

Running head: DISCIPLINE MATRIX AND PROCESS

Executive Development

A Disciplinary Matrix and Process for the  
Fairfax County Fire and Rescue Department

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Certification Statement

I hereby certify that this paper constitutes my own product, that where the language of others is set forth, quotation marks so indicate, and that appropriate credit is given where I have used the language, ideas, expressions, or writing of another.

Signed: \_\_\_\_\_

### Abstract

The Fairfax County Fire and Rescue Department's past discipline procedure was problematic in that there was not a documented process in place for supervisors to determine the appropriate level of discipline, based on the merit of the incident and behaviors. Subsequently, there were inconsistencies and misperceptions resulting in frequent grievances and civil service hearings.

The purpose of the research was to gather information and develop a disciplinary matrix and complimenting process that provides officers and supervisors a tool to assist in the administration of consistent, fair and equitable discipline.

The action method research method was the primary method used to develop the discipline matrix and process. However, the historical research method was also used to determine how the department got to its present situation and to answer the research questions of what are the causative factors for the inconsistency of discipline, what stakeholder groups perceive to be the problem, and if there would there be any legal obstacles to establishing a matrix and process for supervisors.

The procedures included research and analysis of whatever statistical information or data could be found on department discipline, personal interviews with stakeholders, interviews with peers in the industry and research on other fire and emergency service organizations' experiences, and the legal ramifications of inconsistent discipline.

The results of the research indicated that the establishment of any tool that assists supervisors in administering discipline would be advantageous as long as the process considers mitigating circumstances.

Recommendations of this action research include the consolidation of discipline related policies into two succinct documents that include a matrix for discipline with corresponding investigative processes. Ratification of these with stakeholder groups will create a unified communication device addressing the expectations of all department members.

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## A Disciplinary Matrix and Process for the Fairfax County Fire and Rescue Department

### Introduction

The Fairfax County Fire and Rescue Department (FCFRD) is a combination volunteer and career department that serves a community of 1.1 million people. The problem is that there is not a sanctioned decision making process in place to aide officers and supervisors in determining the appropriate level of discipline for department members (herein referred to as members) who have violated an organizational policy, procedure, rule or regulation. This has lead to reluctance and unwillingness to enforce policy and procedure by many officers and supervisors. For those who do enforce these policies and procedures, there is apprehension and inconsistency in the administration of discipline leading to perceptions of disparate treatment by members of the organization. These inconsistencies and perceptions have resulted in grievances, Equal Employment Opportunity (EEO) complaints, civil service hearings, and in some cases, civil suits against the department.

The purpose of this research is to develop a disciplinary matrix and process, using action research methodology, to improve the confidence and performance of the officer and supervisor in enforcing policies, procedures, rules and regulations. This will result in determining fair and equitable corrective actions for members in a consistent manner, thereby reducing the incidence of grievances, civil service hearings, EEO complaints and the loss of productivity associated with preparing for these matters.

Trends and causative factors for disciplinary actions in the FCFRD, resulting in members and labor groups regularly contesting discipline decisions by officers will be used as reference points as the following research questions are addressed:

1. What problems exist with current discipline methods in the Fairfax County Fire and Rescue Department?
2. What are the behavioral trends (common policy or procedure violations) that result in serious discipline (proposals for suspension and/or termination) and subsequent grievances, civil service hearings, and civil suits against the department?
3. What is the perspective of representative labor groups regarding the administration of discipline to their members?
4. How does case law influence the concept or development of a disciplinary matrix and process?

#### Background and Significance

On July 1, 1948, Fairfax County hired the first ten firefighters to serve at each of the volunteer fire departments as apparatus drivers. Today the Fairfax County Fire and Rescue Department consists of 1,395 uniformed and 135 civilian merit employees, supplemented by over 300 operational volunteer members to provide all hazards and emergency medical response to the community over 407 square miles from 37 fire stations and five administrative and support facilities. The department responded to over 92,000 incidents in 2007. The annual operating budget for Fiscal Year 2009 is \$174.3 million dollars.

Fairfax County is an increasingly diverse community with 67.9% of the current population white (non-Hispanic), 15.8% Asian, 12.9% Hispanic/Latino, 9.5% African American (non-Hispanic) and 6.9% other making up the balance of races represented in the community. The median family income in the county is \$119,812, with 58.7 % of the community possessing a Bachelors Degree or higher (Fairfax County Economic Authority, 2008). The county is

governed under the urban county executive form of government. The powers of the government are vested in a nine member elected board of supervisors plus an elected at-large chairperson.

The FCFRD is a high performing, well funded and progressive department. With the level of support provided by the elected officials, their constituents, and the executive leadership of the county, there are high expectations regarding service delivery, fiscal stewardship, strategic planning, and ensuring that the department is responsive to the emerging needs of the community.

The fire service nationwide is seeing many senior and chief officers move into retirement. The next generation of officers is rapidly moving into their new positions to assume command of their respective departments. FCFRD is no exception to this trend and currently has an attrition rate of approximately 60 members leaving each year. New members of the department are coming to the fire service with diverse cultural, educational, and work experiences. The department is markedly more diverse than when the first ten paid firefighters (all white males) were hired in 1948. The department celebrates a diverse workforce consisting of 18.3% African American, 6.3% Hispanic/Latino, 4.2% Asian, .6% Native American, 11% female, and 62% White male. For each of the last eight recruit classes, over 50% of the recruits have been of non-white male status. The values, norms, and expectations of the members entering the department today are much different from the work force that entered the service even 30 years ago.

Over the past ten years there has been a continuing trend regarding the frequency of disciplinary matters and grievances coming to the Deputy Chief level and above for resolution. Battalion Chiefs and lower ranking officers are not consistently addressing violations of policy and procedures resulting in grievances as a result of inconsistency in enforcing the rules or the

level of discipline administered by the organization. A symptom of this trend is that the administration of discipline has frequently been untimely due to the fact that the supervisors closest to the situation are not taking corrective action immediately. These delays have a profound impact on the efficacy of corrective action.

From January 1, 1999, through December 31, 2007, there have been 27 civil service cases brought before the Fairfax County Civil Service Commission. Of the 27 cases, 21 were a result of disciplinary actions. Ten of these cases were found in favor of the department, while the remaining 11 cases were either found in favor of the grievant, settled, dismissed, or withdrawn. In cases where the findings were in favor of the department, the officers involved had presented a solid case, ensuring due process for the individual and thereby the discipline was upheld as presented. In the other 11 cases there was untimely or delayed discipline, inconsistent application of discipline, incomplete facts from the investigations, or lack of due process by the officer that became evident only at the hearing. This performance sends a negative message to the department and leads to distrust of officers that do hold their subordinates accountable. It also perpetuates the myth that no one can be fired regardless of their actions. This perception can be pervasive and undermine the morale of good officers and firefighters alike.

For a grievance to reach the Civil Service Commission it must first be reviewed by the county executive for grievability determination. From January 1, 1999, until December 31, 2003, there were 9 discipline cases that went through the county executive's office for grievability determination. In the following four years this number rose to 12 discipline cases being forwarded to the county executive's office for grievability determination.

These statistics and the corresponding hours spent by Deputy Chiefs, Assistant Chiefs, and the Fire Chief preparing grievance responses and for civil service hearings are indicators that

a clear process and framework for disciplinary decisions is needed. It is evident that the current means of administering discipline is inefficient. The value and benefit of a documented and well communicated disciplinary matrix and process will be realized by clear expectations among all department members regarding the consequences of non-compliance and will be more aligned with a key element of the department's core values, teamwork and shared leadership. The reduction of grievances and civil service hearings will result in time being spent by senior management dedicated to more value added endeavors.

The topic of this research project directly relates to the concepts presented in the National Fire Academy (NFA) Executive Development course. Teamwork and shared leadership are guiding principles for the FCFRD. The organizational symptoms associated with the lack of a formalized disciplinary decision process undermine the achievement of these guiding principles. One can clearly see how the inconsistent administration of discipline impacts the team when comparing to unit two of the National Fire Academy Executive Development Course (2007) which highlights the components of an effective team structure: "1. Clear roles and accountabilities. 2. An effective communication system. 3. Methods for monitoring individual performance and providing feedback. 4. Emphasis on fact based judgment" (p. SM 2-9).

When senior officers spend an inordinate amount of time attending to grievances and disciplinary matters that should have been resolved at the station or battalion level, they are being limited in their ability to see the big picture. As Heifetz and Linsky aptly captured it, "achieving a balcony perspective means taking yourself out of the dance, in your mind, even if for only a few moment. The only way you can gain both a clearer view of reality and some perspective on the bigger picture is by distancing yourself from the fray" (p. 53). It is important

to make the time to see what the real issues are and assess what is necessary to mitigate these issues or facilitate the change that may be in order.

Chief Officers must maintain situational awareness in this increasingly complex world. It is essential that the senior leadership of the department maintain focus on strategic level thinking and planning through the legislative process and other means to achieve the shared operational objectives of the United States Fire Administration and the FCFRD. The increasingly diverse and post baby-boom workforce requires clear communication of expectations and understanding of the rules. This applied research project directly relates to the following operational objective “To respond appropriately in a timely manner to emerging issues” (United States Fire Administration, 2008) by recognizing and addressing an outdated disciplinary process.

#### Literature Review

An extensive amount of research into the theory and concepts of organizational discipline was conducted to address the first research question of what problems exist with the current discipline system in the FCFRD. The department uses a progressive discipline system in accordance with the County of Fairfax Personnel Regulations. The Fairfax County Fire and Rescue Department, Rules and Regulations (2004) state:

The purpose of discipline is to address and correct identified job performance, conduct, or performance problems. When appropriate, disciplinary actions will be progressive in nature and shall be consistent with the seriousness of the infraction. However, severe disciplinary action, including dismissal, may be appropriate for some offenses and may be taken without following the steps of progressive discipline. In any event, each case must be handled on its own merit with as much consistency as possible.

Overall, both the Fairfax County Personnel Regulations and the policies and procedures adopted by the FCFRD regarding discipline are designed to serve as tools used after coaching and counseling has not produced results in correcting behaviors that are not consistent with the standards of conduct or in violation of other policy and procedure. In a review of the disciplinary procedures one finds that the concepts and intent associated with progressive disciplinary procedures is to correct behaviors as early and at the lowest level possible. Most begin with oral counseling, progress to written reprimands, then to suspension, disciplinary demotion, and ending in dismissal. This mirrors most aspects of those systems published as best practices for local government in many human resource management references. Murphy (2004) also established that it is common for public safety agencies to use a progressive approach in their disciplinary proceedings.

Throughout the years there have been many fire administration texts that have been required reading for officer candidates in the FCFRD. These texts, coupled with the minimum officer requirements through the National Fire Protection Association (NFPA) 1021: Standard for Fire Officer Professional Qualifications, have been the base of training for aspiring officers in the personnel management arena. There have been no written guidelines or definitive training provided to the officer candidates or incumbents that relate to the practical application of the supervisory or management principles presented in the academic setting. As with many other aspects of the fire and emergency services, current officers have learned vicariously through their current or former senior officers regarding individual philosophies on the enforcement of policy and procedure and the administration of discipline.

There are myriad approaches and philosophies taken by individuals regarding discipline as a result of the vague guidelines the organization has established. In a discussion with former

FCFRD Deputy Chief and now retired Arlington County Fire Chief Edward Plaucher, he explained that the primary reason for the organization to administer discipline is to reward those whom diligently perform their duties abiding by the standards of conduct and standard operating procedures of the department (E.P. Plaucher, personal communication, February 2002). This view is consistent with the expectancy and equity theories of motivation in the workplace. Productive members need to see that others are held accountable for low performance, absenteeism, insubordination or numerous other infractions. Without this level of accountability, the productive personnel may develop a negative perception of the organization as well as their own role (Patton, Witt, Lovrich, Frederickson, 2002). Discipline is designed to assist organizations maintain the norm for performance and behavior in the workplace. Bruegman (2009[sic]) differentiates between discipline and disciplinary action. The former being the act of a supervisor developing discipline through training, clear standards of operation, team supported policies and procedures and regular communications between supervisors and subordinates. Disciplinary action is used to correct confirmed violation of the standards of operation.

Many officers feel that their job is to protect or take care of their people not only in relation to their physical well being as they perform the duties of their job, but also in terms of protecting them from discipline to address behaviors or actions that are not consistent with the values, policies, or procedures of the department. The reference of an officer taking care of their people may also be rooted in some of the behaviors of the officers themselves and the nuances of shift work and station life, where officers live side by side with those charged to their supervision. Too many times officers only enforce the rules that they agree with, therefore practicing selective discipline. Standards of conduct and policy and procedure are instituted to maintain accountability and ensure the safety of the members. Officers only enable the

normalization of deviance and undermine the team effort by allowing members to take short cuts, or accepting a lower standard of performance (Mullane, 2007).

Discipline is viewed as means for supervisors to correct behavior or performance issues in the work place. It should be progressive in nature starting with verbal counseling or coaching and progressing through more severe discipline to include termination if the performance, conduct, or behavior is not corrected in a specified period of time. Wise, Clemow, Murray, and Bingham (2004) state that it is important that guiding principles and definitive steps are included for supervisors when preparing to discipline employees. These guiding principles include thorough yet timely investigations, starting at the lowest possible level to affect change in the behavior. Depending on the nature of the offense it is not always appropriate to start at the lowest level of the progressive discipline process. Certain infractions warrant more severe penalties even though it may be the first instance of the violation. It is generally accepted that if the action is egregious in nature that more severe disciplinary action is appropriate. Wise et al. (2004) build upon these common progressive discipline concepts with pragmatic processes to ensure just cause and due process:

To be sure that the action will stand up under review, it is important not only that the offense be documented and proven, but also that the punishment fit the crime. In many cases, the range of appropriate discipline for a particular offense may be commonly understood. In others, the employer should have established and disseminated a listing of offenses and applicable penalties. In any event, the reviewing body usually has the authority to decide not only the employee's guilt or innocence but also the reasonableness of the punishment.

Bruegman (2009 [*sic*]) and Edwards (2005) both reference management expert Douglas McGregor's *red-hot stove rule* as a guide to an organization's actions in disciplinary matters. The primary focus of this rule consists of the members awareness of the rules and the consequences for violating them, timely and consistent discipline, and lastly that the discipline is based strictly on the behavior and not whether or not the member is liked or disliked by the supervisor. It is interesting to note this viewpoint in juxtaposition with the belief that good supervisors, with appropriate training, know which rules need to be enforced and when to enforce them (Murphy, 2004).

Literature regarding behavioral trends resulting in disciplinary actions among public safety workers is not readily available. However, Edwards (2005) has captured many salient reasons for central administration or oversight of discipline so that these trends can be analyzed within organizations. A central gatekeeper for disciplinary matters assists officers and the organization maintain consistency in record keeping and administration of discipline. This central point must be managed by a person or team of human resource professionals that can analyze the data on a recurring basis to identify trends and causative factors that may be influencing actions or behaviors among the work force. It is important that the organization can take corrective actions based on facts and empirical data. This is not to say that the officer of supervisor is relieved of the responsibility of administering discipline when appropriate; it is a matter of consult and collaboration with a personnel officer.

Patton et al. (2002) take on more of a philosophical discussion regarding the merits of a centralized means of administering discipline versus the individualized attention that can be provided when discipline is decentralized and left to the immediate supervisor's discretion. As Patton et al. relate, there is no exact formula to accommodate the competing values and variables

that come into play when dealing with human beings, and the supervisor must ultimately apply judgment to come to a decision.

David Lyons, a retired FCFRD Captain and former board member of the International Association of Fire Fighters (IAFF) Local 2068, now a labor law specialist and consultant, was asked why he chose to represent and save the job of employees who were clearly not interested in performing the duties and responsibilities of the job, or complying with the rules of the department, and not representing the union or the department in a favorable manner. Mr. Lyons' response was that the union had a minimal obligation to them as dues paying members to ensure they received due process. In too many instances when investigating the cases of the employees referenced, it was discovered that not only had there been incomplete investigations by officers and due process had not been followed, there were facts discovered and presented that contradicted the results of the officer's account of events that resulted in proposed discipline (D. Lyons, personal communication, December 2007).

Interviews were conducted with the respective executive boards of IAFF Local 2068, the Fairfax County Women's Firefighters' Association and the Fairfax County affiliates for the International Association of Black Professional Fire Fighters (I.A.B.P.F.F) and the National Association of Hispanic Firefighters (NAHF), as well as the Fairfax County Professional Fire and Rescue Officers Association (FCPFROA). The common perspective among all groups was that there is too much inconsistency regarding discipline in the department. Too many times there are allegations of disparate treatment based on race, gender, affiliation or the fact that a member simply does not fit into the traditional fire and emergency service culture, consequently receiving more severe discipline or being singled out for minor infractions, while the behavior of other accepted members goes unnoticed or unaddressed.

The Commonwealth of Virginia is a Right to Work state without collective bargaining and therefore no contract. As a result of this dynamic, it is not the traditional clear line where labor versus management. Edwards (2005) has accurately captured some environmental aspects that also apply to FCFRD when he explains how peer pressure within the fire service is also caused by the fact that the officers are union members. A fundamental element of unions is solidarity and the brother and sisterhood of the members. This unique aspect can prove to be a significant complication to the officer's role as a supervisor. The close working relationship within the station enables subordinates to always observe and scrutinize the officer's actions. As such, there are no secrets in the station. The make up of each labor group executive board consists primarily of officers in the department.

A review of progressive discipline cases from 1998 to 2005 revealed several instances where the court found in favor of the plaintiff rather than the department as a result of poor investigations. For example, in the City of Annapolis v. Rowe, Court of Special Appeals of Maryland, No. 1416 (1998), the mayor said the investigation was flawed; Rowe was reinstated and subsequently sued the city, claiming the city deprived him of due process rights. The court found in his favor and awarded him damages. The city later appealed and the decision was reversed, however Rowe still ended up keeping his job and it was never established whether Rowe had been guilty of the behavior that initiated the effort to terminate him in the first place. This is just one of many examples where officers are spending countless hours and resources in what amounts to a fruitless effort because a definitive process for investigation and disciplinary action was not in place or followed.

Amidst 110 pages of legal briefs on progressive discipline in "Legal Briefings for Fire Chiefs" Atkinson (2005) references the Minneapolis fire department and past experience with

complaints and grievances as a result of inconsistent disciplinary procedures. In an effort to reduce the frequency of these proceedings, the department created a system and process that unified enforcement by training and requiring officers to enforce all of the rules consistently and fairly. The rules and the associated discipline were developed by a labor and management committee and since its inception grievances have declined significantly.

The literature review has included extensive reference to fundamental discipline theory and the challenges the fire and rescue service faces in the consistent, fair, and equitable application of these theories without proper framework and processes. The review has revealed as best practices: a central point of discipline data collection, officer training, communication of expectations and consequences, and the importance of processes that ensure just cause and due process.

#### Procedures

For many years the senior leadership team (SLT) of the fire and rescue department, Deputy Chiefs, Assistant Fire Chiefs and the Fire Chief, has discussed the inordinate amount of time that this team spends on dealing with issues that should be handled at the first levels of supervision. The problem statement for this applied research and the research questions were discussed with the SLT to gain consensus on the primary issues with current methods. Nothing has been pushed forward in the past. There has always been reluctance in adopting a centralized discipline system or a disciplinary matrix where it is perceived that discipline is taken out of the hands of the individual supervisor and they are not afforded to consider the incident or behavior on its own merit.

A situational analysis to determine the causative factors for this problem and to address the first research question began with a review of all county and department regulations and

policies that involved disciplinary proceedings. A review of internal reports and surveys established in 2004 and 2005 that focused on those things that the members felt divide the FCFRD was also conducted. Armed with this information an assessment was made from the perspective of a first line supervisor regarding what specific tools or training had been provided to prepare them to enforce the regulations and policies.

Interviews were conducted with the primary stakeholders in the grievance and civil service appeals processes in Fairfax County government. Labor leaders, county attorneys, directors and managers of the civil service commission, and human resource departments were provided questions via email with individual follow up telephone conversations during February 2008 (see Appendix A). Eight pieces of information were requested within three questions. This was used to initiate a broader discussion on their experiences with the disciplinary process from their respective viewpoints. The goal was to obtain an objective response from key players in the grievance and civil service hearing processes. The first question requested what the key players believed were the top three areas that need improvement in the department's application of discipline to its members. The second question was more specific and asked for a rating of how the principles of just cause, due process, enforcement and consistency were adhered to by the department. The last question asked if they would be receptive to assisting in a joint venture to develop a tool and process that would assist supervisors when discipline was necessary, and that also communicated to the members the potential consequences for the most common and serious infractions.

To address the second research question, the FCFRD Operations Bureau discipline tracking spreadsheet and the Professional Standards Officer's case management spreadsheet was referenced and all of the county stakeholders interviewed were asked if they maintained a

database of disciplinary proceedings and outcomes. None of the groups maintained a bona fide database; however the Civil Service Commission (CSC) and IAFF Local 2068 did maintain a running list of cases and outcomes in the form of a spreadsheet. The CSC provided the data reflecting the activity involving FCFRD from January 1, 1997 to the present.

To gain the perspective of the representative labor groups, individual meetings with the executive boards of Fairfax County IAFF Local 2068, I.A.B.P.F.F. Progressive Firefighters, Professional Fire and Rescue Officers Association, Hispanic Firefighters, and the Women's Firefighter Association were held in the months of March and April of 2008. This was a follow up to the interviews with each of the presidents that had occurred in February of 2008. The objective was to ensure that a broad perspective was gathered from this diverse group so that common perspectives and experiences could be extrapolated and addressed in the solution to the problem.

Case law review of progressive discipline cases was narrowed to the fire and emergency services industry to maintain relevance and in consideration of the nuances of the public safety environment. Several interviews were held during January and February, 2008, with the county attorney who has represented the FCFRD for over ten years in civil service and court cases.

Jean Kidd, Deputy Chief of Personnel for the Minneapolis Fire Department (Minnesota) was contacted to discuss the performance and results of the *Disciplinary Guide* that has been in effect in Minneapolis since March 15, 1999. The discipline system used by Minneapolis was compared with the systems used by FCFRD, Virginia Department of Transportation (VDOT), Mesa Fire Department (Arizona), and Chesterfield Fire and EMS Department (Virginia).

Limitations were primarily related to the challenge of obtaining data for accurate analysis of behavioral trends. The FCFRD Human Resource Section has only recently started

building a SQL database that captures activities in the discipline arena. There is less than one year of data entered at this time so the information is not considered reliable at this juncture. None of the stakeholder groups or the other metro departments contacted maintained a robust database on personnel matters. All thought it was a good idea.

### Results

FCFRD is lacking this established and disseminated listing of offenses and applicable penalties. Other than a rudimentary spreadsheet that was started in 1999 to track only the discipline administered within the Operations Bureau and the Professional Standards Officer's case management spreadsheet, there is not a centralized discipline tracking mechanism for the department. Currently all disciplinary actions (including verbal counseling) beginning at the station level must be cleared by the respective shift or division Deputy Chief prior to moving forward. With three different operational shifts and six administrative divisions without a standard decision framework, there are nine different approaches to discipline that can change with the leadership. It is not required that the Deputy Chief research similar previous discipline cases in conjunction with the information provided by the initiating supervisor to make a determination of whether to maintain, elevate or reduce the proposed discipline. The Deputy Chief makes the determination without the advantage of hearing the employee's side of the story. Proposed suspensions and terminations are reviewed by the Deputy and Assistant Chief prior to final approval by the Fire Chief. Once again this is done with only the originating officer's account of events. Essentially this is a subjective process which is inherently vulnerable. "The disciplinary process should be expressed in a written policy. The policy should represent a valiant attempt to remove as much subjectivity as possible" (Cochran, 2005, p. 132). When the originating officer has not completed a thorough investigation and proposed discipline that is not

strictly based on fact, typically the Deputy Chief will see this case again in the form of a second step grievance where the employee will have the opportunity to present their side of the story for the first time.

From January 1, 1999, through December 31, 2007, FCFRD has administered 505 formal disciplinary actions (written reprimands, suspensions, terminations). From January 1, 1999, through December 31, 2003, out of 268 disciplinary actions, there were 26 grievances and civil service hearings, or 9.7% of the disciplinary actions that were contested by the recipients. From January 1, 2004, through December 31, 2007, out of 237 disciplinary actions, there were 50 grievances and civil service hearings, or 21.1% of the disciplinary actions contested by the recipients.

The FCFRD does not have a clear, documented investigation or decision making process for discipline. Subsequently, discipline is not administered in a timely manner, is inefficient and inconsistent across the three shifts and entire department.

Whereas the principles of progressive discipline are outlined in the regulations and policies of the authority having jurisdiction, clear parameters and process regarding the methodology used by officers in the FCFRD has not been established.

The Human Resource Section of the FCFRD maintains all personnel records for the department, however it has only recently begun building a discipline database in an effort to improve the department's performance in the administration of discipline. The HR Manager has not been actively engaged or consulted on the discipline that is administered within the agency. However this same manager is tasked with representing the department at civil service hearings, to defend the actions of officers that have imposed the aggrieved discipline. Too many times during time consuming preparation for these cases the HR Manager discovers that there is

missing information or that just cause or due process were not established or followed. Based on the experience of the FCFRD, a centralized approach would appear to yield more consistent and efficient results.

The following common areas or behaviors were identified as the most frequent rules, policy, or procedural violations that resulted in serious discipline. These were derived from the Operations Bureau spreadsheet and Professional Standards case management spreadsheets and anecdotal perspectives of the Deputy Chiefs: Unbecoming conduct, Untruthfulness, Failure of officers to enforce county or FCFRD rules, policy, or procedures, Vehicle accidents, Workplace violence, Performance of duty, Insubordination, Criminal conduct, Human relations, Emergency operations, Medical practice violation, Malingering, Tardiness, and Unauthorized absence. The value of compiling data on discipline activities, besides simply placing copies of the discipline in the personnel file, becomes more obvious with each grievance that the department processes. Without review of the discipline system performance, how can a chief officer or HR manager ensure that the system is fair and equitable (Cornell, 2003)?

The results of the interview questions (see Appendix A) to the stakeholder group provided predictable results however the added insight from the respective parties during the interviews proved very valuable when considering recommendations to improve the discipline system. The results of those interviewed were merged to provide the top three areas that needed improvement asked in question one, consistency in the enforcement and severity of punishment and improved training of officers in conduct and discipline matters. The results of question two, which contained four parts was again compiled, resulted in that 75% of time the officer proved just cause in investigations; 50% of the time the officer ensured due process in the investigations;

45% of the time the officer consistently enforced policy and rules; and 30% of the time the officer demonstrated consistency in the application of discipline.

In the 2004 Workplace Diversity Task Force Survey, 66% of the 969 respondents felt that discipline was not conducted in a consistent manner (FCFRD, 2004). In a subsequent report by the task force, of the discipline administered between 1999 and 2004, 49% of those receiving discipline were minorities and women while only 30% of the workforce is made up of this group (FCFRD, 2005).

Information gathered from the civil service commission during the interviews disclosed that 38.6% of the grievances filed from the FCFRD to the Civil Service Commission in the past ten years have involved allegations of some kind (age, gender, race, disability) of discrimination. During the same time, of the remainder of the appeals received by the Commission, 28.2% involved an allegation of discrimination.

Across all groups it is felt that the officers need better training in the administration of discipline to ensure due process and that when proven without a reasonable doubt, fair and equitable discipline will be administered in a consistent manner. All groups responded favorably to the concept of a matrix that identified and communicated to all members the consequences of policy, procedures, and rules of conduct violations.

All groups were willing to partner in a joint management-labor agreement regarding the development and application of detailed guidelines to serve as communication tool and guide to discipline.

A pragmatic review of the legal findings of the case law studied, illustrated that the incorporation of a discipline system that promotes the consistent and impartial application of discipline would not have any negative legal consequences. The county attorney eagerly

supported the direct involvement of the Human Resources Manager as the clearing house for disciplinary determinations, as well as the discipline matrix as a reference tool for officers in the department.

Several references were examined regarding the Minneapolis Fire Department's discipline system that was adopted over nine years ago. The system has worked very well for the department since its inception. The labor union and the Human Resources Manager were integral parts of the system development. The department has realized consistent results with grievances being rare (average one-two annually). The timeliness of the discipline has remained consistent as well with an average turn-around of 30 days. The system is constantly maintained to ensure that it remains current with the problems of the day. It remains a collaborative effort with the labor union (J. Kidd, personal communication, June 3, 2008). The other departments compared had systems that closely resembled the traditional decentralized discipline system. The Chesterfield Fire and EMS Department, as well as VDOT, require that discipline rising above an oral reprimand be cleared with the human resources department prior to administration. The Mesa Fire Department maintains a decentralized system as well; however has incorporated a discipline flow chart to facilitate due process and higher level review prior to any discipline rising above an oral counseling or reprimand.

#### Discussion

A discipline decision and application methodology that incorporates the best elements of a centralized and decentralized system is the objective. There is an opportunity to assimilate traits of both of these philosophies in order to better achieve fair, consistent, and equitable discipline so that the both the organization and employee enjoy enhanced productivity.

That discipline is the cornerstone to delivering effective emergency response service to the community (Murphy, 2004) relates to the theory that discipline in the literal sense involves training, teamwork and supported policy and procedure (Bruegman, 2009 [sic]). Most would agree that these elements are essential to a high performing organization. When considering behavioral issues and the human behavior, established parameters and consequences must be in place to address when members do not adhere to the code of conduct and performance standards. The disciplinary action itself is the tool that assists in communicating to the individual as well as others in the organization that there is a standard that must be maintained. Wise et al. (2004) describe affirmative discipline as a means of addressing behavioral or performance related issues through a work improvement plan or contract in which the member must agree to certain terms and achieve compliance to avoid discipline. While this approach has merit, well communicated standards and adequate training should make this approach the exception rather than the rule, especially in a large organization. Work improvement plans are more appropriate in areas where a specific aspect of job performance needs focused attention.

The inconsistency of discipline and the effect this has had on perceptions and attitudes among officers and subordinates creates a divide in the organization. Poor discipline or attitudes from the company level resulting in grievances that labor and management end up resolving at the upper levels of the department is never efficient or timely. More importantly, it undermines those essential components of an effective team, clear roles and accountability, effective communications, means of monitoring performance and providing feedback, and fact based judgment and decisions (NFA, 2007, p. SM 2-9). The FCFRD shares the core values of teamwork and shared leadership.

As the literature review revealed, Fairfax County Personnel Regulations and the FCFRD Standard Operating Procedures and Rules and Regulations contain the basic concepts and theories involving progressive discipline and include the minimum procedural guarantee requirements pursuant to Section 9.1-300 et seq. of the Code of Virginia. Officers in the FCFRD have not been provided the initial training and continuous education on this topic and have subsequently learned through trial and error; this is exacerbated by the attrition of senior officers through retirement, and has led to a “brain drain” of institutional knowledge and experience. Edwards (2005) emphasizes that officers must receive training on when and how to use discipline. When members know that their supervisors are well trained, they are more inclined to view the application of discipline as fair and equitable. Whatever the system, training must be included if it is going to yield consistency and transparency for all the officers and members (Murphy, 2004).

A review of McGregor’s (2004) recommendation for a formal disciplinary investigation procedure was compared and contrasted with Cornell (2003) and Clack’s (2001) published articles on disciplinary action and a discipline grid. There are parallel efforts among all three to ensure consistency and due process to mitigate legal issues for fire chiefs. The common themes woven between the articles were clear communication of rules of conduct and what is expected both on and off duty and officer training.

McGregor focused on a decentralized approach of discipline however stressed that the development of formal policy on investigations and definitive instruction and training for officers by human resource and legal professionals was required. On the other hand, Cornell advocates for a centralized system where the officer reports the infraction up the chain of command to a designated officer to provide final oversight of the disciplinary process. A

discipline grid, developed through a collaborative labor-management effort is described by Clack (2001) as a solution to a high number of charges of disparate treatment by supervisors when addressing performance issues of employees. The discipline grid provides a set of guidelines that all supervisors use when making disciplinary decisions. An additional aspect of this system and grid is a sunset provision for removing past discipline after two, three and five years.

The Virginia Department of Transportation (VDOT) uses a variation of the two approaches cited above by applying a traditional decentralized method of corrective and disciplinary actions up to a fourth step or written notice. Subsequent discipline proposals are centralized and are routed to the agency human resource director to determine if the action is appropriate with the offense. A chart accompanies the standards of conduct and illustrates three groups of offenses with the corresponding levels of normal disciplinary action, the active life of the discipline and the effects of accumulated offenses (VDOT, 2008).

Prior to 2005, the FCFRD assigned a Battalion Chief to perform as the HR Manager for the department. This position was essentially a liaison with the general county HR department and dealt primarily with hiring and promotional processes. Discipline was decentralized and handled by the respective shift or division Deputy Chiefs.

The communication of expectations prior to the disciplinary event seems to manage the anxiety at all levels and provide for a more consistent results.

Besides the incidence of grievances and civil service hearings, the ramification of this inconsistency and selective enforcement has found its way to the incident scene as well. Too many of the department's close call events are tracked back to inconsistent compliance to emergency scene policy and procedure.

### Recommendations

The nuances of shift work and minimum staffing can make the delivery of the necessary supervisory training a logistical challenge. The budgetary impact of overtime for back fill or for members on days off is significant. To date, the department has not made the financial commitment to deliver adequate training in this area primarily due to an austere budget environment. The projections for the next two fiscal years do not indicate any improvement. Whereas the research for this paper identifies the importance of supervisory training, it is beyond the scope of the problem statement and this applied research project to provide a solution to this issue. However, it is recommended that the FCFRD incorporate this need into the strategic plan for the organization.

There are processes that can be implemented to create a more efficient model for administering discipline within the FCFRD. The training and communication of the process to all members is achievable within the current fiscal environment and available training mediums and venues.

The consolidation and revision of three existing policies within the FCFRD is recommended. These policies establish the process for the discipline to take place. This action will set the department on a course to minimize the inconsistency, misunderstanding and conflict that has been associated with disciplinary actions for many years. The first policy revision will be the FCFRD Rule and Regulation, *300, Disciplinary Actions* (see Addendum B). This policy will be the foundation of the progressive discipline system and will communicate a description of the rules and the consequences for noncompliance in a matrix format (see Appendix C) to all members of the department. It will also indicate that the Human Resources Manager will serve as the primary facilitator and consultant for agency discipline. The Human Resources Manager

will also administer a comprehensive database of all discipline above oral reprimands in order to conduct trends analysis. The second recommended policy change is to consolidate Standard Operating Procedure (SOP) 02.00.06, *Oral and Written Reprimands*, and SOP 01.03.03, *Internal Investigations* (see Appendix D). This consolidation will expand on the procedural guarantees and include the steps that officers shall use in investigating a potential disciplinary problem. It will also indicate when the officer shall confer with higher authority in the form of the Battalion, Chief, Deputy Chief, Human Resources Manager, or the Professional Standards Officer.

The next recommendation is to leverage the willingness of the labor and stakeholder groups to participate in a new process and guide to disciplinary decision making. The next steps are to form a stakeholders group chartered to share additional perspective on the revisions that they helped initiate in the interviews associated with this research. A memorandum of understanding would be drafted between the stakeholder groups communicating that there is consensus on the contents of the policies and that there will be periodic reviews and continued revisions when necessary. The final draft of the matrix and process will be reviewed by the county attorney to ensure that all aspects meet the legal requirements of the commonwealth and the county.

The discipline matrix and process will sustain positive management-labor relations into the future. Most importantly the officers and members of the department will have clearer expectations, higher morale and confidence in the department.

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Appendix A

Disciplinary Process and Experience

Fairfax County Fire & Rescue Department

1. From your experience in your capacity as: Department of Human Resources Director, Human Resource Manager, Employee Group President, Civil Service Executive Director, what do you feel are the top three areas of improvement required in the department’s application of discipline to its members?

- 
- 
- 

2. How often do FRD officers: (circle or write in)

a. Prove *just cause* in the investigation of alleged violations of rules, regulations, policy or procedure?

100%          75%          50%          25%          0%

b. Ensure *due process* in the investigation of alleged violations of rules, regulations, policy or procedure?

100%          75%          50%          25%          0%

c. Consistently *enforce* rules, regulations, policy, and procedures?

100%          75%          50%          25%          0%

d. Demonstrate *consistency* in their application (severity) of discipline?

100%          75%          50%          25%          0%

3. Would you be willing to participate in a joint labor-management initiative to develop a tool and process to assist officers in their administration of discipline and to communicate to the members of the department the potential consequences for various rules and policy infractions?

Appendix B

**FAIRFAX COUNTHY FIRE AND RESCUE DEPARTMENT**

**RULES AND REGULATIONS**

**APPROVED BY:**

**Chief Ronald L. Mastin**

**DATE:**

300 DISCIPLINARY ACTIONS

300.01 General Guidelines

It is the intent of this policy that department and supervisors follow a course of progressive discipline that fairly and consistently addresses employee behavior, conduct, or performance that is incompatible with the county’s Standards of Conduct for employees and/or related department policies. Disciplinary actions must be founded on the principles of due process and will employ a range of corrective and disciplinary actions that are applied based on the nature and history of the misconduct or unacceptable performance. The purpose of discipline is to address and to correct identified job performance, conduct, and attendance problems. When appropriate disciplinary actions shall be progressive in nature and shall be consistent with the seriousness of the infraction as outlined in the discipline matrix (Appendix C). Corrective and disciplinary actions must be administered through a prompt and fair process as described in this policy’s Administrative Procedures. The ultimate goal of this policy and its procedures is to help employees become fully contributing members of the organization.

Progressive discipline steps as outlined below will apply for those infractions that are not included on the discipline matrix. Severe disciplinary action, including dismissal, may be appropriate for some offenses and may be taken without following the steps of progressive discipline for problem behaviors identified in the discipline matrix. Each case will be handled on its own merit based on the intent of the behavior, the impact on department the county operations, the context of the situation, and the circumstances surrounding the behavior. If appropriate, a supervisory referral to the Employee Assistance Program (EAP) should be considered as an adjunct to progressive discipline and should be administered according to department procedures and Fairfax County Personnel Regulations.

Supervisors shall enforce all county and department rules and policies. Supervisors shall fully investigate and document all allegations or observations of misconduct pursuant to Standard Operating Procedure 01.03.03, *Discipline and*

*Investigation Process.* To ensure consistency and fair treatment, the supervisor shall consult with the next level of supervision and the Human Resource Manager prior to making a discipline determination.

300.02 First Offense

Normally progressive discipline starts with an oral reprimand which is considered an informal action and is not recorded in the employee's official personnel file. The employee must be provided the opportunity to review and rebut the contents of the oral reprimand. Oral reprimands are not grievable under the county's grievance procedure.

300.03 Second Offense

A written reprimand is appropriate for the second violation of the same or similar nature. The written reprimand is used when the supervisor determines that the offense is severe enough that a formal written record should be placed in the employee's official personnel file, or when the employee has failed to correct the problem despite previous oral reprimand(s). Written reprimands are nongrievable, but are eligible to receive an advisory decision from a hearing officer under the county's Grievance Procedure.

300.04 Third Offense

The third offense of the same or similar nature will warrant a suspension of at least two 24-hour workdays or four 8-hour work days.

300.05 Fourth Offense

The fourth offense of the same or similar nature may result in dismissal.

300.06 Oral Counseling and Written Reprimand

Any supervisor may conduct oral counseling and may issue written reprimands.

Appendix C

**Fairfax County Fire & Rescue Department**  
 Chief Ronald L. Mastin



703-246-2126  
 Fax - 703-273-1049

***Discipline Matrix***

*Supervisors shall fully investigate and document all allegations or observations of misconduct or performance issue pursuant to Standard Operating Procedure 01.03.03, Internal Investigations, prior to making a discipline proposal. The infractions and corrective actions in this matrix will be referenced only after the supervisor has established: Intent of the individual, Impact of the actions, Context of the situation, and Circumstances surrounding the incident. The appropriate infraction and corresponding actions will be identified on the merit of each case in accordance with this matrix.*

*The discipline actions may be removed from the work location or personnel file as follows: Oral Reprimands will remain active in the work location supervisor's file for two years. Written reprimands will remain in the member's personnel file for three years. Suspensions shall remain in the member's personnel file for five years.*

Infraction	First Offense	Second Offense	Third Offense	Fourth Offense
Officer's or Supervisor's Failure to enforce County or Department Rules, Regulations, Policy or Procedure	Written Reprimand, Suspension or Demotion	Suspension, Demotion	Termination	
False or inaccurate statements in any verbal or written department communications	Written Reprimand or Suspension	Suspension, Demotion, or Termination	Termination	
Insubordination	Written Reprimand or Suspension	Suspension, Demotion, or Termination	Termination	
Tardiness (unexcused)	Oral Reprimand	Written Reprimand	Suspension	Termination
Misuse of Sick Leave - Malingering	Written Reprimand	Written Reprimand or Suspension	Suspension, Demotion or Termination	Termination

Unauthorized Absence	LWOP for time absent and Written Reprimand or LWOP and 2 day Suspension	LWOP for time absent and 3 day Suspension or Termination	Termination	
Vehicle Accidents – At fault (Remedial Driver Training required after all Class 1 or 2 accidents)	Class 1 – Written Reprimand or Suspension Class 2 – Oral or Written Reprimand Class 3 – Oral Reprimand	Class 1 – Suspension Class 2 – Written Reprimand Class 3 – Oral or Written Reprimand	Class 1 – Termination Class 2 – Suspension Class 3 – Written Reprimand	Class 2 – Suspension or Termination Class 3 - Suspension
Failure to follow Fire and EMS Apparatus Backing Procedures	Written Reprimand	Suspension or Demotion	Termination	
Workplace Violence – Physical	Suspension or Termination	Termination		
Workplace Violence – Verbal Assault or provoking a physical altercation	Written Reprimand or Suspension	Suspension or Termination	Termination	
Human Relations – Discriminatory Behavior	Written Reprimand or Suspension	Suspension or Termination	Termination	
Human Relations – Sexual Harassment	Written Reprimand or Suspension	Suspension or Termination	Termination	
Performance of Duty – Failure to: Act, Disregard Safety Policy and Procedures endangering self and others	Written Reprimand, Suspension, or Termination	Suspension or Termination	Termination	
Leaving workplace without authorization	Written Reprimand or Suspension	Suspension, Demotion, or Termination	Termination	

Failure to Report a Known Injury, job related or non-job related	Oral or Written Reprimand	Written Reprimand or Suspension	Suspension or Termination	Termination
Performance of Duty - Failure to follow Emergency Operations Procedures and Medical Practice Protocols	Oral or Written Reprimand, or Suspension	Written Reprimand, Suspension or Termination	Suspension or Termination	Termination
Conduct Unbecoming – Criminal charge, dishonesty, disorderly conduct (may apply for Disciplinary Diversion pursuant to SOP 02.00.12)	Written Reprimand, Suspension, Termination	Suspension or Termination	Termination	
Conduct Unbecoming/Human Relations – Failure to treat or speak to the public or co-workers with courtesy and respect	Oral or Written Reprimand, Suspension	Written Reprimand or Suspension	Suspension or Termination	Termination
Loss or Destruction of County/Department Property Outside Performance of Duties	Written Reprimand or Suspension	Suspension or Demotion	Demotion or Termination	Termination
Misappropriation or unlawful taking or department or county property	Written Reprimand, Suspension, or Termination	Suspension or Termination	Termination	
Failure to maintain contact information	Oral Reprimand	Written Reprimand	Suspension	Termination

Acceptance of Gifts or Gratuities in Connection with Performance of Duties as County Employee	Oral or Written Reprimand, Suspension, Demotion, or Termination	Suspension, Demotion, or Termination	Termination	
Possession or consumption of Alcohol or Illegal Drugs on County Property	Written Reprimand, Suspension, Demotion, or Termination	Discharge *See SOP 02.00.12 Disciplinary Diversion	Discharge	
Reporting to Work Under the influence of Alcohol or Illegal Drugs	Suspension or Termination *See SOP 02.00.12 Disciplinary Diversion	Termination *See SOP 02.00.12 Disciplinary Diversion		

## Appendix D

**FAIRFAX COUNTHY FIRE AND RESCUE DEPARTMENT**

**STANDARD OPERATING PROCEDURES**

**SUBJECT: DISCIPLINE AND INVESTIGATION PROCESS**

**CATEGORY: ADMINISTRATION**

**DATE:**

**APPROVED BY:**

**Chief Ronald L. Mastin**

**FORMS REQUIRED:**

FRD-297, Investigative Warning

FRD-298, Firefighter's and Emergency Medical Technician's Procedural Guarantees

FRD-133, Oral Reprimand Documentation Form

**NOTE:** Current forms are located on the department's Intranet

**PURPOSE:**

To ensure the integrity of the Fire and Rescue Department by establishing procedures for investigating performance problems or complaints and allegations of misconduct against employees of the department and operational members of volunteer departments in the workplace or outside the workplace. These procedures will ensure the prompt and thorough investigation of such allegations to determine whether the misconduct occurred; whether disciplinary action is warranted; and whether existing policies, procedures, and training are adequate. It is the intent of the Fire and Rescue Department to come to a determination and provide the disposition of disciplinary matters within 45 days of the incident or behavior.

**POLICY STATEMENT:**

Fire and Rescue Department personnel, both career and volunteer, hold a unique position of public trust and responsibility. The public and the department have a vital interest in expecting employees to give frank and honest replies to questions that are directly related to the performance of their official duties and/or their fitness to hold public employment. This policy is promulgated in accordance with these considerations. The term "employee" as used in this document applies both to employees of the Fire and Rescue Department and to certified operational members of volunteer

**ENSURE JUST CAUSE AND DUE PROCESS**

Was the employee aware or should they have been aware of the rule, policy, procedure, or standard (herein referred to as policies) that they are accused of violating?

Was the policy or supervisor's order reasonable and relevant to the efficient and safe operation to the department activities?

Has it been fairly and convincingly established that the policies or order was violated or not followed?

What mitigating or aggravating factors are present in the employees work history (length of service, environmental influences, and prior discipline)?

### **FIREFIGHTERS' AND EMERGENCY MEDICAL TECHNICIANS' PROCEDURAL GUARANTEES**

A 24-hour written notice to paid uniformed employees is required prior to interrogating them about circumstances or situations that could lead to a written reprimand, suspension, demotion, or dismissal for punitive reasons.

Determining facts surrounding an incident, preliminary investigation, and other normal procedures does not require a written notice.

Once supervisors determine that circumstances **may** warrant punitive actions involving a written reprimand, suspension, demotion, or dismissal of a paid uniformed LEO person, they will complete the form titled "[Investigative Warning](#)" and present it to the subordinate 24 hours prior to any formal investigation. The member shall receive a copy of the Notification of the Formal Investigation and the original must be placed in the member's personnel file.

The form will include:

The nature of the charge(s) to include specific reference to policy/procedure

The date of the alleged offense(s)

Name, rank and unit or command of the issuing supervisor

Names, ranks and unit or command of those who may attend the formal questioning

Range or possible punishment which may range from "No Action to Termination"

The signature of the issuing officer

The signature of the employee

The formal investigative interrogation should take place at the employee's workstation, if at all possible.

Prior to the proposal of any Written Reprimand, Demotions, Discipline Related Transfers, Suspensions or Terminations, the Human Resource Manager or their designees should review the documentation for the recommended actions to determine if the action is appropriate for the offense based on department past practice; if a referral to the employee assistance program is advisable; and make final recommendation for the corrective action.

**NOTE:** **Civilian and volunteer members will not** be given a 24-hour notice nor receive a notification of a formal investigation based on this section only applying to paid uniformed

personnel. Civilian and volunteer members will be processed according to County Administrative Personnel Regulations, Chapter 16: Conduct and Discipline.

### **DISCIPLINARY INVESTIGATIONS FOR OFFICERS AND SUPERVISORS**

*Officers and Supervisors should follow the guidelines below in conjunction with regular consultation with the next level of supervision, the Human Resource Director and the Professional Standards Officer.*

The first step is conducting a reasonably thorough yet timely investigation into the alleged behavior. When the supervisor takes disciplinary action prematurely, without first having conducted an investigation, the action is more than likely to be over turned in a grievance or civil service hearing, usually because the supervisor missed some important facts.

#### **Prior to Meeting with Employee:**

Interview each eyewitness.  
 Acquire evidence systematically keeping detailed notes.  
 Safeguard any original documents that may be relevant.  
 Collect any physical evidence and maintain clear records in the chain of custody.  
 Be fully prepared with the facts of the situation.  
 Anticipate or determine employee personal prejudices prior to meeting.

**Meeting with Employee:** *Determining facts surrounding an incident, preliminary investigation, and other normal procedures does not require a written notice pursuant to the Firefighters' and Emergency Medical Technicians' Procedural Guarantees.*

Conduct the meeting in private.  
 Face the employee in order to hear and see him or her.  
 Communicate clear understanding of the purpose of the meeting.  
 Listen closely and encourage employee feedback.  
 Encourage employee to explain the situation.  
 Repeat what the employee has said to be sure you understand and confirm your notes.  
 Watch for body language (on both your part and the employee's)  
 Do not try to have the last word.  
 Consider the facts and take time before making final judgment.

#### **Discipline Determination:**

After the supervisor or officer has completed the investigation, they shall document their findings and should be able to answer the following questions: Intent of the individual, Impact of the actions, Context of the situation, and Circumstances surrounding the incident. To ensure consistency and fair treatment, the supervisor or officer shall consult with the next level of supervision and the Human Resource Manager (or their designee) prior to making a discipline determination.

**PROFESSIONAL STANDARDS SECTION**

- A. The Professional Standards Section of the Fire and Rescue Department coordinates and exercises supervision over more complex investigations of complaints or allegations of misconduct against department employees. Officers and Supervisors shall confer with the Professional Standards Officer during the course of an investigation for guidance and direction whenever necessary.
- B. Upon receipt of a complaint, the Professional Standards Section may:
1. Refer the complaint to the appropriate assistant chief, deputy chief, or other appropriate authority for investigation.
  2. Provide assistance to other investigating authorities when requested.
  3. Initiate an independent administrative investigation (upon authorization) when a complaint is of a serious nature or might result in criminal charges.
- C. The Professional Standards Section shall maintain a control log containing the following information:
1. Date and nature of the complaint.
  2. A control number.
  3. Name of the person filing the complaint.
  4. Name of the person against whom the complaint was filed.
  5. Findings/case status.
- D. Access to the Professional Standards Section's control log shall be restricted to:
1. Fire Chief or assistant chiefs.
  2. Professional Standards Section supervisor or his or her designated representative.
  3. Other appropriate authorities as designated by the Fire Chief.

**INCIDENTS TO BE INVESTIGATED**

- A. The incidents that are to be handled in accordance with the provisions of this procedure are alleged or suspected misconduct or violations of any laws, statutes, ordinances, standard operating procedures, department rules and regulations, or Fairfax County Standards of Conduct by any employee of the Fire and Rescue Department.
- B. Incidents that may be investigated by the Professional Standards Section include, but are not limited to:
  - 1. Complaints from the public. All allegations of impropriety on the part of any employee shall be immediately reported to the employee's supervisor who shall review the complaint. If the complaint cannot be resolved without an investigation, the supervisor shall obtain all facts relevant to the complaint. The seriousness of the complaint is the determining factor in whether an internal investigation should be conducted.
  - 2. Upon the request of any department employee who feels threatened by a false accusation or a contrived situation involving potentially false evidence.
  - 3. Alleged violations reported to supervisory or command personnel by department employees.
  - 4. Those actions observed by supervisory or command personnel that appear to be in violation of law or departmental regulations, or otherwise determined to be misconduct.
- C. Cases typically investigated at the battalion or station level include, but are not limited to:
  - 1. General complaints concerning minor infractions of regulations and/or the manner in which the employee's duties are performed.
  - 2. Complaints relative to differences of opinion between an employee and a citizen arising from the performance of duty.
  - 3. Issues concerning medical procedures and/or protocols shall be assigned to an EMS supervisor who shall coordinate his or her findings with the investigating officer.

### **PROCEDURAL GUARANTEES**

- A. When an investigation involves employees of the Fire and Rescue Department, including volunteers, the investigating officer shall comply with the Firefighter's and Emergency Medical Technician's Procedural Guarantees set forth in *Virginia Code 9.1-300 to 9.1-304*.

- B. When an individual is interviewed about an alleged violation that could lead to dismissal, demotion, change in status, or suspension for punitive reasons, the investigating officer shall utilize the Firefighter's and Emergency Medical Technician's Procedural Guarantees, FRD-298, (attached) to inform the individual of his or her procedural guarantees.

### **EMPLOYEE RIGHTS**

- A. The investigating officer shall provide the employee with written notice in sufficient detail of the investigation in order to reasonably apprise the employee of the nature of the investigation. The Investigative Warning Form, FRD-297, (attached) shall be used for this purpose. Unless there is a clear and compelling need, an employee shall be provided a minimum of five calendar days notice prior to any interview or interrogation.
- B. Department personnel conducting internal investigations that are strictly administrative in nature are not required to allow the employee being interviewed to have an attorney, supervisor, or other representative present. This, however, shall not preclude the employee from seeking counsel prior to or after the interview.
- C. If a transcript is made of the tape recorded interview, a copy of the transcript will be given to the employee. If a transcript is not made, the employee may review the tape recording(s) of his or her interview.

### **CHIEF OFFICER'S RESPONSIBILITIES**

- A. Any chief officer shall have the responsibility for directing any investigation concerning an employee within his or her command unless he or she determines the allegation to be outside his or her scope of authority or resources.
- B. The assistant chief shall be responsible for ensuring a complete and expeditious investigation of all cases referred to the Professional Standards Section. He or she shall request assistance from other divisions as necessary. The employee, through contact with the assistant chief or the Fire Chief, shall be kept apprised of the progress and disposition of the investigation.
- C. The Fire Chief or assistant chief shall be advised by the investigating authority of any new information developed during the course of an investigation that may result in the following actions:
1. Reassigning an employee to other duties.
  2. Relieving an employee from duty, placing an employee on administrative leave, or suspending an employee.

3. Rescinding a volunteer's operational duty status.
- D. Written statements may be taken from the employee under investigation, witnesses, and complainants. Statements need not be in the form of questions and answers, but they may be in the form of a memorandum or narrative report.
  - E. Should it be determined at any time during the investigation that the complaint or allegation is clearly unfounded, the investigation shall be terminated. All relevant information supporting the termination of the investigation and the unfounded allegation shall be documented in a report.

### **EMPLOYEE'S RESPONSIBILITIES**

- A. Each employee shall cooperate fully with personnel assigned to the Professional Standards Section or with any other person conducting internal investigations.
- B. It shall be the responsibility of the employee to answer fully and truthfully all questions asked by the investigating authority pertaining to the investigation.
- C. During the course of an internal investigation, an employee does not have the right to refuse to answer any questions concerning his or her performance of duty, adherence to departmental rules and regulations, or suspected misconduct. If an employee refuses to answer questions relating to an administrative investigation, or if he or she is untruthful in answering questions, he or she shall be subject to department charges, which could result in disciplinary action up to and including dismissal. However, any statements made by the employee cannot be used against him or her in criminal prosecution.
- D. In order to facilitate the internal investigation, an employee placed on administrative leave during the course of an investigation shall contact the Professional Standards Section on his or her normally scheduled work days, unless directed to do otherwise by the investigating authority.

### **EXAMINATIONS**

- A. During the course of an administrative investigation, if the investigating authority determines reasonable cause exists to justify an employee's submission to a medical, physical, psychiatric, laboratory, or polygraph examination, the employee will be ordered by the Fire Chief to submit to such test or exam. The tests and exams may include, but are not limited to breathalyzer, blood, hair, and urine tests; photograph and physical line-ups; voice and handwriting exemplars; and/or a polygraph examination. Tests and examinations shall be performed in a reasonable manner. Results shall not be used in any criminal proceeding against the individual tested. The investigating officer shall be responsible for consulting with the Fire Chief for approval of such tests or exams, except in those circumstances outlined in SOP 02.04.03, Fitness for Duty.

- B. If an employee refuses to submit to a test or an examination as ordered, he or she shall be charged with insubordination which could result in disciplinary action up to and including termination.

### **CHEMICAL DEPENDENCY**

- A. The following procedure shall apply to protect employee(s) under investigation or those employees implicated by the testimony of another who have previously initiated or completed a professional treatment program for chemical dependency.
1. When the issue of an employee being chemically dependent becomes a factor in an investigation and the employee maintains that he or she currently is enrolled or has successfully completed a treatment program, the employee shall be required to sign a Release of Information form. This authorization shall permit the Fire Chief to verify that the employee is currently participating in or has successfully completed a treatment program. Once verification has been received, the Fire Chief may direct the investigating officer to cease investigating those aspects of the case that related to the employee's chemical dependency.
  2. The Fire Chief may require the employee to sign a Back-To-Work or Continue-To-Work Agreement.

### **INVESTIGATIVE FINDINGS**

- A. Upon completion of an investigation, the employee(s) who was the subject of the investigation shall be provided with a written copy of the investigative findings. The findings shall be classified in the following manner.
1. Unfounded: Based on the preponderance of credible evidence, the allegation is false.
  2. Not sustained: There is insufficient evidence either to prove or to disprove the allegation.
  3. Sustained: The allegation is supported by a preponderance of credible evidence.
  4. Exonerated: The incident occurred, but the actions taken were lawful and proper.

### **RESULTS AND REPORTS**

- A. The results of an internal investigation will be released only to the following officials:

1. The Fire Chief and assistant chief(s) and, if authorized by the Fire Chief, other appropriate authorities.
- B. The final report of the investigation shall be maintained at the Professional Standards Section. To ensure confidentiality, copying a report shall not be permitted.

### **ORAL AND WRITTEN REPRIMANDS**

Chapter 16 of the Personnel Regulations provides for two kinds of reprimands, the oral reprimand and the written reprimand.

In both cases the officer or supervisor will conduct a preliminary investigation as outlined in previously in this Standard Operating Procedure.

The oral reprimand is considered an informal action and is not recorded in the employee's official personnel file. The employee must be provided the opportunity to review and rebut the contents of the oral reprimand. Oral reprimands are not grievable under the county's grievance procedure.

The written reprimand is used when the supervisor determines that the offense is severe enough that a formal written record should be placed in the employee's official personnel file, or when the employee has failed to correct the problem despite previous oral reprimand(s). Written reprimands are nongrievable, but are eligible to receive an advisory decision from a hearing officer under the county's Grievance Procedure.

### **PROCEDURE**

#### A. Oral Reprimand

When a supervisor deems that an informal oral reprimand is warranted, he or she shall administer the discipline and maintain a record of the discussion according to the following rules:

1. The supervisor shall advise the employee, in private, of the specific infraction of the rule or breach of conduct and the date it occurred.
2. The employee shall be advised at the time of the counseling that an informal written record of the reprimand is being kept in the supervisor's files and that he or she has a right to review the record.
3. The employee shall be clearly advised during the counseling session that further occurrences will result in more serious disciplinary action. This statement shall be included on the oral reprimand form as well.

4. The employee shall be further advised that he or she has the right to file a statement stating his or her position which will be attached to the oral reprimand form.
5. Oral reprimand forms shall not be attached to subsequent disciplinary actions. The facts and particulars of prior oral reprimands may be included in advance notice letters or written reprimands if relevant to future disciplinary action.
6. The record of the oral reprimand is to be maintained solely as evidence of the prior counseling should the employee allege that it was not provided during possible appeals of future disciplinary actions. Oral reprimands are not included in the employee's agency or Department of Human Resources official employee record.
7. Oral reprimands are maintained for a period of one year. In the event that subsequent disciplinary action is taken within that year, the oral reprimand form shall be maintained for one year from the date of the most recent disciplinary action. This is true whether or not the reason for subsequent disciplinary action is directly related to the reason for the oral reprimand.
8. The Oral Reprimand/Verbal Counseling Form FRD-133 should be reproduced for use by supervisors in the documentation of oral reprimands.

B. Written Reprimand

When the supervisor determines that an offense requires that a formal written record be placed in an employee's official personnel file, or when the employee has failed to correct a problem despite earlier oral reprimand(s), a formal letter of reprimand shall be prepared adhering to the following guidelines:

1. The supervisor shall advise the employee privately that a formal letter of reprimand is being issued. The supervisor should give the employee specific information concerning the infraction of the rule or breach of conduct, the date it occurred, and previous counseling sessions or oral reprimands, if appropriate.
2. The letter shall contain a statement that it is a formal letter of reprimand and that it will be placed in the employee's official personnel file.
3. The letter also shall list previous offenses in those cases involving progressive discipline, and a statement that future similar occurrences will result in more severe disciplinary action.

4. An employee may request that a written reprimand be removed from his or her official personnel file (and agency personnel file) after a period of three years, unless the reprimand is part of subsequent disciplinary action.
5. A request for removal of a written reprimand shall be made in writing to the Director of the County's Department of Human Resources and routed through the department's Human Resource Manager. Upon receipt of the request, the Human Resource Manager will then conduct a file review and consult with the appropriate Assistant Chief. The Assistant Chief will base removal of such reprimand upon the review and recommendation of the Human Resource Manager. Absent such a request, a written reprimand shall remain a part of the employee's official personnel file indefinitely.
6. Nothing in this procedure precludes the Fire Chief from removing a written reprimand from an employee's official personnel file (and agency personnel file) sooner if it is deemed appropriate to do so. Such requests shall be made in writing to the Director of the County's Department of Human Resources and routed through the department's Human Resource Manager.
7. The employee shall sign the reprimand to acknowledge receiving the reprimand.

### **DISCIPLINARY FORMS**

The forms for disciplinary actions can be found in Outlook under Public Folders, Fire and Rescue sub-folder, Operations, then discipline.