

Rule 3: Disciplinary Action

3.1 (9 NYCRR Section) Reports Of Investigations Regarding Accusations Of Misconduct

Effective: --/--/--

Rescinds: 02/01/10 version

Whenever accusations are made by any person or information is received that a Member has violated any Rule, Regulation, Instruction, or Order of the New York State Police, the Member receiving such accusation or information shall make an official record of its receipt and immediately, by telephone, through channels, notify the Deputy Superintendent - Internal Affairs. Every such accusation or information shall be thoroughly investigated, in order to protect the accused Member, the Division and the people of the State of New York, and all such investigations shall be handled in accord with current written Division instructions outlining the procedure for reporting and investigating Complaints Against Personnel. A written report shall be prepared without delay in accord with Division instructions. The report shall, whenever possible, include written statements of the complainant or complainants, written statements of witnesses interviewed, and a full and complete written statement of the accused Member.

3.2 (9 NYCRR Section) Initial Review Or Adjudication By Troop Or Detail Commander

Effective: --/--/--

Rescinds: 02/01/10 version

The Troop or Detail Commander, after review of a report provided to him or her may make:

- a. A recommendation that no action is warranted. The Troop or Detail Commander will thereafter forward the complete report, together with his or her recommendation, to the Deputy Superintendent – Internal Affairs.
- b. A determination that, in his or her judgment, the penalties that he or she can impose as a Troop or Detail Commander would not be adequate punishment for any violation of the Rules, Regulations, Instructions, or Orders as alleged. Upon such determination, the Troop or Detail Commander shall forward the complete report, together with his or her recommendation, to the Deputy Superintendent – Internal Affairs.
- c. A determination that, in his or her judgment, the penalties that he or she can impose as a Troop or Detail Commander will be adequate punishment for any proven violation of the Rules, Regulations, Instructions or Orders as reported to him or her. Upon such determination, the Troop or Detail Commander shall forward the report to the Deputy Superintendent – Internal Affairs, and with the approval of the First Deputy Superintendent, the Troop or Detail Commander shall proceed as follows:
 1. The Troop or Detail Commander shall cause the accused Member to appear before him or her, affording the Member the right to be represented, if desired, and shall inform him or her of the following:
 - The Troop or Detail Commander's decision to dispose of the matter by informal inquiry.
 - The Member's option of an informal inquiry, to be conducted by the Troop or Detail Commander, resulting in an adjudication of both the question of guilt and of penalty, if any, to be imposed.
 - The penalties that the Troop or Detail Commander can impose upon a finding of guilt; these penalties shall be limited to one or more of the following:
 - a letter of censure;
 - an intra-troop transfer;
 - a fine to be expressed in the loss of no more than five vacation days to be worked by the Member with no additional compensation or overtime.
 - The Troop or Detail Commander's adjudication after an inquiry will be final.
 - If the Member accepts an informal inquiry and adjudication by the Troop or Detail Commander, the Member must execute in writing:
 - consent to have the matter so adjudicated; and

- a waiver of any right of appeal.
2. Upon the execution of such consent and waiver by the accused Member, the Troop or Detail Commander shall conduct an informal inquiry; thereafter, he or she shall make a final adjudication to include a finding of any violations of the Rules, Regulations, Instructions, or Orders sustained. If the Troop or Detail Commander finds that there is no violation, with the approval of the First Deputy Superintendent the matter will be closed and the accused Member will be so advised in writing. Upon a finding that the Member is in violation of the Rules, Regulations, Instructions or Orders, the Troop or Detail Commander may impose any or all of the penalties that he or she can impose, as aforesaid, and will so advise the accused Member. The Troop or Detail Commander shall forward a complete report to the First Deputy Superintendent.
 3. If the accused Member does not accept informal inquiry and adjudication by the Troop or Detail Commander, or does not execute in writing the consent and waiver of right of appeal, the Troop or Detail Commander shall forward the completed report to the First Deputy Superintendent.

3.3 (9 NYCRR Section) Review By Deputy Superintendent - Internal Affairs	Effective: --/--/--
	Rescinds: 02/01/10 version

- a. When the Deputy Superintendent - Internal Affairs receives a report from a Troop or Detail Commander, or directly from a Member of the staff of the Internal Affairs Bureau, in which either the Troop or Detail Commander, or the Internal Affairs staff member, has determined that no further action is warranted, the Deputy Superintendent - Internal Affairs shall review such report. In the event that the Deputy Superintendent - Internal Affairs concurs with the recommendation of the Troop or Detail Commander, or appropriate staff member, the matter shall be closed with no further action taken, and the accused Member shall be so informed in writing.
- b. If upon review of the report by the Deputy Superintendent - Internal Affairs, he or she determines that further action may be warranted, the Deputy Superintendent - Internal Affairs shall forward the report to the First Deputy Superintendent for determination.

3.4 (9 NYCRR Section) Disposition By First Deputy Superintendent	Effective: --/--/--
	Rescinds: 02/01/10 version

When the First Deputy Superintendent receives a report from either a Troop or Detail Commander, or a member of the Internal Affairs Bureau, that contains accusations against a Member, the First Deputy Superintendent may take the following action:

- a. Determine that the matter requires no further action and will be closed. The First Deputy Superintendent shall return the report with such determination, and the accused Member shall be informed of this action by the appropriate Troop or Detail Commander, or Internal Affairs staff member.
- b. Determine that the matter should be returned to the Troop or Detail Commander for appropriate action pursuant to section 3.2 above.
- c. Determine that a Letter of Censure should be issued. In this case, the First Deputy Superintendent shall issue a Letter of Censure to the accused Member.
- d. Determine that the facts and evidence presented in the report are sufficient and of such a nature as to warrant any or all of the following penalties, which shall be offered to the Member, in writing, as punishment for violating one or more Rules, Regulations, Instructions or Orders of the New York State Police:
 1. Probation for a specific period not to exceed six months (during which time the Member may be dismissed without cause). In the event the Member is suspended, such probation will commence at the time of reinstatement;
 2. Loss of annual leave not to exceed 10 days;
 3. Suspension without pay for a period not to exceed 60 days;

4. Intra or inter troop transfer.
- e. Determine that the facts and evidence presented in the report are sufficient and of such nature as to warrant the preparation of charges, which will be served upon the accused Member. In this case, the report should be forwarded to Division Counsel for preparation and service of charges.

3.5 (9 NYCRR Section) Options Of Accused Member	Effective: --/--/--
	Rescinds: 02/01/10 version

- a. The accused Member may accept the penalty offered by the First Deputy Superintendent, advising his or her Troop or Detail Commander in writing, within 10 days of receipt of the offer, of his or her decision to accept the penalty and waiving the right to a formal hearing. The Troop or Detail Commander shall immediately forward this memorandum to the First Deputy Superintendent.
- b. Should the accused Member wish to have a formal hearing, he or she shall inform the Troop or Detail Commander in writing within 10 days of receipt of the offer from the First Deputy Superintendent. The Troop or Detail Commander shall immediately forward this memorandum to the First Deputy Superintendent. Thereafter, charges will be prepared and served on the accused Member. The findings and penalty recommended by the First Deputy Superintendent will not, in any way, be binding on the hearing board; the board shall reach an independent determination based on the facts presented at the hearing.

3.6 (9 NYCRR Section) Preparation Of Accused Member	Effective: --/--/--
	Rescinds: 02/01/10 version

Whenever charges are prepared by Division Counsel and filed and served on the accused Member, the charges shall include:

- a. The charge, indicating completely the law, or the Rule, Regulation, Instruction, or Order alleged to have been violated; and
- b. Specifications setting out the information and/or facts substantiating the charge; and
- c. Notice that disciplinary action may result in separation from the Division either temporarily or permanently, or in reduction in permanent rank; and
- d. The names of persons preferring the charges or who are witnesses in the matter.

3.7 (9 NYCRR Section) Acknowledgment Of Charges By Accused Member	Effective: --/--/--
	Rescinds: 02/01/10 version

The accused Member will be directed to acknowledge, in writing, the receipt of the charges. If the accused Member requests a formal hearing upon such charges, his or her request must be made to the Superintendent, by memorandum, within eight days of the receipt of the charges. Upon receipt of this request for a formal hearing, the Superintendent shall set a date for a formal hearing and give notice to the accused member. At any time prior to the formal hearing the accused Member may submit to the Superintendent in writing:

- a. A plea of guilty, setting out any mitigating or extenuating circumstances and any facts which might tend to lessen the penalty;
- b. A waiver of his or her right to a formal hearing;
- c. An answer to the charges.

3.8 (9 NYCRR Section) Hearing Board	Effective: --/--/--
	Rescinds: 02/01/10 version

- a. The hearing upon charges against an accused Member will be conducted by a hearing board consisting of three Commissioned Officers designated by the First Deputy Superintendent.
- b. The presiding hearing officer, who shall be of the rank of Staff Inspector or above, and one other Officer, shall be named and designated by the First Deputy Superintendent.

- c. The third Officer of the board may be named by the certified or recognized employee representative organization of any accused Member and, if eligible and available, he or she will be designated by the First Deputy Superintendent. If the accused Member is a Commissioned Officer, the designated third Officer of the board shall be of equal or higher rank than that of the accused Member.
- d. If, after designation as a Member of a hearing board, any Officer feels constrained to disqualify himself or herself for cause, he or she shall so advise the First Deputy Superintendent and the First Deputy Superintendent may then designate a replacement.
- e. After designation, and prior to the hearing, designated hearing board Officers shall refrain from acquainting themselves with any facts or circumstances involving the accused Member or the subject matter of the hearing, except to review the pleadings.
- f. The Members of the hearing board shall have no ex parte communications regarding the subject of the hearing with Division Counsel, Division Counsel staff, the accused Member's attorney, or the Member's union representative during the hearing. If the presiding officer wishes to consult with Division Counsel during the hearing, the communication shall be made in the presence of the assigned Division attorney, the accused Member's attorney, and the Member's union representative. The assigned Division attorney, the Member's attorney, and the Member's union representative may not participate in any discussion between the presiding officer and Division Counsel.

3.9 (9 NYCRR Section) Hearing

Effective: --/--/--
Rescinds: 02/01/10 version

- a. The Member is not entitled to discovery at or before the hearing. However, the Member is entitled to receive copies of prior written statements of witnesses called by the Division concerning the subject of their testimony before the Board. Such statements will be provided before the witnesses' testimony.
- b. At a hearing, the accused Member shall have the right to be represented by counsel of his or her choice.
- c. The presiding hearing officer shall conduct the hearing and shall make all rulings upon the submission of evidence and motions.
 - A Member may apply to the hearing board to exclude evidence from admission on the ground that it resulted from the failure to allow the member, upon his/her request, a reasonable time period to obtain representation by a representative of the recognized employee organization (or its designee) in connection with questioning when it reasonably appeared that the Member may have been the subject of a potential disciplinary action. The hearing board shall exclude the evidence from admission if the board finds that the evidence resulted from the failure to allow a Member, upon his or her request, a reasonable time period to obtain representation by a representative of the recognized employee organization (or its designee) in connection with questioning when it reasonably appeared that the Member may have been the subject of a potential disciplinary action. The Member may present testimony and introduce exhibits relevant to the application.
- d. The accused shall be confronted by the witnesses against him or her, given a reasonable opportunity to hear their statements under oath and to cross-examine them, in person or by counsel. This does not preclude the admission of reliable hearsay when deemed appropriate by the hearing board.
- e. The defense counsel shall have an opportunity and shall be granted a reasonable time to obtain witnesses and other evidence necessary for a proper defense of the accused. Such reasonable time for such defense preparation should not extend the commencement of the hearing beyond 30 days.
- f. The hearing should, to the extent possible, be conducted in continuous sessions to a conclusion without adjournments, except at the discretion of the presiding hearing officer for cause.
- g. The testimony at the hearing shall be recorded.

- h. The decision of the hearing board shall be the result of a majority vote and shall be expressed in written findings and recommendations, without reference to, or recording of, the voting and without inclusion of a dissenting opinion. The hearing board shall make an independent decision and shall not be bound by any prior determination or recommendation. The findings and recommendations shall be signed by the presiding officer.
- i. After the hearing board has concluded its deliberations and has submitted its findings and recommendations, in writing, to the Superintendent, all officers of the hearing board shall refrain from any discussion of any fact or matter arising at the hearing or in the deliberations of the hearing board until such time as the Superintendent has rendered a determination. After the Superintendent issues a determination, all officers of the hearing board shall avoid discussions concerning the hearing or deliberations except in the course of official business.
- j. At the conclusion of the hearing, findings and recommendations of the hearing board shall be submitted to the Superintendent for his or her final determination, and the accused Member may request to have the final decision of the Superintendent rendered without the transcript of testimony. Such request shall be in writing, and it shall be restricted to a waiver of the requirement that the transcript of testimony be available to the Superintendent before his or her final decision. If such accused Member should subsequently petition for judicial review of the Superintendent's decision, under Article 78 of the Civil Practice Law and Rules (CPLR), he or she shall be furnished with a copy of the transcript of testimony.
- k. If the accused Member is determined to be guilty of any charge, the charges, findings, determination and reports connected therewith shall be filed in the personnel record of the Member.

3.10 (9 NYCRR Section) Failure To Request Or To Appear For Hearing	Effective: --/--/--
	Rescinds: 02/01/10 version

If the accused Member fails to request a hearing within eight days after service of the charges upon him or her, or fails or refuses to appear for the hearing, or waives his or her right to such hearing, the Superintendent may make findings and impose such disciplinary action as he or she deems proper.

3.11 (9 NYCRR Section) Suspension Pending Hearing	Effective: --/--/--
	Rescinds: 02/01/10 version

- a. Pending a hearing an accused Member may be suspended without pay:
 - 1. After charges have been filed against him or her; or
 - 2. Immediately in an emergency situation where, in the judgment of the Superintendent, the continued status of the Member as a police officer may constitute a danger to the Member or others, and/or the public interest may be seriously jeopardized. In this event, charges will be filed as soon as possible after suspension.
- b. The period of suspension without pay shall not exceed 30 days, unless:
 - 1. the hearing is delayed beyond 30 days by the accused Member's action or that of his or her counsel; or
 - 2. unusual circumstances exist beyond the control of the Superintendent that prevent filing of charges and/or the holding of a hearing within 30 days.
- c. The 30 day limit may be extended by the length of the delay or the duration of existing unusual circumstances.

3.12 (9 NYCRR Section) Resignation Or Retirement After Charges Have Been Served	Effective: --/--/--
	Rescinds: 02/01/10 version

An accused Member who resigns or enters retirement after charges have been served upon him or her shall not be entitled to compensation for vacation and/or overtime accruals, except as may be approved by the Superintendent.

3.13 (9 NYCRR Section) Reinstatement

Effective: --/--/--

Rescinds: 02/01/10 version

An accused Member, who has been suspended pending a hearing and is found not guilty of the charges filed against him or her, shall be entitled to be immediately reinstated to his or her position and to receive back-pay for the period he or she was suspended without pay.

3.14 (9 NYCRR Section) Penalties

Effective: --/--/--

Rescinds: 02/01/10 version

If the accused Member is found guilty of any of the charges, he or she shall not be entitled to back-pay for the period he or she was suspended, notwithstanding the fact that he or she has been restored to his or her position. Upon a finding of guilty on one or more charges, any one or more of the following penalties may be imposed:

- a. Letter of Censure.
- b. Probation for a specific period not to exceed one year (during which time the member may be dismissed without cause). In the event the Member is suspended, such probation will commence at the time of reinstatement.
- c. Suspension without pay for a period not to exceed 90 days. When suspension without pay is the penalty or part of the penalty imposed, any period of time the Member was under suspension without pay pending the adjudication of his or her case may be deducted from the total period of suspension provided for in the penalty.
- d. Demotion in rank.
- e. Dismissal.

3.15 (9 NYCRR Section) Applicability Of This Rule

Effective: --/--/--

Rescinds: 02/01/10 version

This Part shall take effect immediately; provided that the authorized penalties in effect at the time of the events underlying the charges shall remain effective.