

TO: Citizens Review Board Work Group
FROM: Annale Taylor, Deputy General Counsel
Louisville Metro Government
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RE: Discipline and Review Process in Place

Discipline and Review Process

There are two ways in which an investigation on an officer's misconduct can be initiated; a citizen or officer can file a sworn affidavit with the LMPD Professional Standards Unit ("PSU") or the Chief can direct the PSU to initiate an investigation. If the complainant alleges criminal activity, the LMPD Professional Integrity Unit ("PIU") will investigate the allegations. The PIU presents their investigation to the prosecutor's office; the prosecutor will decide whether to pursue prosecution of the officer.

After prosecutorial decision is made or there are no criminal allegations, PSU begins their investigation to determine whether an officer has violated any policies and procedures. At the conclusion of the investigating sergeant's investigation, the PSU sergeant writes a letter summarizing their findings and making a recommendation. The investigative file is then passed up the chain of command with each person in the chain conducting a review and making a recommendation until it reaches the Chief. By law, the Chief is the only person that can make a final determination on whether an officer violated policy and if so, what discipline may be imposed.

The Chief can only discipline if he has just cause. Just cause is not legislatively defined, but is a common standard used in labor agreements. Generally, just cause requires a consideration of the following questions:

- 1) Was the employee adequately warned of the consequences of his conduct?
- 2) Was the employer's rule or order reasonably related to efficient and safe operations?
- 3) Did management investigate before administering the discipline?
- 4) Was the investigation fair and objective?
- 5) Did the investigation produce substantial evidence or proof of guilt?
- 6) Were the rules, orders, and penalties applied evenhandedly and without discrimination?
- 7) Was the penalty reasonably related to the seriousness of the offense and the past record?

Discipline can occur in the form of a verbal or written reprimand, suspension, demotion, or termination/discharge and is progressive. Under the collective bargaining agreement in place, the Chief cannot consider a previous written reprimand after one year, a previous suspension of 72 hours or less or an involuntary transfer after three years, and a previous suspension over 72 hours after five years.

The appeal process of the Chief's final determination begins with the Police Merit Board. The Board is comprised of five citizens appointed by the Mayor and approved by Metro Council and two police officers voted in by LMPD officers. The Board also has subpoena power.

If an officer receives discipline in a PSU investigation initiated by the Chief, the officer may appeal the Chief's decision to the Police Merit Board within ten days. The Board must schedule and conduct a public hearing to review the action of the Chief. An appeal of a dismissal, demotion, or forty (40) hour or more suspension by a non-probationary officer must be heard by the full Board. If the appeal involves a suspension less than forty (40) hours can be heard by the full board or a hearing officer secured by the Board.

The hearing officer must submit a written recommended order including findings of fact, conclusions of law, and recommended disposition of the appeal to the Board within 30 days. The appealing officer and Chief may file exceptions to the hearing officer's recommended order within 15 days. The Board has 30 days from the hearing officer's recommended order to render a final order.

If a citizen initiates an investigation against an officer and is dissatisfied with the Chief's final determination, they can appeal to the Board within 30 days. The citizen must submit the appeal in writing setting forth specific reasons why the Chief's decision is thought to be erroneous, an estimate of the amount of time they need to present their position, and the evidentiary materials supporting their position.

The Chief has fifteen days to file a written answer to the citizen's charges; the officer may respond if they wish. The Secretary, which is hired by the Board, and Legal Counsel for the Board will then review the citizen's appeal, the Chief's response, and the officer's response if any, and determine if there is sufficient cause for additional investigation, review, or hearing by the Board. The Secretary and Legal Counsel for the Board will then advise the Board accordingly. The Board will then make a decision; if it decides to hold a hearing, the hearing may be heard by a hearing officer or the full Board.

Once the Board issues a final order, the aggrieved party has thirty days to file an appeal to the circuit court. Once the circuit court renders a final judgment, it can be appealed to the Court of Appeals.

Citizen's Commission on Police Accountability

The CCPA was created by ordinance in 2003. It consists of a Chair and ten members all appointed by the Mayor and approved by Metro Council. The CCPA's scope is to review closed police investigations in all police shooting cases and incidents involving loss of life due to police action. It also advises the Chief and Mayor on the adequacy and quality of the investigation and can recommend changes in police policy, training, and procedures.

Police Officer's Due Process Rights

The General Assembly enacted KRS 67C.326 with the goal of setting out officer's administrative due process rights and while also providing a means for citizens to seek a remedy for the wrongs allegedly done to them by officers; it is often referred to as the "Police Officer's Bill of Rights." It is this statute that permits citizens to appeal the LMPD Chief's final determination.

The Police Officer's Bill of Rights also provides for the following:

- If the officer is under arrest, likely to be arrested, or a suspect in any criminal investigation, the officer shall be afforded the same constitutional due process rights afforded any civilian.
- A charge of a violation of policy and procedure must be made with specificity and in writing so as to fully inform the officer of the nature and circumstances of the alleged violation.
- No public statements shall be made by any person or persons of the consolidated local government or by the police officer when the officer has been charged with a violation of policy
- No police officer as a condition of continued employment may be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature
- Officer must be given at least 72 hours' notice before a hearing and be provided with all exculpatory statements and affidavits at least 72 hours before the hearing
- If appeal stems from a citizen complaint, the citizen has a right to be appear at the hearing and if does not appear, the charge will be dismissed with prejudice
- The hearing must occur within 60 days of being suspended with or without pay from a charge of violation of policy or the charge will be dismissed with prejudice and the officer reinstated with full back pay and benefits