



## Key Issue Report:

# SFPD's Handling of Officer Discipline

Interim Report for the Audit of SFPD's Handling of Officer Misconduct

May 3, 2023

Department of Police Accountability

Executive Director Paul Henderson

## Executive Summary

**SFPD lacks written criteria for holding discipline in abeyance, which may lead to subjective and arbitrary decisions.**

*(Key Issue 1)*

**SFPD does not have timeframes for resolving appeals of intended disciplinary actions, which can delay accountability and create perceptions that the process is unfair.**

*(Key Issue 2)*

The San Francisco Police Department (SFPD) stated that it considers abeyance on a case-by-case basis, and that the abeyance period is like a "probation" term where the discipline is only imposed if the officer has further misconduct.

**11%** From 2019 to 2021, SFPD suspended 126 officers; SFPD held suspensions for 14 (11%) of these officers in **abeyance without documented criteria.**

- ◆ The U.S. Department of Justice cautions that, when used unwisely, habitual suspension of sentences can introduce arbitrariness into the disciplinary system.
- ◆ Although SFPD aims to create a clear, equitable, and accountable protocol for disciplinary actions, it has not provided any context around the decisions to hold certain discipline in abeyance, or the mechanisms in place to ensure consistency in these determinations.

After the Chief of Police determines discipline for a sustained case, SFPD notifies the officer. The officer may then appeal the decision and request a Chief's hearing.

**55%** We analyzed data for Department of Police Accountability (DPA) investigations referred to SFPD for disciplinary action. As of April 2022, most appeals (28 of 51, or 55%) related to these cases were **pending a Chief's hearing for more than a year.**

- ◆ U.S. Department of Justice guidance states that an effective disciplinary process must be timely and have established completion deadlines.
- ◆ Appeals can increase the time to resolve cases. The impact of discipline on the officer, and the messages to the rest of the department and to the community are severely compromised the longer it takes from the time the misconduct occurred to its resolution.

## Key Issues

### Issue 1 – SFPD lacks written criteria for holding discipline in abeyance, which may lead to subjective and arbitrary decisions.

The San Francisco Police Department (SFPD) does not have written criteria for when it is appropriate to hold discipline in abeyance. This lack of documented criteria may lead to subjective decision-making and introduce arbitrariness into the department's discipline process.

From 2019 to 2021, SFPD suspended 126 officers; SFPD held suspensions for 14 (11%) of them in abeyance. While SFPD stated that it considers abeyance on a case-by-case basis for officers with no prior disciplinary history, this practice is not documented.<sup>1</sup> SFPD reported that both terminations and suspensions were held in abeyance in 2021 in its *Department Racial Equity Progress Report*. Although it states that it is SFPD's goal to create a clear, equitable, and accountable protocol for disciplinary actions, the report does not provide any context around the decisions to hold certain discipline in abeyance, or the mechanisms in place to ensure consistency in these determinations.

Further, SFPD's reasons for holding discipline in abeyance may not be clear to the San Francisco Police Commission — survey responses from five commissioners reflect a desire for improvement in SFPD's reasons for holding discipline in abeyance.<sup>2</sup>

**Although SFPD does not have guidance on holding discipline in abeyance, other jurisdictions do.**

The **Albuquerque Police Department** defines abeyance as a temporary hold on part of a suspension to be served for a sustained policy violation.<sup>3</sup> The Albuquerque Police Department considers abeyances as exceptions in the disciplinary process that require documentation. This




#### Abeyance

**SFPD policies do not define abeyance or describe when it is appropriate.** SFPD stated it used abeyance similar to a "probation" term where the discipline is only imposed if the officer has further misconduct during the abeyance period.

Fully justified conditional suspensions of discipline should be available when they will not undermine fairness, consistency, and integrity. **Used unwisely, abeyance can introduce arbitrariness into the disciplinary system.**

- U.S. Department of Justice, *Standards and Guidelines for Internal Affairs*

#### Commissioners' rating of information provided by SFPD on reasonings for holding discipline in abeyance

SFPD does not provide	
Does not meet needs	
Needs improvement	
Meets needs	-
Excellent	-

<sup>1</sup> Abeyance is referenced in the *Memorandum of Understanding Between the City and County of San Francisco and San Francisco Police Officers' Association*; however this only states that officers that received a suspension, whether it was served or held in abeyance, within the past three years are not eligible for the experienced officer incentive pay.

<sup>2</sup> We issued this survey to the San Francisco Police Commission on April 26, 2022.

<sup>3</sup> Albuquerque Police Department, *Standard Operating Procedure 3-46 Discipline System*, effective July 2021.

department also has criteria for when holding discipline in abeyance is appropriate, as shown in Exhibit 1.

**Exhibit 1 - The Albuquerque Police Department has criteria on when, and for how long, it can hold discipline in abeyance.**

Albuquerque Police Department policy states it can hold no more than 25% of a suspension in abeyance, and for no more than 6 months.

Abeyance Is <b>Appropriate</b> When:	Abeyance Is <b>Inappropriate</b> When:
<ul style="list-style-type: none"> <li>◆ The employee accepted responsibility for their actions</li> <li>◆ The employee has no more than one prior offense during the period in which the prior offense may be considered for progressive discipline</li> <li>◆ Further offenses are unlikely to occur</li> </ul>	<ul style="list-style-type: none"> <li>◆ The employee refuses to admit any wrongdoing</li> <li>◆ Past attempts to correct behavior have been ineffective</li> <li>◆ The employee has served any suspension in the previous two years</li> <li>◆ Violations find purposeful, physical harm to an individual</li> <li>◆ Violations find serious harm resulted to the reputation of the department</li> <li>◆ The conduct constituting the violation was planned or part of an on-going scheme.</li> </ul>

Source: Albuquerque Police Department, Standard Operating Procedure 3-46 Discipline System, effective July 2021.

The **San Diego Police Department** offers a lower level of discipline if the officer accepts a “last chance agreement” where the more severe discipline is put in abeyance if the officer does not violate the agreement. For example, termination for first-time alcohol-related misconduct can be converted to a 5-day suspension with a last chance agreement putting the termination in abeyance for five years.<sup>4</sup>

Without clear, documented guidance, SFPD may not be able to show that it offers abeyance to members consistently and equitably without consideration of factors like their race, gender, rank, or assignment.

**Issue 2 – SFPD does not have timeframes for resolving appeals of intended disciplinary actions, which can delay accountability and create perceptions that the process is unfair.**

SFPD’s process for resolving appeals of the Chief’s intended discipline does not include completion timeframes. U.S. Department of Justice guidance states that an effective disciplinary process must be timely and have established completion deadlines. This guidance notes that appeals can increase the time to resolve cases and cautions that the impact of discipline on the officer, and the messages to the rest of the department and to the community, are severely compromised the longer it takes from the time the misconduct occurred to its resolution.<sup>5</sup>

<sup>4</sup> City of San Diego Police Department *Discipline Manual for Sworn Personnel*, June 2019.

<sup>5</sup> U.S. Department of Justice, National Institute of Justice, *Police Discipline: A Case for Change*, 2011.

While state law gives officers the opportunity to administratively appeal punitive actions, it does not establish any timeframes for when appeals must be heard or decided – this is left to the local law enforcement agency.<sup>6</sup> Although SFPD's **Department General Order 2.07 Discipline Process for Sworn Officers** requires officers to request a hearing with the Chief within 10 days of receiving a notice of intent to discipline, it does not establish timeframes for when the hearing must take place or when the appeal should be resolved.<sup>7</sup>

SFPD stated that it aims to hold Chief's hearings within six to eight months, but that delays happen due to scheduling conflicts and the availability of the accused member. We analyzed data for DPA-initiated investigations and found that over half (28 of 51, or 55%) of the hearings related to these cases were pending for more than a year, as shown in Exhibit 2.

### Investigation Process Overview



**Misconduct Reported** – A complaint alleging a violation of SFPD policy.



**Misconduct Investigated** – Generally, DPA investigates complaints made by members of the public, while SFPD's Internal Affairs investigates complaints from SFPD employees.



**Sustained** – If misconduct occurred, the Chief of Police or the Police Commission determines discipline.



**Officer Notification** – SFPD must notify officers of the intended discipline within one year of the investigation.



**Appeal** – Officers may appeal some types of intended discipline through a **Chief's hearing**.

## Exhibit 2 – Most appeals were pending Chief's disciplinary hearings for more than a year.

We analyzed data for DPA investigations referred to SFPD for disciplinary action. As of April 2022, most appeals (28 of 51, or 55%) related to these cases were pending a Chief's hearing for more than one year.

	Approximate Months Pending a Chief's Hearing	Hearings	% of Total
Note: This analysis focuses only on DPA-investigated officer misconduct. SFPD's case management system does not include the necessary dates to conduct the same analysis on Internal Affairs Division-initiated investigations.	< 6 months	15	29%
	6-12 months	8	16%
	12-18 months	17	33%
	18-24 months	8	16%
	>24 months	3	6%
	<b>Total</b>	<b>51</b>	

Source: DPA Case Tracking Spreadsheet, as of April 2022.

<sup>6</sup> California Government Code Section 3304.

<sup>7</sup> In August 2020, SFPD and the San Francisco Police Officers' Association signed a letter of agreement for appeals of written reprimands. However, this agreement also lacks timeframes for the various stages of the process, like the Chief's appointment of the hearing officers or how long the member has to confer with SFPD about the issues on appeal.

### Other jurisdictions attach time frames to their appeals processes.

The **City of Los Angeles** and **Long Beach Police Department** both have specific timeframes for administrative appeals.

A memorandum of understanding between the **City of Los Angeles** and the Los Angeles Police Protective League requires:

- ◆ A **five-day deadline for selecting a hearing officer** after an employee requests an administrative hearing.
- ◆ The hearing officer to **convene the hearing within 15 to 30 days** of their selection. The hearing officer can continue proceedings for **periods up to 21 days**.
- ◆ The hearing officer to forward their report to the Los Angeles Police Department's Chief of Police and officer's representative **within 30 days**.
- ◆ The Chief of Police to **make a final decision within 30 days** of receiving the report and provide the employee with both the final decision and the hearing officer's report **within 10 days of making their decision**.

The **Long Beach Police Department** established a timeframe for appeals of written reprimands.<sup>8</sup> Long Beach's process requires the Chief of Police or their designee to **meet with officers within 10 working days of receiving an appeal and make a written decision within 30 calendar days**.

The amount of time between when the misconduct occurred to the imposition of sanctions can affect employees' opinions about fairness. For example, an officer suspended a year after the misconduct, but who has performed well in the interim, may resent the imposition of the sanction. The officer and the officer's colleagues may believe that imposition of the sanction a year later is unfair.<sup>9</sup> Setting timeframes for resolving appeals may help SFPD avoid these risks and ensure a fair and efficient discipline process.

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## Opportunities to Address These Issues

SFPD's lack of written criteria for holding discipline in abeyance and lack of set completion timeframes for Chief's hearings provide the department with opportunities to improve its procedures. Establishing clear criteria and timeframes may help SFPD create a more transparent, consistent, and efficient discipline process.<sup>10</sup>

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<sup>8</sup> Long Beach Police Department Policy Manual, effective August 2022.

<sup>9</sup> U.S. Department of Justice, National Institute of Justice, *Police Discipline: A Case for Change*, 2011.

<sup>10</sup> The U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government* provides a framework for designing, implementing, and operating an effective internal control system. The framework outlines principles and components that can help SFPD assess the key issues and develop control activities to mitigate associated risks in its disciplinary process.

## Key Terms

**Abeyance** – SFPD policies do not define abeyance or describe when it is appropriate. SFPD stated that the use of the abeyance period is similar to a "probation" term, where the discipline, such as suspension without pay, is only imposed if the officer has further misconduct during the abeyance period.

**Chief's Disciplinary Hearing** – As described in Department General Order 2.07, when a police officer accused of misconduct is notified of intended punitive action, they are given an opportunity to request a hearing before the Chief. At the conclusion of the hearing, the Chief may suspend the officer up to 10 days, or reprimand, admonish, prescribe corrective action, find not sustained, or exonerate the officer.

**Department General Order 2.07** – This policy is titled *Discipline Process for Sworn Officers*. This order sets SFPD's disciplinary policies and procedures for officers as prescribed by the City Charter.

**Disciplinary Penalty and Referral Guidelines for Sworn Members of the San Francisco Police Department** - Guidelines presented as examples of the factors the Chief of Police will consider in deciding the charges for misconduct. The guidelines are intended to enhance consistency and assist in the determination of appropriate and reasonable penalties.

**Misconduct** – Any breach of peace, neglect of duty, or any conduct by an officer that tends to subvert the order, efficiency or discipline of the department, or reflects discredit upon the department or any member, or is prejudicial to the efficiency and discipline of the department. SFPD defines this term in Department General Order 2.01, titled *General Rules of Conduct*.

**Police Commission** – The San Francisco Police Commission, the governing body that oversees SFPD and DPA.

## The Audit's Next Steps

DPA will issue a full audit report assessing SFPD's effectiveness and efficiency in handling and reporting on allegations of misconduct, including officer bias.

San Francisco Charter Section 4.136 requires DPA to regularly audit SFPD's use of force and handling of police misconduct. This interim report provides information from DPA's audit work to the attention of the Police Commission and SFPD. DPA will incorporate this information in findings with recommendations in the final audit report.

**Auditing Standards** – DPA is conducting this performance audit in accordance with generally accepted government auditing standards. These standards require obtaining sufficient, appropriate evidence to provide a reasonable basis for findings to answer the audit objectives. This interim report provides information from the audit work to allow SFPD and the Police Commission to take corrective action before the final report is complete.