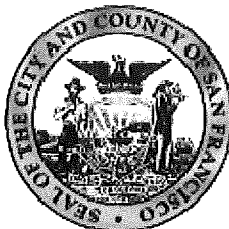


**CITY AND COUNTY OF SAN FRANCISCO**

**POLICE COMMISSION**



**PROCEDURAL RULES GOVERNING TRIAL**

**OF DISCIPLINARY CASES**

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## I. INTRODUCTION

Under Charter Section A8.343, a uniformed Member of the Department shall not be subject to dismissal or punishment for any breach of duty or misconduct, including any violation of the Department's Rules and Regulations, General Orders, Bulletins, Policies or Procedures, except for cause.

The Chief may impose a disciplinary suspension not to exceed 10 working days, subject to a suspended Member's right to appeal the suspension to the Commission and to have a trial and hearing on that suspension.

If the Chief determines that a Member's breach of duty or misconduct warrants discipline in excess of a 10-day suspension, the Chief must file verified charges with the Commission, setting forth the acts that the Chief has determined constitute a breach of duty or misconduct. In addition, if the Director of the Office of Citizen Complaints (OCC) sustains a complaint against a Member and recommends discipline in excess of a 10-day suspension, the OCC Director may file charges against that Member with the Commission, as provided by the Charter.

If the Chief determines that a non-disciplinary dismissal of a Member from the Department is warranted, the Chief must file verified charges with the Commission, setting forth the facts that the Chief has determined warrant a non-disciplinary dismissal. Generally, the Commission will apply these Procedural Rules in non-disciplinary dismissal cases.

After reasonable notice, the Commission will afford the Member a fair and impartial trial and hearing on the suspension appeal or verified complaint. The Member is entitled to appear personally and by representative, to have a public trial, and to secure and enforce, free of expense, the attendance of all witnesses necessary for his or her defense.

## II. DEFINITIONS

**A. Chief.** "Chief" means the Chief of the San Francisco Police Department.

**B. Charging Party.** The "Charging Party" in a discipline proceeding is either the Chief of the Department, or the Director of the Office of Citizen Complaints.

**C. City.** "City" means the City and County of San Francisco.

**D. Commission.** "Commission" means the San Francisco Police Commission.

**E. Day.** Unless expressly stated otherwise, any reference to a "day" or to "days" in these Procedural Rules is a reference to calendar days.

**F. Department.** "Department" means the San Francisco Police Department. In proceedings before the Commission, the Department acts through the Chief or the Chief's designee.

**G. Director of the Office of Citizen Complaints or OCC Director.** The "Director of the Office of Citizen Complaints" is the Director of that Office of Citizen Complaints, as provided in Charter Section 4.127.

**H. Hearing Officer, Outside Hearing Officer, and Outside Hearing Officer Monitor.**

**Hearing Officer.** A "Hearing Officer" is a single Commissioner assigned by the Commission President to preside at a hearing in a disciplinary case to take evidence in the case and to take other actions delegated or authorized under these Procedural Rules.

**Outside Hearing Officer.** Alternatively, if authorized by the Commission President, an "Outside Hearing Officer" who is not a Commissioner may be selected and assigned pursuant to Section VI.C. "Procedure for Assignment of an Outside Hearing Officer," to take evidence in the case and to take other actions delegated or authorized under these procedural Rules.

**Outside Hearing Officer Monitor.** If an Outside Hearing Officer is assigned, the initially assigned Hearing Officer (who is a Commissioner) will become the "Outside Hearing Officer Monitor" for the case, to facilitate and insure that the case is set for hearing and returned to the Commission by the Outside Hearing Officer within the time limits provided in these Procedural Rules.

**I. Member.** In a disciplinary case, the "Member" is a sworn Department employee accused of a breach of duty or misconduct, including any violation of the Rules. In a non-disciplinary case, the "Member" is a sworn Department employee against whom the Chief has filed a verified complaint alleging non-disciplinary cause for dismissal from employment.

**J. Office of Citizen Complaints (OCC).** "Office of Citizen Complaints" or "OCC" means that office established pursuant to Charter Section 4.127.

**K. Parties.** The Department or the OCC, and the Member, are the Parties to a Commission discipline proceeding. Individually, the Department or the OCC, and the Member, are each a Party to the proceeding.

The Department may be represented during a proceeding by the Chief or the Chief's designee. The Chief may not select as a designee an individual listed by one of the Parties as a percipient or material witness or otherwise expected to be a percipient or material witness in the case. Notwithstanding this restriction, the Chief and Assistant or Deputy Chiefs and their sworn staff may attend some or all of a discipline proceeding and still testify as a witness in that proceeding. The Presiding Officer shall resolve any disputes regarding the presence of a designated representative.

**L. Presiding Officer.** "Presiding Officer" means the Commissioner or Hearing Officer or Outside Hearing Officer responsible for presiding at the hearing on a discipline case. For hearings held before the Commission, the Presiding Officer is the Commission President, or the Commission Vice President or another Commissioner when designated by the Commission President to preside at the proceeding; and for hearings held before a Hearing Officer who is a Commissioner, the Presiding Officer is that Hearing Officer. For hearings held before an Outside Hearing Officer, the Presiding Officer is that Outside Hearing Officer.

**M. Procedural Rules.** "Procedural Rules" means these "San Francisco Police Commission Procedural Rules Governing Trial of Disciplinary Cases."

**N. Rules.** "Rules" means City or Department Rules and Regulations, General Orders, Manuals, Policies or Procedures.

### **III. GENERAL REQUIREMENTS**

#### **A. Ex Parte Communications Prohibited**

An “ex parte communication” is any communication regarding any aspect of a discipline case between a Party to the case or any representative of a Party, and any individual Commissioner or Hearing Officer or Outside Hearing Officer, the Commission as a whole, or the Commission Secretary or counsel, where the other Party to the case is not included in the communication. All ex parte communications, by any means, including but not limited to, by telephone, email, in person, or written correspondence, are prohibited.

The prohibition on ex parte communications does not prohibit communications where all Parties to the case are included in the communication. In addition, a Party or a Party’s representative may have ex parte communications about the case with the Commission Secretary and the Commission’s counsel, provided that the communication is limited solely to procedural matters.

#### **B. Burden of Proof**

In all discipline cases, including appeals, the Department or OCC has the burden of proving by a preponderance of the evidence that the accused Member has committed a breach of duty or engaged in misconduct.

In any non-disciplinary proceeding, the Department has the burden of proving cause for dismissal by a preponderance of the evidence.

#### **C. Rules of Evidence**

The rules of evidence applicable in the courts are not binding on the Commission or any assigned Hearing Officer or Outside Hearing Officer. Constitutional due process principles, as applicable in administrative adjudicative proceedings conducted under these Procedural Rules, are observed.

#### **D. Witnesses**

A “witness” is an individual whom at least one Party intends to call to testify during a particular hearing.

Each witness shall testify under oath.

With the exception of Parties and Party representatives, all witnesses are excluded from discipline hearings except when testifying, until the witness has completed testifying and has been excused by the Presiding Officer. A Party may request that its investigator be permitted to be present during proceedings, which request the Presiding Officer may grant in his or her discretion.

The Parties and their representatives may not disclose the content of a witness’s testimony to other witnesses before those other witnesses testify and are excused by the Presiding Officer.

#### **E. Submissions to the Commission**

To ensure a complete administrative record, the Parties shall submit any correspondence, pleading or other material for the Commission, Hearing Officer or Outside Hearing Officer to the Police Commission Secretary, 850 Bryant Street, Room 505, San Francisco, California, 94103, for the Secretary to distribute to the Commission, Hearing Officer or Outside Hearing Officer. The Parties may submit materials via hand delivery, email, facsimile, overnight delivery, or U.S. Mail.

When a Party submits any correspondence, pleading or other material to the Commission, Hearing



Officer or Outside Hearing Officer, the Party shall concurrently submit the correspondence, pleading or other material to the other Party or if known, to that Party's representative, using a method that ensures delivery on the same date as delivery to the Commission. An item is "submitted" when received by the Police Commission Secretary.

#### **F. Hearing Time**

The Commission's goal is to render a decision in a suspension appeal proceeding within 90 days of the notice of appeal being filed, and to render a decision in a proceeding on a verified complaint filed by the Chief or OCC Director within 120 days of the complaint being filed. In any individual case, the time to render a decision may exceed these goals, and the failure to render a decision within these time objectives shall not provide any basis for challenging any discipline imposed by the Commission.

In an effort to accomplish the Commission's goals for rendering a decision on a case, and to promote efficiency in the hearings, the Presiding Officer will set an equivalent maximum time limitation on each Party's presentation of its respective part of the case, based on the facts and circumstances of a particular case.

The Presiding Officer shall notify the Parties of the maximum total hearing time allowed for each Party to present its respective part of a discipline case, and the allocation of time, in the written notice from the Commission Secretary scheduling the initial hearing date. Unless otherwise directed by the Presiding Officer:

1. Each Party will be allocated one and one-half (1.5) hours as the maximum total hearing time for that Party's presentation of evidence, including direct examination, cross-examination, and any rebuttal (for a total hearing time of three (3) hours, if there are two Parties). Questions from the Presiding Officer (or other Commissioners, if present), and answers to those questions, do not count against these time allocations.
2. In addition, each Party is allocated five minutes for an Opening Statement and five minutes for Closing Argument; and the Party with the burden of proof (*i.e.*, the Department or OCC) may reserve time for any Rebuttal Argument. Alternatively, in the discretion of the Presiding Officer, Closing Arguments and Rebuttal Argument may be submitted in writing.
3. In the discretion of the Presiding Officer, shorter or longer time limits may be set in a particular case, so long as the total time allocated to each party is equal.
4. If a Party believes that additional time beyond that set by the Presiding Officer is required to present its case, the Party shall submit a written request to the Presiding Officer, with a copy concurrently provided to the other Party, stating good cause for the additional time and specifying the amount of additional time requested. The deadline for a Party to submit any request for additional time will be set in the written notice scheduling the initial hearing date.
5. The Presiding Officer may modify the equivalent time allocations as the case develops, in his or her discretion.

## **G. Continuances**

In order to complete discipline proceedings within the time goals set by the Commission, continuances are generally disfavored. (See, *e.g.*, Sections IV.A.3. - 5; IV.B.3. - 5; XI.E.)

The procedures to request a continuance at various stages of the case are described in Sections IV.A.3-5, IV.B.3-5 and XI.E., below.

## **H. Record**

The Commission will provide a court reporter to record and prepare a stenographic transcript of all proceedings (excluding Commission deliberations and any meeting on proposed findings of fact, which shall be recorded by the Commission Secretary). The Commission will order the transcripts and provide a complete copy to both Parties. The Commission will maintain all documentary or other evidence as part of the record, including copies of any documents or other tangible items excluded from evidence.

## **I. Non-Disciplinary Dismissal**

At times, the Chief may request that the Commission dismiss a Member for non-disciplinary cause, *e.g.*, non-punitive medical separation or failure to meet minimum qualifications for the Member's classification. In such a case, the Chief shall file a verified complaint against the Member with the Commission, indicating the Chief's recommendation for a non-disciplinary dismissal from employment and specifying the cause for the requested dismissal. Notwithstanding any reference to "discipline" or "disciplinary" proceedings in these Procedural Rules, generally the Commission will use these Procedural Rules for any non-disciplinary dismissal proceeding.

# **IV. PROCEDURES FOR SETTING A DISCIPLINARY CASE FOR HEARING**

## **A. Suspension Appeals**

### **1. Charter Requirements**

Under Charter Section A8.343, the trial and hearing on an appeal from a Chief's suspension must be held within 30 days after the notice of appeal is filed with the Commission. A notice of appeal is deemed filed when received at the Commission office. A Member may waive the 30-day Charter provision by filing a written waiver with the Commission Secretary, preferably using the form provided by the Commission Secretary for this purpose (the "Consent to Waive Time For Trial on Appeal Form," Attachment A to these Procedural Rules).

### **2. Initial Case Management Conference, Early Case Resolution Conference, and Notice of Hearing Date**

#### **a. Initial Case Management Conference, Early Case Resolution Conference**

An Initial Case Management Conference, including an Early Case Resolution Conference, shall be scheduled and conducted in accordance with Section IV.B.2.a.

#### **b. Notice of Hearing Date**

The Secretary will send written notice to the Member and Chief or OCC Director, and the Parties' representatives if known, of the time and date of the hearing on the appeal. The Member and Chief

or OCC Director will receive at least 10 days notice of the initial hearing date.

### **3. Request for Continuance by Member**

The Member or the Member's representative may request a continuance of the scheduled hearing date by sending a letter to the Presiding Officer in care of the Commission Secretary:

(a) requesting a continuance of the hearing, (b) stating good cause for the continuance, (c) waiving the 30-day period set by the Charter and consenting to have the hearing held at a later date, and (d) providing dates in the near future when the Member, the Member's representative and the Member's witnesses are all available for the hearing. The request for continuance must include a "Consent to Waive Time For Trial on Appeal Form" completed and signed by the Member (Attachment A to these Procedural Rules). At the same time the member or the Member's representative submits the request for continuance to the Commission, the Member or representative shall send a copy of the request to the Department or OCC representative if known, or if not known then to the Chief or OCC Director, using a method that ensures delivery on the same date as delivery to the Commission Secretary.

Any request for a continuance must be in writing and submitted as soon as the Member or the Member's representative learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within three (3) business days of the scheduled hearing date, absent extraordinary circumstances.

### **4. Request for Continuance by Department or OCC**

The Department or OCC may request a continuance of the scheduled hearing date by sending a letter to the Presiding Officer in care of the Commission Secretary (a) requesting a continuance of the hearing, (b) stating good cause for the continuance, and (c) providing dates in the near future when the Department or OCC representatives and witnesses are all available for the hearing. At the same time it submits the request for continuance to the Commission, the Department or OCC shall send a copy of the request to the Member's representative if known, or if not known then to the Member, using a method that ensures delivery on the same date as delivery to the Presiding Officer in care of the Commission Secretary.

Because a Member is entitled to have the appeal hearing held within 30 days after the notice of appeal is filed, if the Department or OCC wishes a continuance beyond that time, the Department or OCC must obtain the accused Member's waiver of the 30-day period and consent to having the hearing held at a later date by obtaining from the member a completed and signed "Consent to Waive Time For Trial on Appeal" form (Attachment A to these Procedural Rules). Members are not required to complete the form or consent to an extension of time. The Presiding Officer will not ordinarily continue the hearing beyond the 30-day period without the Member's written consent to extend the time for the hearing.

Any request for a continuance must be in writing and submitted as soon as the Department or OCC learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within three (3) business days of the scheduled hearing date, absent extraordinary circumstances.

### **5. Action on Requests for Continuance**

Continuances are generally disfavored. (Section III.G.) Only the Presiding Officer has the authority to continue the hearing date. The Commission Secretary may not take a hearing off calendar unless directed to do so by the Presiding Officer. When a request for continuance is received, the Presiding Officer will consider the request and timely respond in writing. If a request for continuance is granted, the hearing will be continued to a date certain, absent extraordinary

circumstances. If the Presiding Officer is unavailable, the Commission President may continue the hearing date.

Continuance of a hearing date does not extend deadlines for discovery compliance, or motion deadlines, or Pre-Hearing filings.

**B. Verified Complaint Filed by the Chief or OCC Director**

**1. Timeline for Setting Hearing**

The Commission's goal is to begin the trial and hearing on a verified complaint filed by the Chief or OCC Director within 90 days from the date the complaint is filed with the Commission, and to render a decision within 120 days of the complaint filing (see III.F.). A complaint is deemed filed on the date received at the Commission office.

**2. Initial Case Management Conference, Early Case Resolution Conference, and Notice of Hearing Date**

**a. Initial Case Management Conference, Early Case Resolution Conference**

Consistent with Commission Resolution No. 75-09 as modified by these Rules, the Commission Secretary will schedule an Initial Case Management Conference within 15 calendar days after the case is assigned to a Hearing Officer.

At the Initial Case Management Conference the assigned Hearing Officer shall:

- Set a hearing date for taking evidence;
- Set a date for completion of discovery exchange;
- Establish a schedule for pre-hearing submittals, including any pre-hearing motions and motions in limine; and
- Set date(s) for any subsequent Case Management Conferences.
- Conduct an Early Case Resolution Conference. At an Early Case Resolution Conference the accused Member and his or her Representative must attend in person, and the Chief or his or her designee must also attend in person.

**b. Notice of Initial Hearing Date**

The Secretary will send written notice to the Member and the Chief or OCC Director, and the Parties' representatives if known, of the time and date of the hearing on the complaint. The Member and Chief or OCC Director are entitled to at least 21 days notice of the initial hearing date.

**3. Request for Continuance by Member**

The Member or the Member's representative may request a continuance of the scheduled hearing date by sending a letter to the Presiding Officer in care of the Commission Secretary (a) requesting a continuance of the hearing, (b) stating good cause for the continuance, and (c) providing dates in the near future when the Member, the Member's representative, and the Member's witnesses are all available for the hearing. At the same time the Member or the Member's representative submits the request for continuance to the Presiding Officer in care of the Commission Secretary, the Member

or representative shall send a copy of the request to the Department or OCC representative if known, or if not known then to the Chief or OCC Director, using a method that ensures delivery on the same date as delivery to the Presiding Officer in care of the Commission Secretary.

Any request for a continuance must be in writing and submitted as soon as the Member or the Member's representative learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within three (3) business days of the scheduled hearing date, absent extraordinary circumstances.

#### **4. Request for Continuance by Department or OCC**

The Department or OCC may request a continuance of the scheduled hearing date by sending a letter to the Presiding Officer in care of the Commission Secretary (a) requesting a continuance of the hearing, (b) stating good cause for the continuance, and (c) providing dates in the near future when the Department or OCC representatives and witnesses are all available for the hearing. At the same time it submits the request for continuance to the Commission, the Department or OCC shall send a copy of the request to the Member's representative, if known, or if not known then to the Member, using a method that ensures delivery on the same date as delivery to the Presiding Officer in care of the Commission Secretary .

Any request for a continuance must be in writing and submitted as soon as the Department or OCC learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within three (3) business days of the scheduled hearing date, absent extraordinary circumstances.

#### **5. Action on Requests for Continuance**

Continuances are generally disfavored. (Section III.G.) Only the Presiding Officer has authority to continue the hearing date. The Commission Secretary may not take a hearing off calendar unless directed to do so by the Presiding Officer. When a request for continuance is received, the Presiding Officer will consider the request and timely respond in writing. If a request for continuance is granted, the hearing will be continued to a date certain, absent extraordinary circumstances. If the Presiding Officer is unavailable, the Commission President may continue the hearing date.

Continuance of a hearing date does not extend deadlines for discovery compliance, or motion deadlines, or Pre-Hearing filings.

### **V. REPRESENTATION**

#### **A. Member Representative**

At any discipline proceeding before the Commission, whether a suspension appeal or trial on a verified complaint, a Member may choose to represent himself or herself or to have a representative, including an attorney, a representative from the San Francisco Police Officers Association, or a Department employee below the rank of Assistant Chief; provided, however, that when the Member is at the rank of Assistant Chief or above, the Member may choose an officer of the same rank as a representative.

The Member may not select as a representative an individual listed by one of the Parties as a percipient or material witness, or otherwise expected to be a witness in the case.

## **B. Member's Notice to Commission**

If a Member elects to proceed with a representative, the Member or the representative shall promptly notify the Police Commission Secretary and the Charging Party (Chief or OCC Director), in writing, of the representative's name and contact information.

In selecting a representative, the Member shall select a representative who is available and prepared to appear on the date set for hearing in the matter. (See Sections IV.A.2. and IV B.2. above, setting the trial date during the initial Case Management Conference.) For good cause shown, the Presiding Officer may grant a Member one continuance of no more than 30 days, to accommodate the schedule of the selected representative.

## **C. Department or OCC Notice to Commission**

The Chief or the Chief's representative, or the OCC Director or the OCC Director's representative, shall notify the Police Commission Secretary and the Member of the name and contact information for the individual who will represent the Department or OCC in the discipline proceeding.

# **VI. PROCEDURE FOR ASSIGNING A DISCIPLINARY CASE**

## **A. Suspension Appeals**

Generally, the President will assign each appeal to a Commissioner who will serve as Hearing Officer for the taking of evidence. Or, the Commission President may assign the appeal to the Commission for the taking of evidence, at the President's discretion. When the Commission will take the evidence, an individual Commissioner will be assigned as Hearing Officer for the administration of any pre-trial matters.

Alternatively, in the discretion of the Commission President and upon agreement of the Member, the Commission President may authorize selection of and assign the matter to an Outside Hearing Officer (who is not a Commissioner) for the taking of evidence and to take other actions delegated or authorized under these Procedural Rules; and if so the initially assigned Hearing Officer (who is a Commissioner) will become the Outside Hearing Officer Monitor for the case, to facilitate and insure that the case is set for hearing and returned to the Commission by the Outside Hearing Officer within the time limits provided in these Procedural Rules. (See Section VI.C. of these Procedural Rules, "Procedure for Assignment of an Outside Hearing Officer.")

## **B. Verified Complaint Filed by the Chief or OCC Director**

### **1. Discipline Recommendation from Chief or OCC Director**

In all discipline cases where the Chief or OCC Director files a verified complaint against a Member, the Chief or OCC Director shall set forth specifically the acts that the Chief or OCC Director has determined constitute a breach of duty or misconduct, as well as any rules violated. The Chief or OCC Director shall also include in the complaint a recommendation for a particular level of discipline. If the Commission finds a breach of duty or misconduct by a Member, it may impose discipline that is greater or less than that recommended by the Chief or OCC Director. The Commission may impose discipline as specified in Section XIII of these Procedural Rules.

In non-disciplinary dismissal cases under Section III.I., the Chief shall specify that the request for dismissal is non-disciplinary, and shall provide the basis for the recommendation for dismissal in the verified complaint.

The Charging Party shall provide the Commission Secretary with an electronic copy of each

verified complaint in (unlocked) Word format, or in alternative electronic format as designated by the Secretary.

## **2. Assignment of Hearing Officer**

Generally, the President will assign each verified complaint to a Commissioner who will serve as Hearing Officer for the taking of evidence. Or, the Commission President may assign the case to the Commission for the taking of evidence, in the President's discretion. When the Commission will take evidence, an individual Commissioner will be assigned as Hearing Officer for the administration of any pre-trial matters.

Alternatively, in the discretion of the Commission President and upon agreement of the Member, the Commission President may authorize selection of and assign the matter to an Outside Hearing Officer (who is not a Commissioner) for the taking of evidence and to take other actions delegated or authorized under these Procedural Rules; and if so the initially assigned Hearing Officer (who is a Commissioner) will become the Outside Hearing Officer Monitor for the case, to facilitate and insure that the case is set for hearing and returned to the Commission by the Outside Hearing Officer within the time limits provided in these Procedural Rules. (See Section VI.C. of these Procedural Rules, "Procedure for Assignment of an Outside Hearing Officer.")

### **C. Procedure for Assignment of an Outside Hearing Officer**

#### **1. Authorization of Outside Hearing Officer, Consent Form**

**a.** If a Member wishes to utilize an Outside Hearing Officer, the Member must request authorization for an Outside Hearing Officer from the Commission President within seven (7) days after the first date the case is called on the Commission meeting calendar.

**b.** If the Commission President authorizes use of an Outside Hearing Officer, the Commission Secretary shall promptly notify the Parties in writing, and the Parties representatives if known, and include the Consent to Assignment to Outside Hearing Officer Form (Attachment B to these Procedural Rules) and the List of Approved Outside Hearing Officers (Attachment C to these Procedural Rules).

**c.** If the Member wishes to utilize an Outside Hearing Officer, the Member must complete the Consent to Assignment to Outside Hearing Officer Form (Attachment B to these Procedural Rules) and return it to the Secretary within 14 calendar days of the date of the Secretary's notice.

**d.** The completed consent form must include the name of the Outside Hearing Officer agreed to by the Parties, and the date agreed upon by the Parties and the Outside Hearing Officer for the hearing to commence.

**e.** If the Member does not consent to assignment to an Outside Hearing Officer, the Member or the Member's representative should inform the Commission Secretary as soon as possible, and no later than 14 days after the date of the Secretary's notice.

**f.** If the Member does not timely return the completed consent form, the Commission Secretary shall include the discipline case on the agenda for the next available Commission meeting, and the Commission President shall set the matter to be heard either by a single Commissioner sitting as Hearing Officer or by the Commission as a whole.

**g.** In matters involving more than one charged Member (multiple-officer cases) that will be heard together, where some but not all of the charged Members consent to the use of an Outside Hearing Officer, an Outside Hearing Officer will not be utilized.

## **2. Selection of Outside Hearing Officer by Mutual Agreement**

If the Member wishes to utilize an Outside Hearing Officer as authorized by the Commission President, the Parties shall first attempt to select an Outside Hearing Officer by mutual consent from the List of Approved Outside Hearing Officers (Attachment C to these Procedural Rules).

Any Outside Hearing Officer selected by the Parties must be available to begin the proceedings within 90 calendar days of confirmed selection, and complete the proceedings within 120 calendar days of selection.

## **3. Selection of Outside Hearing Officer by Striking Process**

If the Parties are unable to agree on an Outside Hearing Officer from the List of Approved Outside Hearing Officers by mutual consent (Section VI.C.2., above), a Party may request a list of seven (7) names from the California State Mediation and Conciliation Service within five (5) days of the Secretary's Notice (VI.C.1.b.).

a. Upon receipt of the list, the Parties shall alternate in striking names from the list. In multiple-officer cases that will be heard together, the accused members shall designate one representative to exercise strikes on behalf of all of the accused members. The Parties shall determine by lot who will strike the first name. The Parties shall continue alternating strikes until one name remains. The Parties shall mark the list to indicate the order in which names were struck from the list.

b. The Commission Secretary shall promptly contact the individual remaining after the striking process. That individual shall be selected only if he or she is available to begin the proceedings within 90 calendar days and complete the proceedings within 120 calendar days of the Secretary's inquiry regarding the prospective Outside Hearing Officer's availability.

c. If that individual is not available within the required timeframe, the Secretary shall contact the individual struck sixth from the list, and shall repeat this process until the Secretary has identified an Outside Hearing Officer available within the required time period or has exhausted the list of names. If the list is exhausted, the Commission Secretary shall request a new list of names from the California State Mediation and Conciliation Service, and the Parties shall repeat the process until an Outside Hearing Officer is selected.

## **4. Inability to Mutually Agree to Outside Hearing Officer**

If the Parties cannot agree on an Outside Hearing Officer either by mutual consent pursuant to Section VI.C.2. or by the "striking process" provided in Section VI.C.3 within 14 calendar days of the date of the Commission Secretary's notice that the Commission President has authorized use of an Outside Hearing Officer, the Secretary shall place the matter on the calendar of the next meeting of the Police Commission for reassignment to be heard by an individual Commissioner sitting as Hearing Officer or by the Commission as a whole.

## **5. Additional Time Before Outside Hearing Officer**

Either Party may petition the Commission President to allow additional time to complete the proceedings before an Outside Hearing Officer, where good cause is shown, for example, in a case with substantial discovery or pretrial legal issues.



## **VII. LOCATION; OPEN OR CLOSED SESSION; RECORD OF PROCEEDINGS**

### **A. Location**

Generally, the hearing and trial on a discipline case will be held in the Hall of Justice at Department Headquarters, unless the Presiding Officer designates an alternate location. Any alternate location will be selected with due regard to the convenience of the Parties, witnesses and the public.

### **B. Open (Public) Session**

Members have the right to have the hearing on the appeal or verified complaint held in an open session, subject to Section VII.D., below.

If the Member wishes to have a public hearing, the Member must complete and return the Request for Public Hearing Form to the Commission Secretary (Attachment D to these Procedural Rules; see Section VII.E., below).

### **C. Rights Under State Law**

California Government Code §54957(b)(2) provides: "As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null or void."

### **D. Other Grounds for Closed (Non-Public) Session**

Even where the Member requests an open session, the Presiding Officer may require some or all of the hearing to be held in closed session for other reasons, for example, due to third-Party privacy rights or where federal, state or local law or rules prohibit disclosure of certain information.

### **E. Requesting Open (Public) or Closed (Non-Public) Session**

The Presiding Officer will initially schedule any hearing in closed session (*see Copley Press v. Superior Court* (2006) 39 Cal.4<sup>th</sup> 1272), unless the Member has requested an open session in advance and filed a completed written waiver of the right to a closed hearing (Request for Public Hearing Form, Attachment D to these Procedural Rules).

If a Member initially requests open session, but subsequently wishes to request closed session, the Member may request closed session at any time. The Presiding Officer will consider the request for closed session when made.

The Presiding Officer has authority to rule on any request for open or closed session.

### **F. Record of Proceedings**

The record of open proceedings will be available for public inspection unless disclosure is otherwise prohibited by law. The record of closed proceedings will not be available for public inspection unless disclosure is otherwise required by law.

## VIII. DISCOVERY

### A. Department and OCC Discovery Obligations to the Member

1. The Charging Party (Department or OCC) shall provide the required discovery to the Member, as specified below, shall be provided promptly to the Member by the Charging Party (Department or OCC), beginning on the first business day a suspension appeal or verified complaint is filed with the Commission:

a. Discovery for a suspension appeal shall be provided to the Member immediately when the suspension appeal is filed with the Commission, and in any event completed no later than seven calendar (7) days after the suspension appeal is filed with the Commission; and

b. Discovery for a verified complaint shall be provided to the Member on the first day the verified complaint is filed with the Commission, and in any event completed no later than seven calendar (7) days after filing a verified complaint with the Commission.

c. The Presiding Officer may modify this time schedule to insure due process in the event of amended charges, or in the event charges are filed within seven (7) days of an involuntary suspension by the Chief of Department under Charter section A8.344.

2. The Parties shall report discovery compliance status to the assigned Hearing Officer at the initial Case Management Conference, and as otherwise directed by the Presiding Officer. If discovery production is delayed, the Member may request that the Presiding Officer postpone or continue a hearing date in order to insure due process.

3. The Charging Party (Department or OCC) shall provide the following required discovery to the accused Member.

a. The entire investigative file related to the discipline investigation and case, prepared and maintained by the Department or OCC, including the final investigative report, notes prepared by the investigator, audio or video recordings, photographs and any other physical evidence, including any evidence in electronic form, and including any exculpatory evidence.

b. Any evidence that the Chief relied on in imposing discipline, or that the Chief or OCC Director relied upon in filing a verified complaint or recommending a level of discipline.

c. The names and, where reasonably possible, telephone numbers of witnesses who are known by the Department or OCC to have information relevant to the complaint. For all witnesses who are Department employees, the Department shall provide work contact information. The Member and any representative or agent may use this information to contact any witnesses in connection with the discipline proceeding, but shall not otherwise use or disclose any telephone numbers or other contact information provided by the Department or OCC under this Section. Except that, if the Member is subject to a Chief's Stay-Away Order or any court order that prohibits or limits contact with any witness or complainant, the Member (and the Member's representative, if applicable) must adhere to the order.

d. All evidence that the Department or OCC intends to introduce in its case in chief during the taking of evidence.

e. If requested by the accused Member or the Member's representative, an opportunity to inspect Department facilities or original physical evidence related to the discipline proceeding.

Before producing required discovery, the Department or OCC may redact or withhold any attorney-client communication, attorney-work product or third-party confidential material in the discovery materials.

## **B. Continuing Discovery Obligation**

The Department or OCC duty to provide required discovery to the Member shall continue beyond its initial disclosure obligation, and the Department or OCC shall promptly produce any required discovery obtained after the initial production.

## **C. Additional Discovery from Department**

If the accused Member believes that he or she needs additional information or materials to prepare a defense, the Member or the Member's representative shall submit a written discovery request to the Department or OCC representative if known, or if not known, to the Chief or OCC Director, no later than 21 days after the suspension appeal or verified complaint is filed with the Commission. The Department or OCC shall provide a written response to the discovery request within 10 days. The Department or OCC response shall either state that the Department or OCC will provide the requested information or materials or raise one or more objections to some or all of the discovery requests. With its written response, the Department or OCC shall provide any information or materials that are responsive to requests to which it had not raised an objection. If the Member wishes to pursue the discovery request over the Department or OCC objection, the Member shall follow the motion procedures described in Section IX.C., below.

## **D. Obtaining Attendance of Witnesses**

### **1. Department Employees**

If the Member intends to call any Department employee as a witness at the hearing, the Member or the Member's representative shall submit a written request to the Department or OCC representative, asking that the Department detail to the proceeding any employee requested by the Member. The Member shall submit the request to the Department or OCC representative at least five (5) days before the scheduled hearing date.

The Member and Department or OCC shall coordinate in scheduling any Department employees as witnesses, to minimize inconvenience to employees and Department operations.

If the Department or OCC objects to one or more of the Member's proposed witnesses, the Department or OCC shall notify the Member or the Member's representative of the objection before the hearing. The Department or OCC shall also arrange for the witness to be available on standby, and may raise its objections with the Presiding Officer at the hearing.

If a witness is unavailable for the hearing, the Department or OCC shall, upon learning of the unavailability, notify the member of the witness's unavailability and generally the reason for that unavailability.

### **2. Other Witnesses**

For witnesses who are not Department employees, either Party may request in writing that the Commission issue a "Notice to Attend Hearing" to an employee in another City department or to a

third-party. The Party's request must include the full name and contact information for the witness and a brief description of the witness's anticipated testimony and its relevance to the case.

A Party wishing a "Notice to Attend Hearing" must submit a written request to the Presiding Officer by the deadline set for submitting a motion under Section IX.B., below.

The Presiding Officer is authorized to determine whether to issue the "Notice to Attend Hearing." If the Presiding Officer grants the request to issue a "Notice to Attend Hearing," the Commission Secretary will issue and send the "Notice to Attend Hearing" to the identified witness, with copies to all Parties and their representatives. If the Presiding Officer denies the request to issue the "Notice to Attend Hearing," the Party may ask the Commission to reconsider the request.

If the witness refuses or fails to attend the hearing, the Party seeking to call that witness may request that the Commission issue a subpoena for attendance of the witness at the hearing. The Commission will schedule a meeting to determine whether to issue the subpoena.

In addition, the Director of the Office of Citizen Complaints has certain separate subpoena authority under City and County of San Francisco Administrative Code Section 96.6, for OCC proceedings.

#### **E. Obtaining Production of Records Not Maintained by the Department**

If a Party wishes to obtain production of records from another City department or a third Party, the Party may request that the Commission issue a "Notice to Produce Records." The request must include the full name and contact information for the custodian of records and a description of records sought and their relevance to the case.

A Party wishing a "Notice to Produce Records" must submit a written request to the Presiding Officer by the deadline set for submitting a motion under Section IX.B., below.

The Presiding Officer is authorized to determine whether to issue the "Notice to Produce Records." If the Presiding Officer grants the request to issue a "Notice to Produce Records," the Commission Secretary will send the "Notice to Produce Records" to the identified witness. If the Presiding Officer denies the request to issue the "Notice to Produce Records" the Party may ask the Commission to reconsider the request.

If the custodian of records refuses or fails to produce the requested records, the Party seeking to obtain those records may request that the Commission issue a subpoena for production of the records to the Commission proceeding. The Commission will schedule a meeting to determine whether to issue the subpoena.

In addition, the Director of the Office of Citizen Complaints has certain separate subpoena authority under City and County of San Francisco Administrative Code Section 96.6, for OCC proceedings.

#### **F. Extension of Deadlines**

A Party may request an extension of a discovery deadline under this Section by (1) submitting a written request to the Presiding Officer, with a copy concurrently provided to the other Party, stating good cause for the requested extension, or (2) presenting to the Presiding Officer a stipulation of the Parties, establishing good cause for the extension. Only the Presiding Officer may extend the deadline.

## **G. Evidence Code §§1043-1045 Motions**

If a Party wishes to file a motion in Superior Court seeking peace officer personnel records of a witness pursuant to Evidence Code §§1043-1045:

1. The moving Party should first present the discovery request to the Presiding Officer with a copy to the opposing Party, making an offer of proof as to the nature of the anticipated records and relevance to the pending discipline case, at least 45 days before the first day of hearing to take evidence.

2. Consistent with Penal Code §832.7, the Parties should engage in a good faith discussion to determine whether there is agreement on whether the materials are relevant, and/or whether such materials exist, and if so whether the discovery can be accomplished by waiver and stipulation without necessity of court proceedings. Alternatively, the parties should make a good faith effort to define and narrow the scope of the discovery at issue, and stipulate to nondisputed matters if court proceedings are necessary. The Presiding Officer may facilitate this discussion.

3. If court proceedings are necessary to resolve the discovery issue the requesting Party shall file appropriate papers in the Superior Court at least 30 days before the first day of hearing to take evidence, with service on the opposing Party in the pending discipline case, and service on others as required by statute.

4. No Motion pursuant to Section IX.C. of these Rules, is required.

## **IX. MOTIONS**

### **A. Generally**

This Section governs all motions advanced by any Party to a discipline proceeding. Requests for a continuance shall be governed by Sections III.G., IV.A.3-5, IV.B.3-5, and XI.E. of these Procedural Rules, and not by this Section.

Motions shall be written, typed, double-spaced and bear the caption of the proceeding. No motion filed with the Commission may exceed 10 pages in length without written permission from the Presiding Officer.

### **B. Timeline to Submit Motions**

#### **1. Suspension Appeals**

Unless otherwise scheduled by the Presiding Officer: if an appeal is heard on the initially scheduled hearing date (no continuance), any Party wishing to make a motion shall submit the motion to the Presiding Officer in care of the Commission Secretary, and concurrently to the other Party/Parties, no later than three (3) days before the initial hearing date; and the other Party shall submit any opposition at the initial hearing.

If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing, a schedule for submitting motions and any opposition and reply papers.

## **2. Verified Complaint Filed by Chief or OCC Director**

Unless otherwise scheduled by the Presiding Officer: any Party wishing to make a motion shall submit the motion to the Presiding Officer in care of the Commission Secretary and concurrently to the other Party/Parties no later than 14 days before the initial hearing date; the other Party may submit any opposition papers no later than seven (7) days before the initial hearing date; the moving Party may submit reply papers no later than three (3) days before the initial hearing date. Any Party submitting a motion or opposition or reply papers to the Commission Secretary shall serve all papers on the other Party at the same time the Party submits the papers to the Commission Secretary, using a method that ensures delivery on the same date as delivery to the Commission Secretary.

If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting motions and any opposition and reply papers.

### **C. Discovery Motions**

A Member dissatisfied with the Department or OCC response to a discovery request under Section VIII.C. may submit a motion to the Presiding Officer requesting further discovery from the Department or OCC. The motion shall include the following:

1. A list specifically identifying all discovery materials requested by the Member that the Department or OCC declined to produce and the Department or OCC stated objections;
2. A clear description of any perceived discovery deficiencies in the Department or OCC response to the Member's discovery request;
3. A statement explaining why the Member anticipates the additional discovery would be relevant to the member's defense;
4. Legal authorities relevant to the Member's motion; and
5. A written declaration, under penalty of perjury, showing compliance with the requirements of Section VIII.C., and attaching copies of all correspondence sent to and received from the Department or OCC concerning the discovery request; or explaining why the Party did not comply with the requirements of Section VIII.C.

### **D. Other Motions, including Dispositive Motions**

#### **1. Content of Motions, Filing With Commission Secretary**

Any Party wishing to make a motion other than a discovery motion, including but not limited to a dispositive motion, must file the motion and any supporting papers with the Presiding Officer in care of the Commission Secretary and concurrently serve other parties, in compliance with the requirements of this Section. A "dispositive motion" is a motion brought by the Member that, if granted, would result in the dismissal of one or more charges against the Member. A dispositive motion may be brought on jurisdictional or procedural grounds and/or on the ground of alleged insufficiency of the evidence presented by the Department or OCC. The Commission will decide any dispositive motion.

Any motion shall include the following:

- prompting the motion;
- a. A clear description of the alleged problem or procedural defect
  - b. A description of all facts supporting the motion;
  - c. Legal authorities relevant to the motion;
  - d. A concise statement of the remedy or relief sought through the motion;
- and
- e. If appropriate, a written declaration, under penalty of perjury, showing any communication or correspondence between the Parties regarding the alleged problem or procedural defect.

## **2. Time for Filing a Dispositive Motion**

Dispositive motions brought solely on procedural and/or jurisdictional grounds may be filed with the Presiding Officer before, during, or after, the taking of evidence.

Any motion to dismiss on the ground of alleged insufficiency of the evidence may not be filed with the Presiding Officer until after the close of the Department's or OCC's case in chief; and may be filed after all evidence and argument is received.

The filing of a dispositive motion does not constitute grounds for delay or continuance of other proceedings in the case, including evidentiary hearing on the merits, unless the Presiding Officer specifically orders a continuance or delay in the case.

## **3. Hearing Officer or Outside Hearing Officer**

When a discipline case is assigned to a Hearing Officer or Outside Hearing Officer for the taking of evidence, the briefing on any motion, including any dispositive motion, must be filed with that Presiding Officer. The time to forward a dispositive motion to the Commission for decision is within the sole discretion of that Presiding Officer.

## **4. Findings on a Dispositive Motion**

When the Commission grants a dispositive motion, the prevailing party shall prepare proposed findings of fact consistent with the Commission's decision, and submit those proposed findings to the Commission and the other Party for consideration. The prevailing Party shall submit the proposed findings no later than 15 days after the Commission Secretary transmits the complete transcript of the proceedings to the parties.

The non-prevailing Party shall file any proposed modifications or alternative findings with the Commission no later than 10 days after transmittal of the other Party's proposed findings.

Either Party may request an extension of these proposed findings deadlines by submitting a written request to the President, stating good cause for the requested extension. Only the President may extend the deadline.

Any findings of fact adopted by the Commission will be issued by the Commission Secretary to the Parties.

## **X. PRE-HEARING SUBMISSIONS**

### **A. Required Pre-Hearing Submissions**

Each Party shall prepare and submit nine (9) copies of the following materials to the Presiding Officer in care of the Commission Secretary:

1. A written Pre-Hearing Statement that includes a summary of the Party's position and evidence, including any pertinent citations to legal authority in support, together with a list of all witnesses that Party intends to call during the hearing and a brief description of the anticipated testimony of each witness. Pre-Hearing Statements shall also identify which exhibits or other evidence is disputed and which exhibits or other evidence is undisputed; this portion of the Pre-Hearing Statements may be submitted as a joint statement of the Parties.

2. All exhibits the Party intends to introduce into evidence at the hearing. If the total number of pages of exhibits exceeds 25 pages, the Party shall include the exhibits in a binder, with the exhibits separated by tabs. The binder shall include an index listing the tab number/letter and a description of each exhibit.

Each Party must provide a copy of these materials to the other Party at the same time the Party submits the materials to the Commission Secretary, using a method that ensures delivery on the same date as delivery to the Commission Secretary. In the discretion of the assigned Presiding Officer, the number of copies submitted during the Hearing Officer or Outside Hearing Officer phase of these proceedings may be modified.

### **B. Deadline for Pre-Hearing Submissions**

#### **1. Suspension Appeals**

If a suspension appeal is heard on the initially scheduled hearing date (no continuance), unless otherwise scheduled by the Presiding Officer, the Parties shall submit the required materials no later than three (3) days before the initial hearing date. If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting the required materials.

#### **2. Verified Complaint filed by the Chief or OCC Director**

Unless otherwise scheduled by the Presiding Officer, the Parties shall submit the required materials no later than 14 days before the initial hearing date.

#### **3. Extension of Deadlines**

Either Party may request an extension of the submission deadline under this Section by submitting a written request to the Presiding Officer, with a copy concurrently provided to the other Party, stating good cause for the requested extension. Only the Presiding Officer may extend the deadline.

## **XI. INITIAL HEARING DATE, AND ANY CONTINUED HEARING DATES**

### **A. Plea by Accused Member**

At the initial hearing, whether on the date originally set at the Initial Case Management Conference or a continued date, the Member shall plead guilty or not guilty to the charged breach of duty or misconduct. In non-disciplinary cases, the Member shall state whether he or she agrees or disagrees with the Chief's stated reason for requesting dismissal.



**B. Open (Public) or Closed (Non-Public) Session**

If the Member wishes to have the hearing and trial conducted in open session, the Member shall request open session prior to the initial hearing as provided in Section VII.B. and E., above (by submitting a completed Request for Public Hearing Form, Attachment D to these Procedural Rules).

If a Member initially requests open session, but subsequently wishes to request closed session, the Member may request closed session at any time.

The Presiding Officer has authority to rule on any request for closed session, and will consider any request for closed session when made.

### **C. Motions, Evidentiary Hearing, and Other Matters**

The Presiding Officer may take the following actions in preparation for and at the initial hearing, whether on the originally set date or a continued date:

1. Set a schedule for hearings, pre-trial submissions and motions;
2. Respond to any request for continuance;
3. Direct discovery and resolve discovery disputes, including discovery motions under Section IX.C., and set a deadline to complete all discovery;
4. Accept the Member's plea;
5. Respond to any request for open or closed session;
6. Respond to any request for additional time beyond the maximum total hearing time allocated to a Party for presentation of its case;
7. Respond to any request that the Commission issue a "Notice to Attend Hearing" or "Notice to Produce Records;"
8. Decide any non-dispositive motions briefed by the Parties, including discovery motions, or set a schedule for further briefing, any argument and consideration of such motions;
9. For dispositive motions, schedule briefing and hear oral argument;
10. Identify and set deadlines for any additional submissions;
11. Set a briefing schedule if the Parties anticipate other legal issues, or if the Presiding Officer directs briefing on particular issues;
12. Schedule dates for additional hearing days, if necessary;
13. Preside at hearings to take evidence in the case, including hearing opening statements, taking evidence, and hearing closing argument;
14. Rule upon all objections presented by the Parties;
15. Ask questions of any witness; and
16. Conduct any additional business as necessary.

The Commission Secretary will send a notice to the Parties and any representatives, confirming any additional hearing dates and any other dates or information for the hearing.

### **D. Taking of Evidence**

At the initial hearing, whether on the date originally set at the Initial Case Management Conference or a continued date, all Parties and their respective representatives shall be prepared to proceed with opening statements, the taking of evidence, and closing arguments.

## **E. Continuances After Initial Hearing Date**

Continuances of additional hearing dates set at the initial hearing are strongly disfavored. Any Party who wishes a continuance of any dates after the initial hearing date shall submit a written request for continuance as soon as the Party identifies a need for a continuance. Before requesting a continuance, a Party shall meet and confer with the opposing Party and any representative for the purposes of obtaining alternative dates when ALL Parties and representatives are available. The request shall state good cause for the continuance and provide dates in the near future when the Party, the opposing Party and any opposing counsel or other representatives and witnesses are all available for the hearing. Only the Presiding Officer has authority to continue a hearing date. The Commission Secretary may not continue a hearing date.

Continuance of a hearing date does not extend deadlines for discovery compliance, motion deadlines, or Pre-Hearing filings.

## **XII. TAKING OF EVIDENCE, DELIBERATIONS AND DECISION**

### **A. Hearing Officer and Outside Hearing Officer Proceedings**

#### **1. Actions of the Hearing Officer or Outside Hearing Officer**

**a.** The Hearing Officer or Outside Hearing Officer is authorized to take actions as listed in Section XI.C., above.

**b.** The Outside Hearing Officer may mediate or provide other assistance to the Parties in developing a proposed stipulated disposition of the case, upon agreement of the Parties. If the Parties mutually agree to have the Outside Hearing Officer mediate or provide other assistance in developing a proposed disposition of the case, the Parties must complete the Agreement to Use Outside Hearing Officer as Mediator form (Attachment E to these Procedural Rules). As described on the form, the rule prohibiting ex parte communications with the Outside Hearing Officer does not apply during a mediation or proceeding by the Outside Hearing Officer working to develop a proposed stipulated disposition of the case. If the Outside Hearing Officer assists the Parties in developing a proposed stipulated disposition of the case, the Outside Hearing Officer may inform the Commission that the Parties have developed a proposed disposition and may, with the Commission's approval, present the proposed disposition to the Commission.

If the proposed disposition is not accepted by the Commission, the Commission President will reassign the case to the Commission or to a Commissioner sitting as Hearing Officer, for hearing on the merits.

#### **2. Actions of the Parties**

Each Party or the Party's representative may make an opening statement; call, examine and cross-examine witnesses; raise objections; move for the admission of items into evidence; and make closing argument, subject to any time constraints imposed by the Presiding Officer. The Presiding Officer may permit or direct written closing argument in addition to or in lieu of oral closing argument.

### **3. Outside Hearing Officer Report**

#### **a. Contents of Report**

After the Outside Hearing Officer closes the evidentiary phase of the hearing, the Outside Hearing Officer shall prepare a brief report on the proceedings for the Commission's consideration, not to exceed 15 pages. The report shall include the following:

- A summary of the witnesses, the substance of their testimony, and any demeanor or credibility issues identified by the Outside Hearing Officer;
- A summary of other facts of the case;
- A list of any other evidence admitted; and,
- A recommendation about whether there is sufficient evidence in the record to meet the Charging Party's burden of proof necessary to sustain one or more of the charges.

#### **b. Deadline for Outside Hearing Officer Report**

The Outside Hearing Officer shall complete the report as soon as practical, and in no event more than 21 days after the evidentiary portion of the hearing is closed and the transcript of the proceeding is complete. When the report is complete, the Outside Hearing Officer shall through the Commission Secretary serve the report simultaneously on the Commission and all Parties, and shall transmit the entire record in the case to the Commission Secretary.

#### **c. Responses to Outside Hearing Officer Report**

Upon receipt of the Outside Hearing Officer's report, each Party may submit a written closing argument, including any response to the Outside Hearing Officer's report and including any objections to evidence admitted by the Outside Hearing Officer, not to exceed 10 pages. Each Party shall file any such closing argument with the Commission Secretary within 10 days of service of the report, and shall simultaneously serve a copy on all Parties. No additional written submissions are permitted, unless expressly ordered by the Commission.

### **4. Actions of the Commission Secretary**

After the close of the taking of evidence proceeding, the Commission Secretary shall submit the complete record of the proceedings, including the reporter's transcript and all admitted evidence, to each Commissioner.

#### **B. Trial of Disciplinary Cases by the Commission After Evidence is Taken by a Hearing Officer or Outside Hearing Officer**

##### **1. Notice of Proceedings Before Full Commission**

After submitting the record of proceedings before the Hearing Officer or Outside Hearing Officer to all Commissioners, the Commission Secretary will notice the date and place of trial before the Commission. The Parties will receive at least seven (7) days notice of the trial date.

The Commission President may request an Outside Hearing Officer to appear before the Commission to discuss his or her report to the Commission (see XII.A.3), with Parties present; and Parties may respond during that discussion.

## **2. Purpose of Proceedings Before Full Commission**

Except as provided in Section XII.B.1 above, and Section XII.B.3 below, proceedings before the Commission after evidence has been taken by a Hearing Officer or Outside Hearing Officer, shall be limited to deliberations by the Commission.

## **3. Additional Testimony or Evidence**

In any disciplinary case where evidence has been taken by a Hearing Officer or Outside Hearing Officer the Commission will not hear live testimony or take other evidence, except as specified in this subsection.

At the request of a Party, the Commission may take additional live testimony or other evidence (a) where the requesting Party demonstrates that the evidence is newly discovered and could not with reasonable diligence have been located before the proceedings before the Hearing Officer or Outside Hearing Officer, and (b) the Commission determines that the proposed evidence is material and relevant to the case under consideration.

In addition, if after reviewing the record of a case the Commission concludes that it cannot decide the matter without receiving additional evidence, including documentary evidence or live testimony from one or more of the witnesses or from additional witnesses, the Commission may order the Parties to present additional evidence, including live testimony from any witness.

## **4. Commission Review of Record and Deliberations**

The Commission will not begin deliberations to decide a case until each Commissioner participating in the deliberative process affirms for the record that he or she has reviewed the entire record of the proceedings before the Hearing Officer or Outside Hearing Officer, including the transcript of the proceedings and all documentary and any other evidence admitted by the Hearing Officer or Outside Hearing Officer. After that review and affirmation on the record, the Commission will deliberate and decide the case. In the discretion of the Commission, the penalty phase (if any) may be severed and decided separately.

The Commission may choose to conduct deliberations in Closed Session without parties present, whether the evidentiary hearing was conducted in Open and/or Closed Session.

### **C. Trial by the Commission Without a Hearing Officer or Outside Hearing Officer Taking Evidence**

#### **1. Taking of Evidence by the Commission**

The Presiding Officer may take actions as listed in Section XI.C., above.

Any Commissioner may ask questions of any witness.

When a dispositive motion is submitted by a Party, the Commission in its discretion may choose to decide the motion either before, or during, the taking of evidence, or it may take the motion under submission and decide the motion during deliberations at the conclusion of the case.

#### **2. Actions of the Parties**

Each Party or the Party's representative may make an opening statement; call, examine and cross-examine witnesses; raise objections; move for the admission of items into evidence; and make closing argument, subject to any time constraints imposed by the Presiding Officer. The Presiding

Officer may permit or direct written closing argument in addition to or in lieu of oral closing argument.

### **3. Commission Deliberations and Decision**

At the conclusion of the trial, the Commission shall conduct deliberations and render a decision on the case. The Commission may not begin deliberations until each Commissioner participating in the deliberative process affirms for the record either (a) that he or she was present for the entire proceeding before the Commission or (b) that he or she has reviewed the transcript of any hearings when he or she was not present, as well as all documentary and any other evidence admitted at any hearings when he or she was not present.

The Commission may choose to conduct deliberations in Closed Session without parties present, whether the evidentiary hearing was conducted in Open and/or Closed Session.

## **XIII. PENALTY**

### **A. Suspension Appeals**

The Commission may sustain the Chief's disciplinary suspension, may affirm the breach of duty or misconduct but reduce the suspension, or may find the Member not guilty of any violation. The Commission may not increase the penalty beyond that imposed by the Chief for any violation affirmed by the Commission.

If the Commission reverses or reduces a suspension imposed by the Chief, in whole or in part, and if the Member has already served the suspension imposed by the Chief, the Commission will order that the Member be paid his or her salary for any period of suspension reversed by the Commission.

### **B. Verified Complaint Filed by the Chief or OCC Director**

If the Commission finds a Member guilty of any breach of duty or misconduct based on a verified complaint filed by the Chief or OCC Director, the Commission may impose the penalty recommended by the Chief or OCC Director, or a lesser or greater penalty. The Commission may impose the following penalties:

- Reprimand;
- Fine not exceeding one (1) month's salary for any offense;
- Suspension for a period not exceeding three (3) calendar months for any offense;
- Dismissal from the Department.

### **C. Non-Disciplinary Verified Complaint Filed by the Chief**

If the Commission finds cause for dismissal based on a non-disciplinary verified complaint filed by the Chief, the Commission may dismiss the member from employment with the Department.

#### **XIV. NOTIFICATION OF COMMISSION DECISION AND FINDINGS OF FACT**

##### **A. Final Commission Decision**

When the Commission has completed deliberations and rendered a decision on the case, the Commission will announce its final decision. The Commission Secretary will also send written notification to all Parties announcing the Commission's final decision.

If all Parties are present when the Commission concludes deliberations and announces its decision, the decision is final at that time. If all Parties are not present when the Commission concludes deliberations and announces its decision, the decision is final on the date of the Secretary's written notification of the decision to all Parties.

##### **B. Proposed Findings of Fact**

When the Commission sustains one or more charges, the Department or OCC shall prepare proposed findings of fact consistent with the Commission's decision, and submit those proposed findings to the Commission and the other Party for consideration; except that no findings shall be prepared in cases resolved by stipulated disposition.

##### **C. Deadline to Submit Proposed Findings of Fact**

The Department or OCC shall submit the proposed findings no later than 15 days after the Commission Secretary transmits the complete transcript of the proceedings to the parties. The Member shall file any proposed modifications or alternative findings with the Commission no later than 10 days after transmittal of the other Party's proposed findings. Either Party may request an extension of these proposed findings deadlines by submitting a written request to the President, stating good cause for the requested extension. Only the President may extend the deadline.

##### **D. Findings of Fact**

Any findings of fact adopted by the Commission will be issued by the Commission Secretary to the Parties.

#### **ATTACHMENTS:**

Attachment A -- Consent to Waive Time For Trial on Appeal Form

Attachment B -- Consent to Assignment to Outside Hearing Officer Form

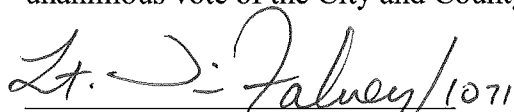
Attachment C -- List of Approved Outside Hearing Officers

Attachment D -- Request for Public Hearing Form

Attachment E -- Agreement to Use Outside Hearing Officer as Mediator Form

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These Police Commission Procedural Rules Governing Trial of Disciplinary Cases were adopted by unanimous vote of the City and County of San Francisco Police Commission on April 27, 2011.

  
Lt. Timothy Falvey, Secretary  
Police Commission