

GENERAL ORDER



DISTRICT OF COLUMBIA

Title
**Fire and Police Disciplinary Action
Procedure Act of 2004**

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Related to:
**General Order 1202.1 (Disciplinary
Procedures and Processes)**

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I. BACKGROUND

The purpose of this order is to set forth changes in existing policies and procedures for initiating corrective or adverse action against sworn and civilian employees of the Metropolitan Police Department (MPD), and to establish reporting requirements for allegations of misconduct, formal grievances and equal employment opportunity complaints. These changes reflect the enactment of Title V of the “Omnibus Public Safety Agency Reform Amendment Act of 2004,” entitled the “Fire and Police Disciplinary Action Procedure Act of 2004,” hereinafter referred to as “The Act.”

The Act provides that “no corrective action or adverse action against any sworn or civilian employee of...the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the...Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.” (D.C. Official Code § 5-1031.a [Commencement of Corrective or Adverse Action])

The Act provides, however, in the event there is an ongoing criminal investigation into the act constituting cause by the MPD, the United States Attorney’s Office (USAO), or the Office of the Attorney General for the District of Columbia (OAG), or if there is an ongoing investigation by the Office of Police Complaints (formerly the Office of Citizen Complaint Review), the 90-day time period shall be suspended until the conclusion of the investigation. (D.C. Official Code § 5-1031.b [Commencement of Corrective or Adverse Action])

This order establishes guidelines and requirements for managers and officials that will ensure compliance with the 90-day rule and reporting requirements of the “Fire and Police Disciplinary Action Procedure Act of 2004.”

II. DEFINITIONS

When used in this directive, the following terms shall have the meaning designated:

- A. 10-Day Extension – A **ONE** ten day extension request submitted by Element Commanders or Directors to their respective Assistant Chief or Senior Executive Director. This extension utilizes calendar days.
- B. 90 Days – A requirement that applies to the specific time limit within which corrective or adverse action must be commenced against a sworn or civilian employee of the Department after the date that MPD knew, or should have known, of the act or occurrence allegedly constituting cause, to **exclude** Saturday, Sunday and legal holidays.

In addition, if the act or occurrence allegedly constituting cause is the subject of an ongoing criminal investigation by the MPD, the USAO, or the OAG, or if there is an ongoing investigation by the Office of Police Complaints, the 90-day time period shall be suspended until the conclusion of the investigation.

- C. Adverse Action
 - 1. Adverse action, for sworn employees, is any suspension, reduction in grade or pay, or removal from service.
 - 2. Adverse action, for civilian employees, is a suspension of ten (10) days or more, a reduction in grade, or a removal from service.
- D. Calendar Days – The twenty-four (24) hour day as denoted on the calendar to include business days (Monday-Friday), weekend days (Saturday and Sunday), and holidays.
- E. Commence – To serve a sworn or civilian employee with a corrective action, a notice of a commander's conference, or a proposed notice of adverse action.
- F. Corrective Action
 - 1. Corrective action, for sworn employees, is a PD Form 750 (Dereliction Report), a letter of prejudice, or an official reprimand.
 - 2. Corrective action, for civilian employees, is an official reprimand, or a suspension of less than ten (10) days.
- G. Chain of Command Investigations – Investigations conducted by unit commanders and their subordinates regarding allegations of misconduct and use of force incidents that do not fall under the jurisdiction of the Office of Professional Responsibility (OPR).

- H. Due Date – refers to the calendar day upon which an investigation is due as determined by the Assistant Chief, OPR.
- I. Employee – A sworn or civilian employee of the Department.
- J. Formal Grievance
 - 1. A grievance, submitted in writing to an employee’s Element Commander, or Director, or the Chief of Police pursuant to the procedures set forth in the Collective Bargaining Agreement (CBA) and General Order 201.3 (Grievance Procedures), by an employee alleging a violation, misapplication, or misinterpretation of the CBA between the MPD and the employee’s labor representative. (CALEA 25.1.1)
 - 2. A grievance, submitted in writing, by an employee to an official who is at a higher administrative level than the deciding official on such actions pursuant to the procedures set forth in District of Columbia Personnel Manual, Chapter 16 (General Discipline and Grievances) and General Order 201.3 (Grievance Procedures) and does not involve an alleged violation of the CBA.
- K. Knew or Should Have Known of the Act or Occurrence Allegedly Constituting Cause – The date on which a manager or supervisor becomes aware, or should have known, or an official is notified of the alleged misconduct.
- L. Special Circumstances – Circumstances in which a critical component that is necessary to complete the investigation is not available by the assigned deadline due date to reasons outside of the investigating official’s control, i.e. complexity of the case, or availability of a subject employee(s)/critical witness(es).

III. REGULATIONS

- A. No corrective action or adverse action against an employee of the MPD shall be commenced more than 90 days, not to include Saturday, Sunday, or legal holidays, after the date that the MPD knew, or should have known, of the act or occurrence allegedly constituting cause. (CALEA 26.1.1)
- B. In the event that there is an ongoing criminal investigation into the act constituting cause by the MPD, the USAO, or the OAG, or if there is an ongoing investigation by the Office of Police Complaints, the 90-day time period shall be suspended until the conclusion of the investigation.
- C. All Metropolitan Police Department administrative, use of force, misconduct and disciplinary investigations shall be completed within thirty (30) calendar days, with the exception of motor vehicle crash investigations, which must be certified and completed within fifteen (15) calendar days. This includes investigations being conducted by OPR.

- D. All chain of command investigations shall be completed and submitted, through the chain of command, to the Assistant Chief, Office of Professional Responsibility (OPR) by the assigned due date. Element Commanders and Directors may request **ONE** 10-day extension in accordance with the procedures outlined in Section IV.A.4-9, of this order. (CALEA 52.1.4)
- E. All OPR investigations shall be completed and submitted to the Assistant Chief, OPR, by the assigned due date. The Director, Internal Affairs Division, or the Program Manager, Diversity and EEO Compliance Unit, may request **ONE** ten-day extension in accordance with the procedures outlined in Section IV.A.4-9, of this order.
- F. Subsequent requests for an extension, after the initial **ONE** 10-day extension, shall be reviewed and approved on a case-by-case basis by the Assistant Chief, OPR.
- G. Investigation timelines established by the Department to achieve the 90-day requirement are internal guidelines. Failure to meet these timelines shall not be used by employees as a defense against a recommendation for corrective or adverse action.
- H. The 90-day rule in the "Fire and Police Disciplinary Action Procedure Act of 2004," and the policy and procedures described in this order that relate to that act, shall apply to all sworn and civilian employees of the Department, regardless of their duty status. The 90-day rule does not apply to members of the Reserve Corps.
- I. Any effort to contact employees on administrative sick leave to serve corrective action, or a notice of proposed adverse action, shall be coordinated in consultation with the Director, Medical Services Section, Office of Human Services. The consultation shall not delay service if the 90-day deadline is within three (3) working days.

IV. PROCEDURAL GUIDELINES

- A. Element Commander or Director, whichever is applicable, shall ensure:
 - 1. All chain of command investigations are submitted using the appropriate "template" formats issued by the Assistant Chief, OPR.
 - 2. All chain of command investigations are submitted, through the chain of command, to the Assistant Chief, OPR, by the due date deadline assigned by the Assistant Chief, OPR.
 - 3. Twenty (20) days is allotted to complete the investigation, to include:
 - a. Five (5) days for the Element review, and

- b. Five (5) days for review by the appropriate Assistant Chief or Senior Executive Director.
4. All extension requests are submitted, in writing, to include the specific reason(s) additional time is needed. Extension requests shall also document the original incident intake date and the original due date, as well as any subsequent extensions request that have been approved.

Note: Element Commanders and Directors may request **ONE** 10-day extension for investigations from their respective Assistant Chief or Senior Executive Director.
5. All requests for a 10-day extension are submitted, in writing, to the Assistant Chief or Senior Executive Director at least two (2) days prior to the due date deadline.
6. Request a subsequent extension when special circumstances exist. Examples of special circumstances include:
 - a. **Complexity of the case** - in these circumstances, the written request must include the specific elements of the investigation that will require additional time.
 - b. **Availability of a subject employee(s)/critical witness(es)** - the written request must include the specific reason(s) why the subject employee(s) and/or witness(es) are unavailable, and the specific efforts that have been undertaken thus far to meet with the subject employee(s) and/or witness(es), including dates and times of efforts.
7. All requests for subsequent extensions due to special circumstances are submitted, in writing, through the chain of command, to the Assistant Chief, OPR, at least two (2) days prior to the due date deadline.
8. Subsequent extension requests document the special circumstances, the original incident intake date, the original due date, and all previous extensions that have been granted.
9. Extensions are requested and forwarded in accordance with the procedures outlined in this order any time an investigation will not be submitted to the Assistant Chief, OPR, by the due date deadline, including when an investigation has been returned to the investigating official for further investigation or for administrative corrections.
10. Submit a copy of the discipline imposed for all investigations submitted **AFTER** the due date without the written approval for an extension.

11. A copy of the served corrective action, with the employee's signature, or with the official's documentation that the employee refused to sign, is submitted to OPR, along with the investigation, by the due date deadline assigned by the Assistant Chief, OPR.

Note: Corrective action applies **only** to misconduct investigations that are **not** subject to further review by a Department Review Board (e.g. the Crash Review Board).

12. Corrective action is served to employees as soon as possible, but not later than 90 days after MPD became aware of the incident.
13. Subject employees are interviewed and his/her comments are considered for mitigation in accordance with the procedures outlined in General Order 1202.1 (Disciplinary Procedures and Processes), when an official reprimand or suspension of less than ten days is under consideration. The Element Commander or Director shall attempt to resolve a disciplinary matter after a conference with an affected employee and his/her Labor Union representative (unless representation is voluntarily waived by the employee).
14. Element-level corrective action is served on an employee, not to include chain of command investigations that require Complaint Summary (CS) numbers, as soon as possible, but not later than 30 days after MPD became aware of the incident.
15. A copy of the served element-level corrective action, signed by the employee, or with the official's documentation that the employee refused to sign, is forwarded through the channels to the Director, Disciplinary Review Division, OPR.

B. Assistant Chief or Senior Executive Director, whichever is applicable, shall ensure:

1. All chain of command investigations are submitted using the appropriate "template" formats issued by the Assistant Chief, OPR. Investigations submitted without the approved templates shall be returned from the Assistant Chief, OPR, for correction.
2. All chain of command investigations are completed and submitted to the Assistant Chief, OPR, by the due date deadline assigned by the Assistant Chief, OPR.
3. Requests for the **ONE** 10-day extension permissible for chain of command investigations submitted by Element Commander and Directors are reviewed and submitted in accordance with Section IV.A.4-5.

4. Upon the approval of the **ONE** 10-day extension request, the Operations Lieutenant, Internal Affairs Division, OPR, is notified, in writing prior to the original due date deadline, via memorandum or e-mail.
 5. Extensions are requested in accordance with the procedures outlined in Section IV.A.4-8, when an investigation will not be submitted to the Assistant Chief, OPR, by the due date deadline, to include circumstances where an investigation has been sent back for further investigation or for administrative corrections.
 6. A copy of the discipline imposed for investigations submitted **AFTER** the approved due date is forwarded not later than seven (7) business days to OPR, after submission of the original investigation.
- C. The Director, Diversity and Equal Employment Opportunity (EEO) Compliance Unit, OPR, shall:
1. Prepare a monthly report that contains the number of EEO complaints filed with the Agency's Diversity and EEO Compliance Unit, categorized by the nature of the grievance filed, and the nature of those grievances that are substantiated.
 2. Submit the report to the Assistant Chief, OPR, no later than the 5th day of each month, beginning in January 2005.
 3. Ensure the report prepared for the month of December includes:
 - a. Statistics for the entire calendar year, and
 - b. All corrections made to previous monthly reports for that same year.
- D. The Director, Disciplinary Review Division, OPR, shall:
1. Ensure that recommendations for adverse action are reviewed, and that notices of proposed adverse action are submitted, through channels, to the Assistant Chief, Office of Human Services, not later than 10 business days after receipt, to ensure that the subject employee shall be served the notice no later than 90 days after MPD became aware of the incident.
 2. Prepare a monthly report listing the number of individuals of all ranks and services investigated and disciplined for misconduct, to include:
 - a. Categorization by the nature of the misconduct allegations,
 - b. Substantiated misconduct allegations, and

- c. Discipline for substantiated allegations.
 3. Submit the monthly report to the Assistant Chief, OPR, no later than the 5th day of each month, beginning in January 2005.
 4. Ensure the report prepared for the month of December includes:
 - a. Statistics for the entire calendar year, and
 - b. All corrections made to previous monthly reports for that same year.
- E. The Director, Labor Relations Unit, Office of the General Counsel, shall:
 1. Prepare a monthly report of the number of formal grievances filed by individuals, including complaints filed with Element Commanders and Directors, categorized by:
 - a. The nature of the grievance filed, and
 - b. The nature of substantiated grievances.
 2. Submit the report, through channels, to the Assistant Chief, OPR, no later than the 5th day of each month, beginning in January 2005.
 3. Ensure the report prepared for the month of December includes:
 - a. Statistics for the entire calendar year, and
 - b. All corrections made to previous monthly reports for that same year.
- F. The Assistant Chief, Office of Human Services, shall ensure that notices of proposed adverse action are served to the subject employee not later than 90 days after MPD knew, or should have known, of the act or occurrence constituting cause.
- G. The Assistant Chief, OPR, shall:
 1. Ensure that thirty (30) calendar day due date deadlines are assigned for all OPR and chain of command investigations.
 2. Ensure investigations submitted without the approved template are returned to the Assistant Chiefs and Senior Executive Directors for correction.

3. Respond, in writing and in a timely manner, to all requests for extensions submitted in accordance with the procedures outlined in Section IV .A.7-9.
4. Ensure that the data contained in the report prepared by the Director, Disciplinary Review Division, as described in Section IV. D.2 is entered into the OPR Complaint Summary (CS) database in a timely manner, not later than the 10th day of every month.
5. Prepare and submit the following monthly reports to the Chief of Police, not later than the 10th day of each month, beginning January 2005:
 - a. A report that lists the number of individuals of all ranks and services, investigated and disciplined for misconduct, with such information categorized by:
 - (1) The nature of the misconduct allegation(s),
 - (2) Substantiated misconduct allegations,
 - (3) Discipline imposed for substantiated allegations, and
 - (4) Information regarding referrals to the USAO, arrests, intake cases, and dispositions.
 - b. A report that lists the number of formal grievances filed by individuals, to include complaints filed with the Agency's Diversity and EEO Compliance Unit, categorized by the nature of:
 - (1) The grievance filed, and
 - (2) Substantiated grievances.
6. Ensure the report prepared for the month of December includes:
 - a. Statistics for the entire calendar year, and
 - b. All corrections made to previous monthly reports for that same year.

V. CROSS REFERENCES

1. GO-RAR-901.08 (Use of Force Investigations)
2. GO-PER-120.23 (Serious Misconduct Investigations)
3. General Order 1202.1 (Disciplinary Procedures and Processes)

4. GO-PER-201.09 (Equal Employment Opportunity)
5. GO-RAR-201.36 (Code of Ethics)

//SIGNED//
Charles H. Ramsey
Chief of Police

CHR:SOA:DAH:JAH:moc:mcw