

720 DEPARTMENT DUE PROCESS PROCEDURES:

PURPOSE:

To provide a means by which persons involved in a ruling or order shall be given proper notice of same and to provide for the availability of defense.

SCOPE:

This policy is applicable to all personnel.

PROCEDURE:

WRITTEN COMPLAINT:

Due process procedures shall be initiated upon the filing of a written complaint with the Chief. The Complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or commissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. The complaint should specify the specific provisions of these policies and procedures which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.

PRELIMINARY INVESTIGATION:

Upon receipt and consideration of the written complaint, the Chief may (but is not required to) assign an officer to make a preliminary investigation as to the validity of the complaint. If the Chief determines that the complaint has no merit, then the Chief may dismiss the complaint and respond in writing to the complainant. If no such preliminary investigation is conducted, or if the preliminary investigation indicates the need for further action, then the Chief shall proceed as appropriate with the steps set forth below.

SERVICE OF COMPLAINT:

If further action is necessary, the Chief shall serve a copy of the complaint on the respondent by either of the following means: (1) personal service, or (2) by registered or certified mail, return receipt requested, and addressed to the respondent at the address appearing on the books and records of the Department. Service by mail shall be deemed effective two days after such mailing in a regular depository of the United States Mail. The complaint shall be accompanied by a postcard or other written form as described below entitled "Notice Of Defense: which constitutes a notice of defense hereunder. No order adversely affecting the rights of the respondent may be made in any case, unless the respondent shall have been served as provided herein.

NOTICE OF HEARING:

Along with the service of the complaint, the Chief shall serve a Notice of Hearing, as provided herein, on all parties at least fifteen (15) days prior to the hearing. If any parties can promptly show good cause as to why they cannot attend the hearing on the set date and indicates times and dates on which they would be available, the Chief may reschedule the time and date of the hearing and promptly deliver notice of the new hearing date.

NOTICE OF DEFENSE:

Service of complaint and notice of hearing shall be accompanied by a Notice of Defense.

The Notice of Defense shall state that the respondent may:

- (a) Attend a hearing before the Chief as hereinafter provided,
- (b) Object to the complaint on the grounds that it does not state acts or omissions upon which the Chief may proceed; said objections must be made in writing within seven (7) calendar days of service of this notice of defense, or
- (c) Object to the form of the complaint on the grounds that it is so indefinite or uncertain that the respondent cannot identify the violating behavior or prepare proper defense; said objection must be made in writing within seven (7) calendar days of service of this notice of defense, or
- (d) Admit to the complaint in whole or in part. In such event, the Chief shall meet to determine appropriate action, if any.

Any objections to the form or substance of the complaint shall be considered by the Chief within thirty (30) days of their receipt. The Chief shall make his determination and notify all parties within said thirty (30) day period. If the complaint is found insufficient, the complaining party shall have fifteen (15) days within which to amend the complaint to make it sufficient. The procedure as set forth above shall be followed with respect to any amended or supplemental complaint. If it is determined by the Chief that the complaint is still insufficient, then the matter shall be dismissed.

CEASE AND DESIST REQUEST:

The Chief may issue a cease and desist order along with the complaint, statement to respondent, and Notice of Defense; such cease and desist order shall be binding on the member.

AMENDED OR SUPPLEMENT COMPLAINTS:

At any time prior to the hearing date, the Chief may file or permit filing of an amended or supplemental complaint. All parties shall be notified thereof in the manner herein provided. If the amended or supplemental complaint presents new charges, the Chief shall afford the respondent a reasonable opportunity to prepare proper defense thereto.

DISCOVERY:

Upon written request to the other party, made prior to the hearing and within fifteen (15) days after service of the complaint by the Chief or within ten (10) days after service of any amended or supplemental complaint, either party is entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party and (2) inspect and make copies of any statements or writing the other party intends to offer as evidence at the hearing. Nothing in this Section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made conditional or protected as the attorney's work product. Any party claiming his request for discovery has not been complied with shall submit a petition to request discovery to the Chief. The Chief shall make a determination and issue a written order setting forth the matters or parts thereof which the petitioner is entitled to discover.

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STATEMENTS:

At any time ten (10) days or more prior to the hearing or a continued hearing, any party shall mail or deliver to the opposing party a copy of any sworn statement which that party proposes to introduce into evidence. Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the respondent a request to cross-examine the statement's author, his right to cross-examine such author is waived and the sworn statement, if introduced in evidence, shall be given the same effect as if the author had testified orally. If an opportunity to cross-examine the statement's author is not afforded after a request is made as herein provided, the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.

CONSTRAINTS ON THE CHIEF:

It shall be incumbent upon the Chief to make a determination as to whether he is able to function in a disinterested and objective manner in consideration of the case before it. In such instances the matter will be turned over to the Board's Personnel Director.

HEARING:

When the accused member does not agree with the decisions by the Chief, he may request a hearing in front of the Board of Officers.

(1) At least three (3) members or alternate members of the Board of Officers shall consider the case. The Board of Officers shall select a person to serve as a hearing officer and preside over the hearing. Such hearing officer may be the solicitor for the Florence Township Fire District #1. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. The Board of Officers may determine the manner in which the hearing will be conducted, so long as the rights set forth in this section are protected. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding. Council for the Florence Township Fire District #1 may be present at all hearings and may serve as hearing officer.

(2) Neither the complainant nor respondent must be in attendance at the hearing.

(3) Each party shall have the right to do the following, but may waive any or all of these rights:

- (a) make an opening statement
- (b) introduce evidence, testimony, and witnesses
- (c) cross-examine opposing witnesses
- (d) rebut evidence and testimony
- (e) make a closing statement.

Even if the complainant and / or respondent does not testify in his own behalf, each may still be called and questioned.

(4) Whenever the Board of Officers has commenced to hear the matter and a member of the Board of Officers withdraws prior to a final determination, the remaining members shall continue to hear the case and the Chief shall name a replacement for the withdrawing member. Oral evidence shall be taken only on oath or affirmation administered by the hearing officer.

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DECISION OF THE BOARD OF OFFICERS:

Within thirty (30) days of the conclusion of the hearing, the Board of Officers shall make a decision on the matters raised in the Complaint. The Board of Officers decision shall be set forth in writing. Said decision

shall contain a concise finding of the facts as determined by the Board of Officers. The Board of Officers shall also set forth a decision on the complaint. The decision of the Board of Officers on the complaint may be but is not limited to one of the following:

- (1) The accusations in the complaint are unfounded and the complaint is dismissed;
- (2) The accusations in the complaint have been substantiated but no disciplinary actions are required;
- (3) The allegations in the complaint are substantiated and the decision of the Board of Officers shall be considered:
 - (a) written reprimand;
 - (b) the actions in the complaint are found and the member shall be suspended from the Department for a specified period of time;
 - (c) the actions in the complaint are substantiated and the member is terminated from the Department;
 - (d) any other action deemed just by the Board of Officers.

Copies of the Board of Officers written decision shall be sent to the complainant and respondent and the Board.

REVIEW BY THE BOARD:

The complainant, respondent, or the Board may seek review of the Board of Officers decision. The request for review by the Board shall be made in writing and submitted to the complainant, respondent, Board of Officers and the Board within fifteen (15) days from the issuance of the Board of Officers written findings. If no such written request for review is received in a timely manner, the decision of the Board of Officer shall become final. If a written request for a review is received by the Board of Officers it shall forward to the Board its entire file on the matter. The Board shall then conduct a hearing in accordance with the procedure set forth. The Board's decision on the review of the matter shall be final. The Board at its sole discretion may decide to hear any matter ordinarily heard by the Board of Officers.