

DAYTON POLICE DEPARTMENT
GENERAL ORDER
DISCIPLINE



RICHARD S. BIEHL – DIRECTOR AND CHIEF OF POLICE

Rev. 1/14

POLICY STATEMENT

The manner by which members of the Department of Police, collectively and individually, conform to established standards of conduct and performance directly affects our ability to effectively perform our mission and uphold our integrity within the community. Discipline is intended to foster proper behavior and *voluntary* compliance with these standards. Effective discipline must be focused toward non-compliant behavior through positive correction and training. It should clearly demonstrate to the non-compliant member and to other members that such behavior must be corrected. The failure of supervisors to take appropriate disciplinary action expresses tolerance for non-compliant behavior and fails to discourage such behavior from others.

Dayton Police Department personnel are governed by the following system of rules: Manual of Procedure, Rules of Conduct, Information and Procedure guide for Non-Sworn Employees, City of Dayton Personnel Policies and Procedures Manual, Civil Service Rules and Regulations, City Charter, All local, State and Federal Laws, Rules declared by the Chief of Police or their designee and respective Labor Contracts.

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I. DISCIPLINARY INVESTIGATIONS

- A. Whenever a supervisor becomes aware of apparent violations of established standards of conduct and performance, whether by personal observation, information provided from another person or during the course of their investigation of a complaint or incident, the supervisor must conduct a disciplinary investigation to determine whether the violation occurred, and must insure the appropriate action is taken to correct the conduct of the employee. Certain minor violations may be appropriately corrected by *formal or informal training* (see General order 1.10-4 - Training). More serious violations or repeated minor violations require formal disciplinary action be taken against the employee.
- B. When supervisors conclude a violation of established standards of conduct and performance may have occurred, they must conduct an investigation to determine the facts surrounding the apparent violation, by a *preponderance of the evidence*.
- C. The supervisor will inform the employee of the nature of the disciplinary investigation, and provide the employee with written notice of the possibility of pending disciplinary action.
 - 1. Written notice is not required when a supervisor does not speak with an employee, or does so contemporaneously to the incident, and **ONLY** requests a Special Report regarding the allegations.
 - 2. Sworn employees will be issued disciplinary investigation notice via *Form S-93*, which will be served by the investigating supervisor and signed by the employee.
 - 3. Non-sworn employees will be issued disciplinary investigation notice via a Special Report directed to the employee.



- D. The supervisor will provide the employee with an opportunity to relate facts concerning the alleged violation.
 - 1. Sworn employees will be advised of their right to meet with the investigating supervisor at least 24 hours after the notice is given, and to be represented by a Grievance Representative at this meeting, unless either right is waived by the employee.
 - 2. Non-sworn employees may request that a Union Steward be present at any disciplinary meeting with a supervisor.
- E. If the investigation reveals a violation has occurred, the supervisor will contact the Department Advocate via Email to determine the performance history of the employee involved, and the type of action taken against other employees for like or similar violations of standards of conduct or performance. The Department Advocate will send the performance history to the supervisor. With this, there will be a copy of **what the supervisor told the Department Advocate about the situation and what they recommended**. This information must be included in the investigative packet.
- F. In determining the level of *formal discipline* to be recommended against an employee, the supervisor must weigh: the nature of the employee's violation; the risk or potential risk posed by the employee's violation to other employees, other persons or property, or to the city; the motivation of the employee at the time of the violation; and the past conduct and performance of the employee.
- G. The supervisor will report his findings and recommendations for discipline of charges and specifications, which will be forwarded through the chain of command to the Chief of Police or their designee for approval.
- H. Individual Division Commanders will have the final approval on all discipline up to and including Written Reprimands. They will continue to coordinate with the Department Advocate to ensure consistency of discipline and once the BlueTeam investigation is complete, they will be forwarded to the Department Advocate for disposition. Lieutenants plus-rated to acting superintendents will **not** have this authority.

II. RELIEVING AN EMPLOYEE OF DUTY FOR DISCIPLINARY REASONS

- A. Certain serious violations may require that an employee be immediately relieved of duty.
 - 1. On-duty employees whose conduct presents a serious breach of discipline or whose physical condition is such that they cannot continue to perform their duty may be relieved of duty until a "Show Cause" hearing can be held.
 - 2. Off-duty employees whose conduct presents a serious breach of discipline may similarly be relieved from returning to duty until a "Show Cause" hearing can be held.
- B. A supervisor (Sergeant or above) may relieve an employee of subordinate rank of duty for serious breaches of discipline which include, but are not limited to:
 - 1. Employees under the influence of alcohol while on duty.
 - 2. Employees under the influence of or using illicit drugs, or abusing pharmaceutical drugs, whether on or off duty.
 - 3. Flagrant or persistent *insubordination*.
 - 4. Disruptive conduct while on duty (fighting, disorderliness).
 - 5. Criminal conduct on the part of an employee.
- C. Whenever an employee is relieved of duty for being under the influence of alcohol or drugs:
 - 1. The investigating supervisor will ensure that a breath, urine or other appropriate medical test is administered to the employee in accordance with General Order 1.02-2 Drug and Alcohol Testing Policy. Supervisors may issue direct orders to employees who refuse such tests. Failure to obey such an order may result in additional and separate charges of *insubordination* against the employee.



2. The investigating supervisor must assure that an employee with impaired capacity is conveyed to a place of safety.
- D. Upon relieving an on-duty employee from duty, the supervisor will take custody of the employee's credentials and any departmentally issued firearms.
1. If possible, the supervisor will take custody of those items from off-duty employees as well.
 2. The supervisor will arrange for these items to be delivered to the Superintendent handling the "*Show Cause*" hearing prior to the date/time of the hearing.
- E. The supervisor will advise the employee of the reasons compelling the relief from duty and order the employee to appear at a "*Show Cause*" hearing to be held in the office of the employee's division Superintendent at 1300 Hours on the following business day.
- F. The supervisor will notify the Commander of the employee's work unit, the employee's division superintendent and the Department Advocate whenever an employee is relieved of duty. The superintendent will be given a verbal account of the facts and reasons leading to the suspension.
- G. Relief from duty is an action taken in a critical situation for the good of the department, and is not a disciplinary procedure.

III. TYPES OF FORMAL DISCIPLINARY ACTION

- A. The Dayton Police Department recognizes five types of disciplinary action. In order of severity, they are:
1. Oral Reprimand of Record
 2. Written Reprimand
 3. Suspension
 4. Demotion
 5. Discharge or dismissal
- B. The aforementioned (5) types of disciplinary action do not have to occur chronologically in the case of serious or flagrant violations by an employee. In the case of repeated violations of a relatively minor nature, when previous disciplinary action has failed to correct the employee's performance, the use of a more severe level of discipline can be employed.
- C. Oral Reprimands of Record and Written Reprimands are issued to the employee by the investigating supervisor in the form of a written report, which is submitted through the chain of command for approval.
- D. Suspension, Demotion and Discharge are disciplinary actions which require the preparation of legal documents and a hearing accorded the employee before their division superintendent, the Assistant Chief or the Chief of Police.
- E. **Probationary employees** - the terms and conditions arising out of Article 11, Discipline and Due Process, and Article 12, Grievance Procedure of the current Collective Bargaining Agreement, with regard to disciplinary matters do not apply to probationary employees. In the event allegations arise against a probationary employee which would likely result in suspension, demotion or discharge, the Chief of Police may elect to terminate the employee via a *Probationary Discharge*. The Department Advocate will review all such allegations with the Chief of Police prior to the filing of Charges and Specifications against a probationary employee. Probationary employees do not have the same appellate protection, as they may be discharged without a showing of "just cause."

IV. ISSUANCE AND DISTRIBUTION OF REPRIMANDS (See appendix A and B for Samples)

- A. Both an Oral Reprimand of Record and a Written Reprimand are issued in the form of a Special Report to the employee found in violation from the investigating supervisor. This report will include:
1. A brief description of the facts and circumstances giving rise to the disciplinary action;



2. A specific description of the standard(s) of conduct and performance violated by the employee (Rule of Conduct, General Order, etc.), citing the rule or General Order number (Separate multiple violations arising from the same incident that result in the same level of discipline (e.g. multiple violations that result in an oral reprimand for each violation that arose from the same incident) can be submitted on the same document – See appendix C for example);
 3. A review of the employee's pertinent performance history pertaining to the severity of discipline being issued and the recommendation of the Department advocate; and
 4. A signature line underneath the statement "***I have read and understand the above report. My signature is acknowledgment of receipt only, and does not imply my concurrence with the contents***" for the employee to acknowledge receipt of the disciplinary report once it has been approved.
- B. Reprimands are prepared by the supervisor and submitted through the chain of command for approval at each level, ultimately by the Chief of Police or their designee. Reprimands issued to sworn employees will be completed in an original and (1) copy (both with original signatures). Reprimands issued to non-sworn employees will be completed in an original and three (3) copies. A copy of the employee's Performance History will be attached to the reprimand.
- C. Once approved, the reprimand is returned to the employee's work unit for service on the employee. The employee is required to sign either type of reprimand to indicate receipt of the document. Their signature does not indicate that they agree with the contents of the report.
- D. After service on the employee, the reprimand is distributed as follows:
1. Original document to employee;
 2. One copy to Department Advocate after service for inclusion on employee's Performance History;
 3. One copy to Labor Relations (**Non-sworn employees only**); and
 4. One copy to President/Chapter Chairperson of the appropriate union (**Non-sworn employees only**).

V. INITIATING DEPARTMENTAL CHARGES AND SPECIFICATIONS

- A. When the serious nature of an employee's alleged violation, or their performance history, indicates suspension, demotion or discharge may be the appropriate disciplinary action to be imposed; formal **Departmental Charges and Specifications** must be prepared.
1. The investigating supervisor will submit the BlueTeam Investigation to the appropriate Division Commander detailing the facts and circumstances surrounding the violation, the specific description of the standard(s) of conduct and performance violated by the employee, and a review of the employee's pertinent performance history. A copy of the employee's Performance History will be attached to the investigation.
 2. Upon approval of the Division Commander, the Division Commander or their designee will complete an Investigative Packet containing hardcopies of the BlueTeam Investigation and forward the packet to the Chief of Police and then onto the Department Advocate for review and processing. **NOTE:** The Investigative Packet will include the contractual disciplinary time limits written in the space provided in the upper right hand corner of the F-286 Internal Investigative Envelope as calculated by the investigating supervisor.).
 - a. When necessary, the Department Advocate will contact the investigating supervisor to obtain further information concerning the alleged violation(s).
 - b. The Department Advocate will confer with the City of Dayton's Division of Labor Relations, which will prepare the formal Departmental Charges and Specifications in duplicate for signature by the investigating supervisor.
 - c. When the anticipated disciplinary action is a suspension of five (5) days or less, a Disciplinary Hearing will be scheduled before the employee's division superintendent. If the anticipated disciplinary action is a suspension of greater than five days, demotion or discharge, a Disciplinary Hearing will be scheduled before the Chief of Police.



- B. Once completed, the Departmental Charges and Specifications will be forwarded to the investigating supervisor, who will review them for accuracy and sign the document.
- C. After signature, the Departmental Charges and Specifications will be forwarded to the employee's work unit for service on the employee by a supervisor.
 - 1. If the employee was not relieved of duty, the document will be served, during duty hours whenever possible, no later than five (5) work days prior to the scheduled Disciplinary Hearing date.
 - 2. If the employee was relieved of duty or the employee's work schedule prevents service on duty at least five (5) work days prior to the hearing date, the document will either: be personally delivered to the employee's last known address or mailed by registered United States Mail to the employee's last known address with "Return Receipt Requested."
- D. If served in person, the employee **must sign for receipt** of the Departmental Charges and Specifications. Failure to obey an order to sign for receipt will result in additional and separate charges of *insubordination* against the employee.
 - 1. The employee **may** enter a plea of **Guilty, Not Guilty or No Contest** to the charges on the line provided on the document.
 - 2. Regardless of the plea entered, the employee **may** choose to **waive the scheduled hearing** or may elect to appear at the hearing to present evidence in defense or mitigation of the alleged violation.
- E. The supervisor serving the Departmental Charges and Specifications will complete the Return portion and present the completed copy of the document to the employee.
- F. The supervisor will serve the original on the employee then make five (5) copies of the completed and signed original document and distribute them as follows:
 - 1. Original document and two (2) copies to the Division of Human Resources (Original to Personnel, copy to Human Resources and Civil Service);
 - 2. One (1) copy to the appropriate Union;
 - 3. One (1) copy to Department Advocate.

VI. FINDINGS ON CHARGES AND SPECIFICATIONS

- A. Findings contain the results of a hearing and are issued whenever an employee has been presented with Charges and Specifications. The Findings are prepared by the Division of Labor Relations and reflect the conclusions of the hearing officer concerning the guilt or innocence of the employee, and any disciplinary action to be imposed. Findings of a division superintendent are presented to the Chief of Police for approval.
 - 1. Findings include each Charge and Specification considered, the plea of the employee relating to each Charge and Specification and the conclusion of the hearing officer concerning the guilt or innocence of the employee in connection with the Charge and Specification.
 - 2. When it is determined the employee was guilty of any or all of the Charges and Specifications, the Findings will specify the disciplinary action(s) to be imposed for the violation(s) and the effective date(s) of the action(s). It is the responsibility of the supervisor and/ or commander of the affected employee to enter onto the findings, the specified date(s) of the suspension(s).
 - 3. Findings will include instructions to the employee concerning the filing of an appeal before the Civil Service Board.
- B. Findings are served and distributed by the supervisor serving the findings in accordance with the distribution form that is included with the findings.



1. When the disciplinary action being taken against an employee consists of a suspension, the Department Advocate will attach the proper forms to the Findings, advising the employee of their option to forfeit vacation days in lieu of serving the period of suspension in accordance with the guidelines established in the current Labor Agreement regarding Vacation Forfeiture.
2. Employees who elect to forfeit vacation credits in lieu of serving a suspension relinquish their right to appeal the Findings of the department regarding the alleged violation(s).
3. Any suspension days must be scheduled at least 10 days in advance to allow for the findings to reach police payroll and for payroll records to reflect the suspension time prior to the employee being placed on suspension leave. The employee's immediate supervisor will be responsible for entering their employee's suspension leave into KRONOS.

VII. CONDUCT OF DISCIPLINARY HEARINGS

- A. The Departmental Hearing is an administrative proceeding providing the employee with the opportunity to present evidence or argument in defense or mitigation of the alleged violation(s). The hearing will be scheduled before either the employee's division superintendent or the Chief of Police (or his designee), depending on the severity of the most serious anticipated disciplinary action.
- B. If the employee fails to appear for the scheduled hearing without excuse, the hearing will proceed *in absentia*.
- C. The employee may be represented at a Departmental Hearing by their legal counsel or a Grievance Representative/Union Steward.
- D. The employee may request the Department Advocate to compel witnesses to appear and give testimony at the hearing by notifying the Department Advocate **at least two (2) days prior to the hearing**. Other members of the department may be obligated to attend the hearing and provide testimony. When necessary, the Department Advocate will **make all reasonable attempts** to insure the attendance of witnesses who are not police employees. If civilian witnesses fail to appear, the investigating supervisor can relate their statement(s) to the hearing officer.
- E. Departmental Hearings are usually attended by the employee, their representative, the charging supervisor, the Department Advocate, representative(s) of the Division of Labor Relations and/or Law Department, and the hearing officer. Other members of the department who are not witnesses in the matter may be requested or permitted to attend the hearing at the discretion of the hearing officer.
- F. The hearing officer is in charge of the proceedings, and may admit any evidence or testimony deemed pertinent to either the guilt or innocence of the employee, or the severity of the disciplinary action to be imposed.
 1. **Departmental Hearings are not subject to criminal or civil rules of evidence.**
 2. The Department Advocate will assure an audio recording of the Departmental Hearing is made for department records.
 3. The Charges and Specifications will be read by the hearing officer or the Department Advocate, unless waived by the charged employee.
 4. The Department Advocate will represent the department by calling witnesses to testify and/or introduce evidence in support of the Charges and Specifications. The employee or their representative may cross-examine witnesses called by the department and make arguments relating to the admission of other evidence.
 5. The employee or their representative may call witnesses to testify and/or introduce evidence in defense or mitigation of the alleged violation(s). The Department Advocate may cross-examine witnesses called by the charged employee and make arguments relating to the admission of other evidence.



DISCIPLINARY PROCEDURE - SUMMARY

DISCIPLINARY INVESTIGATIONS

- Inform employee of investigation (S-93 or Special Report)
- Give 24 Hour notice of disciplinary meeting, right to representative, unless waived
- Hold disciplinary meeting unless waived
- Get Performance History, past practice from Department Advocate
- Submit recommendation to Chief

RELIEVING EMPLOYEE OF DUTY

- Only serious violations (drugs, alcohol, fighting, insubordination, criminal conduct)
- Breath, blood or other test if drug or alcohol involvement, then convey employee to safety
- If possible, take custody of credentials and firearms
- Advise employee of reason, order to appear at Show Cause hearing at 1300 Hrs. following business day
 - Notify employee's Commander, Major and Department Advocate

REPRIMANDS

- Report from supervisor to employee
 - Concise description of conduct in violation
 - Specific performance standard violated
 - Review of Performance History
 - Space for employee to sign for receipt
- Submit through command to Chief or designee for approval
- Served on employee after approval –
- **Employee must sign for receipt**
- Original and (1) for sworn employee, Original and (3) for non-sworn

CHARGES AND SPECIFICATIONS

- Serious violations warranting suspension, demotion or discharge, or
- Repeated violations of a relatively minor nature
- Recommended by supervisor in an investigative report to Division Commander (route hard copy of reports in an investigative envelope)
- Prepared by Labor Relations and Department Advocate
- Signed by investigating supervisor
- Served by supervisor (5) days before hearing date
- Employee **must** sign for receipt
- Employee **may** enter plea of Guilty, Not Guilty, No Contest
- Employee **may** waive hearing, regardless of plea
- Have employee sign original then make (5) copies for distribution, giving a copy to the employee

DISCIPLINARY HEARINGS

- Before Division Commander or Chief
- Employee can compel witnesses to attend
- Employee may be represented by attorney or union representative
- Hearing officer determines what evidence may be admitted, who may attend
- Employee may cross-examine, present evidence
- Not governed by criminal or civil rules of evidence

FINDINGS

- Conclusions of hearing officer concerning guilt or innocence, penalty
- Prepared by Labor Relations and Department Advocate
- Signed by hearing officer and Chief
- Served by supervisor - **complete Return**
- Have employee sign original then make (5) copies of original for distribution, give employee a copy
- Forfeiture of VAC Credits – See current Labor Agreement.



Appendix A

REPRIMAND SAMPLE FORMAT (PROGRESSIVE)

Date _____

TO: Officer _____
West Patrol Operations Division/Squad One

FROM: Sgt. _____
West Patrol Operations Division/ Squad One

SUBJECT: **WRITTEN REPRIMAND (ROC 5.6 (A) A.W.O.L.)**

Officer _____

You were assigned to attend a training session for Riot Control at the Dayton Police Academy on June 1, 2010 at 0800 hours. You failed to appear for that assignment until 0810 hours.

On June 4, 2010, you were issued an S-93 prior to being interviewed concerning your tardiness. You stated that you were late because of heavy traffic on I-75 due to unexpected construction.

Rules of Conduct 5.6 (A) ABSENCE WITHOUT LEAVE states in part: *“An officer must not be absent without leave from their regular assignment including scheduled overtime assignments, meetings or other scheduled obligations.”* (AWOL shall mean failure to report for duty at the time and place of duty or the leaving of a place of duty or assignment without authorization)

Even though you offered mitigation as to why you were late, you are still responsible to report to your work assignment at the time required. A review of your performance history indicates that you received an Oral Reprimand on 4-3-2009 for violation of ROC 5.6 (A). That reprimand was also issued for failing to appear for a training session at the academy at the time required.

You are being issued a **Written Reprimand** due to progression in disciplinary action for like and similar violations. *You are further cautioned that future violations of this nature may result in more stringent disciplinary action being taken.*

Sgt. _____
West Patrol Operations Division/ Squad One

*I have read and understand the above report.
My signature is acknowledgment of receipt only,
and does not imply my concurrence with the contents*

OFFICER NAME

DATE RECEIVED

SUPERVISOR SERVING DISCIPLINE



Appendix B

REPRIMAND SAMPLE FORMAT (ENTRY OFFENSE)

Date _____

TO: Officer _____
West Patrol Operations Division/Squad One

FROM: Sgt. _____
West Patrol Operations Division/ Squad One

SUBJECT: ORAL REPRIMAND (ROC 5.6 (B) A.W.O.L. – Court Assignments)

Officer _____

On June 14 2010, at 0830 hours, you were commanded and required to appear before the Criminal Division of the Dayton Municipal Court for court case # _____, on a criminal case for _____. You received a court order-in for the above date commanding you to appear to testify on behalf of the prosecution in the above-captioned case that was pending in court. You failed to appear for court case # _____, on the time and date ordered-in.

On June 16, 2010, you were issued an S-93 prior to being interviewed concerning your failure to appear in court. You stated that you missed the court case because you forgot the court case.

Rules of Conduct 5.6 (B) - ABSENCE WITHOUT LEAVE (Court Assignment) states in part: "An officer must not be absent without leave from any court hearing, trial, interview, board or grand jury." (AWOL shall mean failure to report for duty at the time and place of duty or the leaving of a place of duty or assignment without authorization)

You offered no mitigation as to why you missed court on the date and time required. A review of your performance history indicates you have no previous violations of ROC 5.6 (B).

You are being issued an **Oral Reprimand** as disciplinary action for this violation. *You are further cautioned that future violations of this nature may result in more stringent disciplinary action being taken.*

Sgt. _____
West Patrol Operation Division/ Squad One

*I have read and understand the above report.
My signature is acknowledgment of receipt only,
and does not imply my concurrence with the contents*

OFFICER NAME

DATE RECEIVED

SUPERVISOR SERVING DISCIPLINE



Appendix C

REPRIMAND SAMPLE FORMAT (MULTIPLE OFFENSES)

Date _____

TO: Officer _____
East Patrol Operations Division/Squad One

FROM: Sgt. _____
East Patrol Operations Division/ Squad One

SUBJECT: ORAL REPRIMAND (ROC 5.22, Neglect of Duty, ROC 5.3 Lawful Directive)

Officer _____

On November 11, 2010, you were assigned to uniformed patrol in the East Patrol Operations Division, Squad One. You failed to show any teamwork when you chose to remain on a one unit paper call while the dispatcher was appealing for crews to respond on priority two and three service calls. These calls were in your district as well as the South Zone. During the time you were on a one unit paper call, there were 21 priority calls dispatched in the East Patrol Operations Division within 62 minutes, none of which you chose to assist other police crews with.

Additionally, at roll call you had been directed to be a one unit crew for the entire shift. At approximately 1315 hours, you chose to double up with another Squad One officer for the remainder of the shift. You failed to consult with your supervisor and therefore ignored the directive you had received at roll call.

On November 12, 2010, you were issued an S-93 prior to being interviewed as part of an investigation into your conduct and actions on the previous shift. You admitted at that time that you knew better than to double up without consulting a supervisor, but did so anyway.

Rules of Conduct 5.22, Neglect of Duty states: *"Officer will not neglect any duty or display incompetence in the performance of duty"*

Rules of Conduct 5.3, Responding to lawful orders and directives states in part: *"An Officer will at all times respond to lawful orders of ranking members as well as requests from citizens..."*

When interviewed, you could not provide adequate mitigation for your lack of service on your part. It is your responsibility to closely listen to the radio and to share the total call load, especially priority calls during your shift. You also offered no mitigation as to why neglected to consult your supervisor before doubling up with another officer, thereby disregarding a previous directive to remain a one unit crew. A review of your performance history indicates you have no previous violations of ROC 5.22 or 5.3.

You are being issued an **Oral Reprimand** as disciplinary action for each violation. *You are further cautioned that future violations of this nature may result in more stringent disciplinary action being taken.*

Sgt. _____
East Patrol Operations Division/ Squad One

*I have read and understand the above report.
My signature is acknowledgment of receipt only,
and does not imply my concurrence with the contents*

Officer NAME

DATE RECEIVED

SUPERVISOR SERVING DISCIPLINE