

D. Record of Hearings

All testimony shall be given under oath. The Department shall audio tape-record the hearing. The Department will provide the employee a free copy of the audiotape. The employee may also record the hearing with his or her own audio recording device if desired.

ARTICLE 9.6 FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER

At the conclusion of the hearing, after reviewing all information presented, the hearing officer shall prepare a report recommending that: (1) the charge(s) be sustained or not sustained (paper penalty); (2) the penalty remain the same or be reduced; or (3) the appeal be denied or granted. The hearing officer shall articulate in the report the basis for the findings. The hearing officer shall also complete the decision portion of a Decision of the Hearing Officer Administrative Appeal Hearing and Order of the Chief of Police, Form 1.73.1, and forward this with the hearing officer's report to the Chief of Police within 30 days of the conclusion of the hearing.

ARTICLE 9.7 FINAL DETERMINATION

The Chief of Police shall make a final decision in the matter within 60 days of receiving the Form 1.73.1 and the hearing officer's report, and shall complete the Order of the Chief of Police portion of Form 1.73.1. The Chief of Police may adopt or reject, in whole or in part, the proposed findings of the hearing officer, as appropriate under the circumstances. The decision of the Chief of Police shall be final. The Form 1.73.1 and the hearing officer's report shall be returned to the Employee Relations Administrator, who shall cause it to be served on the employee and distributed within 10 days.

SECTION 10.0 REPRESENTATION

ARTICLE 10.1 RIGHT TO REPRESENTATION

This Article shall not be construed to make discipline, transfers, promotions, or probationary employee terminations grievable or arbitrable. It is mutually agreed that the provisions of this Article do not limit what the law requires. The right to representation during the investigation and adjudication of misconduct, categorical use of force investigation, an administrative appeal and grievance presentation is not to be denied to any employee.

Any interview of an employee in connection with an investigation that the employee reasonably believes may result in disciplinary action against the employee, will entitle the employee to a representative of the employee's choice. The employee has the right to choose a representative, subject only to reasonable consideration of the representative's availability and the urgency of the investigation. The representative may be a member of the Department from the rank of lieutenant or below, or legal counsel (at the employee's expense), or both. A Director of the League shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any non-criminal information received from any employee under investigation or obtained as a representative of that employee in

relation to employment matters. This does not apply if the Director is a percipient witness to criminal acts under investigation.

All references to "on-duty representation" in Section 10.0 of this MOU shall refer to those representatives who are currently Department employees, excluding Directors of the League and any employee who represents him or herself. There is no provision for the use of on-duty time or overtime for an accused employee or grievant to prepare a defense or grievance initiation or appeal.

ARTICLE 10.2 PERSONNEL COMPLAINT INTERVIEW REPRESENTATIVE

Employees have the right to representation during an interview pursuant to a personnel complaint investigation or a "special" investigation. The duties of a representative in these interviews are:

- A. To conduct pre-interview consultation with the employee to ascertain if the employee understands the allegations against the employee; and
- B. To be present with the employee during the interview for purposes of:
 - 1. Consultation,
 - 2. Advice,
 - 3. Clarification,
 - 4. Ensuring procedures are followed, and
 - 5. Ensuring the employee's rights are not violated.

Representation shall be on an on-duty basis. When on-duty representation is impractical, the Department may use an adjusted work schedule. Such representation shall not be done on an overtime basis unless no other alternative is available and such overtime is approved by a supervisor.

The provisions of this Article shall apply to an employee who is being interviewed as a witness pursuant to a personnel complaint investigation or "special" investigation if the employee has a reasonable belief that the employee may be disciplined as a result of the investigation.

On-duty personnel selected as a representative shall obtain the approval of a supervisor before leaving their assigned duties. Permission shall not be denied unless deployment would be seriously affected or vitally important duties neglected. If this causes a delay for the employee in retaining the representative of the employee's choice, the interview will be rescheduled.