

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans. LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the amended Chapter 35.1.7 - Non-Disciplinary Responses to Minor Violations. The OCDM has no objection to the policy as amended.

We believe that the amended Chapter 35.1.7 - Non-Disciplinary Responses to Minor Violations, 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)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 35.1.7

TITLE: NON-DISCIPLINARY RESPONSES TO MINOR VIOLATIONS

EFFECTIVE: D R A F T

REVISED:

PURPOSE

The New Orleans Police Department recognizes that member's behaviors or actions may not always be fully compliant with Department Rules, regulations, Chapters, or policies but are not sufficiently egregious to elevate the behavior or action to a formal disciplinary investigation. These minor behaviors or actions may only require corrective supervisory guidance and not disciplinary action. Supervisors shall address minor violations/infractions through redirection, counseling, or formal discipline (see **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation**) according to this Chapter.

Nothing within this Chapter diminishes or relieves a supervisor of his/her responsibility to refer observed or alleged violations that do not meet the definition of a minor violation/infraction to PIB for a formal disciplinary investigation.

DEFINITIONS

Definitions related to this Chapter include:

Minor violation/infraction— A violation of a Departmental Rule, Policy, Procedure, Order, regulation, or verbal/written instructions that a supervisor believes requires minimal intervention through redirection, retraining and/or non-disciplinary counseling to correct the employee's behavior (e.g., tardiness, uniform requirement, forgetting to complete an FIC, and cleanliness of vehicle). The behavior must not be the subject of a public complaint and must be sufficiently minor that it is immediately correctable by minimal intervention by the supervisor, with the goal of non-repetitive behavior. Repetition of similar violations within a twelve-month period (based on the date of the observed violation) may require discipline.

Misconduct—Any action or inaction that violates any Departmental Rule, Policy, Procedure, Order, verbal or written instruction, or criminal law other than a grievance as defined in **CAO Policy Memorandum 4(R)** and **Chapter 25.1 – Employee Grievances**. A supervisor may decide to handle a minor violation/infraction through non-disciplinary means.

Non-disciplinary counseling—A non-punitive process used to correct a subordinate's behavior that is not fully compliant with Department rules, regulations, Chapters, or policies but is not sufficiently egregious to elevate the action to formal discipline. A supervisor must meet

with the non-compliant member, explain the manner in which his or her actions are not compliant, and review the relevant policy (or Chapter, rule, or regulation) with him or her. The non-disciplinary counseling shall be documented in the Supervisor Feedback Log.

Redirection—Remedial, non-punitive, oral instruction provided by a supervisor to a subordinate member on an individual basis. The purpose of redirection is to immediately resolve the minor issue or problem and remediate the individual's behavior by providing guidance. The member does not experience any loss of rights, remuneration, or benefits. Redirection need not be formally documented. When a member repeatedly (i.e., more than three times within a 12-month period) commits the same minor violation/infracton, the supervisor shall not handle the minor violation/infracton through redirection.

Remedial training—Non-punitive training to specifically address a minor violation/infracton that reveals a deficiency in job skills, knowledge or department procedure. Remedial training is an opportunity to better train and instruct members, clarify any issues involving Departmental Rules, Policies, Procedures, or Orders which may not have been clear to the member.

Supervisor Feedback Log (SFL)—A web-based application utilized by Department supervisors to document close and effective supervision actions such as redirection, counseling, and support. SFL is available to supervisors on NOPD Web Apps under Applications.

ELIGIBILITY FOR REDIRECTION

1. Supervisors may use redirection to immediately resolve a minor violation.
2. Supervisors are not required to formally document redirection. Supervisors may document redirection in the Supervisor Feedback Log.
3. If a supervisor repeatedly redirects a member for the same or similar minor violation/infracton (i.e., more than three times within a 12-month period), the supervisor shall :
 - (a) Escalate the response to counseling and document the counseling in the Supervisor Feedback Log; or
 - (b) Initiate a formal disciplinary investigation as appropriate.

ELIGIBILITY FOR COUNSELING OR REMEDIAL TRAINING

4. If a supervisor observes or discovers a minor violation/infracton by a member, and the member's past disciplinary record includes no previous sustained violations or infractons of the same type within twelve months, a supervisor may, in his or her discretion after considering the totality of the circumstances, address the minor violation/infracton through immediate non-disciplinary counseling or remedial training, which shall be documented in the Supervisor Feedback Log.
5. The supervisor must have firsthand knowledge of the behavior that constitutes the minor violation/infracton.
6. A public complaint cannot be handled through non-disciplinary corrective action and requires formal disciplinary investigation, even if the complained-of behavior is, or appears to be, a minor violation/infracton. See **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation**.
7. When a supervisor repeatedly counsels a member for the same or similar minor violation/infracton (i.e., more than three times within a 12-month period), the supervisor

shall not handle the minor violation/infraction through a non-disciplinary response. In such circumstances, a formal disciplinary investigation is required and shall be handled according to **Chapter 52.1.1 – Misconduct Intake and Complaint Investigation** and related chapters.

8. Supervisors shall respond to any body-worn camera violations according to **Chapter 41.3.2 – Body-Worn Camera Inadvertent Misuse and Non-Use**.

SUPERVISOR RESPONSIBILITY FOR MINOR VIOLATIONS/INFRACTIONS

9. The supervisor shall document all minor violations/infractions in the Supervisor Feedback Log and provide documented redirection or non-disciplinary counseling, unless the minor violation/infraction was handled through verbal redirection or referred for a formal disciplinary investigation.
10. Supervisors shall respond to any body-worn camera violations according to **Chapter 41.3.2 – Body-Worn Camera Inadvertent Misuse and Non-Use**.
11. Non-disciplinary counseling requires a supervisor to meet with the non-compliant member, explain the manner in which his or her actions are not compliant, and review the relevant policy (or Chapter, rule, or regulation) with him or her.
12. The supervisor shall provide the counseling individually, without other officers present, citing the relevant part of the appropriate Rule, Chapter, Policy, Procedure, or Order violated and the behavior that constitutes the minor violation/infraction. The supervisor should instruct the member how to avoid repeating the same minor violation/infraction in the future and inform the accused officer/employee that repetition of the minor violation/infraction may result in disciplinary action in the future. The supervisor shall inform the officer that a record of the counseling will be entered into the Supervisor Feedback Log.
13. The supervisor shall indicate his/her reviewing supervisor when submitting an SFL entry.

REVIEWING SUPERVISOR RESPONSIBILITIES

14. The reviewing supervisor shall review and accept or reject the supervisory response indicated in the SFL within seven days.
15. If the reviewing supervisor rejects the response indicated in the SFL, the reviewing supervisor shall take appropriate corrective action.

EMPLOYEE RESPONSIBILITIES

16. Members receiving redirection, non-disciplinary counseling or remedial training in response to a minor violation/infraction shall acknowledge the actions taken by the supervisor. The member shall not experience any loss of rights, remuneration, or benefits as a result of such corrective actions.
17. If he or she denies commission of the minor violation/infraction, he/she may indicate his/her denial to the supervisor who will record this fact in the narrative portion of the Supervisor Feedback Log entry.
18. If an employee believes he/she has received any redirection, non-disciplinary counseling or remedial training of a minor violation/infraction in error, he/she shall notify a supervisor, who can contact NOPDTECH to rectify any errors.

REVIEW BY PIB

19. PIB shall review the reports from the Supervisor Feedback Log and ensure the identified minor violation/infraction issues were appropriate for handling under this Chapter.
20. PIB shall discuss any issues with the application or appropriateness of non-disciplinary responses to minor violations/infractions with the supervisor within 15 days of the non-disciplinary response.
21. If PIB determines that the documented behavior constitutes a more serious offense requiring formal disciplinary investigation, PIB shall notify the commanding officer of the involved supervisor and conduct a formal investigation into the alleged minor violation/infraction.