



April 10, 2017

VIA EMAIL

Dr. Rhonda Williams and Mr. Mario Clopton, Co-Chairs  
Cleveland Community Police Commission

[REDACTED]  
[REDACTED]

cc: Matthew Barge, Monitor [REDACTED]

**Re: Recommendations for CDP's "Disciplinary Guidance" GPO**

Dear Commissioners:

Thank you for providing us the opportunity to comment on the City of Cleveland's draft General Police Order (GPO) on the subject of Disciplinary Guidance. Clear and robust disciplinary policies are essential for discipline to be administered consistently and fairly for all involved. Any disciplinary policy must provide definitions of misconduct as well as expectations of consequences for misconduct, that are abundantly clear to the officers who are subject to the policy, to the adjudicators who will administer the policy, and to the community at large, who must have faith that the policy will be fair and effective.

Cleveland's draft policy fails to meet this basic standard, and likewise fails to meet other specific requirements set forth in the consent decree. In several instances even where it does meet threshold requirements, it still does not comport with prevailing best practices.

The policy, throughout, is lacking in specificity. It is unclear as to the definition of many offenses; it fails to establish a presumptive penalty for any offense; it does not clearly establish which, if any, factors are to be considered mitigating or aggravating for any given offense; and it fails to penalize at all some infractions that are wholly contrary to constitutional, bias-free policing, infractions so serious that they gave rise to the consent decree. As a result, this draft policy leaves the adjudicators charged with imposing discipline, as well as the officers subject to it, with little clarity as to what discipline may be justified or given. Such a lack of clarity is an open invitation to procedural injustice that can only harm officer morale and undermine accountability and community trust. Our recommendations for remedying these flaws are below.

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO, FOUNDATION  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org



1. Provide a definition of each offense.

To consistently and fairly categorize officer misconduct, the policy itself must set forth a clear and specific explanation defining each offense. In the current draft, no offense is defined, and instead the draft contains vague descriptions such as, "unsatisfactory performance," "discourtesy," "conduct unbecoming," and "misconduct." Further, some offenses are overly broad and do not differentiate the range of seriousness of the offense by intent. For example, due to a lack of definition, the separate offenses of "erroneous daily duty report," "reports, failure to submit," and "WCS, Improper usage" encompass both inadvertent violations, as well as willful and/or malicious violations. The three tiers of gravity are arbitrary, especially since they lack any regard of an officer's intent.

2. Add to the existing list of offenses.

It is concerning that Cleveland's draft policy includes no mention of offenses such as gender bias, racial profiling, racial/ethnic slurs, discrimination, or retaliation. These are some of the very offenses that gave rise to the consent decree. Identifying such acts as offenses and prescribing appropriate discipline is a basic component of constitutional policing and must be explicitly covered by the disciplinary policy.

Even with regard to lesser offenses, the draft policy is deficient: If an officer repeatedly receives verbal counseling for continuing to commit the same offense ("unsatisfactory work performance or irregularities"), he/she should eventually receive disciplinary action.

3. Establish clear presumptive penalties

Though the policy provides a presumptive *range* of penalties for each class of offenses, there is no one presumptive penalty for any given offense. Without an expected penalty, there is no direction for what disciplinary action to impose in the absence of aggravating/mitigating factors. This leaves the adjudicator with unfettered discretion to decide on a wide range of possible penalties for each offense.<sup>1</sup>

4. Provide a clear list of mitigating and aggravating factors.

The policy does not comply with the consent decree's requirement in paragraph 246(c) that the matrix "set out defined mitigating and aggravating factors." The current policy's vague description of what constitutes a mitigating or aggravating factor will make it hard to enforce consistent application of discipline for similar offenses. The policies of other jurisdictions do a better job of specifying mitigating/aggravating factors.<sup>2</sup>

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<sup>1</sup> New Orleans' and Denver's policies provide such presumptive penalties.

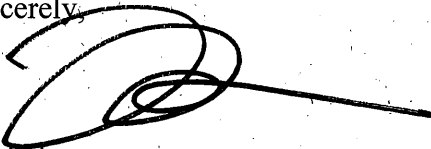
<sup>2</sup> New Orleans' discipline policy provides descriptions of 18 examples of mitigating/aggravating factors; Madison, Wisconsin's provides 11. Denver's provides descriptions of 14 aggravating and 7 mitigating factors. In contrast, Cleveland uses just five vague terms.

5. Require adequate documentation of the chosen disciplinary action.

Paragraph 247 of the consent decree mandates that, "All disciplinary decisions will be documented in writing." In its current form, the policy only requires documentation of the date of the incident, date of discipline or non-disciplinary action, violations sustained, and action taken. This fails to provide any documented explanation of the actual decision made. In an effort to avoid arbitrary imposition of discipline, or even the appearance of such, the adjudicator must be required to fully document the basis for his/her decision, especially in cases where it deviates from any presumptive penalty.

Ultimately, the CDP's discipline policy will serve as the backbone of the department's overarching scheme for ensuring that officers comport themselves according to the law. As such, the policy must be written so that officers, adjudicators, and the public they serve may clearly understand the expectations of a Cleveland Police officer and the consequences for any type of misconduct, and trust that any action taken against every officer will be grounded in rules and standards that are consistently administered and clear to all.

Sincerely,



Freda Levenson  
Legal Director  
ACLU of Ohio

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