



HEARING BOARDS

Directive 5 - 108

Date of Issue: April, 2017

Amends/Cancel: 5-108 September, 2016

I. PURPOSE

The purpose of this Directive is to provide an overview of the procedures that are followed in a hearing board.

II. POLICY

The Department of General Services, Maryland Capitol Police (MCP) will conduct hearing boards in appropriate circumstances that comply with the Law Enforcement Officers Bill of Rights.

III. DEFINITIONS

- A. Brutality is considered to include any situation wherein a law enforcement officer, while acting in his official capacity, resorts to the use of force which is unnecessary in its origin and application; or if force is deemed necessary, is excessive in its application.
- B. Hearing means a proceeding during an investigation conducted by a hearing board to take testimony or receive other evidence.
- C. Hearing Board means a board that is authorized by the Chief of Police to hold a hearing on a complaint against a law enforcement officer.
- D. Prosecutor is typically the assistant Attorney General assigned to the Department of General Services or in other cases appointed by the Chief of Police.
- E. Final Order is the decision of the Chief of Police, after reviewing the hearing board's findings, conclusions, and recommendations. If the hearing has been waived, the decision is rendered after the case is reviewed.

IV. PROCEDURES

A. CASES REFERRED TO A HEARING BOARD

Cases referred to a Hearing Board (Board) result from the:

1. Refusal of an police officer to accept Summary Punishment;
2. Failure of an officer to acknowledge an offer of Summary Punishment within five working days after receiving the Form 181, Notification of Charges; and
3. Referral of charges by a commander.

B. CRIMINAL INVESTIGATIONS

1. In general, no departmental hearing, except a suspension review hearing, will be held on any charges that relate to conduct which is also the subject of a criminal proceeding, until such time as all criminal charges are disposed of.
2. The MCP retains the discretion to make an exception to the general rule if it determines that the morale, operation or best interests of the MCP would be adversely affected by the failure to hold a hearing.
3. The decision of the MCP to hold a hearing may not be the subject of a grievance.

C. TYPE OF HEARING BOARD

1. MCP Headquarters will coordinate and direct MCP administrative hearings.
2. The Chief of Police or his designee will:
 - a. Designate either a one-member or three-member Board;
 - b. Assign a commissioned officer, who has not participated in the investigation or interrogation of the officer, as Hearing Board Chairperson (Chair);
 - c. Assign the board members of a three member Board, none of whom will have participated in the investigation of the officer who is the subject of the hearing;
 - d. Assign at least one Board member who is the same rank as the officer who is the subject of the hearing;
 - e. Issue a Special Order to convene the Board;
 - f. Forward copies of the special order and Form 181(s) to the officer's commander, the Board member(s) and the officer;

D. CHAIR DUTIES AND RESPONSIBILITIES

1. The Chair will:
 - a. Contact the officer's representative, the prosecutor and the board members to arrange a mutually convenient date for the hearing that is at least 30 days after the date that the officer's representative received a copy of all charges and the internal investigation material, unless a shorter period is mutually agreed upon by the officer's representative and the department;
 - b. Prepare a Form 183, Notification of Hearing, and a Form 184, Notification of Evidence/Document Receipt, and forward these to the officer's commander;
 - c. Provide a copy of the Form 183 to the prosecutor and Board members.
2. The Chair may issue summonses to compel the attendance and testimony of witnesses, and the production of books, paper, records and documents as may be relevant or material. These summonses may be served in accordance with the Maryland Rules of Procedure pertaining to service of process issued by a Court, without cost.

E. ACCUSED OFFICER'S RIGHTS AND RESPONSIBILITIES

1. The officer is entitled to a copy of the investigative file, at no cost, not less than 30 days before the hearing date. However, the identity of confidential sources and non-exculpatory information will be excluded from the case file
2. The accused officer will complete a confidentiality agreement regarding use and disclosure of

information from the case file.

3. The accused officer is entitled to one preemptory challenge of persons assigned to the Board, with the exception of the Chair, who may not be challenged; and
4. Preemptory challenges must be filed by the accused officer with the Chair at least 10 days prior to the hearing.

F. HEARING BOARD DUTIES AND RESPONSIBILITIES

1. Board member(s) may NOT review the case file and may only review the information contained in the Form 181.
2. The Hearing Board may take notice of judicially cognizable facts and of general, technical and scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference to preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity and reasonable time to contest the facts so noticed.
3. A Hearing Board may use its experience, technical competence, and specialized knowledge in evaluating the evidence presented.

G. PROSECUTOR DUTIES AND RESPONSIBILITIES

1. Plea Bargaining – The prosecutor may engage in plea bargaining at any time prior to or during a hearing. If a plea bargain agreement is reached, the prosecutor will then notify the Chair so that further proceedings may be cancelled.
2. If a penalty which differs from the Disciplinary Matrix category is sought by the prosecutor, notice will be given to the officer no less than 10 days prior to the hearing.

H. PRE-HEARING PROCEDURES

1. If either the prosecutor or the officer's representative requires summonses, or if evidence will be presented, he will return the Notification of Evidence/Document Receipt (MCP Form 184) to the Chair not less than 10 days prior to the hearing date.
2. The officer's commander will serve the Notification of Hearing (MCP Form 183) on the officer and return a signed copy to the Chair.
3. Requests for postponements will be directed to the Chair and granted only for good cause.
4. Preliminary Motions – All preliminary motions shall be filed with the Chair at least 10 days (excluding weekends and holidays) before the hearing date. The parties must respond to these motions in writing within 7 days of the date received. The Chair, in consultation with other members of the board, shall rule on the motion before or at the hearing. Absent a showing of good and substantial reason, preliminary motions will not be considered on or after the hearing date.
5. Requests to amend charges will be directed to the Chair; an amended charge could result in a postponement of the hearing.

I. CONDUCTING THE HEARING BOARD

1. Hearings are conducted by the Chair unless otherwise designated.
2. Weapons will be secured outside the hearing room.

3. Hearings will be recorded and a record maintained any time the recording is stopped and restarted.
4. Written requests for open hearings will be considered.
5. Documents accepted into evidence will be marked for identification and retained as part of the record.
6. Motions and stipulations may be heard; the Chair may rule or recess the Board to discuss matters with the Board members.
7. The Chair will administer oaths or affirmations and examine any individual under oath.
8. Brief opening statements, by the prosecutor and the defense representative may be made.
9. The prosecutor will present his case-in-chief and bears the burden of proof.
10. The defense may, but is not required to, present its case.
11. Hearing Boards are administrative proceedings and as such are not subject to the same rules of evidence which govern the conduct of criminal proceedings. Although testimony must bear only on facts concerning the instant case, the restrictions applicable to hearsay evidence, written statements, and other forms of evidence in criminal actions, do not apply to administrative hearings.
12. Each party has a right to cross-examine each witness who testifies for the other party.
13. Redirect and re-cross examination is limited to matters covered in a preceding examination.
14. The Board may question each witness.
15. Rebuttal evidence by both parties may be presented.
16. Closing Arguments include:
 - a. Summation presented by the prosecutor;
 - b. Summation presented by the defense; and
 - c. Rebuttal if the prosecutor chooses to present one.
17. The Board members will clear the hearing room to decide guilt or innocence on each charge.

J. DECISION OF THE HEARING BOARD

1. The Hearing Board shall reconvene the hearing, receive evidence of the employee's past job performance, matters of extenuation and mitigation and other relevant information and recommend a penalty to the Chief of Police. The prosecutor will be responsible for providing the accused's personnel files to the Chair for the Hearing Board's consideration.
2. If the decision of the Hearing Board is not unanimous, in either the verdict or the penalty, the dissenting member may, but is not required to, submit a minority report expressing his views. If the dissenting member elects to submit a minority report, it will be submitted to the board Chair, who will forward it along with the Hearing Board report.
3. If the Chief of Police is an eyewitness to the incident which led to the charges being placed, the decision of the Hearing Board, both as to findings of fact and punishment is final. This decision may only be appealed to the court.
4. A Hearing Board convened because the accused refused summary punishment may recommend only those penalties permitted for summary punishment.
5. When a Board recommends termination, the Chair will immediately notify the Chief of Police or his designee.

K. HEARING BOARD REPORT

1. Within 5 days, the Board report should be completed and submitted to the Chief of Police or his designee.
2. Conclusions made by the Board will be explained in a concise written statement and must be supported by a finding of fact.
3. A copy of the report will be forwarded to the Assistant Attorney General assigned to the Department of General Services so it may be reviewed for legal sufficiency.
4. The Board report will be signed by the Board members.

L. DISSEMINATION OF REPORT

1. A copy of the Board report will be forwarded to the Chief of Police or his designee for review and approval.
2. All evidence received during the Board will be submitted to the Chief of Police or his designee.

M. CHIEF OF POLICE'S REVIEW

1. Within 30 days of receipt of the Board report the Chief of Police will:
 - a. Review the findings, conclusions, and recommendations of the hearing board; and
 - b. Issue a final order.
2. The Chief of Police may increase or decrease a recommended penalty; if he chooses to increase the penalty, the Chief of Police must:
 - a. Review the entire record of the proceedings of the Board;
 - b. Meet with the officer and allow him to be heard on the record;
 - c. Disclose and provide in writing to the officer, at least 10 days before the meeting, any oral or written communication not included in the record of the Board on which the decision to consider increasing the penalty is wholly or partly based; and
 - d. State on the record the substantial evidence relied on to support the increase of the recommended penalty.
3. A copy of the Board report will be forwarded to the officer or his representative by the Chief of Police or his designee.
4. The Chief of Police's decision is final.

N. POST-HEARING PROCEDURES

1. Document Distribution
 - a. The Form 181, the case file and the Board report with all exhibits will be returned to the Operations Commander.
 - b. For guilty findings, the Operations Commander will notify Human Resources and request a Personnel Order; each Form 181 will be forwarded to officer's commander to be sent, through official channels, to the officer.
 - c. For not guilty findings, the Chair will notify the Operations Commander of the Board's decision.

2. Records

- a. The Operations Commander will maintain the Board report, related documents and the recordings of the proceedings.
- b. The Prosecutor will return the case file to the Operations Commander for filing and retention per policy.

O. APPEAL PROCESS

The officer may appeal the Chief's decision to the Circuit Court in the respective county.

P. FEE SCHEDULE

1. Reimbursement for Travel

- a. Travel for witnesses may be reimbursed up to \$75.00 per day per witness.
- b. A witness who misses work may be reimbursed at the rate of \$4.00 per hour up to \$32.00, excluding travel time.
- c. Mileage is reimbursed per the State of Maryland Standard Travel Guide.

2. Cost for Reproduction of Materials

- a. Transcribed recordings: \$2.50 per page.
- b. Photocopy of existing documents: \$.50 per page.
- c. Duplicate recording: \$5.00 per tape or CD.