

DISCIPLINE 101 & PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHT (aka "POBOR")

April 2015



DISCIPLINE 101 QUIZ





City's Philosophy on Discipline

Discipline is to:

- Correct and modify behavior that impacts
 - Other employees within workplace
 - Service delivery to the public
 - Interferes with another employee's ability to perform his/her job duties
 - Violates policies, procedures and regulations
- Get the employee back to meeting performance standard



City's Philosophy on Discipline

- Be Progressive
- Generally use the least severe step which will restore employee to meeting standards
- Conduct discipline as close to the time of the incident as possible
- The supervisor trains and assists the employee
- Employee is responsible for acceptable performance of the FULL RANGE of job duties
- A two-track system with different steps for misconduct and performance



Two-Track Discipline System

Performance Discipline	Misconduct Discipline
1. Verbal Counseling	1. Verbal Warning
2. Written Counseling	2. Written Warning
3. Supplemental Performance Report / PDP	3. Reprimand
4. Reduction in Compensation	4. Suspension
5. Demotion	5. Demotion
6. Termination	6. Termination





Discipline Tips

- Counseling and Warnings usually focus on a specific issue or incident (narrow focus)
- Performance Evaluations generally address several issues (broad focus)
- Misconduct issues are disciplines based on the incident. This means a *first* incident may result in termination



Discipline Tips

- Did the action taken seem:
 - Fair and Equitable
 - Consistent with department/division standards
 - Reasonable





Supervisors

- Role Model
- Prepare Performance Plan
- Communicate acceptable job standards to employees
- Hold employees accountable for job performance
- Document objective performance data
- Conduct Performance Evaluations
- Recognize and Reward employee performance
- Develop Employees
- Knowledge of rules, policies and procedures



Supervisors

- Keep your supervisor informed
- Conduct Discipline
 - Verbal Counseling/Warning
 - Written Counseling/Warning
 - Supplemental Performance Reports
 - Performance Development Plan
- Recommend / Prepare discipline documents
- Documentation
- Know Civil Service Rule XI
 - RESIGNATION, REMOVAL, SUSPENSION,
REDUCTION IN COMPENSATION, DEMOTION

Employees

- Perform the full range of duties at an acceptable level
- Improve behavior and / or performance to an acceptable level




Management / Supervisory Standards

- The following should be discussed with supervisory staff:
 - Standards and expectations of acceptable performance
 - Guidelines for appropriate discipline
 - How discipline should be handled in their division
 - Apply specific needs of the division fair and consistently



Management / Supervisory Standards

- One element may be so important that if an employee does not meet standard in one element, then the overall job performance rating may not meet standards
- Discipline should be administered equitably, based on clear job related EPR criteria
- In order to ensure all actions are fair and consistent it should be reviewed by the next higher level supervisor

A panoramic view of the San Diego skyline, showing various skyscrapers and buildings along the waterfront under a clear blue sky.

Employee Performance Review Program (EPRP)

- Employee Performance Review is the foundation of Rewards and Discipline
- Employee must first have a performance plan
- An employee should have a new performance plan when he/she moves into a new position, or there is a change of supervisors
- Supervisors will be held accountable in their performance plans for:
 - Conducting timely performance evaluations
 - Rewarding and disciplining employees

EPRP (CONT)

- It is very difficult to correct a serious performance problem without conducting a corresponding evaluation
- Maintain Performance Standards/Hold Employees Accountable to performance
 - Avoid performance that does not meet standards or is not corrected becoming your minimum acceptable performance standard
- Evaluations also document exceptionally good performance and justify additional rewards



EPRP (CONT)

- Supplemental Performance Review

- A tool to notify employees about poor performance
- An official documented record of poor performance

Remember to:

- Establish date/time to meet with the employee and provide performance updates on a regular basis and adhere to dates
- Offer assistance
- Keep employee informed - there should be **No** surprises
- Conduct a final meeting to discuss employee status
- Do not let final date lapse



EPRP (CONT)

- Supplemental Performance Reviews should refer to any previous inappropriate behavior(s) within the current evaluation
- Include behaviors that can be supported with examples or documentation previously discussed with employee
- Must include a Development Plan that addresses how the employee must correct problems / behaviors



EPRP (CONT)

- Meet on a regular basis to discuss performance
 - List dates, times, and location of weekly/bi-weekly meetings with employee in the supplemental performance review and adhere to them
- Be specific on the expected performance
- Work closely with your Personnel Liaison to ensure all the requirements for a supplemental performance review and the annual review are met



Documentation

Documentation is crucial for the following reasons:

- Seriousness of behavior
- Unacceptable behavior
- Corrected behaviors
- Provides a record

Be sure to focus on:

- Behavior(s) and the impact(s)
- Date(s) and Time(s)
- Outcome(s) and Consequence(s)





Written Counselings and Warnings

- Be sure to focus on:
 - Performance or incident
 - Date or time frame
 - Improvement needed
 - Consequences if improvement is not noted
- Be sure to offer assistance and designate a follow-up date
- If appropriate, offer EAP as a resource



Counseling and Warnings

- Previous Verbal Counselings / Warnings should be referenced in the Written Counseling / Warning. Document:
 - Date(s)
 - Time(s)
 - Topic(s)
 - If the employee fails to change the behavior document it in the Written Counseling / Warning





DESC Model

When discussing issues in a tense situation:

- **D**escribe Behavior
 - “When you report to work late....”
- **E**xpress Impact
 - “...your crew doesn’t leave the yard on time and productivity is reduced”
- **S**pecify Change
 - “You need to report to the yard on time everyday – that means 7:00 am”
- **C**onsequences
 - “If you do not do this beginning tomorrow I’ll have to take more severe disciplinary action”

***Let’s try it!**

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Public Safety Officers Procedural Bill of Rights (POBR)

- Enacted in 1976
- Codified in Government Code sections 3300 through 3313
- Provides a catalog of basic rights and protections that must be afforded all peace officers by the public entities which employ them

Public Safety Officers Procedural Bill of Rights (POBR)

Investigation Procedures
Notification
Representation
Interview Processes
Deadlines/Timelines

Imposing Discipline
Appeals
Privacy Rights
Searches & Reassignments
Political Activity
Personnel Files

COVERS PUBLIC SAFETY OFFICERS

- **The term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.**



When does POBOR Apply?

Any actions which may lead to:

- Dismissal
- Demotion
- Suspension
- Reduction in Salary
- Written Reprimand
- Written Warning/Counseling
- Transfer for the purpose of punishment

DOES NOT APPLY TO:

- Verbal Counseling
- Verbal Warning
- Instruction
- Coaching
- Informal verbal admonishment
- Routine or unplanned contact with supervisor



Interrogations

(Fact Finding Investigations)

Pre Fact Finding Investigation Notices

- Must advise the officer (Lifeguard) of the nature of the investigation
 - Date / Brief description of alleged misconduct
 - Department/City Rules/regulations violated
 - Name, rank, and “command” of the person in charge of the interrogation, the interrogating officer, and all others expected to be present during the interrogation (Gov. Code, § 3303(b).)
 - Right to representation

Fact Finding Rights to Representation

- It is the responsibility of the subject to obtain representation
- Representative can not be a part of the investigation
- Representative from Local 911
- Attorney
- MOU Article 8
 - An employee is entitled, upon his or her request, to representation, not to exceed one City employee and one non-City employee during each of the following proceedings. In addition, one observer may also attend if authorized by the Human Resources Department



Fact Finding

Interrogation Procedures

- **ALLOWABLE**

- Questions may be asked by and through no more than two interrogators (interviewers) at one time
- Reasonable hour
- Reasonable length, determined by the complexity of the issue
- Reasonable breaks, to attend to own personal physical necessities
- On-Duty or Compensated

- **NOT ALLOWABLE:**

- Offensive language
- Threat of punitive action
- Incentives/Rewards/Bribes/Quid pro quo



Fact Finding

Interrogation Procedures

- May be recorded by either party
 - **Employer recording:** Lifeguards shall have access to the recording if any further proceedings are contemplated or prior to any further interrogation at a subsequent time.
- They have the right to bring own recording device and recording and all aspects of the interrogation.



Fact Finding

Post Fact Finding Right to Materials

- Subject is entitled to **access the recording** of the interrogation, any **stenographer's notes**, and **non-confidential reports or complaints** if discipline is going to be imposed or prior to any further interrogation.
- Consult a labor relations attorney before providing a subject officer with documents or other materials.



Fact Finding

Interrogations With Possible Criminal Misconduct

- If during or prior to the interview it is determined that the Firefighter could be subject to criminal charges, the employee must be informed of constitutional rights (Miranda Rights)

*City may elect to postpone investigation



Fact Finding

- **POLYGRAPH**

- Lifeguard cannot be forced to take a polygraph
- Refusal to submit cannot be noted or used against the Lifeguard

- **MEDIA**

- Lifeguard cannot be subject to visits by the media without the Lifeguard's express written consent.
- Lifeguard's photograph, home address, telephone number, or other contact information shall not be given to the press or news media without express written consent.

- **DISCLOSURE OF FINANCIAL INFORMATION**

- Lifeguard cannot be forced to disclose financial information



RIGHTS TO PRIVACY

• Cannot search an officer's locker or other assigned storage space without **one** of the following:

- Lifeguard gives consent
- Lifeguard is physically present
- Lifeguard received prior notification **or**
- a search warrant

Fact Finding Investigation Deadlines

- **One year from discovery**
 - not the incident
- **Exceptions:**
 - Lifeguard voluntarily waives deadline
 - Criminal or Civil investigation or prosecution
 - Multijurisdictional investigation
 - Employee involved is incapacitated or unavailable
 - Worker's compensation fraud

Fact Finding Investigation Deadlines

- **May reopen if:**
 - Significant new evidence has been discovered that is likely to affect the outcome of the investigation, AND
 - The evidence could not reasonably been discovered in the normal course of the investigation, OR
 - The evidence resulted from the Firefighter's predisciplinary response or procedure
- **DISCIPLINE DEADLINE**
 - Within 30 days of the decision to discipline but not less than 48 hours prior to imposing the discipline



DISCIPLINE

Notice of Discipline

- Must notify the officer in writing of the decision to impose discipline, including the date the discipline will be imposed, within 30 days of the decision (Gov. Code, § 3304(f).)



DISCIPLINE

Notice of Intent to Discipline (ANOS, NOS, ANOT, NOT...)

- If pending discipline impacts property rights, (e.g. suspension, demotion, or termination), the notice must include:
 - Level of discipline determined & effective date of proposed action
 - Rules or statutes violated
 - Factual bases for findings
 - How the proposed discipline was determined.
- Include copies of **all materials** supporting the decision
- Advise the lifeguard of **right to a *Skelly* conference** and that failure to provide a timely request will waive the right to respond prior to the imposition of discipline.
- Advise the lifeguard that he/she has the right to have a representative at the *Skelly* conference.

REASSIGNMENT

A Lifeguard shall not be loaned or temporarily reassigned to a location or duty assignment if a Lifeguard in his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

PUNITIVE ACTION FOR EXERCISING RIGHTS

A Lifeguard shall not be subject to or threatened with punitive action, or denied promotion, because of the lawful exercise of the right granted under this act



Political Activity

- **Except whenever on duty or in uniform**, an lifeguard cannot be required to, or prohibited from, engaging in political activity.
- A lifeguard cannot be prohibited from seeking election to or serving as a member of the governing board of a school district.



Personnel File

- An officer has the right to review and sign any adverse comment before it is placed in his/her personnel file. If the officer refuses to sign the adverse comment, the refusal must be noted on the document.
- An officer has **30 days** to file a written response to any adverse comment entered in his/her personnel file. This response must be attached to the adverse comment in the file.



Personnel File

- A lifeguard may **inspect** his/her personnel file upon reasonable request.
- A lifeguard may request removal or correction of material in personnel file believed to be mistaken or unlawful. The agency must respond to the request within 30 calendar days.

ENFORCEMENT

- **Penalties for violation**
 - Department may be liable for a civil penalty
 - \$25,000 for each violation
 - Damages may be awarded
 - Attorney's Fees
- **Frivolous or bad faith**
 - Sanctions
 - Attorney's Fees
 - Expenses



RESOURCES

- Department Management / HR Division/PSU
- Human Resources Department / Labor Relations Office
- Local 145
- City Attorney's Office
- Employee Assistance Program



The top of the slide features a banner with a blue sky and a city skyline over water. On the left is the official seal of the City of San Diego, which is circular and contains the text 'SAN DIEGO - STATE OF CALIFORNIA' and '1850' around the perimeter, with 'SEMPER VIGILANS' at the bottom. Overlaid on the seal is the text 'The City of San Diego' in a large, bold, black font, with 'America's Finest City' in a smaller font below it.

The City of
San Diego
America's Finest City

ANY QUESTIONS ?