



## 27.0 Trial Board Procedures

### TRIAL BOARD PROCEDURE

#### I. Statutory Provisions:

A. Authority—Pursuant to Md. Code Ann., Public Safety Art. ("PS"), § 3-106, the Washington County Sheriff's Office establishes the following Trial Board Process for disciplinary matters against a Police Officer, initiated by a Complaint filed by an individual member of the public, pursuant to PS § 3-101, *et seq.*

B. A Trial Board shall be composed of:

(1) an actively serving or retired administrative law judge or a retired judge of the District Court or a circuit court, appointed by the Board of County Commissioners of Washington County, Maryland, who shall serve as Chair of the Trial Board; shall be responsible for ruling on all motions before the Trial Board; and shall prepare the written decision of the Trial Board, including the findings, conclusions and recommendations of the Trial Board;

(2) a civilian who is not a member of an administrative charging committee, appointed by the Washington County Police Accountability Board; and

(3) a police officer of equal rank to the police officer who is accused of misconduct, appointed by the Sheriff, or if the accused is a municipal police officer, by the head of the law enforcement agency employing said officer. The police officer of equal rank will preferably be a member of another law enforcement agency.

C. The attorney for the Sheriff's Office shall notify the County Attorney or his designee of the need for appointment of an administrative law judge or retired judge, and of the need for appointment of a civilian by the Police Accountability Board. The attorney for the Sheriff's Office shall also prepare and file such requests and forms with the Office of Administrative Hearings or such other means as are necessary to initiate the appointment of a Chair of the Trial Board.

D. Before serving as a member of a Trial Board, each member must receive training on matters relating to police procedures from the Maryland Police Training and Standards Commission.

E. Proceedings of a Trial Board shall be open to the public, except to protect:

- (1) a victim's identity;
- (2) the personal privacy of an individual;
- (3) a child witness;
- (4) medical records;
- (5) the identity of a confidential source;
- (6) an investigative technique or procedure; or
- (7) the life or physical safety of an individual.

F. A Trial Board may administer oaths as necessary to complete its work.

G. A Trial Board may issue subpoenas as necessary to complete its work.

H. A complainant has the right to be notified of a Trial Board hearing. Except as provided in subsection (D) of this section, a complainant has the right to attend a Trial Board hearing.

I. Except as otherwise provided in this subtitle, a law enforcement agency has the burden of proof by a preponderance of the evidence in any proceeding under this procedure.

J. A Police Officer may be disciplined only for cause.

## **II. Definitions**

Calculation of time-- Unless otherwise stated, all references to “days” in this procedure refer to calendar days, and include Saturday, Sunday, and holidays. In computing a period of time, day of the act or event after which the designated period of time begins to run shall not be included, however the last day shall be included. If the last day falls on a Saturday, Sunday, or a County Holiday on which the Circuit Court for Washington County is closed to the public, the period runs until the end of the next day on which said court is open to the public.

## **III. Pre-Hearing Procedures**

A. The date and location of each hearing shall be determined by the Chief Deputy in consultation with the Chair and the members of the Trial Board. The hearing shall occur within Washington County, Maryland, and the Chief Deputy shall provide notice of the date and location to the parties and to the members of the Trial Board, prior to the hearing.

B. The accused officer will provide the name and contact information of the attorney, if any, who will represent him or her at the hearing to the Chief Deputy and to the Chair. If possible, this should occur within 10 days after the officer receives notice of the hearing date. Said attorney must be admitted to practice law in the State of Maryland. At all times while a matter is pending before a Trial Board, the accused officer and his or her attorney(ies) will notify the Chief Deputy and the Chair of any change in address or contact information.

C. At least 30 days before the Trial Board proceeding begins, the police officer shall be

(1) provided a copy of the investigatory record, if the police officer executes a confidentiality agreement not to disclose any contents of the investigatory record for any purpose other than to defend the police officer;

(2) notified of the charges against the police officer;

(3) notified of the disciplinary action being recommended; and

(4) provided a copy of this Trial Board procedure.

D. The members of the trial board will be presented with the Administrative Charging Committee’s or Agency’s charging document in advance of the hearing.

## **IV. Issuance of Subpoenas/Discovery**

A. A request for the issuance of a subpoena to require the attendance of witnesses or the production of documents shall be made in writing no later than 15 days before the hearing, and shall contain:

(1) The name and complete mailing address of the Police Officer;

(2) The badge number of the Police Officer;

(3) The date of the scheduled hearing, if known;

(4) The name, address, and telephone number of the attorney making the request, if applicable;

- (5) A proffer of the expected testimony or evidence and its relevance to the proceeding; and
- (6) The name and address of the requested witness.

B. The decision to issue a subpoena shall be in the discretion of the Trial Board Chair.

C. A request for subpoena may be refused if the testimony or evidence to be offered:

- (1) Is immaterial, irrelevant, or unduly repetitious; or
- (2) Does not pertain to a genuine issue in the contested case.

D. Cost of and proof of service by certified mail or affidavit of personal delivery is the responsibility of the person requesting the subpoena.

E. The party requesting the subpoena is responsible for notifying the person subpoenaed if the hearing is cancelled or postponed. Subpoenas shall remain in effect until the conclusion of the hearing.

F. The parties shall, 15 days before the hearing, exchange the names of witnesses whom they intend to testify at the hearing. If additional witnesses are identified as necessary witnesses, the party calling the witness shall notify the opposing party as soon as possible.

G. The Victim's Rights Advocate will notify the complainant of the date of the hearing and the complainant's right to attend the hearing. PS § 3-106(g).

H. Except as provided in this subsection, no other discovery shall be obtained between the parties.

#### **V. Postponements**

A. The Chair shall grant a postponement of the hearing if both parties agree to a postponement.

B. If the parties do not agree, postponements will only be granted for good cause as determined by the Chair. Failure to obtain representation within a reasonable amount of time shall not constitute good cause.

C. In the event of a postponement, a new hearing date will be scheduled by the Chief Deputy in consultation with the Chair and the other members of the Trial Board.

#### **VI. Conduct of Trial Board Hearing.**

A. The accused Police Officer may be represented by legal counsel of his or her choosing. Such legal counsel must be an attorney admitted to practice law in the State of Maryland. The personal appearance of the Police Officer at the Trial Board is mandatory.

B. There shall be no weapons permitted at the proceedings of the Trial Board.

C. The entirety of the hearing will be recorded by an official recorder appointed by the Chief Deputy. Unless expressly authorized by the Chief Deputy, the use of audio, video, or photographic recording devices by parties, their representatives, witnesses, or other persons in attendance of the hearing is strictly prohibited.

D. On request by a party, the Chair may exclude witnesses expected to testify, other than parties, from the hearing, except when testifying. In the event that witnesses are excluded, no person present in the hearing may disclose to an excluded witness the substance, nature, or purpose of any testimony, exhibits, other evidence, or arguments introduced during that witness's absence. The law enforcement agency may designate an employee or officer (in addition to the agency's attorney) as its representative to remain in the hearing room, even though the employee or officer may be a witness. An expert witness who is to render an opinion based on testimony given at the hearing may remain during the testimony. In the discretion of the Chair, a witness who has been excluded from the hearing who receives information in violation of this rule may be prohibited from testifying.

E. The conduct of the Trial Board hearing itself shall be as follows:

1. Brief opening statements will be given first by the law enforcement agency, and then by the defense.
2. The law enforcement agency will present its case, which shall consist of introducing evidence and/or testimony from witnesses. The defense may cross-examine witnesses. Trial Board members may also ask questions of witnesses.
3. After the law enforcement agency has rested its case, the defense will present its case. The law enforcement agency may cross-examine witnesses.
4. Rebuttal evidence may then be presented by the law enforcement agency.
5. Summation is made by the law enforcement agency, then by the defense, and then any rebuttal summation by the law enforcement agency.
6. Any witness who testifies must do so under oath or affirmation, consistent with the Maryland Rules of Civil Procedure.
7. Although live testimony is strongly preferred to other methods, in the case of an extraordinary hardship shown by a party and found by the Chair, the Chair may allow a witness to testify by video or telephonically, provided that both parties are able to hear and examine and/or cross examine the witness.
8. Any direct examination or cross-examination by a law enforcement agency or defense shall be conducted by a single attorney or party only.
9. The law enforcement agency has the burden of proof by a preponderance of the evidence.
10. At the conclusion of the evidence and summation, the Trial Board will go directly into closed session for deliberations. Any decision of the Trial Board as to verdict, or, if applicable, as to any penalty under section 11 below, must be by a majority of the Trial Board. Upon reaching its finding as to each charge, the Trial Board will return to open session at which the Chair will announce the Trial Board's findings of GUILTY or NOT GUILTY. As to any GUILTY finding, the Trial

Board shall also make a finding of which Violation Category and Level of the Disciplinary Matrix is applicable.

11. If a GUILTY verdict is reached on any charge, the Trial Board shall reconvene the hearing to consider the appropriate application of the Discipline Matrix. Either party may offer argument and/or evidence regarding aggravating and/or mitigating factors, which may include any factors outlined in the Disciplinary Matrix. The Board will then go directly into closed session for deliberations, and upon reaching its determination regarding penalty, within the Disciplinary Matrix. The Trial Board may consider, but is not bound by, any recommendation by the Administrative Charging Committee. Upon reaching its determination, the Trial Board will return to open session at which the Chair will announce the Trial Board's recommendation as to penalty.

12. All of the Trial Board's findings shall be later confirmed by a written decision as provided in Section E, below.

#### F. Trial Board Findings and Recommendations

1. Within 45 days after the conclusion of the final hearing, the Trial Board shall issue a written decision reflecting the findings, conclusions and recommendations of a majority of the Trial Board. Said findings shall include a verdict of guilty or not guilty as follows:

a. GUILTY (Charges Sustained): Sufficient evidence has been presented to establish a prima facie case that the law enforcement officer committed the actions as charged.

b. NOT GUILTY: A "Not Guilty" verdict will conclude the administrative action on the charges. A not guilty verdict shall be accompanied by one of the following findings:

1. NOT GUILTY (Unfounded): The allegations against the police officer are not supported by facts or sufficient evidence.

2. NOT GUILTY (Exonerated): The police officer acted in accordance with law and agency policy.

2. Any decision, order, or action taken as a result of the hearing will be accompanied by a finding of fact. The finding shall consist of a statement upon each issue of the case. If the Trial Board finds the employee "not guilty," the action is concluded.

3. A copy of the Trial Board's written decision shall be delivered to the the Sheriff or chief of the law enforcement agency, the Police Officer, and the complainant. Delivery may occur by e-mail. Delivery to the Police Officer's attorney shall be considered delivery to the officer. The date the e-mail is sent is deemed to be the date the decision has been issued.

4. An official written and taped record will be kept of the hearing, along with all evidence and exhibits.

5. Within 30 days after the date of issuance of a decision of a Trial Board, the decision may be appealed by the Police Officer to the Circuit Court for Washington County, Maryland. An appeal taken

under this subsection shall be on the record. Unless ordered by the Court, or otherwise provided by applicable law, the filing of an appeal shall not stay imposition of the Trial Board's decision.

6. A Police Officer who appeals the decision of the Trial Board shall request in writing that a transcript of the proceedings be prepared, and shall pay the estimated cost of preparation of the transcript of proceedings before any transcription shall occur.

7. A Trial Board decision that is not appealed by the Police Officer is final.

8. The victims' right advocate will provide a case summary to the complainant within 30 days after final disposition of the case.