

**NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA**



202.747.1904 direct
ddouglass@sheppardmullin.com

File Number: 37PA-191555

March 27, 2015

VIA ELECTRONIC MAIL (jaginsberg@nola.gov)

Deputy Superintendent Jay Ginsberg
Compliance Bureau, New Orleans Police Department
714 South Broad Street
New Orleans, LA 70119

RE: Policy Approval

Dear Superintendent Ginsberg:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on revised policy Chapter 35.1.7, Employee Counseling. The OCDM has no objection to the policy as revised.

We believe that revised Operating Guidelines Chapter 35.1.7 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.

Sincerely,

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

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

Office of the Consent Decree Monitor



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 35.1.7

TITLE: NON-DISCIPLINARY EMPLOYEE COUNSELING FOR MINOR VIOLATIONS

EFFECTIVE:

REVISED:

PURPOSE

The New Orleans Police Department recognizes that some violations of Department Rules, Policies, Procedures, or Orders require corrective supervisory guidance and not disciplinary action. This Chapter establishes a process that New Orleans Police Department supervisors may take in certain circumstances to address and resolve minor violations or infractions of Departmental Rules, Policies, Procedures, or Orders, and establishes the circumstances in which that process may be taken.

Nothing within this Chapter lessens a supervisor's responsibility to refer any observed or alleged misconduct, violation, or infraction to PIB for a formal disciplinary investigation.

DEFINITIONS

Definitions related to this policy include:

Complaint Form—The universal form that any person may use to file a complaint against an employee of the New Orleans Police Department. Any person can file a complaint without filling out this form (e.g., a complaint may be communicated verbally or online), and a complaint shall not be disregarded if a person refuses to, or cannot, complete this form. However, a copy of this form shall be provided to any person who requests it or asks to file a complaint, and a supervisor shall assist any such person to ensure the form is filled out thoroughly and forwarded to the Public Integrity Bureau.

Minor violation/infraction—A violation of a Departmental rule, chapter, policy, procedure, regulation, or verbal/written instructions, the nature of which has little effect and is a small degree of risk and/or liability to the officer/employee, the New Orleans Police Department, its reputation, and its operations. The violation must be so minor so as to require minimal intervention through retraining and counseling to correct the employee's behavior. The behavior must not be the subject of a civilian complaint. Examples of minor violations include tardiness, a violation of a uniform requirement, or lack of vehicle cleanliness.

Non-Disciplinary Counseling—Remedial and non-punitive instruction given by a supervisor to a subordinate employee or officer on an individual basis. The purpose of Non-Disciplinary

Counseling is to resolve the problem and correct the inappropriate behavior by providing guidance.

Remedial training—Non-punitive, in-service training that is required to specifically address a minor violation/infraction that reveals a deficiency in knowledge or procedure. This training should be viewed as an opportunity to better train and instruct officers/employees, clarifying any issues involving Departmental Rules, Policies, Procedures, or Orders.

ELIGIBILITY FOR NON-DISCIPLINARY COUNSELING

1. If a supervisor observes a minor violation/infraction by an NOPD member, and if the member's past record includes no previous violations or infractions of the same type, a supervisor may, in his or her discretion after considering the totality of the circumstances, address the minor violation/infraction through immediate non-disciplinary counseling or remedial training.
2. The supervisor must have firsthand knowledge of the behavior that constitutes the minor violation/infraction.
3. A public complaint cannot be handled through corrective action and requires formal investigation, even if the complained-of behavior is, or appears to be, a minor violation/infraction.
4. When an officer or employee repeatedly (i.e., more than once within a 12-month period) violates the same Departmental Rule, Chapter, Policy, Procedure, or Order, the minor violation/infraction may not be resolved through non-disciplinary counseling or remedial training. In such circumstances, formal investigation is required.

SUPERVISOR RESPONSIBILITIES

5. A supervisor who takes corrective action for a minor violation/infraction must document the minor violation/infraction and the specific corrective action taken on a Complaint Form. The Complaint Form must be given to, and signed by, the accused employee. The Complaint Form must then be forwarded to the Public Integrity Bureau within five days of the supervisor becoming aware of the minor violation/infraction.
6. The supervisor should provide the counseling individually, without other officers present, citing the appropriate Rule, Chapter, Policy, Procedure, or Order violated and the behavior that constitutes the violation. The supervisor should instruct the accused officer or employee how to avoid making the same violation/infraction in the future and inform the accused officer/employee that repetition of the violation/infraction may result in disciplinary action.

EMPLOYEE RESPONSIBILITIES

7. Employees receiving non-disciplinary counseling or training in response to a minor violation/infraction must sign the Complaint Form completed by the supervisor. The signature of the accused employee on the Complaint Form is to acknowledge receipt of the documentation, not to acknowledge culpability. Refusal by the accused to sign the Complaint Form acknowledging receipt shall result in the immediate initiation by the issuing supervisor of an internally generated complaint for a violation of "Rule 4: Performance of Duty; Paragraph 2: Instructions from an Authoritative Source, to wit: verbal instructions from INSERT RANK AND NAME OF SUPERVISOR to sign Complaint Form acknowledging receipt."

8. The accused officer or employee shall not experience any loss of rights, remuneration, or benefits as a result of such corrective action. If he or she denies commission of the minor violation/infraction, he/she may indicate his/her denial on the Complaint Form.
9. If an employee believes he/she has been issued a Documentation of Minor Violation/Infraction Resolved Through Non-Disciplinary Counseling or Training in error, he/she may submit to PIB within thirty (30) days of the date of issuance a 105 to the PIB Deputy Superintendent through his/her chain of command documenting his/her reason(s) for believing the issuance was erroneous. The 105 will become part of the documentation of the complaint and retained by PIB.

REVIEW

10. The Public Integrity Bureau will review the submitted Complaint Form to ensure appropriate corrective action has been taken. PIB shall review the documentation and shall have authority to require a full investigation into the alleged minor violation/infraction.
11. If PIB determines that the complained-of behavior constitutes a more serious offense requiring formal investigation, PIB shall institute a formal investigation based on the Complaint Form.