

POLICE COMMISSION

PROCEDURAL RULES GOVERNING TRIAL

OF DISCIPLINARY CASES

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I. INTRODUCTION

Under Charter Section A8.343, a uniformed member of the Department shall not be subject to dismissal or punishment for any breach of duty or misconduct, including any violation of the Department's Rules and Regulations, General Orders, Bulletins, Policies or Procedures, except for cause.

The Chief may impose a disciplinary suspension not to exceed 10 working days, subject to a suspended member's right to appeal the suspension to the Commission and to have a trial and hearing on that suspension.

If the Chief determines that a member's breach of duty or misconduct warrants discipline in excess of a 10-day suspension, the Chief must file verified charges with the Commission, setting forth the acts that the Chief has determined constitute a breach of duty or misconduct. In addition, if the [Director of the Office of Citizen Complaints \(OCC\)](#) sustains a complaint against a member and recommends discipline in excess of a 10-day suspension, the OCC Director may file charges against that member with the Commission, as provided by the Charter.

If the Chief determines that a non-disciplinary dismissal of a member from the Department is warranted, the Chief must file verified charges with the Commission, setting forth the facts that the Chief has determined warrant a non-disciplinary dismissal. Generally, the Commission will apply these Procedures in non-disciplinary dismissal cases.

After reasonable notice, the Commission will afford the member a fair and impartial trial and hearing on the appeal or verified complaint. The member is entitled to appear personally and by representative, to have a public trial, and to secure and enforce, free of expense, the attendance of all witnesses necessary for his or her defense.

II. DEFINITIONS

A. Chief. "Chief" means the Chief of the San Francisco Police Department.

B. City. "City" means the City and County of San Francisco.

C. Commission. "Commission" means the San Francisco Police Commission.

D. Day. Unless expressly stated otherwise, any reference to a "day" or to "days" in these Procedures is a reference to calendar days.

E. Department. "Department" means the San Francisco Police Department. In proceedings before the Commission, the Department acts through the Chief or the Chief's designee.

F. [Director of the Office of Citizen Complaints or OCC Director.](#) The "Director of the Office of Citizen Complaints" is the Director of that Office of Citizen Complaints, as provided in Charter Section 4.127.

FG. Hearing Officer. A "Hearing Officer" is a single Commissioner assigned by the Commission President to preside at a hearing in a disciplinary case to take evidence in the case and to take other actions delegated or authorized under these Procedures. Alternatively, a Hearing Officer who is not a Commissioner may be selected pursuant to the "Police Commission Supplemental Rules Governing Assignment of Police Discipline Cases to a Hearing Officer."

GH. Member. In a disciplinary case, the "member" is a [uniformed-sworn](#) Department employee accused of a breach of duty or misconduct, including any violation of the Rules. In a non-disciplinary case, the "member" is a [uniformed-sworn](#) Department employee against whom the Chief has filed a verified complaint alleging non-disciplinary cause for dismissal from employment.

HI. Office of Citizen Complaints (OCC). "Office of Citizen Complaints" or "OCC" means that office established pursuant to Charter Section 4.127, ~~including the Director of the OCC.~~

IJ. Parties. The Department, or the OCC, and the member, are the parties to a Commission proceeding. Individually, the Department, or the OCC, and the member, are each a party to the proceeding.

The Department may be represented during a proceeding by the Chief or the Chief's Departmental designee. The Chief may not select as a designee an individual listed by one of the parties as a percipient or material witness or otherwise expected to be a percipient or material witness in the case. Notwithstanding this restriction, the Chief and the Deputy Chiefs may attend some or all of a discipline proceeding and still testify as a witness in that proceeding. The Presiding Officer shall resolve any disputes regarding the presence of a designated representative.

JK. Presiding Officer. "Presiding Officer" means the Commissioner or Hearing Officer responsible for presiding at the hearing on a discipline case. For hearings held before the Commission, the Presiding Officer is the Commission President, or the Commission Vice President or another Commissioner when designated by the Commission President to preside at the proceeding; and for hearings held before a Hearing Officer, the Presiding Officer is the Hearing Officer.

KL. Procedures. "Procedures" means these "San Francisco Police Commission Procedural Rules Governing Trial of Disciplinary Cases."

LM. Rules. "Rules" means City or Department Rules and Regulations, General Orders, Manuals, Policies or Procedures.

III. GENERAL REQUIREMENTS

A. Ex Parte Communications Prohibited

An "ex parte communication" is any communication regarding any aspect of a discipline case between a party to the case or any representative of a party, and any individual Commissioner or Hearing Officer, the Commission as a whole, or the Commission Secretary or counsel, where the other party to the case is not included in the communication. All ex parte communications, by any means, including but not limited to, by telephone, email, in person, or written correspondence, are prohibited.

The prohibition on ex parte communications does not prohibit communications where all parties to the case are included in the communication. In addition, a party or a party's representative may have ex parte communications about the case with the Commission Secretary and the Commission's counsel, provided that the communication is limited solely to procedural matters.

B. Burden of Proof

In all discipline cases, including appeals, the Department or OCC has the burden of proving by a preponderance of the evidence that the accused member has committed a breach of duty or engaged in misconduct.

In any non-disciplinary proceeding, the Department has the burden of proving cause for dismissal by a preponderance of the evidence.

C. Rules of Evidence

The rules of evidence applicable in the courts are not binding on the Commission or any assigned Hearing Officer. [Due Process principles are observed.](#)

D. Witnesses

A “witness” is an individual whom at least one party intends to call to testify before the Commission during a particular discipline proceeding.

Each witness shall testify under oath.

With the exception of parties and party representatives, all witnesses are excluded from Commission discipline proceedings except when testifying, until the witness has completed testifying and has been excused by the Presiding Officer. A party may request that an investigator be permitted to be present during proceedings, which request the Presiding Officer may grant in his or her discretion.

The parties and their representatives may not disclose the content of a witness’s testimony to other witnesses before those other witnesses testify and are excused by the Presiding Officer.

E. Submissions to the Commission

The parties shall submit any correspondence, pleading or other material for the Commission or Presiding Officer in care of the Police Commission Secretary, 850 Bryant Street, Room 505, San Francisco, California, 94103. The parties may submit materials via hand delivery, email, facsimile, overnight delivery, or U.S. Mail.

When a party submits any correspondence, pleading or other material to the Commission or Presiding Officer, the party shall concurrently submit the correspondence, pleading or other material to the other party or, if known, to that party’s representative, using a method that ensures delivery on the same date as delivery to the Commission. An item is “submitted” when received by the Police Commission Secretary.

F. Hearing Time

The Commission’s goal is to render a decision in a suspension appeal proceeding within 90 days of the notice of appeal being filed, and to render a decision in a proceeding on a verified complaint filed by the Chief or OCC [Director](#) within 120 days of the complaint being filed. In any individual case, the time to render a decision may exceed these goals, and the failure to render a decision within these time objectives shall not provide any basis for challenging any discipline imposed by the Commission.

In an effort to accomplish its goals for rendering a decision on a case, and to promote efficiency in the hearings, the Commission generally sets time limitations on the parties’ presentation of their cases, based on the facts and circumstances of a particular case. For many cases, the Commission will allocate 1½ [\(one and one-half\)](#) hours to each party as the maximum total hearing time for the party’s discipline case [\(for a total hearing time of 3 hours, for the two parties\)](#). Because the Department or OCC bears the burden of proof, generally the Commission also allocates 10 additional minutes to the Department or OCC for rebuttal argument. In a particular case, the Commission may set shorter or longer time limits for the parties to present their cases, in its sole discretion.

The Commission will notify the parties regarding the maximum total hearing time allowed for the parties to present their discipline cases, and the allocation of time, in its notice scheduling the initial

hearing date. The Presiding Officer may modify the time allocation as the case develops, in his or her discretion.

If either party believes that additional time beyond that set by the Commission is required to present its case, the party shall submit a written request to the Presiding Officer, with a copy concurrently provided to the other party, stating good cause for the additional time and specifying the amount of additional time requested. The deadline for a party to submit any request for additional time will be set in the written notice scheduling the initial hearing date.

G. Continuances

In order to complete discipline proceedings within the time goals set by the Commission, continuances are generally disfavored.

The procedures to request a continuance at various stages of the case are described in Sections IV.A.3-5, IV.B.3-5 and XI.E., below.

H. Record

The Commission will provide a court reporter to record and prepare a stenographic transcript of all proceedings (excluding Commission deliberations and any meeting on proposed findings of fact, which shall be recorded by the Commission Secretary). The Commission will order the transcripts and provide a complete copy to both parties. The Commission will maintain all documentary or other evidence as part of the record, including copies of any documents or other tangible items excluded from evidence.

I. Non-Disciplinary Dismissal

At times, the Department may request that the Commission dismiss a member for non-disciplinary cause, *e.g.*, non-punitive medical separation or failure to meet minimum qualifications for the member's classification. In such a case, the Chief shall file a verified complaint against the member with the Commission, indicating the Chief's recommendation for a non-disciplinary dismissal from employment and specifying the cause for the requested dismissal. Notwithstanding any reference to "discipline" or "disciplinary" proceedings in these Procedures, generally the Commission will use these hearing Procedures for any non-disciplinary dismissal proceeding.

IV. PROCEDURES FOR SETTING A DISCIPLINARY CASE FOR HEARING

A. Suspension Appeals

1. Charter Requirements

Under ~~the~~ Charter [Section A8.343](#), the trial and hearing on an ~~suspension~~ appeal [from a Chief's suspension](#) must be held within 30 days after the notice of appeal is filed with the Commission. A notice of appeal is deemed filed when received at the Commission office. [A member may waive the 30-day Charter provision by filing a written waiver with the Commission Secretary, preferably using the form provided by the Commission Secretary for this purpose \(the "Consent to Waive Time For Trial on Appeal" form\).](#)

2. Initial Case Management Conference, and Notice of Hearing Date

Consistent with Commission Resolution No. 75-09, an initial Case Management Conference is to be scheduled by the Commission Secretary within 15 business days after the case is assigned to a Hearing Officer. All parties to the case or their designated representative shall attend the case management conference. The parties shall submit any proposed stipulated settlement of the matter in sufficient time before the case management conference to allow meaningful discussion of the offer at the case management conference. At the initial case management conference, the assigned

Hearing Officer shall: (1) set a hearing date for taking evidence; (2) set a date for completion of discovery exchange; (3) establish a schedule for pre-hearing submittals, including any pre-hearing motions and motions in limine; (4) discuss the option of having the matter heard by a hearing officer who is not a Commissioner; and (5) set date(s) for any subsequent case management conferences. At the discretion of the Hearing Officer, this case management conference may be conducted by telephonic conference call.

The Secretary will send written notice to the member and Chief [or OCC](#), and the parties' representatives if known, of the time and date of the hearing on the appeal. The member and Chief [or OCC](#) will receive at least 10 days notice of the initial hearing date.

3. Request for Continuance by Member

The member or the member's representative may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, (3) waiving the 30-day period set by the Charter and consenting to have the hearing held at a later date, and (4) providing dates in the near future when the member, the member's representative and the member's witnesses are all available for the hearing. The request for continuance must include a "Consent to Waive Time For Trial on Appeal" form completed and signed by the member. At the same time the member or the member's representative submits the request for continuance to the Commission, the member or representative shall send a copy of the request to the [Department's Department or OCC](#) representative, if known, or if not known, then to the Chief [or OCC Director](#), using a method that ensures delivery on the same date as delivery to the Commission.

Any request for a continuance must be in writing and submitted as soon as the member or the member's representative learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

4. Request for Continuance by Department [or OCC](#)

The Department [or OCC](#) may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, and (3) providing dates in the near future when the [Department's Department or OCC](#) representatives and witnesses are all available for the hearing. At the same time it submits the request for continuance to the Commission, the Department [or OCC](#) shall send a copy of the request to the member's representative, if known, or if not known, to the member, using a method that ensures delivery on the same date as delivery to the Commission.

Because a member is entitled to have the appeal hearing held within 30 days after the notice of appeal is filed, if the Department [or OCC](#) wishes a continuance beyond that time, the Department [or OCC](#) must obtain the accused member's waiver of the 30-day period and consent to having the hearing held at a later date by obtaining from the member a completed and signed "Consent to Waive Time For Trial on Appeal" form. Members are not required to complete the form or consent to an extension of time. The Presiding Officer will not ordinarily continue the hearing beyond the 30-day period without the member's written consent to extend the time for the hearing.

Any request for a continuance must be in writing and submitted as soon as the Department [or OCC](#) learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

5. Action on Requests for Continuance

Only the Presiding Officer has the authority to continue the hearing date. The Commission Secretary may not take a hearing off calendar unless directed to do so by the Presiding Officer. When a request for continuance is received, the Presiding Officer will consider the request and respond in writing. If a request for continuance is granted, the hearing will be continued to a date certain, absent extraordinary circumstances.

B. Verified Complaint Filed by the Chief or OCC Director

1. Timeline for Setting Hearing

The Commission will ordinarily begin the trial and hearing on a verified complaint filed by the Chief or OCC Director within ~~60~~90 days from the date the complaint is filed with the Commission. A complaint is deemed filed on the date received at the Commission office.

2. Initial Case Management Conference, and Notice of Hearing

Consistent with Commission Resolution No. 75-09, an initial Case Management Conference is to be scheduled by the Commission Secretary within 15 business days after the case is assigned to a Hearing Officer. All parties to the case or their designated representative shall attend the case management conference. The parties shall submit any proposed stipulated settlement of the matter in sufficient time before the case management conference to allow meaningful discussion of the offer at the case management conference. At the initial case management conference, the assigned Hearing Officer shall: (1) set a hearing date for taking evidence; (2) set a date for completion of discovery exchange; (3) establish a schedule for pre-hearing submittals, including any pre-hearing motions and motions in limine; (4) discuss the option of having the matter heard by a hearing officer who is not a Commissioner; and (5) set date(s) for any subsequent case management conferences. At the discretion of the Hearing Officer, this case management conference may be conducted by telephonic conference call.

The Secretary will send written notice to the member and the Chief or OCC Director, and the parties' representatives if known, of the time and date of the hearing on the complaint. The member and Chief or OCC Director are entitled to at least 21 days notice of the initial hearing date.

3. Request for Continuance by Member

The member or the member's representative may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, and (3) providing dates in the near future when the member, the member's representative, and the member's witnesses are all available for the hearing. At the same time the member or the member's representative submits the request for continuance to the Commission, the member or representative shall send a copy of the request to the Department or OCC representative, if known, or if not known, then to the Chief or OCC Director, using a method that ensures delivery on the same date as delivery to the Commission.

Any request for a continuance must be in writing and submitted as soon as the member or the member's representative learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

4. Request for Continuance by Department or OCC

The Department or OCC may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, and (3) providing dates in

the near future when the Department's representatives and witnesses are all available for the hearing. At the same time it submits the request for continuance to the Commission, the Department or OCC shall send a copy of the request to the member's representative, if known, or if not known, to the member, using a method that ensures delivery on the same date as delivery to the Commission.

Any request for a continuance must be in writing and submitted as soon as the Department or OCC learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

5. Action on Requests for Continuance

Only the Presiding Officer has authority to continue the hearing date. The Commission Secretary may not take a hearing off calendar unless directed to do so by the Presiding Officer. When a request for continuance is received, the Presiding Officer will consider the request and respond in writing. If a request for continuance is granted, the hearing will be continued to a date certain, absent extraordinary circumstances.

V. REPRESENTATION

A. Member Representative

At any hearing before the Commission, whether a suspension appeal or trial on a verified complaint filed by the Chief, a member may choose to represent himself or herself or to have a representative, including an attorney, a representative from the San Francisco Police Officers Association, or a Department employee below the rank of Assistant Chief; provided, however, that when the member is at the rank of Assistant Chief or above, the member may choose an officer of the same rank as a representative.

The member may not select as a representative an individual listed by one of the parties as a [percipient or material](#) witness, or otherwise expected to be a witness in the case.

B. Member's Notice to Commission

If a member elects to proceed with a representative, the member or the representative shall promptly notify the Police Commission Secretary, and the Chief or OCC Director, in writing, of the representative's name and contact information.

In selecting a representative, the member shall select a representative who is available and prepared to appear on the date set for hearing in the matter. [\(See Sections IV.A.2. and IV B.2. above, re setting the trial date during the initial case management conference.\)](#) For good cause shown, the ~~Commission assigned Hearing Officer or the Presiding Officer~~ may grant a member one continuance of no more than 30 days, to accommodate the schedule of the selected representative.

C. Department or OCC Notice to Commission

The Chief or the Chief's representative, or [the OCC Director or the OCC Director's representative](#), shall notify the Police Commission Secretary and the member of the name and contact information for the individual who will represent the Department or OCC at the Commission hearing.

VI. PROCEDURE FOR ASSIGNING A DISCIPLINARY CASE

A. Suspension Appeals

Generally, the President will assign each appeal to a Commissioner who will serve as Hearing Officer for the taking of evidence. The Commission President may assign the appeal to the

Commission for the taking of evidence, ~~in~~ at the President's discretion. When the Commission President has determined that a disciplinary matter will be heard by the full Commission, an individual Commissioner assigned to the case will be responsible for administration of any pre-trial matters.

B. Verified Complaint Filed by the Chief or OCC Director

1. Discipline Recommendation from Chief or OCC Director

In all discipline cases where the Chief or OCC Director files a verified complaint against a member, the Chief or OCC Director shall set forth specifically the acts that the Chief or OCC Director has determined constitute a breach of duty or misconduct, as well as any rules violated. The Chief or OCC Director shall also include in the complaint a recommendation for a particular level of discipline. If the Commission finds a breach of duty or misconduct by a member, it may impose discipline that is greater or less than that recommended by the Chief or OCC Director. The Commission may impose discipline as specified in Section XIII of these Procedures.

In non-disciplinary dismissal cases under Section III.I., the Chief shall specify that the request for dismissal is non-disciplinary, and shall provide the basis for the recommendation for dismissal in the verified complaint.

2. Assignment of Hearing Officer

Generally, the President will assign each verified complaint to a Commissioner who will serve as Hearing Officer for the taking of evidence. The Commission President may assign the case to the Commission for the taking of evidence, in the President's discretion. When the Commission President has determined that a disciplinary matter will be heard by the full Commission, an individual Commissioner assigned to the case will be responsible for administration of any pre-trial matters.

VII. PUBLIC PROCEEDINGS

A. Location

Generally, the hearing and trial on a discipline case will be held in the Hall of Justice at Department Headquarters, unless the Presiding Officer designates an alternate location. Any alternate location will be selected with due regard to the convenience of the parties, witnesses and the public.

B. Open (Public) Session

Members have the right to have the hearing on the appeal or verified complaint held in an open session, subject to Section VII.D., below.

C. Rights Under State Law

California Government Code §54957(b)(2) provides: "As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null or void."

D. Other Grounds for Closed (Non-Public) Session

Even where the member requests an open session, the Commission may hold some or all of a hearing in closed session for other reasons, for example, due to third-party privacy rights or where federal, state or local law or rules prohibit disclosure of certain information.

E. Requesting Open (Public) or Closed (Non-Public) Session

The Police Commission will initially schedule any hearing in closed session, unless the employee has requested an open session in advance and filed a written waiver of the right to a closed hearing (see *Copley Press v. Superior Court* (2006) 39 Cal.4th 1272).

If a member initially requests open session, but subsequently wishes to request closed session, the member may request closed session at any time. The Presiding Officer will consider the request for closed session when made.

The Presiding Officer has authority to rule on any request for open or closed session.

F. Record of Proceedings

The record of open proceedings will be available for public inspection unless disclosure is otherwise prohibited by law. The record of closed proceedings will not be available for public inspection unless disclosure is otherwise required by law.

VIII. DISCOVERY

A. ~~Department's~~ Department and OCC Discovery Obligations

The required discovery, as specified below, shall be provided promptly by the Department or OCC
~~Discovery shall commence promptly,~~ beginning on the first business day an appeal or verified charges are filed with the Commission—;

- No later than 7 days after receiving notice of an appeal; and
- No later than 14 days after filing a verified complaint with the Commission.
- The Hearing Officer may modify this time schedule to insure due process in the event of amended charges, or in the event charges are filed within seven days of an involuntary suspension by the Chief of Department under Charter section A8.344.

The parties shall report discovery compliance status to the assigned Hearing Officer at the initial status conference, and as otherwise directed by the Hearing Officer. If discovery production is delayed, the officer may request that the Hearing Officer postpone or continue a hearing date in order to insure due process.

The Department and OCC shall provide the following required discovery to the accused member.

- The entire investigative file related to the discipline investigation and case, prepared and maintained by the Department or OCC, including the final investigative report, notes prepared by the investigator, audio or video recordings, photographs and any other physical evidence, and including any evidence in electronic form.
- Any evidence that the Chief relied on in imposing discipline, or that the Chief or OCC Director relied upon in filing a verified complaint or recommending a level of discipline.

- The names and, where reasonably possible, telephone numbers of witnesses who are known by the Department or OCC to have information relevant to the complaint. For all witnesses who are Department employees, the Department shall provide work contact information. The member and any representative or agent may [use this information to](#) contact any witnesses ~~solely~~ in connection with the discipline proceeding, ~~and but~~ shall not otherwise use or disclose any telephone numbers or other contact information provided by the Department [or OCC](#) under this Section. [Except that, if the member is subject to a Chief's Stay-Away Order or any court order that prohibits or limits contact with any witness or complainant, the member \(and the member's representative, if applicable\) must adhere to the order.](#)
- All evidence that the Department or OCC intends to introduce in its case in chief during the taking of evidence.
- If requested by the accused member or the member's representative, an opportunity to inspect Department facilities or original physical evidence related to the discipline proceeding.

Before producing required discovery, the Department or OCC may redact or withhold any attorney-client communication, attorney-work product or third-party confidential material in the discovery materials.

~~The Department shall provide the required discovery no later than 7 days after receiving notice of an appeal; and the Department or OCC shall provide the required discovery no later than 14 days after filing a verified complaint with the Commission.~~

B. Continuing Discovery Obligation

The Department or OCC duty to provide required discovery to the member shall continue beyond its initial disclosure obligation, and the Department or OCC shall produce any required discovery obtained after the initial production.

C. Additional Discovery from Department

If the accused member believes that he or she needs additional information or materials to prepare a defense, the member or the member's representative shall submit a written discovery request to the Department or OCC representative if known, or if not known, to the Chief or OCC Director. The Department or OCC shall provide a written response to the discovery request within 10 days. The Department or OCC response shall either state that the Department will provide the requested information or materials or raise one or more objections to some or all of the discovery requests. With its written response, the Department or OCC shall provide any information or materials that are responsive to requests to which it had not raised an objection. If the member wishes to pursue the discovery request over the Department or OCC objection, the member shall follow the motion procedures described in Section IX.C., below.

D. Obtaining Attendance of Witnesses

1. Department Employees

If the member intends to call any Department employee as a witness at the hearing, the member or the member's representative shall submit a written request to the Department or OCC representative, asking that the Department detail to the proceeding any employee requested by the member. The member shall submit the request to the Department or OCC representative at least 5 days before the scheduled hearing date.

The member and Department or OCC shall coordinate in scheduling any Department employees as witnesses, to minimize inconvenience to employees and Department operations.

If the Department or OCC objects to one or more of the member's proposed witnesses, the Department or OCC shall notify the member or the member's representative of the objection before the hearing. The Department shall also arrange for the witness to be available on standby, and may raise its objections with the Presiding Officer at the hearing.

If a witness is unavailable for the hearing, the Department or OCC shall, upon learning of the unavailability, notify the member of the witness's unavailability and generally the reason for that unavailability.

2. Other Witnesses

For witnesses who are not Department employees, either party may request that the Commission issue a "Notice to Attend Hearing" to an employee in another City department or to a third-party. The party's request must include the full name and contact information for the witness and a brief description of the witness's anticipated testimony and its relevance to the case.

A party wishing a "Notice to Attend Hearing" must submit a written request to the Presiding Officer by the deadline set for submitting a motion under Section IX.B., below.

The Presiding Officer is authorized to determine whether to issue the "Notice to Attend Hearing." If the Presiding Officer grants the request to issue a "Notice to Attend Hearing," the Commission Secretary will issue and send the "Notice to Attend Hearing" to the identified witness, with copies to all parties and their representatives. If the Presiding Officer denies the request to issue the "Notice to Attend Hearing," the party may ask the Commission to reconsider the request.

If the witness refuses or fails to attend the hearing, the party seeking to call that witness may request that the Commission issue a subpoena for attendance of the witness. The Commission will schedule a meeting to determine whether to issue the subpoena.

[In addition, the Director of the Office of Citizen Complaints has certain separate subpoena authority under City and County of San Francisco Administrative Code Section 96.6.](#)

E. Obtaining Production of Records Not Maintained by the Department

If a party wishes to obtain production of records from another City department or a third party, the party may request that the Commission issue a "Notice to Produce Records." The request must include the full name and contact information for the custodian of records and a description of records sought and their relevance to the case.

A party wishing a "Notice to Produce Records" must submit a written request to the Presiding Officer by the deadline set for submitting a motion under Section IX.B., below.

The Presiding Officer is authorized to determine whether to issue the "Notice to Produce Records." If the Presiding Officer grants the request to issue a "Notice to Produce Records," the Commission Secretary will send the "Notice to Produce Records" to the identified witness. If the Presiding Officer denies the request to issue the "Notice to Produce Records" the party may ask the Commission to reconsider the request.

If the custodian of records refuses or fails to produce the requested records, the party seeking to obtain those records may request that the Commission issue a subpoena for production of the records. The Commission will schedule a meeting to determine whether to issue the subpoena.

In addition, the Director of the Office of Citizen Complaints has certain separate subpoena authority under City and County of San Francisco Administrative Code Section 96.6.

F. Extension of Deadlines

A party may request an extension of a discovery deadline under this Section by (1) submitting a written request to the Presiding Officer, with a copy concurrently provided to the other party, stating good cause for the requested extension, or (2) presenting to the Presiding Officer a stipulation of the parties, establishing good cause for the extension. Only the Presiding Officer may extend the deadline.

IX. MOTIONS

A. Generally

This Section governs all motions advanced by either party to a discipline proceeding. Requests for a continuance shall be governed by Sections III.G., IV.A.3-5, IV.B.3-5, and XI.E. of these Procedures, and not by this Section.

Motions shall be written, typed, double-spaced and bear the caption of the proceeding. No motion filed with the Commission may exceed 10 pages in length without written permission from the Presiding Officer.

B. Timeline to Submit Motions

1. Suspension Appeals

Unless otherwise scheduled by the Presiding Officer: if an appeal is heard on the initially scheduled hearing date (no continuance), any party wishing to make a motion shall submit the motion to the Commission and other party no later than 3 days before the initial hearing date; and the other party shall submit any opposition at the initial hearing.

If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting motions and any opposition and reply papers.

2. Verified Complaint Filed by Chief or OCC Director

Unless otherwise scheduled by the Presiding Officer: any party wishing to make a motion shall submit the motion to the Commission and other party no later than 14 days before the initial hearing date; the other party may submit any opposition papers no later than 7 days before the initial hearing date; the moving party may submit reply papers no later than 3 days before the initial hearing date. Any party submitting a motion or opposition or reply papers to the Commission shall serve all papers on the other party at the same time the party submits the papers to the Commission, using a method that ensures delivery on the same date as delivery to the Commission.

If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting motions and any opposition and reply papers.

C. Discovery Motions

A member dissatisfied with the Department or OCC response to a discovery request under Section VIII.C. may submit a motion to the Presiding Officer requesting further discovery from the Department or OCC. The motion shall include the following:

- A list specifically identifying all discovery materials requested by the member that the Department or OCC declined to produce and the Department or OCC stated objections;
- A clear description of any perceived discovery deficiencies in the Department or OCC response to the member's discovery request;
- A statement explaining why the member anticipates the additional discovery would be relevant to the member's defense;
- Legal authorities relevant to the member's motion; and
- A written declaration, under penalty of perjury, showing compliance with the requirements of Section VIII.C., and attaching copies of all correspondence sent to and received from the Department or OCC concerning the discovery request; or explaining why the party did not comply with the requirements of Section VIII.C.

D. Other Motions, including Dispositive Motions

Any party wishing to make a motion other than a discovery motion, including but not limited to a dispositive motion, may submit the motion and any supporting papers to the Commission in compliance with the requirements of this Section. A "dispositive motion" is a motion brought by the member that, if granted, would result in the dismissal of one or more charges against the member. A dispositive motion may be brought on jurisdictional or procedural grounds and/or on the ground of alleged insufficiency of the evidence presented by the Department. If a member believes that one or more of the charges should be dismissed on procedural or jurisdictional grounds, the member shall file a motion presenting all such arguments.

Any motion shall include the following:

- A clear description of the alleged problem or procedural defect prompting the motion;
- A description of all facts supporting the motion;
- Legal authorities relevant to the member's motion;
- A concise statement of the remedy or relief sought through the motion; and
- If appropriate, a written declaration, under penalty of perjury, showing any communication or correspondence between the parties regarding the alleged problem or procedural defect.

Even when a discipline case is assigned to a Hearing Officer for the taking of evidence, any dispositive motion brought will be decided by the Commission. Dispositive motions brought solely on procedural and/or jurisdictional grounds may be decided before or after the taking of evidence. Any motion to dismiss on the ground of alleged insufficiency of the evidence may not be heard or decided until after the close of the Department's case in chief, and may be heard after all evidence and argument is received.

X. PRE-HEARING SUBMISSIONS

A. Required Pre-Hearing Submissions

Each party shall prepare and submit nine (9) copies of the following materials to the Commission:

- A written Pre-Hearing Statement that includes a summary of the party's position and evidence, including any pertinent citations to legal authority in support, together with a list of all witnesses that party intends to call during the hearing and a brief description of the anticipated testimony of each witness. Pre-Hearing Statements shall also identify which exhibits or other evidence is disputed and which exhibits or other evidence is undisputed; this portion of the Pre-Hearing Statements may be submitted as a joint statement of the parties.

- All exhibits the party intends to introduce into evidence at the hearing. If the total number of pages of exhibits exceeds 25 pages, the party shall include the exhibits in a binder, with the exhibits separated by tabs. The binder shall include an index listing the tab number/letter and a description of each exhibit.

Each party must provide a copy of these materials to the other party at the same time the party submits the materials to the Commission, using a method that ensures delivery on the same date as delivery to the Commission. In the discretion of the assigned Hearing Officer, the number of copies submitted during the Hearing Officer phase of these proceedings may be modified.

B. Deadline for Pre-Hearing Submissions

1. Suspension Appeals

If an appeal is heard on the initially scheduled hearing date (no continuance), unless otherwise scheduled by the Presiding Officer, the parties shall submit the required materials no later than 3 days before the initial hearing date. If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting the required materials.

2. Verified Complaint filed by Chief

Unless otherwise scheduled by the Presiding Officer, the parties shall submit the required materials no later than 14 days before the initial hearing date.

3. Extension of Deadlines

Either party may request an extension of the submission deadline under this Section by submitting a written request to the Presiding Officer, with a copy concurrently provided to the other party, stating good cause for the requested extension. Only the Presiding Officer may extend the deadline.

XI. INITIAL HEARING DATE

A. Plea by Accused Member

At the initial hearing, whether on the originally set date or a continued date, the member shall plead guilty or not guilty to the charged breach of duty or misconduct. In non-disciplinary cases, the member shall state whether he or she agrees or disagrees with the Chief's stated reason for requesting dismissal.

B. Open (Public) or Closed (Non-Public) Session

If the member wishes to have the hearing and trial conducted in open session, the member shall request open session prior to the initial hearing. If a member initially requests open session, but subsequently wishes to request closed session, the member may request closed session at any time.

The Presiding Officer has authority to rule on any request for closed session, and will consider any request for closed session when made.

C. Motions and Other Matters

The Presiding Officer may take the following actions at the initial hearing, whether on the originally set date or a continued date:

- Accept the member's plea;
- Respond to any request for open or closed session;

- Respond to any request for additional time beyond the maximum total hearing time allocated to a party for its discipline case;
- Respond to any request that the Commission issue a “Notice to Attend Hearing” or “Notice to Produce Records;”
- Decide any non-dispositive motions briefed by the parties, including discovery motions, or set a schedule for further briefing, any argument and consideration of such motions;
- Identify and set deadlines for any additional submissions;
- Set a briefing schedule if the parties anticipate or if the Presiding Officer directs briefing on particular issues;
- Schedule dates for additional hearing days, if necessary;
- Hear opening statements, take evidence, and hear closing argument; and
- Conduct any additional business as necessary.

The Commission Secretary will send a notice to the parties and any representatives, confirming any additional hearing dates and any other dates or information from the hearing.

D. Taking of Evidence

At the initial hearing, whether on the originally set date or a continued date, all parties and their respective representatives shall be prepared to proceed with opening statements, the taking of evidence, and closing arguments.

E. Continuances after Initial Hearing Date

Continuances of additional hearing dates set at the initial hearing are strongly disfavored. Any party who wishes a continuance of any dates after the initial hearing date shall submit a written request for continuance as soon as the party identifies a need for a continuance. Before requesting a continuance, a party shall meet and confer with the opposing party and any representative for the purposes of obtaining alternative dates when ALL parties and representatives are available. The request shall state good cause for the continuance and provide dates in the near future when the party, the opposing party and any opposing counsel or other representatives and witnesses are all available for the hearing. Only the Presiding Officer has authority to continue a hearing date. The Commission Secretary may not continue a hearing date.

XII. TAKING OF EVIDENCE, DELIBERATIONS AND DECISION

A. Hearing Officer Proceedings

1. Actions of the Hearing Officer

The Hearing Officer is authorized to take the following actions:

- Set a schedule for hearings, pre-trial submissions and motions;
- Direct discovery and resolve discovery disputes, including discovery motions under Section IX.C.;
- Preside at hearings to take evidence in the case;
- Rule upon all objections presented by the parties;
- Hear opening statements, take evidence, and hear closing arguments;
- Ask questions of any witness; and
- Rule on any non-dispositive motions.

2. Actions of the Parties

Each party or the party's representative may make an opening statement; call, examine and cross-examine witnesses; raise objections; move for the admission of items into evidence; and make closing argument, subject to any time constraints imposed by the Commission. The Presiding Officer may permit or direct written closing argument in addition to or in lieu of oral closing argument.

3. Actions of the Commission Secretary

After the close of the taking of evidence proceeding, the Commission Secretary shall submit the complete record of the proceedings, including the reporter's transcript and all admitted evidence, to each Commissioner.

B. Trial of Disciplinary Cases by the Commission After Evidence is Taken by a Hearing Officer

1. Notice of Proceedings before Full Commission

After submitting the record of proceedings before the Hearing Officer to all Commissioners, the Commission Secretary will notice the date and place of trial before the Commission. The parties will receive at least 7 days notice of the trial date.

2. Purpose of Proceedings before Full Commission

Except as provided in Section XII.B.3 below, proceedings before the Commission after evidence has been taken by a Hearing Officer shall be limited to deliberations by the Commission.

3. Additional Testimony or Evidence

In any disciplinary case where evidence has been taken by a Hearing Officer, the Commission will not hear live testimony or take other evidence, except as specified in this subsection.

At the request of a party, the Commission may take additional live testimony or other evidence (1) where the requesting party demonstrates that the evidence is newly discovered and could not with reasonable diligence have been located before the proceedings before the Hearing Officer, and (2) the Commission determines that the proposed evidence is material and relevant to the case under consideration.

In addition, if after reviewing the record of a case the Commission concludes that it cannot decide the matter without receiving additional evidence, including documentary evidence or live testimony from one or more of the witnesses or from additional witnesses, the Commission may order the parties to present additional evidence, including live testimony from any witness.

4. Commission Review of Record and Deliberations

The Commission will not begin deliberations to decide a case until each Commissioner participating in the deliberative process affirms for the record that he or she has reviewed the entire record of the proceedings before the Hearing Officer, including the transcript of the proceedings and all documentary and any other evidence admitted by the Hearing Officer. After that review and affirmation on the record, the Commission will deliberate and decide the case. In the discretion of the Commission, the penalty phase (if any) may be severed and decided separately.

C. Trial by the Commission Without a Hearing Officer Taking Evidence

1. Taking of Evidence by the Commission

The Presiding Officer may take the following actions:

- Set a schedule for hearings, pre-trial submissions and motions;
- Direct discovery and resolve discovery disputes, including discovery motions under Section IX.C.;
- Preside at hearings to take evidence in the case;
- Receive testimony, documents and other evidence;
- Rule upon all objections presented by the parties; and
- Rule on any non-dispositive motions.

Any Commissioner may ask questions of any witness.

The Commission may deliberate and decide any dispositive motion submitted by a party before or after the taking of evidence.

2. Actions of the Parties

Each party or the party's representative may make an opening statement; call, examine and cross-examine witnesses; raise objections; move for the admission of items into evidence; and make closing argument, subject to any time constraints imposed by the Commission. The Presiding Officer may permit or direct written closing argument in addition to or in lieu of oral closing argument.

3. Commission Deliberations and Decision

At the conclusion of the trial, the Commission shall conduct deliberations and render a decision on the case. The Commission may not begin deliberations until each Commissioner participating in the deliberative process affirms for the record either (1) that he or she was present for the entire proceeding before the Commission or (2) that he or she has reviewed the transcript of any hearings when he or she was not present, as well as all documentary and any other evidence admitted at any hearings when he or she was not present.

XIII. PENALTY

A. Suspension Appeals

The Commission may sustain the Chief's disciplinary suspension, may affirm the breach of duty or misconduct but reduce the suspension, or may find the member not guilty of any violation. The Commission may not increase the penalty beyond that imposed by the Chief for any violation affirmed by the Commission.

If the Commission reverses or reduces a suspension imposed by the Chief, in whole or in part, and if the member has already served the suspension imposed by the Chief, the Commission will order that the member be paid his or her salary for any period of suspension reversed by the Commission.

B. Verified Complaint Filed by the Chief or OCC Director

If the Commission finds a member guilty of any breach of duty or misconduct based on a verified complaint filed by the Chief or OCC Director, the Commission may impose the penalty recommended by the Chief or OCC Director, or a lesser or greater penalty. The Commission may impose the following penalties:

- Reprimand;

- Fine not exceeding one (1) month's salary for any offense;
- Suspension for a period not exceeding three (3) calendar months for any offense;
- Dismissal from the Department.

C. Non-Disciplinary Verified Complaint Filed by the Chief

If the Commission finds cause for dismissal based on a non-disciplinary verified complaint filed by the Chief, the Commission may dismiss the member from employment with the Department.

XIV. NOTIFICATION OF COMMISSION DECISION AND FINDINGS OF FACT

A. Final Commission Decision

When the Commission has completed deliberations and rendered a decision on the case, the Commission will announce its final decision. The Commission Secretary will also send written notification to all parties announcing the Commission's final decision.

If all parties are present when the Commission concludes deliberations and announces its decision, the decision is final at that time. If all parties are not present when the Commission concludes deliberations and announces its decision, the decision is final on the date of the Secretary's written notification of the decision to all parties.

B. Proposed Findings of Fact

The Commission may direct one of the parties to prepare proposed findings of fact consistent with the Commission's decision, and to submit those proposed findings to the Commission and the other party for consideration.

Generally, the Commission allows time for the other party to respond to the proposed findings of fact before taking any action to adopt and issue the Commission's findings of fact.

C. Deadline to Submit Proposed Findings of Fact

Generally, the Commission will allow the party asked to prepare the proposed findings of fact 15 days from transmission by the Commission Secretary of the complete transcript of the proceedings. That party may request an extension of the deadline to submit those findings by submitting a written request to the Presiding Officer, stating good cause for the requested extension. Only the Presiding Officer may extend the deadline.

D. Findings of Fact

Any findings of fact adopted by the Commission will be issued to the parties.

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