

Report on the Manager of Safety's Disciplinary Advisory Group*

June 4, 2008

Mission Statement

To create a fair, rational, efficient, consistent discipline system which reflects the goals, values and priorities of the Denver Police Department and promotes respect and trust within the Police Department and with the community it serves.

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Manager of Safety

Gerald R. Whitman
Chief of Police

* This report should be considered in conjunction with the Discipline Handbook: Conduct Principles and Disciplinary Guidelines which was prepared as a result of the Disciplinary Advisory Group process and all other Denver Police Department policies and procedures regarding discipline. Additional copies of this report can be accessed online. www.denvergov.org/safety

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**Participation in DAG does not necessarily constitute an endorsement of any or all of the provisions of the revised discipline system nor does that participation waive the right of any individual or group to challenge any of those provisions. DAG is advisory in nature and the final decision as to revisions in the discipline system was the responsibility of the Manager of Safety and the Chief of Police, as required by the Denver City Charter and Denver Police Department Policy.

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EXECUTIVE SUMMARY

Introduction

In the past both community members and police officers, for varying reasons, have expressed a lack of confidence in the Department's ability to administer disciplinary penalties in a fair and timely manner. When Mayor John Hickenlooper was elected, he worked with his appointees, Chief of Police Gerald Whitman and Manager of Safety Alvin LaCabe, to assess the discipline system and create the changes needed to address these concerns.

On December 7, 2004, the Manager of Safety convened the Manager's Disciplinary Advisory Group (DAG) to undertake a thorough evaluation of the current discipline system and to recommend changes where needed. To ensure impartiality, more than 80 members representing a cross section of officers, community members, and City employees from relevant agencies were selected for DAG. Additionally, the Washington D.C. based Police Executive Research Forum (PERF) was employed to assist in the process.

DAG Advisory in Nature

The Denver City Charter clearly puts the responsibility for disciplining police officers in the hands of the Chief of Police and Manager of Safety. In keeping with the language in the Charter, DAG discussed and advised the Manager with regard to possible revisions to the discipline system. However, the decision to implement any proposed revisions fell to the Chief of Police and the Manager, in consultation with the Denver City Attorney's Office.

DAG Process

The Manager of Safety directed DAG and its membership to undertake an extensive review of disciplinary practices from police agencies across the nation. Corporate and educational disciplinary models were also reviewed. This compilation of research provided a foundation for the revisions which DAG reviewed and discussed. Additionally, DAG reviewed some of the Department's past disciplinary decisions as well as decisions of the Denver Civil Service Commission to help understand the strengths and weaknesses of former policies and prior systems. The Manager challenged DAG to create a system that was specific to the needs of the City of Denver and the Denver Police Department (DPD).

DAG's Mission Statement read:

To create a fair, rational, efficient, consistent discipline system which reflects the goals, values, and priorities of the Denver Police Department and promotes respect and trust within the Police Department and with the community it serves.

To better effectuate its work, in February 2005 DAG members decided that the large group would divide into three major working committees: Process, Programs and Guidelines.

DAG Developments

Over a number of months, the three committees met on at least a monthly basis. The Process Committee undertook a review of the Internal Affairs Bureau (IAB) process and focused on finding ways to improve efficiency, reduce disciplinary delays and implement alternatives to discipline. The Programs Committee generated a listing of programs, training, and resources that would be available to assist officers. The Guidelines Committee, along with PERF, discussed information on the discipline matrix concept. Members of the City Attorney's staff and the Civil Service Commission were tasked with providing further review to determine whether the use of a discipline matrix and the proposed changes to the discipline system would require changes to the City Charter or Civil Service rules.

As a result, this Report of the Manager along with the Discipline Handbook: Conduct Principles and Disciplinary Guidelines ("Discipline Handbook") were created with the goals of introducing the revised discipline system, including the matrix; explaining its use and integration into the Department; and describing the processes from which the revised system had developed. The Manager's Office worked closely with the legal staff of the Police Protective Association and the City Attorney's Office to ensure the appropriate actions and documentation were completed prior to training and implementation of the revised system.

Summary of Issues Identified by DAG

After thoroughly studying and discussing the Department's current discipline system, its historical development and relevant prior discipline cases, DAG identified issues it believed needed to be addressed in order to improve the system and accomplish the goals of its Mission Statement. These included:

- Clarifying of Departmental values and the Law Enforcement Code of Ethics and their importance in the implementation of discipline.
- Streamlining the disciplinary process to:
 1. Allow for the allocation of the appropriate level of resources based on the seriousness of the misconduct;
 2. Review complaints to ensure that the need for further investigation is properly evaluated; and
 3. Improve the timeliness of the investigations and their final resolution.
- Establishing alternatives to the imposition of discipline and developing criteria to identify cases appropriate for alternatives.

- Establishing written Department-wide criteria for evaluating whether or not an alleged violation has been proven.
- Clarifying, in writing, the goals and purposes of disciplinary sanctions.
- Establishing written criteria for categorizing the seriousness of misconduct.
- Establishing, in writing, reasonable disciplinary sanctions commensurate with the seriousness of misconduct.
- Establishing written disciplinary guidelines to:
 1. Provide reasonable notice, where possible, to officers and the public of the likely sanction to be imposed for a particular level of misconduct; and
 2. Provide reasonable notice of the principles, policies and procedures to be used in determining disciplinary sanctions.
- Establishing, in writing, a system for considering the category/seriousness of misconduct, relevant aggravating and mitigating circumstances, and relevant disciplinary and employment history when determining an appropriate disciplinary sanction.
- Establishing a system to more effectively and efficiently ensure that disciplinary penalties are reasonably consistent among all officers with similar disciplinary/work histories who engage in similar misconduct.
- Eliminating any unjustifiable disparities between discipline findings or the penalties imposed on command/supervisory personnel and all other officers.
- Establishing a system/criteria to achieve more consistent disciplinary recommendations at each level of review within the Department as well as a method for the Chief of Police and the Manager of Safety to better understand the rationale for these various recommendations.
- Eliminating, to the extent possible, any officer perception of an ineffective, unfair discipline system weighted against all or any particular officers.
- Eliminating, to the extent possible, any public perception that the discipline system is ineffective, unfair or unreasonably weighted in an officer's favor.

The three years of work put forth by DAG have yielded a revised discipline system which addresses each of the issues noted above. This revised system should help to reduce community perception that the discipline system is ineffective and biased in the officers' favor, and the countervailing perception of officers that the discipline system is arbitrary and biased against them. The revised system is also intended to provide reasonable notice to, and to set expectations for, both officers and the public when dealing with discipline issues. The system has been revised specifically to be more transparent, predictable, equitable, and consistent.

The Manager's Report: Critical Areas of Review

In the full-context Manager's Report there are specific sections dealing with the significant issues that were considered or otherwise addressed, such as:

- The Purpose and Importance of an Effective Discipline System;
- Achieving Consistency in Discipline;
- Charter Provisions Regarding Consistent Discipline;
- A Discussion of Civil Service Commission Rules;
- Charter Provision Regarding Giving the Manager of Safety "Due Weight";
- Challenges to Achieving Consistency in Discipline;
- Introduction to the Discipline Matrix;
- Proposed Amendments to Civil Service Commission Rules to Achieve Consistency;
- Evaluation and Revision of Rules and Regulations;
- Training Framework and Process for Discipline System;
- Effective Date for Implementation of Conduct Principles and Disciplinary Guidelines Including the Discipline Matrix;
- Dealing with Future Changes: Establishing a DAG Standing Committee;
- Establishing and Maintaining a Discipline Database;
- Role of the Office of the Independent Monitor; and
- Research and References.

Conclusion

The Manager's Report, in conjunction with the overall revised discipline system, represents the willingness of the Manager of Safety and the Department to listen to officers and the public, evaluate the current state of affairs, accept critiques and make changes as appropriate. Through the hard work and effort of many dedicated people, a revised discipline system has been developed to:

- Provide a better understanding of why discipline - fair and just discipline - is so important to the Department;
- Create a discipline system with all of its components to avoid confusion and provide clarity; and
- Facilitate delivery of consistent penalties for misconduct as required by the rules, regulations, policies, procedures and directives of the Department.

It is critical to the success of the Department that the lines of communication remain open between the Department, officers and the public. To ensure the success of the revised discipline system, DAG quarterly meetings will occur to discuss the transition of the revised system, address implementation success and challenges, and monitor on-going progress. The Department's top priority is to develop and foster trust and integrity within the Department and within the community. This discipline system, and the dedication it shall receive, is vital to promoting these values internally and externally.

The revised discipline system will result in a more effective and efficient method of achieving consistent discipline. The improvements are designed to create Department-wide criteria for the review of disciplinary cases and to provide notice to officers of the likely discipline in a given case and the method by which the disciplinary decision will be reached.

The revised discipline system and related components can be found in numerous outcomes to the DAG process, including:

- Revisions to the Departmental Rules and Regulations;
- Revisions to the Operations Manual Section 503.00 entitled Performance, specifically 503.01 Complaint and Discipline Procedures for Sworn Officers;
- Creation of a Discipline Handbook, entitled Conduct Principles and Disciplinary Guidelines, which includes the Discipline Matrix and discussions of the rationales and principles involved in the administration of discipline for distribution to all members of the Department;
- Creation of training materials for all members as well as more detailed training materials including necessary forms and instructions for supervisors, command officers and others involved in the review of discipline cases;
- Proposed changes to the Civil Service Commission rules which:
 - Recognize and accept a matrix-based discipline system and written discipline principles and guidelines as a method of achieving Charter-mandated consistency;
 - Preserve the Charter-mandated requirement of consistent discipline;
 - Provide greater guidance on the use of “comparable cases” to achieve consistency;
 - Allow for implementation of periodic change to disciplinary standards upon notice to officers and application of those changes only to violations occurring after notice is provided;
 - Provide greater guidance on what constitutes “consistent” or “inconsistent” discipline; and

- Provide clarification of how the Charter-mandated requirement of giving “due weight” to the Manager’s maintenance of administrative control of the Department intermeshes with consistent discipline and impacts the scope of “de novo” review.
- Creation of a more effective discipline database within the Department for comparing cases; and
- Establishment of a DAG Standing Committee for continual review and evaluation of the revised system.

Report of the Manager of Safety's Disciplinary Advisory Group

Introduction

In the past both community members and police officers, for varying reasons, have expressed a lack of confidence in the Department's ability to administer disciplinary penalties in a fair and timely manner. When Mayor John Hickenlooper was elected, he worked with his appointees, Chief of Police Gerald Whitman and Manager of Safety Alvin LaCabe, to assess the discipline system and create the changes needed to address these concerns.

On December 7, 2004, the Manager of Safety convened the Manager's Disciplinary Advisory Group (DAG) to undertake a thorough evaluation of the current discipline system and to recommend changes where needed. To ensure impartiality, more than 80 members representing a cross section of officers, community members, and City employees from relevant agencies were selected for DAG. Additionally, the Washington D.C. based Police Executive Research Forum (PERF) was employed to assist in the process.

DAG Advisory in Nature

The Denver City Charter clearly puts the responsibility for disciplining police officers in the hands of the Chief of Police and Manager of Safety. Charter § 9.4.14(A) provides in pertinent part:

The Chief of Police . . . shall . . . initiate disciplinary action by a written command ordering the specific disciplinary action, which written command shall be submitted to the Manager of Safety for approval. . . .

Charter § 9.4.14(B) provides:

The Manager of Safety shall, within fifteen calendar (15) days of the date of the Chief's order, approve, modify or disapprove the written order of disciplinary action. The Manager shall take such action by a written departmental order which shall take place effective immediately.

Additionally, Charter § 2.6.1 establishes the Department of Safety as being in full charge of the Police Department (as well as the Fire Department) and Charter § 2.6.2 provides that the Manager of Safety is in full charge of the Department of Safety. Finally, Charter § 9.4.15 provides that the Manager of Safety shall be the representative party for the City/Police Department in a Civil Service Commission hearing brought by an officer's appealing the Manager's disciplinary order.

Consequently, the decision-making authority on disciplinary matters resides with the Chief of Police and the Manager of Safety. In keeping with the language set forth above, DAG discussed and advised the Manager with regard to possible revisions to the discipline system. However, the decision to implement any proposed revisions fell to the Chief of Police and the Manager, in consultation with the Denver City Attorney's Office.

DAG Process

Initially, the Manager of Safety directed DAG and its membership to undertake an extensive review of disciplinary practices from police agencies across the nation. Corporate and educational disciplinary models were also reviewed. This compilation of research provided a foundation for the revisions which DAG reviewed and discussed.¹ Additionally, DAG reviewed some of the Department's past disciplinary decisions as well as decisions of the Denver Civil Service Commission to help understand the strengths and weaknesses of former policies and prior systems. Finally, the Manager challenged DAG to create a system that was specific to the needs of the City of Denver and the Denver Police Department (DPD).

In February of 2005, DAG created its Mission Statement, which read:

To create a fair, rational, efficient, consistent discipline system which reflects the goals, values, and priorities of the Denver Police Department and promotes respect and trust within the Police Department and with the community it serves.

When originally formed, DAG created a Steering Committee which included the Chairpersons of all committees and subcommittees,² a Research Committee dedicated to finding pertinent background material and best practices information, an Executive Committee consisting of Chief Gerald Whitman, Executive Director of the Civil Service Commission Earl Peterson, Denver City Council members Rick Garcia, Michael Hancock and Judy Montero, and all the Chairpersons of other committees within DAG.

After convening DAG in December of 2004, two months were devoted to identifying concerns regarding the discipline system, learning the background of those concerns and how the Department historically had addressed those concerns. The concept of a discipline matrix was discussed extensively. Historical information showed that, in the past, the use of a discipline matrix had been a favorable idea to officers. In fact, the Department had twice attempted to create a discipline matrix; however, those attempts never bore fruit. The entire group was provided with the documentation and history of those early attempts. DAG discussed the issues which interfered with and ultimately halted those earlier efforts to adopt a matrix. Understanding that prior history was beneficial to DAG in assessing what type of discipline system would best work for the Department.

To better effectuate its work, in February 2005 DAG members decided that the large group would divide into three major working committees. Those committees were directed to address the following areas:

¹ A more detailed summary of the research and references reviewed is contained in a separate section of this report.

² The Steering Committee was subsequently expanded to approximately 25 members representing a cross section of stakeholders whose responsibility it was to collect, organize and consider the work of all committees and subcommittees and advise the Manager in developing the revised discipline system.

Process Committee

Chaired by Deputy Chief (then Cmdr.) John Lamb and Lt. Catherine Davis

The Process Committee focused on finding ways to improve efficiency and reduce delays in the discipline system. It researched the viability and effectiveness of alternative methods of handling disciplinary issues. This committee gathered information on procedures in other jurisdictions and the potential of having discipline without punishment and the use of mediation.

Among the matters it investigated was the idea of “pushing down” some disciplinary decisions. This is an approach which decentralizes some disciplinary decision-making by taking less serious misconduct out of the formal “chain of command” review requirement. Pushing down disciplinary decisions allows direct supervisory staff (i.e., sergeants and lieutenants) to work with officers to correct minor misconduct and behavioral issues.

At the completion of its work, the Process Committee reported back to the Steering Committee, which considered the research and findings of the Process Committee in developing the revised discipline system.

Programs Committee

Chaired by Dr. Evan Axelrod and Capt. Steve Carter

Understanding that misconduct can sometimes be related to personal, professional and quality of life issues, this committee addressed the need for providing resources, remedial training and assistance to officers. The committee looked specifically for re-training programs that could be made available to officers. It also researched specific intervention and corrective programs.

When finished, the Programs Committee had generated a list of over 40 classes or training programs available to officers needing assistance. These programs address all types of issues ranging from psychological and stress related problems to domestic violence and anger management issues. They also include programs which improve professional skills. The programs are available currently through the Denver Police Academy or the Department’s contract with Nicoletti-Flater Associates.

The committee also discussed the implementation of a mentoring program which would provide counsel and assistance from more experienced officers to those needing it.

The work of the Programs Committee was presented to the Steering Committee which considered the research and recommendations of the Programs Committee in developing the revised discipline system.

Guidelines Committee

Chaired by Manager Alvin LaCabe, Division Chief (then Cmdr.) Tracie Keesee and Lt. "Pete" Connor

The Guidelines Committee was the largest of all committees with approximately 50 members representative of all stakeholders in the process. This committee was tasked with multiple obligations, beginning with classifying, where possible, all the misconduct specifications set out in Department Rules and Regulations (R&Rs). In addition, DAG, as a whole, felt it was of great importance to give further clarification to the written values of the Department. The Guidelines Committee also initiated the drafting of written criteria and guidelines for the imposition of discipline.

An additional assignment for the Guidelines Committee was to determine what possible changes, if any, would be needed to either the City Charter or Civil Service rules. Like the Process and Programs Committees, the Guidelines Committee reported back to the Steering Committee, which considered the discussions and findings of the Guidelines Committee in developing the revised discipline system.

DAG Developments

By August, 2005, the committees had made substantial progress. The Process Committee discussed reconciling the Operations Manual with departmental rules and regulations.³ This committee also undertook a review of the Internal Affairs Bureau (IAB) process. The Programs Committee generated a list of programs, training and resources that would be available to help officers improve performance and address behavioral issues.

Because of the variety of tasks which had been assigned to it, as well as the great amount of discussion those tasks generated, the Guidelines Committee began meeting bi-weekly, instead of monthly, in the early summer of 2005. Members of the other committees who were in the process of completing their assignments also participated in the Guidelines Committee discussions. These discussions were lengthy and included all points of view regarding matters being considered. This exhaustive process was invaluable to the Steering Committee, which considered these discussions in developing the revised discipline system. Among the tasks accomplished or topics discussed were:

- Classification of all Rules and Regulations (R&Rs) into four categories from least to most serious.
- Establishment of definitions for Conduct Categories.
- Identification of the most serious misconduct justifying the greatest investment of Department resources and attention in any revision of the disciplinary system.

³ The Steering Committee and the Manager of Safety ultimately decided that reorganization and revision of the Operation's Manual should be considered by the Department but was beyond the scope and mission of DAG. The responsibility for that task was given to the Department's Research and Development section, which is now engaged in that process.

- Consideration of the Department's Mission and Values as well as the Law Enforcement Code of Ethics and how they relate to the imposition of discipline.
- Determination of the purposes and goals of an effective disciplinary system and the benefits to the individual officer, the Department as a whole and the public.
- Determination of the purposes and goals of disciplinary sanctions.
- Establishment of criteria for analyzing acts of misconduct to determine whether an alleged violation should be sustained.
- Establishment of criteria for determining the appropriate disciplinary penalty if a violation is sustained.
- Perceptions as to whether, historically, discipline was fairly and consistently administered and the issues involved in ensuring more consistent discipline.
- The advantages and disadvantages of a discipline matrix system;⁴ what an effective matrix should attempt to accomplish; and, the need to monitor the effectiveness of a matrix and modify it as necessary.
- Criteria to be considered in recommending termination.
- Issues including the burden of proof needed to establish that an alleged violation had occurred, whether previous unsustained allegations should play any role in the disciplinary process and the relationship between discipline and other Department functions such as assignments, promotions and off-duty employment.
- The identification of Rules and Regulations that needed to be amended, deleted or added.
- Issues related to specific R&Rs, including:
 - R&R 105 – Conduct Prejudicial
 - R&R 106 – Immoral Conduct
 - R&R 112 – Departing from the Truth
 - R&R 115 – Violation of the Law
 - R&R 306 – Unnecessary Force
- The advantages and disadvantages of placing maximum limits on the number of days an officer could be suspended.
- Issues related to perceived unfairness in how disciplinary history is used, disciplinary considerations related to the amount of time that has elapsed between prior acts of misconduct and the incident currently being addressed, and the impact of “stacking charges” on the final disciplinary sanction.

⁴ After lengthy discussion, it was the overwhelming consensus of the Guidelines Committee that any revision to the discipline system should include a discipline matrix to guide Departmental decision-making and provide better notice to officers of likely disciplinary sanctions.

- The impact of applicable City Charter provisions, Civil Service rules, Civil Service Commission decisions and prior Departmental disciplinary decisions.

Over the next several months, further refinements to the R&Rs were made, drafts of the discipline matrix were created and revised, timelines and training on the matrix were discussed, and a host of other tools and documentation to accompany the revised system, which was to include an explanation of the discipline matrix and how to use it, were outlined. Members of the City Attorney's staff and the Civil Service Commission were tasked with providing further review to determine whether the use of a discipline matrix and the proposed changes to the discipline system would require changes to the City Charter or Civil Service rules.

All committees had completed their initial work by September 2005. Thereafter, the Steering Committee began collecting and organizing information from other committees as well as discussing and drafting the first attempt of the discipline matrix.

In March 2006, members of the Steering Committee began drafting this report along with outlining what was eventually entitled the Discipline Handbook: Conduct Principles and Disciplinary Guidelines ("Discipline Handbook"). The Handbook's goals are to outline in detail the revised discipline system, including the matrix, and explain its underlying principles. Upon circulation and discussion of the drafts, numerous areas were identified as needing further information, refinement or editing. The drafts were presented to the entire Steering Committee, which discovered additional areas for improvement and identified numerous questions that were in need of answers. As part of the continuing work of the Steering Committee, disciplinary scenarios were tested against the new discipline matrix. This process showed a need for further improvement of the matrix itself as well as some of the classification and categorization of misconduct. This report and the Discipline Handbook were put aside until further work on the matrix could be completed. Additional stakeholders and their representatives came to the table in a series of weekly meetings, intended to resolve all of the outstanding issues and concerns.

In September of 2006, the Steering Committee resumed writing this report and setting the stage for the review and implementation of the revised discipline system. In June of 2007, the committee completed a comprehensive draft of this report and the discipline guidelines and considered a schedule for stakeholder review, comment and necessary revisions. Between June 2007 and January 2008, DAG continued to refine this report and discipline guidelines to facilitate the implementation and understanding of the revised discipline system. The Manager's Office worked closely with the legal representatives of the Police Protective Association and the City Attorney's Office to ensure the appropriate actions and documentation were completed prior to training and implementation of the revised system. The Manager of Safety worked with other stakeholders to discuss further changes to the revised system. From February 2008, through April 2008, the Manager of Safety held bi-weekly to weekly meetings with the Board of the Police Protective Association and its legal counsel to discuss all proposed provisions of the revised discipline system. These discussions led to additional refinements to the discipline system.

On December 20, 2007, representatives of the City Attorney's Office, the Police Protective Association, the Firefighter's Union, the Manager of Safety's Office, and others appeared before the Civil Service Commission to discuss proposed changes to Civil Service Commission rules. At that time, the Civil Service Commission proposed and considered changes in addition to those proposed by the Manager of Safety. Between January 2008, and April 2008, further meetings were held among these varying interests in order to consider the scope and wording of the proposed rule changes. The final public hearing on the proposed changes was held by the Civil Service Commission on April 18, 2008. As a result, the Commission subsequently reached a decision on amendments to relevant Civil Service rules.

Summary of Issues Identified by DAG

After thoroughly studying and discussing the Department's current discipline system, its historical development and relevant prior discipline cases, DAG identified issues it believed needed to be addressed in order to improve the system and accomplish the goals of its Mission Statement. These included:

- Clarifying Departmental values and the Law Enforcement Code of Ethics and their importance in the implementation of discipline.
- Streamlining the disciplinary process to:
 1. Allow for the allocation of the appropriate level of resources based on the seriousness of the misconduct;
 2. Review complaints to ensure that the need for further investigation is properly evaluated; and
 3. Improve the timeliness of the investigations and their final resolution.
- Establishing alternatives to the imposition of discipline and developing criteria to identify cases appropriate for alternatives.
- Establishing written Department-wide criteria for evaluating whether or not an alleged violation has been proven.
- Clarifying, in writing, the goals and purposes of disciplinary sanctions.
- Establishing written criteria for categorizing the seriousness of misconduct.
- Establishing, in writing, reasonable disciplinary sanctions commensurate with the seriousness of misconduct.
- Establishing written disciplinary guidelines to:
 1. Provide reasonable notice, where possible, to officers and the public of the likely sanction to be imposed for a particular level of misconduct; and
 2. Provide reasonable notice of the principles, policies and procedures to be used in determining disciplinary sanctions.

- Establishing, in writing, a system for considering the category/seriousness of misconduct, relevant aggravating and mitigating circumstances, and relevant disciplinary and employment history when determining an appropriate disciplinary sanction.
- Establishing a system to more effectively and efficiently ensure that disciplinary penalties are reasonably consistent among all officers with similar disciplinary/work histories who engage in similar misconduct.
- Eliminating any unjustifiable disparities between discipline findings or the penalties imposed on command/supervisory personnel and all other officers.
- Establishing a system/criteria to achieve more consistent disciplinary recommendations at each level of review within the Department as well as a method for the Chief of Police and the Manager of Safety to better understand the rationale for these various recommendations.
- Eliminating, to the extent possible, any officer perception of an ineffective, unfair discipline system weighted against all or any particular officers.
- Eliminating, to the extent possible, any public perception that the discipline system is ineffective, unfair or unreasonably weighted in an officer's favor.

The three years of work put forth by DAG have yielded a revised discipline system which addresses each of the issues noted above. This revised system should help to reduce community perception that the discipline system is ineffective and biased in the officers' favor, and the countervailing perception of officers that the discipline system is arbitrary and biased against them. The revised system is also intended to provide reasonable notice to, and to set expectations for, both officers and the public when dealing with discipline issues. The system has been revised specifically to be more transparent, predictable, equitable and consistent.

The Importance of the Department's Mission, Vision, and Values

All Departmental policies, practices and decisions, including those involving discipline, should be rooted in the Department's Vision and Values and designed to accomplish its stated mission. Therefore, a discussion of how the Department's Mission Statement, Vision and Values were developed and how they relate to discipline was undertaken by DAG.

In 2003, the Denver Police Department undertook a review of its internal philosophies and policies with the intent of creating a substantial, action oriented strategic plan.

As a prelude to the creation of this strategic plan, the Department researched mandates from Department of Justice consent decrees and memoranda of understanding from jurisdictions all over the country. Also reviewed were recommendations from the Department of Justice's "Principles for Promoting Police Integrity" and a study from the University of Maryland called "Preventing Crime: What Works, What Doesn't, What's Promising."

Best practices were researched through the International Association of Chiefs of Police (IACP) and 26 major U.S. cities. Included in this research were the best practices in the areas of citizen complaint investigations, early warning systems, citizen review, use of force, in-custody deaths, mentally disabled individuals, crisis intervention teams, pursuits, citizen injuries, sexual harassment, discrimination, gangs, crime analysis, accountability, civil enforcement, gun violence, crime reduction, performance assessments and crime prevention.

The Department also retained Joseph Brann, formerly the Director of the Office of Community Oriented Policing Services (COPS Office). Mr. Brann worked with a team of law enforcement professionals to conduct a top to bottom organizational assessment of the Department. The Department assembled the fruits of its research, the Brann Report, and the Denver City Council Law Enforcement 2000 Committee's study of the Department, and created a comprehensive strategic plan to guide its mission for the next several years.

As part of this historical review, the Department also reviewed prior compilations pertaining to the Department's values, mission, goals, vision and philosophies. Among those historical materials were the Law Enforcement Code of Ethics, which the Department adopted in April of 1999, and early discussions of the Department's philosophies and goals.

The overall review focused on providing a clear, direct statement of the principles and vision which should guide the Department and its officers. This review was also seen as a necessary foundation for establishing the disciplinary priorities of the Department. The process began with the creation of a clear statement of the Department's mission and how that mission could be accomplished. The interaction of the community and the Department was seen as essential to carrying out the mission - this was described as the vision of the Department. Of paramount importance was the need to acknowledge the core values to which every officer of the Department must be fully committed.

The result of this extensive undertaking was the creation of the Department's Strategic Plan and, in April of 2003, the adoption of the Department's Mission, Vision, and Values (See the Operations Manual).

DAG thoroughly discussed the relationship between the Department's mission, vision and values (as well as the Law Enforcement Code of Ethics) and disciplinary decision-making in the Police Department. The results of those discussions are contained in the Discipline Handbook.

The Purpose and Importance of an Effective Discipline System

The overall objectives of a discipline system are to facilitate the orderly functioning and operation of the Department; to ensure employee adherence to reasonable and acceptable standards of performance and conduct; and to provide fair and equitable consequences for failing to adhere to those standards. Given the very nature of the law enforcement profession, the importance of achieving these objectives cannot be

overstated. Police officers hold a “position of trust” – a trust bestowed upon them by the Department and the community and are, in large part, the community’s most visible representatives of government. They often work independently and without extremely close supervision. Arguably more than any other representatives of government, they are given enormous discretion in carrying out their duties – discretion which also carries tremendous responsibility. Officers are granted the legal authority to seize property, restrict personal freedom and save or take the life of another. Because of the trust placed in them and the enormity of the discretion and authority granted to them, officers should understand that the community has every right to expect and demand the highest level of accountability from the Department as well as individual offending officers. Officers must know that, when they engage in misconduct, they will receive fair and appropriate discipline commensurate with the level of misconduct. Discipline should not be an unexpected event but rather an anticipated consequence of inappropriate conduct.

In order to ensure that high level of accountability, the discipline system must be effective. An effective system is one that is fairly administered, consistent and based upon Department-wide standards known and enforced by all members of the Department and designed to ensure timely results. This system serves the public, the officers and the administration by uniformly reinforcing the acceptable standards of conduct and presenting a clear methodology for consequences related to a failure to abide by such standards. Such a discipline system seeks to maintain the integrity of the Department and the individual officer. An effective discipline system also works in conjunction with other Departmental systems such as promotions, awards, training and counseling services to encourage compliance with standards. An effective discipline system results in strengthened relationships and increased levels of trust within the Department as well as with the community by ensuring both clarity in expectations and accountability for actions by both the Department and the individual officer.

The lack of an effective discipline system fosters mistrust and low morale within the Department, poor relationships with the community and a negative image of the Department in the eyes of the public. These can, in turn, jeopardize the public’s confidence in the Department as well as public and officer safety and can contribute to the Department’s inability to effectively carry out its mission.

Achieving Consistency in Discipline

DAG discussed at length its commitment to achieving consistent discipline and developing principles and guidelines to do so in the most efficient, effective manner. At its many sessions devoted to this subject, DAG examined consistency in three areas:

1. The need to apply consistent rules and principles to help ensure that the disciplinary sanction imposed on any officer is consistent with that imposed on other officers in similar circumstances.
2. The need to apply consistent rules and principles throughout the Department and at every level of disciplinary review to help ensure reasonable consistency in determining whether a violation of Department rules is proven.

3. The need to apply consistent rules and principles throughout the Department at every level of disciplinary review to help ensure reasonable consistency in determining the appropriate disciplinary sanction whenever a violation has been proven.

Discipline that is applied consistently to officers in similar circumstances is often referenced in interpreting the concept of consistent discipline. This concept impacts the interpretations and application of the various City Charter provisions and Civil Service Commission rules which guide disciplinary practices of the Department.

Consistency in determinations as to whether Police Department rules have been violated and in imposing disciplinary sanctions (#'s 2 and 3 above) involve Department internal review processes. These considerations have a definite impact on the ability of the Department to achieve consistent discipline between similarly situated officers (#1 above). Multiple levels of Department supervisors and command officers review internal investigation reports and make disciplinary recommendations to the Chief and the Manager. The absence of consistent principles and guidelines at every stage of the review process can result in disciplinary recommendations that range from minor to serious sanctions so disparate as to render them ineffective in assisting the Manager in making a final disciplinary decision.

Charter Provisions Regarding Consistent Discipline

The legal basis for a requirement that discipline be “consistent” is contained in the Denver City Charter.

Section 9.4.14 of the City Charter addresses “Disciplinary Procedures.”

- Subsection (A) of section 9.4.14 provides that the Chief of Police shall initiate disciplinary actions within the Police Department.
- Subsection (B) provides that the Manager of Safety shall issue a written disciplinary order approving, modifying, or disapproving the Police Chief's disciplinary order.
- Pursuant to Charter section 9.4.15, an officer may appeal the Manager of Safety's disciplinary order to a Civil Service Commission (CSC) Hearing Officer. The Hearing Officer is an independent fact finder who holds a hearing to review the propriety of the Manager's order. At the hearing, the Manager has the burden of proof by a preponderance of the evidence to justify any disciplinary action administered. The Hearing Officer must afford “due weight” to the Manager of Safety's need to maintain administrative control of the Police Department. The Hearing Officer issues a written decision affirming, reversing, or modifying the disciplinary order in whole or in part. If the Manager of Safety or the police officer is dissatisfied with the Hearing Officer's decision, either one or both of them may appeal that decision to the Civil Service Commission.

- Charter section 9.4.15(F) limits the Commission’s review of the Hearing Officer decision to only four grounds. One of those grounds is that:

“...the discipline affirmed or imposed by the Hearing Officer is inconsistent with discipline received by other members of the Department under similar circumstances. The Commission may affirm, reverse or modify the Hearing Officer’s decision provided that the Commission shall not have the authority to impose a level of discipline more severe than that imposed by the Hearing Officer or the Manager of Safety.”

The City Charter does not define any of the key terms used in section 9.4.15(F). For example, there is no definition or explanation of “inconsistent;” nor is there a definition or explanation of the term “under similar circumstances.”

Civil Service Commission Rules

The CSC rules also address “inconsistent discipline” as a ground for appeal and for review of the Hearing Officer’s decision by the Commission. The CSC rules also provide some limited guidance as to the meaning of the concept.

Commission Rule 12(6)(C) identifies as “grounds for appeal” from a Hearing Officer decision the same four grounds that are set forth in City Charter section 9.4.15(F). One of those grounds is:

“Inconsistent Treatment: The discipline affirmed or imposed is inconsistent with discipline received by other members of the Department in similar circumstances. A similar circumstance contemplates similar factual situations and similar disciplinary histories.”

Commission Rule 12(6)(E) limits the Commission’s review to the same four grounds set forth in Rule 12(6)(C), including:

“...inconsistent treatment of similarly situated persons.”

Commission Rule 12(4)(C)(2) (referring only to discovery of documents prior to the hearing before the Hearing Officer) states:

“Discovery in matters concerning comparative discipline shall be limited to three years prior to the date the disciplinary order was issued by the Manager of Safety.”

Thus, the CSC rules, along with the City Charter, indicate that the concept of “comparative discipline” really means “consistent discipline.” The misnomer “comparable discipline” has come into popular use because the parties in an appeal frequently present other discipline cases, for purposes of “comparison”, to support an argument that the discipline administered is either “inconsistent” or “consistent” with discipline received by other members of the Department in similar circumstances.

Interpretation of how one should apply “comparative discipline cases” in order to determine whether “consistent discipline” has been administered or imposed has largely been left to the CSC Hearing Officers and the Commission itself. As indicated above, the City Charter does not provide any definition or explanation of how “consistent” discipline is to be achieved.

In practice, some Hearing Officers and on occasion the Commission, have permitted the following approaches in interpreting the mistakenly named “comparable discipline” cases:

1. Although Commission Rule 12(4)(C)(2) limits discovery to the last three years, in some cases the parties have been permitted to submit evidence from cases that the parties have termed “comparable” and that are older than the three-year period for discovery. In fact, the Commission held in *Graves v. Montoya*, CSC appeal number 97CSC02A (1998), a decision affirmed by the Denver District Court, that Rule 12(4)(C)(2) applies only to discovery and not to evidence that the Commission can consider, whether the evidence is submitted by the parties during the appeal hearing or whether the Commission takes administrative notice of the evidence. In *Graves*, the Commission considered cases that were as much as ten years old when the Commission opinion was written and were approximately eight to nine years old when the subject disciplinary order was originally issued. In addition, many of the cases considered involved disciplinary decisions made by prior Managers of Safety.
2. If the Hearing Officer or the Commission determines that a case or cases are comparable to the instant case, the discipline imposed in that comparable case or those cases may serve as a guide to the Hearing Officer and/or the Commission in determining the appropriate discipline to be imposed in the subject case.
3. Parties to an appeal have been permitted to argue that the length of time between the so-called “comparable” cases and the subject case should be considered in determining how much weight, if any, the prior cases should carry in guiding a Hearing Officer or the Commission’s decision as to the discipline to be imposed in the present case. Likewise, they have argued that a decision by a different Manager of Safety other than the one who imposed the subject discipline should be afforded less weight in determining whether the subject discipline is “inconsistent” with that imposed upon other members of the Department. However, Hearing Officers and the Commission have not historically afforded those arguments much weight.

Unfortunately, the media has contributed to general public misconceptions about the principles of “consistent discipline” by regularly using the misnomer “comparable discipline” and by stating that that term “dictates” that an officer cannot receive greater discipline than that received by another officer in similar circumstances. In fact, there is no such mandate in either the Denver City Charter or the Civil Service Commission rules. Nevertheless, when Hearing Officers or the Commission have determined that prior cases involved similar circumstances to the subject case and a lesser discipline

was imposed in the earlier cases, the Hearing Officers or Commission have reduced the discipline imposed in the subject case – sometimes reducing it to the level imposed in the earlier cases. However, there is no requirement that, simply because a lesser discipline was imposed in an earlier case involving allegedly similar circumstances, the discipline in the present case must be reduced, particularly to the level of the earlier case. If that were true, then the corollary would also have to be true: An officer could not receive any lesser discipline than that received by another officer in similar circumstances. Principles of “consistent discipline” do not require the administration of identical discipline. A reasoned application of principles of “consistent discipline” will recognize that, even when cases are similar, the facts vary and any established and significant aggravating and mitigating factors must be considered with respect to each individual case.

Charter Provision Regarding Giving the Manager of Safety “Due Weight”

A City Charter provision that should be considered in applying principles of “consistent discipline” is the portion of section 9.4.15(D) which deals with the Hearing Officer’s review of a disciplinary action and the issue of “maintaining...administrative control of the Department.” Because it is the Manager who makes the final disciplinary decision and, therefore, issues the departmental disciplinary order, Charter section 9.4.15(D) requires (in part) that:

“The Hearing Officer shall give due weight to the necessity of the maintaining by the Manager of administrative control of the Department.”

As with the principles of “consistent discipline,” the Charter does not clarify how this “due weight” requirement should be interpreted or applied. Additionally, there is no guidance on how the due weight requirement intermeshes with the principle of “consistent discipline.” Moreover, Commission rules do not currently provide any additional clarification or guidance on these issues or on the impact of the due weight requirement on the scope of de novo review.

Challenges to Achieving Consistency in Discipline

The current status of the City Charter provisions, Civil Service Commission rules, interpretations of those rules, and departmental disciplinary procedures have resulted in a number of expressed concerns related to “consistent discipline” which were considered by DAG. Among them were the following:

1. Because the Charter grants the Commission the right to review Hearing Officers’ decisions on the basis of “inconsistent discipline,” Hearing Officers have traditionally considered whether the discipline imposed upon the subject officer by the Manager is “inconsistent” with that imposed in cases involving “similar circumstances.” If the Hearing Officer or the Commission determines that “comparable cases” exist, the Manager is often unable to impose the disciplinary sanction the Manager feels is appropriate unless that sanction falls within the range of discipline previously imposed in the “comparable cases.”

2. When there is a significant disparity between the disciplinary penalty recommended at various levels of review within the Department and the penalty ultimately imposed by the Manager of Safety, it raises questions about the fairness or appropriateness of the discipline being administered.
3. Arguably, prior disciplinary decisions, in effect, provide notice to officers of how the Department will treat a subsequent, similar violation. As a result, attempts to impose sufficiently different discipline from prior similar cases after a subsequent violation has occurred have, for a number of reasons, been rejected by the Civil Service Commission. Logically, it is only reasonable, fair and equitable that officers receive some notice that the Department or the Manager is instituting a change in disciplinary policies/practices before a subsequent violation occurs.
4. Providing “comparable cases” in response to a discovery request can be quite burdensome to the Manager of Safety and City Attorney’s Office.
5. It is burdensome, particularly in light of the Department’s current recordkeeping system, to review major portions of an IAB file of a “comparable case” to determine what the relevant facts of the case were; and knowing all of those relevant facts is necessary in order to determine whether the “comparable case” is truly comparable. Consideration of only the penalty imposed or a very brief summary of an IAB file used as a “comparable case” without greater knowledge and understanding of the case is problematic in determining its relevance in assessing “consistent discipline.” As a matter of practice, at most levels of review within the Department, disciplinary recommendations are based upon setting discipline within a range established by a list of “comparable” cases in which the rule and regulation violated is the same as in the current case. However, that list contains only the disciplinary sanction imposed and not the facts of the previous case, the disciplinary history of the disciplined officer or any aggravating or mitigating factors considered. This practice provides no meaningful guidance in setting an appropriate disciplinary sanction and frequently leads to disparate recommendations.
6. The parties often spend substantial time arguing at CSC hearings and in front of the Commission whether past cases are truly comparable and whether the discipline imposed upon the subject officer is “consistent” with “comparable cases.”
7. There has been insufficient guidance within Commission rules as to what “inconsistent discipline” or “consistent discipline” means and how the concept should be applied.
8. There has been insufficient guidance within Commission rules as to the meaning of “giving due weight to the necessity of the maintaining by the Manager of administrative control of the Department,” how the concept should be applied, how it intermeshes with principles of “consistent discipline,” and how it impacts the scope of de novo review.

9. There has been no mechanism for changing “comparative discipline” benchmarks. Once cases have been litigated, they establish the benchmark for future “comparative discipline.” Where there have been changes in Department or community norms regarding sanctions for certain kinds of misconduct or acknowledgement by the Department or Manager of Safety that certain misconduct should be penalized differently from past practices, no procedure has been developed to reflect those changes. As a practical matter, changes have been made only where the present case was sufficiently different from the prior cases so as to support a finding that they are not “comparable.”
10. There has been a reluctance to reduce disciplinary sanctions in cases of arguable mitigation out of concern that the reduced sanction will become the benchmark for “comparables” in all future cases.
11. There has been no practical time limit for consideration of previous cases to be used as “comparables.” The three year “discovery” period has been specifically held by Civil Service to be a discovery rule only, and there is no practical recognition that prior cases may have been the decisions of prior Managers of Safety.
12. Historically, there has been no alternative mechanism or process to replace the review and use of “comparable discipline” cases as one of the primary methods for helping to ensure and uphold the principle of “consistent discipline.”

Introduction to the Discipline Matrix

The absence of written directives and questions about the consistency and fairness of discipline have prompted development of the revised discipline system. In the past, the Department has not had either a discipline matrix or concrete guidelines to ensure fair and consistent consequences when officer misconduct requires correction or punitive action. To that end, DAG set out to identify and examine various approaches to a discipline system that would meet the needs of the Department. DAG determined that written guidelines, including a discipline matrix, would promote the Department's goal of having a fair and consistent disciplinary process.

As part of its decision-making process, DAG considered trends and practices around the country. The information and studies reviewed demonstrated that police department use of written penalty schedules has become more common around the country.⁵ The research identified the two primary reasons contributing to police misconduct: joining a group or department where there is some level of acceptance of misconduct; and poor oversight and management of misconduct and penalties (Stoddard 1968, Bahn 1984). DAG closely reviewed the Shelby Crime Commission (1999) report, which examined national standards and best practices concerning written directives and penalty

⁵ Indeed, the Denver Police Department currently uses written penalty schedules for a limited number of rules violations. This practice has resulted in more consistent discipline and notice to all officers of the likely penalty for those violations. The implementation of the discipline matrix will not change this practice with respect to those violations that are currently disciplined by written penalty schedules.

schedules. The Shelby Crime Commission found that the use of written directives was essential to the successful management and leadership of a police department. Written directives are said to offer:

- Greater degree of consistency in officer disciplinary penalties;
- Clarification of findings, directives, and mandates;
- Enhanced police training; and
- Enhanced public relations.

The use of a discipline matrix to outline types of misconduct and reasonable disciplinary penalties was recommended by the Shelby Crime Commission, despite some reluctance in adopting such approaches. The final determination of the Shelby Crime Commission was that the benefits of a matrix or penalty schedule far outweighed concerns about the loss of supervisory discretion. The benefits they identified included:

- Establishing and maintaining consistency;
- Managing supervisory discretion; and
- Encouraging public confidence.

Another resource for DAG was an article by Professor Sam Walker (2003) in which police professionals from a number of jurisdictions considered the benefits of a discipline matrix.⁶ The findings contained in the article indicated that a carefully designed penalty matrix is a useful tool for enhancing accountability within a department and ensuring greater consistency in disciplinary penalties. Among the determinations made were these:

- Written directives and matrices also ensure greater accountability for officers, management and the department as a whole. Not only will the community see the department as more accountable, but personnel within the department will begin to view the department as more accountable when it delivers consistent disciplinary penalties and applies the same guidelines to all officers.
- To be workable, a penalty matrix must be designed with careful consideration for realistic implementation. It should not be unnecessarily restrictive. A successful matrix is one that is accompanied by a system for addressing necessary future revisions. A matrix is intended to provide better notice of potential penalties and will streamline the process by offering presumptive penalties. These presumptive penalties should result from research and stakeholder input. When properly supported, the presumptive penalties are far more likely to be accepted as fair. When aggravating and mitigating circumstances are considered, there will be some variation of penalty. However, the successful matrix will make that variation understandable, so long as it stays within the minimum and maximum penalties allowable for a specific penalty level, absent extraordinary circumstances.

⁶ Walker, S (2003, December). The Discipline Matrix: An Effective Accountability Tool? A Conference Report. Police Professionalism Initiative, University of Nebraska at Omaha.

The Shelby Report (1999) offered three recommendations for departments adopting and implementing a matrix to manage disciplinary penalties. They advise that the matrix should include:

- A detailed classification of offenses and explicit statements of the range of possible disciplinary measures;
- The widest range of disciplinary alternatives practicable; and
- A commitment to regular review and maintenance of disciplinary directives. This review should include the input of employees of all ranks and grades.

The Manager of Safety, through DAG input, has created the revised discipline system in an attempt to incorporate each of the Shelby Report recommendations. The Department is committed to maintaining an effective and fair discipline system for all. The application of the revised principles and guidelines as well as the matrix will forward that goal. While the Manager of Safety remains the final disciplinary decision-maker, he/she must necessarily rely upon the matrix and the principles and guidelines therein in exercising his/her authority.

DAG designed the matrix based upon its consultation with the Police Executive Research Board (PERF), its review of national and international discipline systems and various compilations of literature regarding disciplinary matrices, and its extensive internal discussion with representatives from all areas of the Police Department, city management, legal advisors and citizens.

The matrix was designed to accomplish the following goals:

- Define categories of misconduct based upon the seriousness of the misconduct and set discipline levels;
- Identify disciplinary sanctions that would be appropriate for each category of misconduct and discipline level, while recognizing that all situations are not alike and some flexibility is required;
- Identify a presumptive penalty for each discipline level;
- Provide fair and reasonable penalties at each discipline level in the event there are compelling mitigating and/or aggravating factors to be considered;
- Provide notice to officers and the community of the likely sanction for a particular violation unless the particular facts and circumstances justify a different result; and
- Provide a framework for consistent discipline based upon Department established standards applicable to all members of the Department.

As the matrix evolved, DAG determined what the categories of conduct would be, where each rule and regulation fell within those categories and then determined the discipline levels and associated penalties that would relate to each category.⁷ There are multiple discipline levels associated with each category due to situations where repeated misconduct occurs. In those cases, repeated misconduct raises the discipline level. Each discipline level has a presumptive penalty as well as aggravated and mitigated penalties.

In defining Conduct Categories, deciding what R&R(s) should be placed in each category and determining reasonable presumptive, aggravated and mitigated penalties, the diversity of DAG members was essential. Lengthy discussion and consideration were given to the nature and seriousness of the conduct proscribed by each Rule and Regulation; how the violation of the R&R impacts the operations, mission, values and professional image of the Department; the potential or actual harm, injury or prejudice arising from the violation; and the purposes and goals of disciplinary sanctions. Members also fully discussed and took into consideration prior “similar” discipline cases, how the Department had previously handled them and the range of disciplinary sanctions which had been previously imposed.

The complete matrix can be found in the Discipline Handbook.

Amendments to Civil Service Commission Rules to Achieve Charter-Mandated Consistency

Based upon its review of the above summarized Charter provisions, Civil Service Commission rules and the advantages of a discipline matrix system, the DAG Steering Committee and the Manager of Safety reached a general consensus that the implementation of a discipline matrix and written principles and guidelines for the administration of discipline would more effectively achieve the consistency mandated by the Charter than the current practices of the Denver Police Department and the Civil Service Commission.⁸ The Manager further concluded that a revised discipline system could be implemented through amendments to Civil Service Commission rules and practices and need not involve amendments to the City Charter.⁹

The DAG Steering Committee and the Manager of Safety fully accept and endorse the Charter-mandated concept of consistent discipline to help ensure that similarly situated

⁷ To better differentiate among types of misconduct and more appropriately set penalties, the original four conduct categories considered by the Guidelines Committee was expanded to six and the definitions of each category were appropriately modified.

⁸ It is noted here that this is not the position of all participants in the DAG Steering Committee.

⁹ This conclusion was reached through consultation with the Denver City Attorney’s Office. It is again noted that this is not the position of all participants in the DAG Steering Committee and that participation in DAG does not constitute an endorsement of any or all of the provisions of the revised discipline system. The Denver Police Protective Association and its representatives continue in their objection to incorporation of the Matrix into the Civil Service review of discipline.

officers are treated similarly and that disciplinary decisions are not the result of discrimination or any other inappropriate influence. However, as noted previously, the Charter does not define what “consistency” or “inconsistency” means and how consistency is to be achieved. The current practices for attempting to achieve consistency have arisen through the application and interpretation of Civil Service rules, which are subject to amendment by the Civil Service Commission, so long as they are fashioned to achieve the “consistency” required by the City Charter.

The Steering Committee also recognized the value, in certain instances, of comparing previously decided cases to a current case in order to help achieve consistency. However, the Committee also believed that such a practice must have reasonable limitations and allow for notice of changes to prior practices.

Therefore, the Manager of Safety proposes that Civil Service Commission rules be amended to accomplish the following:

- Recognize and accept a matrix-based discipline system and adoption by the Department of written discipline principles and guidelines as a method of achieving Charter-mandated consistency.
- Provide greater guidance on what constitutes “consistent” discipline.
- Provide greater guidance on the use of “comparable” cases to achieve consistency.
- Allow for implementation of periodic change to discipline standards, upon notice to officers and application of those changes only to violations occurring after notice is provided.
- Provide greater clarification on how the Charter-mandated requirement of giving “due weight” to the Manager’s maintenance of administrative control of the Department intermeshes with consistent discipline and impacts the scope of “de novo” review.

Evaluation of Rules and Regulations

After a thorough examination of the R&Rs, DAG determined that some of the rules and regulations had become outdated or did not fully address the conduct issues which arise in current-day law enforcement. Recognizing these deficiencies, some of the rules and regulations were deleted, modified or divided into subsections. Rules were divided into subsections when they addressed different types of conduct or conduct which varied in seriousness. By dividing the rule into subsections, DAG was able to ensure that the conduct was governed by the appropriate level of discipline. An additional purpose for undertaking this review of the R&Rs was to ensure that the standards governing conduct fully reflect the Department’s mission, vision and values.

Summary of Certain Changes to Rules and Regulations

Each of the following rules is noteworthy because the substantive text of the rule has been significantly modified, a new rule has been created to address a type of misconduct that had not been previously addressed in a rule and regulation, or the old R&R has been deleted. This summary does not include all changes made to the rules and regulations. Modifications such as minor word additions and variations or updates and deletions of obsolete language are not reflected in this document.

RR-100, the preamble to the R&Rs, now requires officers to obey Mayoral Executive Orders (in addition to “all Departmental rules, duties, procedures, instructions, and orders; [and] the provisions of the Operations Manual”).

Old rule RR-101, Violation of any Department Rule, has been re-numbered as new rule RR-102.1, Duty to Obey Department Rules and Mayoral Executive Orders. RR-102.1 requires officers to obey Mayoral Executive Orders (in addition to “all Departmental rules, duties, procedures, instructions, and orders; [and] the provisions of the Operations Manual”).

New rule RR-102.2 applies only to any former officer who: (a) has been separated from employment with DPD due to a disciplinary action or disqualification; and (b) has a pending appeal of that disciplinary action or disqualification or the time to file such appeal has not yet expired. During the time an appeal is pending or the time for appeal has not expired, the former officer must obey all state and federal statutes, municipal ordinances, the Charter of the City and County of Denver, DPD rules and regulations, and orders issued specifically to the officer by the Department that were in effect at the time of the officer’s separation from DPD. If a former officer violates this rule and if the former officer regains employment with DPD (such as through an order of reinstatement from the Civil Service Commission or a court), the Department may take disciplinary action against the former officer upon his/her return to service.

RR-103, Aid Another to Violate Rule, has been deleted in its entirety.

RR-104, Contacting of Supervisor, now incorporates the reporting requirements of the DPD Operations Manual relating to the duties of officers and sets forth a single set of rules for contacting of a supervisor and for supervisor responses in those situations, as well as when the officer’s driving privileges have been suspended or revoked or the officer has been served with a restraining order issued due to allegations of domestic violence or criminal activity.

RR-105, Conduct Prejudicial, no longer includes the verbiage “which may not specifically be set forth in Department rules.” RR-105 can now be used in two different ways; those two usages are explained in the section on Special Considerations Regarding Certain Violations contained in the Discipline Handbook.

Old rule RR-106, Immoral Conduct, has been re-numbered as new rule RR-106.1, Immoral Conduct, and modified to eliminate “disorderly” conduct from the rule’s definition. New rule RR-106.2, Sexual Misconduct, addresses various types of sexual misconduct, both on-duty and off-duty.

Old rules RR-108, Plainclothes Officers – Identification, and RR-801, Identification – Civilian Attire, have been combined into new rule RR-108.1, Plainclothes Officers – Identification. Additionally, a new rule, RR-108.2, Protecting Identity of Undercover Officers, has been added.

The substance of old rules RR-109, Drinking on Duty, and RR-110, Drinking to Excess, has been allocated into four new rules: RR-109.1, Drinking to Excess; RR-109.2, Unfit for Duty; RR-109.3, Drinking on Duty; and RR-109.4, Under the Influence.

Old rule RR-112, Departing from the Truth, and the substance of old rule RR-131, False Report, have been split into two rules. New rule RR-112.1, Misleading or Inaccurate Statements, prohibits officers from knowingly making misleading or inaccurate statements that relate to their official duties. New rule RR-112.2, Commission of a Deceptive Act, prohibits officers from “willfully, intentionally or knowingly commit[ting] a materially deceptive act in connection with any investigation or any judicial or administrative proceeding, including but not limited to, departing from the truth verbally, making a false report, or intentionally omitting information.”

Old rule RR-115, Law Violations, has been split into two new rules, RR-115.1, Conduct Prohibited by Law, and RR-115.2, Aggravated Conduct Prohibited by Law. RR-115.2 establishes a disciplinary rule for officer conduct that is especially antithetical to police work and has been condemned by society in state and federal laws. Specifically, officer conduct which is felonious, violates any class one misdemeanor statute, or is committed either on duty or under the color of authority carries a presumptive penalty of termination. RR-115.1 establishes a disciplinary rule for officer conduct that violates laws other than those identified in RR-115.2. The severity of RR-115.1 violations will be determined by applying the Conduct Category definitions to the behavior in question.

RR-116 has been re-named Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law.

The text of old rule RR-118, Disrespectful or Insolent Language, has been moved to new rule RR-122.3, Insubordination.

Old rule RR-122, Respect for Fellow Officer, has been split into three new rules. RR-122.1 through RR-122.3 address respectively: (a) failing to treat other members of the Department with due respect; (b) being abusive toward a fellow officer; and (c) being insubordinate toward a supervisor or command officer.

Old rule RR-123, Malicious Threats or Assault, has become new rule RR-123, Assault of Fellow Officer, which prohibits threatening, striking, or assaulting a fellow officer but no longer requires that any of those actions be done maliciously.

Old rule RR-128, Impartial Attitude, has been divided into two new rules. RR-128.1, Impartial Attitude, requires that officers possess an impartial attitude toward complainants and violators. RR-128.2, Impartial Attitude - Bias, requires officers to provide service to anyone who may be in danger or distress, regardless of race, color, creed, national origin, gender, age, sexual orientation, ancestry, physical or mental disability, marital status, military status, political affiliation, or religion.

Old rule RR-130, Aiding and Protecting Fellow Officers, has been divided into two new rules. RR-130.1, Aiding and Protecting Fellow Officers - Unreasonable, prohibits officers from “unreasonably” failing to assist and protect each other. RR-130.2, Aiding and Protecting Fellow Officers – Intentional or Reckless, prohibits officers from “intentionally” or “recklessly” failing to assist and protect each other.

Old rules RR-138, Racial or National Origin Intimidation, and RR-139, Gender or Sexual Orientation Discrimination, have been combined into new rule RR-138, Discrimination, Harassment, and Retaliation, which now prohibits discrimination, harassment, or retaliation based on any class protected by federal, state, or local law, or Department policy.

New rule RR-141.1, Prohibited Associations, precludes officers from knowingly fraternizing or otherwise associating with persons the officer reasonably believes to be engaged in or planning to commit criminal activities if that association is reasonably likely to be damaging to the Department or officer unless the Chief of Police or designee approves the association or the association occurs as part of DPD duties. New rule RR-141.2, Reporting of Prohibited Associations, requires officers to promptly disclose to the Chief any potentially prohibited associations except those occurring in accordance with DPD duties.

The wording of RR-305, Duty to Protect Prisoner, has been changed to provide as follows: “Officers shall not physically abuse a prisoner and shall not allow a prisoner in their custody to be physically abused by any person.”

RR-306 has been re-named Inappropriate Force.

Old rule RR-309, Suggesting Bondsmen or Attorneys, has been broken into two new rules, RR-309.1, Suggesting Bondsmen or Attorneys, and RR-309.2, Suggesting Bondsmen or Attorneys for Profit.

RR-310 has been re-named Mistreatment of Prisoners/Suspects and modified to read “Prisoners and suspects shall be treated in a fair and humane manner.”

Old rule RR-311, Compromising Criminal Cases, has been split into two new rules, RR-311.1, Compromising Criminal Cases, and RR-311.2, Interference with Prosecution.

Old rule RR-312, Interfering with Case Assigned to Other Officers, has been expanded and allocated to three new rules. Old rule RR-312 is now new rule RR-312.1 and carries the same title. New rule RR-312.2, Interfering with Internal Investigation/ Questioning, prohibits officers from influencing internal investigations whether the investigation is conducted by the Internal Affairs Bureau; the Professional Standards Unit; the Office of the Independent Monitor; the Manager of Safety’s EEO Coordinator; or any DPD division, bureau, section, or unit. New rule RR-312.3, Failure to Provide a Statement, requires officers to provide complete and truthful statements in internal investigations when ordered to do so.

Old rule RR-313, Lack of Jurisdiction, has been deleted in its entirety.

RR-314, Providing Assistance Outside the City, has been modified slightly.

Old rules RR-601, Communication of Information which may Delay an Arrest; RR-602, Communication of Information which may Aid a Person to Escape; RR-604, Information Concerning Cases Under Investigation; and RR-611, Giving Assistance to Criminals, have been merged into new rule RR-601.2, Communication of Confidential Information that Jeopardizes a Police Action. Old Rule RR-615, Confidential Information, has been re-numbered as new rule RR-601.1 and re-named Confidential Information, Generally. New rule RR-601.1 precludes officers from providing to private parties information about persons who have provided information to DPD on the condition of anonymity. The substance of old rule RR-610, Security of Police Information, is also contained in new rule RR-601.1.

RR-603, Destruction of Evidence has been modified and now reads “Officers shall not recklessly or negligently destroy or remove evidence, nor shall officers intentionally destroy or remove evidence, except as legally permissible.”

Old rules RR-607, Failure to Make or File Required Reports, and RR-608, Completing Official Reports, have been merged into new rule RR-607, Failure to Make, File, or Complete Official Reports.

Old rules RR-704, Soliciting for Promotion, etc.; RR-705, Soliciting for Promotion, etc. of Another; and RR-706, Soliciting for Appointment; have been merged into new rule RR-704, Soliciting for Promotion/Appointment.

Old rule RR-806, Exchange of Badge Prohibited, has been divided into two new rules, RR-806.1, Alteration of Badge Prohibited, and RR-806.2, Use of Badge by Person other than an Officer.

Old rule RR-901, Sirens and Red Lights, has been deleted in its entirety.

RR-1004, Testifying for Defendant, has new language requiring notification, as necessary, to the Civil Liability Bureau (as well as to the persons previously listed in the rule).

Old rule RR-1109, Absence from Duty when Sick Leave Exhausted, has been deleted in its entirety.

RR-1201, P.O.S.T. Certification Required, now forbids officers from committing any act that would disqualify them from P.O.S.T. certification.

Training Framework for Discipline System

After compiling the information for a new disciplinary process for the Department, the Steering Committee began to look at ways to effectively inform Department personnel, employee groups, and other affected entities about the revised system. Several concepts were studied and the greatest concerns were who needed to know what,

when they needed to know it, and how much information could be effectively disseminated so that everyone understood the revised process.

Five groups were identified for training. Individually-tailored classroom instruction will be provided to persons who will be involved in the disciplinary review process. Other forms of training (video, training bulletin, etc.) will be provided to other persons who need a basic understanding of the changes to the R&Rs and the discipline matrix.

The committee decided to leave the instruction to a small group of individuals who had been involved with the project since its inception, thus reducing the chance for misinterpretation during training. In addition, it would allow for any questions that may arise to be answered by individuals who can properly explain the vision of the Manager and DAG. The training process will be multi-faceted and targeted to the needs of each individual group.

The goal of the Manger and the Steering Committee is to ensure that everyone regardless of assignment, rank or position is informed of the new disciplinary process. Careful consideration has gone into how that information will be relayed to personnel and outside agencies.

Training Process

Classroom Instruction – The following groups will receive individually-tailored classroom instruction:

- Chief of Police, Deputy and Division Chiefs
- Office of the Independent Monitor and the Citizen Oversight Board
- Commanders, Captains, Lieutenants and Sergeants
- Disciplinary Review Board, Civil Service Commission, Internal Affairs Bureau, Professional Standards Unit, PPA Board and FOP representative

The Chief, Deputy and Division Chiefs, OIM and Commanders will receive their instruction prior to everyone else. This will give them the ability to respond to questions from personnel when the multi-faceted instruction begins.

Multi-faceted Instruction – Various methods of presenting the disciplinary process to all personnel utilizing the following:

- Short-7 Video Series – The Manager will narrate a series of Short-7 videos that are divided into segments by topics. Each video will be from 10-15 minutes in length and will be mandatory viewing for all sworn members of the Department.
- Training Bulletins – A number of training bulletins will be released at the same time as the Short -7 video series.
 - Complete Department Conduct Principles and Disciplinary Guidelines
 - Revised R&Rs – side-by-side comparison of the new and old R&Rs

- Discipline Matrix – Overview with examples and description of the objective mitigation/aggravation criteria
- Frequently Asked Questions Bulletin – Summary of the most common issues and concerns
- Town Hall Format Meetings – Shortly after the Short-7 videos and bulletins have been released, there will be a series of town hall style meetings.
 - Forum allowing direct discussion with the Manager and the Independent Monitor to address questions or concerns about the new disciplinary process.
 - Meetings will be scheduled at various times and locations to maximize participation by personnel who work evening and overnight shifts.

Both the Manager and the Committee believe that they have developed a comprehensive training program by using the various training methods coupled with the Town Hall meetings. The Manager and Committee also agreed that the training aspect is the most important measure to ensure that the revised system is accepted and properly applied to discipline cases.

Effective Date for Implementation of Conduct Principles and Disciplinary Guidelines Including the Discipline Matrix

The provisions of the matrix and its supporting principles and guidelines shall be effective upon order of the Chief of Police, as approved by the Manager of Safety, after a sufficient period for publication and training has occurred, and shall apply to violations where the subject events occur on or after the effective date of implementation.

Any amendments or changes to the matrix occurring after its original date of implementation shall be appropriately published to all Department personnel and shall be effective on a date specified in the publication. The amendments shall apply to violations occurring on or after the effective date of the amendments.

Dealing with Future Changes: Establishing a DAG Standing Committee

Any system is incapable of anticipating every potential problem. To that end, the Manager of Safety has recommended a continuing process for monitoring the implementation of this revised system and addressing new issues that arise. In an effort to ensure consistency and continuity, the Manager will name a Standing Committee to review and monitor the implementation of this revised system and to make further suggestions and recommendations as needed. The Standing Committee will meet on a quarterly basis or when otherwise called upon by the Manager. The committee will include twenty membership positions. Additionally, the Manager has created a selection process for those positions which require selection, terms for serving on a committee and recognizes that a strong message must be sent regarding the importance of attendance at these quarterly meetings. For more information on the DAG Standing Committee see the Department Operations Manual.

Establishing and Maintaining a Discipline Database

The Manager of Safety has determined that the Department shall modify its disciplinary record-keeping to establish a database which allows for a more effective and efficient method of reviewing prior cases. The database will contain the following for all discipline cases:

1. A copy of the Pre-disciplinary Letter;
2. A copy of Specifications;
3. A copy of Disciplinary History/Commendations;
4. A copy of Manager's Order including Aggravating and Mitigating Factors;
5. A copy of any subsequent Manager's Orders related to the case; and
6. A copy of any subsequent findings/rulings of the Denver Civil Service Commission or any reviewing court related to the case.

This database shall be maintained for all disciplinary cases involving violations occurring on or after the effective date of the revised discipline system. With the exception of Civil Service Commission and court findings, documents should be redacted so as to not identify the officers involved. Policies will be developed to limit access to this database, except as allowed by law.

Role of the Office of the Independent Monitor

On March 29, 2005, the Mayor appointed the City of Denver's first Independent Monitor. The Monitor was tasked with bringing professional and independent oversight to the Department's complaint handling and disciplinary processes. The Office of the Independent Monitor (OIM) began active monitoring of the Department's internal investigations as of August 1, 2005, and worked swiftly to analyze policies and to recommend and implement changes. OIM recommendations and changes have provided a solid foundation for the continued improvements for other additional and necessary changes.

The Manager and DAG recognize the vital importance of the OIM. Through effective and proper communication and implementation, OIM can ensure that cases are appropriately filtered or triaged. The OIM also has oversight responsibilities to ensure that alternative disciplinary options (such as mediation, counseling or debriefing) are offered in appropriate cases. An additional obligation of OIM is to ensure consistency - both in determining whether violations are sustained and in imposing proper discipline. OIM has also created timeliness goals for the handling of complaints and Internal Affairs investigations. The Manager acknowledges and appreciates that several of the changes recommended pertaining to the new discipline system have already been implemented by OIM. The OIM's activities and recommendations for 2006 are contained in an Annual Report (published on February 1, 2007), which was helpful to DAG in assessing the disciplinary needs of the Department.

The OIM participated fully in DAG process and will be tasked with overseeing the fair and proper application of the revised discipline system, including the discipline matrix.

Conclusion

This report, in conjunction with the overall revised discipline system, represents the willingness of the Manager of Safety and the Department to listen to officers and the public, evaluate the current state of affairs, accept critiques and make changes as appropriate. Through the hard work and effort of many dedicated people, a revised discipline system has been developed to:

- Provide a better understanding of why discipline - fair and just discipline - is so important to the Department;
- Create a discipline system with all of its components to avoid confusion and provide clarity; and
- Facilitate delivery of consistent penalties for misconduct as required by the rules, regulations, policies, procedures and directives of the Department.

It is critical to the success of the Department that the lines of communication remain open between the Department, officers and the public. To ensure the success of the revised discipline system, DAG quarterly meetings will occur to discuss the transition of the revised system, address implementation success and challenges and monitor on-going progress. The Department's top priority is to develop and foster trust and integrity within the Department and within the community. This discipline system, and the dedication it shall receive, is vital to promoting these values internally and externally.

The revised discipline system will result in a more effective and efficient method of achieving consistent discipline. The improvements are designed to create Department-wide criteria for the review of disciplinary cases and to provide notice to officers of the likely discipline in a given case and the method by which the disciplinary decision will be reached.

The revised discipline system and related components can be found in numerous outcomes to the DAG process, including:

- Revisions to the Departmental Rules and Regulations;
- Revisions to the Operations Manual Section 503.00 entitled Performance, specifically 503.01 Complaint and Discipline Procedures for Sworn Officers;
- Creation of a Discipline Handbook, entitled Conduct Principles and Disciplinary Guidelines, which includes the Discipline Matrix and discussions of the rationales and principles involved in the administration of discipline;
- Creation of training materials for all members as well as more detailed training materials including necessary forms and instructions for supervisors, command officers and others involved in the review of discipline cases;

- Proposed changes to the Civil Service Commission rules which:
 - Recognize and accept a matrix-based discipline system and the adoption by the Department of written discipline principles and guidelines as a method of achieving consistent discipline;
 - Preserve the Charter-mandated requirement of consistent discipline;
 - Provide greater guidance on the use of “comparable” cases to achieve consistency;
 - Allow for implementation of periodic change to disciplinary standards upon notice to officers and application of those changes only to violations occurring after notice is provided;
 - Provide greater guidance on what constitutes “consistent” or “inconsistent” discipline; and
 - Provide greater clarification on how the Charter-mandated requirement of giving “due weight” to the Manager’s maintenance of administrative control of the Department intermeshes with consistent discipline and impacts the scope of “de novo” review;
- Creation of a more effective discipline database within the Department for comparing cases; and
- Establishment of a DAG Standing Committee for continual review and evaluation of the revised system.

Research and References

Below is a summary of the extensive research and references considered by DAG in developing the revised discipline system. DAG also maintained agendas, minutes and notes as prepared by the various committees, all of which were considered by the Steering Committee and the Manager of Safety in developing the revised discipline system.

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