LOUISVILLE METRO

POLICE MERIT BOARD

HEARING PROCEDURES

Revised 5/17/11

SECTION 1

TITLE AND SCOPE

1.1 The title of this document is the "Louisville Metro Police Merit Board Hearing Procedures," which may be cited as such, or as "Hearing Procedures," or by the abbreviation "HP"

1.2 These procedures govern practice in all hearings before the Louisville Metro Police Merit Board in conjunction with the procedural requirements of KRS 67.301 *et seq.* and KRS 15.520. These procedures are intended in general to establish the practice that will be followed on all disciplinary appeals before the Board.

SECTION 2
DEFINITIONS

Throughout these Hearing Procedures the following terms shall have the meaning given below, unless the context clearly indicates otherwise.

Board - The Louisville Metro Police Merit Board.

Day or Calendar Day - The respective days of the week. In computing any period of time prescribed by these rules, if the day on which, or by which, an act is required to be done falls on a Saturday, Sunday, legal holiday, or day on which the Board office is closed, the act may be done on the next day which is none of the days just mentioned.

Chief - The Chief of the Louisville Metro Police Department.

Officer- Except as the context otherwise requires, any sworn member of the Louisville Metro Police Department covered by KRS 67C.301 *et seq.* (i.*e.*, police cadets, police recruits, police officers, corporals, sergeants, lieutenants, and captains).

Public Notice - Delivering personally, electronically or by mail, written notice to each Board member and each organization which has on file with the public agency a written request to be notified, as well as to the Chief and each Board Member. The Chief's Office shall post the notice conspicuously in Headquarters and each substation of the Louisville Metro Police Department.

SECTION 3
HEARING REQUESTS/ DOCKETING

3.1 Within ten (10) calendar days of any action taken by the Chief subject to review by this Board, as contemplated in KRS 67C.301 *et seq*. the affected officer must notify the Board and the Chief in writing of his/her intention to appeal the action of the Chief. The officer shall include in such notice his/her intent to be represented by counsel at the requested hearing. As soon as practicable, the officer must notify the Board of the name and address of his/her attorney.

3.2 If not stated in the notice of appeal, the appellant shall file a statement of the grounds therefore with the Board and the Chief within five (5) calendar days of filing the notice of appeal.

3.3 Upon receipt of any notice of appeal, the Chief shall forward to the Board true copies of the written notice of the disciplinary action together with any reply or other explanatory matter filed by the affected officer or employee.

3.4 Upon receipt of a notice of appeal, the Board shall, at its next regularly scheduled meeting or by telephone conference, establish a date for the hearing, which shall be at the convenience of the Board Members and parties, in order to ensure a quorum and resolution of all issues at the hearing. Unless otherwise ordered by the Board, the Secretary shall, upon receipt of a notice of appeal, promptly schedule a public hearing as set forth herein. The assignment for hearing by the Secretary shall be placed in the minutes of the Board as an official action of the Board.

3.5 Hearings on appeal of suspensions of under forty (40) hours may be scheduled for a hearing officer rather than before the full board, in the Board's discretion.

3.6 The announcement of the hearing shall be treated like all other public notices by the Board and shall be communicated in a like manner.

3.7 In addition to the notice given under 3.3 above, immediately upon assignment of an appeal for hearing by the Secretary, or by an order of the Board, the Secretary shall give notice of the date, time, and place of the hearing to each member of the Board eligible to sit in disciplinary cases, to the Chief and counsel designated by the Chief, and to the officer or employee appealing and any counsel designated by said person. The notice to the officer appealing and to his/her designated counsel, if any, shall include a copy of these procedures together with a list of references to current Kentucky Statutes relating to appeals to the Board, unless said materials have previously been provided to the appellant or counsel.

3.8 After an appeal is initially assigned to a hearing date, the Secretary of the Board may reassign the hearing to another date on its own Motion if it appears that a quorum will not be available for the original hearing date. The hearing will be assigned according to the availability of Board members and the parties, but the Board may reassign to another date if necessary.

3.9 Any request by either party to an appeal for a continuance of any public hearing scheduled by the Board shall be in writing and shall be filed with the Board immediately upon the occurrence of the circumstances, which prompt the request. A copy of the request shall be mailed by the requesting party to the opposing party, or designated counsel, at the time it is filed with the Board. The opposing party, if so desired, shall file a response within five (5) calendar days of receipt of the continuance request. A request for continuance filed by the appealing officer shall be accompanied by an appropriate waiver, signed by both the officer and his/her designated counsel in a form approved by the Board. Timely requests for continuances will be granted by the Board, in its discretion, for good cause shown. If there is no regular meeting of the Board scheduled in advance of the hearing for which a continuance is sought, the Secretary shall schedule a special meeting for the purpose of considering the request for continuance. However, in the event there is insufficient time to schedule a special meeting, as determined by the request for continuance and provide immediate notice of such to the Board. Written notice of any rescheduled hearing date shall be given in accordance with Sections 3.6. and 3.7.

SECTION 4
CHARGES BROUGHT BY CITIZEN

4.1 Any citizen may make a charge of misconduct, concerning the action of any employee, in writing and under oath, to the Chief. If not satisfied with the response of the Chief, the citizen may appeal the determination of the Chief to the Board within thirty (30) days, setting forth the particulars of the charge. The written appeal must provide specific reasons why the Chief's decision is thought to be erroneous; an estimate of the amount of time the citizen needs to present his/her position; and evidentiary materials (written documentation or other evidence) that support the citizen's position.

4.2 The Board shall notify the Chief of the appeal and forward to the Chief all materials filed by the citizen. The Board also shall give notice and provide copies of such materials to the officer who is the subject of the appeal.

4.3 The Chief has fifteen (15) days to file a written answer to said charges. The officer may respond if he or she wishes.

4.4 The Secretary and Legal Counsel for the Board shall review the citizen's appeal, the Chief's response, and the officer's response, if any, and determine if there is sufficient cause for additional investigation, review or hearing by the Board and shall advise the Board accordingly.

4.5 The Board may adopt the recommendation of the Secretary and Legal Counsel or may order further investigation or hearing. The Board shall determine the scope of the investigation or hearing.

4.6 If the Board requires a hearing after investigating the citizen appeal, the Board may assign the matter to a hearing officer or the Board itself may conduct the hearing. In either case, the hearing shall be conducted as indicated in the Board's Hearing Procedures.

4.7 In conducting an investigation or hearing regarding a citizen appeal, the Board also shall comply with the provisions of KRS 15.520.

SECTION 5
PREHEARING MOTIONS

5.1 Unless otherwise ordered by the Board, motions to dismiss the proceedings or for summary disposition of the appeal shall be made in writing and filed with the Board within fourteen (14) days after the affected officer gives notice to the Board of his/her intention to appeal the action of the Chief. The basis for any such motion shall be stated clearly and include copies of any authorities relied upon. Copies of any such motion shall be served upon the opposing party or its counsel and counsel for the Board. The Party opposing the motion may file a response with the Board within five (5)) calendar days after receipt of any motion and shall serve a copy of any response upon the other party or its counsel and counsel for the Board.

5.2 Either party may move for leave of the Board to take a videotaped deposition, and it is the stated preference of the Board that said motions be filed jointly by the parties. The party or parties making the motion for leave to take a videotaped deposition must include with the motion the name and current address of the witness and a brief summary of that witness's expected testimony, if the Board has not yet received such information pursuant to Rule 6.1. It is the stated policy of the Board to seek to limit the use of videotaped depositions to the testimony of medical or other experts who would not be available to appear at the hearing, or for witnesses who do not reside within the jurisdiction and would not be available to appear in person at the hearing.

SECTION 6
DISCLOSURE AND EXCHANGE OF WITNESSES AND DOCUMENTS

6.1 At least ten (10) calendar days prior to any scheduled hearing, the parties shall exchange the following information in writing and copies shall be filed with the Board and its counsel:

(A) Except for good cause shown, on motion to the Board, the names and current addresses of all persons each party may call as a witness, and a brief summary of each witness's expected testimony; and

(B) Copies of all records or other documents each party expects to tender as evidence at the hearing.

(C) Except for good cause shown, copies for the Board shall be delivered in quantities sufficient for each Board Member and Board Counsel to have a copy in addition to the Board's copy.

(D) Documents filed and exchanged pursuant to this Rule shall be marked as the tendering party's exhibit with extruding tabs for identification purposes unless it is not feasible to do so because of the type of exhibit.

6.2 Any physical evidence not susceptible to photocopying or reproduction expected to be used by a party at the hearing shall be made available for inspection to opposing counsel at least ten (10) calendar days prior to the hearing.

6.3 Except for good cause shown, or for purposes of rebuttal, the Board shall not permit a witness to testify or an exhibit to be admitted into evidence unless the party calling the witness or tendering the exhibit has complied with the procedures set forth in this section.

6.4 Unless otherwise directed by the Board, no other prehearing discovery shall be available to the parties.

SECTION 7
OBJECTIONS TO EXHIBITS

7.1 Any party objecting to the admissibility or introduction of a document, report or exhibit disclosed pursuant to Section 6 above shall file the objection, in writing, not less than five (5) calendar days prior to the scheduled hearing with copies of the objection served on the opposing party or its counsel and upon counsel to the Board. Objections shall state clearly and with particularity the grounds for the objection along with copies of any authorities relied upon. Except for good cause shown, any party not objecting to the admissibility or introduction of a document, report or exhibit in compliance with this section shall be deemed to have waived any objection as to the admissibility or introduction of the same.

SECTION 8
STIPULATIONS

8.1 Counsel for the parties shall confer prior to any scheduled hearing to determine the extent to which uncontested facts can be stipulated by the parties in connection with the evidence to be presented at the hearing. At the commencement of the hearing, any stipulations as to testimony or facts shall be submitted to the Board in writing and signed by each of the parties or their counsel. Stipulations as to exhibits will be noted at the commencement of the hearing and shall be referred to as such when used by either party.

SECTION 9
ORDER OF PROCEEDINGS: EVIDENCE

9.1 Evidence at Board hearings shall be developed and presented by parties briefly, materially, and relevantly. The parties shall not be redundant and/or cumulative in the presentation of their evidence.

9.2 The Chief shall have the burden of going forward with the evidence and presenting such evidence that he/she considered in determining the disciplinary action under review. The appealing officer shall then present such evidence as he/she may have that the disciplinary action of the Chief is unjustified or unsupported by proper evidence. The burden of going forward with the evidence shall fall upon the appealing officer in the event of an appeal from a nondisciplinary action. Either party may present rebuttal evidence, which shall not restate or cumulate direct evidence previously presented by that party.

9.3 All motions or objections of an evidentiary nature, not otherwise covered by Section 7, shall be stated with particularity with the reasons therefor. The opposing party or its counsel shall be allowed to respond briefly to the motion or objection. No further arguments or statements by either party will be permitted unless requested by the Chairperson or counsel to the Board. The Chairperson shall promptly announce, on the record, all rulings on motions and objections which may be conditional or final under the circumstances.

9.4 Notwithstanding the foregoing, a Citizen appealing the determination of the Chief shall have the burden of going forward and presenting evidence in any hearing on such appeal.

SECTION 10
WITNESSES

10. 1 Witnesses testifying at hearings shall do so under oath and may be cross-examined by an opposing party or by any member of the Board or by counsel for the Board.

10.2 Subject to Rule 4.2 above, testimony of any witness at a hearing may be introduced into evidence at the hearing in the form of a deposition, provided that the other party and Board counsel are given full opportunity to be present at the witness's deposition and cross-examine the witness.

10.3 At the commencement of any hearing, before any evidence is presented, the Board shall direct the separation of witnesses upon the request of either party. Any party failing to make a timely request for separation shall be deemed to have waived the right to do so. The Chief or his designated agent, whether or not testifying as a witness, shall be exempt from any separation, as shall be the appealing officer.

SECTION 11
ARGUMENTS AND STATEMENTS

11.1 In addition to formal evidence introduced at a hearing, the Board shall permit brief arguments and statements of counsel or the parties upon such conditions and restriction, as the Board deems fair, adequate or necessary to protect the rights of the parties.

SECTION 12
HEARINGS TO BE STENOGRAPHICALLY RECORDED

12.1 All hearings, other than on Citizen Appeals, shall be stenographically recorded unless otherwise ordered by the Board with the written consent of the Chief and the appealing officer or employee.

12.2 Citizen Appeal hearings may be recorded stenographically or on audiotape or videotape, at the discretion of the Board.

SECTION 13
SUBPOENAS

13.1 Upon a showing of proper need at the request of the Chief or the appealing officer, the Board shall issue subpoenas to compel the attendance of witnesses or the production of documents or other documentary evidence in conjunction with any Board hearing. The parties applying for the issuance of subpoenas to the Secretary shall set forth the substance of the anticipated proof or relevance of the documentary evidence to be obtained and the need therefor in support of the application. The Board may issue subpoenas in its own name if deemed necessary in a particular situation.

13.2 Subpoena forms shall be developed and maintained in the office of the Secretary, and subpoenas shall be issued in the name of the Board, and executed by the Chairperson. In the absence of the Chairperson, subpoenas may be executed by the Vice-Chairman or Secretary, or any other agent or employee the Board may designate by resolution.

13.3 In order to reduce the need for the issuance of numerous subpoenas and to avoid delays in proceedings before the Board, all parties are urged to confer and produce witnesses under their control by agreement when possible.

SECTION 14
EVIDENCE NOT PERMITTED: EXCEPTIONS

14.1 Any investigative file compiled or maintained by the Louisville Metro Police Department, the Jefferson County Attorney, and Commonwealth Attorney, or any law enforcement agency or official, or any statement, memorandum, letter, or report obtained or prepared for the purpose of inclusion in an investigative file shall not be disclosed or produced at a hearing unless:

(A) A file or any part thereof is to be introduced into evidence by the Chief and is disclosed pursuant to Section 6; or

(B) Any witness testifies from or with reference to a specific document or record from any investigative file, in which case the party calling the witness shall promptly produce any such document or record to the Board and to the other party.

14.2 The Chief may not introduce any evidence as to the character, reputation, suitability, or professional competence of the appealing officer or employee unless:

(A) The same constitutes grounds for the disciplinary action under appeal and the Chief's initial written notice of the disciplinary action clearly sets forth grounds in that regard; or

(B) The appealing officer or employee introduces evidence as to the same, in which case the Chief shall be entitled to rebut the evidence with any appropriate evidence, whether or not similar in nature to that of the appellant.

14.3 The Chief may not introduce evidence of any prior disciplinary action or criminal charge unless:

(A) The same constitutes grounds for the disciplinary action under appeal and the Chief's initial written notice of the disciplinary action clearly sets forth grounds in that regard; or

(B) The appealing officer or employee introduces evidence as to the absence of any prior discipline action or criminal charge, in which case the Chief shall be entitled to rebut the same.

SECTION 15
DELIBERATIONS AND DECISIONS OF THE BOARD

15.1 At the conclusion of a hearing, the Board shall retire to executive session to deliberate and to reach a conclusion. No person shall be present in any executive session for this purpose except, at the specific request of the Board, the Secretary and counsel for the Board.

15.2 In its deliberations, the Board shall give due consideration to the fact that the Chief has the burden of presenting reliable, relevant evidence to the Board as to the factual and circumstantial basis of the disciplinary action under review. The Board shall also give due consideration to the primary disciplinary responsibility and authority of the Chief.

15.3 Following its deliberations in executive session at the conclusion of a hearing, the Chairperson shall reconvene the Board in open session to vote on the final decision. Factual findings of the Board then shall be reduced to written form entitled "Findings and Order," which shall be signed and dated by the Chairperson in the name of the Board. Any member of the Board, upon request at the hearing, shall have the right to have any separate or dissenting opinion included as part of the "Findings and Order" which shall be entered on the records of the Board only as preliminary order. When signed and dated by the Chairperson, the "Findings and Order" shall be deemed final and immediately shall be mailed to counsel for the Chief, and to the appealing officer or to his or her counsel.

15.4 Following an appeal heard by a hearing officer, the hearing officer shall, within thirty (30) days after the hearing, submit a written recommended order which shall include his findings of fact, conclusions of law, and recommended penalties. The recommended order also shall include a statement advising the appealing officer and Chief fully of their exception and appeal rights. A copy of the recommended order shall be sent to the appealing officer and Chief. Each party then shall have fifteen (15) days from the date of mailing to file exceptions with the Board. The Board shall consider the record including the recommended order and timely exceptions and may accept and adopt, reject or modify, in whole or in part, the recommended order, or remand the appeal of the matter, in whole or in part, to the hearing officer for further proceedings. The Board shall issue a final order within thirty (30) days after receipt of the hearing officer's recommended order. If it differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law.

15.5 Appeals from Board orders may be taken to the Jefferson Circuit Court in the manner set forth in KRS 67C.323.