

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



November 3, 2020

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Otha Sandifer
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Deputy Superintendent Sandifer:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 1.3.8 – Serious Disciplinary Action Review Board. The OCDM has no objection to the policy as written.

We believe that Chapter 1.3.8 – Serious Disciplinary Action Review Board, 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 ¶ 8.

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

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
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SUNNI LEBEOUF, CITY ATTORNEY (VIA ELECTRONIC MAIL)

SMRH:4816-6540-9429.7



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 1.3.8

TITLE: SERIOUS DISCIPLINARY ACTION REVIEW BOARD

EFFECTIVE: DRAFT

REVISED: DRAFT

PURPOSE

This policy establishes and sets requirements for a Serious Disciplinary Action Review Board (SDRB) to review the supervisor's role in any serious disciplinary action involving a member of the Department and any cases forwarded to the SDRB by a disciplined member's Bureau Chief. This review board will follow the structure and procedures of the Use of Force Review Board.

POLICY STATEMENT

1. The SDRB serves as a quality control mechanism to ensure timely reviews of all serious discipline imposed on members to determine the appropriateness of the **supervision** of the members involved in the infraction and if inadequate supervision or a failure in the chain-of-command was present and caused or enabled the violation(s).
2. This review process shall be in addition to any other review or investigation that may be conducted by the NOPD, or any outside or multi-agency entity having jurisdiction over all or part of the investigation.

DEFINITIONS:

Definitions related to this Chapter include:

Serious discipline – any discipline imposed on a member of the NOPD as part of an internal or external investigation where the assessed penalty for any violation, or the aggregate penalties exceed 20 days suspension or greater. This shall not apply to any Level A offense regardless of the punishment imposed unless the member's Bureau Chief has requested the SDRB to review the case.

REVIEW BOARD

3. The SDRB consists of the following personnel as the SDRB's only voting members:

- (a) The Deputy Superintendent of the Field Operations Bureau, (FOB) who will act as the SDRB chairperson;
 - (b) The Deputy Superintendent of Public Integrity Bureau (PIB);
 - (c) The Deputy Superintendent of Investigations and Support Bureau (ISB);
 - (d) One Captain selected by the Superintendent to serve a six-month term as a non-voting member on the SDRB.
4. The Chief of the Professional Standards and Accountability Bureau and the Captain of the Education and Training Division shall participate in all Board meetings as non-voting members.
5. The commander of the Risk Management Unit shall participate as a non-voting member when a pursuit or department vehicle crash is involved.
6. The Captain supervising the district / division in which the member and supervisor(s) was assigned when the infraction(s) occurred shall be present and will be responsible for providing the SDRB with any information needed to review the supervisor's role in the infraction. The captain of the district / division cannot delegate this requirement.
7. Should the Captain no longer be available (i.e. retirement, resignation, etc.), the present Captain shall attend with the highest-ranking member present in the district / division at the time of the incident.
8. The Deputy Chief of PIB is responsible for providing administrative support to the SDRB and will assign a PIB staff member to serve as the secretary to the SDRB. The SDRB secretary will:
 - (a) Assemble and distribute case information packages to SDRB members both voting and non-voting, prior to their meeting.
 - (b) Include in the information package a summary of key issues regarding supervisory failings.
 - (c) Prepare a findings memo for the signature of the chairperson for each case reviewed by the SDRB after a draft has been circulated to the other voting members for consideration.
 - (d) Prepare summary minutes of the meeting for review and approval by the SDRB.
 - (e) Ensure that any follow-up action directed by the SDRB is forwarded to the responsible member of the Department for action.
 - (f) Track and report back to the SDRB action taken in response to its follow-up recommendation.
 - (g) Maintain complete records of the SDRB actions.
9. All records and reports generated by the SDRB shall be securely maintained by PIB.
10. The liaison to PIB of the Bureau of the member(s) and supervisor under review will be responsible for presenting the investigation to the review board. This will include a summary of the investigation as well as any findings. However, if PIB investigated the case, then the assigned PIB investigator will be responsible for the presentation.

PROCEDURAL REVIEW REQUIREMENTS

11. The Superintendent of Police will determine whether the SDRB should delay its review of a case until after completion of any related criminal investigation, review by any prosecutorial body, filing of criminal charges, and the decision not to file criminal charges or any other action based on recommendation by the Deputy Chief of PIB. This decision will be communicated to the chairperson of the SDRB in the form of a Form 105 for inclusion in SDRB records.
12. The SDRB shall:
 - (a) Review all serious discipline imposed by the department with the goal of identifying if inadequate supervision or a failure in the chain-of-command was present and caused or enabled the violation(s).
 - (b) Review less serious disciplinary events where the member's Bureau Chief identifies patterns or practices warranting command level review.
 - (c) Review other discipline as directed by the Superintendent.

BOARD MEETINGS SCHEDULE

13. Absent special circumstances, the SDRB shall meet every 30 days to review the supervisor's role in serious disciplinary action taken by the department or investigations submitted by a Bureau Chief or the Superintendent that have been completed and a disciplinary letter has been issued since the prior SDRB meeting. The cancellation or rescheduling of scheduled SDRB meetings, and the reason for such, shall be noted in the next scheduled SDRB meetings minutes. If there are no cases for review during that period, that fact shall be noted in the next scheduled SDRB meeting.
14. The chairperson shall determine the date, time, and location of meetings and communicate the schedule to the other SDRB members and observers at least three (3) working days prior to the scheduled date.
15. The quorum for each SDRB shall be all three 3 voting members.
16. SDRB members shall not be permitted to send a representative in their place to a proceeding. The only exception will be the absence of a named member and the appointment of an "Acting Bureau Chief" for that Bureau during that member's absence. This appointment can only be made by the Superintendent of Police or the absent Bureau Chief with the approval of the Superintendent of Police. The appointment shall be communicated in a Form 105 to the SDRB chairperson and maintained in the SDRB records by the secretary.
17. The SDRB secretary shall document board member attendance as part of the record. Absences, and replacement, shall be expressly noted in the meeting summary/minutes.
18. The SDRB shall complete its review of each incident on the date scheduled but, in any event, no longer than 30 days from convening of the board unless SDRB extends its review pursuant to paragraph 9, above. The SDRB shall document its findings and recommendations in a written SDRB Report within the lesser of 45 days of receiving notification of an issuance of serious discipline via a disciplinary letter issued by the Superintendent of Police or 15 days of SDRB presentation, unless SDRB extends its review pursuant to paragraph 11, above.

RESPONSIBILITIES OF THE BOARD

19. The SDRB responsibilities are to:

- (a) Review each serious disciplinary action taken by the police department with a goal of identifying and correcting systemic issues related to inadequate supervision or a failure in the chain-of-command.
- (b) Review each serious imposition of discipline within 30 days of issuance of the disciplinary letter by the Superintendent of Police to determine the supervisor's role in the infraction.
- (c) Hear the case presentation from the bureau liaison or the PIB investigator (as determined in paragraph 10) and discuss the case as necessary, with the liaison and Captain of the district / division to gain a full understanding of the facts of the incident.
- (d) The officer(s) who were disciplined or their representatives shall not attend this hearing.
- (e) Order further investigation when it appears there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. Where the findings are not supported by a preponderance of the evidence, the SDRB shall document the reasons for this determination, which shall be included as an addendum to the original investigation, including the specific evidence or analysis supporting their conclusions.
- (f) Evaluate each case to either affirm or reject the supervisor's role in the misconduct.
- (g) If the Board determines the supervisor's role violated NOPD policy, the Board shall refer it to PIB for disciplinary action.
- (h) Review the incident to determine whether it raises policy, training, equipment, or tactical concerns, and refer such to the appropriate unit within NOPD to ensure the concerns are resolved.
- (i) Direct district supervisors to take and document non-disciplinary corrective action to enable or encourage improvement in involved officers' and supervisors' performance.
- (j) Identify commendable conduct by NOPD officers or supervisors and ensure appropriate recognition is forthcoming.
- (k) Document the SDRB findings and recommendations in a SDRB Report within 45 days of the issuance of the disciplinary letter by the Superintendent, and within 15 days of the conclusion of the SDRB case presentation, unless SDRB extends its review pursuant to paragraph 11, above. In cases where the entire Department would benefit from learning about the issues, the SDRB shall prepare a release of the issues and concerns without reference to individuals or otherwise confidential records.
- (l) Monitor progress on implementation of the findings and recommendation made by the SDRB.
- (m) Ensure that a report is prepared summarizing the Board's actions during the year and included in the PIB Annual Report.
- (n) Any case sent to PIB for further investigation shall be returned to the Board within 14 days for final Board Action.

20. SDRB training recommendations shall inform the Annual Training Needs Assessment. The Captain of the Education and Training Division will use findings of the Board to assess the adequacy and, where possible, to enhance the Department's training on supervision and discipline. The Captain shall ensure that supervisory deficiencies identified by the Board are addressed in future training modules for both new supervisors as well as supervisor in-service.