Police Officer Discipline – Standards to Consider

Legal Officers Section
International Association of Chiefs of Police
Orlando, FL 2014

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Program Description

Part One – Craig Ferrell
  ▫ Establishing ethical norms and expectations

Part Two – Karen Kruger
  ▫ Reacting when correction is needed

Part Three – Jeff Noble
  ▫ Determining what discipline is appropriate
Part One - Setting the Standards

Craig Ferrell
Why attend this class?

1. Need to get 1.5 hours of training
2. Need to let my Chief think I’m really motivated
3. I need a nap
   \{YOU’RE IN THE WRONG CLASS\}
4. Remind us of some of the basics
5. Look at some recent case law
6. “Man has a natural aptitude for virtue; but the perfection of virtue must be acquired by man by means of some kind of training.” St. Thomas Aquinas
Legal Disclaimer

- This is training, not legal advice

- For advice regarding specific facts patterns, suggested actions, or ongoing cases, please consult with your legal counsel
Why go over the basics?

Trying to Resist Arrest

By the Discipline Police ...
Well...Because Police Officers Occasionally Do __________?
IS IT LOADED??

HOLD ON...
LET ME TAKE A LOOK
1. All police chiefs want to communicate to their employees some sort of ethical standard.

2. But how does a chief create a culture that not only embraces ethics and professionalism but also establishes these principles in an infrastructure that will be in place long after the chief leaves?

3. This is one of the most vexing problems chiefs face at the start of their careers and throughout their tenures as leaders.
Unfortunately, most policies are written by lawyers, for lawyers. For the average officer, this generally means that these policies are far too long and wordy to remember.

Yet most lawyers want to make sure that a department’s policies will not only conform to constitutional mandates but, in the case a police officer is challenged in court, will also convey and convince a jury that the city is following best practices consciously and deliberately sensitive to an officer’s training and supervision needs.

So how does one meet this seemingly conflicting problem of keeping policies simple, clear, and concise while also maintaining policies that will survive the challenges of litigation?
The first step in creating an ethical behavior policy is to review your department’s current policies and procedures and determine if they are updated, relevant, and have been reviewed recently by the city attorney.
Begin by preparing an attention grabbing message that explains that you are pleased overall with the guidelines currently in place to assist employees in understanding their assigned tasks and the department’s expectations.

Your message must go on to remind employees of the department’s dedication to the concepts of community oriented policing and its strong philosophy concerning individual ethics.
Let Officers Know You Understand the Demands They Face

August Vollmer, a pioneer in police professionalism, once said that **the public expects police officers to have the:**

1. “wisdom of Solomon;
2. the courage of David;
3. the strength of Sampson;
4. the patience of Job;
5. the leadership of Moses;
6. the kindness of the Good Samaritan;
7. the strategic training of Alexander the Great;
8. the faith of Daniel;
9. the diplomacy of Lincoln;
10. the tolerance of the Carpenter of Nazareth;
11. and, finally, an intimate knowledge of every branch of the natural, biological, and social sciences.”
So the Public Wants Perfection

BUT

Police Officers, like everyone else, are human and thus make mistakes.

So give them a foundation that is based on the ethical principles you want them to follow.

They Must Be:

CLEAR, CONCISE, & EASY TO REMEMBER
The Houston, Texas, Police Department did this a few years ago by coming out with a training bulletin that simply stated:

No Lying, Cheating, or Stealing
By putting the rules in clear, concise, everyday English, you will construct the department’s best known and most easily recited rule.

When an officer is interviewed by your local news media or is on the stand in court and is asked what policy covers ethical guidelines, he or she can simply say:

“I don’t remember the exact policy number, but you’re talking about our ‘rule against lying, cheating, and stealing.’ ”
Ethics remains the greatest training and leadership challenge facing police administrators today.

With such high societal expectations, whenever and wherever chiefs can summarize a policy in five to seven words (as was done in Houston), they should do so.

This will help you create a Climate of Integrity and a Culture Based on Ethical Standards that Officers will Accept, Know and Won’t Forget.
Often, the longer and more legalistic a policy is, the more likely the officers will look for a way to justify their actions as falling within the policy.

On the other hand, when a policy is simpler, the troops are more likely to buy in and hold themselves and fellow officers accountable.
FBI’s Three Steps to Integrity (Modified Some by Instructors)

1. Teach What is Right

2. Do What is Right
   (Even when it costs you)

3. Do it in the Open for Everyone to See
   (Remember you are the representative for your agency of all the traditions, the accomplishments, and the very reputation of your Police Department)
Basic law enforcement training requirements were established in the 1950s. Today, every jurisdiction mandates peace officer standards and training (POST) or POST-like programs, although the requirements vary considerably from state to state. What seems to be emerging is that each state either has or is now incorporating ethical training mandates into such training programs.

As several IACP articles have stated in the past that ethics training has been integrated into most law enforcement training programs, and calls for expanded training in police ethics are being heard from many corners. A comprehensive resource for enhancing awareness for law enforcement ethics, called **the Ethics Toolkit**, is available from the IACP and the federal Office of Community Oriented Policing Services at: [http://www.theiacp.org/Ethics-Toolkit](http://www.theiacp.org/Ethics-Toolkit)
One of the easiest means to gaining an officer’s acceptance of the policy is to explain how and why it is in an officer’s best interest to follow the ethical standard.

Start by explaining the obvious: An officer being sued is a reality and ending up in the courtroom is an occupational hazard in U.S. law enforcement.

If an officer does not follow departmental policy he will often times not be eligible for the defense of Qualified Immunity…..and have to pay $$$$$$$$$$$$$$$
If you treat others the way you would want them to treat you if your roles were reversed, then even if you don’t happen to remember your department’s rules or how you’ve been trained to handle a matter, you will be dealing with the situation in a legally defensible manner.

So follow the Golden Rule found in Luke 6:31 and “Do unto others as you would have them do unto you.”

If officers act in this way, they will be entitled to qualified immunity in any civil rights lawsuit (and thus not be personally liable for injuries or damages even for a mistake made in the way the situation was handled, as the officer would have been acting in an objectively reasonable manner with the good faith belief that the action was both lawful and proper).
Discipline That Works

Explain

Focus

Golden Rule

Rules and Regulations

1. Who
2. What
3. When
4. Where
5. Why
6. How

General Orders

Supervision

FACTS

ETHICS

Treat People Ethically

Rules and Regulations

Supervision
Part Two - Purpose of Discipline

Karen J. Kruger
Workplace Discipline

• “Many managers believe the word discipline has to do with punishment. Actually, it doesn't. Discipline pertains to improving employee performance through a process of assisting the employee (at least at first) to learn so he or she can perform more effectively.”

• *Five Sins Of Discipline* by Robert Bacal
Bacal’s Issues

• Error #1: Discipline As Punishment
• Error #2: Discipline As An I-You Confrontation
• Error #3: Too Late, Too Late
• Error #4: A Non-Progressive Approach
• Error #5: Missing Root Causes

• The Performance Management & Appraisal Help Center – Bacal & Associates
Definition

- Training intended to elicit a specified pattern of behavior or character
- Behavior that results from such training
- A condition of order based on obedience to authority
- Punishment meant to correct or train
Progressive v. Corrective

- Expectation that negative consequences will lead to positive results
- Negative sanctions will only succeed when:
  - the employee values what is taken away or fears what is threatened;
  - the employee sees the sanction as fair, and consistent with the "offense;"
  - the employee acknowledges and respects the right of the manager to impose the sanction.
Discipline as punishment

- Unless these three elements are in place, employees respond to punishment with resentment, and counter-attacking, either covertly or overtly.
Corrective Discipline

- Individual values systems are set
- Supervision can provide (1) decision-making tools and moral support and (2) deterrence from fear of reprisal
- Discipline, in this approach, focuses on what the employee must learn in order to bring his/her behavior in line with the needs and expectations of the organization. (Bacal)
Seeking to Improve Behavior

• Some managers see discipline as something done TO an employee, not something done with an employee
• Work with employee to identify causes of problematic behavior, and to take action to correct those problems.
• Be aware that discipline involves use of supervisory power over employee
Precursors of Misconduct

- Overinflated egos, arrogance
- Unchecked sexual harassment
- Financial problems
- Poor personal work ethics
- Substance abuse
- Time & attendance abuse
- Family tensions
- Willingness to deceive

Other Concerns

- Nature of peer pressure in law enforcement workplace
- Culture of the agency
- Generational differences
Failing to Put Employees on Notice

- Delay in addressing misconduct is problematic in that it sends a message that undesirable behavior will be accepted or even not noticed.
- Makes constructive interaction more difficult.
- It is only fair to put employees on notice of inappropriate behavior or actions in the workplace.
Recognizing Root Causes

- Institutional Ethics
- Personal Work Ethics
- Personal Ethics
- Lack of training
- Character Flaws
- Personal problems: substance abuse, financial problems, family tensions, medical concerns
Other Causes

- Employee lacks skills or training.
- Employee has personal psychological/medical problems.
- System in which s/he works is not set up to engineer success, e.g. wrong person/wrong job.
Career Saving Tools

- Do’s and don’ts versus why and how to make decisions.
- Peer pressure awareness & avoidance.
- Institutional support – training, mentoring, providing good examples.
- Communicating personal limits.
- Engage in critical thinking.
- Awareness of consequences.
Institutional “Branding”

• Establish pride in employees in being part of the agency and want to protect reputation.
• Take meaningful measures:
  ▫ Prevention
  ▫ Fair and prompt resolution of problems
  ▫ Support and assistance when needed
  ▫ Deterrence measures in place
Part Three - Determining the Level of a Disciplinary Action

Jeff Noble
Elements to Consider

1. The severity of the offense
2. The status of the employee (officer-supervisor-manager)
3. The employee’s prior disciplinary history
4. The employee’s work record (length of service, performance)
5. The employer’s past practice of dealing with similar infractions
Elements (Continued)

6. The impact of the employee’s conduct on the organization
7. Whether warnings were given
8. The impact of the employee’s actions upon the reputation of the agency
9. The consequences of the employee’s conduct
10. The potential for the employee’s rehabilitation
Aggravating Factors

1. Pattern of misconduct
2. Prior warnings or discipline for same or similar misconduct
3. Officer refused to acknowledge the wrongfulness of his/her acts
4. Officer did not fully cooperate with the investigation
5. The violation occurred or was repeated over a significant period of time (even if minor)
6. The act committed was deliberate, willful or reckless
7. Degree of risk of harm to others
8. High level of vulnerability of the victim
9. Officer used his/her position to engage in the misconduct
10. There was a pecuniary gain or self-benefit to the officer
Mitigating Factors

1. Mistakes
2. Apology/accepts responsibility
3. Absence of willful or reckless misconduct
4. Minimal or no demonstrated harm
5. Potential impact of remedial measures
6. Absence of prior misconduct
7. Isolated incident
8. Fully and completely cooperated with the investigation
Conclusion

• All police officers will make mistakes
• Management must evaluate each officer, each incident on its own
• Penalty matrices may be inconsequential or misleading
• Management must provide due process and exercise rational discretion in imposing punitive measures
• Some offenses render officer unfit for service