

# WINDERMERE POLICE DEPARTMENT GENERAL ORDER



Effective Date: July 11, 2019	<input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Amends 5.2 (January 14, 2019)	Number: 5.2
SUBJECT: Discipline		Print Date: 07/11/19
Distribution: All Personnel	Accreditation Standards:	

This order consists of the following:

1. Purpose
2. Policy
3. Definitions
4. Procedures

## 1. Purpose

The purpose of this policy is to promote organizational efficiency by encouraging members to comply with agency policies and procedures and by providing an appropriate review of disciplinary actions.

## 2. Policy

The primary goals of disciplinary action are to educate members on proper professional conduct, deter violations of agency policy, and punish policy violations in an appropriate manner.

The Chief of Police expressly reserves the right to change the agency's disciplinary appeals process, make exceptions to existing policy, and make definitive interpretations of policy at any time consistent with applicable law. These policies and procedures shall not be construed to expand or abridge the rights of any person under the Constitution of the State of Florida or of the United States of America.

## 3. Definitions

- A. Appeal With Merit - a decision in favor of a member's appeal.

- B. Appeal Without Merit - a decision against a member's appeal.
- C. Appellant - the agency member appealing a disciplinary action.
- D. At-Will - All Town members are At-Will.
- E. Business Days - Monday through Friday, excluding holidays.
- F. Discipline Dispute Resolution Process (DDRP) - an elective process by which a member may acknowledge having violated agency policy and accept discipline, rather than proceeding with a formal investigation and disciplinary appeal. A DDRP affords the member and agency an opportunity to negotiate a mutually acceptable resolution to policy violations.
- G. Exempt Members - persons performing certain functions (e.g., professional, managerial) who receive a flat salary, instead of being paid on an hourly basis, in accordance with the Fair Labor Standards Act.
- H. New and Material Evidence – relevant information that is substantial enough to alter the outcome of the disciplinary appeal, that is supported by proof, and that was not available earlier through the exercise of due diligence.
- I. Newly Hired Probationary Members - persons who have been hired by the agency for full-time work but who have not completed their designated probationary period.
- J. Part-Time Agency Members – A person appointed by the Chief of Police who serves on a part-time basis with or without compensation.
- K. Professional Services - the component of the agency which is responsible for coordinating and exercising supervision over all complaints and/or allegations of misconduct against the Windermere Police Department or its members.
- L. Volunteers - persons who donate time and effort to the agency (are not compensated for services rendered but may receive reimbursement for expenses).

#### 4. **Procedures**

- A. Administrative Actions Not Constituting Formal Discipline

1. Certain administrative actions do not constitute formal discipline, though they may negatively impact members. There is no appeal for these actions, which include but are not limited to the following:
  - a. Relieving a member from duty pending an investigation or in response to fitness for duty concerns.
  - b. Transferring or reassigning members.
  - c. Eliminating positions.
  - d. Withdrawing, or limiting the use of, an agency-issued vehicle.
  - e. Delaying or disapproving a merit increase.
  - f. Extending probationary period.
  - g. Suspending or prohibiting participation in the agency's off-duty employment program.

B. Other Non-Appealable Personnel Actions

1. Voluntary written resignation.
2. Voluntary demotion, voluntary reduction in pay, or a requested transfer that is accompanied by a signed statement.
3. Voluntary retirement.
4. Abandoned position (e.g., left job without the required notice).

C. Alternatives to Formal Discipline

The agency encourages supervisors to explore alternatives to formal discipline with the goal of improving member productivity. These alternatives include but are not limited to the following:

1. Verbal or Written Counseling by the Supervisor
  - a. Supervisors are responsible for reviewing the work performance of their subordinates and providing appropriate counseling as

needed. Effective counseling provided in a timely manner may prevent future situations requiring formal disciplinary action. Supervisors are not required to initiate formal discipline for every policy violation; they may use counseling when appropriate. Examples of situations that require discipline (instead of simply counseling a person) include but are not limited to illegal discrimination, improper pursuits, excessive force, and criminal violations.

- b. Supervisors are encouraged to appropriately document all verbal counseling that is significant or repeated. By creating this record, supervisors support future disciplinary action that may be required. They are responsible for maintaining the documentation in a file and for forwarding the file to the appropriate supervisor upon the member's transfer, promotion, etc.
- c. Supervisors may counsel in writing by using the appropriate counseling form. This record will support future disciplinary action that may be required. Supervisors are responsible for maintaining the documentation in a file and for forwarding the file to the appropriate supervisor upon the member's transfer, promotion, etc.

## 2. Remedial Training

- a. Remedial training may be provided at the request of the supervisor or member. Supervisors may request remedial training for an member who fails to successfully complete other remedial training, fails to achieve minimum standards in any training program, is identified by Command Staff as needing remedial training, is required to receive remedial training as the result of formal discipline, or as the supervisor otherwise deems appropriate.
- b. Supervisors referring members for remedial training shall schedule the training at the earliest possible date.
- c. Members will not be released from remedial training until they have acquired the minimum skill levels required by the agency. Failure to achieve these minimum skill levels shall be reported to the member's immediate supervisor for action.

### 3. Professional Counseling

- a. A supervisor may perceive that a member is experiencing stress, emotional difficulties, etc., that are negatively affecting the member's work performance. The supervisor may refer the member to a contract psychologist or Employee Assistance Program (EAP) for professional counseling.

### D. Types of Formal Discipline

1. Verbal Reprimand - a verbal admonition by which a supervisor orders inappropriate behavior be corrected. A verbal reprimand is less severe than a written reprimand.
  - a. If a member is not disciplined for one (1) continuous year from the date the discipline is served, he or she may request that a verbal reprimand be removed from his or her personnel file. This request must be in writing and forwarded via chain of command to the Chief of Police. However, the reprimand will be included in records maintained by Professional Services, and it may be considered for purposes of progressive discipline.
2. Written Reprimand - a written admonition by which a supervisor orders inappropriate behavior be corrected. A written reprimand is less severe than a suspension without pay.
  - a. If a member is not disciplined for one (1) continuous year from the date the discipline is served, he or she may request that a written reprimand be removed from his or her personnel file. This request must be in writing and forwarded via chain of command to the Chief of Police. However, the reprimand will be included in records maintained by Professional Services, and it may be considered for purposes of progressive discipline.
3. Suspension Without Pay - suspending a person's employment status so accruals may be docked and their assignments may be changed. If a member is suspended without pay, he or she may choose to serve the suspension by one of the following methods:
  - a. Do not report to work for the specified time and do not receive compensation for those hours.

1. The member shall promptly surrender the following agency-issued equipment: vehicle, e-pass, gas card, mobile telephone, weapons, badges, credentials, and any other identification. The member shall not wear any part of an agency uniform and shall not exercise the authority of his or her office.
  2. Depending on the length of the suspension, the member shall pay the entire premium for enrolled insurance options he or she chooses to continue while suspended. There is no coverage if the member chooses not to pay the premium. If coverage lapses because the member failed to pay the premium, he or she must complete new paperwork when he or she returns to work.
  3. The member is prohibited from engaging in enforcement related off-duty employment during this period.
- b. Report to work as usual and surrender accrued vacation time to satisfy the suspension.
1. The disciplined member's chain of command shall notify Finance to deduct the surrendered vacation time from the member's balance.
4. Disciplinary Probation - a period of close supervision, critical examination, and evaluation which may be imposed for a specified period of time not to exceed one year. The supervisor shall review specific and written performance standards with the member at the beginning of the probation period. The supervisor shall complete special performance evaluations at the mid-point and conclusion of the probationary period. If the member does not adhere to agency policy or meet the specified performance standards, he or she may be subject to progressive discipline which may result in deviation outside the normal parameters of discipline, up to and including termination.
- a. Members on disciplinary probation are prohibited from the following: enforcement related off-duty employment, participation in promotional testing process, promotion, participation in the individually assigned vehicle program, voluntary transfer from their current position, and participation in specialized functions and details.

5. Demotion - a reduction in rank, job classification, or pay grade and/or step. Demotion is only exceeded by termination in its severity.
6. Termination - dismissal or revocation of appointment or employment.

E. Categories and Classes of Discipline

CLASSES	CATEGORIES	RECOMMENDED DISCIPLINE
A	1	Verbal or written reprimand
A	2	4 to 10 hours of suspension
A	3	11 to 20 hours of suspension
B	4	21 to 30 hours of suspension
B	5	31 to 40 hours of suspension
B	6	41 to 80 hours of suspension
C	7	81 to 120 hours of suspension
C	8	Suspension of more than 120 hours, and/or demotion, and/or termination
D	9	Termination
E	10	Includes all ranges of discipline, from verbal reprimands up to and including termination

1. In determining an appropriate discipline, supervisors shall consider the severity of the offense, whether the action was malicious, the applicable category and class, the member's disciplinary history, the member's position within the agency (e.g., supervisor), pertinent counseling and/or training received by the member, extenuating circumstances directly related to the violation, and the best interests of the agency.
2. Supervisors are encouraged to follow the categories when specifying the level of discipline. However, if they justify their reasons in writing, supervisors may choose discipline from within a class. For example, a supervisor may wish to give twenty-one (21) hours suspension for a Category five (5) violation. The supervisor may do so, because Categories

four (4) and five (5) are in the same class. Similarly, a supervisor may wish to award eighty (80) hours for a Category four (4) violation. He or she may do so, because Categories four (4), five (5), and six (6) are in the same class.

3. Supervisors shall employ progressive discipline for repeated violations of agency policies and procedures. The repeated violations need not involve the same standard of conduct. Progressive discipline allows a supervisor to choose a tougher penalty from within a class. Progressive discipline also allows a supervisor to request an upward deviation outside the class which must be approved by the Chief.
4. A supervisor may request a downward deviation outside a class, but only for a category eight (8) or nine (9) violation. This request must be in writing and must detail reasons. Supervisors shall forward these requests via chain of command to the Chief for approval.
5. When awarded discipline includes the mandatory completion of drug/alcohol testing, credit report checks, or training, the following procedures shall be followed:
  - a. Professional Services shall be responsible for maintaining a record of the required drug/alcohol testing, credit report checks or training and a record of when it has been completed.
  - b. Upon receipt of a Notice of Disciplinary Action form that requires drug/alcohol testing or credit report checks, the Professional Services Investigator or member serving the discipline shall notify the Deputy Chief.
  - c. Upon receipt of a Notice of Disciplinary Action form that mandates training, the member's supervisor and Deputy Chief will coordinate the appropriate training.
  - d. Failure of a member to complete the mandated testing or training may result in progressive discipline.
  - e. The Chief of Police shall be notified of any updates.
6. A supervisor's record in awarding discipline must be documented and evaluated in his or her annual performance evaluation.

F. Authority to Serve Discipline

1. The appropriate administrator from a member's chain of command is responsible for serving discipline upon the member, i.e., personally delivering the applicable paperwork to the member. The appropriate chain of command is where the member was assigned at the time the violation occurred.
2. There are three (3) levels of administrators, as follows:
  - a. Level 1 - persons holding the rank of the Chief of Police. They may impose discipline of any severity, up to and including termination.
  - b. Level 2 - persons holding the rank of Deputy Chief, or equivalent. They may impose discipline up to and including one-hundred twenty (120) hours suspension.
  - c. Level 3 - persons holding the rank of Sergeant, or equivalent. They may impose discipline by verbal and written reprimands.

G. Initiating Formal Discipline by Drafting/Serving a Notice of Intent to Discipline

1. When a supervisor decides to impose discipline, he or she shall complete a Notice of Intent to Discipline. The supervisor shall obtain the member's disciplinary history from Professional Services. The supervisor shall consider the following in determining an appropriate level of discipline: the severity of the offense, whether the action was malicious, the applicable category and class, the member's disciplinary history, the member's position within the agency (e.g., supervisor), pertinent counseling and/or training received by the member, extenuating circumstances directly related to the violation, and the best interests of the agency.
2. The Notice of Intent to Discipline shall state the reason for, and effective date of, the proposed discipline. The specified effective date must be at least twenty-four (24) hours after service of the Notice to Personnel.
3. The Notice of Intent to Discipline must be signed by each supervisor in the member's chain of command, up to and including the Deputy Chief before it is served.
4. The appropriate administrator shall serve the Notice of Intent to Discipline on the member. The administrator shall give one (1) complete copy of the investigative report and supporting documentation (e.g., transcripts) to the member at no cost.

5. The Notice of Intent to Discipline includes spaces for requesting an appeal or for accepting the charges and discipline. If the agency member accepts the charges and discipline, he or she should mark and sign the form and then give it to the administrator who served it (or his or her designee) within twenty-four (24) hours of service. In that case, or if the agency member fails to take any action, all further administrative appeals are deemed waived. The appropriate administrator shall then serve the member with a Notice of Disciplinary Action.
6. If the agency member who has been served with a Notice of Intent to Discipline wishes to appeal the charges and/or level of discipline, he or she must mark the appropriate spaces, sign the form, and return it to the administrator who served it (or his or her designee) within twenty-four (24) hours of service.
7. Members that are served with a Notice of Intent to Discipline resulting in termination shall surrender their sworn agency identification, badge, firearms, vehicle, radio, and any other issued property as directed by their supervisor.

#### H. Discipline Dispute Resolution Process (DDRP)

1. A formal investigation and disciplinary appeal can consume considerable time and resources. In some situations, the member may wish to acknowledge having violated agency policy and then accept discipline, rather than proceeding with a formal investigation and disciplinary appeal. These situations may be appropriate for a Discipline Dispute Resolution Process. A DDRP affords the member and agency an opportunity to negotiate a mutually acceptable resolution to policy violations.
2. Any time prior to receiving a Notice of Intent to Discipline applicable to the case, a member may request DDRP by submitting a memo via chain of command to the Chief of Police.
3. When a member initiates the DDRP by submitting the memo, the member agrees to toll the limitations period specified in the Law Enforcement Officers Bill of Rights for the applicable case during negotiations. If the agency postpones the DDRP in writing or no agreement is reached between the parties, the limitations period specified in the Law Enforcement Officers Bill of Rights shall resume.

4. The Chief of Police or designee will review the case to determine if it is appropriate for DDRP and reserves the right to deny a member's request to meet and resolve the allegations pursuant to this process. If the Chief of Police or designee decides the case is not suitable for the DDRP, the member will be notified of the decision and the investigation will continue. Nothing in this policy shall preclude a member from submitting another request at the conclusion of the investigation but before being served with a Notice of Intent to Discipline.
5. In the event of an investigation involving more than one member, the investigation and interviews will continue unless all accused members sign a waiver tolling the limitations period referenced above.
6. If the Chief of Police or designee decides the case is appropriate for DDRP, he or she may contact the member or the member's representative in writing to set up a meeting no later than five business days (Monday thru Friday) following receipt of the member's request to initiate the DDRP.
  - a. The Chief of Police or designee may postpone any meeting in writing pursuant to the provisions of this policy if, due to the seriousness or nature of the allegations, interviews of witnesses or accused members should occur first. The Chief of Police or designee may also postpone the meeting until the completion of the investigation to determine if this process is appropriate. This includes, but is not limited to, situations involving complex investigations or when multiple members are involved in the investigation.
  - b. The purpose of the meeting is to discuss potential discipline and administrative charges and to determine if a proposed consensus can be reached on the appropriate charge and discipline, if any.
  - c. The Chief of Police or designee shall consult with the investigating authority and review past violations and discipline awarded for similar facts and circumstances prior to the meeting with the member. The member's performance history and previous discipline with the agency shall be considered.
  - d. The member must attend the meeting. The member's representative and counsel may also attend at the member's request. If requested, the member's supervisor, the investigating authority, and any other agency member deemed necessary by the

Chief of Police or designee may be consulted at any time during the DDRP.

7. If the parties reach a proposed agreement, it will be reduced to writing by the Chief of Police or designee. The member and the Chief of Police or designee shall sign the agreement. If the signed agreement involves discipline of an oral reprimand through 120 hours suspension, it shall be implemented. If it involves discipline of 121 hours or more, up to and including demotion or termination/resignation, the agreement is subject to approval by the Chief of Police and Town Manager which shall be considered final.
8. If the Chief of Police or designee does not approve the agreement, the matter will progress back to the investigation as if no meeting had been conducted.
9. General Provisions for DDRP Cases
  - a. By signing an agreement reached pursuant to this policy, the member waives all further appeals pursuant to policy or law, including contractual grievances concerning the investigation and discipline.
  - b. Any member who signs an agreement pursuant to this policy must still participate in a witness interview concerning the same investigation involving another member.
  - c. Nothing in this policy precludes the agency from pursuing additional violations gleaned from a DDRP meeting, whether an agreement is reached or not.
  - d. If an agreement is reached, the investigating authority shall complete the Investigative Report and forward it to Professional Services to close out the tracking number. All original DDRP documents will be included in the investigative file and forwarded to Professional Services for records retention purposes.
  - e. Nothing discussed at any meeting held pursuant to this policy shall be binding upon any party until a final agreement is approved by the Chief of Police or designee.

- f. An agreement reached between the member and the agency shall not establish binding precedent on the Chief of Police in other cases. Discipline imposed as a result of any agreement between parties pursuant to this policy may be used for purposes of progressive and cumulative discipline for future disciplinary action.

J. Verbal and/or Written Reprimand Appeal Process

1. Members served with a Notice to Personnel specifying a verbal and/or written reprimand shall be afforded an appeal to the Deputy Chief. The result of the review from the Deputy Chief is final.

K. Disciplinary Appeal Process

Pursuant to town policy, the appeal of any formal discipline shall be filed by the member to his/her immediate supervisor within five (5) working days from the time the discipline is served. The appeal must be in writing, dated and signed, and it must set out the particular facts that he/she contends to support his/her claim and the relief he/she seeks. The appeal will be forwarded to the disciplining authority via the chain of command.

L. Final Disposition by the Chief of Police

1. The Chief of Police and the Town Manager are the ultimate authorities in all matters of discipline.
2. In cases where a second appeal is warranted and the Chief of Police is the first level of appeal, the Town Manager may serve as the final authority within that appeal process.
3. The Chief of Police shall review the findings and recommendations of all investigations.

M. Miscellaneous Provisions

1. Appellants shall perform their job duties without disrupting fellow workers, other persons, or agency activities. If deemed necessary, they may be temporarily assigned to other duties or relieved from duty with pay.
2. Appellants shall not use on-duty time to prepare disciplinary appeals.

3. As noted in this policy, an appellant will receive one (1) complete copy of the applicable investigative report.

N. Agency Vehicle Crashes

1. When an employee is involved in a traffic crash or a traffic incident with an agency vehicle, the employee shall immediately notify his/her supervisor.
2. The chain of command should review all aggravating and mitigating factors for all traffic crashes. Mitigating and aggravating factors should be used to determine what administrative action and/or discipline will be given in that category based on the range. Any downward deviations to the matrix must be approved by the Chief of Police. The mitigating and aggravating factors include but are not limited to:
  - a. Bodily injury to the employee or any other person
  - b. Dollar amount of property damage
  - c. Speed as a contributing factor
  - d. Violation of traffic laws
  - e. Violation of agency policy
  - f. Responding to a call for service
  - g. If the traffic crash occurred on duty or off duty

## TRAFFIC CRASH MATRIX

### Minor Traffic Crash

Traffic Crash Number	Administrative action and/or discipline
1 <sup>st</sup>	Written coaching form or verbal reprimand
2 <sup>nd</sup> within 12 months	Written reprimand or a 4 to 10 hour suspension without pay
3 <sup>rd</sup> within 18 months	4 to 10 hour suspension without pay along with a 10 day loss of take home car privilege
4 <sup>th</sup> within 24 months	11 to 20 hour suspension without pay along with a 21 day loss of take home car privilege
5 <sup>th</sup> within 36 months	21 to 120 hours of suspension without pay along with a 6 month loss of take home car privilege up to termination of employment

### Major Traffic Crash

Traffic Crash Number	Administrative action and/or discipline
1 <sup>st</sup>	Written reprimand or a 4 to 10 hour suspension without pay along with a 7 day loss of take home car privilege
2 <sup>nd</sup> within 12 months	11 to 20 hours suspension without pay along with a 14 day loss of take home car privilege
3 <sup>rd</sup> within 18 months	21 to 120 hour suspension without pay along with a 6 month loss of take home car privilege up to termination of employment
4 <sup>th</sup> within 24 months	More than 120 hour suspension without pay along with a 6-12 month loss of take home car privilege up to termination of employment

3. If formal discipline is to be imposed, the Law Enforcement Bill of Rights will apply.

4. Investigations will be conducted in accordance with GO 5.3 *Internal Investigations and Inquiries*.
5. Any employee involved in an automobile accident while working or driving a Town owned vehicle shall refer to Town of Windermere Personnel Rules & Regulations, Policy 9.5 *DRUG FREE WORKPLACE*, (D) (7) (c) (v).

A handwritten signature in blue ink, appearing to read "David A. Ogden", written over a horizontal line.

Chief David A. Ogden