



**PAB**

**POLICE  
ACCOUNTABILITY  
BOARD**

# **Disciplinary Matrix**

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DISCIPLINARY MATRIX

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# DISCIPLINARY MATRIX

Section 18 of the City Charter requires that the PAB create a “written, consistent, progressive and transparent tool or rubric” that “shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints.” This disciplinary matrix is a non-binding set of guidelines that guide PAB’s own recommendations regarding a response to misconduct. If PAB acquires legal authority to impose binding recommendations this document will be amended.

This disciplinary matrix is founded on the Rochester Police Department (RPD) general values, code of ethics, rules and regulations, and general orders. Under such values, the police department has sworn to:

- Serve mankind<sup>1</sup>
- Protect the innocent<sup>2</sup>
- Maintain calmness and courage in the face of danger<sup>3</sup>
- Obey laws and regulations<sup>4</sup>
- Disallow personal biases and prejudice from influencing decision making<sup>5</sup>
- Respect the Constitutional rights of all people<sup>6</sup>

Incorporating these, and other core values of PAB and the community, these guidelines furnish the procedure for appropriate discipline of officers who fail to uphold these values.

## I. Definitions

- Aggravating factors: Circumstances that increase the culpability of the officer or increase the harm of the misconduct such that the disciplinary outcome should increase in severity.
- Discipline: Any act intended to correct or punish misconduct such as counseling, training, written reprimand, salary reduction, fine, suspension, demotion, or termination.
- Exonerated: A finding at the conclusion of an investigation that, although the act at issue occurred, the subject officer’s actions were lawful and proper and within the scope of the subject officer’s authority under police department guidelines.
- Mitigating factors: Circumstances that decrease the culpability of the officer or decrease the harm of the misconduct such that the disciplinary outcome should decrease in severity.

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<sup>1</sup> Rochester Police Department Rules and Regulations, Law Enforcement Code of Ethics, 2 (Dec. 27, 2020).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

- Not sustained: A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.
- Presumptive penalties: A penalty that must be imposed for the sustained violation of a given offense if no aggravating or mitigating factors are present.
- Progressive discipline: The process of implementing increasingly severe measures or penalties to address recurring instances of misconduct.
- Sustained: A finding at the conclusion of an investigation that there is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and committed misconduct.
- Unfounded: A finding at the conclusion of an investigation that the act that is the basis of the allegation did not occur.

## II. Investigation Procedure

### a. Cooperation

The PAB Rules for Investigation outline the procedure for the PAB to accept reports of misconduct, investigate misconduct, and refer reports of misconduct to other organizations including the Professional Standards Section (PSS) of the Rochester Police Department. These guidelines provide the PAB's recommendation for consistent and appropriate discipline for all circumstances where discipline is imposed against sworn staff of the Rochester Police Department.

### b. Staff and Board Responsibility

The PAB Rules for Investigation outline the responsibilities of the Board and the staff of the PAB in conducting investigations and making determinations utilizing these guidelines.

## III. Outcome Guidelines

### a. Outcome Guidelines Explained

The purpose of the outcome guidelines in this Disciplinary Matrix is to set expectations for the Rochester Police Department (RPD) and the Police Accountability Board (PAB) and provide greater transparency to the public. The matrix makes officers aware of potential consequences for their actions and ensures that discipline is assigned in a fair and rational way.

### b. Presumptive Outcomes

This matrix sets out presumptive outcomes for sustained acts of misconduct and violations of policy. A presumptive outcome is the assumed outcome that is appropriate for the specific act. It is not a mandatory minimum, but serves as the starting point for assigning discipline while analyzing the totality of the circumstances, including mitigating and aggravating factors.

In most cases the presumptive outcome should not be mitigated or aggravated to a different outcome. If outcomes are routinely or uniformly mitigated or aggravated the presumptive penalty

should be re-evaluated to ensure the presumptive outcome and the ultimate outcomes of the disciplinary system are consistent with community and RPD values.

c. Mitigating and Aggravating Factors

This matrix facilitates outcomes that are designed to ensure consistency among similarly situated officers while allowing for a reasonable degree of mitigation or aggravation based on the totality of the circumstances and facts specific to each case. Mitigating factors are circumstances that do not excuse or justify the misconduct, but decrease the culpability of the misconduct or the harm of the misconduct and thus the disciplinary action taken. Aggravating factors are circumstances that increase the culpability of the misconduct or the harm of the misconduct and thus the disciplinary action taken. The presumptive penalty for each act of misconduct may be increased or decreased based on the presence of these factors. However, the presence of mitigating or aggravating factors does not automatically lead to the conclusion that departing from the presumptive penalty is necessary. Rather the factors must be weighed against each other and the totality of the circumstances must be considered. In particular, where the proposed aggravating or mitigating factor is already accounted for in the type of misconduct or duties of an officer it ordinarily will not result in departing from the presumptive outcome.

If the board determines that an action is mitigated or aggravated and it wishes to deviate from the presumptive penalty, it must document the reasons thoroughly and explain its reasoning in a memorandum. The board recommends that the police chief also document their reasoning if they depart from the presumptive penalty or the penalty recommended by the board.<sup>7</sup>

i. Mitigating factors: Considering the totality of the circumstances, mitigating factors decrease culpability of the officer or decrease the harm of the misconduct. Examples include:

- The officer did not know the proper course of action and did not have access to sufficient training or experience relevant to the misconduct;
- The misconduct was not willful or deliberate;
- The officer attempted to de-escalate the situation;
- The officer accepted responsibility for the misconduct;
- Any mitigating or remedial acts taken by the officer prior to any complaint or investigation;
- Willingness to actively participate in restorative practices;
- The misconduct did not result in harm to a community member.

i. Aggravating factors: Considering the totality of the circumstances, aggravating factors increase the officer's culpability or increase the harm of the misconduct. Examples include:

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<sup>7</sup> The City Charter requires that the police chief provide the board with a "written explanation of the exact discipline imposed in accordance with the matrix." §§ 18-5(I)(10) and 18-F(J)(2) .

- The officer knew the proper course of action or had access to sufficient training or experience relevant to the misconduct. Past disciplinary history and counseling may inform whether the officer knew or should have known the proper course of action;
- The culpable mental state of the officer such as:
  - Intent;
  - Reckless disregard for the wellbeing of citizens.
- The officer was motivated by bias or prejudice;
- The officer was motivated by personal interest or gain, or to receive a benefit from the misconduct;
- The officer did not attempt to de-escalate the situation and there was an opportunity to attempt to do so;
- Lack of candor or cooperation throughout the investigation;
- Any attempt to interfere with the investigation or attempts to influence others from participating cooperatively in the investigation;
- Extent and nature of the harm or damage caused to persons or property;
- The role of the officer in the particular event (i.e.; the person is a supervisor on the scene of the incident).

#### ii. The effect of rank on discipline

An officer's rank and their role in a particular event will be considered when assessing an appropriate discipline penalty. An officer's supervisory status will generally be viewed as an aggravating factor, especially when the event in question occurred on duty. This is because supervisors operate under higher expectations to lead with sound judgment and hold their subordinates accountable.

Demotion may be an appropriate disciplinary outcome and should be considered in each case where an officer has been previously promoted. Demotion should be favored outcome where the misconduct indicates that an officer is unable, unwilling, or unfit to serve as a supervisor.

#### IV. Progressive Discipline

The disciplinary history of an officer will be considered when assessing an appropriate penalty resulting from the current investigation. Prior discipline changes the presumptive penalties according to the matrix below.

Prior sustained violations increase the presumptive penalty regardless of severity or relationship to the current misconduct. When a prior violation is older than the time limitations listed below, it is not considered a prior sustained complaint and does not increase the severity of the outcome. The date of the prior sustained violation is the earlier of the date the Chief of Police imposed discipline or the PAB recommended discipline. The limitations are as follows:

- Violations of Level 1 have a limitation of 3 years
- Violations of Level 2 have a limitation of 4 years
- Violations of Level 3 have a limitation of 5 years

- Violations of Level 4 have a limitation of 7 years
- Violations of Level 5 have no limitation

## V. Selecting charges

The decision maker should select the most serious appropriate charge. If the conduct shown from the investigation fits two different rules or general orders, the decision maker should ordinarily select the charge of a higher level. Additionally, this matrix recommends that where there is a more specific charge that covers the conduct, the decision maker prefer the more specific charge to the general charge.

An act of misconduct may be subject to or fit multiple definitions of proscribed conduct. In this case, a single penalty will be applied and will be determined based on the most serious appropriate category of misconduct. For example, an officer who drives a city vehicle while intoxicated may technically be unfit for duty, but will be disciplined according to the more serious rule regarding intoxication while driving.

### a. A caution on “catchall categories.”

RPD rules and regulations contain catchall categories that cover broad swaths of conduct. In particular, Rules 1.1 Obedience to Laws, Ordinance and Rules and Rule 1.3 Obedience to Orders cover nearly all potential misconduct of an officer. This matrix recommends that where there is a more specific charge that covers the conduct, the decision maker prefer the more specific charge to the general charge. As an example, consider an officer who handcuffs a six-year-old child who is not a danger to himself or others. This violates general order 338(IV)(1). This also violates Rule 1.1 Obedience to Laws, Ordinances and Rules. General Order 338(IV)(1). is the more appropriate charge.

### b. Aggregating charges

When an event that is subject to discipline contains multiple acts of misconduct by a single officer, each distinct act will be addressed and the penalties aggregated. In the event that the penalties or each distinct act aggregates at more than 90 days, the matrix recommends termination as the outcome.

### c. Use of force

RPD governs the use of force through its general orders. The two most frequently cited general orders in sustained discipline are General Orders 335 and 337.<sup>8</sup> Each of those general orders have numerous subsections that describe different levels of force or rules relating to reporting force. As a result, this proposed matrix classifies, with particularity, the different subsections of those general orders into the misconduct levels. The decision maker should select the most serious appropriate charge that matches the circumstance. The decision maker may conclude that

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<sup>8</sup> PAB Disciplinary Analysis July 2022

more than one subsection has been violated by multiple distinct acts and should aggregate those charges consistent with the aggregation rule above.

## VI. Selecting Outcomes

The matrix utilizes a set of standard outcomes as the presumptive outcomes. After selecting a charge and determining the officer’s prior disciplinary history, the board will utilize the matrix to determine the presumptive outcome. On the vertical axis the levels of misconduct and on the horizontal axis are the number of violations. The matrix provides an outcome for each level and number of violations.

The outcomes included as presumptive penalties are training, counseling, written reprimand, suspension, and termination.

Additionally, the matrix requires that the decision maker consider alternative outcomes. Many of these alternative outcomes are directed at correcting the officer’s behavior, providing the officer additional resources, restoring a victim of misconduct, or restoring the community. Some of these alternative outcomes are traditional penalties that could supplant or add to standard outcomes (transfer, demotion, fine). Both counseling and training are outcomes that may be selected in tandem with any other outcome, including alternative outcomes.

An alternative outcome may supplement or replace a standard outcome. The board must document that they have considered alternative outcomes, whether they have decided to adopt or reject an alternative outcome, and their justification for selecting these outcomes.

Standard Outcomes	Alternative Outcomes
Training	Remuneration to the victim
Counseling	Remuneration to the community
Written Reprimand	Engaging in a restorative circle
Suspension	Public service
Termination	Apology
	Fines
	Driver training
	Transfer
	Employee assistance
	Demotion
	Mediation

## VII. Optional Restorative Process

This matrix recommends a parallel restorative process utilizing the restorative circle model. This process must be fully voluntary, proceed in parallel (not in substitution) to the investigative process, and be administered by trained professionals. To be full voluntary both the officer and the reporter must consent to participating. Implementing a restorative process would require



hiring or contracting with professionals willing and able to perform the service. We are surveying our community and investigating the RFP process to create and engage such a service.

In the interim the proposed matrix also includes two sets of outcomes: standard outcomes, and alternative outcomes. The Board is empowered to recommend alternative outcomes, including a payment to an affected community member, a payment to a community fund from the RPD budget to pay for community harms (such as breaking down doors when executing a warrant) engaging in a restorative circle which is a process designed to resolve disputes between a wrongdoer and the aggrieved, an apology, and public service. We recommend that any restorative process be fully voluntary, and if an officer or the department consents to a restorative outcome that no discipline be imposed unless and until the restorative outcome concludes. The board should account for any restorative outcome in evaluating the appropriate standard outcome.

VIII. Categories of Misconduct

Level	Description	Number of Prior Sustained Violations			
		0	1	2	3 or more
1	Minimal negative impact to individuals, community, or public perception of the agency with no impact on relationships with other agencies.	Written reprimand / counseling and training		3-day suspension	10- day suspension
2	More than minimal negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.	5-day suspension	10-day suspension	20-day suspension	30 day suspension
3	Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.	10-day suspension	20-day suspension	30-day suspension	60-day suspension
4	Significant negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.	60-day suspension		Termination	
5	Criminal misdemeanor, felony, or severe misconduct, or; major negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies, or; demonstrates serious lack of integrity, ethics, or character and includes conduct that could effectively disqualify an officer from continued employment as a law enforcement officer.	Termination			