

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



March 18, 2016

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File Number: 37PA-191555

VIA ELECTRONIC MAIL (tafaverill@nola.gov)

Deputy Superintendent Timothy Averill
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

RE: Policy Approval

Dear Superintendent Averill:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on policy Chapter 26.2, Adjudication of Misconduct. The OCDM has no objection to the policy as revised.

We believe that Chapter 26.2, Adjudication of Misconduct, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 18.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.

Very truly yours,

David Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
2099 PENNSYLVANIA AVE., N.W., SUITE 100
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 26.2

TITLE: ADJUDICATION OF MISCONDUCT

EFFECTIVE:

REVISED:

PURPOSE

The purpose of this policy is to establish procedures for conducting predisposition conferences and/or disciplinary hearings following internal investigations that identify potential misconduct and for the administration of penalties if allegations of misconduct are ultimately sustained.

POLICY STATEMENT

1. Members of the NOPD are expected to conduct themselves, both in interactions with each other and with the public, in a manner that conveys respect, honesty, integrity, and dedication to public service. In turn, employees of the department can expect to be treated fairly, honestly and respectfully, by their peers and other employees of the department who hold positions of greater or lesser organizational authority.
2. The NOPD shall hold employees who commit misconduct accountable through a fair, impartial, timely and consistent disciplinary process in which penalties are imposed objectively, without favoritism or bias in any form. Similar penalties shall be imposed for similar violations, depending on the aggravating or mitigating circumstances of each case. Discipline shall be based upon the nature of the violation, with consideration of aggravating and mitigating circumstances, rather than the identity of the accused or his or her status within the NOPD.
3. The administration of discipline shall not discriminate against anyone on the basis of race, creed, national origin, ancestry, gender, sexual orientation, age, religion, political affiliation, disability, or any other basis protected by federal, state, or local law.
4. The NOPD believes that truthfulness is essential in an internal investigation, and it is expected and demanded from all Department employees who may be the subject of, or a witness in, a misconduct investigation.
5. The timely disposition of an investigation is an indispensable component of handling misconduct complaints and imposing discipline, and the untimely imposition of discipline is unfair to the employees involved, community members affected by employee misconduct, and the NOPD as a whole.

DEFINITIONS:

Definitions relevant to this Chapter include:

Aggravating circumstances—Conditions or events that increase the seriousness of misconduct and may increase the degree of penalty. Aggravating circumstances may be considered at a pre-disciplinary hearing to deviate from the recommended or presumptive punishment. For example, if an offense carries a penalty range of one to three days' suspension, a hearing officer may choose to impose a three-day suspension in light of aggravating circumstances.

Bureau predisposition conference—A conference conducted by the accused employee's bureau to provide the accused with an opportunity to respond to misconduct allegations. The accused may choose to present relevant information to dispute or clarify the allegations made against him or her. During the Bureau predisposition conference, the Bureau shall determine the appropriate disposition of the allegation. When a misconduct allegation is sustained, the Bureau predisposition conference shall be followed by, and conducted in conjunction with, a pre-disciplinary hearing. The accused may also choose to waive the predisposition conference and proceed directly to a pre-disciplinary hearing.

Discipline—A punitive personnel action for violation of an established law, order, rule, NOPD policy and/or procedure, including a written reprimand, suspension, demotion, or dismissal.

Disposition—The outcome of an investigation or disciplinary hearing. The investigation of a misconduct allegation may result in a recommended disposition of exonerated, not sustained, sustained, or unfounded.

Employee—For the purposes of this Chapter, the term employee refers to employees of the New Orleans Police Department as well as commissioned members and recruits. Although the deadlines for a completed investigation do not apply to non-commissioned employees (see La. R.S. 40:2531), the general procedure for adjudication of misconduct complaints is the same for commissioned and non-commissioned employees.

Exonerated—The disposition of a misconduct investigation that determines, by a preponderance of the evidence, that alleged conduct did occur but did not violate NOPD policies, procedures, or training.

Hearing Officer—The NOPD officer who presides over a predisposition conference and/or pre-disciplinary hearing for an accused employee. For a PIB predisposition conference, the hearing officer may be the PIB Deputy Superintendent, his or her designee, who must be a supervisor with the rank of sergeant or higher and have a rank equal to or higher than the rank of the accused. For a Bureau predisposition conference or pre-disciplinary hearing, the hearing officer may be the accused employee's District/Division Commander, a Deputy Superintendent, or the Superintendent of Police.

Mitigating circumstances—Conditions or events that do not excuse or justify misconduct but are considered in deciding the degree of penalty. Mitigating circumstances may be considered at a pre-disciplinary hearing to deviate from the recommended or presumptive punishment. For example, if an offense carries a penalty range of one to three days' suspension, a hearing officer may choose to impose a one-day suspension in light of mitigating circumstances.

Notice of Completed Investigation—Written notice provided to an accused employee that a misconduct investigation has been completed. For commissioned employees, this is the "Notice to Accused Law Enforcement Officer Under Investigation of a Pre-Disciplinary Hearing or a Determination of an Unfounded or Not Sustained Complaint" (NOPD Form #308). For non-commissioned employees, this is known as the "Notice of Recommended Disposition to Non-Commissioned Employee." The notice provides the accused employee with a brief

summary of the investigation's findings; it contains a statement of the charges sufficient in detail to fully inform the accused employee of the misconduct with which he or she has been charged. The notice also includes the investigator's recommended disposition for each charge and informs the accused employee that a predisposition conference has been scheduled that he or she may elect to waive. The notice shall also inform the accused employee that a pre-disciplinary hearing will follow the predisposition conference.

Not sustained—The disposition of a misconduct investigation or disciplinary hearing when the investigator or hearing officer is unable to determine, by a preponderance of the evidence, whether alleged misconduct occurred.

Pre-disciplinary hearing—A hearing, conducted by the accused employee's Bureau, in which the penalty for a sustained violation is determined. A sustained disposition may not be altered during the pre-disciplinary hearing. Rather, only the penalty for a sustained violation is considered and determined. Mitigating circumstances may be presented at a pre-disciplinary hearing, and aggravating circumstances may be considered at a pre-disciplinary hearing.

PIB investigation—Any misconduct investigation undertaken by the Public Integrity Bureau, as opposed to investigations assigned by PIB to other bureaus.

PIB predisposition conference—A conference available to the accused employee conducted by the Public Integrity Bureau to provide the accused with an opportunity to respond to misconduct allegations. The accused may choose to present relevant information to dispute or clarify the allegations made against him or her. When a misconduct allegation is sustained, the PIB Predisposition Conference shall be followed by the scheduling of a pre-disciplinary hearing at the accused employee's Bureau. The accused may also choose to waive the predisposition conference and proceed directly to a pre-disciplinary hearing.

Preponderance of the evidence—Such evidence that when considered and compared with that opposed to it has more convincing force and produces in one's mind the belief that what is sought to be proven is more likely true than not true.

Sustained—The disposition of a misconduct investigation or disciplinary hearing that determines, by a preponderance of the evidence, that alleged misconduct occurred.

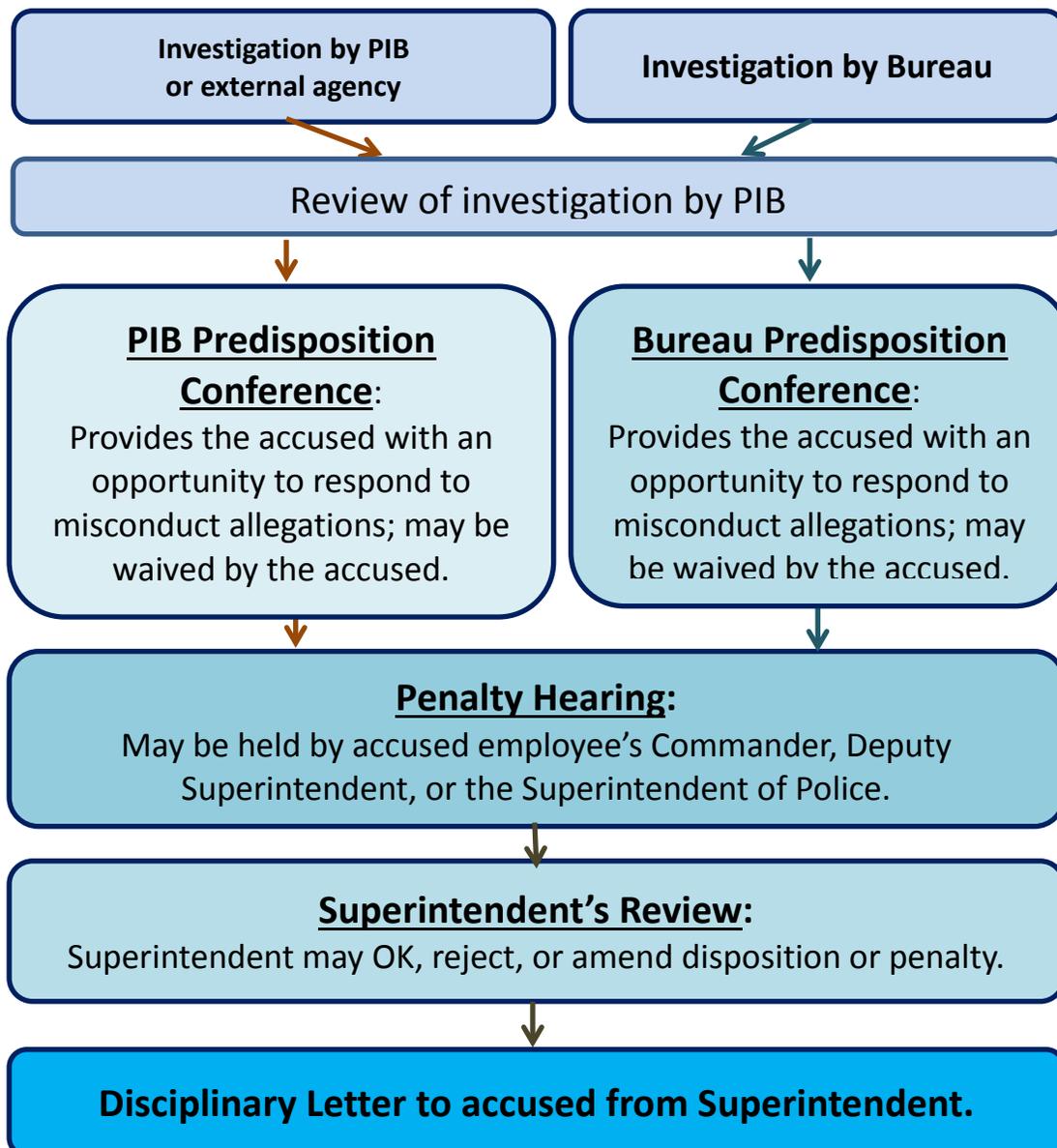
Unfounded—The disposition of a misconduct investigation that determines, by a preponderance of the evidence, that alleged misconduct did not occur or did not involve the subject employee.

PREDISPOSITION CONFERENCES AND PRE-DISCIPLINARY HEARINGS—GENERAL

6. When a misconduct investigation results in a preliminary recommendation of a sustained disposition, and the accused employee has not resigned, the case shall proceed to a predisposition conference (unless waived) followed by a pre-disciplinary hearing. The procedure is the same regardless of which NOPD bureau (or external agency) has investigated the case, except that the predisposition conference may be held by PIB for those cases investigated by PIB or an external agency.
7. PIB shall determine whether a complaint will be assigned to another Bureau, retained by PIB for investigation, or referred to the appropriate agency (see NOPD Chapter 52.1.1). When a misconduct investigation conducted by PIB or an appropriate outside entity results in a preliminary recommendation of a sustained disposition, the accused employee shall be offered a PIB predisposition conference. The purpose of a predisposition conference is to provide the employee with a brief summary of the investigation's findings and to provide the employee with an opportunity to present information relevant to his/her defense or the allegations against him/her. Generally, a PIB predisposition conference shall be available only for investigations conducted by

PIB or an outside entity, but PIB at its discretion may conduct a predisposition conference for investigations conducted by other Bureaus within the Department. Following a PIB predisposition conference, if any allegation of misconduct is sustained, a pre-disciplinary hearing shall be held by the accused employee's bureau to determine the accused employee's punishment.

8. When a misconduct investigation conducted by the accused employee's Bureau results in a preliminary recommendation of a sustained disposition, the accused employee shall be offered a Bureau predisposition conference. The purpose of a predisposition conference is to provide the employee with a brief summary of the investigation's findings and to provide the employee with an opportunity to present information relevant to his/her defense or the allegations against him/her. A Bureau predisposition conference shall be available only for Bureau-level investigations. Following a predisposition conference, if any allegation of misconduct is sustained, a pre-disciplinary hearing shall be held immediately by the accused employee's Bureau to determine the accused employee's punishment.
9. The following chart illustrates the procedure for adjudication of misconduct, from the end of the investigation to the transmittal of a disciplinary letter:



PIB PREDISPOSITION CONFERENCE

10. When a misconduct investigation is completed by PIB or an appropriate outside entity, the PIB investigator shall provide the accused employee with a written Notice of Completed Investigation (NOPD Form #308) at least one week before a scheduled predisposition conference.
11. If the accused employee chooses to waive the predisposition conference, the employee shall submit the waiver in writing.
12. If the employee contests the legal basis for the alleged violation, i.e. the timeliness of the disciplinary process pursuant to the "Police Officer's Bill of Rights," La. R.S. 40:2531, or disputes whether the complained-of conduct impaired the efficiency of the Department or bears a real and substantial relationship to the Department's efficient operation, the employee shall state the legal basis for his/her argument in writing at least five days before the predisposition conference. For good cause shown, the Hearing Officer can waive this restriction and allow arguments that contest the legal basis for an alleged violation at the predisposition conference.
13. The predisposition conference shall include the accused employee and the PIB Deputy Superintendent or his/her designee. The PIB Deputy Superintendent's designee may be any PIB supervisor with the rank of sergeant or higher, provided that the designee's rank shall be higher than the rank of the accused. The accused employee may elect to have a representative present.
14. At the same time that PIB notifies the accused employee that an investigation has been completed, PIB shall also notify the Office of the Independent Police Monitor (OIPM) of the same, and provide OIPM with the summary of the investigation's findings provided to the accused employee. OIPM may provide PIB with a written memorandum regarding the investigation. The Independent Police Monitor or her designee shall be notified of, and permitted to attend, the PIB predisposition conference.
15. At the discretion of the PIB Deputy Superintendent, he or she may consult with and allow the accused employee's immediate supervisor, Commander, or Deputy Superintendent to attend the predisposition conference. However, the PIB Deputy Superintendent shall have sole authority to determine the recommended disposition following the PIB predisposition conference.

CONDUCT OF THE PIB PREDISPOSITION CONFERENCE

16. During the PIB predisposition conference, the accused employee may present relevant information to dispute or clarify the allegations made against him/her or present information relevant to his/her defense. The accused employee shall not have the right to confront or cross-examine witnesses at the predisposition conference, nor will the accused employee have the right to question the investigator. The accused also may not present mitigating circumstances at the predisposition conference.
17. The accused employee shall have the right to legal counsel or another representative at the PIB predisposition conference, and the representative shall be allowed to offer advice to the accused employee and make statements on the record. The legal counsel or representative shall not have the right to question the investigator or any witnesses.
18. Following the accused employee's written response to the investigation's findings or participation in a predisposition conference, the PIB Deputy Superintendent may remand the investigation to the investigator to correct any deficiencies or for further investigation as the PIB Deputy Superintendent deems necessary. After any supplemental investigation is completed, the PIB Deputy Superintendent shall

recommend a disposition of Unfounded, Sustained, Not Sustained, or Exonerated.

19. If the PIB Hearing Officer determines that any allegation is not sustained, exonerated, or unfounded, those recommendations shall proceed to the Superintendent of Police for final approval. Only alleged violations for which the Hearing Officer recommends a sustained disposition shall proceed to a pre-disciplinary hearing.
20. If any allegation of misconduct is recommended sustained, a pre-disciplinary hearing shall subsequently be held at the accused employee's bureau in accordance with this Chapter (see Pre-disciplinary Hearing section below).

WAIVER OF PIB PREDISPOSITION CONFERENCE

21. If the accused employee does not dispute the alleged violation, he or she may decline to participate in a predisposition conference and proceed directly to a pre-disciplinary hearing by signing a predisposition conference waiver. By signing the waiver, the employee acknowledges that he or she will not contest the allegation(s) against him or her at the pre-disciplinary hearing. However, an employee who signs a predisposition conference waiver may present evidence to mitigate his/her penalty at the pre-disciplinary hearing.

BUREAU PREDISPOSITION CONFERENCE

22. All misconduct investigations completed by the accused employee's Bureau shall be forwarded to the investigator's District/Division Commander and Bureau Deputy Superintendent for review, then forwarded to the Deputy Superintendent of PIB in accordance with Chapter 52.1.1. The investigator shall provide the accused employee with a written Notice of Completed Investigation (NOPD Form #308) at least one week before a scheduled predisposition conference.
23. If the accused employee chooses to waive the predisposition conference, the employee shall submit the waiver in writing.
24. If the employee contests the legal basis for the alleged violation, i.e. the timeliness of the disciplinary process pursuant to the "Police Officer's Bill of Rights," La. R.S. 40:2531, or disputes whether the complained-of conduct impaired the efficiency of the Department or bears a real and substantial relationship to the Department's efficient operation, the employee shall state the legal basis for his/her argument in writing at least five days before the predisposition conference. For good cause shown, the Hearing Officer can waive this restriction and allow arguments that contest the legal basis for an alleged violation at the predisposition conference.
25. At the same time that the Bureau notifies the accused employee that an investigation has been completed, the Bureau shall also notify OIPM of the same, and provide OIPM with the summary of the investigation's findings provided to the accused employee. OIPM may provide the Bureau with a written memorandum regarding the investigation. The Independent Police Monitor or her designee shall be notified of, and permitted to attend, the Bureau Predisposition Conference.

FORUM OF BUREAU PREDISPOSITION CONFERENCE

26. The Superintendent of Police, through the Deputy Superintendent of PIB, shall choose the appropriate forum for a Bureau predisposition conference. Bureau predisposition conferences may be conducted by the accused employee's District/Division Commander, the accused employee's Deputy Superintendent, a Superintendent's Committee, or the Superintendent of Police, according to the following guidelines:

A. Commander

With the approval of the Superintendent of Police, a District/Division Commander may conduct a Bureau predisposition conference when the:

- (a) Violation does not involve criminal activity;
- (b) Accused's classification is subordinate to the Commander's classification; and
- (c) Commander did not serve as investigator or initiate investigation on the case being heard.

1. Deputy Superintendent

With the Superintendent of Police's approval, a Deputy Superintendent may conduct a predisposition conference for any employee within his/her respective Bureau unless the Deputy Superintendent was an investigator on or initiated an investigation on the case being heard.

2. Superintendent's Committee

The Superintendent of Police may appoint a Superintendent's Committee, composed of a panel of three or five Deputy Superintendents and/or District/Division Commanders, to conduct any Bureau predisposition conference, subject to the following.

- (a) Majority vote shall guide all of the committee's recommendations.
- (b) Only those committee members who voted to sustain a violation, which was recommended to be sustained by majority vote, shall vote on the penalty recommendation in that case.
- (c) The accused employee's Deputy Superintendent shall chair the Committee Hearing.

3. Superintendent of Police

The Superintendent of Police may conduct any Bureau predisposition conference.

CONDUCT OF BUREAU PREDISPOSITION CONFERENCE

27. The Bureau predisposition conference shall include the accused employee, who may elect to have a representative present.
28. During the Bureau predisposition conference, the accused employee may present relevant information to dispute or clarify the allegations made against him/her or present information relevant to his/her defense. However, the accused employee may present only evidence that could not have been presented during his/her previous investigation interview. The accused employee shall not have the right to confront or cross-examine witnesses at the predisposition conference, nor will the accused employee have the right to question the investigator. The accused also may not present mitigating circumstances at the predisposition conference.
29. The accused employee shall have the right to legal counsel or another representative at the Bureau predisposition conference, and the representative shall be allowed to offer advice to the accused employee and make statements on the record. The legal counsel or representative shall not have the right to question the investigator or any witness.
30. Following the accused employee's written response to the investigation's findings or participation in a predisposition conference, the Bureau presiding over the Bureau

predisposition conference may remand the investigation to the investigator to correct any deficiencies or for further investigation.

31. At any time, the Bureau may also request the investigation be transferred to PIB. Such request must be presented in writing with justification for transferring the investigation to PIB. The PIB Deputy Superintendent will have final authority to determine if the investigation should be transferred.
32. At the conclusion of the Bureau predisposition conference, or any subsequent conference if further investigation is required, the Hearing Officer shall consider the allegations, and the accused employee's response. The Hearing Officer shall then verbalize to the accused employee his or her recommended disposition on each allegation. The recommendation on each allegation shall be one of the following: Unfounded, Sustained, Not Sustained, or Exonerated.
33. If the Hearing Officer determines that any allegation is not sustained, exonerated, or unfounded, the Hearing Officer shall document the reasons for such findings in an Interoffice Memorandum (Form 105), which shall be included in the investigative file. Those recommendations shall proceed to the Deputy Superintendent of PIB for review. Only allegations for which the Hearing Officer recommends a sustained disposition shall proceed to a pre-disciplinary hearing.
34. If any allegation of misconduct is recommended sustained, the Bureau shall immediately conduct a pre-disciplinary hearing in accordance with this Chapter (see Pre-disciplinary Hearing section below).

WAIVER OF BUREAU PREDISPOSITION CONFERENCE

35. If the accused employee does not dispute the alleged violation, he or she may decline to participate in a predisposition conference and proceed directly to a pre-disciplinary hearing by signing a predisposition conference waiver. By signing the waiver, the employee acknowledges that he or she will not contest the allegation(s) against him or her at the pre-disciplinary hearing. However, an employee who signs a predisposition conference waiver may present evidence to mitigate his/her penalty at the pre-disciplinary hearing.

PRE-DISCIPLINARY HEARING

36. In all cases involving a sustained violation, the accused employee's Bureau shall hold a Pre-disciplinary Hearing in which the penalty for the sustained violation is determined in accordance with NOPD Chapter 26.2.1 (Discipline Matrix/Penalty Schedule).

FORUM OF PRE-DISCIPLINARY HEARING

37. When a misconduct investigation conducted by PIB or an outside agency results in a sustained disposition, the Superintendent of Police, through the Deputy Superintendent of PIB, shall choose the appropriate forum for a pre-disciplinary hearing in accordance with this Chapter (Commander's hearing, Deputy Superintendent's hearing, Superintendent's Committee hearing, or Superintendent of Police hearing).
38. Where a misconduct investigation conducted by the accused employee's Bureau results in a sustained disposition, the pre-disciplinary hearing shall follow immediately in the forum conducting the Bureau predisposition conference. When an accused employee has waived a Bureau predisposition conference, the Superintendent of Police, through the Deputy Superintendent of PIB, shall choose the appropriate forum for a pre-disciplinary hearing in accordance with this Chapter.

39. The pre-disciplinary hearing shall include the accused employee. The accused employee shall have the right to legal counsel or another representative at the pre-disciplinary hearing.
40. The case investigator shall appear at the pre-disciplinary hearing. The investigator shall be notified at least five calendar days prior to the date of the hearing.
41. The District/Division, Section, or Unit level Commander of the accused employee shall appear at any pre-disciplinary hearing involving any subordinate under his/her command.
42. The Independent Police Monitor, or her designee, shall be notified and permitted to attend all pre-disciplinary hearings.

CONDUCT OF PRE-DISCIPLINARY HEARING

43. A sustained disposition may not be altered during the pre-disciplinary hearing. Rather, only the penalty for a sustained violation is considered and determined. Mitigating circumstances and aggravating circumstances may be presented and considered at a pre-disciplinary hearing.
44. There shall be no formal rules of evidence in the disciplinary hearing, and the accused employee may request permission from the Hearing Officer to call witnesses to testify on his/her behalf. However, the accused employee does not have the right to call witnesses, and approval is at the discretion of the Hearing Officer on a case-by-case basis, considering such factors as the gravity of the charges, and the severity of the potential penalty. Evidence presented shall be limited to the question of an appropriate penalty, and the accused employee shall not be entitled to introduce new evidence not introduced at the predisposition conference. The Hearing Officer shall conduct the hearing according to the below guidelines.

A. OPENING

The hearing shall be analog or digitally recorded. The Hearing Officer shall state the time, date, place, and identity of all those present at the disciplinary hearing, and the type of hearing being conducted. The Hearing Officer shall, utilizing the Pre-disciplinary Hearing Disposition Form, read into the record the sustained violations and the circumstances of the misconduct. The Hearing Officer shall provide an explanation of any relevant policy, procedure, and regulations of law.

B. BODY

The body of the hearing shall provide the accused employee with an opportunity to provide evidence of mitigating circumstances that may be relevant to the determination of an appropriate penalty for the sustained violation.

45. PIB shall provide information regarding the discipline that has been imposed on other NOPD employees across all Bureaus for similar violations. The District/Division, Section, or Unit level Commander of the accused employee may make a statement regarding the accused employee's disciplinary record or other mitigating or aggravating circumstances.
46. Examination or cross-examination of the investigator and/or PIB representative, accused employee, and the accused employee's District/Division, Section, or Unit level Commander shall be conducted by the Hearing Officer only.

PENALTY RECOMMENDATION

47. The Hearing Officer shall recommend an appropriate penalty for each sustained

violation in accordance with NOPD Chapter 26.2.1 (Discipline Matrix/Penalty Schedule).

48. The Hearing Officer shall document the penalty recommendation on the Pre-disciplinary Hearing Disposition Form and provide a written memorandum explaining any deviation from the penalty schedule and/or penalties imposed in similar cases as identified by PIB.
49. The Hearing Officer shall record a separate penalty for each violation (and not a cumulative penalty for the case).
50. If the penalty is a suspension, the Hearing Officer shall indicate that the suspension time involves working days (example: ten working days).
51. Should the penalty include a fine, the Hearing Officer shall record in the Comments section of the Pre-disciplinary Hearing Disposition form the exact amount of any monetary fine assessed, and how that amount was determined.
52. Should the penalty include a prohibition on working paid off-duty details, the Hearing Officer shall record the number of calendar days during which the employee is prohibited from working details.
53. Should the penalty include any other restriction, such as loss of a take-home vehicle or other such privilege, the Hearing Officer shall record the number of days the property or privilege is restricted.
54. Should the penalty include any remedial or other training, the type of training, and the person responsible to co-ordinate and schedule the employee for the training shall be specified in the Comments section of the Pre-disciplinary Hearing Disposition form.

PRE-DISCIPLINARY HEARING DISPOSITION FORM INSTRUCTIONS

55. The following are instructions for completion of the Pre-disciplinary Hearing Disposition Form:

Place a check in the appropriate block to designate the type of hearing.

Date:

Record the date the pre-disciplinary hearing disposition form is completed.

P.I.B. CTN:

Record the P.I.B. complaint tracking number for the case heard.

From:

List the rank and name of the person(s) who conducted the hearing, i.e. the Hearing Officer.

Opening paragraph:

List the date the disciplinary hearing was held, and the rank/name/ID #/assignment of the accused employee. List the names, ranks, IDs, assignment, and/or relationship to the accused employee of every witness who testifies during the hearing, and list the names of all others present during the hearing.

Violation name and recommended disposition:

List each Rule violation identified in the investigative report. Cite each Departmental Rule allegedly violated by both number and nomenclature. After each Rule, make reference to the particular Departmental order, policy or procedure (Chapter, Policy, Procedure, Section, Special Order, General Order, Personnel Order, Bulletin, etc.), which most specifically addresses the alleged violation. (Example: Rule 4: Performance of Duty; Paragraph 2: Instructions from Authoritative source, to wit, Chapter 33.3: Firearms Requalification).

State the recommended disposition next to each cited Rule violation.

Aggravating and mitigating circumstances

List or summarize all aggravating and mitigating circumstances considered in determining the recommended penalty.

Violation name and recommended penalty:

List each Rule violation recommended as sustained by the hearing officer. Next to each cited sustained Rule, state the recommended penalty per violation.

Comments:

Record any appropriate comments relative to the disposition or penalty, including an explanation of any deviation from the presumptive penalty.

Signature(s) of hearing officer(s):

All persons who conducted the hearing shall place their signatures and the date signed.

Concur / do not concur (Deputy Superintendent):

To be signed and dated by the Deputy Superintendent of the accused employee's Bureau.

Concur / do not concur (Superintendent):

To be signed and dated by the Superintendent of Police.

SCHEDULING AND NOTIFICATIONS

56. In all cases, PIB shall inform the complainant in writing of the classification of the complaint and the unit assigned to investigate the complaint within ten business days of the classification.
57. PIB also shall inform the complainant of the disposition of the investigation within ten business days of the investigations' completion, and whether any disciplinary action was taken within ten days of the completed disciplinary decision.
58. In all cases, the investigator shall prepare and transmit to the accused a Notice of Completed Investigation (NOPD Form #308), which the investigator shall forward to PIB with the completed investigation file.
59. Except in documented extenuating circumstances, a pre-disciplinary hearing shall be scheduled on a date not to exceed 30 calendar days from the date of the completed investigation, i.e. the date of the Notice of Completed Investigation.

PIB PREDISPOSITION CONFERENCE—SCHEDULING AND NOTICE

60. In any case investigated by PIB personnel, the PIB investigator shall be responsible for scheduling a PIB predisposition conference and pre-disciplinary hearing. If the accused employee signs a predisposition conference waiver, the waiver shall be included in the original case file and the case shall proceed to a pre-disciplinary hearing.
61. In all cases investigated by PIB, a pre-disciplinary hearing shall be held at a time and location different from the time and location of the PIB predisposition conference. Additionally, when an accused employee waives his or her right to a predisposition conference or fails to appear at a predisposition conference, his/her case may proceed directly to a pre-disciplinary hearing. In such cases, the appropriate forum will be selected in accordance with this Chapter.
62. The investigator shall schedule a predisposition conference and pre-disciplinary hearing in consultation with the PIB Deputy Superintendent or his/her designee and/or the accused employee's Commander, or the accused employee's Deputy Superintendent, or the Superintendent, depending on the forum selected.
63. The investigator shall prepare a Notice of Completed Investigation (NOPD Form #308) informing the accused employee of the following:
 - (A) That a predisposition conference will be held, during which the accused employee may present information relevant to his or her defense;
 - (B) That the accused employee may have an attorney or other legal representative present (but not both);
 - (C) The time, date, and location of the conference;
 - (D) The Hearing Officer's identity;
 - (E) A synopsis of each identified violation and the disposition recommended by the investigator;
 - (F) That a pre-disciplinary hearing shall follow the predisposition conference if the allegation(s) is/are sustained;
 - (G) The time, date, and location of the pre-disciplinary hearing; and
 - (H) That the predisposition conference may be waived.
64. The Notice of Completed Investigation (NOPD Form # 308) shall be issued to and signed by the accused employee at least five calendar days prior to the date of the conference. The original shall be maintained in the case file, and a photocopy shall be issued to the accused employee. The accused employee may request an extension in writing, but the Deputy Superintendent of PIB may grant an extension only under extenuating circumstances.
65. If the accused employee fails to appear at the PIB predisposition conference after being notified and failing to request an extension, the failure to appear will be documented in an Interoffice Memorandum (Form 105) in the original case file. The case will then proceed to a pre-disciplinary hearing.
66. PIB shall contact the accused employee's Bureau after the conclusion of the PIB predisposition conference, or if the accused employee waives his or her appearance, or fails to appear, and inform the accused employee's Bureau that the case may proceed to a pre-disciplinary hearing.

BUREAU PREDISPOSITION CONFERENCE—SCHEDULING AND NOTICE

67. In any case investigated by the accused employee's Bureau, the investigator shall be responsible for scheduling a Bureau predisposition conference and pre-disciplinary hearing.
68. The investigator shall schedule the pre-disciplinary hearing in consultation with the

accused employee's District/Division Commander, or the accused employee's Deputy Superintendent, or the Superintendent, depending on the forum selected.

69. The PIB Deputy Superintendent or his/her designee shall select the forum in accordance with this Chapter. The Bureau investigator shall schedule the predisposition conference in consultation with the accused employee's District/Division Commander, Deputy Superintendent, or the Superintendent, depending on the forum selected. The investigator shall prepare a Notice of Completed Investigation (NOPD Form #308) informing the accused employee of the following:
- (A) That a conference will be held, during which the accused employee may present information relevant to his or her defense;
 - (B) That a pre-disciplinary hearing will follow the predisposition conference;
 - (C) That the accused employee may have an attorney or other legal representative present (but not both);
 - (D) The time, date, and location of the conference and/or hearing;
 - (E) The Hearing Officer's identity;
 - (F) A synopsis of each identified violation and the disposition recommended by the investigator;
 - (G) That a pre-disciplinary hearing shall immediately follow the predisposition conference if the allegation(s) is/are sustained; and
 - (H) That the predisposition conference may be waived.
70. The Notice of Completed Investigation (NOPD Form #308) shall be issued to and signed by the accused employee at least five calendar days prior to the date of the conference and hearing. The original shall be maintained in the case file, and a photocopy shall be issued to the accused employee. If the accused employee signs a predisposition conference waiver, the waiver shall be included in the original case file, and the pre-disciplinary hearing shall proceed immediately. The accused employee may request an extension in writing, but the accused employee's Deputy Superintendent may grant an extension only under extenuating circumstances.
71. If the accused employee fails to appear at the Bureau predisposition conference after being notified properly and failing to request an extension, the failure to appear will be documented in an Interoffice Memorandum (Form 105) in the original case file. The case will then proceed to a pre-disciplinary hearing.

HEARING PACKET SUBMISSION AND REVIEW

72. Following the pre-disciplinary hearing, the Hearing Officer shall forward all Notification Forms, the Notice of Completed Investigation, the Hearing Disposition Form, the audio/digital recording of the hearing, the investigative report, and any other related materials through the Hearing Officer's chain of command to PIB.
- (a) For all cases investigated by PIB, the PIB Deputy Superintendent shall have approval authority of the disposition. The Deputy Superintendent of the accused employee's Bureau shall have approval authority of the recommended penalty only. Upon receipt of the hearing records, the Deputy Superintendent shall review the recommended penalty; approve the recommended penalty or recommend a different penalty.
 - (b) For all cases investigated by the accused employee's Bureau, the Deputy Superintendent of the accused employee's Bureau shall have approval authority for the recommended disposition and penalty. Upon receipt of the hearing records, the Deputy Superintendent shall review the recommended disposition and penalty; approve the recommended disposition and penalty or recommend a different disposition and/or penalty. If the Deputy Superintendent recommends a different disposition and/or penalty, he/she shall explain such recommendation in the Comments

section of the Hearing Disposition Form or on a Form 105.

- (c) The Deputy Superintendent of PIB shall have final approval authority for the recommended disposition. If the Deputy Superintendent of PIB recommends a different disposition and/or penalty, he/she shall provide a detailed explanation in a Form 105 why a new disposition and/or penalty is recommended.
73. The Superintendent of Police may approve, disapprove or change any recommended disposition or penalty. Only the Superintendent of Police has the authority to impose disciplinary action.

DISCIPLINARY LETTER

74. Upon receipt of the Superintendent of Police's decision regarding a penalty, PIB shall prepare a disciplinary letter. The disciplinary letter shall include the following:
- (a) A statement citing the reason for the disciplinary action;
 - (b) The effective week of the action, or date of dismissal;
 - (c) A statement of the status of fringe and retirement benefits after dismissal;
 - (d) A statement as to what documentation shall be retained in the employee's personnel file relative to discipline and/or dismissal;
 - (e) A statement of the time frame for filing a Civil Service appeal; and
 - (f) A statement directing the employee to refer to Civil Service Rules governing appeals.
75. PIB shall notify the Deputy Superintendent of the accused employee's Bureau when the disciplinary letter is ready to be issued to the employee. PIB shall establish a time limit for the employee to appear at the PIB office to receive his/her letter. The Deputy Superintendent of the accused employee's Bureau shall establish sufficient procedures to ensure that the employee is instructed to appear at the PIB office to receive his/her disciplinary letter and sign a receipt. The Deputy Superintendent of the accused employee's Bureau shall ensure PIB is notified in writing if an employee is unable to appear to sign for his/her disciplinary letter within the specified time frame.
76. When there is no Deputy Superintendent in the accused employee's chain of command, the Superintendent of Police may assign the appropriate supervisor to assume those responsibilities.

RESPONSIBILITIES OF THE PUBLIC INTEGRITY BUREAU

77. PIB shall review all investigative reports submitted in disciplinary matters.
78. PIB shall forward a copy of the investigative case file, along with the accused employee's disciplinary record, to the designated Hearing Officer for consideration in a predisposition conference and/or pre-disciplinary hearing.
79. The Commander of PIB shall coordinate all forms of predisposition conferences and pre-disciplinary hearings, and assign an employee from PIB to attend all predisposition conferences and pre-disciplinary hearings except those in which the accused employee's District/Division Commander serves as Hearing Officer. The Commander of PIB shall coordinate all notices for predisposition conferences and pre-disciplinary hearings, which may be prepared by investigators.
80. PIB shall maintain a record of every disciplinary hearing and shall be responsible for maintaining audio recordings of every hearing. Predisposition conferences and pre-

disciplinary hearings shall be audio recorded by the Hearing Officer. The audio recording shall be forwarded to PIB for filing. PIB shall maintain for seven years the files of all disciplinary hearings. The names of all persons in attendance shall be entered into the audio record of the hearing.

81. PIB shall review each recommended disposition and penalty resulting from a pre-disciplinary hearing to ensure the disposition is appropriate and the recommended penalty is in compliance with the established penalty schedule.
82. PIB shall be responsible for forwarding final recommendations to the Superintendent of Police for approval.
83. PIB shall prepare the disciplinary letter from the Superintendent of Police that finalizes the disposition of the complaint and the penalty. The accused employee shall then be notified through the office of his/her Deputy Superintendent to appear at the PIB office to receive and sign a receipt for his/her disciplinary letter.
84. PIB shall record the disposition of investigations in the PIB files and make the appropriate files available for viewing by the accused employee, as specified by the mandates of the Police Officer's Bill of Rights (in accordance with La. R.S. 40:2533) and the Public Records Law.
85. PIB shall record the disposition in the Department's Early Warning System ("Insight").
86. PIB shall inform the complainant in writing of the final disposition of the complaint which he/she initiated.
87. PIB shall monitor the Departmental disciplinary process and recommend revisions to the Superintendent of Police.
88. PIB shall monitor each appeal by an employee of the Department presented to, and heard by, the Civil Service Commission and shall make recommendations to the Superintendent of Police on these appeals.

RESPONSIBILITIES OF BUREAU

89. For all cases, the accused employee's Hearing Officer shall be designated in accordance with this Chapter and the Superintendent of Police's choice of forum. The designated Hearing Officer shall preside over the accused employee's Bureau predisposition conference, unless it is waived. The designated Hearing Officer shall also preside over the accused employee's subsequent pre-disciplinary hearing.
90. For all cases investigated by an accused employee's Bureau, the Bureau investigator shall provide a Notice of Completed Investigation (NOPD Form #308) to the accused employee as soon as the investigation is complete. The investigator shall forward the investigative file to the Hearing Officer to ensure it is complete and thorough before the Bureau submits the investigative file to PIB.
91. For all cases investigated by an accused employee's Bureau, the Bureau shall provide notice to the OIPM of the completed investigation as well as notice of the predisposition conference, unless it is waived, and of the pre-disciplinary hearing.
92. For all Bureau predisposition conferences and pre-disciplinary hearings, the designated Hearing Officer shall coordinate with the Commander of PIB. The Hearing Officer presiding over every Bureau predisposition conference and pre-disciplinary hearing shall be responsible for audio recording the proceedings.

93. Following each pre-disciplinary hearing, the designated Hearing Officer shall forward to PIB all Notifications, the Notice of Completed Investigation, the Hearing Disposition Form, the audio/digital recording of the hearing, the investigative report, and any other related materials through the Hearing Officer's chain of command.

RESPONSIBILITIES OF ACCUSED EMPLOYEE

94. In addition to cooperating with all misconduct investigations, including presenting all evidence requested by investigators, every accused employee is responsible for responding to notifications and appearing at his or her pre-disciplinary hearing and, unless one is waived, predisposition conference. Upon receipt of a Notice of Completed Investigation (NOPD Form #308), the accused employee must respond in writing if he or she elects to waive a predisposition conference.
95. If the employee contests the legal basis for the alleged violation, i.e. the timeliness of the disciplinary process pursuant to the "Police Officer's Bill of Rights," La. R.S. 40:2531, or disputes whether the complained-of conduct impaired the efficiency of the Department or bears a real and substantial relationship to the Department's efficient operation, the employee shall state the legal basis for his/her argument in writing at least five business days before the predisposition conference.
96. It is the accused employee's responsibility to notify the Hearing Officer if he or she is unable to appear at a predisposition conference and/or pre-disciplinary hearing. It is also the accused employee's responsibility to request, in writing, an extension for a predisposition conference and/or pre-disciplinary hearing if one is necessary. Any request for extension must be sent to the Hearing Officer at least five business days before the date of the conference and/or hearing.
97. The District/Division, Section, or Unit level Commander shall ensure that any subordinate who appears for a disciplinary hearing is, for payroll purposes, entered into the NOPD payroll system as regular working for the term of the hearing. The entry shall reflect the PIB complaint tracking number in the Remarks section.
98. Every NOPD employee is required to be truthful at all times in spoken, written, or electronic communications, whether under oath or not, in all matters and official investigations relating to the scope of employment and operations of the Department.