

ATTACHMENT

QUESTION 22 – AGENCY OPERATIONS

(PROCEDURES)

ARTICLE VI

GENERAL RULES OF CONDUCT

Section 1. Sleeping on Duty:

Members, while on duty, shall not sleep in any place except beds provided by the Department for that purpose.

Members shall not sleep on day tour except by special permission of the Fire & EMS Chief or his designee.

No member shall, except in case of emergency, occupy a bed in a Department building between 0700 to 2000 hours.

Section 2. Articles of Value Found at the Scene:

Members discovering articles of value at the scene of an incident shall promptly deliver said articles to the Incident Commander for transfer to an appropriate police authority. The Incident Commander, together with the police officer, shall inventory the articles of value and record same on a FD Form 1. The police officer, after signing, shall retain the second copy (pink) of the Form 1 and the articles of value. A Special Report, addressed to the appropriate Division Head, shall be submitted by the member discovering the articles and the Incident Commander to whom the articles were delivered stating full particulars. The Incident Commander shall attach the original (white) of the Form 1 to his/her Special Report and retain the first copy (yellow).

Section 3. Decals on Department Property:

No decal, sticker or tag that may be construed as obscene, offensive or otherwise embarrass or harass members shall be displayed in or on Department property. Privately owned vehicles displaying any of the above named items shall not be parked on Department property.

[Section 4. Arrests, Indictments, Convictions and Investigations]:

All employees of the Department will immediately notify the Office of Internal Affairs (OIA) whenever he or she becomes aware that an employee of this agency has been arrested ***on or off duty***.

During the hours of 0800 to 1700 hours, Monday thru Friday, member(s) of the OIA will be available to receive such notifications on the following numbers: 202-673-3678 or 202-673-3728. During weekends, holidays and all other hours that the office is closed, notifications will be made by calling the on-duty Operations Deputy Fire Chief who will notify the OIA. If the on-duty Operations Deputy is unavailable, members will call the Office of Unified Communications (OUC) Fire Liaison Officer (FLO) on 202-373-3712. The FLO will be responsible for contacting the on-call Internal Affairs member.

Additionally, all employees will notify the OIA as soon as possible during normal business hours and give full details of any changes in their legal status. This includes:

1. Indictments;
2. Conviction or entering a guilty plea to a felony;
3. Conviction or guilty plea to a misdemeanor including convictions and guilty plea to traffic violations where the member's license was suspended;
4. Notification of investigation for criminal/illegal activity.

Immediately when possible, but no later than 72 hours after the initial notification, employees of the Department will provide a written notification in the form of a Special Report to OIA giving full details and any supporting documentation concerning the incident. During normal business hours, these reports are to be hand delivered in sealed envelopes to OIA or the Office of Compliance at Fire&EMS Department Headquarters. During hours when both offices are closed, the reports are to be placed in a marked drop box that is located in the lobby of Grimke School.

Members under investigation for criminal/illegal activities are required to provide OIA with official documentation of the ongoing status of their case. This includes any information pertaining to additional charges, dismissal of charges, court dates, hearing notices, changes in bail status, changes to driver's permits, and any other information that may be construed as being pertinent to the case.

When being questioned by superior officers in connection with matters relating to the official business of the Fire and EMS Department, members shall respond truthfully to all questions posed during their interview. Additionally, during the course of an investigation, all members shall respond truthfully to questions by any agent or official of the Office of Internal Affairs (OIA), even if the OIA agent is not of superior rank. All OIA agents are authorized to conduct any and all investigative activities in the furtherance of an investigation.

Any member who willfully and knowingly makes untruthful statements of any kind, or who refuses, or fails to make truthful statements in an verbal or written report pertaining to his official duties as a Fire and EMS Department employee is subject to disciplinary action, including dismissal.

It shall be the responsibility of OIA to coordinate daily with the Deputy Fire Chief of Operations and the FLO about any arrests or incidents during the previous tour. The OIA will complete an Incident Report Form and submit it thru the Assistant Fire Chief - Services who will ensure that the appropriate Assistant Fire Chief and Fire & EMS Chief are notified. The appropriate Assistant Fire Chief shall insure that the affected employee is immediately placed on administrative leave and that the Office of Compliance is notified. During hours when the Office of Compliance is closed, the notification shall be made by e-mailing to the Office of Compliance mail box at compliance.fems@dc.gov.

Section 5. Use of Intoxicants or Illegal Substances:

Department members shall not:

1. Place themselves under the influence of intoxicants while on duty,
2. Use illegal substances in any form while on or off duty,
3. Report for duty under the influence of intoxicants or illegal substances,
4. Permit the presence of intoxicants or illegal substances in or on any property used or occupied by the Fire&EMS Department.
5. Ingest or expose themselves to any intoxicant or illegal substance likely to affect their full performance of duty.

Section 6. Conduct Unbecoming an Employee

Conduct unbecoming an employee includes conduct detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or any conduct that violates public trust or law of the United States, any law, municipal ordinance, or regulation of the District of Columbia committed while on-duty or off-duty.

Any member convicted of the motor vehicle moving violation Driving Under the Influence or Driving While Intoxicated while off-duty will be charged with **Conduct Unbecoming an Employee** and will be charged a 120-duty hour suspension for a first offense. This penalty may be reduced 40-hours pending the member's completion of an alcohol rehabilitation program approved by the Assistant Fire Chief. Any second offense will result in a 360-duty hour suspension, and a third offense will result in termination.

Section 7. Inefficiency

Inefficiency is evidenced by repeated and well founded complaints from superior officers or others concerning improper performance of duty or neglect in the performance of duties. Three (3) adverse actions within a period of twelve (12) months involving any charge of misconduct, conduct unbecoming an employee, improper performance of duty or neglect in the performance of duties shall be prima facie evidence of inefficiency. If a member is cited a fourth time for a similar charge in a twelve month period, the member will also be cited for inefficiency.

Section 8. Insubordination

Insubordination is a failure and/or refusal to comply with lawful orders or instructions, either verbal or written, from a higher ranking member.]

Section 9. Department Smoking Policy:

Smoking is prohibited in all areas and rooms within Fire and EMS Department facilities. Smoking is also prohibited in all vehicles.

Designated smoking areas within Department facilities do not exist.

Smoking is also prohibited in all areas as well as on the grounds of the Fire and EMS Department Training facility. There will be no designated area for smoking at the Training Academy. Members desiring to smoke at this Department facility must leave the premises in order to smoke.

Company commanders and supervisors may suggest a specific location on the exterior of the engine company for members desiring to smoke. A waste receptacle may be provided for discarded smoking materials. However, if a receptacle is not available for disposal, the concerned member shall be responsible for proper disposal of the tobacco product. This will allow members to maintain a clean and neat appearance of the grounds of the Department facility.

Section 10. Professional Licenses

It shall be the responsibility of all employees to immediately notify the appropriate Assistant Fire Chief in writing, through their chain of command, of any changes in the status of any license or certifications required to perform their assigned duties. Examples include, but are not limited to; any medical certifications, driver's licenses, law enforcement credentials and any other technical certificate required for the employee to legally perform their job. Similarly, members must immediately notify the appropriate Assistant Fire Chief in writing of any investigation that has been initiated by any licensing authority and the conclusion of said investigation.

Section 11. Contact Information

All members are required to maintain accurate and up-to-date contact information at all times, including home address, phone numbers, and emergency contact information. Members on extended Sick Leave, Annual Leave, Administrative Leave, Leave Without Pay and Enforced Leave are not relieved of this responsibility.

Members under investigation for criminal/illegal activities are responsible for maintaining contact with the Office of Internal Affairs.

Section 12. Availability

If a member has been placed on enforced leave or administrative leave for disciplinary reasons or pending the outcome of an OIA investigation, the member will be placed on a 40 hour work week for pay and leave purposes. The member will be required to make a reasonable effort to be available to conduct Department business from 0900 hrs. to 1700 hrs. Monday through Friday.

ARTICLE VII

Maintenance of Discipline

Section 1. Guidelines for Issuance of Adverse (Disciplinary) Actions:

When disciplinary actions against employees are warranted, supervisors should refer to the following procedures. Inquiries or requests for assistance may be made to the Office of Compliance, at (202) 673-3333, between 0815 and 1645 hours.

Disciplinary actions against firefighters at the rank of captain and below shall be governed by the collective bargaining agreement between the Department and D.C. Fire Fighters' Association Local 36 and Chapter 16 of the D.C. Personnel Manual (DPM). In the event of a conflict between the collective bargaining agreement and Chapter 16, the collective bargaining agreement shall prevail. In disciplinary actions against firefighters above the rank of Captain, the provisions of Chapter 16 of the DPM and Section 17 of this Article, shall apply; except that the rights of chief officers appointed before December 3, 1980, which were in effect as of December 3, 1980, shall not be diminished by application of Section 17 of this Article.

Section 2. Definition of Cause:

The following is the definition of cause:

- (a) Conviction of a felony;
- (b) Conviction of a misdemeanor based on conduct relevant to an employee's position, job duties, or job activities;
- (c) Any knowing or negligent material misrepresentation on an employment application;
- (d) Any knowing or negligent material misrepresentation on other document given to a government agency;
- (e) Any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law;
- (f) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include:
 - (1) Unauthorized absence;
 - (2) Absence without official leave;
 - (3) Neglect of duty;
 - (4) Insubordination;
 - (5) Incompetence;

- (6) Misfeasance;
 - (7) Malfeasance;
 - (8) Unreasonable failure to assist a fellow government employee in carrying out assigned duties;
 - (9) Unreasonable failure to give assistance to the public;
- (g) Any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious;
- (h) Any act which constitutes a criminal offense whether or not the act results in a conviction; and
- (i) Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result.

Members should not be subject to discipline for extremely minor (“de minimis”) infractions.

For the purposes of this section, “employment-related act or omission” means an act or omission, occurring during a time that the member was other than on duty, and which adversely and materially has affected, or is likely to affect, the efficiency of government operations or the member’s performance of his or her duties.

The authority for this section is contained in Section 1603 of the District of Columbia Personnel Regulations, effective May 30, 2000.

Section 3. Adverse Actions:

A corrective or adverse action, including without limitation, suspension, reduction in grade, or removal, may only be taken for cause against members in the career services who have passed their probationary period. Members are entitled, except in the case of summary action, to advance written notice of fifteen (15) days for proposed adverse action and ten (10) days for proposed corrective action. Enforced Leave, as defined in Section 14, is not considered to be an adverse or corrective action.

Section 4. Disciplinary Reporting Procedures:

Officers, supervisors or members shall promptly report, in writing, apparent or alleged infractions of discipline that are observed or brought to their attention. Reports concerning such incidents shall be addressed to the responsible Assistant Fire Chief and "EXPEDITED", with endorsements. Said reports shall be received by the Assistant Fire Chief not later than their next regularly scheduled tour of duty or regular workday, following the occurrence.

All reports and endorsements shall state all particulars and pertinent facts pertaining to the matter and cite action(s) to be taken without recommending a specific penalty. Sufficient copies of

these documents shall be made to allow forwarding to each level of the charged individual's chain-of-command.

In the Fire Fighting Division, the proposing official at the appropriate level shall hand carry the original and one (1) copy of all relevant reports, with endorsements, to the designated deciding official.

Officers or supervisors witnessing such actions and/or receiving such reports shall immediately initiate the following actions:

1. Interview members and witnesses and obtain a written report regarding the incident.
2. Prepare a complete and factual record of available information which identifies all persons, places and pertinent statements or documents contained in the record.
3. Evaluate all available information to determine if a violation has occurred and if so, state the Article and Section of the Order Book or the Rules and Regulations involved, and cite the individual concerned with the appropriate cause(s) listed in Section 1603, Chapter 16, of the District Personnel Manual (DPM).
4. Review member's personnel record and cite all relevant factors, including but not limited to, length of employment and prior disciplinary infractions, including 169s, which have occurred in the past three (3) years. The prior infractions need not be for the same cause as is currently pending.
5. Prepare and forward such reports through the chain-of-command to the appropriate Assistant Fire Chief.

If there is sufficient basis to proceed with possible disciplinary action, the member should be charged with a specific on-duty or employment-related act or omission, as defined in Section 2 of this Article. Examples include, but are not limited to, unauthorized absence, negligence, incompetence, insubordination, misfeasance, malfeasance, the unreasonable failure to assist a fellow government employee in performing his or her official duties, the unreasonable failure to give assistance to a member of the public seeking services or information from the government.

The Assistant Fire Chief has the discretion to refer the matter to the Disciplinary Investigation Board (DIB), if he or she believes that additional information is warranted to make a determination as to whether to proceed, or as to the appropriate Proposed Action (as described in Section 7, below). If the Assistant Fire Chief decides not to refer the case to the DIB, he or she shall refer the matter directly to a Battalion Fire Chief (BFC) Conference, a Deputy Fire Chief (DFC) Conference, or a Trial Board, as provided in Section 13 below, based on a consideration of the nature of the offense, the member's prior disciplinary history and any other relevant aggravating or mitigating factors. In the case of a BFC conference, the matter shall not be referred to the BFC who is in the direct chain of command of the member.

Section 5. Disciplinary Investigation Board (Uniformed Members Only):

The Disciplinary Investigation Board (DIB) shall:

1. Be appointed by and serve at the pleasure of the Fire/EMS Chief.
2. Be composed of three (3) captains who will serve a term of 18 months. When a member attains 18 months service they would be relieved, thereby retaining members with 12 and 6 months service. The member with 6 months remaining would be designated chairperson. When possible, the new appointee will be a junior captain.

It shall be the duties of the DIB to:

1. Receive and review reports or other information indicating an infraction of discipline or violation of law, rule, regulation, provisions of the Department's Order Book or improper procedure by officers and uniformed members of the Department.
2. Investigate each case received if required.
3. Determine whether the interest of the public or the Department is best served by requiring an action against the accused.
4. Submit a written report and F&EMSD Form 2.2 to the Assistant Fire Chief, recommending one (1) of the following:
 - a. Trial Board (Suspension of 120 duty hours or more, including termination.)
 - b. Deputy Fire Chief Conference (Suspension of more than 72 duty hours, but less than 120 duty hours.)
 - c. Battalion Fire Chief Conference (Reprimand to a suspension of 72 duty hours.)
 - d. No further action.
 - e. Other.

The operational procedures of the DIB shall be:

1. The chairperson of the DIB shall schedule the pick-up (and distribution to members of the DIB) of disciplinary cases on a weekly basis, or more often, if necessary.
2. The member assigned to the case(s) shall:
 - a. Distribute copies of all reports and information to other members of the Board and to the Office of Compliance (documents of arrest, court findings, etc.).
 - b. Be responsible for the complete investigation of the case and have all requests for additional information by other Board members directed to them.
 - c. Make a file folder, if one does not already exist, on each case for the DIB records. Submit one (1) F&EMSD Form 2 ("Initial Written Notice") on each case to the

Office of Compliance.

- d. Receive recommendations from other Board members before final disposition of the case.
- e. Prepare a summary of the DIB investigation and an F&EMSD Form 2.2 (DIB Recommendation) and forward them to the Assistant Fire Chief.

The DIB shall have the authority to:

- 1. Interview any and all members having knowledge pertinent to a disciplinary case. The interview shall be conducted in accordance with Article 8 (Investigations and Supervisory Questioning), of the Collective Bargaining Agreement between Local 36, IAFF, and the Department. An F&EMSD Form 2.1 (Notification of DIB Interview) shall be submitted at least seven (7) days prior to the interview.
- 2. Review master personnel files, and/or any other Department records if required.
- 3. Request written reports from any member whom the Board determines could supply additional facts concerning a case.

Members of the DIB will arrange for relief from duty through their Battalion Fire Chief or immediate supervisor for a scheduled pick-up of cases, and when necessary to attend:

- 1. Court hearings.
- 2. Court trials.
- 3. Arraignments.
- 4. Trial Boards.
- 5. Other procedures where the appearance of a member of the Board as a representative of the Department is warranted.

Section 6. Investigation of Motor Vehicle Accidents

Upon completion of an investigation of a motor vehicle accident by the Accident Investigation Board, the investigating official or safety official shall forward a copy of the FEMSD Form 7 (Vehicle Accident Investigation) to the Office of Compliance.

Section 7. Notice of Charges

A member shall be notified of the alleged infraction or complaint filed against him/her, in writing, within seventy-five (75) days after the alleged infraction or complaint or such time as the employer becomes aware of the alleged infraction or complaint. This notification shall be referred to as the "Initial Written Notification." The member shall verify his receipt of the

notification, and all reports related to the incident shall be made available to him/her upon request.

Within 60 days of the receipt of the Initial Written Notification the member shall be notified of the type of Departmental action that will be pursued. This notification shall be referred to as the "Proposed Action." The proposed action shall provide for the range of discipline being considered by stating the type of Conference or Trial Board available to the employee. It shall also inform the member of the following:

1. The specific reasons for the proposed action;
2. The right to challenge the Proposed Action by notifying the Fire/EMS Chief, in writing, within ten (10) days of the Department's issuance of the Proposed Action. This challenge shall initiate a Battalion or Deputy Fire Chief's Conference or a Trial Board, as applicable to the proposed discipline;
3. The right to receive a copy of all materials upon which the proposed action is based and the name of the person from whom the material may be obtained;
4. The right to be represented in the Conference if the member wishes to be so represented, and the representative agrees to so represent the member; and
5. The right to respond which includes the right to present an oral and/or written response, witness statements, affidavits or documents or any other form or depiction of information.

The Initial Written Notification and the Proposed Action shall be issued by officers at the rank of Battalion Fire Chief and above. Challenges of Proposed Actions in which the maximum penalty that may be imposed does not exceed a 72 duty-hour suspension shall be heard at a Battalion Fire

Chief Conference. Such cases shall include, but not be limited to, charges of the following infractions:

- Late for duty up to three times;
- Discourteous to other members or to citizens;
- Uniform violations;
- AWOL, not exceeding 12 hours;
- Missing a run;
- At fault for a minor accident;
- Other minor violations of duties and responsibilities, e.g., missing a clinic appointment or training class.

Challenges of Proposed Actions in which the maximum penalty that may be imposed is greater than a 72 duty-hour suspension but less than a 120 duty-hour suspension shall be heard at a

Deputy Fire Chief Conference. Such cases shall include, but not be limited to, charges of the following infractions:

- Late for duty more than 3 times;
- Conduct unbecoming an officer;
- AWOL for more than 12 hours;
- At fault for a major accident;
- Insubordination;
- Other serious violations of duties and responsibilities;
- More than 3 infractions of the same offense within a 3-year period.

The member shall acknowledge receipt of all notices by signing and printing his or her name as indicated. This signature is not an admission of guilt. If the member refuses to acknowledge receipt of the notice, the official serving said notice shall state this on the signature page of the acknowledgment. In addition, this page shall contain the signature of the official serving, the date the notice was served, and the signature of the witness to the service.

If the member is not in a duty status, all notices shall be sent to the member's last known address by courier, or by certified or registered mail, return receipt requested. The first day of the notice period shall be the day following the date on which service is made to the member, either in person, by courier, or by certified or registered mail, or the date on which service was attempted and refused.

In the case of criminal charges against a member, all proceedings other than issuance of the Initial Written Notification may be tolled by the Department until completion of the criminal process.

Section 8. Penalties:

- A. All penalties involving loss of time or pay shall be expressed in terms of the number of duty hours involved.
- [B. **Douglas Factor Considerations** Any appropriate remedy from reprimand to removal may be selected. Consideration shall be given to any mitigating or aggravating circumstances that have been determined to exist, to such extent and with such weight as is deemed appropriate. A number of factors that are relevant for consideration in determining the appropriateness of a penalty are known as the "Douglas Factors". While the following list is not purported to be exhaustive, these are factors that, if relevant, may be considered:]
 1. The nature and seriousness of the offense and its relation to the member's position, duties and responsibilities, including whether the offense was intentional, technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

2. The member's job level, type of employment, contacts with the public and the prominence of the position.
3. The member's past work record, including length of service, performance on the job, dependability, and ability to get along with fellow co-workers.
4. The effect of the offense upon the member's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the member's ability to perform assigned duties.
5. The consistency of the penalty with those imposed upon other members over the preceding three (3) years for the same or a similar offense.
6. The member's past disciplinary record over the preceding three (3) years. Corrective and adverse actions may be considered for three (3) years following their effective dates and admonitions may be considered for three (3) years following the date of issuance.
7. Consistency of the penalty with the District Personnel Manual Chapter 16 Table of Appropriate Penalties.
8. [The notoriety of the offense, or its impact on the Department.]
9. The clarity with which the member was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.
10. The potential for the member's rehabilitation.
11. Any mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice or provocation on the part of others involved in the matter.
12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the member or others.

[Not all twelve (12) "Douglas Factors" are pertinent in every case. Mitigating factors may weigh in the employee's favor resulting in a lesser penalty, while aggravating factors may weigh against the employee resulting in a harsher penalty. Deciding officials must balance the relevant factors in each individual case to determine an appropriate penalty.

Douglas Factor No. 5 (Article VII, § 8(B)(5)): Protective Order Issuance Mandatory — Discipline files of District of Columbia employees are both private and confidential, and the Department is prohibited from disclosing these files absent either employee consent or a court order. Whenever the Department determines that a member's record request — whether made in conjunction with Douglas Factor No. 5 or any other aspect of disciplinary proceedings — would necessitate the exchange of a co-worker's discipline file, the Department's Protective Order (Form 3.3) must first be signed by the Trial Board Chairperson. The Form 3.3 may not be modified or amended, and no co-worker discipline records may be exchanged beyond the 3-year period recited in Article VII, § 8(B)(5). Any employee who violates the Protective Order will be subject to disciplinary action.]

Section 9. Battalion Fire Chief Conference:

The Battalion Fire Chief shall review the proposed action and schedule a conference to hear the member's answer to the proposed action, if there is one. Reasonable notice of the time and place of the conference shall be provided to the Union. If, at any time, the member chooses to be represented in the Conference, the representative (if willing to represent the member) must be present before the conference may proceed.

The Battalion Chief is authorized to negotiate a settlement agreement. Any negotiated settlement must be transmitted up the chain of command through the appropriate Assistant Fire Chief to the Fire/EMS Chief. If the Fire/EMS Chief disapproves the settlement, the BFC shall proceed with the formal disciplinary process.

Extensions of time in which to respond shall be granted by the Battalion Fire Chief for good cause. Any statements made in the conference (including but not limited to any proposed penalty, settlement or resolution of the matter) shall not be used as a precedent in any future cases. Nontraditional penalties including transfer, reassignment and change of days off are specifically permitted under this Section if the affected member agrees to the penalty.

The Battalion Fire Chief shall notify the member in writing of the decision in the case, including the penalty (if any) imposed. Upon delivery of the final decision, the Battalion Fire Chief shall make five copies. The officer shall retain a copy and shall distribute 1 copy to the Company Officer, and one copy to the Union. The remaining copies, along with the case file, shall be forwarded to the Office of Compliance.

The affected member shall have the right to appeal the Battalion Fire Chief's decision within fifteen (15) calendar days of receipt of the final decision to the appropriate Assistant Fire Chief who may approve the action, reduce the penalty or dismiss the case.

The member may also appeal the Assistant Fire Chief's decision within fifteen (15) calendar days of receipt to the Fire/EMS Chief or his designee, who may adopt either the Battalion Fire Chief's or Assistant Fire Chief's action, reduce the penalty issued by the Assistant Fire Chief or dismiss the case. The decision of the Fire/EMS Chief or his designee to deny the appeal, in whole or in part, shall be the final administrative decision and shall not be subject to further administrative appeal. Failure by the Fire/EMS Chief to respond to the appeal within sixty (60) calendar days shall constitute a denial of the appeal.

Section 10. Deputy Fire Chief Conference:

The Deputy Fire Chief shall review the proposed action and schedule a conference to hear the member's answer to the proposed action, if there is one. Reasonable notice of the time and place of the conference shall be provided to the Union. Extensions of time in which to respond shall be granted by the Deputy Fire Chief for good cause. Any statements made in the conference (including but not limited to any proposed penalty, settlement or resolution of the matter) shall not be used as a precedent in any future cases. Nontraditional penalties including transfer or reassignment (within the Agency) and change of days off are specifically permitted under this

Section. If at any time, the member chooses to be represented in the Conference, the representative (if willing to represent the member) must be present before the disciplinary conference may proceed. The Deputy Fire Chief is authorized to negotiate a settlement agreement. Any negotiated settlement must be transmitted up the chain of command through the appropriate Assistant Fire Chief to the Fire/EMS Chief. If the Fire/EMS Chief disapproves the settlement, the DFC shall proceed with the formal disciplinary process.

The Deputy Fire Chief shall notify the member in writing of the decision in the case, including the penalty (if any) imposed. Upon delivery of the final decision, the Deputy Fire Chief shall make six copies. The officer shall retain a copy and distribute 1 copy to the Battalion Fire Chief's office, 1 copy to the Company Officer, and 1 copy to the Union.

The remaining copies, along with the case file, shall be forwarded to the Office of Compliance.

The affected member shall have the right to appeal the Deputy Fire Chief's decision to a Trial Board constituted pursuant to Section 11 of this Article within fifteen (15) calendar days of receipt of the decision. The Trial Board shall recommend to the Fire/EMS Chief or his/her designee, approval of the Deputy Fire Chief's decision, modification of (but not an increase in) the penalty or dismissal of the case. The Trial Board may either hold a hearing or may make a decision based on the evidence submitted at the Deputy Fire Chief's conference. Should the Trial Board decline to conduct a hearing, management or the member may provide the Trial Board with written arguments.

Section 11. Fire Trial Boards - Composition, Function, Powers:

The functions and powers of Fire Trial Boards shall be set forth in Reorganization Order No. 39 (June 18, 1953) as amended.

All cases in which a member is charged with an infraction for which the penalty that may be imposed is termination, demotion or a 120 duty-hour suspension or greater shall be submitted to a Trial Board. The appropriate Assistant Fire Chief shall forward a request for adverse action, along with a copy of the supporting documentation, to the Office of Compliance. The Office of Compliance shall prepare the Initial Written Notification and the Proposed Action for signature by the appropriate Assistant Fire Chief. The affected member shall be notified in writing of the date to appear before the Trial Board. The Trial Board hearing shall begin within 180 days of the member's receipt of the Initial Written Notification.

A member may request a postponement or continuance of the Trial Board Hearing. Such a request must be in writing and include the number of days needed. The 180-day time limit shall automatically be extended by the length of the postponement or continuance granted by the Department.

The Trial Board shall consist of two (2) battalion fire chiefs and two (2) captains. In selecting members of a Trial Board from members of the Bargaining Unit, the Fire/EMS Chief shall have complete discretion in selecting the members of the Trial Board, and to determine the length of

time that appointees serve on Trial Boards, subject to the right of an affected employee to challenge any member of the Trial Board pursuant to Article VII, Section 17 of the Department Rules and Regulations, provided, that captains appointed to the Trial Board shall be selected and shall rotate in accordance with the previously established procedures. Captains may serve for a period of 30 to 90 days, as determined by the Fire/EMS Chief and no Captain who is a member of the Executive Board of Local 36 shall serve on a Trial Board.

The Fire Trial Board Chairperson is responsible for ensuring that Trial Board decisions are issued in a timely manner and that decisions are grammatically correct, free of typographical errors, and based on evidence produced at the Trial Board. Chairpersons who need assistance on preparing the decision are instructed to contact the Office of Compliance for guidance. Decisions are due in the Compliance Office within 14 calendars of the completion of the Trial Board hearing. If the Chairperson needs additional time, he or she is required to request an extension, in writing, from the Operations Chief before the due date. The Operations Chief may grant an extension for good cause shown. Chairpersons who fail to adhere to these instructions may be subject to disciplinary action. This provision is intended to promote administrative efficiency and is not intended to convey any substantial rights to the employee.

Non-traditional penalties including transfer or reassignment (within the Agency) and change of days off are specifically permitted under this Section.

When a case is brought before the Trial Board, the Trial Board shall make a determination as to the guilt or innocence of the member and recommend an appropriate penalty. The Trial Board's recommendation is then sent to the Fire/EMS Chief for review. Upon receipt of the Trial Board's recommendation, the Fire/EMS Chief shall either adopt the penalty (if any) recommended by the Trial Board, reduce the penalty, or dismiss the case. The decision of the Fire/EMS Chief in this instance may only be appealed to the OEA and shall be based solely on the record established by the Trial Board. The Fire/EMS Chief is authorized to negotiate a settlement agreement at any time before the final decision is issued.

If a case arises when the Trial Board cannot reach a consensus or majority decision and is unable to render a decision, the Trial Board will notify the Assistant Fire Chief (AFC) who will intervene to facilitate. After deliberation with the AFC, the Trial Board shall render a decision, adopting the AFC's recommendation if a dispute continues to exist. Upon receipt of the Board's recommendation, the Fire/EMS Chief shall either adopt the penalty (if any) recommended by the Board, modify (but not increase) the penalty, or dismiss the case. In cases of termination so resolved through the intervention of the Assistant Fire Chief, upon a final decision by the Fire/EMS Chief, if the member or union is dissatisfied with such decision, the member or the Union may either appeal the matter to the Office of Employee Appeals, or submit the dispute to arbitration by notifying the Fire/EMS Chief pursuant to the grievance and arbitration provisions in the collective bargaining agreement between Local 36 and the Department. In any such arbitration, the Department shall be required to establish that termination was for cause.

Except as provided above, a member may appeal the decision of the Fire/EMS Chief only to the Office of Employee Appeals, as permissible and in accordance with that Office's Rules and

Regulations. Appeals of decisions premised upon Trial Board recommendations shall be based solely on the record established in the Trial Board hearing. The filing of an appeal under this paragraph shall not stay the implementation of the Fire/EMS Chief's decision.

[Section 12. Appeal of Adverse Actions:

The affected member may appeal an adverse action to the District of Columbia Office of Employee Appeals. Appeals of decisions premised upon Trial Board recommendations shall be based solely on the record established in the Trial Board hearing. In cases of termination resolved through the intervention of the Assistant Fire Chief as described in Section 11, the affected member or union may submit the dispute to arbitration by notifying the Fire/EMS Chief pursuant to the grievance and arbitration provisions in the collective bargaining agreement.

A member shall be deemed to have elected his or her remedy when he or she files a disciplinary grievance or an appeal.

An appeal or grievance of a decision issued by the Fire/EMS Chief shall not stay the implementation of the proposed action.

Members outside the Bargaining Unit who were appointed before December 3, 1980, shall appeal the Fire/EMS Chief's decision to the Mayor.

Members outside the Bargaining Unit who were appointed after December 3, 1980, shall appeal the Fire/EMS Chief's decision in accordance with this Section.

Section 13. Suspensions:

A member who is insubordinate may be relieved from duty "on the spot" and placed on administrative leave for the remainder of their tour of duty. This "relief from duty" is to prevent a potentially hostile situation from escalating. The member so relieved shall return to duty on their next regularly scheduled tour. If this is not practicable, administrative leave may be extended at the discretion of the appropriate Assistant Fire Chief.

The official who places the member on administrative leave shall immediately prepare a Special Report addressed to the appropriate Assistant Fire Chief stating full particulars and citing the appropriate violation(s) of either the Order Book or Rules and Regulations and the proper cause(s) listed in Section 1603, Chapter 16, of the District Personnel Manual.

Section 14. Enforced Leave:

Pursuant to D.C. Official Code § 1-617.54, civilian and uniformed members may be placed on “Enforced Leave” by order of the appropriate Assistant Fire Chief under the following conditions:

1. A determination is made that the member used fraud in securing his/her appointment or that he/she falsified official records;
2. The member has been indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of no contest); or
3. The member has been indicted on, arrested for, or convicted of any crime (including conviction following a plea of no contest) that bears a relationship to his/her position.

Prior to being placed on enforced leave, the member shall be placed on administrative leave for a period of five workdays, followed by enforced annual leave, then compensatory time which is recorded on time and attendance records, and finally, leave without pay. The five-day period of administrative leave begins on the first workday immediately following the day on which the member was placed on administrative leave.

The member shall remain in enforced leave status until such time as a disciplinary action is completed or a determination is made that no such action will be taken.

During the five-day period of administrative leave, the member shall be provided with a written notice of the proposed action to enforce leave. To ensure receipt within the 5 day period, the initial delivery of notice may be accomplished either in person or by reading the notice to the member over the telephone prior to actual delivery of the written notice. The person reading the notice shall make a journal entry to document the fact that an oral notice was given to the member.

The Assistant Fire Chief shall forward a request for enforced leave, along with a copy of supporting documentation, such as arrest reports, to the Office of Compliance. The Office of Compliance shall prepare the written notice for signature by the Assistant Fire Chief. The written notice shall be prepared in accordance with the Enforced Leave provisions of Chapter 16 of the District Personnel Manual.

Within the 5-day administrative leave period, the member may respond to the proposal to place him or her on enforced leave. This response must be made by the end of the first workday immediately following the day on which initial delivery of the notice was made. [The Assistant Fire Chief will consider the member’s explanation, if any, and statements of any witnesses prior to issuing a written decision. If a determination is made to place the member on enforced leave, the decision letter shall be prepared by the Office of Compliance for signature by the Assistant Fire Chief. The notice shall inform the member of his or her placement on enforced leave, the date the leave is to commence, and his or her right to appeal the action within 10 days of receipt

of the written decision letter. The notice shall also inform the member that if the enforced leave lasts 10 or more days, he or she has the right to file an appeal with the Office of Employee Appeals within 30 days of the effective date of the appealed agency action. The enforced leave shall begin on the first business day following the completion of the 5-day administrative leave period.

The Assistant Fire Chief shall immediately institute disciplinary action against any member placed on enforced leave, except that the disciplinary action may be held in abeyance while criminal proceedings are pending. If no disciplinary action is taken against the employee, or if a decision is made to dismiss the disciplinary action against the employee, any annual leave, compensatory time, or pay lost as a result of this action shall be restored retroactively. If the final decision is to suspend the member for any period of time, any pay, annual leave or compensatory time lost as a result of the enforced leave shall be restored to the member to the extent that this loss exceeds the penalty imposed by the final decision. If disciplinary action results in removal, the member shall not be entitled to restored leave, compensatory time, or pay.

For the purposes of this section, "work day" is defined as follows for all Divisions: A work day shall be the same as a business day, i.e., Monday through Friday, excluding Saturdays, Sundays, and Legal Holidays.

NOTE: The total hours for which a member will be placed on administrative leave will vary according to his/her assignment, as will the total number of hours the member will be charged while on enforced leave.

Section 15. Suspected Intoxication - Alcohol Or Drugs:

When a member of the Department clearly exhibits erratic behavior consistent with intoxication, giving the on-duty company officer probable cause to believe that the member is under the influence of alcohol or drugs to the extent that their physical and mental faculties are affected and their judgment is impaired, the on-duty company officer shall:

1. Temporarily relieve the member from duty.
2. Order them to submit to the necessary tests to determine their physical and/or mental condition.

If they refuse:

1. Notify them that they are in violation of a direct order and this could lead to disciplinary action.
2. Keep them under as close observation as the service permits.
3. Contact a member of the Police and Fire Clinic and request them to make an examination of the member in quarters, and if this is not practical, be guided by the doctor's advice.

4. Place the company out-of-service.
5. Notify the Battalion Fire Chief.

If they agree to take the test:

1. Contact a member of the Police and Fire Clinic and be guided by the doctor's advice.
2. Place the company out-of-service.
3. Notify the Battalion Fire Chief.

The Battalion Fire Chief shall:

1. Report to the quarters of the member concerned.
2. If the member refuses to take the test, await the arrival of the member of the Police and Fire Clinic.
3. If the member agrees to take the necessary tests:
 - a. If the member is suspected of alcohol intoxication, have the on-duty company officer contact the Traffic Alcohol Enforcement Unit (TAEU) of the Metropolitan Police Department to make arrangements for the member in question to be evaluated for intoxication. The TAEU may be contacted at (202) 727-4439, twenty-four (24) hours a day, seven (7) days a week.

Once arrangements have been made, transport the member to the TAEU at 501 New York Ave., N.W., for evaluation. It is essential to obtain the test results in writing.

Note: The TAEU is not equipped to do blood tests and cannot take urine samples because it lacks the capability to ensure proper "chain-of-custody".

- b. If the member is suspected of being under the influence of a drug other than alcohol, transport the member (call first), during normal hours of operation, Monday through Friday (except holidays), to the Medical Services Office (MSO) for evaluation. If the situation arises other than the times mentioned, order the member to report to the MSO at 0700 hours on the next business day for evaluation.

If the member's actions indicate that they may be in need of immediate medical attention, have the member transported to the nearest hospital emergency room.

4. If practical, return the member to the quarters of the company or office to which they were assigned at the time they were relieved from duty.
5. Direct the member to report to the MSO the morning of the second (2nd) day following the incident. When such reporting day falls on a day that the MSO is closed, the member shall report the next day thereafter that the MSO is open.

If the member is found to be physically and mentally fit, he or she will be returned to full duty.

6. Notify the MSO, at the earliest possible time, that they had a test for intoxication made on a member of the Department.
7. After the district physician has correlated the tests results with their examination of the member, ask the physician for a statement that it is their (the physician's) opinion that the member had/had not been under the influence of alcohol, or that their physical and mental faculties were/were not affected and their judgment was/was not impaired.
8. Review all reports of the case, and cite the member for infractions, if any.
9. After the examination of the member on the second (2nd) day following the incident, confer with the physician concerned as to the desirability of further visits to the MSO by the member for the purpose of the physician making a diagnosis or to determine if the member is addicted to narcotics.

Section 16. Tardiness - Absence Without Leave:

Tardiness is defined as: Any absence of up to one (1) hour from duty which has not been approved in accordance with established policy and procedures. In such cases, pay is denied for

the entire period of absence. Where it is determined however, that the absence is excusable because of conditions which rendered prior approval impractical, the charge of absence without leave shall be changed to annual leave or sick leave.

The minimum charge for absence without leave (AWOL) is one (1) hour and a member shall not be allowed to perform any duties during the remaining portion of the hour for which they have been charged. For example, if a member is late or absent from their duties without permission for ten (10) minutes, they shall be placed on AWOL for one (1) hour and not be allowed to work the remaining fifty (50) minutes.

When unable to report to their place of duty at the proper time, a member shall:

1. Make every effort to contact, or cause to be contacted, their place of duty and inform the on-duty company officer/supervisor that they will be absent or tardy.

2. Give a brief explanation of the reason for the absence or tardiness.
3. Give an estimated time of arrival for duty.

When members of the Department fail to report for duty at the proper time and place, they will be subject to a charge of AWOL, and in addition, may be subject to disciplinary action.

When a member of the Department fails to report for duty at the proper time and place, the on-duty company officer shall notify the battalion commander of the absence and charge the member with being AWOL. The officer shall document the AWOL on D.C. Standard Form 1199-A, "Notification of Charge to Absence Without Official Leave (AWOL)."

Section 17. Guidelines for the Issuance of Corrective and Adverse Actions Against Chief Officers and Civilian (DS and WG) Employees:

This section shall apply to fire officers above the rank of captain and to civilian employees in the career service who have passed their probationary period.

1. Investigation

Supervisors who observe or receive reports of employee misconduct, inefficiency, or violation of laws, regulations or instructions, or any other act which appears to warrant a disciplinary action, shall, when employee counseling (F&EMSD Form 169) is deemed

inappropriate, or previous counseling has failed to correct the conduct, take the following course of action:

- a. Interview and obtain written statements of witnesses of the conduct or behavior which would appear to form the basis for a corrective or adverse action to be initiated. Interview the accused member, and if possible, obtain the member's written statement describing or explaining their actions.
- b. Prepare a complete and factual record of available information which identifies all persons, places and pertinent facts or documents. Include copies of the relevant document with the record.
- c. Identify the cause as defined in Section 2 of this Article, and recommend a proposed penalty, based on a consideration of all facts, including mitigating and aggravating factors.
- d. Forward the report to the Office of Compliance in order that the Advance Notice of Proposed Action shall be prepared and issued within ninety (90) business days from the date of the incident.

2. Preparation of Advance Notice of Proposed Disciplinary Action

a. When the proposing official is a firefighting official in the career service, the Office of Compliance shall forward the package prepared pursuant to paragraph 1 to an Assistant Fire Chief who is an at-will employee or its equivalent. The Assistant Fire Chief shall either approve or disapprove the institution of the disciplinary action and the proposed penalty. The Assistant Fire Chief's function is not to weigh the evidence. Operating on the assumption that all the alleged facts are true, the Assistant Fire Chief's function is simply to give approval (or disapproval) for the initiation of the proposed action.

b. Employees in the Management and Supervisory Service (MSS) and Excepted Service may initiate a disciplinary action without obtaining authorization from an Assistant Fire Chief.

c. The "Advance Notice of Proposed Action" shall inform the member of the following:

1. The action that is proposed and the cause for the action;
2. The specific reasons for the proposed action;
3. The right to prepare a written response, including affidavits and other documentation, within six (6) days of receipt of the advance written notice;
4. The person to whom the written response or any request is to be presented;
5. The right to review any material upon which the proposed action is based;
6. In the case of a proposed adverse action, the right to be represented by an attorney or other representative;
7. In the case of a proposed corrective action, there is no right to representation, except that members of collective bargaining units have rights to representation as set forth in the collective bargaining agreement;
8. The right to an administrative review by a hearing officer appointed by the agency head when the proposed action is a removal; and
9. The right to a written decision.

3. Representation and Administrative Leave

If in a duty status, the member against whom an adverse action has been proposed and their representative, if an employee of the District Government, is entitled to a reasonable amount of time, not to exceed ten (10) hours of administrative leave each, to prepare the member's answer.

Members being charged with corrective actions have no right to administrative leave, except that members of collective bargaining units and their representatives are entitled to administrative leave in accordance with the collective bargaining agreement.

The Fire/EMS Chief or his designee shall have the right to disallow a person chosen by the member to represent him or her if:

- a. The person is another District government employee and representation by that person conflicts with a governmental priority; or
- b. Representation by that person creates a clear conflict of interest or conflict of official position, or the person is a material witness to the facts underlying the proposed adverse action.

4. Service of the Notice

The member shall acknowledge receipt of the advance notice by signing and printing his or her name as indicated. This signature is not an admission of guilt. If the member refuses to acknowledge receipt of the notice, the official serving said notice shall state this on the signature page of the acknowledgment. In addition, this page shall contain the signature of the official serving the notice, the date the notice was served and the signature of the witness.

If the member is not in a duty status, the advance notice shall be sent to the member's last known address by courier, or by certified or registered mail, return receipt requested. The first day of the notice period shall be the day following the date on which service is made to the employee, either in person, by courier, or by certified or registered mail, or the date on which service was attempted and refused.

5. Member's Response to Notice of Proposal

The member's response shall be in writing. If the proposal is for removal, the response shall be submitted to the hearing officer, in care of the Office of Compliance. If the proposal is other than removal, the response shall be submitted to the deciding official, also in care of the Office of Compliance. The member has six days from the date of the receipt of the advanced notice to respond. The deciding official or the hearing officer may grant extensions of time at their discretion for good cause.

The right to respond shall include the right to present evidence that the member believes might affect the final decision on the proposed action. Evidence may include written statements of witnesses, affidavits, or documents or any other form or depiction of information.

6. Duties of the Hearing Officer

The member is entitled to an administrative review only in cases where the proposed penalty is removal. The administrative review will be conducted by a hearing officer. The hearing officer shall:

- a. Be appointed by the agency head;
- b. Be at DS-13 grade level and above, or equivalent;

- c. Not be in the supervisory chain of command between the proposing official and the deciding official, nor subordinate to the proposing official;
- d. Have no direct and personal knowledge (other than hearsay that does not affect impartiality) of the matters contained in the proposed removal action; and
- e. Be an attorney if an adversarial hearing is conducted. The functions of the hearing officer are similar to the functions formerly performed by the “disinterested designee” except that the hearing officer will make a recommendation based on the written record alone. A hearing will be conducted only when the Fire/EMS Chief or his/her designee makes a determination that the record is insufficient to make a determination. In all such cases where a hearing is required, the hearing shall be conducted by an attorney in accordance with DPM Instruction 16-5. The attorney shall not be the General Counsel, D.C. Fire and EMS. If needed, the Office of Compliance will consult with Office of Personnel to identify an attorney from outside the agency to serve as a hearing officer.

7. Notice of Final Decision

The deciding official, after considering the member’s response, or, in the case of proposed removal, the recommendation of the hearing officer, shall promptly issue the final letter of decision. The deciding official may 1) sustain the proposed penalty; 2) reduce the proposed penalty; 3) remand the action for further consideration; or 4) dismiss the action with or without prejudice. In no event may the deciding official increase the penalty from that proposed in the Advanced Notice of Proposal. The deciding official shall issue the final letter of decision at the earliest practicable date.

The final letter of decision shall inform the member of the penalty imposed, if any, and the effective date of the penalty. If the final decision results in corrective action (suspension of less than 10 days), the final letter shall inform the employee of the right to appeal the decision through the applicable grievance procedures. Members of bargaining units shall be referred to applicable grievance procedures contained in the Collective Bargaining Agreements. Personnel who are not members of collective bargaining units shall be subject to grievance procedures as set forth in Section 1636 of the District Personnel Manual. If the final decision results in adverse action (suspension of 10 days or more), the final letter shall inform the member of his/her right to appeal the decision to the Office of Employee Appeals.

The member shall acknowledge receipt of the final decision letter by signing and printing his/her name as indicated. This signature is not an admission of guilt. If the member refuses to acknowledge receipt of the notice, the official serving said notice shall state this on the signature page of the acknowledgment. In addition, this page shall contain the signature of the official serving the notice, the date the notice was served and the signature of the witness.

If the member is not in a duty status, the notice of final decision shall be sent to the member's last known address by courier, or by certified or registered mail, return receipt requested, before the effective date of the action.

8. Selection of a Penalty

Any appropriate remedy from reprimand to removal may be selected. Consideration shall be given to any mitigating or aggravating circumstances that have been determined to exist, to such extent and with such weight as is deemed appropriate. See Section 8 of this Article for a list of factors that may be considered.

9. Summary Discipline

The Assistant Fire Chief may summarily suspend (without pay) or remove a member when the member's conduct:

- a. Threatens the integrity of government operations;
- b. Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
- c. Is detrimental to public health, safety, or welfare.

A member who is summarily suspended or removed by the Assistant Fire Chief shall immediately leave his or her duty station. Within five (5) business days of the proposed suspension or removal, the Assistant Fire Chief shall initiate a disciplinary proceeding in accordance with the requirements set forth in Section 2 through 8 of this article.

When the final decision is to dismiss the summary action or to reduce it to a lesser penalty, any pay lost as a result of the summary suspension action, to the extent that this pay loss exceeds the pay lost as a result of the final decision, shall be restored to the member.

The suspension provisions in Section 13 of this Article remain in effect.

Section 18. Definitions:

Definitions - reference: Disciplinary Actions.

Admonition - Any written communication from a supervisor to an employee, up to but excluding an Official Reprimand, which advises or counsels the employee about conduct or performance deficiencies, and the possibility that future violations will result in corrective or adverse action.

Adverse Action - A removal, suspension for ten days or more, or reduction in rank, grade, or pay for cause.

Appeal - An employee's written request for review and reconsideration of an imposed corrective or adverse action.

Corrective Action - An Official Reprimand or suspension of less than 10 days for cause.

Days - Consecutive calendar days, unless otherwise specified.

Division Head - Deputy Fire Chief; Deputy Director - EMSB; or any other official designated by the Fire/EMS Chief as a Division Head.

Official Reprimand - A final decision letter which is placed in the employee's Official Personnel Folder and which censures an employee for cause as prescribed in Section 2 of this Article.

Supervisor - Anyone in the chain-of-command at a higher level than the involved employee.