


AURORA POLICE DEPARTMENT DIRECTIVES MANUAL

10.02	Title: COMPLAINT AND DISCIPLINE PROCEDURES FOR SWORN MEMBERS	
	Approved By: Vanessa Wilson, Interim Chief of Police	
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	Associated Policy: DM 10.09, 10.10, 10.11, Form #233, Form#112	
	References: COA Charter 3-16(8), C.R.S. 24-31-305(2.5),C.R.S. 24-33.5-114	
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10.2 COMPLAINT AND DISCIPLINE PROCEDURES FOR SWORN MEMBERS

The following procedures apply to all allegations of misconduct except that complaints determined to be related to internal discrimination or harassment will be handled in accordance with Directive 10.9 - Discrimination and Harassment Complaint Procedure.

Pursuant to city charter, the Chief of Police determines discipline within the Police Department. The Internal Affairs Bureau (IAB) is supervised directly by the Chief. Nothing in this order precludes the Chief from monitoring or directly supervising an Internal Affairs investigation, from delegating this responsibility to the Deputy Chief or another senior command officer, or from consulting with the Division Chiefs or Deputy Chief about an investigation or proposed discipline at any stage in the process.

The chief of police should always consider the IRB in cases of serious misconduct or with the potential for substantial community impact in order to determine the appropriate level of discipline.

At any time during the processes addressed in this directive when there is a conversation between a supervisor and member involving a complaint, a supervisor may decide, or the member may request, that the following advisement be read into the record:

- i. You are being ordered to answer questions and/or provide a written statement in connection with an internal administrative investigation.
- ii. Your answers to those questions and/or your written statement must be truthful and complete. You must answer truthfully and completely all questions asked of you. Failure to do so will result in discipline, which could include termination.
- iii. The scope of the investigation is limited to activities, circumstances, events, conduct, or acts, which pertain to the incident that is the subject of the investigation.

- iv. The Aurora Police Department is requiring this information solely and exclusively for internal administrative purposes.
- v. No truthful information will be used in any criminal proceeding against you.
- vi. If the information you are ordered to provide is used for any purpose other than an internal administrative investigation, you may invoke your constitutional right to silence under the fifth and fourteenth amendments to the United States Constitution and rely specifically upon protections afforded you under the holdings in *Garrity v. New Jersey*

10.2.1 Definitions

Active Case

A case is considered active when the case is received by any department member. The case remains active until the conclusion of all appeals to the Civil Service Commission on all sustained violations for all members involved in the case or there are no findings of sustained violations for any member.

Initial inquiry

The initial actions taken by any supervisor who receives a complaint or becomes aware of a possible violation of policy, to determine the fundamental elements of such a violation. See further detail in Section 10.2.5 of this directive

Preliminary Administrative investigation

Steps taken by a supervisor to advance the investigation of a complaint beyond an initial inquiry or as the primary process to determine, among other possible factors: the degree of violation, where in the organization to best resolve the complaint and the potential level of resulting corrective action or discipline. See further detail in Section 10.2.6 in this directive.

Finding

The resolution or outcome of an internal investigation based on a complaint and supported facts and circumstances developed within that internal investigation. An investigated complaint will result in one of the following findings:

- a. **Unfounded**—A finding which indicates the act(s), complained of did not occur or did not involve police personnel.

- b. Exonerated—A final finding of a complaint of misconduct, which indicates the alleged action did occur but that it was justified, lawful, and/or proper.
- c. Not Sustained—A final finding of a complaint of misconduct that indicates an investigation failed to discover substantial evidence to prove or disprove the allegations made in the complaint.
- d. Policy Failure—The allegation is true, however, the action of the agency or member were in conformance with existing agency policy which led to an undesirable result; or the member's or agency's action violated existing policy even though such actions were reasonable given the totality of circumstances.

Any formal investigation with a disposition code of policy failure will require a memorandum explaining in detail the actual failure. The memo will be sent to the Professional Standards Section for further review.

- e. Sustained—A policy violation will be sustained if, after considering all of the supporting and contradicting evidence, violation of the policy has been established by a preponderance of the evidence. The term "preponderance of the evidence" means that the proposition is more probably true than not.
- f. Expired—A finding utilized only by the Chief of Police regarding a complaint received three or more years after the alleged event. All criminal complaints will be investigated to the extent possible regardless of the statute of limitations. Nothing precludes the Chief of Police from investigating serious allegations no matter how old they are determined to be.

For compliance reviews such as but not limited to a Force Review Board outcomes, the following recommendations can be forwarded:

- a. Compliance—A finding that indicates the member acted in accordance with policy.
- b. Noncompliance—finding that indicates the member did not act in accordance with policy.

10.2.2 Scope of Authority for Corrective Actions and Formal Discipline

- a. All Supervisors may impose the following performance oriented actions:
 - Counseling;
 - Training;
 - Oral Reprimand;
 - Performance Appraisal Entry;

- Corrective Action Report.
 - b. Sergeants may recommend disciplinary action be imposed, but will not formally participate in the disciplinary process.
 - c. Command officers may recommend disciplinary action. If a written reprimand is approved by the Chief of Police or designee, a command officer or equivalent rank will deliver the reprimand to the subject member.

When a command officer requests the issuance of a written reprimand, the command officer will complete and submit the written reprimand with an investigative summary through the chain of command to the Chief of Police or designee for approval prior to issuance.

- d. The Chief of Police may relieve a member from duty as an administrative action pending further investigation. Additionally, the Chief of Police may impose the following discipline, subject to provisions in City Charter:
 - Written Reprimand;
 - Reimbursement;
 - Suspension (The Chief may, at his or her discretion, authorize that the obligation to fulfill suspension time be met by substituting a commensurate reduction in annual leave time)
 - Demotion in Rank or Grade;
 - Dismissal from the Department.

The Chief of Police may defer or suspend all or part of any discipline he or she imposes. For comparable discipline purposes, the full discipline, including any deferred or suspended portions will be the discipline used for comparison.

When officer misconduct results in dismissal from the Department, the following information will be made available, in written communication, to the member:

- Reason for dismissal;
- Effective date of the dismissal;
- Status of accumulated fringe and retirement benefits after the dismissal;
- Content of the officer's employment record in or with relation to the dismissal.

10.2.3 Advisement

It shall be presumed by members that the following advisement and rules will apply to conversations between a supervisor and employee when the conversation is narrowly focused on the resolution of a complaint.

- a. You are being ordered to answer questions and/or provide a written statement in connection with an internal administrative investigation.
- b. Your answers to those questions and/or your written statement must be truthful and complete. You must answer truthfully and completely all questions asked of you. Failure to do so will result in discipline, which could include termination.
- c. The scope of the investigation is limited to activities, circumstances, events, conduct, or acts, which pertain to the incident that is the subject of the investigation.
- d. The Aurora Police Department is requiring this information solely and exclusively for internal administrative purposes.
- e. No truthful information will be used in any criminal proceeding against you.
- f. If the information you are ordered to provide is used for any purpose other than an internal administrative investigation, you may invoke your constitutional right to silence under the fifth and fourteenth amendments to the United States Constitution and rely specifically upon protections afforded you under the holdings in *Garrity v. New Jersey*.

10.2.4 Complaint Procedures

The Aurora Police Department utilizes an automated complaint process. This process requires members to access the complaint management system or the internet in order to fill out the appropriate complaint forms.

All information contained in a complaint report is considered confidential. Any member of the department who initiates or otherwise handles a complaint will keep the information confidential.

- a. Allegations from outside the department

Citizen/non-member complainants may use the computer version of the complaint form found on the internet, but are not restricted to this format. Complainants may utilize the paper version of the complaint form or any other written format. Complainants desiring to lodge a complaint verbally will be encouraged to complete a written complaint, but not required to do so. Supervisors in the department will accept all complaints in any reporting format the citizen chooses. Complainants may also contact the Internal Affairs Bureau directly.

Supervisors accepting a complaint, either verbally or in writing, will enter the complaint into the complaint management system. Any written documentation of the complaint provided by the citizen to a member will be scanned into an electronic format and attached to the electronic complaint as an exhibit.

Department supervisors will accept any complaint made against any member of the department in a professional manner. Supervisors may attempt to resolve the complaint, but will not attempt to dissuade any person from lodging a complaint against any member of the department. If the complaint is based on a misunderstanding or question of policy or procedure, and the supervisor is able to resolve the complaint, the complaint will still be added to the complaint management system as a citizen's inquiry and forwarded as any other complaint. The supervisor will note that the complaint was resolved with the complainant in the narrative portion of their entry.

- b. The "citizen's inquiry" is to document that a citizen called, should the complainant later imply that his/her concern was not taken seriously, but carries no points in the Personnel Early Intervention System (PEIS) and is not deemed a complaint. A call from a person, to ask a question is not making a complaint, and need not be documented unless documentation in the complaint system is determined to be appropriate by a supervisor or command officer. Likewise, a complaint based solely upon a dispute over the guilt or innocence of the complainant in the matter of a traffic violation or criminal summons need not be documented unless documentation in the complaint system is determined to be appropriate by a supervisor or command officer. The complainant will be referred to the appropriate court. The member or investigating supervisor may provide information related to the court process but should not discuss the details of the case. This is not a complaint and should not be entered into the complaint system as such.

Responses to surveys or questionnaires will not be treated as complaints.

Any non-supervisory member contacted by a citizen wishing to lodge an allegation against any member will immediately put the citizen in contact with a supervisor. If for any reason a supervisor is not immediately available, the member will obtain the citizen's name and phone number, the nature of the allegation, and forward this information to a supervisor as soon as possible, but prior to the end of shift. The non-supervisory member will also give the citizen the information on how to file a formal complaint utilizing the on-line complaint system found on the internet.

If the complainant does not wish to speak to a supervisor at the time of making the complaint, the member in contact with the citizen will provide the citizen the access information to file a complaint on-line.

Complaints received in the Chief's Office by mail, fax, email, or other means will be forwarded to the subject member's immediate supervisor for entry into the complaint management system and the supervisor will treat the complaint as if it was received directly by the supervisor.

Anonymous complaints from outside the Department will be accepted and investigated in the same manner as all other allegations.

c. Allegations by Members (to include all APD employees)

Members who wish to make an allegation against a sworn member are authorized to report directly to the Internal Affairs Bureau (IAB), his/her supervisor, or the supervisor of the member. Members who initiate an allegation against another member may enter their complaint into the on-line complaint system, or the complaint management system listing themselves as the complainant, or if the member chooses not to, the receiving supervisor or IAB Investigator will enter the information into the complaint management system.

The complaining member will not indicate the existence of or divulge the contents of his or her allegation to any other agency, officer, or individual, without proper authorization. The receiving supervisor will not indicate the existence of or divulge the contents of the allegation to any other agency, officer, or individual, without proper authorization. Nothing in this paragraph will interfere with the complaining member's privileged conversations with his or her attorney, licensed counselor, labor representative, peer support member, chaplain, religious counselor, or reporting his or her information to an appropriate legal authority.

d. Allegations by Supervisors

When a supervisor wishes to make a complaint regarding a subordinate because he or she witnesses or otherwise becomes aware of potential misconduct, and he or she is the first or second line supervisor of the subject member(s) allegedly involved, he or she will initiate an initial inquiry. If not the subject member's first or second line supervisor, he or she will gather enough information so that an initial inquiry can be started by the member's supervisor. The supervisor will enter or cause to be entered a complaint covering his or her allegation of wrongdoing into the complaint management system. Allegations made against more than one member, by a first or second line supervisor of one of the subject members, shall be considered initiated by a first or second line supervisor of all of the subject members, and an initial inquiry should commence.

Minor workplace performance issues, not received as a complaint from outside the department or from another member that can be corrected through training, counseling, or the issuance of a Performance Appraisal Entry (PAE) are not considered misconduct needing an initial inquiry and complaint entry.

e. Allegations Contained in Legal Documents

If allegations of misconduct are contained in legal documents, e.g., Notices of Intent, Complaints, etc., and there are no formal complaints against the member(s) involved other than those contained in such documents, no investigation will be conducted, unless ordered by a chief after consultation with the City Attorney's Office/Police Legal Advisor.

f. Routine and Customary Communication

Nothing in this directive will prohibit supervisors from performing or engaging in routine, normal, and/or customary supervisory and leadership communications for the purposes of counseling, training, and resolving minor discrepancies.

If answers to routine and customary questions somehow indicate to a supervisor or above that an initial inquiry or more formal investigation is appropriate, the processes outlined in, 10.2.5, and subsequent relevant sections, shall be followed. Routine and customary communication will not be used as a pretext to avoid the initial inquiry or investigation conditions in this directive.

g. Delayed Complaints

Complaints received three years or more after the alleged event will be assessed by the Chief of Police or designee to determine the degree of investigative resources to be invested. All criminal complaints will be investigated to the extent possible regardless of the statute of limitations. Nothing precludes the Chief of Police from investigating serious allegations no matter how old they are determined to be.

h. Reporting

On a quarterly basis, the Internal Affairs Bureau Commanding Officer will provide a report to the Chief of Police detailing the status of all complaints entered into the complaint management system.

10.2.5 Initial Inquiry

All complaints will generally start with the named member's immediate supervisor; however, any supervisor may receive and conduct an initial inquiry into a complaint. Additionally, if the supervisor believes the alleged conduct is such that it may result in discipline beyond a 40-hour suspension, or bring the agency into disrepute, the supervisor may forward the complaint directly to IAB for review and determination.

An initial inquiry is designed to gather necessary facts and information concerning the allegation, to determine if any law, ordinance, directive, standard operating procedure, or other city policy may have been violated or a potential for a policy failure exists. The supervisor will ask the alleged subject member(s) questions narrowly focused to the specific complaint to determine clarifying facts, **except where the allegation against the subject of the initial inquiry implies potential criminal conduct**, in which case Department Directive 10.10: Criminal Investigations Involving Members will be adhered to. The supervisor will advise the subject member that he or she is conducting an administrative investigation prior to asking these questions. These questions, narrow in scope to the complaint, will be focused on establishing the facts of the case to determine: if a violation of policy has occurred, who the violator(s) is/are and the degree of violation.

If, through this process, or on its face, it appears there is a violation which if sustained, would result in discipline greater than a written reprimand, the supervisor will serve a Notice of Investigation and comply with associated protocols as defined in the following sections.

10.2.6 Preliminary Administrative Investigation.

- a. Members are reminded that they are required to cooperate in a department investigation and to answer questions by, or render material and relevant statements to, a supervisor or an internal affairs investigator. Members will answer all questions fully and truthfully and will not omit any material facts. The requirement to answer questions as stated in this directive is compelled and is not voluntary. Failure or refusal to fully and truthfully cooperate, may subject the member to discipline up to and including termination.
- b. Should the supervisor decide, or the member request, the following advisement shall be read into the record:
 - i. You are being ordered to answer questions and/or provide a written statement in connection with an internal administrative investigation.
 - ii. Your answers to those questions and/or your written statement must be truthful and complete. You must answer truthfully and completely all questions asked of you. Failure to do so will result in discipline, which could include termination.
 - iii. The scope of the investigation is limited to activities, circumstances, events, conduct, or acts, which pertain to the incident that is the subject of the investigation.
 - iv. The Aurora Police Department is requiring this information solely and exclusively for internal administrative purposes.

- v. No truthful information will be used in any criminal proceeding against you.
 - vi. If the information you are ordered to provide is used for any purpose other than an internal administrative investigation, you may invoke your constitutional right to silence under the fifth and fourteenth amendments to the United States Constitution and rely specifically upon protections afforded you under the holdings in *Garrity v. New Jersey*
- c. As part of a complete and thorough investigation, the investigating supervisor will make reasonable attempts to contact and discuss the incident with the complainant(s). The investigating supervisor should speak with witnesses, including other involved members to determine the scope and nature of the allegation. Whenever possible, a written statement will be obtained from the complainant and other available witnesses. All written statements will be scanned and attached to the electronic report as an exhibit in the complaint management system. During this inquiry, the investigating supervisor will determine if the allegation is merely a lack of understanding on the part of the complainant, or misconduct by the involved member.

If a procedural or statutory explanation exist, or if the complaint emanates solely from a lack of communication, or miscommunication, the supervisor should attempt to resolve the case with the complainant by explaining appropriate statutory or procedural requirements or by addressing the miscommunication. The complaint can be categorized as resolved in the tracking narrative of the report in the complaint management system and tracked through the chain of command to the commander or equivalent within the respective chain of command for review and conclusion.

The supervisor may also recommend mediation based on the criteria above, described further in Directive 10.12 Mediation.

- d. If the initial inquiry reveals a violation committed by a member, which, if sustained, would result in the issuance of a suspension of 40 hours or less, the investigation may be completed by the initiating supervisory officer's chain of command. To make this determination, the case will be tracked in the complaint management system to the commander or equivalent rank through the chain of command for review.

The commander or equivalent position in that chain of command will determine, based on the investigation, whether the case will be concluded at the district/bureau/section level, or whether it should be forwarded to the Internal Affairs Bureau for further action.

- e. If the initial inquiry reveals the possibility of criminal conduct on the part of the member, the investigation will be handled in accordance with Department Directive

10.10: Criminal Investigations Involving Members. The investigating supervisor will contact the duty executive who will determine the appropriate investigative unit/team(s) to be assigned to conduct the criminal investigation. The original complaint, if already added to the complaint management system, will be forwarded to the IAB commanding officer.

- f. If the initial inquiry reveals a policy failure exists, the investigating supervisor will note that in the complaint report.
- g. The assigned investigating supervisor will complete the initial inquiry in an expeditious manner.

10.2.7 Notice of Investigation

A member will be issued a Notice of Investigation (NOI) if he or she is the subject member of a Preliminary Administrative Investigation where the possible discipline is greater than a written reprimand, or a formal investigation, or:

- the member is required to submit financial disclosure statements;
- the member is required to submit to any test, e.g. breath test, blood test, urine sample, hair follicle test, fitness for duty, etc., as deemed necessary for any internal investigation. Random breath test, blood test, urine sample, or hair follicle test because of a member's rank or assignment will not constitute the need for an NOI.

The NOI will include a synopsis of the incident under investigation outlining the specific nature of, and the member's status, in the investigation. The allegations of misconduct for which the member will be interviewed will be documented, not necessarily in policy specific language.

Prior to an NOI interview, the member will review the NOI form, sign it and will be provided a copy of the signed and dated form. If during an interview, additional allegations are identified, the supervisor will stop the interview, prepare an additional NOI, and serve it to the subject member.

- Supervisors conducting Preliminary Administrative Investigations will not rely on a "blanket statement" to put the member on notice that other issues of misconduct will be investigated.

Members involved in Critical Incidents may be issued a Notice of Investigation – Critical Incident. This NOI is only issued under the authority of the Internal Affairs Bureau Commanding Officer. Anytime a Critical Incident is suspected to have occurred, the IAB Commanding Officer will be contacted prior to any Preliminary Investigation or issuance of an NOI.

Subject members told of an investigation will not discuss any knowledge they have of the case with any other member or outside source. Nothing in this paragraph will

interfere with the subject member's privileged conversations with his or her attorney, licensed counselor, labor representative, peer support member, chaplain, or religious counselor.

Any other member who learns of an investigation will not discuss any knowledge he or she has of the case with any other member or outside source other than the IAB, supervisors conducting an investigation related to the case, criminal investigators conducting an investigation related to the case, and/or among the executive staff.

10.2.8 Preliminary Administrative Investigation

Note: An initial inquiry may serve as a preliminary administrative investigation if the information gathered is sufficiently thorough and complete.

Once a supervisor's initial inquiry indicates that a directive or standard operating procedure may have been violated, the complaint will be tracked through the chain of command to the commander or equivalent rank within the respective chain of command for review. Cases where the discipline would be greater than a forty (40) hour suspension will be tracked to the appropriate division chief with a recommendation to be assigned to the Internal Affairs Bureau.

Cases that involve a minor violation that is most likely a training or unprofessional demeanor issue will be assigned to the subject member's direct supervisor for resolution. Normally, allegations that involve violations of policy or procedure but have little effect on operations, or, create a small degree of risk and/or liability to the member or the department may be handled with a Corrective Action Report, Performance Appraisal Entry, counseling, or possibly a Written Reprimand.

Cases that require a more thorough investigation and may result in a recommendation for discipline higher than a written reprimand and no more than a forty (40) hour suspension, will normally be assigned to a command officer for investigation. Cases where the subject member is a sergeant, acting sergeant, or above, will be assigned to a command officer for investigation.

Cases where the resulting discipline would range from greater than a written reprimand to a forty (40) hour suspension may be eligible for resolution through the Negotiated Discipline Settlement Agreement as defined in Section 10.2.14 of this directive. It may also be determined by the commander or equivalent rank that the case be concluded at the district/bureau/section level.

The subject member of a preliminary administrative investigation will be issued a NOI under the following circumstances:

- a. The member will be interviewed by a supervisor for an allegation of misconduct which the member is the subject of the investigation; and, a supervisor has

advised the member that the investigation may result in formal discipline greater than a written reprimand.

- b. The member is required to produce any documentation, including memoranda, related to an allegation of misconduct investigation, which may result in formal discipline greater than a written reprimand.

The NOI will include a synopsis of the incident under investigation outlining the specific nature of, and the member's status in, the investigation. Further, it will outline the allegation of misconduct for which the member will be interviewed and will be documented on APD Form 112.

Prior to a preliminary administrative investigation, the member will review the NOI form, and sign it. They will be provided a copy prior to departure from the interview. If during an interview, additional allegations are identified, the supervisor will stop the interview, prepare an additional NOI addressing the added elements to be investigated and serve it to the subject member who will review it, sign it and receive a copy.

Further, the subject member will be allowed an observer (see 10.2.9 Observer/Representative) pursuant to observer conditions as defined in Form 111.

Preliminary Process

- a. The investigating supervisor conducting a preliminary administrative investigation will electronically record all relevant interviews with equipment provided by the department. Subject members who are interviewed during a preliminary administrative investigation may also electronically record or take notes of the interview.

Until the conclusion of the preliminary administrative investigation, the investigating supervisor will retain all tapes, notes, and reports. Except for the notes and recordings of the member or observer, the tapes, notes and reports should be uploaded into the complaint management system as exhibits. Subject members will not be allowed access to the investigative materials until the case has been concluded or set for a negotiated settlement. In the event the case is sent to IAB for a formal investigation, all original tapes, notes, records and reports will be forwarded to IAB, copies of all will be uploaded to the complaint management system. Once the supervisor is sure that IAB has the tapes, notes, digital records and reports, he or she will delete any copies that remain in his or her possession or control. At the conclusion of any discipline, counseling, or retraining subsequent to the preliminary administrative investigation, the subject member's notes and/or electronic recording of the NOI interview may be returned to the member. The supervisor's notes and recordings will be uploaded to the complaint management system as exhibits.

- b. Supervisors conducting a preliminary administrative investigation into an allegation of misconduct will complete the investigation in an expeditious manner. The investigating supervisor's immediate command officer may grant extensions as necessary.
- c. If, at the conclusion of the preliminary administrative investigation, the investigator believes the allegation cannot be handled at the district/bureau/section level, or believes the final discipline could be greater than a forty (40) hour suspension, the case shall be forwarded or tracked, with an entry requesting that the case be investigated by the IAB, through the chain of command to the subjects' commander or equivalent rank in the complaint management system. All reports, forms, associated documentation or materials collected during the preliminary administrative investigation will accompany the request for formal investigation.

The commander or equivalent position in the chain-of-command will make the determination on whether an investigation should be concluded by the Internal Affairs Bureau or at the district/bureau/section level.

- d. Supervisors conducting preliminary administrative investigations will notify the complaining citizen, government official, or member either verbally or in writing of the status of the complaint. The investigating supervisor will indicate in the administrative management system how the complainant notification was accomplished, i.e. by phone, e-mail, mail.

If the complainant is not satisfied with the resolution of the case, he or she may contact the next command officer in the chain of command. The supervisor will provide contact information to the complainant.

10.2.9 Observers/Representatives

Observers must adhere to the observer conditions as defined in this section and the Acceptance of Observer Conditions form while participating in any and all processes. Observers are allowed in the following disciplinary processes:

- Internal Affairs Interview
 - Investigative Review Process (IRP)
 - Negotiated Discipline Settlement Agreement (NDSA)
 - Accelerated Discipline
- In order to avoid a conflict of interest or the appearance of a conflict of interest, observers and representatives cannot be the subject member's subordinate, supervisor or within the subject member's chain of command either currently or at the time of the alleged misconduct. In addition, the observer or representative cannot be anyone who has had any role in the

incident or matter under investigation, even as a potential witness or peripheral party.

- If the subject member chooses to have an observer present for the IAB interview, the observer must be present at the scheduled time and place. Should the observer arrive after the scheduled interview time and the interview has begun, the observer will not be permitted to attend the in-progress interview. Prior to the interview, the IAB investigator and the observer will acknowledge the “Acceptance of Observer Conditions” into the formal record.
- Before serving as an observer in a formal investigation, or representative, the member must meet with the IAB commanding officer or his/her designee to be briefed on department policy regarding the responsibilities of the observer and representative roles.
- The observer shall not turn the interview into an adversarial proceeding. The observer may not interfere with the questioning or investigation, will not give any advice that would be contrary to complete honesty and truthfulness, and will not discuss the case with any member of the department or any other person the observer knows or reasonably should know will be interviewed as a witness during the formal investigative process while the case is open (as defined in Department Directives 10.2 and 10.3). The materials present in the room during the course of the interview are not available for review, perusal, or access without the consent of the internal affairs investigator. The observer’s presence is a privilege extended by the Chief of Police, and any violation of these conditions may result in forfeiture of this privilege for the current investigation and for that observer’s presence in future investigations.

Observer/Representative Compensation

a. Observer

If a sworn member is asked to participate as an observer during an accused subject member’s interview (including preliminary, formal and IAB interviews), the following procedures will be adhered to:

- If authorized and on-duty, the member will be allowed use of duty time to serve as an observer;
- Should the requested member be off-duty, he/she will receive straight-time compensation for time spent in an observer role.

b. Representative

Representatives participating in the IRP will be allowed up to four (4) straight-time compensation hours to assist with the review of a completed Internal Affairs Bureau case. If more than four hours is reasonably required to perform this task, the representative may request approval of the Deputy Chief for additional time compensation. The Internal Affairs Bureau Commanding Officer will make an entry into the current scheduling system for the representative.

Representatives participating in the IRB process will be allowed straight-time compensation for that time spent in hearing. The Internal Affairs Bureau investigator present at the IRB hearing will enter the appropriate time into the current scheduling system for the representative.

10.2.10 Formal Investigations (IAB)

The Internal Affairs Bureau commanding officer or designee will receive allegations of misconduct as outlined in this directive. The IAB has the authority of the Chief of Police to conduct investigations without interference or obstruction by any member. The Chief, or designee, may assign the investigation to any member or appropriate outside entity should the Chief or designee decide not to have IAB investigate an allegation. Formal investigations will be conducted according to IAB Standard Operating Procedures.

If a complaint concerns misconduct by the Chief of Police, the IAB will forward a copy directly to the City Manager

Members who are the subject of a formal investigation will be provided a Notice Of Investigation (NOI) prior to being interviewed.

Members who are the subject of a formal investigation are allowed to have an observer present during interviews (refer to the section on Observers). If the subject member has not arranged to have an observer present, the interview will commence.

At the end of the Internal Affairs investigator's questioning, the investigator will allow the subject member to add information related to the case, to the record, should he or she feel that important information was not obtained in the interview. The investigator will allow the observer to suggest questions to the investigator that are narrow in scope and relevant to the case, that the observer feels were not covered during the interview. The investigator will determine if these questions will be asked of the subject member. At no time will the observer directly question the interviewer or the subject member. The investigator may ask additional questions of the member to complete the interview. The subject member is under the same standards of truthfulness regardless if the statements are made on his or her own volition, or in response to questions posed by the investigator.

If a formal IAB investigation is authorized and includes the charge of 14.1.5 (Conformance to Law) and the matter was also the subject of a criminal investigation, and the criminal investigation has been closed, the entire criminal investigation will be attached as an addendum to the IAB case. Identifying information about witnesses, victims and confidential sources and methods may be redacted from the copy of the criminal investigation that is appended to the IAB case at the direction of the Chief or Deputy Chief and pursuant to applicable records disclosure law.

If a formal IAB investigation does not include the charge of 14.1.5 (Conformance to Law), but, the matter was also the subject of a criminal investigation, the criminal investigation may be attached as an addendum to the IAB case at the request of the member or the IAB Investigator. The member will be informed that a criminal investigation was conducted. Identifying information about witnesses, victims and confidential sources and methods may be redacted from the copy of the criminal investigation at the direction of the Chief or Deputy Chief and pursuant to applicable records disclosure law.

10.2.11 Investigative Review Process

The Investigative Review Process (IRP) occurs at the conclusion of the IAB investigation, and prior to the IAB report being sent to the IAB Commanding Officer for recommendations. At that time, the IAB Investigator will notify the subject member that the case is available for the IRP. The subject member will have fourteen (14) calendar days to review the report and make note of any issues in dispute.

- a. The subject member may opt to have an observer appear with him/her or on his/her behalf at the review;
- b. If agreed to by both IAB and the subject member, the fourteen-day review period may be reduced or extended;
- c. If in the determination of the Chief, there is an important organizational need to expedite the IRP process, validated by the Chief in writing and made part of the file, the Chief may at his/her discretion shorten the IRP process. If the process is shortened, the member will be notified in writing. The member will be afforded duty time, compensatory time and/or overtime to properly review the file;
- d. Subject members will not remove the report from the IAB offices at any time during their review. Subject members will not be allowed to copy any portion of the report. Subject members may bring a representative with them to review the report;
- e. Subject members and their representative are permitted to take notes during their review of the investigation. These notes will remain in IAB and can be referred to during the IRP.

- f. The IAB investigator will also notify the subject member of the date and time of his/her final IRP meeting. The final IRP meeting will be considered a duty assignment under Department Directive 14.2.13 Neglect of Duty. The review of the investigation must be completed prior to the IRP meeting. Disputed issues, including the need for further or clarifying investigation, will be discussed at this time in an attempt to reach an agreement or understanding as to the content of the report. If no agreement on the issues can be reached, the subject member may attach a Letter of Dispute to the file prior to submission to the Chief's Staff for review. The subject member will have seven (7) calendar days to prepare and submit a signed, Letter of Dispute. A Letter of Dispute is intended to address perceived inadequacies in the internal investigation such as a failure to interview a witness, a failure to inquire into certain areas during a witness interview or a failure to collect evidence. A Letter of Dispute is not an appropriate forum in which to raise defenses to the alleged policy violations or present mitigating information, issues which are more appropriately included in a Letter of Defense;
- g. In complex investigations, where the member desires to use his/her IRP notes to prepare a Letter of Dispute, he/she must appeal to the Chief of Police or designee. The Chief or designee will decide if the use of notes is appropriate. If appropriate, the Chief or designee will inform the IAB Investigator. The IAB Investigator in the presence of the member will number and copy the page(s) of notes. The originals will remain in IAB and the copies provided to the member. The IAB Investigator will advise the member of the guidelines for having a copy of the IRP notes using form APD 192. The guidelines are:
- the member will not make copies of the notes in any form;
 - the member will not provide information from the investigation or notes to any other member of the Department, except his/her APA or FOP observer listed on the form;
 - the member will not provide information from the investigation or the notes to the public;
 - the member will not provide information from the investigation or the notes to the media;
 - the member will not use the notes to conduct a parallel investigation;
 - the member will return the copy of the notes to IAB along with the Letter of Dispute. Upon return of the notes to IAB, the IAB Investigator will verify all pages of the notes were returned;
 - members are reminded that Department Directive 10.2.19(h) specifically forbids conducting parallel investigations. Members are reminded that the initial notification of investigation from the IAB Investigator and the Notice of Investigation form, are direct orders not to discuss the case;
 - at the discretion of the Chief of Police, an IRP may begin prior to an IA case being completed.

- h. Duty time is authorized for a subject member to review the investigation report and to meet with the IAB investigator over disputed issues;
- i. If the case proceeds to an Independent Review Board (IRB) hearing, the subject member will be permitted to retrieve his/her notes and remove them from IAB for use in preparation for his/her IRB hearing.

10.2.12 Formal Investigation Dispositions

The IAB Commanding Officer will review each completed IAB case after the IRP process has concluded. The IAB commanding officer will ensure the case is complete and make a recommendation of finding for each alleged violation in the case. The IAB commanding officer can make one of the finding recommendations as defined in the definition section (10.2.1) of this directive for each alleged violation.

10.2.13 Chief's Review Board

Note: nothing in this section prevents the Chief of Police from exercising his or her prerogative in reversing or modifying a finding or determining levels of discipline.

Further, a member of the city's Human Resources (HR) department will be part of the Chiefs Review Board (CRB). The HR representative will simply provide input as to the continuity between proposed discipline and that of historic imposed discipline within the city with similar cases. The HR representative will not deliberate in the outcome(s) defined in 10.2.13 (a). The IAB command officer will provide the completed case to the Deputy Chief of Police and will notify the subject member/members' division chief(s), and bureau/district commanding officer(s) that the case is available for review. The IAB case will not leave the Chief's Office for the review.

The subject member of the investigation may send a Letter of Defense to be added to the file for the Chief's Review Board's use. A Letter of Defense is sent to the Internal Affairs commanding officer prior to a recommendation of findings to provide a defense or mitigation for the member's misconduct or alleged misconduct contained in the IA file. The Letter of Defense accompanies the case to the CRB for consideration and is ultimately scanned and entered into the electronic file as an exhibit but not included as part of the IAB investigative file. Once the involved chiefs and commanding officers have read the case, the Deputy Chief, on behalf of the Chief of Police, and as part of the deliberative process, will convene a CRB. The CRB will be chaired by the Deputy Chief and consist of:

- the subject member's Division Chief;
- the subject member's Bureau/District Commanding Officer; and
- the IAB Commanding Officer.

The CRB may see the advice of the police legal advisor during the review process. Should the case involve a conflict of interest with the Deputy Chief or involve a member who reports to the Deputy Chief without a division chief in his or her chain of command, the Deputy Chief will appoint a division chief to be the chair. Should the case involve a conflict of interest with the subject member's bureau/district commanding officer, the Deputy Chief may appoint another supervisor in the member's chain of command or may appoint a division chief to take the bureau/district commanding officer's position in the CRB.

Should the case involve subject members with different chains of command, one CRB will be convened for all involved subject members.

- a. The CRB will review the case, discuss the recommendation of finding from the IAB Commander and decide one or more of the following:
 - Send the case back to IAB for more investigation;
 - Accept, reject, or modify some, all, or none of the recommended findings of the IAB Commander.
 - Recommend post-CRB accelerated disciplinary process (see Section 10.2.13 (b) below) based on:
 - A finding of a sustained violation
 - A recommended discipline of no more than a 40-hour suspension

If the CRB determines a finding of sustained for any allegation of misconduct, or noncompliance for any compliance review, the CRB will make a recommendation of discipline to the Chief of Police. The CRB may also recommend additional training, counseling, or other intervention for the involved subject member. The IAB Commander will not participate in the discipline discussion or recommendation, other than to provide comparable discipline examples. The CRB may convene more than once to determine findings and then discipline.

If the CRB determines a finding other than sustained for any allegations of misconduct, the board may still recommend additional training, counseling, or other intervention for the involved subject member(s).

The affected subject member(s) will be informed of the findings and, if applicable, discipline recommendation(s) of the CRB in a letter from the chair of the CRB. A copy of the letter will be forwarded to the IAB for inclusion in the case file.

a. Post-CRB accelerated disciplinary process

The purpose of this variation is to:

- Streamline the disposition of appropriate cases formally investigated by IAB
- Allow commanders to have more involvement in cases
- Reduce anxiety for members by not having to meet with the Chief; and
- Provide opportunity for members to have more input in the final outcome of their case

In the event a complaint is addressed through a formal investigation and there is a sustained violation, the case may be re-directed through the post-CRB accelerated disciplinary process for final disposition under the following conditions:

- Member is fully and credibly cooperative
- Member acknowledges mistakes and accepts responsibility
- Chiefs review board sustains the violation; and
- A recommended discipline of no more than a forty (40) hour suspension

Should the post-CRB accelerated disciplinary process be deemed appropriate, it will be inserted into the process flow as follows:

- a. The case will be sent to the member's commander or equivalent rank to begin the post-CRB accelerated disciplinary process. The member and commander or equivalent rank, will attempt to reach a mutually agreeable outcome for discipline. The sustained finding will not be subject to negotiation. If an agreement for discipline is reached, the case is considered settled and it is forwarded to the chief's office for final approval.
- b. If there is no agreement between the parties, the case will be scheduled for pre-and final-disciplinary hearings with the chief. If, after the pre-and final-disciplinary hearings, the member is not in agreement with the chief's final decision, appeal rights apply.

10.2.14 Negotiated Disciplinary Settlement Agreement Processa. Purpose:

The purpose of this portion of the policy is to define the use of a Negotiated Disciplinary Settlement Agreement (NDSA) process in order to provide efficient resolution of Departmental Directives violations requiring limited formal discipline without the necessity of a formal Internal Affairs investigation.

Misconduct allegations do not require extensive investigation when clear and verifiable evidence demonstrates that a violation of Departmental Directives and/or City of Aurora policies and procedures has occurred, and/or the accused member does not contest the allegations. In such cases, an NDSA can provide a more efficient, timely resolution using minimal Departmental resources. It is beneficial to all parties involved to resolve complaints fairly and efficiently in order to maintain public trust in the Department and to provide an improved sense of procedural justice for its employees.

NDSAs are offered at the discretion of the Chief of Police or designee and are not a “right” or “entitlement.” At any point during the process, subject to the final approval by the Chief of Police or designee, the matter may be referred to the IAB for a formal IAB investigation.

b. NDSA eligibility determination:

When an internal or external complaint is entered in the complaint management system, and the initial inquiry has been completed, it will be routed through the chain of command to the commander. Cases where the resulting discipline would range from greater than a written reprimand to a forty (40) hour suspension may be eligible for resolution through the Negotiated Discipline Settlement Agreement. It may also be determined by the commander or equivalent rank that the case be concluded at the district/bureau/section level.

Cases may also be deemed appropriate for resolution through the NDSA by the IAB commander if, after a formal investigation, the proposed discipline range would reflect between a written reprimand and 40-hour suspension.

For purposes of this Directive, “commander” refers to the highest ranking command officer or civilian manager below the rank of division chief in the member's chain of command. Such members shall be eligible and designated to conduct the NDSA process.

The IAB commander or designee will add notes to the AIM tracking indicating that the matter is eligible for the NDSA process. The tracking notes will include a range of discipline based on the comparable discipline for prior similar policy violations resulting in a 40-hour suspension or less. The tracking will be set as due in 5 days to ensure that the process continues in an expedient manner.

c. Eligible and Ineligible Matters:

The NDSA is primarily designed for situations where the facts of what occurred are not in dispute and there is no need for additional investigation, including, but not limited to, the following:

1. The incident is witnessed by other Department members or clearly documented on Body Worn Camera or other surveillance video, which establishes little dispute as to the underlying facts of the incident.
2. The member failed to appear for a duty assignment or court.
3. Unintentional Discharge of a Weapon (either lethal or less-lethal not involving injuries, significant property damage, or other aggravating factors).
4. Police Vehicle Collisions where the Collision Review Process has determined enough points exist for formal discipline consisting of a written reprimand or suspension of 40 hours or less.
5. The subject member self-reports or admits to a Directives violation eligible for the NDSA process.

The NDSA will NOT be used in the following circumstances:

1. When a member is arrested or charged with of a violation of municipal, state, or federal law.
2. Where the anticipated or comparable discipline, generally, is greater than a 40-hour suspension.
3. Any allegation of misconduct that is the subject of pending or anticipated civil litigation, unless authorized by the Chief of Police.
4. Any allegation requiring additional investigation, numerous witness interviews, or evidence collection that would be more efficiently and effectively handled by a formal IAB investigation.
5. When additional information is discovered during the NDSA process that would make the incident ineligible for the NDSA process for any reason.
6. When a formal IAB investigation is ordered by the Chief of Police or IAB Commander.
7. Upon request of the Commander or accused member when the member cannot reach a NDSA with his/her Commander.

d. NDSA Process and Presentation Meeting

Upon receipt of the complaint from IAB indicating that the complaint qualifies for a NDSA, the member's Commander will schedule a Presentation Meeting with the accused member to discuss the complaint and the NDSA process. Ideally, this meeting should be scheduled as soon as practical within 10 working days from the date the

Commander receives the complaint from IAB, however, allowances may be made for previously scheduled leave, training, emergencies, etc.

The member's Commander will conduct the Presentation Meeting in accordance with existing Department Directive 10.2.6 Preliminary Administrative Investigations and will electronically record the meeting. Most complaints that qualify for the NDSA process should not require additional investigation when assigned to the Commander; however, nothing in this Directive prohibits the Commander from delegating any additional investigative responsibilities required to an appropriate supervisor in his/her chain of command.

At the presentation meeting, the Commander will present the accused member with a Notice of Investigation (APD Form 112) detailing the incident and Directives violation, an Acceptance of Observer Conditions Form (APD 111), as well as the proposed discipline based on the comparable discipline for similar violations.

The Commander will discuss the incident with the accused member and will provide the accused member with access to any supporting evidentiary documentation, body worn camera video, etc. that was used in the investigation.

The Commander should allow the accused member the opportunity to present any facts in mitigation at this time. Based on the information received during the Presentation Meeting, the Commander may elect to adjust the proposed discipline up or down within the guidelines of the NDSA process listed below.

e. Options Following Presentation Meeting

At the conclusion of the Presentation Meeting, the accused member has three options:

1. Immediate Resolution: The member may elect to immediately accept the sustained allegation and the Commander's recommended discipline/outcome. If the member selects Immediate Resolution, the NDSA Resolution Form 233 will be completed by the member and his/her Commander, who will forward it to the Chief of Police for approval and signature. The Chief's office will return the signed original form to the IAB Commander who will ensure that it is placed in the member's Internal Affairs file. The matter is considered resolved at this point.
2. Reflection Period: The member may elect to have a time period of up to 5 calendar days to consider the findings and the recommended discipline/outcome prior to making a decision. No later than the end of that 5-day period, the member must either select option #1 above or option #3 below. If the member fails to respond, option #3 will be deemed the default option selected.

If the member does not select Immediate Resolution of the issue at the Presentation Meeting and opts for a Reflection Period, the Commander will immediately schedule a Settlement Meeting as soon as practical and as close to the expiration date of the Reflection Period as practical, but no more than 10 calendar days out. Again, allowances may be made for previously scheduled leave, training, emergencies, etc.

The date of the scheduled Settlement Meeting and expiration date of the Reflection Period, if selected, will be documented in this manner as well. If a reflection period is selected, the Commander will track the IAB Commander and the accused member in AIM, with the due date set for 10 days and the Role set as: "FYI only".

The Settlement Meeting may be rescheduled for emergencies or court attendance that would prevent the member from attending the Settlement Meeting and/or prevent him/her from communicating with his/her Commander on the date of the Settlement Meeting.

3. Request a Formal Internal Affairs Investigation: The member may request, in writing, to have the case formally investigated by the IAB subject to the approval of the Chief of Police or designee (IAB Commander).

The Commander shall document the member's selection of one of the above options in the tracking notes in AIM. The member shall be tracked at this time and shall electronically sign and close his/her tracking in the AIM entry.

f. Settlement Meeting

Should the member select option #2, the Commander will schedule the Settlement Meeting, which is the final meeting in the NDSA process. The accused member will NOT be allowed a third opportunity to consider the sustained allegations and recommended outcome in the NDSA process.

During the time prior to the scheduled Settlement Meeting, the member shall consider the settlement proposal and be prepared to discuss the recommended outcome. The member shall be prepared to present any facts in mitigation and make a decision at the Settlement Meeting. The member may also secure the advice or attendance of an APA/FOP observer at the Settlement Meeting; however, the availability of an observer shall not be cause to unreasonably delay any scheduled meeting. The participation of member observers in the NDSA process is governed by this directive in section 10.2.9 concerning observers. The Acceptance of Observer Conditions Form (APD 111) will also be used during the NDSA process if an observer is present and will be uploaded into AIM.

At any point prior to or during the Settlement Meeting, the member may opt for a NDSA if the accused member communicates this to his/her Commander in writing. The NDSA Resolution Form (APD 233) will be completed by the member and the Commander and forwarded to the Chief of Police for approval and signature. The Chief's office will return the signed original form to the IAB Commander who will ensure that it is placed in the member's Internal Affairs file. The matter is considered resolved at this point.

At the Settlement Meeting, the accused member may negotiate the recommended discipline, which must be within the range established by IAB based on comparable discipline for similar violations. The member's APA/FOP Observer may be present at the Settlement Meeting but is only there in an advisory role and may not directly negotiate for the member. The observer is still bound by the conditions of directive section 10.2.9.

The member and the Commander should make every effort to negotiate a settlement. Cooperation and communication by both the member and the member's Commander is essential for the effectiveness of the NDSA process.

At the conclusion of the Settlement Meeting, the available results are:

1. The member accepts responsibility and the negotiated settlement. The member and his/her Commander sign the NDSA Resolution Form (APD 233) indicating resolution of the matter, or:
2. The accused member does not communicate a selection during or before the designated Settlement Meeting date/time and/or the member fails to appear at the Settlement Meeting, the member will be deemed to have selected to have the matter sent to the IAB for a formal IAB investigation (Option #3 above). The Commander will document this in his/her tracking notes and track the case back to the IAB Commander in the AIM system.
3. The member does not accept responsibility, does not agree to sign the NDSA Resolution Form, and/or does not agree with the discipline recommended. If the accused member is unable or unwilling to accept responsibility for the sustained allegation(s) after the Presentation Meeting, Reflection Period, and Settlement Meeting, and/or refuses to sign the NDSA Resolution Form, and/or does not agree with the discipline proposed by the Commander, then the Commander will track the complaint back to the IAB Commander in AIM.

The IAB Commander, upon approval of the Chief of Police, will then assign the investigation to an IAB investigator for a formal IAB investigation consistent with Department Directives. The member shall be given the opportunity to review the NOI and any audio recordings from the NDSA process prior to any interviews conducted by IAB.

If the accused member has agreed to accept responsibility for his or her behavior but disagrees only with the extent of discipline proposed, every effort should be undertaken to resolve the disagreement during the Settlement Meeting to avoid a formal IAB investigation.

The member's Commander and/or the accused member may request, at any point in the process, the assistance of the IAB Lieutenant or IAB Commander to assist with the negotiations to resolve the matter. However, if an acceptable resolution cannot be agreed upon, the case shall be returned to the IAB for a formal IAB investigation upon approval of the Chief of Police.

If the matter is resolved at either the Presentation or Settlement Meeting, then that shall constitute a Pre-disciplinary Hearing as defined by directive section 10.2.15. As such, that meeting shall be conducted in accordance with the provisions of that Directive and shall be digitally recorded. The member's Commander is responsible for ensuring that the digital recording of the meeting is uploaded into the AIM system.

g. Extraordinary Circumstances Extension

If the accused member's Commander determines during the Presentation or Settlement process that extraordinary circumstances exist and that additional time for review or consideration of new information would be in the best interest of the Department or accused member, the member's Commander may request an extension of up to 10 additional calendar days with the approval of the IAB Commander.

h. Confidentiality:

To assure the integrity of an ongoing investigation prior to closure of the complaint, the member and any department members involved in the NDSA process are required to maintain the confidentiality of the complaint and investigation as required by Department Directive 10.2. and/or 10.3 Failure to maintain confidentiality may result in separate disciplinary action.

i. Additional Information:

Commanders, with the approval of the Chief of Police, are authorized to hold in abeyance all or part of any suspension time imposed. For comparable discipline purposes, the full discipline, including any deferred or suspended portions will be the discipline used for comparison. Nothing in this Directive shall limit or preclude exoneration of the accused member, or the resolution of the matter by alternatives to formal discipline if compelling mitigating facts are presented during the NDSA process which support exoneration or the use of an alternative to formal discipline as being in the best interest of the Aurora Police Department and/or the accused member.

Members who elect to negotiate discipline through the NDSA process will waive their right to an IRB and right to appeal the imposed discipline to the Civil Service Commission. The NDSA Form will notify the member of this stipulation and the member's signature on the form will serve as his/her acknowledgment that he/she is voluntarily relinquishing his/her right to appeal the discipline. In addition, the member also acknowledges that he/she relinquish his/her right to the Investigative Review Process and Independent Review Board

j. Post-NDSA formal IAB investigation

Should the Department receive any new information regarding the original matter that, if the information had been known prior to or during the NDSA process would have required the case to be sent to IAB for a formal IAB investigation or would have resulted in discipline greater than the original comparable discipline, a formal IAB investigation may be initiated. Any discipline served as a result of the original NDSA case, if already closed, will be taken into consideration if the member is sustained on any subsequent Internal Affairs investigation that arises from the same complaint or incident.

10.2.15 Predisciplinary Hearing and Imposition of Discipline

In accordance with Aurora City Charter §3-16(8)(b), prior to the imposition of any discipline other than a reprimand, the member shall be provided with a predisciplinary hearing before the Chief or a designee. At this hearing, the member shall be given:

- a copy of the specification of the charges;
- a copy of the written report of the evidence supporting the charges;
- a copy of the summary of the disciplinary record of the member, if any;
- an opportunity to make a statement in response to the charges and written report. The statement, if made, shall be transcribed.
- the right to submit a written statement to the Chief within three (3) days after the predisciplinary hearing.

The member will be informed of the date of the predisciplinary hearing in writing, to include email, by the Chief of Police or designee. The letter will include any recommendations for discipline received by the Chief, or other intervention determined by the CRB. The letter will also include the next steps in the process for the member to include that the member can request an Independent Review Board (IRB) review, in writing, at the predisciplinary hearing or within three days after the predisciplinary hearing. All IRB requests from the member must be made in writing should the member choose to have one.

Additionally, the Chief of Police may call for an IRB review and should always consider requesting an IRB review in cases of serious misconduct or with the potential for substantial community impact in order to determine the appropriate level of

discipline. The Chief, or designee, will inform the member in writing if the Chief has chosen to have an IRB.

At the expiration of the three (3) business day period for the member to submit a written statement and following the conclusion of the IRB, if any, the Chief may proceed in accordance with the provisions of charter. The Chief or designee conducting the hearing may extend the three-day period at his or her discretion.

Per Charter, discipline will be by written command signed by the Chief. If discipline involves a monetary impact on the member greater than one-third (1/3) of the member's monthly salary, the disciplinary order must be approved by the City Manager or a designated Deputy City Manager. A copy of the written disciplinary order shall be served on the member. In the event this Directive is inconsistent with the language of the Charter regarding discipline, the Charter controls.

10.2.16 Records of Corrective Action Reports and Disciplinary Action Reports

- a. Corrective Action Reports: Corrective Action Reports are not disciplinary actions. They will be maintained in the current personnel file software program for one (1) year or until the member's next scheduled evaluation, whichever is longer. Corrective Action Reports will not be forwarded to the IAB, nor forwarded to the member's permanent 201 file.
- b. Disciplinary Action Reports: All disciplinary action reports will be forwarded to the IAB following conclusion of the investigation and issuance of the applicable orders. All supervisor documentation concerning Disciplinary Action Reports (including Written Reprimands) will be forwarded to the IAB along with the report. A Written Reprimand, Suspension, Reimbursement, Demotion or Dismissal order will be maintained according to the retention rules of the IAB, and a copy forwarded by IAB to the member's permanent 201 file kept by the City's Human Resources Department.

Members may request Written Reprimands be removed from their 201 file, and the current personnel file software program after two (2) years from date of issuance. Requests must be submitted in writing to the Chief of Police. Only upon written approval of the Chief of Police or designee, will a Written Reprimand be removed from a member's 201 file and the current personnel file software program.

10.2.17 Appeal of Disciplinary Action

Fines, Suspensions, Reimbursements, Demotions or Dismissals of sworn members arising from disciplinary action are subject to appeal as stated in Department Directive 10.5 - Rights of Members under Administrative Investigation.

10.2.18 Supervisor Responsibility

- a. Supervisory members will initiate an Initial Inquiry when the misconduct observed or alleged is within the scope of their authority.
- b. Supervisory members who receive or observe an allegation of misconduct will complete the initial inquiry in an expeditious manner and forward through the chain of command.
- c. Supervisory members conducting a preliminary administrative investigation will complete the investigation in an expeditious manner.
- d. Supervisory members investigating a complaint will complete the initial inquiry or preliminary investigation as expeditiously as possible. The completed initial inquiry and all supporting documentation will be forwarded through the complaint management system, to the subject member's/members' chain of command.
- e. Supervisory members discovering potential policy failures because of an investigation will complete a summary memorandum and forward the information to the Professional Standards Section in an expeditious manner.
- f. Command personnel who receive a completed Initial Inquiry, or Preliminary Administrative Investigation through the chain of command will review, make recommendation(s), if any, and forward to the next level in the chain of command within five (5) working days.
- g. Command officers may impose emergency relief from duty.

10.2.19 Individual Member Responsibility

- a. All members of the Department will perform the duties and assume the obligations of their rank in the reporting of complaints or allegations of misconduct.
- b. Members are ordered, and required, to cooperate in a department investigation and to answer questions, and/or provide a written statement, render material and relevant statements to, a supervisor or an Internal Affairs Investigator.
- c. Members answers to those questions and/or written statement must be truthful and complete and must not omit any material facts. Failure to do so may result in discipline, which could include termination.
- d. Any member may be required to submit to a medical or laboratory examination at the agency's expense when the examination is specifically directed and narrowly related to a particular internal investigation.

- e. Any member may be required to be photographed, to participate in a line-up, to submit to a fingerprint comparison and/or to submit a financial disclosure statement when such actions are material to a particular internal investigation.
- f. Members may be required to be photographed or fingerprinted for records kept by the Chief of Police and/or the IAB.
- g. Members who are the subject of a departmental administrative investigation (including preliminary and formal) are not permitted to conduct a parallel investigation or inquiry into the matter.
- h. All members are prohibited from participating in a parallel investigation or inquiry by or on behalf of a member subject to a departmental investigation.

10.2.20 Wearing of Weapons

Involved members and their observer/representative will not be armed during interviews with Internal Affairs Investigators, the IRP process, or during pre-disciplinary/disciplinary hearings with the Chief of Police or designee.

10.2.21 Records Maintenance and Retention

The Internal Affairs Bureau maintains records of all complaints received against the Department and its members. These records are stored electronically, or if not stored electronically, in a secure file cabinet separate from other Department records.

Maintenance and purging of records will be accomplished in accordance with relevant Department Directives, Procedures, City Policy, and the State of Colorado Municipal Records Retention Schedule governing police administrative actions.

Any formal investigation with a disposition code of sustained will require a statement of action taken.

All member and observer notes created in the IRP processes will be destroyed after the case is concluded and no longer active as defined in 10.2.11 above.

All notes and records created in the IRB processes will be destroyed after the IRB is concluded save the final recommendation memo to the Chief of Police, which will remain as part of the case file.

10.2.22 Mandated Disclosure Requirements

Certain notifications regarding sustained disciplinary findings are required by law. In addition to *Brady*/Rule 16 notifications given to the District Attorney's office regarding information that could be used to impeach an officer (credibility, truthfulness, bias), there are certain laws that mandate notifications.

- a. C.R.S. § 24-31-305(2.5) requires the Department notify the Colorado Department of Law – P.O.S.T. board regarding a sustained finding, based on a clear and convincing standard of the evidence, of any untruthful statements made knowingly by a sworn member after August 2, 2019, in one of these four categories:

1. On a criminal justice record
2. While testifying under oath
3. During an Internal Affairs investigation; or
4. During an administrative/disciplinary process

IAB will be responsible for the preparation, review and submission to P.O.S.T. Notifications are required after all internal disciplinary rights have been exhausted or expired. P.O.S.T. then is obligated by law to start revocation proceedings.

- b. C.R.S. § 24-33.5-114 requires the Department notify the District Attorney's office for the 17th and 18th Judicial Districts whenever there is a sustained finding that any sworn member of the agency has made a knowing misrepresentation:

1. In any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or to the peace officer's employment history; or
2. During the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct or use of excessive force.

The Chief's Office will be responsible for the preparation, review and submission to the District Attorneys' office.