

CHAPTER 15: DISCIPLINE AND DISCHARGE

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1.0 DISCIPLINE - GENERALLY

1.1 POLICY

It is the policy of the Buffalo Police Department to maintain a highly disciplined work environment that induces individual employees to reach their fullest potential; that creates a sense of esprit de corps; and that gains the trust and respect of the community.

1.2 DISCIPLINE - DEFINITION

Discipline in its broadest sense means all those methods that can be used to train employees to fully comport with Department rules, regulations and procedures and which encourage employees to perform their jobs to the fullest extent of their natural talents. Discipline may be either positive or negative in nature. Positive discipline entails teaching, training and encouragement. Negative discipline involves the use of punitive measures to gain compliance.

1.3 LAW ENFORCEMENT CODE OF ETHICS

Rules, regulations and procedures generally establish the minimum level of conduct and performance that the Department can tolerate. In contrast, the Law Enforcement Code of Ethics sets the ideal standards which all members should strive to attain.

LAW ENFORCEMENT CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all persons to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my Department. Whatever I see or hear of a confidential nature or that is confided in me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God and to my chosen profession...law enforcement.

1.4 POLICE OFFICER'S BILL OF RIGHTS

By agreement with the PBA the Police Officer's Bill of Rights has been adopted as part

of the collective bargaining agreement. It establishes guidelines to be followed by superior officers in conducting investigations arising from a member's conduct as a police officer.

A. Informing the Member

1. The member shall be informed of the rank, name, and command of the officer in charge of the investigation, as well as the rank, name and command of the interrogating officer, and all persons present during the investigation. If a member is directed to leave his/her post and report for interrogation to another command, his/her own command shall be promptly notified of his/her whereabouts.
2. The member shall be informed of the nature of the investigation before any interrogation begins, including the name of the complainant. The addresses of the complainant and/or witnesses need not be disclosed. However, the member shall be given sufficient information to reasonably apprise him/her of the allegations.
3. If it is known that the member is to be interrogated only as a witness, (s)he shall be so informed at the initial notification to appear.
4. If the member is under arrest, or is likely to be (that is, if (s)he is a suspect or the target of a criminal investigation), (s)he shall be informed of, and given, all his/her rights, pursuant to the "Miranda" decision as set forth by the Supreme Court of the United States.

B. Conduct of the Investigation

1. These guidelines shall be observed by all superior officers in conducting investigations of actions of members of the police force.
2. The interrogation of a member shall be at a reasonable hour, preferably when the member is on duty, unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations should be scheduled for the daytime and the reassignment of the member to the day shift should be employed. If any time is lost, the member shall be compensated.
3. The interrogation shall take place at a location designated by the investigating Officer. Usually it will be at the command to which the investigating Officer is assigned, or at the District stationhouse within which the incident allegedly occurred.
4. The questioning shall not be overly long. Reasonable respites shall be allowed. Time shall be provided for personal necessities, meals, telephone calls, and reasonable rest periods.
5. The member shall not be subjected to offensive language, nor shall (s)he be

threatened with transfer, dismissal, or other punishment. No promises or reward shall be made as an inducement to answer questions.

6. The complete interrogation shall be recorded, either mechanically or by a stenographer. There will be no "off the record" questions. All recesses called during the questioning shall be recorded.
7. If a member so requests, (s)he shall be given the opportunity to consult with counsel before being questioned concerning a serious violation of the Departmental rules, provided the interrogation would not be delayed unduly thereby. In such cases, the interrogation may not be postponed past 1000hrs of the day following the notification of the interrogation. Counsel, if available, and a representative of a line organization may be present during the interrogation.
8. Members represented by the PBA and covered by the collective bargaining agreement shall not be ordered to submit to a polygraph test.

C. Minor Violations

In cases of investigations of minor violations of Departmental rules, requests to consult with legal counsel or with a line organization representative will be denied unless sufficient reasons are advanced. In cases of minor violations, the investigating officer shall have discretion as to whether or not the interrogation shall be recorded.

D. Disciplinary Action

In any case, the refusal to answer pertinent questions may result in disciplinary action.

1.5 TIME LIMITATIONS

No disciplinary proceeding shall be commenced more than one year after the occurrence of the wrongdoing complained of or its discovery, if later. However, such limitation shall not apply where the wrongdoing complained of would, if proved in a court of appropriate jurisdiction, constitute a crime.

1.6 DISCIPLINARY PENALTIES

A permanent employee shall be subjected to departmental discipline, and termination where appropriate, as provided for in the respective collective bargaining agreements, departmental regulations, and applicable laws. A permanent employee subjected to disciplinary charges shall be afforded all rights to a hearing process as established in the respective collective bargaining agreements, departmental regulations, and applicable laws. Sworn members are also subject to removal for a conviction for any felony, or any crime involving moral turpitude as provided in the Public Officers Law, or any other violation of law that carries a mandatory forfeiture of employment as a remedy. Examples of mandatory forfeiture include, but are not limited to, residency violations as outlined in the NYS Public Officers Law.

Disciplinary actions or measures shall consist only of the following in accordance with existing collective bargaining agreements and appropriate laws:

1. Reprimand,
2. A fine not to exceed one hundred dollars (\$100.00) to be deducted from salary or wages,
3. Suspension without pay not to exceed sixty (60) days,
4. Demotion in grade and title,
5. Dismissal from the service.

As a guideline in determining the form of discipline and/or severity of punishment, if any, the department should consider all relevant factors. Minimally, those factors should include:

1. the severity of the transgression and the extent of injury or damage to any victim;
2. the extent of damage to the professional reputation of the department;
3. the employee's past work record including any past disciplinary action and any instances of meritorious work;
4. the impact of the discipline on other members of the department;
5. the affect of the discipline in deterring the offending employee from engaging in future acts of misconduct.

1.7 SUPERVISORS/SUPERIOR OFFICER RESPONSIBILITIES

Department Rules and Regulations

Refer to Chapter VII of the Buffalo Police Department Rules and Regulations.

For Whom Supervisors/Superiors Must Initiate Disciplinary Action

1. Whenever the level of performance falls below acceptable limits, supervisors/superior officers are responsible for initiating disciplinary action if:
 - a. the employee is assigned to their command; or
 - b. the employee is temporarily assigned to their command, however briefly; or
 - c. the employee is assigned to another command but the substandard performance occurred in the supervisor's/superior officer's presence.
2. Whenever facts come to the supervisor's/superior officer's attention that indicate that the standards of conduct of the department have been violated by an employee of another command, the supervisor/superior officer shall prepare an Inter-Departmental memorandum detailing the nature of the

employee's conduct, and shall forward the memorandum through channels to IAD, with one copy being sent to the command of the employee who is alleged to have violated the Department standards of conduct.

Positive Discipline

A supervisor/superior officer can implement positive discipline by using all the means at his/her disposal to teach, train and encourage employees to become the best employees that their natural talents allow. This is a constant and continuing process that requires the supervisor/superior officer to be aware of the employee's daily performance. Positive discipline shall be used in cases in which an employee's performance is somehow deficient or it may be used when there are minor violations of Department rules, regulations and procedures..

Formal Discipline

The formal disciplinary process shall be invoked for all major violations of department standards of conduct, for cases in which a disciplinary may be an appropriate remedy, for cases involving complex investigations or when further investigation is required. The formal disciplinary process requires that IAD open a case file; that a thorough and complete investigation be undertaken; and that there be a conclusion of fact at the end of the investigation. In such cases the supervisor/superior officer shall:

1. inform the employee of the nature of the substandard performance, telling him/her that it is unacceptable, and provide remedial instruction so that conduct of a similar nature is not repeated in the future;
2. prepare a memorandum, or in the case of a complaint from a citizen, a Citizen Complaint Form, detailing the nature of the violation of Department standards of conduct;
3. Call upon IAD for assistance and guidance as to suspend the employee when required. IAD can always be contacted through the 911 Communications Lt.

Major vs Minor Violations

It is difficult to draw a clear line distinguishing minor violations of Department standards of conduct from major ones. Major violations will tend to seriously impair the on going operation of the unit or they may have a substantial adverse impact on the Department. Major violations include allegations of criminal conduct, moral turpitude, insubordination, misuse of Department property or equipment, or repeated documented minor violations of Department standards of conduct. Minor violations might include slovenly appearance, coarse or harsh language, tardiness, poor service, etc. Supervisors/superior officers must use their best judgment in determining these distinctions. IAD is available for assistance as to determining major or minor violations as they case may be.

1.8 PROBATIONARY EMPLOYEES

A probationary employee is not guaranteed continued employment but merely has an expectation of appointment to a permanent position. The department has wide latitude in deciding to either retain or dismiss these employees while they are serving their

probationary period.

Monitoring

During an employee's period of probation his/her performance shall be closely monitored by his/her immediate supervisor. The supervisor shall immediately correct deficiencies and shall periodically report on the probationary employee's progress to the Police Academy and other departmental units as determined by the Commissioner from time to time on the appropriate forms as the case may be.

Police Academy

The Police Academy shall be responsible for the oversight of all probationary employees. They shall prepare and disseminate forms designed to assess the progress of such employees. They shall carefully review completed progress reports and shall stay in close contact with the supervisor of any probationary employee who is exhibiting sub-standard performance levels.

Termination

Probationary employees who the Commissioner believes will not be able to raise their performance to an acceptable level may have their appointment to the position rescinded at any time prior to the expiration of the probationary period. Such probationary employee shall be given the opportunity to address the Commissioner on his/her own behalf prior to such rescission. All Departmental property, identification and equipment must be promptly returned by any employee who has had his/her appointment rescinded.

Department of Human Resources

The Commissioner's office shall promptly notify the Department of Human Resources in writing whenever a probationary employee is dropped from the rolls.

2.0 INTERNAL AFFAIRS DIVISION

2.1 POLICY

It is the policy of the Buffalo Police Department to maintain a Internal Affairs Division whose primary function is to ensure that all Department personnel achieve high standards of personal integrity, discipline and professional conduct.

2.2 I.A.D. TO REPORT DIRECTLY TO COMMISSIONER

Because of the sensitivity and potential impact of investigations involving the internal affairs of the Department, the commanding officer of IAD shall report directly to the Commissioner.

The commanding officer of IAD shall keep the Commissioner informed of the nature and progress of all on going investigations.

The commanding officer of IAD shall immediately notify the Commissioner of:

1. any credible allegation of a Department employee's commission of a crime, or any offense involving moral turpitude;

2. any incident allegedly involving misconduct by a Department employee which is likely to generate substantial public attention.

Based on the investigation of the internal affairs incident and the recommendation of IAD, the Commissioner shall determine the appropriate disposition of each such incident.

2.3 COOPERATION WITH LABOR RELATIONS DIVISION

In cases involving discrimination in the workplace based on race, color, religion, sex or national origin, or cases involving sexual harassment, or disciplinary cases in which Departmental charges are preferred, IAD shall keep the Division of Labor Relations informed and shall extend to that Division their fullest cooperation.

2.4 I.A.D. INVESTIGATIONS

IAD shall coordinate the investigation of disciplinary infractions. They may designate the offending employee's command to conduct the investigation of minor violations. The employee's command will report the results of the investigation to IAD and recommend appropriate remedial measures.

All major violations shall be investigated by IAD. Investigations that are particularly complex or that involve allegations of discrimination based on race, color, religion, sex or national origin, or that involve allegations of sexual harassment, shall be investigated by IAD.

Subject to review by the Commissioner, the Commanding Officer of IAD shall have the authority to determine which departmental unit is to conduct employee investigations.

2.5 CIVIL LAW SUITS AND CLAIMS

Refer M.O.P. Chapter 6.

2.6 AUTHORITY OF I.A.D.

In pursuit of employee investigations, the Commanding Officer of IAD is authorized to transgress District and Division boundaries and lines of authority and (s)he shall be given complete cooperation by all department employees.

2.7 CONFIDENTIAL RECORDS

The Internal Affairs Division shall maintain a record of all complaints against the Department or its employees and shall be the central repository for all such complaints. These records shall be kept confidential and shall be separate and apart from regularly maintained personnel files.

All records concerning allegations of violations of Department standards of conduct which do not result in the lodging of Department charges shall be expunged after five years. In cases in which the employee is a party to a law suit involving his/her employment with the City or the City is also a named party, IAD records shall be maintained until the law suit has been concluded or until five years have expired from the date of the complaint, whichever is later.

Records concerning violations of Department standards of conduct which result in the

preferring of Department charges, shall be maintained permanently in the employee's IAD file.

2.8 ANNUAL REPORTS

The Internal Affairs Division shall annually prepare statistical summaries of the activities of the unit.

2.9 I.A.D. ASSISTANCE TO OTHER UNITS

IAD is always available for advice and assistance. The 911 Communication Lt. shall be contacted when circumstances arise outside normal business hours. The 911 Communications Lt. may contact the on-call IAD investigator for further assistance should circumstances so require.

2.10 BLATANTLY FALSE COMPLAINTS

In those instances in which there are grossly or blatantly false accusations concerning employee misconduct and there exists evidence of intentional misrepresentation or the filing of false statements, the Commanding Officer of IAD shall recommend to the Commissioner that criminal action be pursued against the complainant.

3.0 INVESTIGATING COMPLAINTS AND VIOLATIONS

3.1 POLICY

It is the policy of the Buffalo Police Department to thoroughly investigate ALL complaints, from whatever source derived, and to investigate all allegations of misconduct or infractions of department standards of conduct. Each such investigation shall result in an appropriate disposition.

3.2 WHERE COMPLAINTS MAY BE RECEIVED

Citizen complaints concerning Department employees will be accepted at ALL police facilities in which sworn members are assigned regardless of whether the employee who is the subject of the complaint is assigned to that facility. Complaints may be made in person or over a telephone or through the mail, fax, departmental website, or in some instances through a third party as the case may be.

3.3 SUBORDINATES TO NOTIFY SUPERVISOR/SUPERIOR OFFICER

Subordinates becoming aware of complaints regarding an employee of the department, in whatever manner received, shall immediately notify his/her supervisor/superior officer.

3.4 CITIZEN COMPLAINTS - SUPERVISOR/SUPERIOR OFFICER RESPONSIBILITIES

It is the responsibility of every supervisor/superior officer to personally accept citizens' complaints concerning employees of the department. In those circumstances in which the supervisor/superior officer is away from the building/office, (s)he shall be requested to return immediately.

In every case in which a citizen makes a complaint concerning an employee of the department, the complainant shall be provided with the pamphlet entitled "How the

Buffalo Police Department Complaint Process Works." The complainant shall also be allowed to read and review the departmental copy of the IAD Complaint Investigation Manual located at each District.

Often a complaint may result from a lack of understanding of the law or of police procedures. Complaints of this nature in which there is no basis for an allegation of misconduct or where there is obviously no violation of department standards of conduct, shall be resolved by the supervisor/superior officer if possible. The supervisor/superior officer need not prepare a Citizen Complaint Form (P-294) if the citizen is satisfied with the resolution and there are no grounds for further investigation. If the citizen cannot be satisfied or there may be a reason for further investigation, the supervisor/superior officer shall complete and forward a Citizen Complaint Form.

In cases in which a citizen alleges conduct by a department employee and the conduct, if true, would constitute any violation of department standards of conduct, the supervisor/superior officer must complete a Citizen Complaint Form.

- A. If the alleged conduct of the employee would constitute a minor violation but it is not of a repetitive nature, the supervisor/superior officer shall attempt to resolve the complaint. If (s)he is able to successfully resolve the complaint and the citizen is satisfied with the disposition, the supervisor/superior shall note his/her actions on the Citizen's Complaint Finding Form (P-294b).
- B. In cases alleging infractions of law, major violations of Department standards of conduct, minor violations of a repetitive nature, or other misconduct, the supervisor/superior shall complete and forward the Citizen Complaint Form to the Internal Affairs Division and no attempt shall be made to resolve the complaint at this time.
- C. In cases in which the allegations, if proven, would constitute a crime (i.e. misdemeanor or felony), the supervisor/superior officer shall also prepare an incident report.

When a Citizen Complaint Form is completed concerning conduct of an employee not of the supervisor/superior officer's command, the supervisor/superior officer shall also forward a copy of the form to the employee's command.

Citizens shall not routinely be referred to IAD concerning a complaint against a departmental employee without first having completed a Citizen Complaint Form.

3.5 HANDLING MINOR VIOLATIONS

Minor violations of Department standards of conduct which are isolated incidents and which are not the subject of a citizen complaint may be handled with positive discipline.

In cases of minor violations of Department standards of conduct which are not isolated instances, supervisor/superior officer shall:

1. Prepare a memorandum detailing the incident. Upon giving remedial instruction, the supervisor/superior officer will include in the memorandum the nature of the remedial instruction provided;
2. A copy of the memorandum shall be issued to the employee. The employee may choose to respond in writing and the employee's response will be attached to each copy of the supervisor/superior officer's memorandum.
3. The memorandum shall be forwarded to IAD through the chain of command. The memorandum shall include a suggested disposition of the case from each of the superior officers in the chain of command including the initiating supervisor/superior officer. The memorandum and the employee's response, if any, will be filed in IAD.
4. The Commanding Officer of IAD will decide whether a IAD case file will be opened and the formal disciplinary process invoked.

3.6 COMPLAINTS AGAINST SUPERIOR OFFICERS

If a subordinate employee becomes aware that a superior officer has violated department standards of conduct, the subordinate shall notify IAD either in writing or in person. This does not permit subordinate employees to initiate complaints that they know are capricious, unjustifiable and without any basis in fact.

If a citizen attempts to lodge a complaint against a superior officer:

1. The Superior Officer who is the subject of the complaint shall refer the complaint to an on-duty Supervisor of a higher rank than (s)he assigned to that command; or
2. If no Supervisor of a higher rank assigned to that command is on duty, the Duty Officer or Captain assigned as the Duty Officer should investigate the complaint; or
3. If there is no Duty Officer or Captain assigned as the Duty Officer on Duty, the complainant shall be referred to IAD.

3.7 DETERMINING WHICH COMMAND IS TO INVESTIGATE THE COMPLAINT

Upon receipt of a Citizen Complaint Form or a Department memorandum detailing allegations of substandard conduct, IAD will review the documents and determine which would be the best unit to handle the investigation. If accusations of a serious nature are alleged, IAD will investigate the case. The employee's command may be designated to investigate complaints that are minor in nature. The Commanding Officer of IAD, subject to the review of the Commissioner, shall determine which unit handles the investigation.

3.8 CONDUCTING THE INVESTIGATION

- A. When an employee investigation is assigned to the employee's command, the Chief or superior in charge of that command will be responsible for its completion. The Chief or superior in charge may delegate authority to lesser ranking superior officers of his/her command to pursue the investigation however, the ultimate responsibility for its completion rests with the Chief or superior in charge.
- B. All investigations targeting sworn members of the department must be conducted in conformance with the Police Officer's Bill of Rights. Investigations shall also be conducted as determined by the IAD Office Investigation Manual.
- C. All evidence must be thoroughly evaluated and witnesses must be carefully interviewed. Statements of witnesses shall be taken in appropriate cases.
- D. In all cases, the complainant will be contacted and apprised of the results of the investigation. This may be done in writing or telephonically. A record of such contact must be noted on form P-294b.
- E. All superior officers in the employee's chain of command will submit in writing their recommendations concerning the disposition of the case. In cases of citizen complaints this will be done on form P-294b. For non-citizen complaints the recommendations will be forwarded on an Intra-Departmental memorandum.
- F. Cases shall be resolved within thirty (30) days. If additional time is required, a request in writing must be submitted to the Commanding Officer of IAD and approved by the Commissioner.
- G. The Inspector in charge of the Internal Affairs Division or his/her designee will act as a liaison between the District Attorneys Office and the Internal Affairs Division.

NOTE: If an employee's command conducts the investigation, the Command Officer conducting the investigation must speak with the complainant as part of their investigation.

3.9 LINES OF AUTHORITY

The Commanding Officer of IAD shall have authority to transgress District and Division boundaries, and lines of authority. In pursuit of such investigations, (s)he shall be given complete cooperation by department employees. Chiefs and other Superior Officers should not encroach on the command of their peers except in emergency circumstances (e.g. when the police purpose or good order of the department would be jeopardized by failure to take immediate action).

When minor complaints affect more than one command, the investigation shall be conducted by one Chief or superior in charge of the command, with the active cooperation of other affected Chiefs or superior in charge of the command. Recommendations shall reflect the combined thinking of the concerned Chiefs or superior's in charge of the commands.

3.10 CONCLUSIONS OF FACT

At the completion of each formal investigation the department shall reach one of the following conclusions of fact concerning the allegations:

SUSTAINED - Sufficient evidence exists to clearly prove the allegations.

EXONERATED - The alleged facts did occur but were justified and proper.

NOT SUSTAINED - Insufficient evidence exists to clearly prove the allegations.

UNFOUNDED - The alleged facts did not occur or the accused officer was not involved.

4.0 SUSPENSIONS PRIOR TO DISCIPLINARY HEARINGS

4.1 POLICY

Whenever there is an allegation of misconduct against a Department employee, it is the policy of the Buffalo Police Department to suspend that employee from duty prior to a disciplinary hearing, consistent with existing collective bargaining agreements, if the employee's continued presence on the job will disrupt the operations of the unit to which (s)he is assigned; or it will have an adverse impact on the Department; or the alleged violation is of a serious nature.

4.2 AUTHORITY TO SUSPEND FROM DUTY

Prior to Service of Charges

All officers of the rank of lieutenant and above are authorized to immediately suspend a subordinate for violations of department standards of conduct which are deemed to be of a serious nature including appearing for duty under the influence of alcohol. Such suspensions shall be with pay pending service of departmental charges.

1. Consistent with the Department Drug Testing policy, sworn members appearing for duty under circumstances in which there exists reasonable cause to believe that they are under the influence of drugs shall be directed to submit to a "reasonable cause" drug test. They shall be relieved from duty and placed on administrative leave of absence with pay pending receipt of test results and the completion of any investigation conducted by the City. Refer to the Buffalo Police Department Drug Testing Policy.

After Service of Charges

After service of Departmental charges an employee may be suspended without pay for a period not to exceed thirty (30) days. Such suspension shall be at the direction of the Commissioner.

1. Employees represented by Local 264 may be suspended without pay after service of charges only if their continued presence on the job would represent a potential danger to persons or property or would severely interfere with operations.

2. All other employees of the Department may be suspended without pay after service of charges if their continued presence on the job would have an adverse impact on the Department.

4.3 PROCEDURE FOR SUSPENDING AN EMPLOYEE

Suspension With Pay Prior to Service of Charges - Civilian Employees

If a civilian employee is immediately suspended with pay prior to service of charges, the superior officer making the suspension shall inform the employee that (s)he is suspended and the reason therefore.

Suspension With Pay Prior to Service of Charges - Sworn Members

Supervisors/superior officers contemplating suspending an employee prior to service of charges shall, absent exigent circumstances, first consult with IAD. If a sworn member of the Department is to be suspended prior to service of charges, the superior officer that suspends the sworn member shall:

1. inform the sworn member that (s)he is suspended and the reason therefore;
2. obtain the sworn member's badge and identification card;
3. if possible, ascertain if the sworn member has a valid pistol permit;
 - a. if no permit is presented, obtain all handguns owned by the sworn member,
 - b. if a valid permit is presented, obtain all Department issued weapons only;
4. prepare forms P10 and/or P-10a for the officer's weapons, badge and identification and deliver the property to the Property Office consistent with current directives;
5. notify IAD if IAD personnel are on duty, or notify the 911 Communications Lieutenant. when no IAD personnel are working and in such case the 911 Communications Lt. will notify the on-call IAD investigator;
6. prepare a memorandum detailing the conduct or activities for which the employee was suspended. Copies of the memorandum must be forwarded to IAD prior to the expiration of the suspending officer's tour of duty. A copy shall also be forwarded through the normal chain of command.

Suspension Without Pay After Service of Charges

Employees who are to be suspended without pay after service of charges shall first be served with the charges. The employee shall be allowed to review them and cite any inaccuracies before the suspension occurs.

4.4 RETURN OF BENEFITS IF CHARGES ARE NOT SUSTAINED

If the charges are not sustained, the accused person shall be restored to his/her position

with full pay for any period of suspension less the amount of compensation for that period:

- A. which (s)he may have earned in any other occupation or employment;
- B. received from unemployment benefits.

5.0 CHARGES AND HEARINGS

5.1 POLICY

When disciplinary charges are to be lodged against a Department employee, it is the policy of the Buffalo Police Department to prepare and serve the charges on the accused employee and to present evidence concerning the charges before the hearing officer designated to try the case.

5.2 PREPARING THE CHARGES

Commissioner's Determination

If after a thorough and complete employee investigation, the conclusion of fact results in a finding of "sustained," the Commissioner may direct, in his/her sole discretion, that Departmental charges be preferred against the accused employee. If the Commissioner determines that departmental charges are not to be preferred, (s)he shall direct that appropriate action be taken to insure that the employee's conduct is corrected and that the likelihood of recurrence is minimized. Any action directed by the Commissioner shall be consistent with the terms of the applicable collective bargaining agreement.

Charges and Specifications Defined

1. The charge is the designation of the specific standard of conduct which the accused is charged with violating.
2. The specification is a statement of facts which in law constitute the offense charged. Specifications should be drawn in clear and concise language and should contain the following information:
 - a. rank, name and command of the accused;
 - b. date, time and place of the alleged offense, (approximate entries will be acceptable);
 - c. if the offense was committed more than once, or in more than one way, there shall be distinct specifications;
 - d. each specification shall be complete in itself and not refer to facts or particulars of other specifications;
 - e. specifications under each charge shall be numbered consecutively.

5.3 SERVING THE CHARGES

IAD shall prepare a "Notice of Charges" which shall be attached to the charges.

IAD shall issue or cause to be issued to the accused employee, a copy of the charges and "Notice of Charges."

If the charges are issued in person to the accused employee, the employee shall acknowledge receiving the charges by signing his/her name and the date thereon.

If the charges are not issued in person to the accused employee, the officer delivering the charges shall certify in writing on the original copy, the time, date, place and manner in which the charges were delivered. If the charges cannot be personally issued to the accused employee, charges may be issued by:

1. delivering the charges personally to some person of suitable age and discretion at the accused employee's place of residence; or
2. if the place of residence cannot be located, then by personally posting the charges in a conspicuous place in the stationhouse or office to which the accused employee is assigned.

In all cases, the employee's collective bargaining agent must also be served with the charges.

5.4 ANSWER TO CHARGES

The accused employee shall have ten (10) days, exclusive of the date of service, in which to answer the charges.

The answer must be in writing and must be served on the Commissioner.

Failure to serve a written answer within the time provided shall be deemed an admission of the charges. However, where the accused defaults in answering, (s)he shall be permitted to show matters in mitigation of any punishment which may be imposed.

5.5 AMENDMENTS TO THE CHARGE

After charges have been preferred, they may be altered or amended by the Commissioner, or (s)he may cause new charges to be prepared. Slight errors in names, dates and amounts may be corrected by the Commissioner on motion.

All causes for complaints against the accused employee arising from the same incident and not covered by the original or amended charges shall be forever barred.

5.6 INFORMAL CONFERENCE

Within ten (10) days after the receipt of the written answer to the charges preferred, or if the accused employee defaults in answering, within ten (10) days after his/her time to answer has expired, the Commissioner shall conduct an informal conference upon the charges. At such conference the accused employee shall have the opportunity to be represented by his/her collective bargaining agent or by legal counsel. (S)he may, if (s)he desires, present witnesses on his/her behalf. The Commissioner shall have the power to dismiss or withdraw the charges if the conference so warrants, or accept a plea of guilty.

In all cases where the accused employee enters a plea of guilty, the Commissioner shall receive evidence showing all the circumstances of mitigation or aggravation which accompanied the offense, unless they are fully disclosed in the specifications.

In the event that the charges are not withdrawn or dismissed after such conference or if a plea of guilty has not been entered, a formal hearing shall then be held upon the charges before a hearing officer mutually selected by the parties. Such hearing officer shall be deemed to be the person designated by the Commissioner for that purpose within the meaning Section 75 of the Civil Service Law of the State of New York. In the case of a sworn member, where the parties are unable to agree upon a hearing officer, or, where the hearing officer agreed upon is or becomes unable or to act, then the parties shall mutually apply to the Supreme Court of the State of New York for the appointment of a hearing officer.

5.7 UNIFORMS TO BE WORN

Uniformed employees of the Department shall appear at the Informal Conference and/or Formal Hearing and shall do so in uniform.

Officers assigned to Detective or plainclothes duty, Officers on long time sick and IOD status and non-uniform civilian employees, need not appear in uniform at the Informal Conference and/or Formal Hearing however, shall appear in acceptable attire as if attending court. (See M.O.P. Chapter 6)

5.8 RIGHTS OF THE ACCUSED EMPLOYEE

The accused employee is entitled to the following, as a matter of right:

A reasonable time in which to prepare for trial;

To be present at the trial;

To be heard in person and by counsel and to give and furnish evidence in his/her defense;

To reasonable adjournments in order to be able to prepare for trial;

(S)he shall not be compelled in advance of the trial to disclose the names of any of his/her proposed witnesses;

Upon application, the Commissioner shall issue blank subpoenas in which the accused or his/her attorney may insert the name of any person (s)he desires to attend and give evidence.

The burden of proving the charges shall rest with the Department.

The burden of proving the charges shall rest with the Department.

5.9 SUBPOENAS

The Commissioner shall have the power to administer oaths and issue subpoenas. In case any witness shall refuse to appear or answer any proper question, (s)he may be ordered to do so by a justice of any court of record, and punished for his/her disobedience of any

such order in accordance with law.

The impartial hearing officer selected to conduct the formal hearing shall be vested with all the powers of the Commissioner in conducting the hearing.

5.10 ADJOURNMENT: ABSENCE OF WITNESSES

Upon application by the accused for adjournment of the formal hearing because of the absence of a witness for the accused, it should distinctly appear upon his/her oath that:

The witness is material, and why;

The accused employee has used due diligence to require the attendance of the witness;

The accused has reasonable grounds to believe that (s)he will be able to procure such attendance within a reasonable time. If the absence of a witness is caused by sickness, the accused employee must produce a certificate from the attending physician to that effect.

5.11 RECORDING THE FORMAL HEARING

All formal hearings must be recorded.

If the accused employee is found guilty, a copy of the charges, his/her written answer, a transcript of the hearing, and the final determination itself shall be placed in the employee's personnel file. A copy thereof shall also be filed with the Municipal Civil Service Commission.

A copy of the transcript of the hearing shall, upon the request of an accused employee who has been found guilty, be furnished without charge.

5.12 RULES OF EVIDENCE

Compliance with the technical rules of evidence during a formal disciplinary hearing is not required.

5.13 REVIEW OF THE HEARING OFFICER'S DECISION

After the formal hearing, the impartial hearing officer shall make findings and recommendations which shall be referred to the Commissioner for review and decision. The judgment of the Commissioner will be set forth as an order or resolution and will become part of the record of the case.

If the PBA disagrees with the decision of the Commissioner of Police to change the decision recommended by the Hearing Officer concerning a sworn member of the Department, the PBA may seek review of such change in decision. The parties, through the American Arbitration Association and within seven days of the Commissioner's decision, shall mutually select an arbitrator to review the case. It is understood that such arbitrator shall not be authorized to conduct a rehearing of the matter, but only to review the record of the proceeding to determine whether the change in decision by the Commissioner was supported by substantial evidence in the record. If the arbitrator so

determines, (s)he shall have the authority to award an appropriate remedy which shall be final and binding upon the parties and the sworn member involved. It is further understood that the cost of such arbitration shall be shared equally between the parties.

Any employee believing himself/herself aggrieved by a penalty or punishment of demotion in or dismissal from the service, or suspension without pay, or a fine imposed pursuant to the provisions of the collective bargaining agreement, may appeal from such determination either by an application to the Buffalo Municipal Civil Service Commission or by an application to the Supreme Court in accordance with the provisions of Article 78 of the Civil Practice Laws and Rules. If such person elects to appeal to the Commission, (s)he shall file such appeal, in writing within twenty (20) days after receiving written notice of the determination to be reviewed. In accordance with the provisions of Subdivision 76 of the Civil Service Law, the decision of the Commission shall be final and conclusive and not subject to further review in court.

5.14 TERMINATION CONFERENCE

If an employee's dismissal results from disciplinary action or for violation of the Department's Drug Testing Policy, a termination conference shall be held. At this conference the employee facing dismissal shall be:

Informed of the reason for the dismissal;

Informed of the effective date of the dismissal;

Informed of the status of fringe benefits and retirement benefits;

Informed of the contents of his/her personnel file as it relates to the cause of dismissal;

Required to return all Department property and equipment.

5.15 SEEKING INTERCESSION ON BEHALF OF THE ACCUSED

Employees against whom charges have been preferred, shall not in any manner, or at any time, cause any person to intercede for them, personally or otherwise.

5.16 AFFECT OF A FINDING OF GUILT LIMITED TO TWO YEARS

After a lapse of two (2) years, a determination that an accused employee was guilty of the charges preferred against him/her shall not be considered upon application for promotion made by him/her, nor shall it affect any right or privilege to which (s)he would otherwise be entitled were it not for such determination. A lapse of two years shall be deemed to have occurred two years from the date that the Department accepts a plea of guilty to the charges, or two years after the Commissioner receives the findings and recommendations of the hearing officer.

5.17 RESIGNATIONS, SEPARATION FOR CAUSE

The Commissioner shall caused to be placed in the personnel file of any employee

resigning or separating from the Department for cause, all the facts pertinent to the action.

6.0 PREVENTING DISCRIMINATION IN THE WORKPLACE

6.1 POLICY

It is the policy of the Buffalo Police Department to treat all employees fairly and to seek out and prevent discrimination to or by its employees that is based upon race, color, religion, sex or national origin.

6.2 COMPLAINT PROCEDURE

Department employees who feel aggrieved because of discrimination that is based upon race, color, religion, sex or national origin, which occurs in the work place, may make their concerns known by any of the following means.

Aggrieved employees who feel comfortable doing so may directly inform the person engaging in the discriminatory conduct that the conduct is discriminatory and that it must stop.

Aggrieved employees who do not wish to communicate directly with the person engaged in the discriminatory conduct, or if direct communication with the offending party has proved unavailing, may contact either their own immediate supervisor or the offending party's immediate supervisor. The supervisor shall immediately prepare a memorandum detailing the allegations of the subordinate and have such report delivered to IAD prior to the start of the next business day. Copies of the memorandum shall be forwarded through the chain of command to the offending party's District/Division Chief or Commanding Officer. Minimally the report shall include:

1. the date of receipt of the complaint;
2. identification of the complainant;
3. identification of the party or parties and the action complained of, including all relevant background facts and circumstances;
4. a statement detailing the scope of the preliminary investigation that had been undertaken and the results thereof;
5. a statement of corrective measures pursued, the dates such measures were undertaken and the results achieved.

Aggrieved employees who do not wish to communicate directly with the person engaged in the discriminatory conduct and who do not chose to contact their own immediate supervisor or the offending party's immediate supervisor, may as an alternative, directly contact the Labor Relations Division.

Aggrieved employees who do not choose to directly confront the person engaging in the discriminatory conduct, or who do not choose to contact their own immediate supervisor or the offending party's immediate supervisor, or contact the Labor Relations Division, may prepare a memorandum detailing their allegations and forward the memorandum directly to IAD.

Aggrieved employees alleging discriminatory conduct by anyone with supervisory authority, or the failure by supervision to take immediate action on the employee's complaint, may also file a formal grievance in accord with the provisions of the appropriate collective bargaining agreement grievance procedure.

6.3 TIMELINESS FOR INITIATING COMPLAINTS OR GRIEVANCES

There are no express time limits for initiating complaints under this policy, however, every effort should be made to file such complaints as soon as possible, while facts and potential testimony of witnesses, if any, are still fresh.

Employee grievance procedures under collective bargaining agreements have time limits. If the employee submits a grievance alleging discrimination based upon race, color, religion, sex or national origin and the grievance procedure outlined in the appropriate collective bargaining agreement is invoked, time limits must be observed.

Complaints to the Equal Employment Opportunity Commission must be filed within one hundred eighty (180) days.

6.4 INTERNAL AFFAIRS DIVISION AS CENTRAL REPOSITORY

IAD shall be the unit for channeling and recording all complaints against Department employees involving allegations of discrimination based upon race, color, religion, sex or national origin. IAD shall be responsible for insuring that all complaints are dealt with fairly, effectively, and in accord with Department policies and procedures.

Upon receipt of such a complaint, IAD shall immediately notify the Division of Labor Relations. IAD shall fully cooperate with the Division of Labor Relations in handling complaints of this nature.

IAD shall maintain such records, establish such systems, and adopt such procedures that are necessary to handle complaints involving allegations of discrimination in the workplace that are based on race, color, religion, sex or national origin.

If the Commissioner determines that a complaint would best be processed under the grievance procedures outlined in the respective collective bargaining agreements, (s)he shall refer the complaint to the appropriate collective bargaining agent.

6.5 INVESTIGATION

All complaints alleging discrimination in the workplace that are based upon race, color, religion, sex, or national origin shall be thoroughly and completely investigated by IAD. IAD shall interview all witnesses, Department personnel, persons named in the complaint, and any other person who may have pertinent information. All relevant evidence shall be carefully examined. At the completion of the investigation, IAD shall report their findings and make appropriate recommendations to the Commissioner. Cases shall be resolved within thirty (30) days, with extensions granted by the Commissioner based upon good cause.

The Commanding Officer of IAD shall keep the Commissioner informed at all times of the progress of the investigation.

The Commanding Officer of IAD shall have authority to transgress District and Division boundaries and lines of authority. In pursuit of such investigations (s)he shall be given complete cooperation by Department employees.

6.6 COMMISSIONER'S DETERMINATION

The Commissioner shall make a determination as to the validity of the complaint, based upon the report of IAD. If the Commissioner determines that the complaint may be valid, (s)he shall determine the best course of action.

The Commissioner's choices include, but are not limited to, preferring charges against employees violating Department standards of conduct; amending rules, regulations, policies and procedures; or referring the complainant to the grievance process outlined in the appropriate collective bargaining agreement if the time limits for filing the grievance have not yet expired. In every case, the complaining employee shall be provided with the written determination of the Commissioner.

6.7 RESPONSIBILITY OF SUPERVISORS/SUPERIOR OFFICERS

It is the responsibility of supervisors/superior officers to prevent, report and uncover instances in the workplace in which discrimination based on race, color, religion, sex or national origin occurs. They shall take prompt remedial measures commensurate with the level of authority vested in their rank and position. Such remedial measures shall be consistent with current directives and shall not breach the applicable collective bargaining agreement.

7.0 PREVENTING SEXUAL HARASSMENT IN THE WORKPLACE

7.1 POLICY

It is the policy of the City of Buffalo (hereafter "City") and the Buffalo Police Department to provide a business and employment environment free of unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or communications, which have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment constituting sexual harassment as defined and otherwise prohibited by state and federal statutes.

7.2 DEFINITION OF SEXUAL HARASSMENT

The U.S. Equal Employment Opportunity Commission (EEOC) has issued guidelines interpreting Section 703 of Title VII as prohibiting sexual harassment (29 CFR 1604.11). Sexual harassment is defined in these guidelines as follows:

...Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term

or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Further, New York State Human Rights Law prohibits discrimination on the same basis as covered by Title VII, including sexual harassment.

7.3 CONDUCT CONSTITUTING SEXUAL HARASSMENT

An employee's engaging in sexual harassment in the workplace brings discredit to the Department as well as the offending employee and it is prejudicial to the Department's good order, discipline and reputation. Sexual harassment is prohibited and employees shall not:

1. Make sexual advances or request sexual favors when submission to, or rejection of, such advances or requests is the basis for either implicitly or explicitly recommending, imposing, granting, withholding or refusing terms and conditions that either favor or adversely affect the employment of the employee or individual;
2. Recommend, impose, grant, withhold or refuse to take any personnel or other action consistent with the offending employee's duties and responsibilities because of sexual favors or as a reprisal against an employee or other individual who has rejected or reported sexual advances;
3. Disregard and fail to investigate allegations of sexual harassment whether reported by the employee or individual who is the subject of the alleged harassment or a witness, and fail to take immediate corrective action in the event misconduct has occurred.

Employees shall not abuse any other person through conduct or communication of a sexual nature and constituting sexual harassment as defined in section M.O.P. Chapter 15 above. Whenever such conduct exists, prompt and corrective action is required.

Whenever there is reason to believe disciplinary action is warranted, the supervisor or other responsible individual is required to take prompt and corrective action commensurate with the authority vested in his/her rank and position. Such remedial action shall be consistent with Department directives and shall not breach the applicable collective bargaining agreement.

The violation of this policy can result in discipline and discharge for employees pursuant to Section 75 of the Civil Service Law and the discipline clause of the appropriate collective bargaining agreement, if applicable; and such penalties, sanctions and impositions against other individuals or parties as may be available to the City, given the nature of the contractual or business relationship that may be established with such

parties or individuals.

7.4 COMPLAINT PROCEDURE

Department employees who feel aggrieved because of sexual harassment may make their concerns known by any of the following means.

Aggrieved employees who feel comfortable doing so may directly inform the person engaging in sexual harassment conduct or communications that the conduct is offensive and that it must stop.

Aggrieved employees who do not wish to communicate directly with the person whose conduct or communication is offensive, or if direct communication with the offending party has proved unavailing, may contact either their own immediate supervisor or the offending party's immediate supervisor. The supervisor shall immediately prepare a memorandum detailing the allegations of the subordinate and have such report delivered to IAD prior to the start of the next business day. Copies of the memorandum shall be forwarded through the chain of command to the offending party's District/Division Chief or Commanding Officer. Minimally the report shall include:

1. the date of receipt of the complaint;
2. identification of the complainant;
3. identification of the party or parties and the action complained of, including all relevant background facts and circumstances;
4. a statement detailing the scope of the preliminary investigation that had been undertaken and the results thereof;
5. a statement of corrective measures pursued, the dates such measures were undertaken and the results achieved.

Aggrieved employees who do not wish to communicate directly with the person engaged in the sexual harassment conduct or communications and who do not choose to contact their immediate supervisor or the offending party's immediate supervisor, may as an alternative directly contact the Labor Relations Division.

Aggrieved employees who do not choose to directly confront the person engaging in the discriminatory conduct, or who do not choose to contact their immediate supervisor or the offending party's immediate supervisor, or contact the Labor Relations Division, may prepare a memorandum detailing their allegations and forward the memorandum directly to IAD.

Aggrieved employees alleging sexual harassment by anyone with supervisory authority, including the Chief law enforcement Officer, or the failure by supervision or the Chief law enforcement Officer to take immediate action on the employee's complaint, may also file a formal grievance in accord with the provisions of the appropriate collective bargaining agreement grievance procedure.

7.5 TIMELINESS FOR INITIATING COMPLAINTS OR GRIEVANCES

There are no express time limits for initiating complaints alleging sexual harassment however; every effort should be made to file such complaints as soon as possible, while

facts and potential testimony of witnesses, if any, are still fresh.

Employee grievance procedures under collective bargaining agreements have time limits. If the employee submits a grievance alleging sexual harassment in the workplace and the grievance procedure outlined in the appropriate collective bargaining agreement is invoked, time limits must be observed.

Complaints to the Equal Employment Opportunity Commission must be filed within one hundred eighty (180) days.

7.6 INTERNAL AFFAIRS DIVISION AS CENTRAL REPOSITORY

IAD shall be the unit for channeling and recording all complaints against Department employees alleging sexual harassment in the workplace. IAD shall be responsible for insuring that all complaints are dealt with fairly, effectively, and in accord with Department policies and procedures.

Upon receipt of such a complaint, IAD shall immediately notify the Division of Labor Relations. IAD shall fully cooperate with the Division of Labor Relations in handling complaints of this nature.

IAD shall maintain such records, establish such systems, and adopt such procedures that are necessary to handle complaints involving sexual harassment in the workplace.

7.7 INVESTIGATION

IAD shall conduct a thorough and complete investigation of all complaints alleging sexual harassment in the workplace. IAD shall interview all witnesses, Department personnel, persons named in the complaint, and any other person who may have pertinent information. All relevant evidence shall be carefully examined. At the completion of the investigation, IAD shall report their findings and make appropriate recommendations to the Commissioner. Cases shall be resolved within thirty (30) days, with extensions granted by the Commissioner for good cause.

The Commanding Officer of IAD shall keep the Commissioner informed at all times of the progress of the investigation.

The Commanding Officer of IAD shall have authority to transgress District and Division boundaries, and lines of authority. In pursuit of such investigations (s)he shall be given complete cooperation by Department employees.

7.8 COMMISSIONER'S DETERMINATION

The Commissioner shall make a determination as to the validity of the complaint, based upon the report of IAD. If the Commissioner determines that the complaint may be valid, (s)he shall determine the best course of action. The Commissioner's choices include, but are not limited to, preferring charges against employees violating Department standards of conduct; amending rules, regulations, policies and procedures; or referring the complainant to the grievance process outlined in the appropriate collective bargaining agreement if the time limits for filing the grievance have not yet expired. In every case,

the complaining employee shall be provided with the written determination of the Commissioner.

The Department will not retaliate against an individual who makes a report of such conduct nor will it permit any member of the Department to do so.

7.9 RESPONSIBILITY OF SUPERVISORS/SUPERIOR OFFICERS

It is the responsibility of supervisors/superior officers to prevent, report and uncover instances in the workplace involving sexual harassment. They shall take prompt remedial measures commensurate with the level of authority vested in their rank and position. Such remedial measures shall be consistent with current directives and shall not breach the applicable collective bargaining agreement.

7.10 CONSISTENCY WITH CITY OF BUFFALO SEXUAL HARASSMENT POLICY

Nothing in the Police Department's Sexual Harassment Policy shall be construed to be inconsistent with the principles outlined in the City of Buffalo Sexual Harassment Policy. The Police Department's policy adapts the City policy to the needs peculiar to the Police Department.