



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

February 14, 2019

Chief William Scott
Chief of Police

Dear Chief Scott:

At the meeting of the Police Commission on Wednesday, February 13, 2019, the following resolution was adopted:

RESOLUTION 19-15

ADOPTION OF RULES FOR ADMINISTRATIVE APPEALS

RESOLVED, that the Police Commission hereby adopts the Rules for Administrative Appeals dated January 30, 2019.

AYES: Commissioners Hirsch, Taylor, DeJesus, Mazzuco, Hamasaki, Elias, Brookter

Very truly yours,

Sergeant Rachael Kilshaw
Secretary

San Francisco Police Commission

ROBERT HIRSCH
President

DAMALI TAYLOR
Vice President

PETRA DeJESUS
Commissioner

THOMAS MAZZUCCO
Commissioner

JOHN HAMASAKI
Commissioner

CINDY ELIAS
Commissioner

DION-JAY BROOKTER
Commissioner

Sergeant Rachael Kilshaw
Secretary

949/rct

cc: Director P. Henderson/DPA
Ret. Captain P. Chignell/POA
Deputy Chief M. Connolly/MEA
Attorney A. Worsham/IAD
Attorney S. Betz/IAD
Attorney T. Thompson/DPA

RULES FOR ADMINISTRATIVE APPEALS

The following rules shall govern administrative appeals from disciplinary determinations by the Police Commission, in accordance with California Government Code section 3304(b). These rules shall apply only to final disciplinary determinations by the Police Commission on verified complaints filed by the Chief of Police of the San Francisco Police Department ("SFPD") or the Director of the Department of Police Accountability ("DPA").

1. **Right to Appeal.** The Member shall have a right to appeal the Commission's final decision imposing discipline to a Hearing Officer. The appeal shall not stay or delay implementation of the Police Commission's decision.
2. **Deadline to File an Appeal.** The Notice of Appeal must be in writing and contain a statement specifying each basis for the appeal. The Member must file and serve the Notice of Appeal to the Commission Secretary and counsel for the SFPD or DPA (whichever agency prosecuted the specific matter before the Commission) no later than 5:00 p.m. on the date that is 30 calendar days from when both the Commission's determination to impose discipline and its findings of fact are served on the officer by a superior officer. If the 30th day falls on a Saturday, Sunday, or legal holiday, the deadline to file the appeal shall be the next business day. Filing and service of the Notice of Appeal must be by personal delivery, electronic delivery, or by other means calculated to effect delivery on or before the 30th day. Failure to comply with the foregoing requirements shall result in forfeiture of the Member's right to an appeal.
3. **Appeal Hearing Officer.** The Hearing Officer for administrative appeals shall be an Administrative Law Judge ("ALJ") from the California Office of Administrative Hearings ("OAH"). Within seven (7) calendar days of receipt of a Notice of Appeal, the Commission Secretary shall contact the OAH and request the assignment of an ALJ as the neutral Hearing Officer for the appeal. When OAH has assigned a Hearing Officer, the Commission Secretary shall notify the parties of the identity of the assigned Hearing Officer.
4. **Communications; Service on Other Party and Commission.**
 - a. Unless otherwise specified in these rules, once a Hearing Officer is assigned, the parties shall submit all written communications, briefs, and other filings to the Hearing Officer directly and concurrently carbon copy (for communications) or serve (for briefs or other filings) the opposing party and the Commission Secretary with a copy by U.S. Mail, personal delivery, or other means agreed to by the parties. The parties shall provide a courtesy hard copy of all briefs and other filings to the Commission Secretary for the Commission files.
 - b. The OAH requires e-filing pursuant to its Electronic Filing and Naming Guidelines. Information about those procedures is available on the OAH website, currently (<https://www.dgs.ca.gov/oah/Home/SecureFileTransfer.aspx>). The parties shall familiarize themselves with those procedures, and shall ensure they submit materials in compliance with the OAH requirements.
 - c. The parties and their representatives may not have *ex parte* communications with the Hearing Officer. The Hearing Officer may not have *ex parte* communications with members of the Commission or SFPD or DPA regarding the matter or issues on appeal. Any communications from a party to the Hearing Officer regarding the appeal shall be in writing, with a copy concurrently served on the opposing party and Commission Secretary by U.S. Mail, electronic delivery,

personal delivery, or other means agreed to by the parties and the Commission Secretary.

5. **Discovery.** Except as specified elsewhere herein, no discovery is permitted for the appeal. Discovery was available prior to the trial before the Commission, under the Commission's Procedural Rules Governing Trial of Disciplinary Cases, Section VIII. The appeal is limited to the evidentiary record made before the Police Commission, unless the Hearing Officer has ordered the Record on Appeal to be augmented pursuant to the procedures herein.

6. **Appeal Submissions.**

- a. **Transmission of Record on Appeal:** Within thirty (30) calendar days of the timely filing of a Notice of Appeal, the Commission Secretary shall submit the Notice of Appeal and the following materials to the Hearing Officer by personal delivery or other means calculated to effect delivery within the thirty (30) day period, with copies to the parties by the same means:
 - i. Decision letter from the Commission;
 - ii. Commission's Findings of Fact; and
 - iii. Record of the Police Commission proceedings, including the charging documents, the reporter's transcript, and all exhibits.
- b. **Augmenting the Record:** Upon a showing of good cause, the Hearing Officer may grant a party's motion to augment the Record on Appeal with the following: (1) any document that was part of the Commission proceeding that was not included in the Record on Appeal prepared by the Commission Secretary; (2) any document or testimony that was excluded from the Commission proceeding based on an evidentiary ruling of the Commission or as a result of a decision by the Commission denying a request by the Member for more time to put on the Member's case, provided that the Member identified to the Commission, on the record, the specific document or testimony the Member wished to be considered; or (3) any newly-discovered evidence that was unknown to the party at the time of proceedings before the Commission, despite that party's diligent investigation and efforts to discover all relevant evidence. A party must file any motion to augment the record within fourteen (14) calendar days of the date of the Commission Secretary's transmission of the Record on Appeal. The other party may file an opposition within fourteen (14) calendar days of the filing of any such motion. The Hearing Officer may allow an oral argument on any such motion. The Hearing Officer shall rule on the motion within a reasonable time, not to exceed thirty (30) days from the later of either submission of the opposition brief or the date of any oral argument. The Hearing Officer shall provide a written decision to the Commission Secretary for distribution to the parties, which shall include the basis for his or her evidentiary ruling(s).
 - i. If the Hearing Officer grants a motion to augment the Record on Appeal with a document that was part of the Commission proceeding, the Commission Secretary shall submit the document consistent with the Hearing Officer's decision, within not more than fourteen (14) calendar days of that decision.

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- ii. A Member challenging a ruling by the Commission to exclude documentary or testimonial evidence must show that the ruling was erroneous and prejudicial. If the Hearing Officer, on motion by the Member, makes such findings, the hearing officer shall allow limited discovery for the introduction and authentication of such evidence, as well as such related subject matter as the Hearing Officer may approve. Such discovery and evidence shall be part of the Record on Appeal.
 - iii. If the Hearing Officer grants a motion to augment the Record on Appeal with newly-discovered evidence that was unknown to the party at the time of proceedings before the Commission, the hearing officer shall allow limited discovery for the introduction and authentication of such evidence, as well as such related subject matter as the Hearing Officer may approve. Such discovery and evidence shall be part of the Record on Appeal.
- c. Certification of the Record: Upon completion of the procedures described in subparagraphs a. and b. above, the Commission Secretary shall certify that the Record of Appeal is final.
- d. Briefing on the Merits of the Appeal:
- i. Scope of Evidence. In their briefing, the parties may rely only on evidence in the Record on Appeal, as prepared by the Commission Secretary, and as augmented per any decision of the Hearing Officer on a motion to augment the Record. Neither party may submit new or additional evidence in the briefs.
 - ii. Appellant's Opening Brief: The Member shall file and serve the Opening Brief on the Hearing Officer and the SFPD or DPA, whichever prosecuted the discipline matter before the Police Commission, no later than twenty-one (21) calendar days after the Commission Secretary certifies that the Record on Appeal is final. Any basis for appeal not stated in Appellant's Opening Brief is waived.
 - iii. Response Brief: The SFPD or DPA, whichever prosecuted the discipline matter before the Police Commission, shall file and serve its Response Brief no later than twenty-one (21) calendar days after the Member files and serves the Opening Brief.
 - iv. Appellant's Optional Reply Brief: The Member may file a Reply Brief no later than seven (7) calendar days after the SFPD or DPA files and serves its Response Brief.
 - v. The parties must file and serve the briefs pursuant to Paragraphs 4(a) and (b).
 - vi. If one of the preceding deadlines falls on a Saturday, Sunday, or legal holiday, the due date shall be extended to the next business day.
 - vii. Either party may request to continue any one of the foregoing deadlines for good cause by filing and serving with the Hearing Officer (1) a stipulated request with the other party; or (2) a motion to continue, as soon as reasonably possible after learning of the circumstances leading to

the request for a continuance. The Hearing Officer may allow the other party an opportunity to respond or oppose a motion under (2) above. The Hearing Officer may decide the motion, in his or her discretion, and grant additional time not to exceed sixty (60) calendar days.

7. **Appeal Hearing Date and Continuances.** The Hearing Officer shall set a hearing date in consultation with the parties for no later than thirty (30) calendar days following the date for submission of the Optional Reply Brief. If a party wishes to request a continuance of the hearing date, that party must submit a written request to the Hearing Officer as soon as reasonably possible after learning of the circumstances establishing good cause for a continuance. The request must propose three dates when the party and representative will be available, with the objective of setting the hearing for a date as soon as reasonably possible. The opposing party may file a response by the close of business the following day, stating any objection to the request and indicating whether that party is available on any of the three proposed dates. The Hearing Officer shall decide whether the matter should be continued, and if so, set a new date for the hearing when the parties and representatives are available.
8. **Appeal Hearing Time and Location.** The hearing shall be conducted in person, although a party or the representative may appear telephonically with the approval of the Hearing Officer. No later than seven (7) calendar days before the hearing date, the Police Commission Secretary shall, in consultation with the Hearing Officer or OAH staff, reserve an appropriate location to accommodate the hearing and shall notify all parties of the time and location of the hearing.
9. **Closed/Open Hearing.** The appeal hearing shall be conducted in closed (non-public) session unless the Member requests open (public) session, in which case the appeal hearing shall be open. If the Member requests open session, the Hearing Officer shall close portions of the appeal hearing to the extent necessary to protect the privacy interests of third parties, e.g., medical information, or to comply with other laws making some of the material in the record confidential.
10. **Representatives.** The parties may each have a representative of their choice at the appeal hearing.
11. **Court Reporter.** The Commission shall provide a court reporter to record and prepare a stenographic transcript of the appeal hearing. The Commission shall order the transcripts and provide a complete copy to both parties and to the Hearing Officer if requested.
12. **Rights and Responsibility at the Appeal Hearing**
 - a. **Rights and Responsibilities of the Parties.**

Each party shall have the right to make an oral argument and respond to questions from the Hearing Officer, directly or through a representative.
 - b. **Role and Responsibilities of the Hearing Officer.**

The Hearing Officer shall independently reexamine the entire Record on Appeal prior to the appeal hearing.

The Hearing Officer shall preside at the appeal hearing and exercise all powers relating to the conduct of the appeal hearing.

The Hearing Officer may record the appeal hearing with an audio recorder provided by the Commission Secretary.

The Hearing Officer shall issue a written decision (see Paragraph 14 below).

13. **Standard of Review.** The Hearing Officer shall review the Commission's decision for abuse of discretion, as defined in Code of Civil Procedure section 1094.5 and case law construing that statute.
14. **Decision by the Hearing Officer.** The Hearing Officer shall decide the appeal based on the Record on Appeal, the briefs, and the arguments of the parties at the appeal hearing. Not later than sixty (60) calendar days after the appeal hearing, the Hearing Officer shall prepare and issue a written decision that determines the issues on appeal, including factual determinations relating to whether the Commission abused its discretion. The Hearing Officer shall submit the decision to the Commission Secretary, who shall serve the decision on the parties along with written notification that the decision is final. If the Hearing Officer reverses the Commission's decision or reduces the discipline imposed by the Commission, the Hearing Officer shall remand the case to the Commission for further action consistent with the decision. The decision of the Hearing Officer shall be final and binding on Member, the SFPD and DPA (as applicable), and the Commission.
15. **Public Meeting Laws.** The appeal hearing is not subject to public meeting requirements under the Ralph M. Brown Act, Government Code section 54950 *et seq.*, or the San Francisco Sunshine Ordinance, Administrative Code Chapter 67.
16. **Peace Officer Personnel Records.** Unless the member requests an open proceeding, the entire file on appeal, including the Record on Appeal; the communications, motions and briefs; the transcript of the appeal hearing; and the Hearing Officer's decision, are confidential peace officer personnel records protected by Penal Code section 832.7. These records are not subject to disclosure, including but not limited to disclosure in response to a request under public records laws. In response to any such request, the OAH shall assert an exemption to disclosure based on Penal Code section 832.7. In the event that the Member has requested an open proceeding, any testimony or evidence presented in closed session to protect privacy interests shall remain subject to the foregoing restrictions.

For the City:

 1/30/19

Carol Isen
Employee Relations Director

For the San Francisco Police Officers' Association (SFPOA) Union:

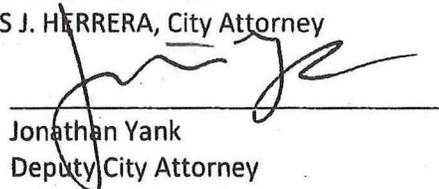


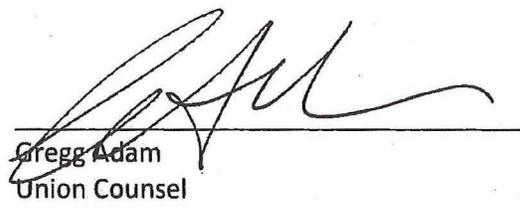
Tony Montoya
President

APPROVED AS TO FORM:

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By:


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Deputy City Attorney


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