

RULE XVI

TRIAL PROCEDURES

Section 1. PURPOSE.

These procedures apply to citizen complaints and disciplinary appeals by sworn and non-sworn Fire or Police Department personnel.

Section 2. JURISDICTION.

- (a) Any member who is served with an appealable order of discipline shall, at the same time that service of the appealable disciplinary order is made, receive any exculpatory evidence in the Chief's possession related to the discharge, demotion or suspension.
- (b) Sworn, non-probationary members of the Police Department who are discharged, demoted or suspended without pay for a period of more than five (5) eight-hour working days may appeal such discipline to the Board.
- (c) Sworn, non-probationary members of the Fire Department who are discharged, demoted or suspended without pay for a period of more than two (2) twenty-four-hour working days, or more than five (5) eight-hour working days may appeal such discipline to the Board.
- (d) Non-sworn (civilian), non-probationary, non-exempt full-time members of the Fire Department or the Police Department who are discharged, demoted or suspended without pay for more than fifteen (15) working days may appeal such discipline to the Board. Any employee subject to a collective bargaining agreement that provides final and binding arbitration as an alternative method of hearing disciplinary matters may elect either the alternative method or a hearing before the Board. If the employee elects final and binding arbitration, the right to a hearing before the Board will be deemed to have been permanently waived.
- (e) Citizen complaints that are referred for trial by the Executive Director pursuant to Rule XV shall utilize the procedures of Sections 7 through 14

below to the extent applicable. A copy of the FPC investigation may be provided to the complainant and member. Upon request by the complainant, the Board or Hearing Examiner may allow a complainant to be represented by an advocate for any part of the proceedings.

Section 3. APPEAL

Within ten (10) calendar days after service of a disciplinary order which is appealable to the Board, the department member so disciplined may file with the Board a written notice of appeal utilizing the following form:

To the Honorable Board of Fire and Police Commissioners:

Please take notice that I appeal the order/decision of the (Fire Chief or Police Chief) (discharging or demoting or suspending) me from the (Fire or Police) Department pursuant to (MFD or MPD) Order No. _____ dated (Month and Date and Year).

Dated this _____ day of _____, 20 ____ .

Signature

Print Name, Address & Phone Number of Appellant and/or Legal Counsel

Section 4. NOTICE OF COMPLAINT.

Within two (2) calendar days after service of an appealable disciplinary order upon a department member, the department shall file with the Board a copy of the disciplinary order and a signed complaint outlining the specific conduct which serves as the basis for each rule violation alleged.

Section 5. SERVICE OF COMPLAINT.

Within five (5) calendar days after an appeal is filed, the Board shall serve appellant with a copy of a Notice of Complaint indicating the department rule that is alleged to have been violated, a copy of the complaint, and notification of a trial date scheduled pursuant to Wis. Stat. §62.50(14). Service by mail upon appellant's counsel of record shall be deemed sufficient to satisfy this requirement.

Section 6. SCHEDULING ORDER.

The Board shall serve appellant and the Chief of the department with a Scheduling Order fixing the time and place of the trial not less than sixty (60) days nor more than one hundred and twenty (120) days after service of the notice to the member, a pretrial date not less than seven (7) days prior to the trial date, and time limitations for discovery and motions.

Section 7. PRETRIAL.

A pretrial shall be conducted to complete any remaining discovery and narrow the issues to be addressed at time of trial. The Hearing Examiner may require a party to prepare a written stipulation of issues which are agreed upon and need not be proven at time of trial.

Section 8. ADJOURNMENT.

A request for adjournment shall be in writing. The request shall state the specific reason(s) that a party will not be able to proceed on the scheduled date, and that the reason(s) for such inability are beyond the control of the party making such request. Absent an express waiver by both parties, no adjournment shall exceed fifteen (15) calendar days except as deemed necessary by the Hearing Examiner.

Section 9. TRIAL BEFORE A HEARING EXAMINER.

(a) The Hearing Examiner is authorized to conduct trials without the Board being present.

- (b) Trials will be videotaped, and the procedural and evidentiary provisions governing trials before the Board will apply to trials before the Hearing Examiner to the extent applicable.
- (c) Within thirty (30) days after the close of any trial conducted before the Hearing Examiner, parties will be provided with copies of the transcript, videotape, exhibits, report summarizing the evidence presented, proposed findings of fact, recommended decision on the merits, and recommended penalty, if applicable.
- (d) Within thirty (30) calendar days after mailing of the report and recommendation to the parties, either party may file a response to the Hearing Examiner's report and recommendation.
- (e) The Board will convene in closed session to review the record. The Board shall make a final determination and may adopt or modify, in whole or in part, the proposed findings and recommendations of the Hearing Examiner.

Section 10. TRIAL BEFORE THE BOARD.

- (a) A Hearing Examiner may assist at trials before the Board, and is authorized to make rulings on all legal and procedural matters that arise during the trial.
- (b) Any witness may testify regarding matters about which the witness has personal knowledge and which are sufficiently related to issues before the Board.
- (c) The Board may limit the calling of witnesses or the taking of testimony which appears to be cumulative or lacking sufficient relevance.
- (d) The Board may question any witness called by either party during the hearing.
- (e) The Board or parties may subpoena witnesses.
- (f) A written decision will be signed by Board members who participated in the decision within ten (10) days after such decision is rendered and will be forwarded to each of the parties.

Section 11. TESTIMONY.

- (a) Trials are quasi-judicial proceedings intended to secure the facts in as direct and simple a manner as possible. Wisconsin Rules of Evidence controlling

- civil cases will apply, but the Hearing Examiner may relax the rules of evidence to assure that relevant facts are elicited during the trial. Hearsay evidence, including any documents from an investigation relating to the charges being tried, may be admitted provided such evidence is probative. All trials are open to the public. Witnesses may be sequestered at the request of either party, or upon direction of the Board or the Hearing Examiner. The Board or Hearing Examiner may adjourn the trial to take additional evidence.
- (b) In a citizen complaint trial the obligation to proceed and present evidence first is on the complainant, with the accused department member thereafter being given an opportunity to respond.
 - (c) In a disciplinary appeal the obligation to proceed and present evidence first is on the department, with the appellant thereafter being given an opportunity to respond.
 - (d) Prior to taking evidence, each party shall be given an opportunity to make an opening statement outlining what that party believes the evidence to be presented will show.
 - (e) Either party may call the other as a witness adversely, and may cross-examine the other party and that party's witnesses when they testify voluntarily. The Board and the Hearing Examiner may question any witness called by either party.
 - (f) At the close of testimony each party may make a closing statement outlining what that party believes the testimony and evidence shows.

Section 12. BURDEN OF PROOF.

(a) Non-sworn Employee Disciplinary Appeals

The Board must find that a preponderance of the evidence exists to sustain the charge(s).

(b) Citizen Complaints and Sworn Member Disciplinary Appeals

The Board must find by a preponderance of the evidence that there is just cause to sustain the charge(s). In determining whether or not there is just cause to sustain the charge(s) the Board shall apply the following standards, to the extent applicable, pursuant to Wis. Stat. §62.50(17)(b).

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the department.

Section 13. TRIAL PROCEDURE-COMPLAINT NOT SUSTAINED.

If the Board determines that the burden of proof has not been met, the matter will immediately be dismissed and proceedings terminated.

Section 14. TRIAL PROCEDURE-COMPLAINT SUSTAINED.

If the Board sustains a finding of one or more rule violations, evidence may then be received regarding the member's character, work record, and the impact of the misconduct on the complainant, department, and community. The Board may deliberate in closed session in order to determine whether the good of the service requires that the appellant be:

- (a) permanently discharged; or
- (b) suspended without pay for a period to be determined by the Board; or
- (c) demoted to a lower rank; or
- (d) participate in policy training.