

ESSEX POLICE DEPARTMENT
Department Directive



Date Issued: May 22, 2000	Number: 1.1.4
CODE OF CONDUCT Disciplinary Procedures	<input checked="" type="checkbox"/> New <input type="checkbox"/> Amends <input type="checkbox"/> Rescinds
Authorized Signature: _____ Chief of Police	
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Date Implemented:	Review Date:

1.0 RESTRICTIONS ON DISCIPLINARY ACTION

- 1.1 No disciplinary action shall be taken against any member except in accordance with the provisions of this Article.
- 1.2 Disciplinary action against a member may be taken only with the approval of the Chief of Police.
- 1.3 The disciplinary guidelines shall be followed in imposing discipline unless the Chief of Police finds in his/her discretion, just cause to deviate from the guidelines. Nothing in this provision prevents the imposition of consecutive discipline for more than one violation occurring from the same incident. Nothing contained in this Article is to be construed as restricting or interfering with the right of the Chief of Police to demote a member in conjunction with or in addition to any imposed disciplinary action set out within the Disciplinary Guidelines.
- 1.4 Notwithstanding the provisions of subsections 1.1 and 1.2 of this section, the Chief of Police, or a Supervisor may immediately temporarily relieve from duty with pay any member who:

- (I) is incapable of performing his/her duties due to illness, intoxication, severe mental distress, or other incapacitation;
- (II) fails or refuses to perform his/her duties or to obey a lawful order, or;
- (III) is performing his/her duties in such a manner as to be detrimental to the good order and operation of the Department or to be in violation of the Department Rules and Regulations or who by his/her conduct reasonably appears to present a risk to the public's safety.

Whenever a member is temporarily relieved from duty with pay under this subsection, the member taking such action shall immediately notify the Chief of Police of same.

- 1.5 Nothing contained in this Article is to be construed as restricting or interfering with the right and obligation of a Commanding Officer or supervisor to take appropriate administrative actions with respect to members under his/her command.
- 1.6 Nothing contained in this Article is to be construed as restricting or interfering with the right of the Chief of Police to temporarily suspend from duty without pay, temporarily relieve from duty with pay, or temporarily reassign any member against whom an allegation has been made pending the final disposition.
- 1.7 Administration of discipline shall be in accordance with Article XV of the Essex Police Employee's Association Agreement.

2.0 COMMENCEMENT OF DISCIPLINARY PROCEEDINGS

- 2.1 Disciplinary proceedings against a member commence with the service of charges upon the member.
- 2.2 Charges shall be served personally upon the member against whom they have been preferred. The member who serves the charges shall certify to the Chief of Police, in writing, the time and place of such service.
- 2.3 At the same time as charges are served upon him/her, a charged member shall be given a copy of all of the statements and other evidence compiled during the course of the investigation into the allegations against him/her.

3.0 RIGHTS OF CHARGED MEMBER

- 3.1 Whether he/she admits or denies the charges preferred, a charged member has the right to a hearing, at which he/she may be represented, may present evidence and testimony on his/her own behalf, and may examine and cross-examine witnesses.

- 3.2 A charged member may, but is not required to, either admit or deny the charges preferred. If the charged member does not admit the charges it will be deemed that he/she denies the same. A charged member who wishes to admit the charges shall so advise the Chief of Police in writing. When a charged member admits the charges, it shall be deemed that the charges have been proved. Nonetheless, such an admission of charges shall not, by itself, constitute a waiver of the charged member's right to a hearing at which he/she may present evidence of mitigating or extenuating circumstances. A charged member who admits the charges preferred against him/her may, however waive his/her right to a hearing by so advising the Chief of Police, in writing, in which case a hearing will not be conducted. A charged member who admits the charges and waives his/her right to a hearing may, within four (4) calendar days of waiving his/her right to a hearing, submit a written statement to the Chief of Police for his/her consideration.
- 3.3 A charged member may elect to have a hearing held before a hearing panel in accordance with subsection 4.0 of this section, which request shall be honored.
- (I) The hearing panel shall be comprised of three (3) members, who shall have no connection with the matter at issue.
 - (II) Within seven days after the delivery to a member of written charges against such member, the member may file with the Chief of Police a request for the appointment of a hearing panel, in accordance with paragraph one (1) above, which request shall be honored.
- 3.4 If the charged member does not request a hearing within seven (7) days after receipt of the written charges the Chief of Police may take such disciplinary action as he/she deems appropriate, including reprimand, suspension, demotion or removal.

4.0 HEARING PANEL

- 4.1 If the charged member requests a hearing panel, the Chief of Police shall provide the charged member in writing with the names of four (4) members within seven (7) calendar days after the charged member's actual request for a hearing. The names of the four (4) members, at least one of whom shall have the rank of Lieutenant or higher, shall have had no connection with the matters at issue. Within five (5) calendar days of his/her receipt of notification from the Chief of Police, the charged member shall notify the Chief of Police in writing, of the three names selected to serve as the hearing panel, provided that at least one member shall have the rank of Lieutenant or higher.
- 4.2 As soon as practicable the panel shall schedule a hearing and shall hold the same after timely notice to the charged member and the Chief of Police.

- 4.3 At the discretion of the charged member the hearing may be closed or public. The charged member or member's representative or both may cross examine witnesses and present evidence. All witnesses shall testify under oath and all proceedings shall be recorded.
- 4.4 A charged member is not required to attend, or be represented at the hearing, and such failure shall not be construed as an admission of the charges preferred against him/her. However, the failure of a charged member to attend or be represented at a hearing shall constitute a waiver of his/her right to present evidence and testimony on his/her own behalf and to examine and cross-examine witnesses. In such cases, the hearing panel shall hold whatever hearing(s) and shall take whatever evidence and testimony as it deems necessary and appropriate.

5.0 DECISION OF HEARING PANEL

- 5.1 At the conclusion of the hearing, the hearing panel shall decide, by majority vote, whether or not the charges have been proved by a preponderance of the evidence and shall report its findings and decisions, in writing, to the charged member and the Chief of Police. The decision of the panel and any resulting disciplinary action taken by the Chief of Police are final.
- 5.2 If the Hearing Panel decides that the charges have not been proved, no disciplinary action will be taken against the charged member, no record of the allegation or charges shall be placed in the member's personnel file, and any pay or other rights which the member may have lost as a result of a temporary suspension shall be restored.
- 5.3 If the hearing panel decides that the charges have been proved, it may, in its discretion, make recommendations to the Chief of Police with respect to the nature and extent of disciplinary action which would be appropriate. Such recommendations shall not be binding upon the Chief of Police.

6.0 DISCIPLINE OF MEMBER

- 6.1 In a case in which the charged member admits the charges preferred against him/her and waives his/her right to a hearing or in which the hearing panel concludes that the charges have been proved, the Chief of Police shall determine what, if any, disciplinary action to take against the member.
- 6.2 In determining what, if any, disciplinary action to take, the Chief of Police may consider the nature and severity of the Class I, II, or III violation, the member's personnel record, the recommendations, if any, of the Selectboard or hearing panel, and the nature and extent of disciplinary action taken in prior cases of a similar nature.

- 6.3 Nothing contained in this Article is to be construed as restricting or interfering with the right of the Chief of Police to demote a member in conjunction with any imposed disciplinary action.
- 6.4 After determining what, if any, disciplinary action to take, the Chief of Police shall advise the charged member, in writing, of the disciplinary action to be taken against him/her.
- 6.5 In all cases in which the charged member admits the charges preferred against him/her and waives his/her right to a hearing, the Chief of Police, shall provide one (1) copy of his/her determination of the disciplinary action to be taken against the member through the chain of command, to the Supervisor of the member involved.
- 6.6 In all cases, the Chief of Police shall advise, in writing, the member or person other than a member who made the allegation of the disposition of the same.

7.0 APPEAL OF DISCIPLINARY ACTION TAKEN

- 7.1 If the charged member did not request a hearing panel, or if a hearing was held and discipline was imposed, he/she may appeal the charges and the disciplinary action taken by following the appropriate procedures as outlined in the Essex Police Employee' s Association Agreement Article XI Step 2.

8.0 PROBATIONERS

- 8.1 Notwithstanding any other provision of this Article, a probationer may be summarily dismissed at any time by the Chief of Police without a hearing.

9.0 DISCIPLINARY GUIDELINES

- 9.1 Acts of Misconduct (Class - 1) (All days suspended are off payroll.)

Violation	1st Offense	Subsequent Offense
Bribes	dismissal	
Cheating on Examination	dismissal	
Criminal Conduct - Felony	dismissal	
Courage	4 days - dismissal	dismissal
Disclosure of Identity of Confidential Informant		dismissal
Disclosure of Identity of Members	30 days - dismissal	dismissal
Discrimination	4 - dismissal	dismissal
False Statements	30 days - dismissal	dismissal

Violation	1st Offense	Subsequent Offense
Falsification and Misuse of Property and Evidence	dismissal	
Gambling	4 days - dismissal	
Mistreatment of Persons in Custody	4 days - dismissal	dismissal
Possession and Use of Drugs	30 days - dismissal	dismissal
Receipt, Processing, and Reporting of Allegations	4 days - dismissal	8 days - dismissal
Truthfulness	dismissal	
Use of Alcohol on Duty	8 days - dismissal	dismissal
Firearms	4 days - dismissal	dismissal
Force	4 days - dismissal	dismissal

9.2 Acts of Misconduct (Class -2) (All days suspended are off payroll, unless noted otherwise.)

Violation	1st Offense	Subsequent Offenses
Abuse of Authority	Letter of Reprimand - 5 days	dismissal
Associations	4 - 8 days	8 days - dismissal
Conduct	Letter of Reprimand - 5 days	5 days - dismissal
Criminal Conduct - Misdemeanor	4 days - dismissal	30 days - dismissal
Biased Expression	4 - 30 days	30 days - dismissal
Dissemination of Information	1 - 30 days	30 days - dismissal
False Statements	4 - 8 days	8 days - dismissal
Gifts	4 - 8 days	8 days - dismissal
Interference	4 - 8 days	8 days - dismissal
Membership in Organizations	4 - 8 days	8 days - dismissal
Obedience to Orders	4 - dismissal	8 days - dismissal
Political Activity	1 - 8 days	8 days - dismissal
Residence	1 - 8 days and relocate within 10 days	suspension - dismissal
Responsibility	4 days - dismissal	8 days - dismissal
Rewards	1 - 8 days	8 days - dismissal

Violation	1st Offense	Subsequent Offenses
Soliciting Personal Advancement	1 - 8 days	4 days - dismissal
Special Privileges	4 days - dismissal	8 days - dismissal
Use and Maintenance of Department Property and Equipment	4 days AL - 4 days suspension	4 - 30 days
Use of Alcohol on duty	8 days - dismissal	30 days - dismissal
Use of Alcohol off duty	1 - 8 days	8 days - dismissal
Violation of Rules	4 - 8 days	8 days - dismissal
Third offense on any Part C Code of Conduct Violation	1 - 4 days	4 days - dismissal

9.3 Acts of Misconduct- (Class-3) (All days are vacation.)

Violation	1st Offense	Subsequent Offenses
Absence from Duty	Letter of Reprimand - 1 day	2 - 4 days
Alcoholic Beverages in or on Department Property	Letter of Reprimand - 1 day	2 - 4 days
Carrying firearms and other weapons	Performance issue up to letter of reprimand	1 - 4 days
Courtesy	Letter of Reprimand - 2 days	3 - 4 days
Defamatory Expression	Performance - Letter of Reprimand	1 - 4 days
Employment Outside of the Department	Letter of Reprimand - 2 days	3 - 4 days
Gifts	Letter of Reprimand - 2 days	3 - 4 days
Identification	Letter of Reprimand - 1 day	2 - 4 days
Indebtedness	Letter of Reprimand - 2 days	3 - 4 days
Influencing Legislation	Letter of Reprimand - 1 day	2 - 4 days
Neglect of Duty	Letter of Reprimand	1 - 4 days
Off duty responsibilities	Letter of Reprimand - 1 day	2 - 4 days
Personal Appearance	Letter of Reprimand	1 - 4 days
Reporting for Duty	Letter of Reprimand - 2 days	3 - 4 days
Soliciting	Letter of Reprimand - 1 day	2 - 4 days
Testimonials for Commercial Use	Letter of Reprimand - 1 day	2 - 4 days
Timely Reports	Letter of Reprimand	1 - 4 days
Use and Maintenance of Department Property and Equipment.	Letter of Reprimand - 2 days	3 - 4 days
Violation of Rules	Letter of Reprimand - 2 days	3 - 4 days

Violation	1st Offense	Subsequent Offenses
Conformance to Laws*	Performance - 2 days	<i>(within a year of first offense)</i> B 3 - 5 days

***Offense in excess of one year apart to be treated as 1st offense.**