



ADMINISTRATIVE GUIDE

Procedure No. 2.063-3

DISCIPLINE AND DUTY ASSIGNMENT STATUS (replacing 2.062 and amending 2.063-2)			Page 1 of 12
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DISCIPLINE

I. PURPOSE:

To inform Members of Service (uniformed and civilian) of the department's disciplinary system and the authority and responsibility of Supervisors to enforce them.

II. POLICY:

The Department shall promote its progressive disciplinary system as a positive means of correcting deficiencies in Employee conduct and encouraging the meeting of high standards of conduct in all Employees.

III. DEFINITIONS:

COMMAND DISCIPLINE: A Department form listing the incident's pertinent information, such as date, time and circumstances, the sections of the Department Manual that the Member was found in violation of, along with the recommended command discipline (in the loss of accrued time or other such similar mechanism). The Command Discipline is utilized in lieu of filing written Departmental charges and is used for what are considered 'minor' offenses.

DEPARTMENTAL CHARGES: A Departmental Form listing all the incident's pertinent information, such as date, time and circumstances, and the sections of the Department Manual that the Member was found in violation of. Departmental Charges are utilized in circumstances in which the Department is looking to hold a Disciplinary Hearing.

IV. PROCEDURE:

1. Supervisors shall ensure that their subordinates perform their duties in accordance with the Department Manual and all laws, rules or regulations regarding their conduct.
2. Supervisors shall take appropriate action in response to alleged misconduct of Employees when brought to their attention even if such Employees are not under their direct supervision.
3. Supervisors shall, subject to the Department Manual and such approvals as may be herein provided for, determine the type of disciplinary action to be taken in respect to alleged misconduct and properly document the same.

V. DISCIPLINARY MECHANISMS:

1. Supervisors may address misconduct through one or more of the following mechanisms, as they may be appropriate to the nature or seriousness of the misconduct, the frequency of the misconduct, and/or the Employee's disciplinary history:
 - a. Remedial training,
 - b. Counseling, and
 - c. Internal complaint.

COMMAND DISCIPLINE**VI. VIOLATIONS SUBJECT TO COMMAND DISCIPLINE:**

The following violations may, upon approval of the Chief of Police, be adjudicated by Command Discipline:

1. SCHEDULE # 1 VIOLATIONS:

- a. Civility violations.
- b. Failure to maintain neat and clean personal appearance.
- c. Improper uniform equipment.
- d. Reporting late for duty. (Limited to 1st and 2nd occasions).
- e. Failure to maintain department vehicle in a clean and serviceable condition.
- f. Failure to notify Desk Officer or their designee when leaving Post for police or personal necessity. (Limited to 1st occasion)
- g. Unauthorized riding in Departmental vehicle by a civilian.
- h. Carrying packages, newspapers or other articles while in uniform or Department vehicle, as prohibited.
- i. Littering or defacing Headquarters building (by not throwing rubbish into a trash receptacle).
- j. Improper or omitted Memorandum Book entries.
- k. Smoking when prohibited.
- l. Failure to lock or safeguard Department vehicle (Limited to 1st occasion).
- m. Failure to supply name and shield number to any person requesting.
- n. Failure to answer or use Department telephones as required.
- o. Failure to salute Superior Officers or the colors.
- p. Loss of Summons Book.
- q. Loss of Identification Card or card key.
- r. Failure to notify Department when address, telephone or social condition changes.
- s. Failure to be familiar with Post Special Attention orders and Post boundaries, etc. (1st occurrence).
- t. Failure to perform or improper performance of patrol or investigations (1st occurrence).
- u. Failure to report sick at least one (1) hour prior to start of tour, when possible.
- v. Unnecessary conversation while in radio communications.
- w. Failure to make routine inspections and surveys required.
- x. Violations of the Department's Social Media Code of Conduct.
- y. Failure to answer a subpoena that has been served upon the Member.
- z. Any other minor violation that, in the opinion of the Chief of Police, is appropriate for a Schedule # 1 violation command discipline.

2. SCHEDULE #2 VIOLATIONS:

- a. Loss of shield.
- b. Failure to safeguard prisoner.
- c. Loss of Department Property.
- d. Failure to respond, report promptly or acknowledge radio calls.
- e. Bringing in alcoholic beverages into a Department facility or vehicle unless it is within the scope of an assignment.
- f. Improper or omitted official reports, Department records or forms.
- g. Any other violation that, in the opinion of the Chief of Police and after notification/consultation with the Commissioner of Public Safety or their designee, is appropriate for a Schedule # 2 violation command discipline.

VII: PENALTIES FOR SCHEDULE #1 AND SCHEDULE #2 VIOLATIONS:

When proposing penalties under Command Discipline, a Division Commanding or Executive Officer may recommend any one of the following.

1. Forfeiture of up to five (5) vacation, personal or award days or any accumulative earned time (compensatory time) for Schedule # 1 violations.
2. Forfeiture of up to ten (10) vacation, personal or award days or any accumulative earned time (compensatory time) for Schedule # 2 violations.

VIII. SCHEDULE #3 VIOLATIONS:

1. Failure to safeguard firearm.
2. All arrests.
3. Any other violation that, in the opinion of the Commissioner of Public Safety, is subject to a maximum penalty of an unpaid suspension of 60 days and/or possible termination.

IX. PENALTIES FOR SCHEDULE #3 VIOLATION:

All penalties for a Schedule #3 violation shall remain under the purview of the Commissioner of Public Safety.

DEPARTMENTAL CHARGES / DISCIPLINARY HEARING**X. INVESTIGATORY PROCESS:**

1. Whenever there is a complaint of a Member being in violation of the law or the Rules and Regulations of the Department, when practical, the Member's immediate supervisor shall conduct the investigation and prepare a Supervisors Report (MV-93) with recommendations and forward to the Member's Division Commanding Officer.

2. When another Superior Officer conducts such an investigation and a subordinate Member is found in violation of the Rules and Regulations, the Member's immediate supervisor on duty at the time the violation occurred shall be notified.
3. The Superior Officer conducting the investigation must relay to the subordinate's immediate supervisor, all pertinent facts of the investigation to substantiate any recommendation for Departmental Charges.
4. A Superior Officer who disagrees with the evaluation of the investigating officer shall forward a report to the next ranking officer, outlining the reasons that charges are not substantiated or warranted. The reports shall be forwarded in order of the chain of command with each officer's recommendation. The final decision shall be resolved by the Commissioner.
5. When an investigation conducted by the Internal Affairs Unit classified "Confidential" results in Departmental Charges against an officer, the Internal Affairs Officer may, at the direction of the Commissioner of Public Safety, file such Charges.
6. If, however, the officer complained against is of equal or higher rank than the Internal Affairs Officer, a higher-ranking Superior Officer shall prepare the Departmental Charges.
7. In cases where the Member is placed under investigation, the Commissioner of Public Safety may, in their discretion, place the Member under Suspended Duty Status. Said Suspension can be either with or without pay.
 - a.) In cases where the suspension is without pay, the Member may only be placed on Suspension without Pay for a maximum of 30 days, unless said investigation is criminal in nature.
 - i.) In the case that the investigation is criminal in nature, the maximum unpaid suspension may be 60 days.

XI. DEPARTMENTAL CHARGES:

CHARGES:

1. Charges in writing shall be preferred against a Member of the Department alleged to be guilty of infractions of the Rules and Regulations, Department Orders, or of conduct prejudiced to the good order, efficiency, and discipline of the Department.
2. Charges in writing shall be prepared under the supervision of the Chief of Police or their designee against the alleged Member and said charges shall be forwarded promptly to Corporation Counsel for review. Upon approval of Corporation Counsel, they will be forwarded to the Commissioner of Public Safety. All charges shall be signed by the Chief of Police or, in their absence, the Superior Officer so designated by the Commissioner of Public Safety.
3. Charges may be declared frivolous and dismissed by the Commissioner of Public Safety.

4. Each Member of the Department to be tried on charges shall be served a copy of the charges and specifications together with a notice of hearing.
5. Service of charges shall be made on the accused as follows:
 - a. Personal delivery of charges and specifications together with a notice of hearing, or,
 - b. if personal delivery cannot be made, then by leaving a copy of the charges at the charged Member's residence with some person of age or discretion and by notifying such person orally of the nature of the papers.
6. Members of the Department served with charges shall acknowledge such service by signing and returning the original and one (1) copy thereof that have been approved by the Commissioner or his designee. The superior officer serving the charges shall certify above their signature on the two (2) copies returned, the date, time, place and manner of service and forward to the Chief of Police or their designee.
7. Notice to Members to appear as complainant or witness may be sent by telephone instead of Personnel Order. Should valid reason prevent compliance with such notification, the Member sending said message shall advise the Commissioner of Public Safety or their designee immediately.

TRIALS:

8. A trial shall be conducted without unnecessary and unreasonable delay and without offensive speech or action on the part of anyone. The Deputy Commissioner or designated Hearing Officer may exclude forthwith, without prejudice to the accused, from further attendance at a hearing, a person who offends against any of these requirements.
9. The following procedure for the trial of a Member has been adopted by the Department. Departure therefrom shall not invalidate the proceedings unless it be conclusively shown in writing addressed to and delivered to the Commissioner of Public Safety within twenty-four (24) hours after the case is closed, that such departure adversely or injuriously affected the rights of the accused.
 - a. The charged party will be served with a written specification of charges.
 - b. The charged party will carefully read the written specification of charges and sign the acknowledgment in the space provided.
 - c. The charged party may enter a plea of guilty or not guilty in the spaces provided on the specification of charges form.

- d. The charged party will provide the office of the City of Mount Vernon Corporation Counsel with the name, address and telephone number of their attorney within ten (10) days of the service of the specification of charges.
 - e. ON THE DATE OF TRIAL, the Deputy Commissioner of Public Safety or Designated Hearing Officer will formally arraign the charged party, hear and determine any motions or applications for dismissal, adjournment, etc., and, in the hearing officer's discretion, proceed immediately to a trial of the charges.
 - f. The Deputy Commissioner of Public Safety or Designated Hearing Officer may, in their discretion, exclude from the trial room, any person, except the accused, their counsel, the prosecutor and counsel, the District Attorney, Court Clerk and stenographer.
 - g. At the conclusion of the testimony offered by the witness(es) for the accused, witness(es) may be called by the Department in rebuttal. They are subject to cross examination.
 - h. The accused shall then have an opportunity to introduce such other testimony as is competent and material.
 - i. The accused shall be given the opportunity to testify under oath on their own behalf and be subject to cross examination by the Department.
 - j. The accused and the Department shall be given a brief opportunity to sum up or make pertinent motions.
 - k. In order to effectuate the above, the charged party will be fully prepared for trial on the date specified in the written Specifications of Charges; they will be present at the date and time stated and secure the attendance of their attorney and any witnesses they may have.
10. Any Member of the Department may be required by the Commissioner of Public Safety to give a statement under oath for the purpose of explaining their conduct at any time. They shall also testify under oath at a trial of any charges preferred against any other Member when directed by the Commissioner of Public Safety. In case of their refusal to testify when so directed, they shall be deemed guilty of disobedience of orders and may be subject to dismissal from the Department or such other punishment as the Commissioner of Public Safety may direct.
 11. Any Member of the Department shall be deemed unworthy to exercise the powers of a police officer who is unwilling to make known and explain their conduct or to comply with the provisions of the above paragraph when required to do so by the Commissioner of Public Safety.

ADJOURNMENT OF CHARGE:

12. When a Departmental Trial is scheduled or is rescheduled by adjournment, it shall be so recorded on the Specifications of Charges by the office of the Commissioner of Public Safety or Deputy Commissioner.
13. The Chief of Police shall be so informed, and they shall:
 - a. Properly notify, in writing, each officer and/or person who must appear, of the adjourned date, time and place of appearance.
 - b. Have the person notified sign a copy of the written notification, verifying he has been so informed.
 - c. Forward verifications to the officer where trial papers are held to be included in file.
 - d. Make necessary arrangements for stenographic service for Departmental Trial.

PUNISHMENT AFTER TRIAL:

14. A Member of the Department found guilty of a violation of a Rule and Regulation or of the provisions of any order or orders, or of disobedience of orders, or of cowardice, or of intoxication while on duty, or while in uniform, or of conduct unbecoming an officer, or of making a false official statement or of having been convicted in a court having criminal jurisdiction, may be dismissed from the Department or suffer such other punishments as the Commissioner of the Public Safety may direct.
15. Disorder or neglect to the prejudice of good order, efficiency or discipline, though not specifically mentioned in the Rules and Regulations, shall be taken cognizance of by the Department and Members of the Department found guilty thereof shall be punished at the discretion of the Commissioner of Public Safety.
16. A Member of the Department may be punished by the Commissioner of Public Safety in his discretion, by reprimand, forfeiture of accrued time, forfeiture of pay, or withholding of pay for a period of not exceeding sixty (60) days, for any one (1) offense, or by dismissal from the Department on conviction of any offense of the Rules and Regulations of the Department of Public Safety as promulgated.

JUDGMENT AND RECORD:

17. The judgment of the Commissioner of Public Safety upon charges, shall be in writing, duly entered into the records of the Department of Public Safety by the Personnel Officer. Records are to be placed in the Member's Personnel File (201 file) and are retained by the Department indefinitely.

XII. THE EFFECT OF RANK ON DISCIPLINE

An individual Member of the Service's rank and their role in an event are factors to be considered when assessing an appropriate disciplinary penalty. An individual Member of the Service's status as a supervisor will generally be viewed as an aggravating factor, particularly for on-duty misconduct, which may warrant a penalty higher than the presumptive penalty for the violation. Supervisors are expected to lead by example, and they are responsible for holding their subordinates accountable. The Department has higher expectations for supervisors, including their ability to exercise sound judgment and to be more deliberate in their actions than subordinate members. Potential mitigating factors described above should be considered as well.

Consistent with this philosophy, the presence or participation of a supervisor in an event may be a mitigating factor when evaluating the culpability of a subordinate. A downward departure from a presumptive penalty may be warranted when a subordinate is acting under the close supervision or direction of a superior and the supervisor is subject to discipline for any misconduct related to the event.

*****HOWEVER, UNDER NO CIRCUMSTANCES MAY A SUBORDINATE THAT RECEIVES AN ORDER FROM A SUPERIOR OFFICER TO PERFORM OR IGNORE AN ACT THAT IS ALWAYS CRIMINALLY ILLEGAL UTILIZE THIS SECTION TO MITIGATE THEIR CULPABILITY.*****

XIII. PRIOR DISCIPLINARY HISTORY

Generally, an individual member of the service's prior disciplinary history will be considered when assessing an appropriate penalty, potentially serving as an aggravating factor to a presumptive penalty.

Factors to be considered when determining whether prior disciplinary history should be considered an aggravating factor include:

- The number of prior disciplinary events,
- The nature and seriousness of the prior event(s),
- Any similarities between prior and current acts of misconduct,
- Any disciplinary history demonstrating an inability or unwillingness to conform to the Department's expectations for the position or successfully rehabilitate.

However, a new act of misconduct that is the same as a prior act of misconduct or carries a presumptive penalty that is equal to or greater than the presumptive penalty of a prior act of misconduct, may instead result in an increase in the disciplinary penalty for the current violation through the application of progressive discipline.

DUTY ASSIGNMENT STATUS

XIV. PURPOSE:

For cause, to avoid discrediting the Department, or prevent the impairment of good order and operating efficiency of the Department or, in regard to an investigation, to assign a sworn Member of

Service from the regular 'Full Duty' status to 'non-enforcement' duties pending determination of the fitness to perform 'Full Duty' police duties.

XV. POLICY:

Firearms may be removed from a Sworn Member of Service for disciplinary as well as non-disciplinary reasons. In incidents where there is no misconduct and no disciplinary action is anticipated, the member may still be placed on a modified assignment for physical fitness or mental health causes.

XVI. DEFINITIONS:

FULL DUTY – A Sworn Police Officer who is able to perform actions as listed in the CMVNY Civil Service Commission Job Description for the titled Position of 'Police Officer', as well as all law enforcement actions and abilities as listed in the New York State Criminal Procedure Law, Section 1.20(34), without any restrictions. This status is contingent upon and is authorized by the Charter of the City of Mount Vernon and the Commissioner of Public Safety. All Full Duty Police Officers must be able to carry their Department authorized firearm.

MODIFIED DUTY – Any Sworn Officer who is not able to perform all law enforcement actions and duties, no matter the cause or reason why, as determined by the Charter of the City of Mount Vernon and the Commissioner of Public Safety. This may include, but is not limited to:

- Sworn Members of Service under investigation,
- On pregnancy status,
- On non-work related injured status,
- The subject on an Order of Protection,

and other such statuses. This status does not preclude the Sworn Officer from possession of their authorized firearm, however the determination if their firearm will be retained or turned in to the Department for safekeeping (either one time or daily) will be made by the Commissioner of Public Safety.

Reasons for modified duty for a Sworn Member of Service that is not facing a disciplinary investigation or as a result of an investigation may include:

- Sworn Members that, during off-duty hours, believe that possession of firearms could aggravate a current domestic or similar problem.
- Sworn Members that fail to qualify during a firearms training cycle.
- Presentation of mental health/wellness issues which reasonably appear to make the possession of a firearm dangerous to the Sworn Officer or another.

SUSPENDED – Any Sworn Officer who is, based upon the approval of the Commissioner of Public Safety, **not allowed to exercise any powers of a police officer**, as defined in New York State Criminal Procedure Law, Section 1.20(34). At the discretion of the Commissioner of Public Safety, this suspension may be with or without pay. Note: Under no circumstances, without the express written consent of the Commissioner of Public Safety, can a Member with a Suspended Duty status wear a uniform or other such clothing, shield depicting or

identification that would make it appear that said Officer is a representative of the Mount Vernon Police Department.

XVII. PROCEDURE:

When placing a Sworn Member of Service on Modified assignment, the following Personnel shall perform the following tasks:

A. DIVISION COMMANDER (OR DIVISION COMMANDER'S DESIGNEE, MUST BE A SUPERVISOR)

1. Inform Sworn Member that modified assignment is contingent upon the results of the Department's determination of disciplinary action after investigation or as a result of an investigation to determine if a physical or mental hygiene issue precludes the Sworn Officer the ability to maintain their Full Duty status.
2. Remove all firearms, shield, Identification Card and any other Department property, if directed to do so by the Commissioner of Public Safety or Chief of Police.
3. If directed to remove the firearm, shield and ID card from the modified Member, on the first available business day, ensure that shield, and Identification Card are hand delivered to Support Services Division with a copy of the report which indicates all firearms were removed from the member and obtain a receipt.
4. Direct Sworn Member to report direct, in appropriate attire for the Member's next scheduled tour, to their respective assigned Division Supervisor for assignment.
 - Sworn Members placed on modified assignment will report direct to their respective Division Commander and will not be permitted to begin the tour at their current assigned squad / division prior to doing so. Members on regular day off (RDO), sick list or scheduled vacation will report on the first business day upon return to work. Members on modified assignment will not perform any extended tour and no overtime is authorized.
 - When a uniformed member is scheduled to return to work on a non-business day (Saturday, Sunday, holiday, etc.), direct the member to report, in appropriate attire, to their assigned Division Supervisor for non-enforcement duty. Uniformed member will report direct to their respective Division Commander the next business day he/she is scheduled to work.
5. Immediately submit report, concerning the nature of the modified assignment, on Typed Letterhead to:
 - i. First Deputy Commissioner
 - ii. Chief of the Police Department
 - iii. Commanding Officer of Patrol Division
 - iv. Commanding Officer of Personnel
 - v. Squad or Division Commander Officer of modified member
 - vi. Internal Affairs
 - vii. Support Services Division

B. MODIFIED UNIFORMED MEMBER OF SERVICE

1. Report direct to Division Commander in appropriate attire at 0800 hours on the next business day scheduled to work. When scheduled to work on a non-business day (Saturday, Sunday, holiday etc.), report in uniform to your assigned squad/division for non-enforcement duty. Uniform members of the service will report direct to the Division Commander for assignment, the next business day the Division Commander is scheduled to work.

2. Division Commander will notify Detective Division's CIU personnel for modified Member's new Identification Card, if removal of firearms was authorized. When directed by Division Commander, the modified member will respond to the Criminal Identification Unit (C.I.U.) for a new Identification Card.

NOTE: Sworn Members of Service are reminded that they must be guided by Administrative Guide Procedure No.2.047-3 titled "Personal Appearance". Members will not be permitted to take an Identification Card photo with facial hair unless:

- a. Written approval has been received from the Police Physician and Police Commissioner when required because of a medical condition, OR
- b. When required because of religious accommodation, a beard may only be grown up to one-half inch unless the applying Member requests additional length. A request for additional length will be reviewed and decided upon by the Police Commissioner, Chief of Police, or their respective designee.
- c. Unless specifically authorized by the Commissioner of Public Safety, modified Members of Service are not authorized to possess any firearms owned as a result of being a sworn police officer; or their police department shield. Modified members will be issued a "NO FIREARMS" Identification Card by C.I.U. during processing. Members who are restored from modified assignment and placed on restricted duty or remain on restricted duty for psychological or alcohol related reasons, may possess their shield and will retain their "NO FIREARMS" Identification Card until their restricted duty status is terminated by the Commissioner of Public Safety. Upon restoration to full duty and approval for the return of firearms, the member's shield and full duty Identification Card will be returned. The Personnel Division will provide an official letterhead to members restored to full duty for retrieval of firearms from the Property Clerk/Support Services Division.

XVIII. SUSPENDED MEMBERS

Suspended Members shall be ordered to report to the Internal Affairs Unit for turning in of Department Shield, ID card and firearms and shall not be allowed the return of such items as addressed in the 'Additional Data' section below. Suspended Members of Service shall have no police powers, shall not enter Police Headquarters or any other such location without the express permission of the Chief of Police or their Designee, shall not possess any Department owned property and may not wear any apparel that has the Department patch or the initials 'MVPD' on it.

Suspended Members remain Members of Service and are still mandated to follow all lawful orders of a Superior Officer.

XIX. ADDITIONAL DATA:

1. The First Deputy Commissioner shall not approve the return of firearms, shield and/or Identification Card to a Sworn Member of Service on modified Assignment unless the Police Commissioner directs the return of such property.
2. A modified Sworn Member continues to accrue vacation and is permitted to take vacation or authorized leave if there is no conflict with an appearance at a criminal or disciplinary trial.
3. Members who are defendants in a criminal action shall not appear in court on these cases while on duty. Such appearances shall be made on regular days off (RDOs) or with authorized excusals.
4. Sworn Members of Service placed on modified assignment may be transferred between Divisions as per the needs of the Department. If the uniformed member on modified assignment does not carry out his/her duties in a satisfactory manner, the Commanding Officer of the squad/division may recommend to the First Deputy Commissioner, through channels, that the member be disciplined.
5. Sworn Members being restored to full duty will be notified by the First Deputy Commissioner or Office of the Chief of Police and will report, when directed, to the Department of Personnel. The Department of Personnel will direct Member to report to Support Services Division, for restoration processing.
6. Removal of Firearms from an Intoxicated Member of Service shall be performed according to Administrative Guide 2.066, titled 'Removal of Firearms From Intoxicated Members of Service'.
7. Removal of Firearms for a Member of Service on Employee Assistance Program leave shall be performed according to Department policy Organization XXIX, titled 'Employee Assistance Program'.