

FAIRFAX COUNTY POLICE DEPARTMENT  GENERAL ORDER	SUBJECT: DISCIPLINE AND APPEALS		NUMBER: 310
	EFFECTIVE DATE: June 17, 2024	REVIEW: June 2027	
RESPONSIBLE ENTITY: INTERNAL AFFAIRS BUREAU			<input type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input checked="" type="checkbox"/> Revised 06-17-24
ACCREDITATION STANDARDS:	CALEA 26.1.4, 26.1.5 VLEPSC ADM.18.03, PER.08.04, PER.09.02, PER.09.03		

I. PURPOSE

The purpose of this General Order is to establish guidelines and procedures for Department formal and informal disciplinary actions and appeals.

II. POLICY

It is the policy of the Fairfax County Police Department (FCPD) to impose fair and impartial disciplinary actions in administrative investigations, as well as provide adequate appeal procedures to ensure the rights of all employees are safeguarded. Discipline shall be intended to correct behavior, improve performance, address and discourage misconduct, and maintain public trust. Disciplinary actions must be both progressive and proportional based upon the severity of the misconduct and the employee's previous disciplinary history. Certain acts of misconduct may ultimately disqualify an employee from continued employment with the Department, while other acts may be egregious enough to necessitate an advanced disciplinary action regardless of the employee's previous employment record. Minor acts of misconduct may potentially be mitigated by an employee's otherwise exemplary performance record.

III. GENERAL PROCEDURES

- A. **Applicability:** Unless expressly stated otherwise herein, the provisions of this General Order shall apply to **sworn** Department employees only. Appeals for **non-sworn** employees shall be handled in accordance with [Chapter 17 of the Fairfax County Personnel Regulations](#).
- B. **Business Day:** For purposes of this General Order, any day that falls between Monday and Friday of a calendar week and is not a county holiday is deemed to be a "business day." For disciplinary actions, business days are considered to be eight (8) hours in length.

- C. **Informal Counseling:** Nothing contained within this General Order prohibits the informal counseling of any employee by a supervisor as it pertains to minor infractions of Department policies and/or procedures which do not result in formal disciplinary actions being implemented. (See [Personnel/Payroll Administration Memorandum Number 21](#)).
- D. **Probationary Employees:** The probationary period is defined as the first twelve (12) months in active service starting with the date the employee graduates from the Fairfax County Criminal Justice Academy and/or is sworn in as a law enforcement officer. The Fairfax County Police Department shall have the sole right to discipline, terminate, or lay off probationary employees without any reason or notice. Probationary periods may be extended in writing by the Chief of Police or their designee at least 10 days before the extension via direct notification to the employee for a period not to exceed 120 days in active service. Employees who are serving probationary periods as it pertains to their original employment may not avail themselves of the appeal procedures contained within this General Order.
- E. **Harassment, Discrimination, or Retaliation Investigations:** Any administrative investigation that involves accusations of harassment, discrimination, or retaliation towards another shall be handled in accordance with [Policies and Procedures Memorandum 39-06](#). The Office of Human Rights and Equity Programs (OHREP) and IAB shall both conduct independent investigations into the allegations. OHREP's findings shall be binding upon the IAB administrative investigation outcome.
- F. **Disciplinary Appeals:** Unless expressly exempted, sworn employees may either use this General Order or [FCPD General Order 311](#) (Grievances), to appeal disciplinary actions. Bargaining unit employees may use the Dispute Resolution procedure in the [Collective Bargaining Agreement](#).
- G. **Voluntary Demotions:** Employees may request voluntary demotions at any time.
- H. **Employee Access to Representation:** The Fairfax Chapter of the Southern States Police Benevolent Association (SSPBA) as the duly elected exclusive bargaining agent for sworn uniformed employees of the FCPD may appoint stewards to represent employees in the bargaining unit in grievances or disciplinary matters. The SSPBA shall notify the Department and Fairfax County Labor Relations Division of the name, rank, shift, and work location of all stewards.

IV. DISCIPLINARY ACTIONS

- A. **Considerations:** Reviewing authorities may consider previous relevant sustained disciplinary violations as a factor in determining proper disciplinary recommendations and/or actions to prevent recurrence or possible future misconduct. Reviewing authorities are not limited to specific time periods, but only previous sustained violations should be considered when relevant. With the exception of oral reprimands, no disciplinary action may be imposed against any employee unless and until an investigation is complete.
- B. **Disciplinary Actions:** Where an allegation is deemed to be sustained the following disciplinary actions may be imposed:
1. Oral Reprimands.
 2. Written Reprimands (Prepared and presented by reviewing commanders).

Disciplinary Actions That May Only Be Imposed by the Chief of Police

3. Suspension Without Pay.
 4. Reduction in Rank (to any level deemed appropriate).
 5. Dismissal from the Department.
- C. **Dismissal Dates:** Dismissal dates shall be delayed for twenty (20) business days in order to allow the affected employee the opportunity to exercise any applicable appeal rights, unless the offense that led to dismissal is deemed to require an earlier dismissal date. In those cases, the dismissal date shall be no sooner than ten (10) business days; however, the employee may be placed on administrative leave until the date of dismissal in accordance with [Chapter 16.7 of the Personnel Regulations by the Department](#).
- D. **Promotion Eligibility:** All disciplinary actions, except for those specifically excluded under this General Order, may potentially preclude an employee's eligibility for promotion. The period of ineligibility shall be twelve (12) months from the date of the of the act for which discipline is imposed or the date that the FCPD becomes aware of the act if different.
1. **Exceptions:** Disciplinary actions that shall **not** affect employee promotion eligibility include (1) Oral Reprimands, and (2) Written Reprimands pertaining to cruiser accidents, equipment loss or damage, and/or photo traffic infractions and summonses.
- E. **Promotional Probationary Period:** All employees in the FCPD promoted to a higher rank shall serve a promotional probationary period of twelve (12)

months in active service following their promotion. During this period, the employee may be returned to their prior rank for any of the following reasons:

1. **Unsatisfactory Performance:** Involuntary demotions are grievable under the County grievance procedures or negotiated Dispute Resolution procedure contained within the [Collective Bargaining Agreement](#) in effect at the time at the employee's option.
2. **Failure to Meet Minimum Position Qualifications or Performance Requirements in the Higher Class:** In these instances, the County shall return the employee to their prior rank and pay. Such employees shall not serve another initial probationary period upon being returned to their prior rank and pay unless they have not previously completed their initial probationary period.

F. **Non-Disciplinary Corrective Actions (NDCA):** Where an administrative investigation identifies mitigating circumstances that demonstrate actions, behaviors, or omissions that do not fully comply with Department policy, or were made in error, and had minimal impact on the Department or community member (e.g., Policy Infraction), the reviewing authority may determine a NDCA is a more appropriate course of action rather than disciplinary action. NDCA examples include, but are not limited to (1) counseling, (2) coaching, (3) remedial training, and/or (4) other supportive action(s).

1. **Documentation:** NDCAs shall be documented by the reviewing authority in their Review and Action memorandum and [NDCA notification form](#).
2. **Review:** NDCAs may be vacated by reviewing authority wherever additional investigative measures or reconsideration of the recommended NDCA is deemed warranted and is not subject to grievances and/or appeals under [FCPD General Order 311](#) (Grievances) or the Contract Dispute resolution process in the [Collective Bargaining Agreement](#).

V. **CORRECTIVE ACTION AND DISCIPLINARY AUTHORITY**

- A. **Disciplinary Authority:** Only the Chief of Police, FCPD Commanders, and FCPD supervisors may issue discipline to police bargaining unit employees.
- B. **First-Line Supervisors:** First-line supervisors may impose oral reprimands for minor policy violations where no administrative investigation is warranted. (See Fairfax County [Personnel Regulations Chapter 16](#) and [Personnel/Payroll Administration Memorandum Number 21](#)).

- C. **Deputy Chiefs, Station, Division, and Bureau Commanders:** Any Deputy Chief of Police, or Bureau, Division, or Station commander may impose the following in accordance with the prescribed guidelines:
1. NDCAs.
 2. Oral or Written Reprimands.
 3. Appropriate Training Requirements.
 4. [Supervisory EAP Referrals](#) after consultation with any affected Bureau Commander and the Commander of the Administrative Support Bureau.
 5. Recommendation of suspension, demotion, or dismissal after consultation with any affected Bureau Commander.
- D. **Chief of Police:** The Chief of Police may impose any disciplinary or non-disciplinary corrective action.
- E. **Conflicts of Interest:** Where a reviewing commander determines that a conflict exists that would prevent them from serving as the reviewing authority for a specific case, the reviewing authority shall be determined by the Chief of Police or the IAB Commander.
- F. **Review of Disciplinary Recommendations:** Administrative investigations that result in the recommendation of discipline at a level below that of the Chief of Police shall be reviewed by the reviewing authority as applicable and the Chief of Police or his designee. Any disciplinary action may be vacated by higher authority where additional investigative measures or reconsideration of the recommended discipline is deemed warranted.

VI. DISCIPLINARY HEARING PROCEDURES

- A. **Non-Sustained Violations:** Where the reviewing commander determines no sustained violation has occurred, the affected employee(s) shall be notified of the results of the investigation. A notification memorandum or email in memorandum format shall be prepared and attached to the investigative file for review and signature by the Chief of Police or IAB Commander.
- B. **Sustained Violations:** Where the reviewing commander determines that a sustained violation has occurred, a disciplinary hearing shall be scheduled and conducted by the reviewing commander. Affected employees shall be given at least two (2) business days' notice before the hearing, and shall be

specifically informed of the date, time, and location of the hearing. The purpose of the hearing will be to provide the affected employee(s) with an opportunity to hear a summary of the obtained evidence and respond so that the reviewing commander can impose a fair and objective decision. The disciplinary hearing is **not** an appeal. The affected employee is not entitled to legal counsel unless the County is represented by legal counsel. The employee is entitled to a Steward pursuant to the Fairfax Code of Ordinances 3-10-11(h) and [Collective Bargaining Act](#) Section 9.4.

- C. **Guidelines:** Disciplinary hearings are not bound by any formal rules of evidence; thus, the following guidelines should be used to conduct all disciplinary hearings:
1. **Confidentiality Orders:** The reviewing commander shall verbally rescind any previously issued confidentiality orders for the duration of the hearing. Upon concluding the hearing, the confidentiality order shall be reimposed until rescinded in writing.
 2. **Investigating Supervisors:** The investigating supervisor shall attend the hearing unless the affected employee agrees to waive their appearance in writing. Such waiver shall be noted in writing by the reviewing commander and included in the administrative case. The reviewing commander may authorize additional individuals to attend the hearing as warranted. Whenever present, the investigating supervisor shall present an oral summary of the results of their investigation and explanation of any relevant laws, policies, and regulations.
 3. **Affected Employees:** Affected employees shall be provided the opportunity to present statements and any relevant evidence on their behalf.
 4. **Posing of Questions:** Only the reviewing commander may examine, cross-examine, or pose questions to the investigating supervisor or affected employee. Any questions that the affected employee has of the investigating supervisor shall be facilitated only through the reviewing commander.
 5. **Identity of Involved Individuals:** Where the affected employee requests the identity of other individuals connected with the administrative investigation, that identity shall be provided unless (1) the individual expressed a reasonable fear of retaliation from any person if their participation in the investigation became known, or (2) disclosure is

prohibited by law or court order, or (3) where disclosure is likely to compromise an ongoing criminal or administrative investigation.

6. **Misleading or Untruthful Answers:** Knowing or intentional failure by any employee to provide full, complete, and truthful answers to any lawful question posed by the reviewing commander shall be considered misconduct and appropriate disciplinary action may be imposed accordingly.
7. **Required Questions:** Prior to concluding the disciplinary hearing, the reviewing commander should ask the following questions of the employee:
 - a. *“Are there any other witnesses to this incident that should be interviewed?”*
 - b. *“Are there any other investigative steps that you feel should be taken to obtain all relevant facts surrounding this incident?”*
 - c. *“Do you have any concerns about the conduct of this investigation?”*
8. **Further Investigation:** Where the reviewing commander determines additional investigative measures are necessary, they shall direct the investigating supervisor accordingly.
9. **Documentation:** The reviewing commander shall document the findings of the disciplinary hearing in a Review and Action memorandum and attach it to the administrative investigation report. The report should, at a minimum, reflect all persons present at the hearing, relevant information provided by all persons, any additional actions taken as a result of the hearing, and the employee’s answers to the three questions listed in paragraph 7. The reviewing commander shall summarize their conclusions in the Review and Action memorandum and identify specific laws, regulations, and/or policies violated, and the appropriate classification as defined by [FCPD General Order 301](#) (Internal Investigations). The employee shall be notified of the reviewing commander’s conclusion(s) by memorandum and a copy shall be included in the administrative file. Oral counseling form(s) shall be placed in the employee’s division personnel file.

VII. ORAL REPRIMANDS

- A. Oral Reprimands, Verbal Counseling, and Warnings are synonymous for purposes of this General Order. Oral Reprimand forms shall be retained for a period not to exceed one year unless subsequent disciplinary action(s) involving similar actions are taken within that year. In those cases, the form shall be retained for one year from the date of the most recent disciplinary action. The employee may request removal of an oral reprimand after the expiration of one year.
- B. [The Fairfax County Personnel Regulations Section 16.5–1](#) provides that all supervisors shall maintain informal records of Oral Reprimands and warnings, with the employee's knowledge of such a record.
- C. Where an informal Oral Reprimand is warranted, the issuing supervisor shall maintain a record of the discussion in conformance with the following:
1. Affected employees shall be advised, in private, of the specific infraction of the rule or breach of conduct and the date it occurred.
 2. Affected employees shall be advised at the time of counseling that an informal written record of the reprimand is being kept and the employee has the right to review the record.
 3. Employees shall be advised of their right to file a statement that sets forth their position where the employee disagrees with the findings of the counseling record.
 4. Oral Counseling/Reprimand sessions shall be documented in the "Action Taken" portion of the investigative report.
 5. Oral Reprimand forms shall not be attached to subsequent disciplinary actions. All facts and circumstances pertaining to prior Oral Reprimands shall be included in the documentation for Advance Notice of Disciplinary Action Memorandums or Written Reprimands if relevant to future disciplinary actions.
 6. The record of an Oral Reprimand is to be maintained solely as documentation of prior counseling, should the affected employee allege it was not provided during possible appeals of future disciplinary actions.

7. Oral Reprimand forms shall not be included in an affected employee's agency personnel file nor sent to the Office of Personnel for inclusion in the employee's official record.

VIII. WRITTEN REPRIMANDS

- A. Where a sustained violation merits documentation in an employee's personnel file, a Written Reprimand memorandum shall be prepared and contain:
 1. A statement of charges specifically stating the violation, infraction, conduct, or offense for which the employee is being disciplined.
 2. A statement designating the document as an official Written Reprimand that is to be placed in the employee's permanent personnel file.
 3. Inclusion of previous offenses in those cases where the memorandum is considered to be a continuation of progressive discipline.
 4. A statement that future similar occurrences may result in more severe disciplinary action, up to and including dismissal.
 5. A notice of appeal rights:
 - a. **For Sworn Employees:** A notice of their right to appeal under this General Order, [FCPD General Order 311](#) (Grievances) or the [Collective Bargaining Agreement](#) (for bargaining unit employees).
 - b. **For Non-Sworn Employees:** A notice of their right to appeal under [FCPD General Order 311](#) (Grievances).
- B. An affected employee shall acknowledge receipt of the memorandum with their signature and the date of signature. Where the affected employee refuses to sign the acknowledgement, the reviewing supervisor shall write "**Refused**" in the signature block, with their initials, and the date of refusal.
- C. Written Reprimands shall be forwarded to the appropriate bureau commander for review. After three (3) years, the affected employee may submit a written request through their chain of command to the Fairfax County Director of Human Resources to request that the Written Reprimand be removed from their personnel file, provided it has not been part of any subsequent disciplinary actions. Written Reprimands shall remain part of the IAB

administrative case file and shall be permanently included in the employee's disciplinary history.

IX. SUSPENSION, DEMOTION, UNSATISFACTORY SERVICE SEPARATION, OR DISMISSAL

- A. Whenever a recommended discipline involves suspension, demotion, unsatisfactory service separation, or dismissal, the affected employee shall be provided with an Advanced Notice of Disciplinary Action memorandum at least twenty (20) business days prior to the imposition of the recommended discipline. Where an offense is deemed by competent authority to have a particularly egregious impact on either the Department or public trust, the employee shall be given notice at least ten (10) business days prior to dismissal for the offense.
- B. Advanced Notice of Disciplinary Action memoranda shall include the following:
 1. A detailed statement of charges enabling the affected employee to fully understand the violation, infraction, conduct, or offense for which they are being disciplined.
 2. A statement that the disciplinary action may preclude the employee's eligibility for promotion. Furthermore, the notice should state the period of ineligibility will be twelve (12) months from the date of action for which discipline is imposed or the date the County discovered if later.
 3. The type of disciplinary action recommended.
 4. A statement that, if imposed, the disciplinary action will become a permanent part of the employee's official personnel file.
 5. A statement that the employee may respond to the charges within five (5) business days.
 6. A statement of previous offenses, if any, which were considered in arriving at the proposed disciplinary action.
 7. The effective date of disciplinary action (no sooner than 20 business days from the date of the Advance Notice of Disciplinary Action Memorandum or 20 business days for unsatisfactory service separation); and

8. For **sworn** employees, a notice of their right to appeal under this General Order (should the final decision result in a dismissal, suspension or reduction in rank), [FCPD General Order 311](#) (Grievances), or the [Collective Bargaining Agreement](#) (for bargaining unit employees). **Non-sworn** employees shall be informed of their right to appeal under [FCPD General Order 311](#) (Grievances).
- C. The affected employee shall acknowledge receipt of the memorandum with their signature and the date of signature and receive a copy of the memorandum. Where the affected employee refuses to sign the acknowledgement, the reviewing supervisor shall write “**Refused**” in the signature block, with their initials, and the date of refusal.
- D. The administrative investigation, conclusions, and disciplinary recommendations and actions shall be reviewed by the assigned Bureau Commander, Deputy Chief of Police, and Chief of Police. Absent an appeal, affected employees shall be notified by memorandum of the findings of the Chief of Police and disciplinary action(s) to be imposed.
- E. No employee may be suspended absent completion of internal investigation, finding a sustained violation, and the requirements of this Agreement. Imposition of disciplinary suspensions shall be in accordance with [FCPD General Order 301](#) (Internal Investigations). Additionally, commanders shall consult with the Administrative Support Bureau concerning dates of suspension to ensure that, whenever possible, the employee will not be held responsible for the County’s portion of their health insurance premium as well as to avoid undue adverse impact (other than monetary loss) resulting from the suspension.
- F. Although unsatisfactory service separations are not considered disciplinary actions, the Department will follow the procedures set forth in Sections A through E above.

X. APPEALS

- A. All appeals or grievances of disciplinary actions shall be conducted in accordance with this General Order, [FCPD General Order 311](#) (Grievances), or if applicable, Article 13 of the [Collective Bargaining Agreement](#).

XI. EMPLOYEE REVIEW OF ADMINISTRATIVE INVESTIGATIONS

- A. Any affected employee who is subject to discipline from an administrative investigation may request to review the investigation and all related documents used to determine discipline prior to the second step on any appeal. Additionally, the Chief of Police or their designee may authorize the review to occur at any point of the administrative investigation.
- B. Those affected employees who wish to review must include the following statement on a Step 2 Grievance Form:

I respectfully request an opportunity to review the administrative investigation report and all related documents used to render a disciplinary decision by [commander's name] prior to the Second Step Hearing.

Such a request shall not be unreasonably denied.

- C. Where the review request is granted, the IAB Investigations Commander shall be responsible for coordinating the date and time for the review to be conducted with the affected employee.
- D. If an employee has retained his or her own counsel and has been recommended for dismissal, demotion, suspension, or unsatisfactory service separation, the Department will provide a copy of the investigation file to the employee's attorney under the following conditions:
1. The employee must request, in writing, the copy at the time the employee files the second step complaint form;
 2. The attorney is prohibited from making any copies (whether electronic or paper) of the investigative file;
 3. Use of the investigative file must be limited to the grievance or dispute resolution procedure; and
 4. The copy must be returned to IAB once any and all appeals have concluded.

The Chief retains discretion to deny any such request. Such requests will not be unreasonably denied.

- E. The Chief of Police or IAB commander may authorize the redaction of the names of individuals involved in an administrative investigation.

- F. This policy shall apply to both appeals made under provisions of this General Order as well as grievances under [FCPD General Order 311](#) (Grievances). Section 13.7 of the [Collective Bargaining Act](#) outlines discovery requirements for the dispute resolution procedure under the contract.

XII. POLICE DEPARTMENT HEARING PANELS

- A. The [Code of Virginia](#) establishes procedures for hearing panels as an advisory body. Recommendations from the panel are to be given significant weight but are only advisory in nature to the Chief of Police. The findings of the panel shall be consistent with all applicable laws and ordinances.
- B. Hearing panels are separate and distinct bodies from Civil Service Commission Hearing Panels. Employees may refer to [FCPD General Order 311](#) (Grievances) or contact the Civil Service Commission for guidance.
- C. Department hearing panels shall be convened upon request of an employee made within five (5) business days of the Step 2 grievance response (see [FCPD General Order 311](#) (Grievances) in cases involving dismissal, reduction in rank or suspension.
- D. Department hearing panels shall consist of three (3) sworn members of the Department. The following members are prohibited from serving on panels:
1. Extended family members of the affected employee, to include household members as defined in Fairfax County Personnel Regulations Chapter 2.
 2. Sworn employees who are, or have been, involved in administrative investigations for possible improper conduct involving the same or related incidents.
 3. Sworn employees who, during the previous year, have been suspended or demoted.
 4. Sworn supervisors responsible for the investigation and/or review of the administrative investigation.
- E. Police Department hearing panels are selected by the following procedures:
1. One member may be selected by the affected employee.

2. One member shall be appointed by the Chief of Police. The member shall be of equal or rank no greater than two ranks above the affected employee. This member shall serve as chair of the hearing panel.
3. One member selected by the other two selected members.

Note: If the third member cannot be agreed upon by the other two members, the Chief Judge of the 19th Judicial Circuit Court will select the third member.

- F. Hearing panels shall be convened no later than fourteen (14) calendar days following the date of request by the affected office unless otherwise agreed to by the officer and the Chief of Police.
- G. The Commander of the IAB Investigations Division is responsible for the scheduling of the hearing panel and arrangement for recording of testimony.
- H. The hearing panel procedures shall be conducted in accordance with the [Law Enforcement Officer's Procedural Guarantee Act](#) and the Department's Procedural Guidelines for the Conduct of Hearing Panels.
- I. All findings and/or recommendations of the hearing panel are to be provided to the affected employee and their counsel within five business days.

XIII. FINAL DISCIPLINARY DETERMINATIONS

- A. The Chief of Police shall have final disciplinary determination authority under the following circumstances:
 1. Where no appeal is sought on behalf of the affected employee.
 2. After a Hearing Panel is conducted at the affected employee's request, or,
 3. After a third step grievance where the affected employee has not requested a Hearing Panel.
- B. The Chief of Police is not bound by any disciplinary recommendations made by a Hearing Panel. Officers may then appeal the Chief's decision to the County Executive, who makes a determination based upon the review of the record of the trial board hearing.
- C. When the civil service option is elected, the third step grievance process and discipline is imposed by the Chief of Police, the affected officer may make a

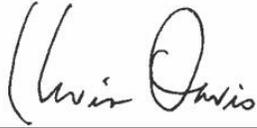
Step Four grievance and request a grievability determination from the County Executive. The County Executive will determine whether the grievance is eligible for a Civil Service Commission hearing.

XIV. LEGAL REFERENCES

- A. [Va. Code Ann. § 2.2-3002](#), Exemptions from chapter.
- B. [Va. Code Ann. § 9.1-500](#), Law-Enforcement Officers Procedural Guarantee Act.
- C. [Va. Code Ann § 9.2-502](#) Notice of charges; response; election to proceed under grievance procedure of local governing body.
- D. [Va. Code Ann. § 9.1-504](#) Hearing; hearing panel recommendations.
- E. [Va. Code Ann. § 9.1-506](#) Informal counseling not prohibited.
- F. [Va. Code Ann. § 9.1-507](#) Chapter accords minimum rights.
- G. [Va. Code Ann. § 2.2-3300](#) Legal Holidays.

General Order 310 becomes effective on the above date and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:



Chief of Police

APPROVED BY:



County Executive