

POLICE OFFICER TERMINATIONS

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Complaints Against Officers

- Complaints – To be expected
 - External
 - Internal

Every individual has an absolute right to file a complaint.

- Department should have established procedure in place for maintaining records of complaints.



Complaints against Peace Officers

§ 614.021. APPLICABILITY OF SUBCHAPTER B

(a) ...this subchapter applies only to a complaint against:

...(3) a peace officer under Article 2.12, Code of Criminal Procedure, or other law who is appointed by a political subdivision of this state...

Continued on next slide.



Complaints against Peace Officers

§ 614.021(b). This subchapter *does not apply* to a peace officer . . .that is covered by a *meet and confer* or *collective bargaining agreement* under Ch. 143 or Ch. 174, Local Government Code, **if that agreement** includes provisions relating to the investigation of, and disciplinary action resulting from, a complaint against a peace officer or fire fighter, as applicable.



Complaints against Peace Officers

§ 614.022. Complaint **must be in writing and signed** by complainant

§ 614.023. Complaint must be given to officer or employee ***within a reasonable time***

- Disciplinary action may not be taken *unless* the signed complaint is given to officer/employee
- Employee may not be indefinitely suspended or terminated *unless*
 - Complaint is investigated; *and*
 - Allegation of misconduct is proved by evidence



Guthery v. City of Sugarland

112 SW3d 715 (Tex. App. – Houston [14th Dist] 2003).

- Officer damaged door at house breaking up a party.
- Property owner made verbal complaint to Department.
- Department proposed suspension for misconduct.
- City argued Chief's "Notice of Proposed Disciplinary Action" constituted signed complaint.
- "Complainant" is a "person claiming to be the victim of misconduct by a police officer" - Tex. Local Govt. Code §143.123(a)(1).

- Court ordered disciplinary action be withdrawn.



Turner v. Perry

278 S.W.3d 806 (Tex.App.—[Houston 14th Dist.], 2009)

- Officer Perry posted gang information on national web site without permission.
- Officer Perry demoted without a signed, written complaint.
- Houston Court of Appeals (14th Distr.) found that:

"in the absence of complaints that were signed, delivered, investigated and supported by evidence, Perry had a legitimate expectation of continued employment secured by §§614.021-614.023"



Nelson v. City of Dallas

278 SW3d 90 (Tex. App. – Dallas, March 17, 2009).

- Officers sought protection from investigations they felt were being conducted improperly.
- Officers claimed Police Chief was considering anonymous letters as part of investigations.
- Officers argued that violation of Subchapter B (related to complaints) deprived hearing examiner of jurisdiction.
- Court rejected argument that Subchapter B is jurisdictional. Court seems to imply that the legal process could be abated to allow for compliance.



Treadway v. Holder

309 SW3d 780 (Tex. Appeals – Austin, 2010).

- Corrections officer accused of falsely reporting time spent with trainee. Accusation made by co-worker.
- Investigation revealed corrections officer was dishonest in her reporting, and she was terminated for false reports and lying, but not for missing training sessions.
- She appealed on grounds that she was not provided with a copy of the signed complaint against her.



Treadway v. Holder

309 SW3d 780 (Tex. Appeals – Austin, April 16, 2010).

- County's response: the internal report was not required to meet the requirements of a "Complaint" pursuant to Tex. Govt. Code §614.
- Court determined that "Complaint" for purposes of Subchapter B includes *any allegation* of misconduct that could give rise to disciplinary action, whether internal or external, and regardless if it is made by a supervisor or peer of the employee at issue.



City of Houston v. Wilburn

2013 LEXIS 8091 (Tex.App.-Houston [1st Dist.] 2013, *no pet. h.*).

- When a Fire Captain tested positive for cocaine, the City provided him a signed letter from Acting Dept. Chief notifying him that he was placed on paid suspension pending investigation of misconduct occurring on or about the date of the urine test.
- Subsequent signed letter from the City Medical Review Officer confirmed that the Fire Capt.'s lab results positive for cocaine.
- Court found no requirement for a single written, signed complainant and determined there was "substantial compliance" with Tex. Govt. Code §614.021-614.023, which is sufficient.



Baldrige v. Spring Branch ISD Police Dept.

2013 WL 4680219 (Tex.App. – Houston [1st Dist.] 2013.

- Baldrige got cross-ways with property owner who claimed softball players damaged his fence.
- Property owner submitted written, signed statement that was not given to officer.
- Officer later written up for using Bluetooth device while on duty in violation of policy.
- Supervisor recommended termination based on citizen complaint and other procedural violations, including Bluetooth incident.
- Court found it was sufficient to terminate Officer based on written complaint regarding Bluetooth device.



City of Lubbock v. Hennsley

2013 WL 5043360 (Tex. App. – Amarillo, 2013).

- Officer Hennsley received a memo from supervising officer regarding a work incident.
- Five months later, Officer Hennsley received a “letter of charges” with information from the prior memo as well as other concerns learned in the subsequent investigation.
- Officer responded in writing to the “letter of charges”.
- Hearing officer refused to consider letter because it was completed after the investigation.
- Termination reduced by Hearing Examiner to 15 day suspension.
- Court held that both documents would be considered, and returned matter for full hearing.



Bracey v. City of Killeen

417 SW3d 94 (Tex. App. – Austin, 2013).

- Killeen adopted Civil Service Act, but still fell under Subchapter B.
- Officer Bracey indefinitely suspended for violating Civil Service rules after receiving letter of disciplinary action.
- Officer Bracey argued letter was based on complaints of two fellow officers, and he had not received signed, written complaints from them.
- Court found that Officer Bracey should have received the complaints, but that nothing in the statutes says automatic reinstatement is the sole remedy.



Harris Co. Sherriff's

Civil Service Commission v. Guthrie

423 SW3d 523 (Tex. App. – Houston [14th Dist.] 2014).

- Deputy investigated the theft of \$17.00 from his wife's car in another jurisdiction. Deputy shut down car wash and detained employees.
- At least three signed complaints about Deputy's behavior were provided to Deputy, but nothing from the Vice President.
- Car Wash Vice President made oral complaint to Department by phone that was referenced in termination letter.
- Court noted the multiple written, signed complaints were sufficient, and that the termination was not based on an anonymous or unsubstantiated complaint.



Lessons Learned

- Prepare a signed, written complaint for every investigation, regardless of if the complaint is initiated internally or by a citizen.
- Officer will get the benefit of the doubt.
- Each complaint must be investigated.
- Additional misconduct discovered during the investigation warrants a new and separate, written, signed complaint to be served upon the officer or employee.
- Go back and fix mistakes.



F-5 SEPARATION REPORT

The head of a law enforcement agency or the head's designee shall submit a report to the Commission on a form prescribed by the Commission regarding a person licensed under this Chapter who (1) resigns or retires from employment with the law enforcement agency, (2) whose appointment with the law enforcement agency is terminated, or (3) who separates from the law enforcement agency for any other reason.



F-5 SEPARATION REPORT

The report must be submitted not later than the seventh business day after the date the license holder:

- Resigns, retires, is terminated, or separates from the agency; and
- Exhausts all administrative appeals available to the license holder, if applicable.



F-5 SEPARATION REPORT

The head of a law enforcement agency or the head's designee shall include in the report required under Subsection (a) a statement on whether the license holder was (1) ***honorably discharged***, (2) ***generally discharged***, or (3) ***dishonorably discharged*** and, as required by the Commission, an explanation of the circumstances under which the person resigned, retired, or was terminated.



SEPARATION OF LICENSEE (F-5)
LICENSEE INFORMATION (Occupations Code 1701.452)

Non-refundable \$35 fee for paper form. Money order, agency or cashier's check. (5541)

1. First Name	2. M.I.	3. Last Name	4. Suffix (Jr., etc.)
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12. APPOINTMENT

- ☐ Peace Officer ☐ County / Contract Jailer ☐ Telecommunicator ☐ Medical Corporation P.O.
☐ Public Security Officer ☐ Reserve Officer (licensed reserve or conditional only)

13. TCOLE Agency Number

14. Appointing Agency

15. DESIGNATION OF SEPARATION: (Check only one).

Report must be submitted not later than the seventh business day after the date the license holder:

(1) resigns, retires, or separates from the agency; or

(2) exhausts all administrative appeals available to the license holder if the license holder was terminated based on an allegation of misconduct. Occupations Code 1701.452.

16. Date Appointed: _____

17. Separation Date: _____

☐ **Honorably Discharged**

Retired, resigned, or separated from employment with or died while employed by a law enforcement agency while in good standing and not because of pending or final disciplinary actions or a documented performance problem.

☐ **General Discharge**

(A) was terminated by, retired or resigned from, or died while in the employed of a law enforcement agency and the separation was related to a disciplinary investigation of conduct that is not included in the definition of dishonorably discharged; or

(B) was terminated by or retired or resigned from a law enforcement agency and the separation was for a documented performance problem and was not because of a reduction in workforce or an at-will employment decision.

☐ **Dishonorably Discharged**

(A) was terminated, by a law enforcement agency or retired or resigned in lieu of termination by the agency in relation to allegations of criminal misconduct; or

(B) was terminated, by a law enforcement agency or retired or resigned in lieu of termination by the agency for insubordination or untruthfulness.

Agency Administrator or Designee (Type or Print)

Signature

Date



APPEALING THE DISCHARGE

- A person who is the subject of an employment termination report . . . may contest information contained in the report by submitting to the law enforcement agency and to the Commission a written petition on a form prescribed by the Commission for a correction of the report not later than the 30th day after the date the person receives a copy of the report.
- On receipt of the petition, the Commission shall refer the petition to the State Office of Administrative Hearings.



THE HEARING

- In a proceeding to contest information in an employment termination report for a report based on alleged misconduct, an administrative law judge shall determine if the alleged misconduct occurred by a preponderance of the evidence.
- If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall order the Commission to change the report.
- The law enforcement agency ***shall*** replace the original employment termination report with the changed report.



In re Earnest Spradling

Texas State Office of Administrative Hearings, 2006 WL 4488774 (May 31, 2006)

- Spradling was a police officer for 10 weeks.
- Spradling found part of marijuana cigarette during a stop, and supervisor at scene said to grind it in to ground.
- Another supervising officer thought this could be a criminal act of illegally destroying evidence.
- Supervisor (not Chief) said he could resign before investigation began.
- Chief gave general discharge because he said investigation had already begun.
- Hearing Officer found that Supervisor's agreement not binding on Chief and because investigation had begun, general discharge was appropriate.



In re Tammy Lewis

Texas State Office of Administrative Hearings, 2006 WL 4470573 (September 27, 2006)

- Officer Lewis served 7 years before going on leave related to medical issues.
- As her Department leave was expiring, Officer Lewis met with supervisors who told her to return to work or file for additional leave by a certain date.
- Officer Lewis did neither and was dismissed.
- Hearing Officer focused on written notice and warnings from supervisors in upholding dishonorable discharge



In re Kenneth Singleton

Texas State Office of Administrative Hearings, 2007 WL 3287160 (October 18, 2007)

- After affair with 19-year-old, Officer Singleton resigned, withdrew resignation, and then resigned again.
- Officer Singleton understood he would get an “honorable discharge” but discharge was “general”.
- After resignation, he was cleared of sexual misconduct, but found to have made one personal call on Department phone.
- Evidence supported that he was under investigation and “general discharge” was appropriate.
- Attached explanation with unsubstantiated findings ordered to be amended.



In re Donald Fisher

**Texas State Office of Administrative Hearings, 2008 WL 95240
(January 2, 2008)**

- Police Chief unable to find paperwork from previous shift that Officer Fisher worked.
- Chief fired Officer Fisher and completed an F5 Report, marking “honorably discharged” but included a written explanation with negative statements regarding policy violations by Fisher.
- Hearing Officer found explanation should be revised to say that Officer Fisher was terminated under the at-will employment provisions in place by the City.



In re Alison Lange

**Texas State Office of Administrative Hearings, 2008 WL 538896
(February 19, 2008)**

- Officer Lange fired and given a “dishonorable discharge” that was not signed (as required by law).
- Discharge report noted policy violations for untruthfulness and insubordination.
- Rule at time required violated policy be attached, which was not done.
- Because City failed to provide any proof of which policy was violated, there was insufficient proof to establish F5 report designation was correct.
- Department ordered to give Officer Lange an “honorable discharge” but left negative explanation.



In re Keith Preusse

State Office of Administrative Hearings, August 9, 2010

- Officer appealed a 5 day disciplinary suspension in 2008.
- Internal administrative appeal dragged out due to disability leave for Officer's unrelated knee injury.
- Appeal still pending at time of Officer's planned retirement in 2009.
- Because of retirement, appeal of suspension negated by DPS, which gave General Discharge because officer resigned/retired during investigation.
- There was credible evidence that Officer retired due to disability and previous plan to retire.
- Order by SOAH for Honorable Discharge, even though Officer not in good standing at time of retirement.



In re Lauren Green

State Office of Administrative Hearings, August 10, 2010

- Officer hired on probationary status until April 2010 after finishing Academy in February 2009.
- Completed firearm qualification in March 2009; failed in May 2009 on first attempt; second attempt successful.
- Failed in October 2009, but testing not done properly.
- Terminated December 2010 for failing to qualify on handgun and given "General Discharge- Failed to Complete Probationary Period". No other reason given.
- SOAH found that Officer did not fail qualification tests, and because no other reason was given, the Officer was entitled to an Honorable Discharge.



In re Jennifer Dodgen

State Office of Administrative Hearings

- Officer told to spend two days doing administrative work because her supervisor was going to be out of town.
- When Supervisor went out of town, Officer went to charity event with other officers and never finished her 16 hours of training.
- Because of how late she stayed at event, Officer said she would be late next day, but instead was no show.



In re Jennifer Dodgen

State Office of Administrative Hearings

- Other officers: Officer said she had completed all of the administrative work.
- Officer terminated for insubordination- Dishonorable Discharge.
- Officer wanted polygraph, but denied based on consistency of other officers' stories. Officer passed private polygraph that was questionable.
- SOAH Judge said that private polygraph result proved Officer was telling truth and other officers were therefore liars. Officer given a General Discharge.



In re Dennis Stephens

State Office of Administrative Hearings

- Officer had long history of feuding with adjourning law enforcement group. Officer moved to a new part of County, away from offended group.
- Officer claimed he was moved because he did not vote for his boss. Officer refused the new assignment and walked out.
- Officer received General Discharge claiming mutual agreement to leave employment.
- Officer asked SOAH Officer for finding that he had been "terminated at will"



In re Dennis Stephens

State Office of Administrative Hearings

- SOAH Officer very critical of lack of documented employment problems and found Officer was not terminated at will, but resigned. Because of resignation no “mutual agreement”.
- Because of lack of documentation, Hearing Officer ordered that Officer be given Honorable Discharge as “resigned in good standing”, even though Hearing Officer was quite critical of Officer’s behavior.



In re A. Drahos

State Office of Administrative Hearings

- Officer called supervisor and made threats against his wife, sister-in-law and any officers who might try to arrest him.
- Written complaint prepared about incident by supervisor.
- Chief presented written complaint to Officer, who wadded it up and said he would resign instead of responding.
- Officer received General Discharge since Officer resigned before investigation could be completed.



In re A. Drahos

State Office of Administrative Hearings

- Officer testified that statements were merely jokes.
- Officer felt the complaint was “ridiculous” and said he did not know there was an investigation.
- Evidence showed resignation was prompted by investigation, which met criteria of General Discharge and not an Honorable Discharge.



City of Athens v. MacAvoy

353 SW 3d 905 (Tex. App. – Tyler, June 30, 2011, *pet. denied*).

- Officer MacAvoy accused of having affair with Mrs. L while on duty. Mr. or Mrs. L signed written complaints, but they were not given to Officer MacAvoy.
- Police Chief, acting as the Complainant, prepared a written complaint, signed, and gave it to MacAvoy.
- Hearing officer ordered reinstatement.



City of Athens v. MacAvoy

353 SW 3d 905 (Tex. App. – Tyler, June 30, 2011, *pet. denied*).

- Court of Appeals found complaint statute mandatory, but not jurisdictional. Automatic reinstatement is a remedy not authorized by the act, and City prevailed.
- Hearing Examiner exceeded his jurisdiction when MacAvoy was reinstated without adjudication on the merits and case was remanded.
- MacAvoy filed Petition for Review and Supreme Court denied it



Lessons Learned

- Be very careful in selecting proper category
- No substitute for documentation
- Officers will usually get the benefit of the doubt
- Expensive process to defend. Many of the problems we see are related to the expense of these matters- such as, cities handling them without attorneys
- Always think through the termination of police officers



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