

# TEXARKANA POLICE DEPARTMENT

## GENERAL ORDERS MANUAL

SUBJECT	Disciplinary Process		
<b>NUMBER</b>	<b>1104.03</b>	<b>EFFECTIVE DATE</b>	<b>December 08, 2010</b>
<b>Scheduled Review Date</b>	<b>July 30, 2018</b>	<b>ISSUE DATE</b>	<b>December 08, 2010</b>
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<b>APPROVED BY</b>		<b>ALEAP Standard</b>	2.04; 2.05; 2.06; 2.07; 2.08; 2.09; 2.10; 7.10

### I. Scope and Purpose

- A. The Texarkana Police Department is committed to excellence. A portion of this commitment rests with the Department’s ability to investigate and resolve, in a fair and impartial manner, complaints received regarding members of the Agency or the Agency’s operations. This policy is intended to inform all employees and the public, of Department procedures for accepting, processing and investigating complaints concerning allegations of employee misconduct.

### II. Policy

- A. It shall be the policy of the Texarkana Police Department to provide for the fair and effective discipline of all its members while relying upon both positive and negative disciplinary measures as well as developing and maintaining a progressive disciplinary process.
- B. The Texarkana Police Department will accept and investigate—in a fair, consistent and impartial manner—all complaints concerning employee conduct in order to determine the validity of the allegations received and subsequently impose justifiable disciplinary action in a timely and consistent manner. Allegations are sustained based only on the facts determined during the investigation or a preponderance of factual evidence. All employees of the Department shall recognize and adhere to the information contained within this policy. [ALEAP 2.06](#)

### III. Definitions

- A. Public Complaint Package
- Information packages containing complaint forms, information on the complaint procedures used by the Agency and subsequent actions the public can expect from the Department in response to their complaint.
- B. Summary Action
- Disciplinary action taken by an employee’s supervisor or commander for lesser violations of agency rules, policies or procedures as defined by the Agency. Summary actions are the lowest level of disciplinary action and are generally handled by first line supervisors.

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C. Administrative Leave or Administrative Duty

- The Chief of Police or designee may place an employee who is the subject of an Internal Affairs Investigation on administrative leave—or administrative duty—during the period in which the investigation is being conducted. An employee on administrative leave will be ordered to remain at a specified location—usually at their home—during regular business hours, unless otherwise directed by competent authority. An employee on administrative duty will perform non-enforcement assignments.

**IV. Procedure**

**A. Basis for Discipline**

1. Employees are subject to discipline for violations of established law, Agency policies, rules or regulations.
2. All disciplinary action levied under this policy shall remain subject to and in accordance with applicable Arkansas state law, local ordinances and administrative rulings.
3. Employees who withhold information from, obstruct or fail to cooperate with internal investigations—or those who fail to report known misconduct of other employees—are subject to disciplinary action in addition to any other disciplinary action that may result from the investigation.

**B. Prevention of Employee Misconduct**

1. Every employee of this Agency has a personal responsibility for, and will be held strictly accountable for, adherence to the Department’s standards of conduct, rules, policies and procedures.
2. This Department has the responsibility for—and will provide to each employee—sufficient and proper training, supervision and policy guidance necessary to ensure all employees are apprised of the demands and requirements of this Agency regarding personal conduct, duties and responsibilities.
3. This agency shall take all reasonable measures to ensure that employees are only assigned and tasked with the duties and responsibilities for which they have the required knowledge, skills, abilities and training.
4. The primary responsibility for maintaining and reinforcing employee conformance to Departmental standards of conduct shall rest with its employees and first-line supervisors.
5. **Supervisors’ Responsibilities:**
  - a. Supervisors of the Department shall familiarize themselves with the employees placed within their charge and closely observe their general conduct and appearance on a daily basis.
  - b. Supervisors of the Department should remain alert to indications of behavioral problems or changes that may affect an employee’s normal job performance and document such information whenever deemed relevant.
  - c. Whenever a supervisor perceives an employee may be having or creating problems, the supervisor should assess the situation and determine the most appropriate action. If that supervisor determines that the immediate removal of the employee from duty is necessary and appropriate, such removal is authorized until the next business day. The Division Commander should be notified of the action as soon as practical.

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- d. A supervisor may recommend additional training to refresh and/or reinforce an employee's skills, abilities or understanding of Agency policy, rules and regulations.
- e. Counseling may be used by an Agency supervisor to determine the extent of any personal or duty-related problems that may be affecting performance and to facilitate assistance and guidance.
- f. The supervisor shall document all instances of counseling or additional training used to modify an employee's behavior.

**C. Accepting and Filing of Complaints** ALEAP 2.04

1. Public complaint packages shall be made available to the public through police personnel at pre-designated public facilities. These complaint packets can be obtained from the receptionist.
2. Complaints may be received by supervisors of this Agency either in person, over the telephone, or in writing. Complaints against any employee of the Department must be made no more than sixty (60) days after the alleged incident occurred. Upon receipt of a formal complaint on an agency employee or volunteer, the Chief of Police will be notified through the appropriate chain of command. ALEAP 2.07
  - a. The sixty (60) day time period does not apply to those complaints that involve an alleged criminal violation or for those instances in which the complainant can demonstrate justifiable reasoning for not bringing the complaint forward within the specified time frame.
3. Complaints should only be accepted from those having first-hand knowledge of the alleged incident.
4. Anonymous complaints will be investigated only under the specific direction of the Chief of Police. If the investigating officer determines—through a preliminary investigation—the violation has occurred, then that investigating officer will file the official complaint and assume the role as the complainant.
5. Department employees shall provide assistance to those who express a desire in lodging complaints against any employee(s) of this Agency. Although not inclusive, providing assistance includes the following:
  - a. Calling a supervisor to the scene to document the complaint;
  - b. Explaining the Department's complaint procedures;
  - c. Providing referrals to individuals and/or locations where such complaints can be made in person; or
  - d. Explaining alternative means for lodging complaints, such as by phone, email or standard mail.

**D. Investigation of Public Complaints—Department Supervisor's Responsibilities**

1. Supervisory personnel shall initiate a preliminary inquiry in order to determine if sufficient evidence exists to support an administrative investigation.
  - a. If the inquiry finds that Agency policy and procedures have been followed, the supervisor will explain to the complainant the investigative steps that were taken by the Department while providing the findings and conclusions of the investigation. If appropriate, the supervisor may explain Agency procedures in an effort to determine if a misunderstanding of Departmental policies and/or procedures may have precipitated the complaint.

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- b. The complainant shall receive a copy of the complaint as lodged with the Agency and shall be asked to verify by signature if the complaint is a complete and accurate account of the alleged incident. If the complainant elects not to sign, this fact shall be documented. After a review of the complaint, the investigation may proceed with the approval of the Chief of Police.
  - c. The written complaint—along with any additional information—will be documented and copies forwarded to the appropriate Division Commander who will ensure a copy is forwarded to the Internal Affairs section for filing.
2. If the supervisor’s preliminary inquiry identifies grounds that may support disciplinary action, the supervisor shall cause further investigation of the complaint and shall notify the appropriate Division Commander.
    - a. Internal Affairs may assume concurrent or sole authority for the investigation at any point in the investigation upon notification by the subject employee’s Division Commander.
    - b. Should an investigation at any time reveal evidence of criminal conduct, all available information shall be forwarded to the Chief of Police and to Internal Affairs as soon as possible.

**E. Investigation of Public Complaints—Internal Affairs Responsibility**

1. The Internal Affairs Investigator may assume primary responsibility for a supervisor’s complaint investigation at any stage within the investigative process upon notification of the affected employee’s Division Commander.
  - a. Under the direction of the Chief of Police or his designee, the Internal Affairs Investigator may also initiate an investigation of alleged employee misconduct with or without the receipt of a formal complaint.

**F. Investigative Interviews and Procedures**

1. Prior to being interviewed, the subject employee of the investigation shall be advised of the nature of the complaint.
2. Unless the seriousness of the investigation is such that an immediate interview is necessary, all interviews will be conducted while the employee is on duty.
3. During all interviews conducted by Internal Affairs, there shall be one supervisor designated as the primary interviewer.
4. The complete interview shall be recorded. The recording will indicate the time at which breaks are taken during the interview, who requested the break and the time at which the interview resumed.
5. In conformance to the mandates dictated by the Garrity court decision, the affected employee shall be given the following admonitions:
  - a. *“ You are being questioned as part of an official Internal Affairs administrative investigation authorized by the Chief of Police ”;*
  - b. *“ You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office ”;*
  - c. *“ You are entitled to all the rights and privileges guaranteed by the Constitution of the State of Arkansas and the Constitution of the United States ”;*

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- d. *“ If you refuse to testify or to answer the questions relating to the performance of your official duties or fitness for office, you will be subject to Department charges which could result in your dismissal from the Police Department ”*; and
- e. *“If you do answer these questions, neither your statement nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings; however, these statements may be used against you in relation to subsequent Department charges ”*.

**6. Rules Governing Representation During Investigative Interviews**

- a. Employees who find themselves the subject of an internal administrative investigation may have an attorney or supervisor representative accompany them during any investigative interview as long as the chosen representative is not in any manner involved with the incident or circumstances surrounding the investigation.
- b. The chosen representative’s role during any investigative interview shall primarily be that of an observer. The affected employee is responsible for his/her representative and should instruct the representative not to interfere in the interview.
- c. The chosen representative may be permitted to make a brief statement at the conclusion of the interview if so requested.

**7. Rules Governing Examinations and Searches During Internal Investigations**

- a. The Department may direct the affected employee to submit to a breath, blood, urine, psychological, polygraph, medical examination or any other examination not prohibited by law and deemed appropriate if the examination is determined to be pertinent to the investigation.
- b. An on-duty supervisor may direct an employee to submit to a breath, blood or urine test when there is reasonable suspicion to believe alcohol/and or drug usage is a suspected factor directly related to the allegations of misconduct.
- c. An employee can be required to participate in a lineup if the lineup is used solely for administrative purposes.
- d. Property belonging to the Texarkana Police Department is subject to inspection for investigative purposes.

**8. Internal Investigations and Dispositions of Administrative Charges** ALEAP 2.04

- a. The primary authority of the internal investigation (i.e. affected employee’s supervisor, Division Commander or Internal Affairs) shall review the complaint report and investigative findings once the investigation is deemed complete. In accordance with the following sections, the investigative authority will generate a report of findings memorandum and provide a disposition recommendation for each charge:
  - **Sustained:** Evidence is sufficient to prove allegations.
  - **Not Sustained:** Evidence is insufficient to either prove or disprove the allegations.
  - **Exonerated:** The incident occurred but was lawful / in accordance with Department rules, regulations, policies or procedures.

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- **Unfounded:** The allegation was determined to be false, not factual or the employee was determined not to be involved.
  - **Policy and Procedure:** The nature of the investigation was based solely upon a complainant's objection or criticism towards Department policy or procedure and not against an individual employee.
  - **Incomplete Investigation:** The investigation could not be thoroughly or properly investigated. Reasons surrounding the incomplete status may be tied to a lack of cooperation by the complainant and/or witnesses, or the available physical evidence or statements received from witnesses are insufficient to adjudicate the complaint.
- b. All applicable findings and recommendations which result from disciplinary investigations shall be forwarded to the Chief of Police through the chain-of-command for information, review and comment.
  - c. The Chief of Police will review the disciplinary action—along with all supporting documentation—and may either accept the findings and recommendations, or the Chief of Police may remand the disciplinary case for additional investigation.
  - d. If the investigation is classified as sustained, then the Chief of Police—or his designee—will determine whether formal administrative charges will be initiated. If administrative charges are filed, the Chief of Police—or his designee—will direct the generation of a formal charging document which shall be endorsed by the affected employee's supervisor and Division Commander and served on the affected employee. The elements within the formal charging document will contain and/or provide for the following:
    - (1) The nature of the charges;
    - (2) A copy of the investigative file; and
    - (3) Will provide for a reasonable time frame necessary to allow the employee an opportunity to respond to the charges either in a written or an oral format.
  - e. Employees who desire an opportunity to be heard on the proposed charges may request a hearing. All such requests will be forwarded to the Chief of Police—or his designee—within a three (3) day period following the affected employee's receipt of the formal charging document.
  - f. Following a hearing—or after receiving the affected employee's written response—the Chief of Police shall determine an appropriate disposition of the charges, or the Chief of Police may remand the disciplinary case for further investigation or related actions.
  - g. The employee may appeal the proposed charges in accordance with established law, ordinance or Departmental / governing jurisdiction procedure.
  - h. The disposition shall be returned from the Chief of Police to the appropriate Division Commander who shall direct the employee's supervisor to initiate the disciplinary action so required.
  - i. Following the initiation of the disciplinary action, the supervisor shall notify the Division Commander and Internal Affairs when the required disciplinary actions have been levied. The affected employee will be provided with a written copy of the disposition.
  - j. Disciplinary cases in which the findings do not support the charges, the Division Commander shall forward the complaint—along with all supporting documentation—to Internal Affairs for reporting and accounting purposes. The employee will be provided with a copy as well.

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- k. Following the final disposition of the complaint, the Chief of Police—or his designee—shall send a formal letter to the complainant that communicates the results of the investigation and explains the final disposition to the person who initiated the complaint. [ALEAP 2.10](#)
- l. All investigations will be completed within 45 days to include the taking of disciplinary action when necessary. If additional time is necessary to conclude the investigation, a request for extension will be presented to the Chief, in writing, providing justification for the extension. If the Chief agrees to an extension a specific number of days will be approved. A copy of the request for extension will be provided to the involved officer and the original placed in the case file. [ALEAP 2.05](#)

**G. Incidents Involving Commissioned Personnel**

- 1. All incidents involving the possibility of criminal activity on the part of commissioned personnel (disturbances, family violence, etc), will be investigated and documented by supervisory personnel. Copies of all reports will be prepared for review by the officer’s immediate supervisor, Division Commander and the Chief of Police. Employees involved in domestic violence will be treated the same as non-employees. [ALEAP 7.10](#)

**V. Disciplinary Actions**

**A. Progressive Discipline**

- 1. The Texarkana Police Department subscribes to the theory of progressive discipline, meaning each subsequent incident of a similar nature would normally justify a more severe disciplinary action on the part of the Department. The Chief of Police may circumvent all formal disciplinary procedures and render an immediate remedy when he deems it necessary to preserve the integrity of the Department.

**B. Summary Action**

- 1. Summary action may be taken by supervisory personnel for lesser violations of Department rules, regulations, policies or procedures after approval for such action is received from the appropriate Division Commander.
- 2. All summary actions shall be documented and copies of the charges and their applicable dispositions provided to the affected employee and incorporated within the employee’s personnel file.

**C. Counseling**

- 1. A Department Supervisor may counsel an employee for a minor infraction of Department rules, regulations, policies or procedures. The affected employee may also be counseled for inadequate or ineffective performances of duty or for an attitude / bearing that is deemed contrary to the guidelines established by the Department.
- 2. Each incident of counseling will be documented by the supervisor in a memorandum to the affected employee. All such memorandums will also be forwarded to the employee’s Division Commander and filed in the affected employee’s personnel file.
- 3. A copy of the memorandum of counseling shall be placed within the affected employee’s personnel file where it will remain for a minimum of three (3) years. After the expiration of a three-year period following the memorandum of counseling, if there are no additional violations similar in nature, the memorandum of counseling will be removed from the employee’s personnel file.

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- a. Each employee's personnel file will be reviewed in January of each year to determine if there are any memorandums of counseling eligible for removal. Final removal of any memorandum from any personnel file shall require the approval of the Services Division Commander.
4. Disciplinary action taken under this section will not bar a recommendation for increased levels of disciplinary action whenever deemed appropriate by higher authority.

**D. Written Reprimands**

1. A command-level supervisor—or his/her designee—may issue a written reprimand for more serious violations of Department rules, regulations, policies or procedures. Written reprimands may also be used to address subsequent violations which were previously adjudicated by lesser forms of discipline.
2. The Written letter of reprimand shall contain a brief description of the incident and/or circumstances and language tailored to the specific Department rule, regulation, policy or procedure the affected employee violated.
3. All written reprimands addressed to Department commissioned employees shall contain the following language:
  - *“ A copy of this reprimand will be placed permanently within your personnel file in the office of the Chief of Police ”*;
  - *“ Any further violations by you of the City Personnel Policies or Department Rules and Regulations issued by the Chief of Police will result in the appropriate penalty for such violation and may result in more severe disciplinary action ”*; and
  - *“ If you desire to appeal this written reprimand, you must request a hearing before the Chief of Police within ten (10) days of your receipt of the reprimand. Otherwise, this written reprimand will become final ”*.

**E. Suspension from Duty**

1. The Chief of Police or Division Commander may suspend an employee with or without pay for any length of time up to thirty (30) days for serious violations of Department rules, regulations, policies or procedures.
2. Any employee who is placed within a suspended status shall be provided written notice from his/her Division Commander that provides for and otherwise explains the justification of the action as well as language that includes his/her right to appeal the action.
  - a. If the affected employee disagrees with the suspension, the initial step in the employee's appeal process initiates with a request for a meeting with the Chief of Police within three (3) days following the employee's receipt of the notification of suspension.
    - (1) In accordance with A.C.A. § 14-51-308, if the suspension is for two (2) days or less, the appeal process ends and the decision made by the Chief of Police is final.
  - b. If the affected employee has reason to believe the suspension is not justified despite the Chief of Police's upholding of the suspension, the second step in the employee's appeal process rests upon the employee's requirement to file an appeal with the Civil Service Commission through his/her chain-of-command within ten (10) days following the Chief's appeal decision.
  - c. The Civil Service Commission shall have fifteen (15) days to establish and otherwise schedule a hearing date for the employee's appeal. Commissioned officers shall not be suspended from duty without pay until their appeal process has been exhausted.

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- d. If the suspension without pay is subsequently reversed, the Chief of Police, the Civil Service Commission and/or the court of jurisdiction may direct the affected employee receive reimbursement for the net loss of earnings resulting from the period of suspension.
- e. Should the period of suspension from duty extend beyond five (5) days, the affected employee's immediate supervisor will collect the employee's badges, credentials and Department issued weapons. These items will immediately be forwarded to the Services Division Commander for safekeeping and appropriate storage.
- f. During periods of suspension, no member of the Texarkana Police Department shall wear any portion of the official police uniform. For additional information regarding the wearing of the uniform, refer to [General Order 1101.03---Uniforms, Equipment and Appearance](#).

**F. Demotion**

- 1. The Chief of Police—or his designee—may demote an employee for disciplinary reasons or for unsatisfactory job performance. Such action will result in the affected employee receiving reclassification to a lower pay grade.
- 2. An employee who is demoted shall be provided written notice that provides for and otherwise explains the justification of the action as well as language that includes his/her right to appeal the action.
- 3. Only employees who have successfully completed their initial probationary period associated with a promotion and otherwise achieved permanent status are eligible to appeal the action pursuant to established law and Civil Service Regulations.

**G. Dismissal**

- 1. The Chief of Police—or his designee—may dismiss or indefinitely suspend an employee for just cause in response to disciplinary action and/or unsatisfactory job performance.
- 2. An employee who is dismissed shall be provided written notice that provides for and otherwise explains the justification of the action as well as language that includes his/her right to appeal the action.
- 3. The affected employee's immediate supervisor shall ensure that all Department issued equipment is returned to the Services Division. Final paychecks shall be withheld until the employee has returned all of his/her issued equipment.

**VI. Appeal Procedures for Disciplinary Action** <sup>ALEAP 2.08</sup>

**A. Probationary Commissioned Employees**

- 1. Employees who have not yet completed their probationary period with the Department may only appeal a disciplinary action to the Chief of Police.

**B. Permanent Commissioned Employees**

- 1. Any permanent commissioned employee who is suspended, demoted or dismissed from any Civil Service position may appeal that action to the Civil Service Commission.
- 2. The affected employee must submit a written request for a hearing through the employee's chain-of-command that otherwise requests a hearing before the Civil Service Commission within ten (10) days following the notification of disciplinary action issued by the Chief of Police or his designee.

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3. The Civil Service Commission shall schedule a hearing as soon as possible which ordinarily occurs within a fifteen (15) day period. The affected employee shall have the right to introduce evidence in his/her own behalf and provided the opportunity to be represented by person(s) of his/her choosing.
4. Provided the presence of a quorum, the decision of the Civil Service Commission shall be derived by majority vote. Upon hearing the evidence presented, the Civil Service Commission may take the following action(s):
  - a. Uphold the suspension, demotion or dismissal;
  - b. Modify the disciplinary action taken by the Department in accordance with established Arkansas law; or
  - c. Reverse the suspension, demotion or dismissal and reinstate the affected employee with full back-pay and applicable benefits.
5. Depending upon the outcome of the Civil Service Commission's decision, both the Department (City of Texarkana) and the affected employee shall have the right to appeal the decision to the Miller County Circuit Court.
  - a. The written notice of the appeal must be filed with the Civil Service Commission within thirty (30) days following their decision.
  - b. Upon the receipt of the notice for appeal, the Civil Service Commission shall forward all pertinent documents, a complete transcript that contains all of the evidence heard by the Commission and all subsequent findings and orders issued by the Civil Service Commission to the Miller County Circuit Court.
6. Depending upon the outcome of the appeal to the Miller County Circuit Court, both the Department (City of Texarkana, Arkansas) and the affected employee shall have the right to appeal the decision to the Arkansas Supreme Court. Such an appeal shall be governed in accordance to the established Arkansas laws surrounding such appeals from the Circuit Court.

**C. Permanent Non-Commissioned Employees**

1. All permanent, non-commissioned employees subject to Department disciplinary action may appeal the action as outline below and in accordance with the appeals procedures outlined with section 6.08 of the City of Texarkana, Arkansas' Personnel Policy.
2. The affected employee must file a written appeal with the Chief of Police within five (5) working days of the disciplinary action. After review of the appeal, the Chief of Police will respond in writing to the employee within five (5) working days.
3. Should the affected employee be dissatisfied with the response from the Chief of Police, the employee may appeal to the City's Personnel Director within three (3) working days. The Personnel Director will submit a written report to the City Manager within five (5) working days.
4. The City Manager will review all of the information and respond to the affected employee in writing within ten (10) working days. The City Manager's decision shall be final.

**VII. Internal Affairs Records and Confidentiality** ALEAP 2.09

- A. Records retained within the Office of Internal Affairs shall be considered confidential and managed in accordance with the following guidelines:

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1. Internal Affairs case files and related information shall be maintained separately from personnel records.
2. Information originating from within the Office of Internal Affairs is considered confidential and will be retained under secure methods within the Internal Affairs Section.
  - a. Case files and personnel dispositions maintained within the Office of Internal Affairs may not be released to any source except by court order; however, the following information must be revealed following a properly filed request:
    - Name of the complaining person(s);
    - Name of the accused employee(s);
    - Subject matter of the allegations; and
    - The final disposition assigned to the disciplinary case.
  - b. Case investigative files shall be retained for a period of time as defined by established state law or the Chief of Police.

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