INTRADEPARTMENTAL CORRESPONDENCE

May 6, 2021
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TO: The Honorable Board of Police Commissioners

FROM: Executive Director, Board of Police Commissioners

SUBJECT: POLICE COMMISSION ADVISORY COMMITTEE COMPREHENSIVE REVIEW OF THE LEGAL FRAMEWORK OF THE DEPARTMENT DISCIPLINARY PROCESS AND PROCEDURES

RECOMMENDED ACTION

It is recommended that the Board of Police Commissioners RECEIVE and FILE the attached documents.

DISCUSSION

The Police Commission Advisory Committee has competed a thorough review of the legal framework for the Department disciplinary process and procedures in accordance with Los Angeles City Charter Section 1070.

The two attachments "Legal Framework for LAPD Disciplinary Process" and "Los Angeles Police Department – Disciplinary Process and Procedures" are attached for your information.

Should you have any questions or require any additional information please do not hesitate to contact me at (213) 236-1400.

Respectfully,

RICHARD M. TEFANK, Executive Director
Board of Police Commissioners

Attachments

LEGAL FRAMEWORK FOR LAPD DISCIPLINARY PROCESS

I. INTRODUCTION

In 1976, the California Legislature adopted the Public Safety Officers Procedural Bill of Rights Act ("PSOBRA" or "the Act"), Cal. Gov. Code § 3300 *et seq.* *See Upland Police Officers Ass'n v. City of Upland*, 111 Cal. App. 4th 1294, 1301 (2003). "The act sets forth a list of basic rights and protections which must be afforded all peace officers (see § 3301) by the public entities which employ them. It is a catalogue of the minimum rights (§ 3310) the Legislature deems necessary to secure stable employer-employee relations (§ 3301)." *Id.* at 1302. PSOBRA thus establishes a floor—not a ceiling—of procedural protections for officers in disciplinary proceedings. *See Quezcada v. City of Los Angeles*, 222 Cal. App. 4th 993, 1003 (2014). Indeed, the Act grants individual jurisdictions substantial leeway to shape their disciplinary processes as long as they adhere to the minimum requirements set forth in the Act. *See* Cal. Gov. Code § 3310.

This memorandum explains the legal obligations and requirements PSOBRA, Section 1070 of the Los Angeles City Charter, Section 22.290 of the Los Angeles Administrative Code, and the August 14, 2019 Memorandum of Understanding between the City of Los Angeles and the Los Angeles Police Protective League impose on the City with respect to police disciplinary proceedings. It also summarizes decisions by the California courts interpreting various provisions of the Act, wherever relevant. Together, these provisions establish foundational rules governing interrogation, discovery, appeals, and final disciplinary action for Los Angeles Police Department ("LAPD") officers.

II. THE PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS

As the California Supreme Court has observed: "To keep the peace and enforce the law, a police department needs the confidence and cooperation of the community it serves. Even if not criminal in nature, acts of a police officer that tend to impair the public's trust in its police department can be harmful to the department's efficiency and morale. Thus, when allegations of officer misconduct are raised, it is essential that the department conduct a prompt, thorough, and fair investigation." *Pasadena Police Officers Ass'n v. City of Pasadena*, 797 P.2d 608, 609 (Cal. 1990). It is also true, however, that "effective law enforcement depends upon the maintenance of stable employer-employee relations," Cal. Gov. Code § 3301, and officers under investigation have a "personal interest in receiving fair treatment." *Id.* at 609.

PSOBRA balances these two competing concerns. The Act "secures for peace officers—when off duty and not in uniform—the right to engage, or to refrain from engaging, in political activity (§ 3303); it protects against punitive action or denial of promotion for the exercise of procedural rights granted under its own terms or under an existing grievance procedure (§ 3304, subd. (a)); it provides that no adverse comment be entered in an officer's personnel file until after the officer has been given an opportunity to read and sign the comment (§ 3305); it mandates that when an adverse comment is entered in a personnel file, the officer shall have 30 days to file a written response to be attached to the adverse comment in the file (§ 3306); and it protects against compelled disclosure, except in limited circumstances, of an officer's financial status (§ 3308)." *Pasadena Police Officers Ass'n*, 797 P.2d at 611. At the same time, the Act authorizes employers

to punish officers who "refus[e] to respond to questions or submit to interrogations," conduct interrogations at even unreasonable hours if "the seriousness of the investigation" requires it, and charge police officers with insubordination if they refuse to cooperate with other agencies involved in criminal investigations. *See* Cal. Gov. Code §§ 3303, 3304.

The following chart summarizes PSOBRA's procedural protections and exceptions for police officers in disciplinary proceedings:

Section 3303	*Interrogations*	A police officer under investigation and facing potential punitive consequences is entitled to an interrogation "conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, *unless* the seriousness of the investigation requires otherwise." He or she is also entitled to be represented by a representative of his or her choice during the interrogation itself upon the filing of a formal written statement of charges *or* if it appears that the disciplinary matter will likely result in punitive action against the officer.[1] The police officer under interrogation must be informed of the nature of the investigation, as well as the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation *before* the interrogation begins. No more than two interrogators may ask questions at one time. The interrogated individual also has a right to a tape recording of the interrogation, a transcribed copy of any notes, and copies of any reports or complaints made by investigators or other persons *after* the interrogation, except for those materials deemed by an investigating agency to be confidential.[2] Officers also have the option of bringing their own recording device to record any and all aspects of the interrogation. Interrogators are strictly forbidden from using offensive language or threatening punitive action during the interrogation, *except* that an officer who refuses to respond

[1] This right is not absolute. The California courts have held that Section 3303 only requires that an officer "be given a *reasonable opportunity* to obtain a representative of his or her choice to be present at the scheduled interrogation." *Upland Police Officers Ass'n v. City of Upland*, 111 Cal. App. 4th 1294, 1309 (2003) (emphasis added). This rule ensures that officers cannot prevent any interrogation simply by choosing a representative who will never be available. *Id.* at 1305.

[2] *See also Pasadena Police Officers Ass'n*, 797 P.2d at 615-16 (concluding that the Act "does not compel preinterrogation discovery," because "unlike other protections set forth in the Act, a right to preinterrogation discovery is not essential to the fundamental fairness of an internal affairs investigation").

		to questions or submit to the interrogation must be informed in advance that their failure to participate may result in punitive action. Interrogators may not promise rewards in exchange for answers; and employers may not share the home address or photograph of the police officer being interrogated without his or her express consent. If it becomes clear either before or during the interrogation that the police officer may be charged with a criminal offense, he or she must be immediately informed of his or her constitutional rights. Statements made during the interrogation under duress, coercion, or threat of punitive action are generally inadmissible in civil proceedings, subject to the following exceptions: (1) when the employer is seeking civil sanctions against "any public safety officer"; (2) when the public safety officer is bringing a civil or administrative action against the employer based on the disciplinary action; (3) when the statements are being used for impeachment purposes after an in camera review; and (4) when the public safety officer is deceased.[3] Employers also may not loan or temporarily reassign police officers to a different location or duty if doing so would deviate from the employer's practice under similar circumstances.
Section 3304	*Administrative Appeal and Investigation Period*	Agencies may charge an officer with insubordination for failing to comply with an order to cooperate with other agencies involved in a criminal investigation. No punitive action, including the denial of a promotion on grounds other than merit, can be issued against a police officer who has completed the probationary period without first providing him or her an opportunity for administrative appeal. An investigation resulting in punitive or disciplinary action must be completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct.

[3] The California Supreme Court has held that an officer's refusal to speak at an interrogation cannot later be used against him in a *criminal proceeding*, but it *can* be used to support an administrative charge of insubordination and any associated disciplinary actions. *See Lybarger v. City of Los Angeles*, 710 P.3d 329, 332 (Cal. 1985). The Court held in the same decision that any officers "compelled to testify under the threat of administrative discipline" during the interrogation cannot have that testimony later used to incriminate them in criminal proceedings. *Id.* at 333.

		Employers also must notify officers of the potential misconduct charges by a Letter of Intent or Notice of Adverse Action within that year.[4] After the agency has determined which punishment it intends to impose, it has 30 days to notify the officer unless he or she is unavailable for discipline. The one-year limitations period may be tolled under the following circumstances: ▪ The officer's act, omission, or misconduct is also the subject of a pending criminal prosecution or investigation *or* the officer has been criminally charged for his or her actions ▪ The police officer agrees to waive the one-year limitations period for a certain amount of time in writing ▪ The investigation overlaps with a related civil litigation where the officer is a named defendant The limitations period may also be extended for a reasonable amount of time if the investigation is a multijurisdictional one requiring coordination between multiple agencies; involves more than one employee and requires a reasonable extension; or involves an incapacitated or otherwise unavailable employee. The one-year limitations period *does not apply* if the investigation involves a claim that the officer committed workers' compensation fraud. An investigation may be reopened after the limitations period expires if significant new evidence has been discovered that is likely to affect the outcome of the investigation *and* either (1) the evidence could not have reasonably been discovered in the normal course of investigation without resorting to extraordinary measures *or* (2) the evidence was a product of the police officer's pre-disciplinary response or procedure.
Sections 3305, 3306, and 3306.5	*Personnel File Comments*	A police officer must read and acknowledge any adverse comments before they can be entered into his or her personnel record. However, if a police officer refuses to sign an acknowledgement after reading the comment(s), the comment(s) may nonetheless be entered into the file provided that the agency notes on the document the fact of the officer's refusal. A police officer has 30 days to file a written response to any adverse comment in his or her file. If

[4] *See Mays v. City of Los Angeles*, 180 P.3d 935, 940 (Cal. 2008) ("Not only completion of the investigation, but also the requisite notification to the officer, must be accomplished within a year of discovery of the misconduct.").

		an officer believes that their file contains a mistake or unlawful comment, he or she may request in writing that the mistaken or unlawful portion be corrected or deleted. That request will become part of the personnel file and must be granted or refused within 30 days of receipt. If the request is refused, the employer must provide its reasons for doing so, which will also become part of the personnel file.
Section 3305.5	*Brady List Restrictions*	An employer may not discipline a police officer solely because the officer's name has been placed on a Brady list or is otherwise subject to disclosure pursuant to the Supreme Court's decision in *Brady v. Maryland*, 373 U.S. 83 (1963).[5] The agency may, however, discipline an officer for the underlying acts or omissions responsible for putting that officer's name on the Brady list.
Section 3307	*Lie Detector Test*	Police officers may not be compelled to take a lie detector test and may not be disciplined or otherwise admonished for refusing to take the test. A police officer's refusal to take a lie detector test is not admissible evidence in any judicial or administrative hearings, trials, or proceedings.
Section 3307.5	*Photographs*	A police officer cannot be required to consent to the use of his or her photograph or identity as an officer on the Internet as a condition of employment, if the officer reasonably believes that the disclosure may cause him or her or members of his or her family to be threatened, harassed, intimidated, or harmed.
Section 3309	*Locker Search*	A police officer's assigned storage space or locker may be searched only if any of the following conditions are present: (1) the officer is physically present at the time of the search; (2) the officer has consented to the search; (3) a valid search warrant has been obtained; or (4) the officer has been notified in advance of the search.
Section 3309.5	*Judicial Remedies*	A court must issue appropriate injunctive relief to remedy any violations of the Act. If the court finds that an employer or the employer's agents maliciously violated the Act, the department shall be liable to the aggrieved officer for a civil penalty not to exceed $25,000 for each and every violation. A court may also award damages for any actual damages suffered by the officer whose rights or protections under the Act were denied.
Section 3310	*Minimum Protections*	Any agency that has adopted procedures that provide, at a minimum, the same rights or protections as the Act, need not follow a specific procedure outlined in the Act.

[5] The Brady list refers to "any system, index, list or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland (1983) 373 U.S. 83." Cal. Gov. Code § 3305.5(e).

III. SECTION 1070 OF THE LOS ANGELES CITY CHARTER

Consistent with PSOBRA's intent that local entities be permitted to establish their own disciplinary procedures, *see* Cal. Gov. Code § 3310, Section 1070 of the Los Angeles City Charter elaborates on many of the protections set forth in PSOBRA.

At the outset, section 1070 applies only to LAPD officers who have completed their period of probation and grants all such officers (with the exception of the Chief of Police) a property interest in their position and employment compensation. In general, officers may not be suspended, demoted,[6] or removed except for "good and sufficient cause" shown upon a finding of guilt following a full, fair, and impartial hearing before a Board of Rights, and suspensions without pay may not exceed 65 working days. However, this rule is subject to two exceptions. *First*, the Chief of Police may temporarily relieve an officer from duty pending a hearing and decision before the Board of Rights, provided that the officer may not be deprived of compensation until 30 days after the day they were first served with the relevant charge or charges. The Chief of Police may also suspend an officer for a period not to exceed 22 days without pay or demote the officer, subject to the officer's right to a hearing before the Board. If the officer files an application for a hearing by the Board of Rights, any suspension or demotion will be automatically stayed pending the outcome of such hearing. *Second*, the Chief of Police may impose his or her penalty if the accused fails to request a hearing before the Board of Rights and fails to appear at a hearing requested by the Chief.

Section 1070 incorporates PSOBRA's one-year limitations period on investigations and corresponding exceptions, but it also imposes specific rules governing any hearing before the Board of Rights. These rules are as follows:

Complaint	Section 1070(d)	Any suspension, removal, or demotion order must contain a statement of the underlying charges. The Chief of Police must file a copy of the verified written complaint upon which the order is based with the Board of Police Commissioners within five days after the order is served.
Service	Section 1070(e)	Service may be effectuated by handing the accused a copy of the notice, order, or process in person. In the event personal service is unavailable, service may be made by U.S. mail.
Application for Hearing	Section 1070(f)	An accused officer has five days after personal service to file with the Chief of Police a written application for a hearing before and decision by a Board of Rights.

[6] Defined as a "reduction in civil service classification" not a reduction in pay grade or other "similar personnel actions caused by reassignment, deselection from bonused positions, and the like," which "shall be administered under policies adopted by the department." § 1070(n).

		The deadline to file is ten days if service took place by mail.
Time and Place of Hearing	Section 1070(g)	A hearing before the Board of Rights must take place between 10 to 30 days after the hearing panel has been selected. After the Board of Rights has convened for the first time, the Board can continue the hearing to a specific date.
Composition of Board of Rights	Section 1070(h)	The Board of Rights must be composed of two officers of captain rank or above and a civilian member *unless* an ordinance passed by the Council permits an accused officer to opt for a Board of Rights panel comprised of three civilians.
Failure to Request a Hearing	Section 1070(i)	If an accused officer fails to request a hearing, the Chief of Police may request a hearing instead. If a Board of Rights has been convened but the accused officer fails or refuses to appear before the Board without reasonable cause, the Chief may elect to either proceed with the hearing in the absence of the accused or impose any penalty he or she deems fit and proper without a hearing. The Chief must notify the accused of his or her decision and file a statement with the Board of Police Commissioners within five days. If both the accused and the Chief fail to draw and create a Board of Rights in a timely manner, the complaint will be null and void.
Burden of Proof	Section 1070(*l*)	The department bears the burden of proving each charge before the Board of Rights by a preponderance of the evidence.
Representation	Section 1070(m)	The accused officer has the right to appear in person and by counsel or representative, put forth a defense, and produce witnesses and cross-examine witnesses. Upon prepayment of a fee, the accused will be entitled to a certified copy of the transcript.
Finding and Decision	Section 1070(n)	The Board of Rights must return a finding of guilty or not guilty on each charge. If the accused is found not guilty, the Board must order the officer restored to duty without loss of pay and without prejudice. If the accused is found guilty, the Board of Rights can order suspension (not to exceed 65

		days) without pay, demotion, reprimand, or removal. The decision must be certified in writing and delivered to the Chief of Police.
Personnel History and Records	Section 1070(o)	The Board of Rights may not examine an accused officer's departmental personnel history and records except for the limited purpose of determining a proper penalty after a finding of guilt. The Board can only consider these records in the presence of the accused and only after the accused has been given a fair and reasonable opportunity to explain any item or entry contained in the records unless he or she has declined to be present.
Imposition of Penalty	Section 1070(p)	The Chief of Police must either uphold the recommended penalty of the Board of Rights *or* impose a less severe penalty within ten days of delivery of a certified copy of the Board's decision.
Rehearing	Section 1070(t)	An officer who has been removed from service has three years from the effective date of removal to request a rehearing. The Chief of Police must decide whether to constitute a Board of Rights for the purposes of a rehearing within 30 days of the officer filing his or her request.
Modification of Penalty	Section 1070(u)	The Chief of Police may reduce a penalty after the fact, including restoring a person following removal, for good cause. An officer who has had his or her penalty reduced is entitled to full compensation for any portion of that penalty they have already served that has been reduced.
Restoration of Duty	Section 1070(w)	An officer who has been restored to duty after removal or temporary relief from duty or whose suspension or demotion has been overturned in whole or in part is entitled to receive full compensation from the City. The compensation may not exceed one year's salary unless otherwise required by law.

IV. SECTION 22.290 OF THE LOS ANGELES ADMINISTRATIVE CODE

After voters approved Charter Amendment C in May 2017, which authorized the Los Angeles City Council to introduce the option of an all-civilian Board of Rights panel in disciplinary

proceedings, the Council passed Ordinance No. 186100 on June 23, 2019, codifying such an option in the city's administrative code. Section 22.290 thus establishes several rules for this optional composition. *First*, it requires the Board of Police Commissioners to maintain a panel of competent adult civilians to serve as members of the Board of Rights and to be compensated at a per diem rate established for City hearing examiners. *Second*, the all-civilian panel will be chosen by drawing nine random qualified individuals and giving the Department and the accused three strikes each. The remaining three civilians constitute the Board of Rights. *Third*, the all-civilian option is unavailable for any complaint filed before June 23, 2019. *Lastly*, the section may not be repealed for at least two years after its adoption. At the end of the two-year period, the Department is required to submit a report to the City Council evaluating the effectiveness of the ordinance.

V. MEMORANDUM OF UNDERSTANDING

In addition to the aforementioned legal provisions, the City of Los Angeles has also entered into a memorandum of understanding with the Los Angeles Police Protective League, which is the name of the police union that represents all police officers ranked lieutenant or below. The memorandum of understanding is effective until June 30, 2022, and it covers subjects ranging from compensation and work schedules to administrative appeals and representation. Recall that although PSOBRA guarantees "an opportunity for administrative appeal," it does not "require the same opportunity [for appeal] regardless of the kind of disciplinary action imposed, nor does it prescribe the time limits within which application for administrative appeal must be made." *Howell v. County of San Bernardino*, 149 Cal. App. 3d 200, 206 (1983). Instead, the Act leaves "all such matters to be determined by the entities employing the public safety officers." *Id.*

The memorandum of understanding accomplishes exactly that by describing in detail the administrative appeal process governing (1) department-initiated transfers as a form of punishment; (2) penalties involving twenty-two days or less of suspension; (3) termination of an entry-level probationary employee for misconduct on charges of dishonesty or moral turpitude; (4) categorical use of force adjudications resulting in administrative disapproval and extensive retraining; (5) non-categorical use of force adjudications resulting in administrative disapproval and either verbal counseling, incident debrief, or training;[7] and (6) vehicular pursuit adjudications resulting in administrative disapproval.[8]

As the following chart illustrates, each category of discipline corresponds to a different set of rules regarding burden of proof and timing. Regardless of the type of discipline, however, each employee has the right to appear in person at the hearing and present relevant information in his or her defense.

[7] Administrative disapproval refers to verbal counseling, incident debrief, or training. *See* Memorandum of Understanding at 90-91.

[8] Sworn or tenured employees facing more serious forms of discipline, such as termination, proceed instead before the Board of Rights. An employee facing a one-to 22-day suspension can choose whether he or she wishes to proceed before the Board of Rights or an administrative hearing officer. The election of either procedure is binding and constitutes an absolute waiver of the alternate appeal procedure.

Type of Discipline	Deadline to Appeal	Burden of Proof
General dispute, including transfers	20 days after the date the employee was notified, or the effective date of the appealable action, whichever is later	The Department has no burden of proof and need not present any evidence. The hearing officer cannot compel the Department to present a case.
Suspension of 22 days or less of a tenured employee	20 days after the employee was served with a penalty not subject to a hearing before the Board of Rights *or* a Form 1.61 for a one-to 22-day suspension	The Department must prove that the suspension was justified by a preponderance of the evidence. The purpose of the administrative hearing is to give the employee a chance to challenge the *degree* of penalty, which cannot be increased.
Termination of a probationary employee for misconduct involving dishonesty or moral turpitude	20 days after the employee was served with a notice of termination	The Department does not bear any burden of proof, may not be compelled to present a case, and is not required to present evidence. The purpose of the administrative hearing is to provide the employee with an opportunity to refute the charge, clear his or her name, and establish a formal record of circumstances.
Categorical use of force resulting in extensive retraining	20 days after the employee was served by his or her commanding officer with the Chief of Police's decision	The Department must prove that the extensive training was justified by a preponderance of the evidence.
Non-categorical use of force resulting in verbal counseling, incident debrief, or training	20 days after the employee was served with the decision completed by his or her Commanding Officer	The Department must prove that the discipline was justified by a preponderance of the evidence.
Vehicular pursuit resulting in verbal counseling, incident debrief, or training	20 days after the employee was served with a copy of the decision	The Department must prove that the discipline was

		justified by a preponderance of the evidence.

The memorandum of understanding also provides that a hearing officer must be selected within five business days of the employee's request for an administrative hearing from a pre-approved list. The Police Commission will draw five random names and whichever person is left after each side uses their two strikes will serve as the hearing officer. The hearing officer must convene the hearing no less than 15 days and no more than 30 days from the date of his or her selection and can continue proceedings for periods up to 21 days. If the hearing officer cannot begin the hearing within 30 days due to illness or pre-scheduled vacation, the employee can select another hearing officer or waive his or her right to a 30-day period. If the employee opts for the latter, the hearing officer must commence the hearing within thirty days of returning. The traditional rules of evidence do not apply to the hearing, but the officer can exclude evidence he or she considers irrelevant or which presentation will consume undue time. The hearing officer can also examine testifying witnesses, to the extent any are presented. All testimony must be given under oath and discovery material must be provided no later than 14 days prior to the date of the hearing.

At the conclusion of the hearing, the officer must prepare a report recommending whether the charges should be sustained, the penalty should remain the same or be reduced, or the appeal be denied or granted. The report must contain the officer's findings in support of his or her recommendation. The hearing officer must forward a copy of his or her report to the Chief of Police and assigned officer representative within 30 days of the hearing's conclusion. The Chief of Police must make a final decision within 30 days of receiving the decision and serve the employee with a copy of both the final decision and the hearing officer's report within 10 days of making his or her final decision.

All employees have a right to representation during the course of an administrative appeal and are entitled to the representative of their choice during any interview that the employee reasonably believes may result in disciplinary action. The representative can be a Department employee or legal counsel.

Los Angeles Police Department

Disciplinary Process and Procedures

This memorandum provides a descriptive overview of the various steps in the Los Angeles Police Department disciplinary process, beginning with a complaint and concluding with the matter being officially closed. This memorandum also highlights the legal limitations placed on the Police Chief's ability to impose discipline (including terminating officers involved for excessive force or other misconduct), as well as the Police Commission's lack of authority to impose any discipline at all, with the exception of their three direct reports, the Chief of Police, Inspector General, and Executive Director. Pursuant to the Los Angeles City Charter, a separate entity (the Board of Rights) has ultimate authority to determine whether an officer should be terminated or otherwise seriously disciplined.

I. INITIAL STEPS: COMPLAINTS & CLASSIFICATION OF COMPLAINTS

A. The Complaint

The disciplinary process begins with a complaint. Complaints can arise in many ways; for example, they may be brought by a member of the public, by a Department employee, or may result from the filing of a lawsuit. The Department has created an extremely low barrier for the filing of complaints, including permitting the filing of anonymous complaints and requiring supervisors to initiate the filing of complaints based on any allegations of misconduct made by a member of the public. Complaints are accepted unless the sole reason for the complaint is either (1) a disputed citation, (2) delay in providing service, (3) low flying airship, (4) complaint by inmate regarding accommodations, food, etc, or (5) vehicle impound *and* the initial conversation with the complainant does not identify any misconduct.

B. Initial Classification

Once the complaint is accepted, the supervisor receiving the complaint initiates a preliminary investigation, attempts to resolve the matter to the satisfaction of the complainant, and documents the complaint on a Complaint Form. Even if the complaint is resolved to the complainant's satisfaction, the complaint is still recorded, investigated, and classified as explained below. The supervisor forwards the documentation of the complaint and preliminary investigation to the watch commander for review.

The watch commander reviews the materials and makes a preliminary determination, based on the "Case Screening Factors" on the Complaint Form, whether the complaint should be classified as "Non-Disciplinary" or "Disciplinary."

This initial classification may be changed, at any time, by the employee's Commanding Officer. Either Professional Standards Bureau or the employee's Commanding Officer has primary responsibility for investigating the complaint. After conducting the investigation, the Commanding Officer makes a final classification of the complaint as either "Non-Disciplinary" or "Disciplinary."

Whether a complaint is classified as "Non-Disciplinary" or "Disciplinary" determines the next steps in the disciplinary process. Those next steps are explained in the following two sections.

II. NON-DISCIPLINARY COMPLAINTS

A complaint may only be classified as "Non-Disciplinary" if it meets all the following criteria during the classification stage since Mediation and Demonstrably False can change Disciplinary complaints into Non-Disciplinary with those dispositions.:

- The complaint, as stated, would not amount to the commission of a felony or misdemeanor crime;
- The complaint, as stated, may not result in discipline against the employee, or the complained of act or omission by the employee has no nexus to the employee's position with the Department;
- The complaint does not allege any of the following: Unauthorized force; discrimination of any kind; unlawful search and/or unlawful seizure of person or property; dishonesty; domestic violence; improper/illicit use of alcohol, narcotics, or drugs; sexual misconduct; theft, or retaliation/retribution against another employee;
- The complaint was not as a result of concerns arising out of a criminal prosecution, or, dismissal of California Penal Code Section 148 charges, or otherwise initiated by a judge or prosecutor acting in their official capacity;
- The accused employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused; and,
- The complaint was not initiated in response to civil suits or claims for damages involving on-duty conduct and civil lawsuits regarding off-duty conduct required to be self-reported by employees.

Once the Commanding Officer makes a final classification of a complaint as Non-Disciplinary, the Bureau Commanding Officers review the classification.

The Bureau Commanding Officers may only change the non-disciplinary classification if "a substantial justification for changing it can be articulated." If that occurs, the matter is returned to the employee's Commanding Officer with a written explanation for the change and directions on how to proceed. In all other instances, the Bureau Commanding Officers sign off on the non-disciplinary classification.

III. DISCIPLINARY COMPLAINTS

Once a complaint has been initially identified as Disciplinary, the matter is sent to Professional Standards Bureau which may assign the matter to Professional Standards Bureau or the Chain of Command for investigation.

A. Alternative Dispute Resolution Programs

Mediation Thru the City Attorney's Office Community Police Unification Program

Complaints alleging Biased Policing or Discourtesy are eligible for mediation through the City Attorney's Community Police Unification Program. The purpose of this program is to mediate

select complaints of Biased Policing, Discourtesy and other minor allegations as an alternative to the traditional, adversary-oriented investigation procedure.

Mediation is an informal, confidential process in which the complainant and accused employee meet face-to-face to discuss the alleged misconduct with the goal of arriving at a mutually agreeable resolution. These are facilitated by impartial volunteer mediators from the City Attorney's Dispute Resolution Program.

Because mediation is voluntary, either party can opt out of it and choose to go through a standard investigation instead. 86 percent of the hundreds of residents whom have gone through this program would recommend it to others.

Complaints closed with a "Mediated" disposition are not displayed on the employees' personnel record used for monitoring, performance review, promotion, paygrade advancement, final selection, transfer, disciplinary review, Risk Management Executive Committee profiles or Risk Management Information System thresholds.

B. Alternative Complaint Resolution (ACR) Led by Supervisors

Disciplinary complaints may be designated for ACR if all the following criteria are met:

- The complaint of the alleged misconduct is Non-Disciplinary or Disciplinary, but non-complex in nature (e.g., discourtesy, disrespect, or a minor Neglect of Duty, etc.) as alleged by the public;
- The employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused; and,
- The complainant and the employee have agreed to participate in good faith.

Generally, the watch commander appoints a supervisor to act as the facilitator. Assigned facilitators must review training material prepared by Professional Standards Bureau.

Accused employees may not have an employee representative present, nor may a complainant have legal counsel. Sessions shall not be audio/video recorded. The assigned facilitator shall have the final authority over the ACR session.

The facilitator will encourage both parties to be forthright and willing to accept responsibility in order to settle the dispute. In fact, a full and complete discussion of events may include an admission to the complained of behavior. It is understood that this is part of the resolution process and confidentiality will be maintained. However, should a significant act of misconduct come to light, the ACR process will be concluded and the complaint will be referred for classification and adjudication, as described below.

Either the complainant or the employee may choose to withdraw after the ACR process has begun. If the complainant withdraws once the ACR has been convened, the complaint is referred to the employees Commanding Officer for appropriate disposition. If the accused employee withdraws, the complaint is referred for classification, investigation, and adjudication.

If a resolution is reached, the case is closed. Thereafter, if the complainant seeks to renew the complaint, no new complaint is initiated, and no new investigation takes place. The complaint would have an Alternative Complaint Resolution disposition.

C. Adjudication

If a matter is not sent to mediation or the ACR process, it is investigated. As noted above, either Professional Standards Bureau or the employee's Commanding Officer will have primary responsibility for the investigation. When the investigation is complete, the Commanding Officer adjudicates the matter. The Commanding Officer first determines if the complaint was sustained by the investigation (*i.e.*, the investigation supported the allegations of the complaint) or if the complaint was unfounded or otherwise did not identify misconduct based on a preponderance of the evidence. If the complaint was sustained, the Commanding Officer then determines what penalty, if any, is warranted for the employee.

1. Disciplinary Adjudications

After investigation, disciplinary complaints are determined to fall into one of the following categories:

- *Unfounded*: The investigation indicates the act complained of did not occur.
- *Exonerated*: The investigation indicates the act occurred but that the act was justified, lawful, and proper.
- *Not Resolved*: The investigation discloses insufficient evidence to prove or disprove clearly the allegations made.
- *Sustained*: The investigation discloses that the act complained of did occur and constitutes misconduct.
- *Sustained-No Penalty*: The investigation supports sustaining the allegation; however, the appropriate disposition does not require formal discipline. Instead, other corrective action would be required, such as counseling, training or other action short of formal discipline.
- *Insufficient Evidence to Adjudicate*: The investigation could not be thoroughly or properly investigated. This may be caused by a lack of cooperation by the complainant and/or witnesses, or the absence of a critical interview which was necessary to proceed with the investigation, and/or the available physical evidence or witnesses' statements are insufficient to adjudicate the complaint.
- *Withdrawn by the Chief of Police*: The Chief of Police may withdraw the allegation(s) (generally sustained) or charge(s) in the best interest of the Department. The reasons for the withdrawal must be set forth in writing, evaluated by Professional Standards Bureau, and agreed to by the Chief of Police. Withdrawal is only appropriate in one of the following circumstances:
    - On the advice of the City Attorney, imposing discipline is legally prohibited, or would subject the Department to civil liability; or,

- In the interest of justice and/or fairness, the allegation would be better adjudicated outside the Department, *e.g.*, by a court of competent jurisdiction, or the alleged act is minor misconduct and/or significant time has passed; or,

- Evidence used to sustain a charge is unavailable or has been lost, stolen or destroyed; or,

- Other articulable reasons.

- *Duplicate:* When a preliminary investigation of a complaint reveals the incident is the same as another complaint already under investigation (Complaint Form [CF] number assigned), the complaint shall be cross referenced with the master CF number of the investigation which is related to the duplicate. Any additional or new information shall be noted as part of the supervisor's preliminary investigation and forwarded to IAG which will close the duplicate complaint, cross reference the CF number to the master complaint CF number, and forward the additional information to the appropriate investigators.

The employee's Commanding Officer must advise the employee of the right to representation before discussing the matter and of the specific penalty recommended by the Commanding Officer, give the employee a copy of all investigative materials, and give the employee a copy of the Commanding Officer's letter of transmittal concerning the charges.

The employee has a right to respond to the investigative findings within a reasonable time. Once the employee has done so, the Commanding Officer determines if further investigation is necessary based on the employee's response. If the Commanding Officer conducts a further investigation, he or she must then re-interview the accused employee, advise the employee of the results of the additional investigation, allow the employee to review any new investigative material and allow the employee to respond to the findings of the additional investigation.

2. Non-Disciplinary Adjudications

- *Demonstrably False:* When it is clearly proven that an allegation did not occur.

- *Employee's Actions Did Not Rise to the Level of Misconduct:* A preliminary investigation revealed that the allegations did not rise to the level of misconduct and/or the named employee's actions were protected by law or found to be consistent with Department policy or procedure.

- *Employee's Actions Could Have Been Different:* The facts in the complaint revealed the employee's actions could have been different. However, the employee's act or omission is best addressed through corrective action by the employee's commanding officer.

- *Policy/Procedure:* The facts of the case revealed that the complaint relates to Department policy/procedure and not to a specific employee's actions.

- *Department Employee(s) Not Involved:* The preliminary investigation revealed that the complaint did not involve a Department employee(s).

3. Discipline

When a Disciplinary complaint is sustained, the Commanding Officer may recommend penalties as follows.

For sworn personnel: (1) no penalty; (2) admonishment; (3) official reprimand; (4) suspension; (5) Board of Rights; (6) demotion; (7) suspension and demotion; (8) termination of probation, or (9) removal.

For civilian personnel: (1) admonishment; (2) official reprimand (used for misconduct for which no other penalty is appropriate); (3) suspension; (4) discharge; or (5) termination of probation.

That recommendation is reviewed by the Bureau Commanding Officers.

As with non-disciplinary complaints, the Bureau Commanding Officers may only change the non-disciplinary classification if "a substantial justification for changing it can be articulated." If the Bureau concurs in the recommended adjudication, the matter is then reviewed by Professional Standards Bureau.

The next steps in the process depend on the recommended adjudication.

- *No sustained allegations*: Case is closed.
- *Sustained allegations with No Penalty*: Case closed.
- *Sustained Allegations with Admonishment*: Employee may opt for Administrative Appeal. If no appeal, the case is closed.
- *Sustained Allegations with Official Reprimand or More Severe Discipline*: All such recommendations are presented to the Chief of Police for a final determination of the recommended discipline.

If the Chief recommends the imposition of a penalty up to demotion or a 22-day suspension, the employee then has three options. First, accept the discipline. Second, opt for a Board of Rights hearing. Third, opt for an administrative appeal. If the employee accepts the discipline, the case is closed.

If the Chief recommends the imposition of more severe discipline (*e.g.*, removal or a suspension beyond 22 days), the matter is referred to the Board of Rights.

IV. REVIEW OF THE POLICE CHIEF'S RECOMMENDED DISCIPLINARY DECISIONS

A. Administrative Appeal

Employees may seek an administrative appeal of an admonishment, an official reprimand, an administrative disapproval of a use of force (categorical or non-categorial), a demotion, or a suspension of less than 22 days. Administrative appeals are presided over by a single civilian hearing examiner. The purpose and form of administrative appeals vary depending on the nature of the appeal.

In the case of discipline of a sworn officer that may be administratively appealed (*i.e.*, discipline of demotion or a 22-day-or-less suspension), contingent on the employee pleading guilty to the underlying charge, the purpose of the appeal is to permit the employee to challenge the severity of the penalty. The Department bears the burden of proof of establishing, by a preponderance of the evidence, that the penalty is appropriate. If the Department carries that burden, the recommended sentence is confirmed. If the Department does not carry its burden, the examiner may decrease the penalty. In no circumstance may the penalty be increased.

B. Board of Rights

All matters of severe discipline (*i.e.*, removal from office) are referred to the Board of Rights. Officers facing less severe discipline (anything 22 days or less suspension) may opt for a Board of Rights hearing in lieu of an administrative appeal or simply accept the discipline.

1. Background on the Board of Rights

The Board of Rights process was established in the Los Angeles City Charter in 1935 to protect police officers from political influence in matters of discipline. It was created to provide checks and balances to the power of the Chief and politicians. It required a full, fair, and impartial hearing before an officer could be terminated. It was patterned after the Uniform Code of Military Justice Court Martial model where the Department would prosecute the officer and the trial board would be composed of three command officers with the rank of captain or higher.

The first change to the Board of Rights process occurred in June 1992 when City Charter Amendment F was approved by the voters. From that point on, instead of the trial board being composed of three command officers, there would be two command officers and one civilian member. The civilian member would come from a pool formed by the Police Commission. The next change occurred in 2000 when there was a City Charter change to the practice of having an accused officer represented by an on-duty officer from the Department, which led to the Los Angeles Police Protective League creating a Legal Defense Plan with a panel of attorneys to represent officers at the Board of Rights hearings.

The last and most recent change was in May 2017 when voters approved Amendment C to the City Charter. This amendment allowed the City Council to adopt an ordinance providing the accused officer with the option of choosing a Board of Rights panel composed of three civilian members, rather than the traditional panel comprised of one civilian and two sworn command officers. This ordinance became operative on June 23, 2019.

2. Board of Rights Process

There are two key aspects of the Board of Rights process. First, the Board conducts a *de novo* (new) review of the entire matter, finds the employee guilty or not guilty, and recommends a penalty. The Board is not required to provide any deference to the Chief of Police's findings or recommended penalties, nor is it required to provide any deference to the Police Commission's finding that categorical uses of force were outside of Department policy. Second, the Board's recommended sentence is returned to the Chief of Police who may either adopt the recommendation or *reduce* the sentence. The Chief of Police cannot impose a penalty greater than the penalty recommended by the Board of Rights, even in cases where the Board of Rights finds the employee guilty of the charges and the Chief of Police proposed removal of the officer.

3. The Board Panel

While many aspects of the Board process are similar to a trial (*e.g.*, sworn witness testimony, exhibits, opening and closing statements), Board hearings differ from trials in a number of meaningful ways. Each matter is heard by a three-person panel of Board members. The panel may be chosen in two ways. In the first, two of the three members are Command Officers. Command Officer selection begins with a random draw of four Command Officers out of the group of all Command Officers eligible to serve on the Board. The accused employee then selects two of those four Command Officers to hear the matter. The third member of the panel is a civilian. Three names are randomly selected from a pool of pre-selected Board members. The Department and accused employee each strike one name, with the final remaining name as the panel member. Historically, Board panels have been selected using this method, and boards have been composed of two officers and one civilian. As mentioned above, in 2019, employees were given a second option: they may choose to have the Board panel be composed entirely of civilian members. For all civilian boards, the Board of Police Commissioners provides nine names at random from the pool of pre-selected Board members. The Department and accused take turns in each striking a name, until three members are remaining, who will sit on the board.

4. The Board Hearing – Trial Phase

The employee has a right to be present for the Board hearing and may be represented by an attorney, although the Department does not pay for the employee's legal representation. The Department is not represented by counsel but by a Department Advocate.

Both the employee and the Department may subpoena witnesses to give testimony under oath. Both parties may cross-examine witnesses and the Board members may also examine the witnesses. Both parties may submit documentary evidence and make opening and closing statements.

After the Board hearing, the panel deliberates. The panel must determine, for each charge, whether the employee is "guilty" or "not guilty." The panel need not be unanimous. If the majority (*i.e.*, two members) favor a determination, that becomes the panel's determination. The Board's determination is then communicated to the employee.

5. Board Discipline – Penalty Phase

If the employee has been found "guilty" of a charge, the Board will recommend a penalty. Before doing so, the Board will examine the employee's personnel record, with the employee present. The employee may also present character witnesses in support of a lesser penalty. The Department Advocate may likewise present additional evidence relevant to the Board's determination of a penalty.

The Board then determines the appropriate penalty. The Board may impose one of the following four penalties:

- *Reprimand* without further penalty.
- *Suspension* not to exceed 65 eight-hour days with total loss of pay. Suspension may also include demotion or reprimand, or both.
- *Demotion*, which may or may not also include suspension and reprimand.

- *Removal*.

Once the Board has determined a penalty, the matter is returned to the Chief of Police. The Chief may then either impose the penalty or impose a lesser penalty. In no circumstance may the Chief of Police increase the penalty. Once the Chief has imposed the penalty, or a lesser penalty, the case is closed.