

#	DPA Recommendations for DGO 2.07 Discipline Process for Sworn Officers	Date received	SFPD response	SFPD explanation	Open/ Closed
R1	<b>Amend DGO 2.07's Introduction to Reference Both the City Charter, San Francisco Administrative Code and SFPD's DGOs.</b> DPA suggests that the introduction state: "The purpose of this order is to set forth the Department's disciplinary policies and procedures for sworn officers as established by the City Charter, San Francisco Administrative Code and SFPD's Department General Orders." DPA also suggests that the previous policy provision entitled "Basis for Disciplinary Action" should be included and amended to state, "Members shall obey all written orders, laws, policies and procedures of the Department, and promptly obey all lawful written or verbal directives of superiors."	7/8/20	2) Recommendation has been partially included in the draft DGO	Accepted in part. Included first recommendation but not second due to redundancy. Department General Order 2.01, Rule 10 already states that employees must follow Department directives. This policy describes administrative process, not additional bases of misconduct.	closed
R2	<b>Use Investigative Dispositions and Definitions Provided in DGO 2.04.</b> DGO 2.04 states that "[t]he DPA and SFPD shall use the following terms and definitions to maintain consistency at the conclusion of investigations." DGO 2.04's terms and definitions should replace the suggested ones currently proposed (Section E (a-g). Additionally, DGO 2.04 does NOT include the term "exceptional clearance" and DPA opposed the term "exceptional clearance when SFPD proposed this disposition during 2017-2018 when DPA and SFPD negotiated revisions to DGO 2.04. The Commission did NOT adopt the term "exceptional clearance" in DGO 2.04 and it should be deleted from this DGO as it is inconsistent with DGO 2.04. Consistent with DGO 2.04, DGO 2.07 should include the following definitions. 1. IMPROPER CONDUCT A preponderance of the evidence proves that the alleged conduct occurred and that the conduct violated Department policy or procedure; 2) INSUFFICIENT EVIDENCE The evidence fails to prove or disprove that the alleged conduct occurred; 3). PROPER CONDUCT The evidence proves that the alleged conduct occurred; however, the conduct was justified, lawful, and proper; 4) POLICY FAILURE The evidence proves that the alleged conduct occurred but was justified by Department policy or procedures; however, the SFPD or DPA recommends that the policy or procedure be changed or modified; 5) SUPERVISION FAILURE The evidence proves that the alleged conduct occurred and was the result of inadequate supervision; 6) TRAINING FAILURE The evidence proves that the alleged conduct resulted from inadequate or inappropriate training; 7) UNFOUNDED The evidence proves that the conduct alleged did not occur or that the accused officer was not involved; 8) REFERRAL TO OTHER AGENCY The evidence proves that the alleged conduct did not involve a sworn member of the Department or that the complaint raised issues not within the scope of DPA or IAD. Referral to other agency allegations are not counted as complaints against sworn members of the Department; 9) WITHDRAWAL The complainant failed to provide additional requested evidence, or the complainant requested a withdrawal of the complaint; 10) MEDIATED The complainant and officer agreed to mediation as a non-disciplinary resolution. (DPA finding only).	7/8/20	1) Recommendation has been fully included in draft DGO	SFPD agrees with recommendation.	Closed
R3	Amend I. B. 4 to replace "OCC" with "DPA," and include "suspend an officer for a period not to exceed 10 days for violations of Department General Orders, directives, policies, procedures, or applicable legal precedent (or principles)." Amend I. A. to read, "Members shall obey all written orders, applicable legal precedent (or principles), policies and procedures..."		2) Recommendation has been partially included in the draft DGO	"OCC" has been replaced with "DPA." This is redundant because Rule 9 already includes applicable legal precedent. Additionally, under the cause analysis we are required to show an employee violated a work rule. Must tie everything back to DGOs or other Department policy.	closed
R4	Amend DGO 2.07 to read "Appeal Notification." Amend the text to include, "Written notice of appeal must be filed with the Secretary of the Police Commission within 10 days after..."		3) Recommendation will not be included in draft DGO	Already included in section II(D). Added "written."	closed

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R5	Amend DGO 2.07 to read " A copy of the notice shall be forwarded to... Management Control Division, the Department of Police Accountability (for cases investigated by DPA), and other City departments, as required.		1) Recommendation has been fully included in draft DGO	To avoid surplusage, combined R5 with R6 and created a section for DPA notification. (II(F).)	Closed
R6	Amend DGO 2.07 to include: "DPA NOTIFICATION. The Chief shall send copies to the DPA of all disciplinary and procedural letters and notices related to DPA cases, including but not limited to: Chief's findings letters, notices of intended punitive action, hearing notices, final disciplinary orders, statements of suspension, final nondisciplinary orders, and appeal notices."		2) Recommendation has been partially included in the draft DGO	Will include everything until the first comma (second clause is surplusage: it is clear that all DPA documents must be forwarded). IAD (and not the Chief of Police) will be responsible for forwarding copies, letters, and notices.	
R7	Amend DGO 2.07 to include "LETTER OF INTENT. Pursuant to California Government Code 3304, the Chief or the DPA may provide an officer with a Letter of Intent to Discipline within one year of the discovery of misconduct. Absent a legal extension, service must be personal. This period of one year may be extended if: the officer is named as a defendant in litigation, the misconduct is the subject of a criminal investigation, the investigation involves more than one officer and requires an extension, or if the officer waives the one-year time period in writing. If an officer is off-duty, sick, or otherwise unavailable for service, the Chief or the DPA may provide the notice to the officer's department e-mail address."		3) Recommendation will not be included in draft DGO	This includes misstatements of law: (1) we cannot serve an officer via e-mail; and (2) there are tolling provisions in excess of what is here included. The Department must "notify the public safety officer of its proposed discipline by a Letter of Intent . . ." Gov. Code § 3304(d)(1). The term "notify" requires personal service (rather than mail). <i>Earl v. State Personnel Board</i> , 231 Cal. App. 4th 459, 469 (2014). Additionally, the list of bases to toll or extend the SOL is incomplete (e.g. multijurisdictional, incapacitated or unavailable, worker's comp. fraud, discovery of significant new evidence). Listing each of these provisions goes beyond the point of the DGO: which is to describe the overall process to the employees. From a management perspective, it is better to simply rely upon the statutory language rather than re-writing it here in a condensed form, lest we create unintended exceptions to the employee's benefit that do not exist in law.	Closed

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R8	Amend DGO 2.07 to include "After service on the accused officer...proof of service. Copies shall be sent to the DPA for cases investigated by the DPA."		1) Recommendation has been fully included in draft DGO	Combined with R9.	closed
R9	Amend DGO 2.07 to include: " The Chief shall be responsible for serving the charges on the accused, whether filed by Internal Affairs or the DPA. After serving a copy of the charges on the accused, the Chief shall file the original copy of the charges and the proof of service (showing date, time and place of service), with the Police Commission and the DPA.		1) Recommendation has been fully included in draft DGO	Created section under III(A): "Following service, IAD shall forward proofs of service to the Police Commission Secretary for filing. IAD shall forward copies of signed proofs of service to DPA for cases investigated by that agency."	Closed
R10	<u>2.07.02 - Defintions.</u> DPA recommends adding a section: "Retraining -- A superior officer's direction to the member that they must undergo retraining does not constitute formal discipline. The member must participate in the retraining as soon as it is feasible even if an appeal is pending. "	8/30/22	2) Recommendation has been partially included in the draft DGO	Included under 2.07.02 Definitions: "A direction that a member must undergo retraining. Retraining does not constitute formal discipline. The member must participate in the retraining as soon as feasible even if an appeal is pending."	Closed.
R11	<u>2.07.04.C Commission Level Discipline.</u> The phrase "disciplinary action including a suspension of 11 days" is misleading. Although the recommended discipline must be 11 days or more to get a Commission hearing, the Commission can actually impose discipline as low as a written reprimand following a hearing.	8/30/22	1) Recommendation has been fully included in draft DGO	Added language to 2.07.04: Following a hearing, the Commission may impose disciplinary action from reprimand through termination.	Closed
R12	<u>2.07.02.E.1 Improper conduct.</u> Rephrase to state, "A preponderance of the evidence proves that the alleged conduct occurred and that the conduct violated Department policy, procedures, applicable legal principles, or training." Some misconduct allegations stem from violating training or legal principles officers are require to know, but are not necessarily spelled out in policies and procedures.	8/30/22	1) Recommendation has been fully included in draft DGO	SFPD agrees with recommendation.	Closed

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R13	<u>2.07.02.I. Letter of Intent.</u> Rephrase as follows: "I. Letter of Intent - Pursuant to California Government Code 3304, the Chief may provide an officer with a Letter of Intent to Discipline or DPA may file Specifications with the Police Commission within one year of the discovery of misconduct absent a legal extension. Service must be personal unless waived." Note that DPA does not provide Intent to Discipline letters. If DPA intends to discipline w/o the Chief's approval, DPA files with the Commission and has the charges personally served on the officer. Also the phrase, "absent a legal extension, service must be personal" doesn't quite make sense. Service is still personal even if there is an extension.	8/30/22	2) Recommendation has been partially included in the draft DGO	Modified language has been included in 2.07.02(J) to reflect Cal. Govt. Code Section 3304:	Closed
R14	<u>2.07.03 Chief's Level Discipline Process.</u> The second paragraph should read, "Pursuant to California Government Code 3304, the Chief may provide an officer with a Letter of Intent to Discipline or DPA may file Specifications with the Police Commission within one year of the discovery of misconduct absent a legal extension. Service must be personal unless waived" Same comment as R14.	8/30/22	1) Recommendation has been fully included in draft DGO	The Department must notify a member by written notice of its intent to discipline within one year of the discovery of the misconduct as prescribed by law unless a tolling provision applies. The notice must be personally served on the member except where personal service is waived. This requirement applies to both Chief's level and Commission level discipline.	Closed
R15	<u>2.07.03.E Reprimand Appeal.</u> The process for a reprimand appeal should be spelled out. DPA requests to see the MOU/LOA between the POA and SFPD that describes this process. The Commission should be made aware of it as well.	8/30/22	2) Recommendation has been partially included in the draft DGO	Included language referencing the document that controls reprimand appeals, but did not spell out process for brevity's sake.	closed
R16	To clear the disciplinary backlog and to ensure the swift administration of justice for officers and the public, DPA recommends adding the following language to 2.07.03.B on Chief's Hearings: "If the officer makes a timely request for a hearing before the Chief, the matter shall be assigned to a Hearing Officer who has no prior involvement in the disciplinary matter to conduct a hearing on the merits of the officer's appeal of the discipline the Chief intended to impose. Said hearing shall be held by the Hearing Officer no later than 180 days after the Department received the officer's timely, written request for a hearing before the Chief. The Hearing Officer's written decision on whether to impose discipline shall be submitted to the Chief no later than 90 days after the hearing date. "	2/21/23	1) Recommendation has been fully included in draft DGO	2.07.03.B on Chief's Hearings: "The Hearing Officer shall be a sworn member of the Department, holding the permanent rank of Commander or above, unless conflicts require an outside hearing officer. The Hearing Officer shall have no prior involvement in the disciplinary matter."	Closed