

**CHAPTER 500**  
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**SUBJECT:**

**DISCIPLINARY PROCEDURES**

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**I. POLICY**

- A. Discipline within an organization requires compliance to a code of ethics and standards of performance supported by a system of authoritative guidelines such as laws, rules, regulations, orders and other directives. Discipline is a necessary element in the maintenance and growth of any person or organization.

**II. SCOPE OF THIS PROCEDURE**

- A. The incidents which are to be handled in accordance with the provisions of this order are; alleged or suspected violations of laws, acts, statutes and ordinances; as well as Departmental rules, regulations, policy and orders, by members of the Binghamton Police Department. These incidents include:
  - 1. Those reported to Superior Officers by members of the Police Department as well as those reported to any member of this Department by citizens, including prisoners. Incidents may be reported orally or in writing as well as through written correspondence, either signed or anonymous
  - 2. Those incidents personally observed or otherwise brought to the attention of Officers or Superior Officers of this Department.
- B. The procedures established by this order will assure prompt and thorough investigation of the complaint in order to clear the innocent, establish guilt and facilitate suitable disciplinary action. Formal Disciplinary Action Complaints will be recorded on BPD Form T38 in quadruplicate, which is the Departmental Personnel Complaint Form.

**III. RECEIVING COMPLAINTS - INDIVIDUAL RESPONSIBILITY**

- A. Each member of the Bureau will perform the duties and assume the obligations of his rank in the investigation of personnel complaints or allegations of misconduct made against members of this Department. Each member will cooperate fully with authorized personnel conducting such investigation. Supervisory personnel will themselves initiate investigations when the violation complained of or observed, is an infraction within the scope of their authority. They will not look to higher authority for the initiation of this action.

- B. Subordinates receiving complaints regarding personnel of this Department whether in writing, in person, or by telephone, shall immediately notify their Superior Officer, referring the complaint to him.
- C. Any member of this Bureau becoming aware of any violation of law, ordinance, rule or order of the Department by any other member, shall immediately report such conduct to his immediate Superior.
- D. Any Superior Officer of this Department who has been made aware of any violation of law, ordinance, rule or order of the Department, shall so inform the on-duty Officer in Charge.
- E. Superior Officers shall not take or investigate complaints against themselves, but rather shall refer them to higher authority.

IV. SUPERVISORY AUTHORITY/VIOLATION OF RULES & REGULATIONS

- A. Nothing in this order is meant to take away from a Supervisor the prerogative of correcting, admonishing or reprimanding a subordinate whenever formal punishment is not warranted by the nature or circumstances of the incident.
- B. Supervisors are required to initiate the following corrective measures to fulfill their responsibility of assuring compliance with Departmental rules, regulations, policies and procedures. In all cases the Supervisor is required to instruct the subordinate on how to correct noted inadequacies. Corrective measures may include:
  - 1. Providing a personal interview or counseling, when appropriate, of a subordinate in order to determine the extent of any personal or job related problems that may be effecting his performance. The Supervisor shall offer when appropriate to do so, assistance and guidance, or refer the subordinate to the appropriate individual or agency in order to obtain the proper assistance
  - 2. Giving remedial instruction and or oral reprimand, when appropriate, to members who are or who are construed to have acted in violation of Departmental orders or directives.

**NOTE:** Supervisors shall document instances of personal interviewing, counseling, remedial instruction and oral reprimands for future reference if necessary. In many cases, this documentation will be done on either the Counseling/Remedial Action Form or the Supervisory Contact Form. All shifts and units are required to use the forms in all instances that apply.

- a. Supervisory Contact Forms in themselves are not disciplinary in itself, and may be used for positive and negative contact. Use of these forms will assist supervisors in conducting document based evaluations of their subordinates,

and will enhance total overall accountability of both supervisors and non-supervisors.

- b. Supervisory Contact Forms shall be used under the following circumstances:
    1. When a supervisor counsels, instructs, or trains an officer regarding procedure, tactics, etc. in situations that do not rise to the level of a violation of rules and regulations requiring disciplinary action;
    2. When a supervisor wishes to acknowledge the good work, etc, of an officer that does not rise to the standard for an official commendation or departmental award;
    3. When a complaint from the public/other agency is received by the shift/unit regarding an officer's actions and/or demeanor, and the complaint is dealt with by a shift/unit supervisor. This includes complaints deemed unfounded;
    4. When a compliment from the public/other agency is received by the shift/unit regarding an officer;
    5. In any other situation that is deemed appropriate by a shift/unit supervisor.
  - c. Completed Supervisory Contact Forms will be kept by each respective relief for 18 months. These forms do not require the consent of the named officer, and shift/unit commanders will be responsible for maintaining these in a file and for purging said files when appropriate. When officers are reassigned to different shifts/units, any forms pertaining to them will be turned over to the officer's new supervisor. Police Administration will periodically review the files kept on the shifts/units.
  - d. Supervisors may use the Counseling/Remedial Action Form in place of the Contact form if they choose to do so. Counseling/Remedial Action Forms are to be signed by the officer for acknowledgement only, and may be forwarded to IA, with a copy being kept with the appropriate shift/unit commander's file.
3. In the case of repeated violations of Departmental directives or acts of misconduct where counseling, an oral reprimand or remedial instruction

has failed or is inappropriate, the Supervisor may institute the formal Departmental disciplinary procedures.

4. If the formal disciplinary procedure is deemed to be necessary, the Supervisor shall upon completion of his investigation and appropriate documentation, complete the BPD T-38 Personnel Complaint Form, initiating formal Departmental disciplinary investigation and or action into the matter.

V. SUPERVISORY AUTHORITY/INVESTIGATION OF ALLEGED MISCONDUCT

- A. In the case of a Superior Officer receiving information or having knowledge concerning misconduct of a member, the Supervisor shall promptly inform the Officer in Charge. The Supervisor, under the direction of the Officer in Charge, shall if practical begin an investigation of the matter. The Supervisor shall when appropriate, reduce to writing in affidavit form, statements made by the complainant(s) and or witnesses. Any statement(s) shall be properly sworn to by the complainant or by the witnesses. The investigating Supervisor shall obtain the names and addresses of all witnesses for further reference.
- B. Upon completion of the initial investigation, and if the Officer in Charge determines additional formal disciplinary action is necessary, the investigating Supervisor shall complete all documentation in regards to the matter, including the Departmental T-38 Form as well as his recommendations for further action. All such documentation shall be submitted to the Officer in Charge for review. The Officer in Charge shall include with the report, documentation of any actions he has taken or been involved with, along with his recommendations for further action. The completed report will then be forwarded to the Chief of Police for review and upon approval, additional assignment.
- C. After having reviewed the initial complaint and preliminary investigation report, the Chief of Police may assign the Internal Affairs Division or a selected member of the Department, normally a Superior Officer, to conduct further investigation into the matter. The Internal Affairs Division or the Officer assigned to the investigation shall be responsible to conduct a complete and expeditious investigation into the matter.
- D. The Internal Affairs Division or the assigned investigator will be responsible for keeping the Chief of Police informed of continual developments throughout the investigation.
- E. The Assistant Chief of Police shall be available for consultation and direction in the conduct of complaint investigations.
- F. Charges shall not be recommended unless there is reason to believe that an offense has been committed.

## VI. EMERGENCY SUSPENSION

- A. When it appears that emergency suspension of a member is in the best interest of this Department, an Officer in Charge is empowered to relieve from duty any subordinate under his command for violation(s) of Departmental Rules of Conduct, pending the filing of a written report and/or formal charges along with specifications concerning the violations.
- B. The Officer in Charge shall immediately notify the Chief of Police or Acting Chief of Police upon suspending an employee under this section.
- C. The Officer in Charge is required to prepare a written report as well as formal charges specifying the violation(s), personally forwarding them to the Chief of Police. The Officer thus relieved of duty shall be ordered to report to the Chief or Acting Chief of Police at 10:00 AM the following day unless otherwise directed. Relieving from duty pending a hearing and disposition is a procedural action, distinguished from a penalty.
- D. Examples that could lead to emergency suspension are as follows:
  - 1. The member complained about has been drinking, is intoxicated or appears to be under the influence of narcotics while on duty or when reporting for duty.
    - a. If there is reasonable cause to believe an employee is in violation of this section, he will immediately be required to submit to an intoxication test. The lapse of time, expressed in minutes between the initial report or observation of the Officer's condition and the intoxication test, will be accurately recorded.
  - 2. When it has been determined that an employee is under a physical or mental condition which in the judgement of the Officer in Charge, may render the employee incapable of adequately performing his duties or which may jeopardize the safety of the employee or another.
  - 3. When an employee fails to comply with a direct, lawful order from a Superior Officer.
  - 4. When there is probable cause to believe that a member has committed an act of such seriousness as to render his continued presence in this Department a detriment to either the employee or the Department, (e.g., probable cause to believe the employee has committed a crime or serious violation of Departmental Rules of Conduct).
- E. Upon being suspended as a result of an emergency suspension, the member shall surrender to the suspending Officer in Charge his badge and service

weapon. The Officer in Charge shall provide to the Officer, proper receipts for the same.

- F. The Officer in Charge shall see to the proper safeguarding of the property received, securing the weapon(s) and handcuffs in the Armory Room and forwarding the badge to the Chief of Police.

## VII. INVESTIGATIVE PROCEDURES

- A. Upon being assigned to investigate a personnel complaint concerning a member of the Binghamton Police Department, the Internal Affairs Officer or Investigator so assigned shall insure an impartial, prompt and thorough investigation into the matter.
- B. If an employee under investigation for violation of Departmental Rules of Conduct is to be formally interviewed for Administrative purposes by the Internal Affairs Division or Investigating Officer designated by the Chief of Police, the following procedures will be adhered to:
  - 1. The Officer assigned to the investigation shall, prior to beginning the interview, inform the employee of the incident(s) under investigation and if known, the potential charge(s) which may be brought against him.
  - 2. The employee shall not be obligated to sign any Departmental prepared admissions of guilt which could be used in a disciplinary proceeding without first being given the opportunity to consult with a P.B.A. representative or legal counsel.
  - 3. The employee shall have except under extenuating circumstances, twenty-four hours to consult with a P.B.A. representative or legal counsel prior to signing any Departmentally prepared admissions of guilt.
  - 4. The employee may be required to answer all questions specifically directed and narrowly related to the performance of his official duties.
  - 5. The employee shall be informed that his refusal to comply with this order is a violation of Departmental Rules of Conduct that may subject the employee to further disciplinary measures.
- C. If in the case of a criminal investigation, the Internal Affairs Officer or Investigator assigned to conduct the interview believes criminal prosecution is a probability and feels it is probable that the accused will be detained, the accused shall first be advised of his Miranda Warnings.

- D. Upon completion of the investigation, the employee will be notified of the results, what if any disciplinary procedures are to be recommended and the scheduled implementation of such action.

VIII. FORMAL DISCIPLINARY PROCEDURES

- A. Any disciplinary action involving permanently appointed Officers of this Department shall, unless waived, be processed in accordance with Sections 75 and 76 of the NYS Civil Service Law.
- B. No member of the Binghamton Police Department shall be removed, reduced in rank, suspended, fined or otherwise punished or disciplined except upon charges as provided in Section 75 or Section 76 of the NYS Civil Service Law, which delineates disciplinary procedures and actions.
- C. The Chief of Police may formally suspend a member of this Department for a violation of this Department's rules of conduct, pending the filing of a written report and/or formal charges and specifications concerning the violation.
- D. Members while under suspension shall not wear their uniform, except at arraignment and hearings.
- E. Members shall not be suspended without pay for a period longer than thirty (30) days without having a hearing conducted on the matter, except that suspension shall continue during the period of any adjournment of the hearing, where such adjournment is applied for by the accused.
- F. Whenever formal disciplinary action is taken, the completed investigative report shall be filed, secured and kept confidential within the Internal Affairs Division.
- G. The final disposition of disciplinary action when sustained will be made part of the employee's personnel file.

IX. PREPARING THE CHARGES

- A. Upon receipt of a report indicating that charges should be preferred, the Chief of Police upon his approval, shall forward the same to the Office of the Corporation Counsel, with a letter that formal charges be drawn.
- B. If the Chief of Police determines that charges should not be prepared, an evaluation as to the reasons for dismissing the charges, together with all other pertinent data shall be added to the report and placed in the Internal Affairs Investigative File.



- C. The Corporation Counsel shall prepare charges and specifications forwarding them to the Commissioner of Public Safety for approval or disapproval. Upon approval, the Commissioner of Public Safety shall set a date for the hearing.
- D. If the accused is under suspension without pay, attempts should be made to hold the hearing within thirty (30) days of the date of suspension. If the hearing cannot, for whatever reason be held within thirty days, the accused shall either be returned to duty pending the hearing, or shall continue the suspension with pay.
- E. If the accused is not under suspension, the hearing date shall be within thirty (30) days from the date on which the accused was served with the charges, if possible.

X. SERVICE OF CHARGES

- A. Upon approval of the charges, and the determination of a hearing date, the Chief of Police shall:
  - 1. Prepare a cover letter advising the accused of the date, time and place of the hearing, attaching to it the formal charges
  - 2. Serve or cause to be served the charges and a letter of hearing notification upon the accused employee.
- B. The charges and letter of trial notification shall be served upon such member at least eight (8) days prior to the date of the hearing. The day of service shall be counted as one of the eight days.

XI. PLACE OF HEARING

- A. Hearings of accused employees shall be held in a location designated by the Commissioner of Public Safety.

XII. COUNSEL FOR THE DEPARTMENT

- A. At all Hearings, the Department shall be represented by Corporation Counsel.

XIII. UNIFORM TO BE WORN

- A. Uniformed Officers of the Department who appear at a hearing may do so in uniform.
- B. Officers detailed to the Detective Division or Plainclothes will appear in a business suit or similar attire.

XIV. RIGHTS OF THE ACCUSED

- A. The accused is entitled to the following, as a matter of right:
  - 1. A reasonable time to prepare for the Departmental hearing
  - 2. To be present at the hearing
  - 3. To be heard in person and by counsel, and to give and furnish evidence in his defense

XV. SUMMARY PUNISHMENT

- A. Summary punishment is informal punishment, which would be designated personally by the Chief of Police at his discretion, without delay and/or a formal hearing, given the concurrence of the offender.
- B. Summary Punishment provides for immediate disciplinary action against those members who fail to conform to certain Bureau standards of conduct or appearance. These transgressions may or may not require a detailed investigation depending on the seriousness of the incident.
- C. Initially the accused will be informed of his right to a hearing under the provisions of Section 75 of the NYS Civil Service Law if he does not wish to accept the summary punishment as indicated by the Chief of Police.
- D. Transgressions which may be handled via summary punishment, will depend on the nature and seriousness of the offense as well as final approval given by the Chief of Police. Such transgressions may include but are not limited to the following:
  - 1. Tardiness in reporting for duty;
  - 2. Violations of appearance or dress code;
  - 3. Failure to maintain or carry official equipment;
  - 4. Misuse of Bureau equipment or supplies;
  - 5. Leaving area of assignment without authorization;
  - 6. Failure to provide prompt, professional and courteous service;
  - 7. Permitting unauthorized persons to enter or be transported in Departmental vehicles without permission;
  - 8. Taking excessive time for personal reasons while working;
  - 9. Failure to respond to subpoenas or court requests;

10. Other violations of Departmental policy, rules of conduct or directives as authorized and directed by the Chief of Police.

E. Summary punishment that may be effected under the provisions of this section is limited to the following:

1. Constructive Criticism: which may be used to discuss and correct minor and infrequent Departmental rule or directive violations.

Constructive Criticism may consist of:

- a. Personal interviewing or Counseling to determine the extent of any personal or job related problems that may be effecting the employee's job performance and to offer assistance and guidance or assist via the appropriate referral;
  - b. Oral reprimand-nothing in personnel file;
  - c. Written reprimand-copy in personnel file;
  - d. If as a result of the conference with the accused the explanation is considered to be unsatisfactory, the accused shall be warned unless his conduct or the caliber of his work improves, further disciplinary action may result. A memorandum of the conference shall be prepared and filed in the member's personnel file, with a copy to the offender.
2. Re-training: when through a conference with the accused, it is decided that retraining in specific operational aspects is necessary.
    - a. If retraining is necessary, a memorandum of the conference shall be prepared and filed in the member's personnel file, with a copy to the accused.
    - b. Documentation of the specific retraining and the results of such training shall be filed and maintained by the Training Division as well as the member's personnel file.
  3. Non-Judicial Punishment:
    - a. Placement at the bottom of the seniority list for one (1) year.
    - b. Extra duty, working days off, holidays, personal days or scheduled vacation days. (The offender may choose between accepting the extra duty or suspension without pay for the number of days recommended).
    - c. Loss of up to twenty (20) days of vacation leave.
    - d. Suspension without pay, for a period of time as designated by the Chief of Police.

- e. Reduction in rank and grade.
  - f. Resignation without prejudice.
- F. Depending on the nature and seriousness of the offense, personnel records of Summary Discipline administered as outlined in the above sections may be removed from a member's personnel file if the member has had no other discipline imposed for a period of two years, with the approval of the Chief of Police. Upon the member's request, such records shall be returned to such member or destroyed.
- G. Nothing in this section is meant to take away from a member, his right to refuse summary punishment and request a hearing under the provisions of the NYS Civil Service Law governing these matters.

#### XVI. EXCESSIVE USE OF FORCE COMPLAINTS

- A. As a general rule, complaints of excessive use of force should be handled in accordance with the regular provisions of these procedures.
- B. When a complaint of excessive use of force is made, the complainant will be interviewed and when appropriate, statements will be taken in private and forwarded to the Chief of Police for review.
- C. If the subsequent investigation determines that criminal prosecution against the member is possible, the District Attorney will be consulted as to further investigation and procedure.

#### XVII. CRIMINAL ACTS

- A. When the act committed by a member of this Department is a crime, and the evidence is such that had the crime been committed by a private person it would have resulted in his arrest, the investigating Officer shall immediately notify the Chief or Acting Chief of Police. The Chief or Acting Chief of Police will decide as to whether the accused should be first detained or criminal action should be delayed pending further investigation. The preferable method is to delay arrest until the Chief or Acting Chief of Police can present all available facts to the Commissioner of Public Safety and the Broome County District Attorney. At that point, a decision will be made regarding what procedure to follow.

## XVIII. EXCESSIVE USE OF SICK TIME POLICY

- A. The Binghamton Police Department has recognized the need to address excessive use of sick time. Abuse of sick time results in manpower shortages which becomes a safety issue for those officers working. The prevailing mindset that sick time is an earned benefit which can be used interchangeably with holiday leave time or personal leave time is erroneous. **Sick leave time is an earned conditional benefit that allows a member time away from work specifically for the purpose of recuperating from a medical illness or injury or caring for an ill or injured family member.** Using or *burning* sick time just because it was earned or using it in predictable patterns is considered abuse of sick time and as such is subject to corrective and/or disciplinary action up to and including termination.

An annual review of sick time use will be conducted. This examination will focus on career use of sick time as well as sick time use in the year being reviewed. Use of 50% or more of accumulated sick time during the periods being evaluated will result in a more in-depth look to consider if legitimate reasons exist for the use of sick time. In cases where it is determined that no legitimate reasons for excessive sick time use exist, the officer will face disciplinary measures as outlined in the procedures below.

## B. EXCESSIVE USE OF SICK TIME POLICY PROCEDURES

1. Initial annual review of departmental sick time use: More than 50% use of sick time in a reviewed year and/or career is noted and officers will receive a directive from the A/C of Operations, or his designee, requesting an explanation for the excessive use of sick time.
2. Noted officers will return a written explanation, within 3 working days, citing legitimate reasons for excessive sick time use, if any.
3. Officers determined to have used sick time excessively without legitimate reasons will meet with the A/C of Operations, or his designee, to develop a plan for improvement and will receive a Letter of Counsel.
4. A mid year review will be conducted on officers who have received a Letter of Counsel.
5. Subsequent to a Letter of Counseling, continued use of 50% or more of sick time without legitimate reasons will result in discipline as follows:
  - a. 1<sup>st</sup> offense: 1 day off without pay;
  - b. 2<sup>nd</sup> offense: 2 days off without pay;
  - c. 3<sup>rd</sup> offense: more severe disciplinary measures up to and including termination.

6. Officers subject to mid year review will be returned to annual review status after a one year period of time without illegitimate excessive sick time use.
7. Nothing in this policy will prohibit police administration from reviewing sick time use at any time other than the annual or mid year review period and taking corrective measures regarding officer's excessive use of sick time as detailed in this policy.