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## GENERAL RULES

### ARTICLE 1:00 – OFFICERS

In the Wilmington Fire Department, the term “officer” shall mean both Lieutenant or higher; and also those Firefighters designated by the appropriate authority to act out of rank, whether or not they are compensated for such action status.

#### SECTION

- 1:01 All officers of the Fire Department shall treat all subordinates with fairness and impartiality. *Class F Violation*
- 1:02 They shall preserve order and strict discipline in their commands and have sufficient personnel present to perform required duties properly. *Class F Violation*
- 1:03 They shall have a thorough knowledge of the qualifications of subordinates under their immediate supervision and instruct them in their fire duties and other assignments. *Class F Violation*
- 1:04 They shall insure appropriate action in any case of incompetence, negligence, or misconduct. *Class E Violation*
- 1:05 They shall not permit the use of duty time, motor vehicles, equipment or supplies, for purposes other than Fire Department business, unless such use is approved by the Chief of Fire. *Class E Violation*
- 1:06 They shall prohibit soliciting or collection of money in or around the Fire Department property, unless it is authorized by the Chief of Fire. *Class F Violation*
- 1:07 They shall report all property that is damaged, lost, or found, during their tour of duty, promptly to their superior officers describing in detail the location; time of incident; and any identifying marks on the property. *Class E Violation*
- 1:08 All officers in charge of fires or other emergencies are granted permission to give information regarding these incidents to any qualified news reporter. The correction of any error which may appear shall be referred to the Chief of Fire for such action as he may deem advisable. *Class F Violation*
- 1:09 They shall complete and forward, through normal channels, all Fire Department reports; forms; letters; etc., concerning the personnel and activities of their commands which are required for the efficient administration of the Fire Department. *Class E Violation*

NOTE: In order to be complete, a Fire Department letter shall contain the five W's and one H; namely who, what, when, where, why, and how.

- 1:10 They shall become members of Official Trial Boards, or a prosecuting officer or a defense officer, if so ordered by the appropriate officer and/or authority. *Class F Violation*
- 1:11 They shall have the full power and authority to give and/or administer verbal and/or written orders in order to perform their duties and responsibilities in the Fire Department: *Class E Violation*
  - (A) Such verbal and/or written orders shall be given and/or administered in a proper and efficient manner;
  - (B) Such verbal and/or written orders shall not violate Fire Department Rules, Regulations, procedures, and/or policies.
- 1:12 They shall designate Acting Officers in their command as outlined in the S. O. P. for Acting Officers. *Class F Violation*
- 1:13 The specific duties and/or responsibilities stated for "officers" shall not be construed as limiting the assignment of duties and/or responsibilities of "officers" to only those stated in the Fire Department Rules and Regulations. *Class F Violation*

## **ARTICLE 2:00 - FIRE COMPANY OFFICERS**

A company officer in the Fire Department shall mean any Captain, Lieutenant, or member acting as such, who has been assigned the responsibility of a fire suppression company or special units.

### **SECTION**

- 2:01 He/she shall have a thorough knowledge of the construction and arrangement of all buildings of residential, institutional, educational, industrial, mercantile, business and place of assembly occupancies in his/her response district; and shall have a general knowledge of the construction and arrangement of all such buildings in the City of Wilmington. *Class E Violation*
- 2:02 He/she shall have a thorough knowledge of the location of streets, hydrants, and the boundary lines of the City of Wilmington. *Class E Violation*
- 2:03 Weather permitting, he/she shall be responsible for seeing that the national colors are raised and lowered at the fire station. *Class F Violation*

- 2:04 He/she shall assemble his/her command at the start of each tour of duty for roll call, inspection of designated attire, and the reading of all orders, notices, and other information pertaining to Fire Department operations. *Class F Violation*
- 2:05 He/she shall make quarterly inspections of the Fire Department identification cards, uniforms, and turnout gear of members of his/her command. *Class F Violation*
- 2:06 He/she shall be responsible for the proper handling of the Fire Prevention activities and programs scheduled for his/her command. *Class F Violation*
- 2:07 He/she shall not permit any unauthorized persons to loiter in or around the fire stations. *Class F Violation*
- 2:08 He/she shall prohibit any person who is not a member of the Fire Department from riding on an apparatus at any time, except as may be authorized by the Chief of Fire. *Class E Violation*
- 2:09 He/she shall authorize leave of up to two (2) hours for any member of his/her command, so long as another member will cover or hold over for the member on leave. *Class E Violation*
- 2:10 He/she shall authorize members of his/her command to work as a replacement for other members if the following conditions are met: *Class E Violation*
- (A) At least twenty-four (24) hours notice is given to the commanding officer of the member for whom another member is substituting;
  - (B) The commanding officer approves the substitution;
  - (C) Member is qualified to substitute in the assigned position;
  - (D) Such substitution shall not require the payment of overtime compensation.
- 2:11 He/she shall report, by telephone or in person, to his/her respective Battalion Chief when a member of his/her command has allegedly violated the rules and regulations; an order; or procedures governing the Fire Department. This Section (2:11) shall not in any way relieve the company officer of the responsibility for the preparation and replacement of charges on the member accused of the alleged violation. *Class E Violation*

- 2:12 Before being relieved from duty, he/she shall acquaint his/her relief thoroughly with all pertinent information regarding the business of his/her command and shall make certain that his/her relief understands the information completely. *Class F Violation*
- 2:13 He/she shall be held responsible to review and approve all entries in the House Journal during his/her tour of duty; such approval shall be indicated by his/her signature in the House Journal prior to being relieved from duty. *Class F Violation*
- 2:14 He/she shall be responsible for receiving by radio from the Fire Dispatcher two (2) alarm messages which are the same before responding to any alarm. *Class E Violation*
- 2:15 Prior to responding to an alarm, he/she shall confer with the house watchman to determine whether the house watchman has received the correct alarm and proper location. *Class E Violation*
- 2:16 While in route to an alarm he/she shall notify the Fire Dispatcher immediately if the alarm is outside the boundary lines of the City of Wilmington. *Class E Violation*
- 2:17 He/she shall make sure that the house watchman notifies the on-duty Fire Dispatcher promptly and gives him complete, accurate information when a verbal alarm is received at the fire station or when medical assistance is given at the fire station. *Class E Violation*
- 2:18 He/she shall respond to emergency alarms with his/her company, determine the correct route to be taken, supervise the proper handling of the apparatus, make proper decisions about methods of combating fires and direct firefighting operations until relieved by a superior officer. *Class E Violation*
- 2:19 Upon arrival at an alarm you discover that the alarm is outside the boundary lines of the City of Wilmington, you shall notify the on-duty Fire Dispatcher by radio and render the same service as if the alarm was within City limits, if this is feasible. *Class F Violation*
- 2:20 He/she shall use his/her discretion in determining if the distance outside the City limits or other circumstances makes it impossible for his/her command to continue to respond to an alarm which is outside the boundary lines of the City of Wilmington. *Class F Violation*
- 2:21 He/she shall notify the on-duty Fire Dispatcher, by radio upon arrival at the alarm scene, stating the nature and present condition of the alarm. *Class E Violation*

- 2:22 He/she shall notify the on-duty Fire Dispatcher promptly when his/her command is available for service and when his/her apparatus is back in the fire station. *Class E Violation*
- 2:23 He/she shall use his/her best judgment as to when anti-skid devices (skid chains, tractioners, etc.,) should be put on or taken off the apparatus; and shall be responsible for the proper use of these devices. *Class E Violation*
- 2:24 He/she shall be responsible for instructing all members of his/her command in proper fire fighting techniques. *Class F Violation*
- 2:25 He/she shall be responsible for making sure that all members of his/her command have a thorough knowledge of the location of streets, hydrants, and the boundary lines of the City of Wilmington. *Class F Violation*
- 2:26 He/she shall be responsible for making sure that all members of his/her command qualify as apparatus operators mastering all details of the operation of the apparatus. *Class F Violation*
- 2:27 He/she shall supervise the proper handling of the apparatus at all times and, as part of the driving training program, may order members other than the assigned operator to drive or tiller the apparatus when returning from alarms or other activities. *Class E Violation*
- 2:28 He/she shall notify the Fire Dispatcher promptly by radio every time the apparatus in his/her command leaves the fire station regardless of the reason. *Class E Violation*

## **ARTICLE 3:00 – CONDUCT**

### SECTION

3:01 All members of the Fire Department are expected at all times to:

- (A) Give their undivided attention to their assigned duties; *Class D Violation*
- (B) Act with courage and honesty in all situations; *Class A Violation*
- (C) Carry out orders of superiors promptly and properly; *Class A Violation*
- (D) Extend cooperation, courtesy, and respect to the public and to fellow members; *Class E Violation*

- (E) Understand thoroughly and conform to all rules and regulations, orders, and procedures for the administration and operation of the Fire Department;  
*Class E Violation*

- 3:02 (A) Members of the Fire Department shall reside within the boundary lines of the City of Wilmington within six (6) months of the date of their employment and shall remain residents of the City of Wilmington until such time as they have completed five (5) years of service.

Members shall thoroughly understand and obey City Charter Section 3-304 – Citizenship and Residence as well as City Code Section 2-151 - Employee's Annual Declaration of Residency; Officer and Employee Residency Review Board. *Class A Violation*

- (B) Any member who changes his/her residence must give the Fire Department three (3) days written notice, in memorandum form, prior to the date of the residence change. *Class E Violation*

- 3:03 Members of the Fire Department shall have a telephone in their residence and shall keep The Fire Department informed of the telephone number where they can be contacted at their residence, as well as, the number where they can be contacted if they are engaged in supplemental employment. Any member who changes his/her telephone number must inform the Fire Department of his/her new telephone number. It shall be a written notice, in memorandum form, and shall be submitted within three (3) days after the day of the change. *Class E Violation*

- 3:04 Members of the Fire Department are required to have a Fire Department Identification Card available for inspection while on duty. *Class F Violation*

- 3:05 Members of the Fire Department, while on duty, shall comply with health and safety standards for hair, beards, and jewelry:

- (A) Head hair shall be neatly trimmed and except for shingled or cropped areas, shall not protrude below any point along the full band line of the helmet. Head hair at the back of the neck shall be tapered neatly and shall not extend below the shirt collar. *Class E Violation*
- (B) Sideburns shall not be longer than the earlobe straight down, and kept neatly trimmed. Sideburns also shall be kept close to the face to avoid any possibility of a defective face piece seal. *Class E Violation*

- (C) Moustaches may be worn, but moustaches shall not extend beyond the corners of the mouth, shall not extend below any portion of the upper lip, and shall be kept closely trimmed. *Class E Violation*
- (D) Beards and goatees are not authorized and shall not be worn. *Class E Violation*
- (E) All members of the Fire Department shall be otherwise freshly shaven when reporting for duty. *Class E Violation*
- (F) Earrings and necklaces are prohibited while in uniform. *Class E Violation*

3:06 Members of the Fire Department, while on duty or in uniform, shall not take part in any way in any political or partisan meeting; session; or convention in which political action would be required. *Class E Violation*

3:07 Members of the Fire Department shall not address another member by making reference to his/her race, color, religion, or physical characteristics. *Class E Violation*

3:08 A subordinate shall address a superior officer by his/her proper title. *Class E Violation*

3:09 An officer shall address a firefighter by his/her proper name and/or rank. *Class E Violation*

3:10 Rendering a Military Hand Salute:

While in public, sworn members of the department in uniform are required to salute when they meet and recognize superior officers also in uniform. Uniformed personnel will always render a proper military salute to the Mayor, the Director of Public Safety, and the Chief of Fire, regardless of their attire. All Superior Officers will promptly and properly acknowledge a salute rendered by subordinate personnel. *Class F Violation*

Uniformed officers will render full military honors to the national colors and the anthem at all public safety affairs. Violation of this regulation will result in disciplinary action as specified for a *Class F Violation*.

3:10A Addressing a Superior Officer

Members of the department shall not omit or alter any title when addressing a superior officer. Violation of this regulation will result in disciplinary action as specified for a *Class F Violation*.



When reporting to a superior officer (rank of Lieutenant or above) in his/her office, regardless of the superior officer's attire, members of the department who are in uniform, will remove their headgear, knock and enter only when told to do so. The reporting member will approach within two feet of the superior officer and halt. The member will then render a proper military salute, holding same until returned by the superior officer. Officers will then state the reason of the visit. *Class F Violation*

- 3:11 Members assigned or detailed to the Fire Administration shall not be late for his/her assigned tour of duty without prior approval from his/her superior officer or appropriate authority. *Class D Violation*
- 3:12 Members of the Fire Department shall not use or allow to be used: duty time, motor vehicle, equipment or supplies for purposes other than Fire Department business unless such use is approved by the Chief Officer (Battalion Chief or Deputy Chief). *Class E Violation*
- 3:13 Members of the Fire Department who are off-duty shall be subject to be recalled to duty at any. Recalls to duty shall be in accordance with the S. O. P. in effect at that time. *Class E Violation*
- 3:14 It shall be the duty of every member of the Fire Department, upon obtaining information affecting the interest of any segment of the Fire Service, to report the information promptly through normal channels to the Chief of Fire. *Class E Violation*
- 3:15 Members of the Fire Department shall request permission, through the chain of command, to discuss Fire Department matters personally with superior officers. A member may submit a written letter on any matter with which he/she is concerned at any time to the Chief of Fire. *Class E Violation*
- 3:16 No member shall make an official report or statement which may injure the reputation of another member of the Fire Department, when the report or statement is knowingly incorrect or false; or when said member should have known the report or statement to be incorrect or false. *Class E Violation*
- 3:17 No member shall make an official report or statement which may injure the reputation, discipline, or efficient operation of the Fire Department, when the report or statement is knowingly incorrect or false, or when said member should have known the report or statement to be incorrect or false. *Class E Violation*

- 3:18 All citations for violations of any motor vehicle law except parking violations shall be promptly reported by the member concerned to his/her superior officer. The superior officer shall report said violations through the proper chain of command. *Class E Violation*
- 3:19 When an on-duty member of the Fire Department is personally involved in an accident, however trivial, or in any unusual occurrence which may directly involve the Fire Department with persons or property of any citizen, he/she shall report it promptly to his/her superior officer who shall notify proper authorities. An accident in the Fire Department shall be considered herein as a happening that is not expected or intended (sometimes resulting from negligence or imprudence) that results in injury, loss, and/or damage to life and/or property. *Class D Violation*
- 3:20 When an off-duty member is personally involved in an accident or unusual occurrence involving loss of life, injury, or property damage; and that member is aware, or reasonably should be aware, that such event may directly involve the Fire Department with any other citizen; the member shall promptly submit a written report of that event through normal channels when he/she returns to duty. If the event involves loss of life, serious injury, or significant property damage, the member shall also report the event as soon as possible by telephone or in person to the on-duty Officer at his/her assigned station, who shall notify the proper authorities. The member involved shall submit a written statement on all such occurrences or accidents. An accident in the Fire Department shall be considered herein as a happening that is not expected or intended (sometimes resulting from negligence or imprudence) that results in injury, loss, and/or damage to life and/or property. *Class E Violation*
- 3:21 All sports and recreational activities; watching or listening to television or radio; and reading of newspapers, magazines, or books not directly related to the operation and administration of the Fire Department is prohibited during those parts of the tour of duty scheduled for schooling; cleaning and maintenance of the fire station, apparatus, tools, and equipment; or other fire service duties. *Class F Violation*
- 3:22 Pornographic materials (videos, magazines, films, etc.) are not permitted on fire department property. These materials are not limited to those items listed above. *Class E Violation*
- 3:23 No member of the Fire Department shall smoke while actively engaged in firefighting or other emergency service; and/or no member shall smoke while on any apparatus at any time; or in the vicinity of any apparatus being refueled or any other unauthorized areas. *Class E Violation*

- 3:24 A member of the Fire Department shall ride on or in an apparatus in a manner which is safe and in accordance with Fire Department practices and/or procedures for riders. *Class E Violation*
- 3:25 Gambling in or around Fire Department property is absolutely prohibited. *Class D Violation*
- 3:26 Deadly weapons of any kind are prohibited on or around Fire Department property, unless authorized by the/she Chief of Fire. *Class C Violation*
- 3:27 Use, sale, or possession of alcohol or controlled substances is prohibited (see Collective Bargaining Agreement Article 27). *Class A Violation*
- 3:28 No change or alteration in Fire Department buildings, apparatus, automobiles, equipment, or appliances shall be permitted, except on requisition through normal channels; and with the approval of the Chief of Fire or his/her representative. *Class E Violation*
- 3:29 Permission must be obtained from the Chief of Fire or his/her representative for the acceptance or use of appliances, equipment, or materials of any kind not furnished by this Fire Department. *Class F Violation*
- 3:30 Members of the Fire Department shall not sell, lend, or take away any public property without proper authority. *Class A Violation*
- 3:31 If a member of the Fire Department should lose any Fire Department property entrusted to him, he/she shall promptly report same. Where negligence is established, responsibility for cost or replacement shall be determined by the Chief of Fire. *Class E Violation*
- 3:32 No member of the Fire Department shall, in any way, undertake supplementary employment while on duty or in uniform, unless authorized by the Chief of Fire. Under no circumstances shall any member on sick or injured leave undertake supplementary employment. *Class A Violation*
- 3:33 Members of the Fire Department shall not engage in off-duty employment which may impair their ability to perform their assigned Fire Department duties. Under no circumstances is any member to be allowed to work more than four (4) hours at a second job on any regular work day. *Class E Violation*
- 3:34 Members of the Fire Department must obtain permission from the Chief of Fire as a prerequisite to the undertaking of supplementary employment. *Class E Violation*

- 3:35 A member of the Fire Department when on duty or in uniform shall give his/her name and badge number to all persons when requested. *Class F Violation*
- 3:36 No compensation, reward, or consideration, shall be solicited from any sources by any member of the Fire Department for services performed in the line of duty. *Class B Violation*
- 3:37 Members of the Fire Department while on duty in uniform, or in connection with their official duties, shall not recommend to citizens served by the Fire Department any physicians, attorneys, or others, either individuals, companies or corporations, who provide professional or other services of any kind. *Class E Violation*
- 3:38 No member of the Fire Department shall use a photograph of himself in uniform or use his/her official title, rank or membership in the Fire Department in connection with any advertisement or commercial enterprise or give Fire Department information (written, recorded, filmed, still pictures; or official reports, letters, memoranda, or other documents) to any person(s) unless so authorized by the Chief of Fire. Excluded from this rule are letters and/or copies of special orders that were originally directed to the Fire Department member who wishes to make them public. *Class D Violation*
- 3:39 Members of the Fire Department shall not be authorized to act as public information officers or official spokesmen for the Fire Department for the purpose of making or releasing official statements or comments on the operation of the Fire Department, unless authorized by the Chief of Fire. *Class F Violation*
- 3:40 No member shall violate any General Order, S. O. P. or General Notice. *Class E Violation*

### **RELIEVING A MEMBER FROM DUTY**

Prior to relieving a member of the Fire Department from duty, a chief officer if possible, shall allow the accused member to answer the allegation being made against him, and shall then decide whether to relieve the member from duty or not.

When any member of the Fire Department is relieved of duty for a violation of the rules and regulations or any order governing the Fire Department, his/her case shall be reviewed by his/her respective Division Commander or by the Chief of Fire within forty-eight (48) hours; and a decision shall be rendered as to whether or not said member should be restored to duty prior to the official hearing of his/her case.

A member of the Fire Department under charge(s) and relieved of duty shall return to his / her commanding officer or member acting as such pending disposition of the case, the following Fire Department property which includes, but is not limited to:

- (A) His/her Fire Department badges.
- (B) His/her Fire Department identification card.
- (C) His/her turnout gear.

A member of the Fire Department who is under charge(s) and relieved from duty shall receive no pay from the City of Wilmington during the time he/she is relieved from duty, pending results of his/her Official Trial Board Hearing:

- (A) If the Official Trial Board decision is that the accused member is "innocent" of the charge which caused him to be relieved from duty, he/she shall receive all pay for the period of time during which was relieved from duty in the Fire Department.
- (B) If the Official Trial Board Decision is that the accused member is "guilty" of the charge which caused him to be relieved from duty, the member shall forfeit all rights to pay for and/or during the time he/she was relieved from duty in the Fire Department, unless the Trial Board orders differently.

A member of the Fire Department under charge(s) who has received a judgment from an Official Trial Board of "Guilty" and a penalty of Dismissal from the Fire Department shall be relieved of duty until the member has exhausted his/her appeal time. In a case where the member does appeal, the member shall be relieved from duty without pay until a judgment is received from the appeal panel to uphold or overrule the decision of the Official Trial Board.

A member of the Fire Department under charge(s) and relieved of duty, if he/she appears at his/her Official Trial Board Hearing or at his/her appeal, shall be in civilian clothes.

**VIOLATION OF THE FOLLOWING TEN (10) RULES AND REGULATIONS MAY BE  
DEEMED GROUNDS FOR ANY MEMBER OF THE FIRE DEPARTMENT TO BE  
IMMEDIATELY RELIEVED FROM DUTY:**

3:41 No member of the Fire Department shall be insubordinate at any time. Insubordination shall be considered herein as:

Willful, intentional disobedience; or

Assaulting or resisting authority; or

The use of insulting or abusive language.

*Class A Violation*

3:42 No member of the Fire Department shall report for duty in an unfit condition or be in an unfit condition while on duty. An unfit condition shall be considered herein as:

(A) Being under the influence of intoxicants or unauthorized drugs of any kind. *Class A Violation*

(B) Being injured or ill: When said member becomes or is aware, or when said member should have known that his/her injury or illness is a hazard to himself and/or other members or persons, a member shall immediately inform his/her superior officer, prior to assuming any duties and/or reporting for duty, his/her physical condition when such member is uncertain as to the existence, nature or extent of his/her illness or injury. *Class A Violation*

Proper charges shall be preferred by the respective officer, and arrangements shall be made to transport the unfit member to a hospital and/or his/her home.

3:43 Absent Without Leave (A.W.O.L.)

Any member who fails to appear for duty at the date, time, and location at which he/she has been assigned is absent without leave.

If a member does not contact the Fire Department prior to the start of his/her shift, he/she is considered A.W.O.L. without notice, and is subject to punishment.

*Class B Violation*

If a member contacts the department prior to the start of his/her shift, he/she is considered A.W.O.L. with notice and is subject to punishment in the event that no on-duty personnel will agree to hold over. *Class D Violation*

- 3:44 No member of the Fire Department shall leave an alarm scene or the fire station during his/her assigned tour of duty without prior approval from his/her superior officer. *Class A Violation*
- 3:45 Fire officers and Firefighters are sworn officers of the law and as such shall conduct themselves in a manner consistent with the obligations associated with that oath. Conduct unbecoming a fire officer or firefighter shall include conduct which adversely affects the performance of his/her assigned duties and/or the responsibilities of other members of the Fire Department duty. *Class A Violation*
- 3:46 No member of the Fire Department shall participate in and/or incite an altercation while on duty. *Class A Violation*
- 3:47 In the course of Fire Department investigatory proceedings, unless a member has properly exercised the constitutional right against self-incrimination, a member of the Fire Department shall answer questions and/or make written statements which are demanded by him by investigating and/or Superior Officers in accordance with Fire Department Rules and Regulations; Procedures; and Policies. A member of the Fire Department who refuses to respond to questions and/or refuses to make written statements demanded of him by Investigating and/or Superior Officers shall be made aware of the following:
- That his/her refusal to respond to questions and/or his/her refusal to make written statements demanded of him by Investigating and/or Superior Officers may result in his/her dismissal from the Department. *Class A Violation*
- 3:48 No member shall engage in activities which under the provisions of Delaware State law would constitute a violation of a criminal statute pertaining to moral turpitude, any violation against the person, or a criminal offense which is punishable by a penalty equivalent to a class "c" felony as set forth in Title 11 Current Edition. *Class A Violation*
- 3:49 No member of the Department shall engage in horseplay while on duty or at any time while on Department property and/or through the use of departmental equipment. Horseplay includes but is not limited to engaging in such activities as "bagging" (i.e., dropping of water or other objects on firefighters) or other acts or pranks which, by their nature, could injure the firefighter or some other individual, or damage property. *Class C Violation*

3:50 Members of the Department who hold a supervisory position either on a permanent basis or in an acting capacity, have an affirmative duty to maintain discipline and are accountable for compliance with the rules and regulations by subordinate firefighters, while such supervisor is in command of those subordinates. The failure of a supervisor to take corrective and affirmative steps to investigate conduct of a subordinate which the supervisor knows or should know is in violation of the rules and regulations is a failure to supervise. *Class D Violation*

### 3:51 Sexual Harassment

#### 1. Employee Related

Members of the department are prohibited from engaging in activity defined as Sexual Harassment. For the purpose of this rule, sexual harassment is defined as any unwelcome sexual advances, requests for sexual favor or other verbal or physical conduct of a sexual nature when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
- C. Such conduct has the purpose or effect of unreasonable interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

NOTE: An "employment decision" includes, but is not limited to, promotions, initial employment, demotion, transfer, reassignment, pay, job status, or other job opportunities.

#### 2. Citizen Related

Members of the department are prohibited from engaging in activity with a citizen while acting in the official capacity that can be defined as sexual harassment. Sexual harassment is defined as any unwelcome sexual advances, request for sexual favors or other verbal or physical conduct of a sexual nature.

Any violation of this section will result in disciplinary action as specified for a *Class C Violation*. Any violation of this section that constitutes the elements of a criminal offense specified in Title 11 Current Edition, will result in disciplinary as specified for a *Class A Violation*. Additionally, a violation of this regulation which involves the conduct of a supervisor may result in demotion of rank.



3:52 Causing Physical Injury/Serious Physical Injury

1. Any member who causes physical injury to another member or person, due to carelessness or negligence, shall be a *Class D Violation*.
2. Any member who causes serious physical injury to another member or person, due to carelessness or negligence, shall be a *Class B Violation*.

**ARTICLE 4:00 – DISCIPLINE**

This section alone shall not be the subject of disciplinary action.

SECTION

- 4:01 The Violation of any of the Rules and Regulations, or any Orders, Written Procedures; and/or Policies governing the Fire Department shall be grounds for disciplinary action; and charges shall be filed against the member(s) who commits the violation.
- 4:02 The purpose of this Section is to ensure the integrity of the Fire Department by establishing procedures for handling disciplinary action. This Section is based on the policy that discipline is a function of command and a well-disciplined department is one which voluntarily and ungrudgingly conforms to all Rules and Regulations, or any Orders, Written Procedures, and/or Policies governing the Fire Department.
- 4:03 To ensure this procedure, a punishment classification system has been developed in an effort to standardize our disciplinary process and ensure fair, equitable and consistent punishment for violations of all Rules and Regulations, or any Orders, Written Procedures, and/or Policies governing the Fire Department. The basic philosophy of this classification system is one of “Progressive and Corrective Discipline” and as such, members are reminded that the primary objective is to learn from one’s mistakes. Violations will be placed into a specific classification based on three factors: the Specific Charge, the Reckoning Period, and the Date of the Offense.
- (A) Specific Charge: a letter designator will appear at the end of each specified violation, noted for all rules, regulations, or any orders, written procedures, and / or policies. The letter designation (A, B, C, D, E, or F) will indicate the severity of the violation, with Class A being the most serious and Class F as the lowest level of infractions (see Appendix A).

Any Rule, Regulation, Order, Written Procedure, Policy, and/or Verbal Order which does not have a letter designator, will be classified under a *Class F Violation*.

- (B) The Reckoning Period is designed to correct a member's conduct. The Reckoning Period is that period of time within which same offense(s) will be dealt with more severely. Within each classification, there is a specified Reckoning Period of: three (3) years for Class A and B violations; two (2) years for Class C and D violations; and one (1) year for Class E and F violations. Should the same charge occur within the Reckoning Period, the specified punishment for that violation will fall under the appropriate offense category (i.e., 2<sup>nd</sup> Offense, 3<sup>rd</sup> Offense; etc.)
- (C) The Date of Offense. The exact Reckoning Period is established by the date of the violation being considered. For example, to determine the punishment classification of a particular Class E violation, simply review a member's disciplinary record for one year prior to the date of that violation. If he / she does not have the same violation within that one year period, then the current violation would be considered as a First Offense. If one similar offense to that which is being considered appears in the specified one year period, the current violation will be classified as a Second Offense; and so on.
- (D) A range of punishment has been established for each specific violation (see the Classification of Punishment Chart in Appendix A). It is important to note that the Supervisor, Battalion Chief, Division Commander, Members of the Trial Board, and the Members of the Appeal Board are bound by the specified range of punishment for any violations; however, the above officers or boards may impose disciplinary probation and/or other conditions of employment such as, but not limited to:
  - (a) Psychological evaluation;
  - (b) Referral to Employee Assistance Vendor within the coverage outlined by the employee's health care provider and/or the terms of the City's Employee Assistance coverage;
  - (c) Restricted duty (i.e., extra jobs);
  - (d) Restitution for lost or damaged property;

- (e) Referral to Chief for review of promotion eligibility;
- (f) Administrative leave.

4:04 Habitual Offender

Any member convicted of more than three of the same charge(s) or any combination of five (5) separate charges in any class will be classified as a "habitual offender". Habitual offender status mandates accelerated punishment to the next highest punishment class from the most serious violation which is no less than *Class C*.

4:05 Disciplinary Probation

A violation of probation shall be treated as a repeat offense subject to discipline for such an offense as set forth in the classification of punishment (see Appendix A). The conditions of disciplinary probation will be specified in writing at the conclusion of a member's trial board hearing. Members will not act in violation of the disciplinary probation criteria as specified in the written decision of the Trial Board.

- 4:06 Should an officer or board as set forth in Article 4:03 (D) attach a condition of employment either separately or in addition to a penalty imposed (e.g. attendance and successful completion of a rehabilitation program, restricted duty, psychological evaluation, etc.), the member is expected to comply with the same. In the event there is reasonable cause to believe that the member has violated that condition, a Trial Board will be convened consistent with the rules and regulations, to determine if in fact a violation has occurred. The only issue to be decided by that Trial Board is whether or not a violation has occurred. A party not satisfied with the result may appeal under Article 10.

## **A MEMBER UNDER CHARGES**

### **SECTION**

- 4:07 A member of the Fire Department who is to be charged with a violation of the Rules and Regulations, General Orders, S. O. P., or General Notices, shall be made aware, if possible, that a "Charge" is being filed against him and be given the opportunity to answer the charge.
- 4:08 A member of the Fire Department who is under charges shall answer the charge in his/her written charge statement which shall be submitted to the Officer of Internal Affairs Unit in a sealed, confidential envelope.

- 4:09 A member of the Fire Department, who is under charges and is offered Summary Punishment by a superior officer, shall have the right to accept or waive the offer of Summary Punishment. A member under charges who accepts the offer of Summary Punishment shall be aware that it is an admission that he is guilty of the violation.
- 4:10 A member of the Fire Department, while he/she is under charge(s) and before his/her trial and judgment, shall not cause or procure any person to interfere or to intercede on his/her behalf, directly or indirectly; personally or by letters; with he/she Chief of Fire, Internal Affairs Officer, any member of the Trial Board or Appeal Panel or any person who may be a witness against him at the trial or appeal.
- 4:11 A member of the Fire Department who is under charge(s) shall have the right to plead one of the following:
- (A) Not Guilty.
  - (B) Guilty.
  - (C) Guilty with Explanation.
- 4:12 No member of the Fire Department who is under charge(s) shall be joined in the same charge or tried on joint charges with another accused member of the Fire Department except for concerted action in the same offense. Each case shall be tried for itself and on its own merits.
- 4:13 A member of the Fire Department who is under charge(s) shall have the right to appear and testify in his/her own defense.
- 4:14 A member of the Fire Department who within seven (7) days, excluding Saturday, Sunday or holidays, of being served notice of his/her validated charge (s) shall notify the Officer of Internal Affairs or his/her Representative as to who shall represent him/her as their Defense Officer or Attorney. At the discretion of the Fire Chief or his/her designee additional time may be authorized for good cause.

If the charged member chooses a Fire Department Officer other than himself or herself to represent them, and that Officer is off duty, then that Officer will be paid overtime by the department at straight time rates.

If the charged member so decides not to have an active member of the Wilmington Fire Department to represent him/her the charged member will bear the financial burden at his/her own expense. (See Appendix "B")

- 4:15 Formal notice of the Trial Board Hearing shall be served on the accused member at least four (4) days, excluding Saturday, Sunday or holidays, after notification to the department of the selection of his/her defense representative or of time imposed in Section 4.14.

This formal notice shall consist of the date, time, and place of the Trial Board Hearing and the names of the three (3) Trial Board Members.

At the discretion of the Fire Chief or his/her designee additional time may be authorized for good cause.

- 4:16 A member of the Fire Department who is under charge(s) shall have the right to submit a letter in a sealed, confidential envelope to the Deputy Chief of Prevention or his/her representative prior to his/her Trial Board Hearing if he believes that a Trial Board member or members will not give him a fair hearing. The letter shall state in clear and concise language the reason why he believes that the member(s) would not give him a fair hearing. It shall be the decision of the Deputy Chief of Prevention or his/her representative whether to have the member(s) of the Trial Board remain on it or not. If he decides not to remove a Trial Board member, then his/her written reason(s) why he did not remove the Trial Board member, and the accused member's protest, shall be duly noted in the trial record at the start of the Official Trial Board Hearing.
- 4:17 Even after receiving formal notice of the hearing, a member of the Fire Department who is under charge(s) shall have the right to be absent from his/her Official Trial Board Hearing unless he is ordered to appear by the Fire Department. If the accused member has not been ordered to appear and does not appear for his/her trial or have an attorney represent him with a signed letter indicating his/her plea, a plea of "not guilty" shall be entered on his/her behalf; and the Trial Board shall proceed summarily to hear the evidence and recommend such judgment on the charges as the facts disclosed may warrant.
- 4:18 A member of the Fire Department who is under charge(s) and who requests a postponement of his/her Official Trial Board because of the date and time scheduled, will waive his/her right to overtime if the request is honored by the Official Trial Board; and, the new date and time selected is on the accused member's day off.
- 4:19 A member of the Fire Department who is under charge(s) shall have the right, within five (5) days, excluding Saturday, Sunday or holidays, after his/her notification of his/her Official Trial Board's decision, to appeal to a three (3) member panel at conference if the member under charges feels that:

(A) He/she was unjustly accused;

- (B) The Trial Board proceedings were not carried out in a fair and impartial manner without prejudice to him as the accused;
- (C) All the evidence on his/her behalf was not introduced;
- (D) The finding of guilty was not supported;
- (E) The punishment levied was too harsh or serious in view of the character of the offense.

## **ARTICLE 5:00 - DISCIPLINARY PROCEDURES**

### **AN OFFICIAL WARNING**

#### **SECTION**

5:01 A member of the Fire Department may receive an Official Warning from a superior officer or member acting as such, if his/her performance of assigned duties and/or responsibilities is not within the Fire Department's accepted standards for quality of work or attitude. An Official Warning shall be documented in letter form and shall describe in detail the discrepancy of the member receiving the Official Warning. This letter shall be addressed to the member receiving the Official Warning and shall be signed by the superior officer who is citing and discrepancy. A copy of this letter shall be forwarded through normal channels, in a confidential envelope, for placement in the member's personnel file.

### **ARTICLE 6:00 - CHARGE**

In the Fire Department, the term "Charge" shall refer to or mean the formal act of accusing a member of violating the Rules and Regulations, or any Orders, Written Procedures, and/or Policies, and/or the actual written allegation with which an accused member is addressed, referring to the Article, Section or Violation which is alleged to have been or is being violated.

#### **SECTION**

6:01 In the Fire Department, a "Charge" shall be preferred, prepared, and filed against a member by a superior officer or member acting as such, where there is substance, foundation, or reasonable basis of support to believe that a violation has been committed by a member.

6:02 In the Fire Department, filing a false charge against a member is absolutely prohibited. It shall be understood for the purpose of this Section that a false charge is not merely a charge which is dismissed or dropped or of which a member is acquitted; but rather a charge, which is filed recklessly or in bad faith, without substance, foundation, or reasonable basis of support for the alleged violation.

6:03 In the Fire Department, a "Charge" shall be preferred in the following manner:

- (A) A member of the Fire Department who is to be charged with a violation shall be made aware, if possible, that a "Charge" is being filed against him and be given the opportunity to answer the charge.
- (B) A "Charge" shall be prepared and filed by the on-duty Officer, or member acting as such, of the Unit, Office or Company to which the accused member is assigned or detailed when the alleged violation occurs.
- (C) A "Charge" shall be in writing on the form provided for that purpose:
  - 1. Referring to the Article and Section of the Rules and Regulations or violation which is alleged to have been or is being violated.
  - 2. Giving a brief, concise statement of the facts from which the charge originated.
  - 3. Signed by the person filing the charge.
- (D) Charge statements shall be required and shall be submitted in letter form from the following persons:
  - 1. The Officer, or member acting as such, filing the charge.
  - 2. The accused member against whom the charge is being filed. If criminal charges are filed or pending against a member, accused is not required to make a statement and may indicate so by expressing an intention to implement his / her Fifth Amendment Rights.
  - 3. Witnesses.

NOTE: In order to be complete, a Fire Department charge statement shall contain the five W's and one H; namely – who, what, when, why, and how unless the member is using his/her rights under Section 6:03(D) 2.

(E) All written information regarding a charge or charges; all charge forms; and all charge statements shall be regarded as confidential and shall be submitted in sealed, confidential envelopes:

1. A charge and/or charge involving Summary Punishment shall be sent:
  - (a) To the Office of the Chief of Fire when the charged member is assigned and / or detailed to a position and / or unit which is directly under the command of the Chief of Fire.
  - (b) To the Office of the Respective Division Commander, when the charged member is assigned and / or detailed to a position and / or unit in a Division.
  - (c) To the Battalion Chief on duty when the charged member is assigned and / or detailed to a company in the Fire Suppression Division in his / her District.
2. A charge and / or charges in which Summary Punishment or Deputy Chief's Hearing was not offered or approved and the accused member holds the rank of Captain or below, shall be sent to the Officer of Internal Affairs or his / her representative.

6:04 In the Fire Department, the term "Validated Charge" shall refer to or mean a charge stamped "Validated", after the charge has been reviewed and found to have.

- (A) Been preferred correctly;
- (B) Substance and / or competent evidence.

6:05 In the Fire Department, the following member(s) and / or person(s) shall have the power and authority to "Validate" a charge and / or to dismiss or drop a charge that does not meet the requirement of a "Validated Charge":



For a charge and / or charges involving Summary Punishment and filed against Fire Department member(s) who are assigned and/or detailed to positions and / or units which are directly under the command of the Chief of Fire, the Chief of Fire or his / her representative.

For a charge and / or charges involving Summary Punishment and filed against Fire Department member(s) who are assigned and / or detailed to positions and / or units in a division, the Division Commander or his / her representative.

For a charge and / or charges involving Summary Punishment and filed against Fire Department member(s) who are assigned and / or detailed to companies in the Fire Suppression Division, the on-duty Battalion Chief in that District.

For a charge and / or charges in which Summary Punishment was not offered or approved and the accused member holds the rank of Captain or below, the Officer of the Internal Affairs Division or his / her representative.

- 6:06 In the Fire Department, only a "Validated Charge" shall be recorded and made part of a member's personnel file, regardless of the judgment of the Official Trial Board.

## **ARTICLE 7:00 - SUMMARY PUNISHMENT**

### **SECTION**

- 7:01 A Superior Officer may offer Summary Punishment to a subordinate member who has violated and/or is violating Fire Department Rules and Regulations, or any Orders, Written Procedures, and/or Policies when the following conditions exist and/or are met:

The Fire Department charge filed against the member is a violation which has not and/or could not result in the charged member being immediately relieved of duty; and the charged member has admitted his/her guilt to the Fire Department violation in his/her oral and written statements.

- 7:02 A member of the Fire Department who has been charged with violating and/or the violation of the Fire Department Rules and Regulations or any Orders, Written Procedures, and/or Policies and has accepted an offer of Summary Punishment shall be aware of the following:

- (A) The acceptance of the offer of Summary Punishment is an admission that the employee is guilty of the violation.
  - (B) If Summary Punishment is approved, the employee waives his/her right to the Deputy Chief's Hearing or an Official Trial Board Hearing.
  - (C) If Summary Punishment is approved, the employee must accept the penalty set with no right for an appeal.
- 7:03 In no event will Summary Punishment exceed the punishment in accordance with the Classification of Punishment ("F" first offense or "E" second offense).
- 7:04 The authority to "Validate" a charge involving Summary Punishment shall be as stated in 6:05.
- 7:05 In the Fire Department, "Summary Punishment" shall be administered in the following manner:
- (A) A member of the Fire Department who has been charged with violating and/or the violation of the Fire Department Rules and Regulations or any Orders, Written Procedures, and/or Policies, and has been offered Summary Punishment shall complete the section on the Summary Punishment form (F-3), which indicates his/her decision to accept or reject the offer of Summary Punishment. The charged member shall sign the Summary Punishment form (F-3).
  - (B) A Superior Officer who has offered Summary Punishment to a charged member, and the member has accepted the offer of Summary Punishment, shall either submit the Summary Punishment form (F-3) and all charge statements, or discuss the charge with the respective Chief Officer.
  - (C) When the respective Chief Officer receives an offer for Summary Punishment, he/she shall review the charged member's charges; all charge statements, and make one of the following decisions:
    - (1) Approve the Summary Punishment.

- (2) Disapprove the Summary Punishment. A letter shall be sent to the Commanding Office who offered the Summary Punishment when the Summary Punishment has been disapproved. The letter shall state the reason(s) why Summary Punishment was disapproved.
  - (3) Dismiss or drop the charge.
- (C) The respective Chief Officer shall sign and complete the section on the Summary Punishment form (F-3), which indicates his/her decision. If Summary Punishment is approved, the form (F-3) shall be stamped "Validated" and sent back to the superior officer who filed the charge against the member. If the approval is granted through telephone communication, the Company Officer who placed the charges shall note on the F-3 form that approval was granted by designating the date and time of the conversation with the Chief Officer.
- (D) When the Superior Officer who has offered Summary Punishment to a charged member and has received the Summary Punishment form back he/she shall:
  - (1) If Summary Punishment has been approved and the Summary Punishment form is stamped "Validated", he/she shall sign and complete the section on the Summary Punishment form, which indicates his/her selection of penalty. The Superior Officer shall then re-submit the Summary Punishment form.
  - (2) If Summary Punishment has been disapproved and is indicated as such on the Summary Punishment form (F-3), the Superior Officer shall inform the Charged Member that Summary Punishment has been disapproved. The member, through his/her on-duty Company Officer, using the proper forms, shall have not more than four (4) days excluding Saturday, Sunday or holidays, to determine if he/she will have the charge heard before the Deputy Chief's Hearing or an Official Trial Board Hearing.
  - (3) If the Charge has been dropped or dismissed, the Superior Officer shall inform the member that the charge was dropped or dismissed.

- (F) When the respective Chief Officer receives the Summary Punishment form (F-3) back from the Superior Officer who administered the Summary Punishment penalty, he/she shall review the penalty and shall have power and authority to:
- (1) Reduce the penalty one level of penalty as outlined in Section 7:03 if he/she feels it is too severe.
  - (2) Increase the penalty one level of penalty as outlined in Section 7:03 if he/she feels it is insufficient as long as the above lies within the classification of punishment for said violation.
  - (3) In addition the Battalion Chief may attach conditions consistent with Article 4:03(D).
- (G) When Summary Punishment is approved and the penalty is set, approved, and recorded, a Fire Department Special Order shall be typewritten and distributed throughout the Fire Department stating the judgment.

#### **ARTICLE 8:00 - DEPUTY CHIEF'S HEARING**

##### **SECTION**

- 8:01 When Summary Punishment has not been accepted and / or offered and/or approved, the member may appear before the Deputy Chief of his/her Division or his/her representative, for a Deputy Chief's Hearing.

The member who has been charged will be made aware of the following:

- (A) The acceptance of the Deputy Chief's Hearing is an admission that the employee is Guilty or Guilty with Explanation of the violation;
- (B) If Deputy Chief's Hearing is granted, the employee waives his/her right to an Official Trial Board Hearing;
- (C) The punishment set in the Deputy Chief's Hearing will lie within the guidelines of the Classification of punishment for said violation, not to exceed thirty (30) days.

8:02 In the Fire Department, the Deputy Chief's Hearing shall be administered in the following manner:

- (A) A Member of the Fire Department who has been charged with violating and/or the violation of the Fire Department Rules and Regulations, Written Procedures, or Orders and has agreed to Deputy Chief's Hearing will complete the Form (F-3-A), which indicates his/her decision to have his/her charge or charges heard by the Deputy Chief's Hearing.
- (B) The Deputy Chief or his / her representative will review the charge and statement and determine to either:
  - (1) Hear the case, or
  - (2) Refer the case to an Official Trial Board. A letter shall be sent to the member that the Deputy Chief's Hearing has been disapproved. The letter shall state the reason(s) why the Deputy Chief's Hearing has been disapproved.
- (C) When the Deputy Chief or his / her representative elects to hear the charge, he/she will notify the member of the date and time of the Hearing. At the time of the Hearing, the Deputy Chief or his/her representative shall:
  - (1) Listen and consider all statements and facts that are presented to him by the accused member.
  - (2) Set a penalty within the guidelines of 8:01(C) and the classification of punishment. He/she will advise member of same.
  - (3) He/she shall have a Special Order typewritten and distributed throughout the Fire Department stating the disposition of the Hearing.
  - (4) The charged member may have a Union representative present during the Deputy Chief's Hearing.

## ARTICLE 9:00 - AN OFFICIAL TRIAL BOARD HEARING

### SECTION

- 9:01 When the Officer of the Internal Affairs Unit or his/her representative is officially informed and/or notified that a member of the Fire Department of the rank of Captain or below has been charged with a violation of the Rules and Regulations or procedures of the Fire Department, and Summary Punishment or a Deputy Chief's Hearing has been waived or not offered or approved, he/she shall commence to establish an Official Trial Board Hearing if the charge is a "Validated Charge".
- 9:02 The Officer of the Internal Affairs Unit shall be responsible for the keeping of files and/or records of all Fire Department's Official Trial Board Hearings and their relative information (written, recorded, filmed, still pictures, official reports, letters, memoranda, or other documents) unless otherwise directed by the Chief of Fire.
- 9:03 The Deputy Chief of Prevention or his/her representative shall see that all necessary preparations are made for an Official Trial Board Hearing and shall select the date, time, place and the members of the Official Trial Board Hearing.
- 9:04 The Deputy Chief of Prevention or his / her representative shall be responsible for the preparation of all necessary orders to appear, copies of charge notice(s), and notices(s) of an Official Trial Board Hearing.
- 9:05 The Officer of the Internal Affairs Unit or his/her representative shall be responsible for insuring that a copy of the validated charge(s) and charge statement, are given to the accused member. The accused member shall deliver to the Officer of the Internal Affairs Unit or his/her representative, a written response at least fourteen (14) calendar days prior to the trial, answering the following:
- (A) A preliminary plea of "Not Guilty", "Guilty" or "Guilty with Explanation" to each charge.
  - (B) A list of witnesses to be served with a Fire Department order to appear at the hearing on behalf of the accused member. If more than three (3) witnesses are to be ordered to appear on the behalf of the accused member, the Union shall state, in writing, that only the first three (3) witnesses so ordered are subject to compensation by the City and that only an additional three (3) witnesses will be compensated by the Union, if necessary.

- (C) Any statements regarding character evidence on behalf of the accused member. Character testimony will not be allowed at the trial except in cases where dismissal or demotion is a possible penalty
- (D) The prosecutor will present to the Defense Officer a list of witnesses at least fourteen (14) calendar days prior to the day of trial.

- 9:06 The Officer of the Internal Affairs Unit or his/her representative shall see that the accused member is served with a notice of the date, time and place of the Official Trial Board Hearing; and the names of the Trial Board members as stipulated in Section 4.15.
- 9:07 The Officer of the Internal Affairs Unit or his/her representative shall prosecute or appoint a prosecuting officer. Formal notice of the Trial Board Hearing shall be served to the prosecuting officer at least four (4) days, excluding Saturday, Sunday or holidays, after notification to the department by the accused member of the selection of his/her defense representative or of time imposed in Section 4.14. This formal notice shall consist of the date, time and place of the Official Trial Board Hearing, the names of the Trial Board members and a copy of the charge(s) and charge statements prior to the day of the trial. (See Appendix C re: duties/rights of the prosecution.)
- 9:08 The Officer of the Internal Affairs Unit or his/her representative shall see that the three (3) Fire Department officers assigned as member of the Official Trial Board are served with a notice of the date, time, and the place of the Official Trial Board Hearing and a copy of the charge(s) as stipulated in Section 4.15.
- 9:09 The Officer of the Internal Affairs Unit or his/her representative shall see that any member who is to be a witness at an Official Trial Board Hearing shall be served with a Fire Department order at least fourteen (14) calendar days prior to the day of the trial. The Officer of the Internal Affairs Unit or his/her representative shall also see that the prosecuting officer and the defense are provided with any record(s) that would have a bearing on the case at hand.
- 9:10 A Fire Suppression Battalion Chief or member acting as such, shall be directly responsible for the proper delivery of and serving of a Fire Department order to appear; a charge notice; and, any other notification pertaining to an official trial. He shall do this by:
- (A) Delivering and serving the papers to the member by handing them to him personally.

- (B) Leaving the papers at the member's usual place of abode with someone in the member's family who is sixteen (16) years of age or older.
- (C) If after searching with reasonable diligence he/she is unable to locate the member at his/her usual place of abode, or to find a family member sixteen (16) years of age or older, the Battalion Chief or member acting as such, shall post the papers in a conspicuous place at the member's place of employment.
- (D) If a member resides outside the city limits, the Internal Affairs Officer or his/her representative shall be responsible for insuring that the order to appear, the charge notice and any other notification pertaining to the Official Trial Board is forwarded by registered mail to the individual in sufficient time as prescribed by the Rules and Regulations.

9:11 The general procedure for an Official Trial Board Hearing shall be as follows:

- (A) The Trial Board shall begin the hearing by arraigning the accused member on the charge(s) placed against him.
- (B) The prosecuting officer shall present his/her case prior to the defense. He/she shall present evidence to support his/her case to the Trial Board Members, and shall call upon witnesses to testify. The defense shall have the right to cross-examine each witness after the witness has testified for the prosecution.
- (C) The defense shall present his/her case after the prosecution has presented its side. He/she shall present evidence to support his/her case to the Trial Board members, and shall call upon witnesses to testify. The prosecuting officer shall have the right to cross-examine each witness after the witness has testified for the defense.
- (D) Both the prosecution and the defense shall have the right to recall Witnesses during an Official Trial Board Hearing.
- (E) The Trial Board shall have the right to call witnesses and/or recall witnesses, ask questions, and/or take any necessary measure or step to insure justice.



- (F) After each side has presented all the evidence and called upon all witnesses to testify, it shall be the right of the defense, followed by the prosecuting officer, to finalize and rest his/her case. The Trial Board shall adjourn an Official Trial Board Hearing after both sides have rested.

- 9:12 It shall be the responsibility of the President of the Trial Board to notify the accused member and the prosecution of the judgment of the Official Trial Board.

### **THE OFFICIAL TRIAL BOARD**

- 9:13 In the Fire Department, an Official Trial Board shall be composed of three (3) members or persons acting in the capacity of both judge and jury in an official hearing for a member of the Fire Department who is accused of a violation of the Rules and Regulations or procedures of the Fire Department.
- 9:14 The three (3) members or persons of the Official Trial Board shall be as follows:
  - (A) One (1) President.
  - (B) Two (2) Members in Attendance.
- 9:15 When charges are filed against a member of the rank of Captain or below, three (3) Fire Department Officers shall be the three (3) members or persons of the Trial Board:
  - (A) One (1) President - Senior or Highest Ranking Officer present.
  - (B) Two (2) Members in Attendance - the remaining two (2) officers.
- 9:16 A member who is selected to serve on an Official Trial Board and who believes that because of his/her personal feelings or the nature of the case he/she could not serve in a proper and efficient manner, shall have the right to submit in a sealed, confidential envelope a letter to the Deputy Chief of Prevention or his/her representative no later than four (4) days, excluding Saturday, Sunday or holidays, prior to the scheduled Trial Board. The letter shall state in a clear, concise manner the reasons why he/she is unable to serve. It shall then be the decision of the Deputy Chief of Prevention or his/her representative whether to have or not have the member serve on the Official Trial Board.
- 9:17 An Official Trial Board, as the judge shall conduct itself with dignity, courtesy, and impartiality.

- 9:18 An Official Trial Board as the jury shall be fair to everyone concerned – the accused member, the City administration, and the Fire Department including all its members:
- (A) To the accused member because any person should be presumed to be innocent until he/she is proven otherwise.
  - (B) To the City administration because it is responsible for providing the best possible fire protection for all people in the City of Wilmington.
  - (D) To the Fire Department with all its members because Trial Board decisions are always watched with interest; and, sound decisions or dispositions may cause public reaction detrimental to the member's proper interest.
- 9:19 All members selected to serve on an Official Trial Board shall have the responsibility and duty to insure that a Trial Board hearing is conducted in a proper and efficient manner.
- 9:20 At every trial, the President of the Trial Board, in order to further insure justice and prevent unnecessary delay, shall maintain order by not allowing any person or persons to disrupt, resist, and/or intentionally disobey the Fire Department's procedures for an Official Trial Board Hearing.
- 9:21 The member who is designated to serve as President of the Trial Board shall have the following duties and responsibilities at each trial:
- (A) He/she shall establish his/her authority as the head and supervisor of the Official Trial Board Hearing.
  - (B) He/she shall arraign the accused member, whether present or absent, causing the charge and specification to be read and having the accused member enter his/her plea of "Not Guilty", "Guilty", or "Guilty with Explanation". If there is more than one charge, the accused member shall be arraigned and shall plea separately on the charges and specifications in numerical order.
  - (C) He/she shall allow the prosecuting officer to present to the Trial Board the prosecution's evidence in the form of exhibits and to call in witnesses for the prosecution before the prosecution rests.
  - (D) He/she shall allow the defense to present to the Trial Board the defense evidence in the form of exhibits and to call in witnesses for the defense before the defense rests.

- (E) He/she shall allow witnesses for the prosecution to be cross-examined by the defense and shall allow witnesses for the defense to be cross-examined by the prosecution.
- (F) He/she shall allow witnesses to be recalled at any stage of the proceedings and he/she may reopen a case closed on both sides during the trial.
- (G) He/she and the other two (2) members shall have the power and authority to witnesses and recall witnesses, ask questions, and/or take any necessary measures to insure justice.
- (H) He/she shall insure that the proceedings of the Official Trial Board Hearing are recorded by a means that will take down the words used, from the accused member's arraignment on the charge or charges to the closing of the hearing, for deliberation on the innocence or guilt of the accused member.
- (I) After all the evidence, written statements, witnesses' testimony, etc. have been introduced by both sides; witnesses have been cross-examined by both sides; and both sides have had a chance for rebuttal and have rested their cases, the President of the Trial Board shall adjourn the hearing for deliberation by the Trial Board.
- (J) The President of the Official Trial Board shall be the author of all orders, letters, and/or documents that are written as a direct result of Trial Board decision and/or judgment; and, he/she shall be held responsible for the correct wording of these orders, letters, and/or documents making sure that they are written in a clear and concise manner.

9:22 The Trial Board shall have the right, if one member of the Trial Board requests, to use the City Solicitor or his/her representative to act as legal counsel to the Trial Board. The legal counsel may not vote or take part in the judgment of the accused member but shall advise the Trial Board members on the constitutionality and/or legality of their decisions and procedures.

9:23 The Trial Board shall enter a plea of "Not Guilty" on behalf of a member under charges if the accused member fails to appear for his/ her trial and the following conditions exist:

- (A) The accused member was duly notified of the date, time and place of the Official Trial Board Hearing.

- (B) The accused member or his/her attorney has not submitted a Fire Department letter signed by the accused member stating his/her plea.

9:24 An official decision to postpone an Official Trial Board Hearing may be granted at the discretion of the Trial Board if applications for postponement are submitted by the prosecution or the defense for one of the following reasons:

- (A) The absence of the witness is caused by illness, and the party requesting the postponement produces a certificate to that effect from the witness's attending physician.
- (B) In the case where a witness is absent and it is clear that his/her testimony is necessary and material, the party requesting the postponement must have used reasonable diligence to secure the attendance of the witness and must be reasonable sure that he/she will be able to secure the presence of the witness within a reasonable time. It must also be clear that the party requesting the postponement did not request or consent to the absence of the witness.
- (C) More time is needed for the proper and efficient preparation of a particular case.
- (D) If the prosecution or defense has officially requested a postponement of an Official Trial Board Hearing due to the date and/or time selected for the trial, the Trial Board may grant his/her request under the following:
  - (1) The rescheduling will be made by the Trial Board and for a just and proper reason.
  - (2) The rescheduling of the Official Trial will not come in conflict with Article 9:00, Section 9:26.

9:25 The Official Trial Board shall decide whether a member has violated the Rules and Regulations of the Fire Department as charged without reference to the accused member's previous record. Each case shall be tried on its own merits and the accused member's previous record shall be consulted only for the purpose of determining suitable punishment after a finding of Guilty has been agreed upon by at least two (2) Trial Board members.

- 9:26 Trial Board judgment has a major effect on the morale of members of the Fire Department, and it is important that the Official Trial, the deliberation, and the decision is not delayed unnecessarily. An official decision from a Trial Board shall mean that at least two (2) members of the Trial Board have agreed on the same judgment.
- 9:27 If the judgment of the Official Trial Board is that an accused member of the Fire Department is "Innocent" of a charge filed against him or her, it shall be the responsibility of the Official Trial Board to order that their judgment be recorded in the accused member's personnel file and that a "Special Order" be typewritten and distributed throughout the Fire Department stating their judgment of "Innocent".
- 9:28 If the decision of the Trial Board is that an accused member of the Fire Department is Guilty" of the charge placed against him or her, it shall be the responsibility of the Trial Board to set the following penalties:
- (A) An Official Reprimand.
  - (B) Suspension without Pay - not to exceed the number as prescribed in the classification of punishment including those hours of suspension without pay served prior to the Trial Board's determination. The suspension without pay shall begin on the member's next scheduled work day. A member shall not return to duty until all suspension time has been served. In the event an appeal is taken, the serving of suspension time may be held in abeyance until the appeal panel issues its determination.
  - (C) Probation - if the guilty member is charged with the same violation Again within the time that he/she is on probation and is found guilty again, he/she may be dismissed from the Fire Department.
  - (D) Demotion in Rank - demotion to the rank that the guilty member held prior to his/her last promotion or appointment to his/her present rank.
  - (E) Dismissal - the Trial Board may order that a guilty member should be dismissed from the Fire Department if the character of the offense supported by the preponderance of evidence indicates that this is the only just penalty.

**NOTE:** No decision of the Trial Board shall be implemented until the accused member's appeal time has been exhausted, unless otherwise directed by the action taken by the member who has been on trial.

- 9:29 It shall be the responsibilities of the Trial Board to notify the Officer of the Internal Affairs Unit or his/her representative as well as the charged member of the Trial Board's decision and the penalty imposed, if any. This notification shall be confidential, in letter form, and shall list each charge and decision separately, giving reasoning for the decision and for the chosen penalty.
- 9:30 If the Trial Board's decision is that an accused member is "Guilty" and it has imposed the penalty of Dismissal from the Fire Department, then it shall be the responsibility of the Officer of the Internal Affairs Unit or his/her representative to relieve the member from duty until the member has exhausted his/her appeal time. In a case where the member does appeal, the member shall remain relieved of duty until a judgment is received from the Appeal Panel to uphold or overrule the decision of the Official Trial Board.
- 9:31 The Trial Board's decision shall be classified as strictly confidential until it becomes a Fire Department Special Order and is distributed as such throughout the Fire Department.

## **ARTICLE 10:00 - AN OFFICIAL APPEAL**

### **SECTION**

- 10:01 When a decision of an Official Trial Board is officially appealed, the appeal shall be heard by a three (3) member appeal panel at conference, which is to be recorded by audio tape or if a stenographer is desired, the stenographer will be retained at the requesting party's request. The Official decision from an appeal panel means that at least two (2) members of the appeal panel agreed on the judgment.
- 10:02 The three (3) member appeal panel of the Fire Department shall be composed of the following persons:
- (A) The Chief of Fire or his/her representative.
  - (B) The Director of Personnel or his/her representative.
  - (C) Union President or designee.

It shall be the responsibility of the Officer of the Internal Affairs Unit or his/her representative to inform the three (3) member appeal panel that his/her office has received a written application to appeal a decision of an Official Trial Board Hearing.

- 10:03 A member of the Fire Department who is under charge(s) shall have the right, within four (4) days, excluding Saturday, Sunday or holidays, after his/her notification of his/her Official Trial Board's decision, to notify the Deputy Chief of Prevention that he/she is appealing the decision based on the following:
- (A) He/she was unjustly accused.
  - (B) The Trial Board proceedings were not carried out in a fair and impartial manner without prejudice to him as the accused.
  - (C) All the evidence on his/her behalf was not introduced.
  - (D) The finding of guilt was not supported by the preponderance of the evidence.
  - (E) The punishment levied was too harsh or serious in view of the character of the offense.
- 10:04 The prosecution shall have the right, within four (4) days, excluding Saturday, Sunday or holidays, after the notification of an Official Trial Board's decision, to appeal to a three (3) member panel at conference if the prosecution feels that:
- (A) The Trial Board proceedings were not carried out in a fair and impartial manner without prejudice to the prosecution.
  - (B) The finding of innocent or not guilty was not supported by the preponderance of the evidence.
  - (C) The punishment levied was too lenient in view of the character of the offense.
- 10:05 The Appeal Panel shall convene within a reasonable time and review the judgment of guilty handed down by an Official Trial Board Hearing and shall have the authority and power to do the following:
- (A) Uphold the judgment of the Official Trial Board
  - (B) Overrule the judgment of the Official Trial Board and take whatever other action it deems appropriate.
  - (C) Use the City Solicitor or his/her representative to act as legal counselor to the appeal board; the legal counselor may not vote.

- 10:06 The appellant (prosecution or defense) shall have the right:
- (A) To present evidence to support the reason(s) for his/her appeal. The evidence shall be submitted the form of exhibits to the appeal panel members.
  - (B) To call in witnesses to give testimony which will support the reason(s) for his/her appeal.
  - (C) To finalize and rest his/her appeal.
- 10:07 If a member other than the appellant (an attorney, or union official) is present to an appeal, the appellant shall inform the Officer of the Internal Affairs Unit or his/her representative no later than two (2) days, excluding Saturday, Sunday or holidays, prior to his/her Official Appeal Panel Hearing. The notification shall be submitted in letter form stating the person's name.
- 10:08 The appellant shall submit to the Officer of the Internal Affairs Unit or his/her representative at least four (4) days, excluding Saturday, Sunday or holidays, prior to the day of his/her Official Appeal Board Hearing, a list of the names of persons he/she needs to appear as witnesses at the appeal. If more than three (3) witnesses are to be ordered to appear on behalf of the accused member, the Union will state in writing that only the first three (3) witnesses so ordered are subject to compensation by the City and that only an additional three (3) witnesses, if necessary, will be compensated by the Local.
- 10:09 It shall be strictly understood that an appellant or his/her representative may only present to the appeal board evidence and witnesses' testimony which will support the reason(s) for his/her appeal which were not heard at the Official Trial Board or is not a part of the official record. The opposing party, upon notice of the witness list may request a showing of proof as to the relevance and pertinence of the testimony to be given.
- 10:10 The defense or prosecution (the party not appealing the decision of an Official Trial Board) shall have the right:
- (A) To be present at the appellant's official appeal panel hearing.
  - (B) To have a copy of the written material that the appellant presents to the appeal panel as exhibits no later than four (4) days, excluding Saturday, Sunday or holidays, prior to the hearing.
  - (C) To cross-examine any witness brought before the appeal panel by the appellant.



- (D) To rebuff the appeal after the appellant has finalized and rested his/her appeal. It shall be strictly understood that the party not appealing the decision may only present to the appeal board evidence and witnesses' testimony which will support his/her rebuff of the appellant's reason(s) (Article 10:00, Section 10:03 and/or Section 10:04) for the appeal.

10:11 The Chief of Fire or his/her representative shall serve and President of an Official Appeal Panel Hearing and shall have the following duties and responsibilities at each appeal:

- (A) He/she shall establish his/her authority as the head and supervisor of the Official Appeal Panel Hearing.
- (B) He/she shall allow the appellant to present to the appeal panel Evidence in the form of exhibits and to call in witnesses for the Appellant before the appellant rests.
- (C) He/she and the other two members shall have the power and Authority to call witnesses and recall witnesses, ask questions, And/or take any necessary measures or steps to insure justice.
- (D) He/she shall allow the defense or prosecution (the party not Appealing the decision of an Official Trial Board):
  - (1) To be present at the appellant's Official Appeal Panel Hearing.
  - (2) To have a copy of any written material that the appellant presents to the appeal panel as exhibits.
  - (3) To cross-examine any witness brought before the appeal panel by the appellant.
  - (4) To rebuff the appeal after the appellant has finalized and rested his/her appeal. It shall be strictly understood that the party not appealing the decision may only present to the appeal board of evidence and witnesses' testimony which will support his/her rebuff of the appellant's reason(s) (Article 10:00, Section 10:03 and/or Section 10:04) for the appeal.

- (E) After all the evidence, written statements, witnesses' testimony, etc. have been introduced by the appellant, witnesses have been cross-examined, and a rebuttal has been presented by the other party, the President of the Official Appeal Panel shall adjourn the hearing for the deliberation by the Appeal Panel.
- (F) The President of the Official Appeal Panel shall be the author of all orders, letters, and/or documents that are written as a direct result of an Official Appeal Panel decision and/or judgment.

10:12 The President of the Official Appeal Panel at every appeal in order to further justice, prevent appeal, and unnecessary delay, shall maintain order by not allowing any person or persons to disrupt, resist, and/or intentionally disobey the Fire Department's procedures for an Official Appeal Panel Hearing.

10:13 If the prosecution or defense (member under charges) submits a written application for the postponement of an Appeal Panel Hearing, the appeal panel may grant the postponement providing the following conditions are met:

- (A) The rescheduling of the hearing for the appeal is made by the appeal panel and only after the appeal panel has determined that the requested postponement is for just and/or proper reason(s).
- (B) That it's understood that the appeal panel shall be held strictly responsible for selecting a new date and time for the rescheduled hearing which could not be considered an unnecessary delay. An appeal panel's judgment has a major effect on the morale of members of the Fire Department; judgment must not be delayed unnecessarily.

10:14 If either the prosecution or defense (member under charges) appeals an official Trial Board decision and does not appear for the hearing, then the following procedures shall be followed:

The appeal panel shall enter on behalf of the appealing party the reason(s) why the Official Trial Board decision was appealed.

The appeal panel shall review the evidence, if any, which supports the reason(s) for the appeal

The appeal panel shall make a judgment on the merits of the appeal and take whatever action it deems appropriate.

- 10:15 In the event an appeal is taken by the accused member from a Trial Board decision concerning a charge of a violation of the Fire Department Rules and Regulations, the decision of the appeal panel is final and binding, except as modified in the next paragraph.

If an appeal panel upholds that a member under charges is "guilty" and increases the guilty member's penalty to over six (6) months of suspension without pay, or increases the guilty member's penalty to demotion, or increases the guilty member's penalty to the dismissal from the Fire Department, then and only then may the guilty member appeal the judgment to arbitration. The appeal to arbitration shall be made pursuant to the grievance procedures set forth in the collective bargaining agreement.

#### **ARTICLE 11:00 - WITNESS - OFFICIAL TRIAL BOARD HEARING**

##### **SECTION**

- 11:01 In the Fire Department a witness in an Official Trial Board Hearing shall mean any member or person who is requested or ordered to appear before the Trial Board to testify for the prosecution or the defense.
- 11:02 When ordered, a member shall appear to testify as a witness without fear or threat of his/her position, or promise of any kind, or for anything of value.

#### **ARTICLE 12:00 - ORDER TO APPEAR**

##### **SECTION**

- 12:01 In the Fire Department an order to appear shall mean written notification, in letter form, that a member is to appear before an Official Trial Board or an appeal panel to testify as a witness.

## ARTICLE 13:00 - RETIREMENT OR RESIGNATION

### SECTION

13:01 When a member of the Wilmington Fire Department desires to retire or resign from the service he/she shall forward his/her application for retirement or resignation, properly completed, through official channels to the Chief of Fire at least ten (10) days in advance of the date requested for resignation or retirement. No retirement or resignation shall become effective until approved by the Chief of Fire.

- (A) A member who retires as a result of a job-related disability or the completion of twenty (20) years of service or more shall be issued a retirement badge. This badge will reflect the member's rank as of the effective date of retirement.
- (B) A member who retires as a result of a non-job related disability or upon completion of less than twenty (20) years of service, may apply to the Chief of Fire for permission to purchase (at the member's expenses) a retirement badge. This badge will reflect the member's rank as of the effective date of retirement.

If a member of the Wilmington Fire Department submits a request to resign while he/she is under current investigation, one of the below three actions may be taken by the Chief of Fire:

- (A) He/she may accept the resignation from the member in question;
- (B) He/she may reject the resignation and take other appropriate action if he / she so deems;
- (C) He/she may reject the resignation and order the member dismissed from the Wilmington Fire Department.

13:02 Upon the date that a member is placed on Terminal Leave, said member will be prohibited from any new injury claims under the Workman's Compensation Law of Delaware.

NOTE: Terminal Leave will be considered the date that a member has been granted the right to retire from active duty earlier than the employee's normal effective date of retirement due to their unused vacation and accumulated sick leave as per the agreement between the City of Wilmington and Local 1590.

## ARTICLE 14:00 - MOTOR VEHICLES

### SECTION

14:01 A member of the Fire Department shall be held strictly responsible for the compliance with the following requirements:

- (A) To have at minimum a valid State of Delaware Non-CDL Class A Driver's License or its equivalent within 6-months of appointment to the Wilmington Fire Department. When permitted by the City Residency Requirement and Article 3:02A of the Wilmington Fire Department Rules & Regulations, those who have met the five (5) years of eligibility to live outside City limits must still maintain a valid State of Delaware Driver's License or its equivalent from the State in which they reside. *Class D Violation*
- (B) To have, prior to driving a Fire Department emergency vehicle to an alarm, a Delaware Emergency Vehicle Operator Certificate with the signature of the Chief of Fire or his/her representative attached and to have his/her Delaware Emergency Vehicle Operator Certificate available for inspection while on duty. *Class F Violation*

14:02 No member shall be permitted to drive any Fire Department vehicle under any condition unless they possess at minimum a valid State of Delaware Non-CDL Class A Driver's License or its equivalent from the State in which they reside. *Class D Violation*

- (A) Any member of the Wilmington Fire Department who has their driver's license cancelled, suspended or revoked and notifies the Fire Department immediately shall be subject to a *Class B Violation*.
- (B) Any member of the Wilmington Fire Department who has their driver's license cancelled, suspended or revoked and fails to notify the Fire Department shall be subject to a *Class A Violation*.

14:03 No member of the Fire Department shall drive, cause, or permit to be driven, any Fire Department vehicle at such speed or in such a manner as to cause a collision, accident, or other damage. *Class D Violation*

14:04 All Fire Department motor vehicles shall be operated by their drivers in strict compliance with the motor vehicle laws of the State of Delaware and the City of Wilmington. In non-emergency operations (driving and/or parking) the driver of a Fire Department motor vehicle shall be held strictly responsible for the payment of any and/or all motor vehicle parking tickets and/or other motor vehicle tickets or citations received for violating a motor vehicle law and/or laws.

*Class D Violation*

14:05 All Fire Department vehicles shall be inspected as per the preventative maintenance form (F-38) every Wednesday. *Class F Violation*

## **ARTICLE 15:00 - MEDICAL**

### **SECTION**

15:01 Any member who receives a minor on-duty injury between the hours of 0830 to 1630 hours, Monday through Friday, except holidays, shall report to his/her superior officer and receive permission to report to the Medical Dispensary for treatment. *Class F Violation*

15:02 Any member of the Fire Department who is treated by his/her private physician for any purpose shall notify the Fire Department Physician by letter. *Class E Violation*

15:03 Any member of the Fire Department who is reporting off-duty due to sickness shall do so no later than one (1) hour prior to the start of their next scheduled unit/tour. Fire Suppression personnel shall report to the on-duty officer at their assigned company. Members assigned to day work other than Fire Suppression shall report to their Division Commander during normal working hours. *Class E Violation*

15:04 All Fire Suppression personnel who wish to report back to duty after being sick or injured shall do so no later than one (1) hour prior to the start of their next scheduled unit/tour of duty by notifying the on-duty officer at their assigned company. Members assigned to day work other than Fire Suppression shall report to their Division Commander during normal working hours. *Class E Violation*

15:05 After three (3) days/units of continued absence, when a member of the Fire Department wishes to report back to duty, he/she will do so in compliance with the Department's S. O. P. on Sick Leave. *Class E Violation*

- 15:06 No member of the Fire Department who is on sick or injured leave shall engage in any activity which may impede his / her recovery and/or return to duty. Any member of the Fire Department who is found fit for duty and is ordered by the Fire Department Physician to report for duty shall report for duty as ordered.  
*Class D Violation*
- 15:07 All personal injuries occurring to members of the Fire Department while on duty shall be reported promptly by the member to his/her superior officer who shall notify proper authorities. The injured member must submit an on-duty injury report and a letter as soon as possible. If because of his/her injury he/she is rendered unable to submit his/her injury report and written statement, a written statement shall be submitted by his/her superior officer. However, the submission of a written statement by his/her superior officer does not relieve the injured member from complying with his/her rule as soon as he/she is capable of doing so. *Class D Violation*
- 15:08 All personal injuries occurring to off-duty members of the Fire Department which may impair their ability to perform their assigned Fire Department duties shall be reported as soon as possible, at least one (1) hour prior to the start of their tour of duty, by telephone, telegram, or in person. Fire suppression personnel shall report to the on-duty officer at their assigned company who shall notify the proper authorities. Members of day work other than Fire Suppression shall report to their immediate supervisor. The injured member must submit a *written* statement as soon as possible. If because of his/her injury he/she is unable to submit the written statement, a written statement of the off-duty injury shall be submitted by his/her commanding officer. However, submission of a written statement by his/her commanding officer does not relieve the injured member from complying with this rule as soon as he/she is capable of doing so. *Class E Violation*
- 15:09 All personal injuries suffered by off-duty members of the Fire Department which may not impair their ability to perform their assigned Fire Department duties shall be reported through normal channels when the member returns to duty.  
*Class F Violation*
- 15:10 All members of the Fire Department who are on sick or injured leave shall remain in their homes, unless permission is granted to leave their homes by the Fire Department Physician or their private physician. A member shall inform his/her commanding officer if permission is granted to leave his/her home.  
*Class D Violation*
- 15:11 No member of the Fire Department shall abuse sick leave. In the Fire Department, abuse of sick leave shall mean that a member has developed and/or established a set pattern of being absent from his/her assigned tour of duty through the wrong or improper use of sick leave, and such abuse can be documented. *Class F Violation*

- 15:12 Should the Fire Department Physician or his/her representative require, as a condition of continued employment that any member of the Fire Department submit to a psychiatric evaluation and/or treatment/ and/or treatment for alcoholism, and/or treatment for drug addition, then such member submits a medically justifiable reason which is acceptable to the Fire Department Physician for not submitting to such examination and/or treatment. *Class E Violation*
- 15:13 Any member of the Fire Department injured while on duty who is ordered by a superior officer to report to and / or be seen by the Fire Physician, nurse on duty at the City Dispensary, or a hospital physician for examination and/or treatment shall do so as ordered. *Class D Violation*
- 15:14 Every member of the Fire Department is hereby prohibited from accepting a settlement or signing a release for a personal injury received from any person, firm, or corporation without the approval of the Chief of Fire. Every settlement made by a member of the Fire Department shall provide an amount of money to be paid to the City of Wilmington in compensation for the full amount received from the City for lost time during such injury, unless otherwise approved by the City Solicitor. *Class C Violation*



## APPENDIX "A"

### CLASSIFICATION OF PUNISHMENT

CLASS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
"A"	15-30 Days to Dismissal	Dismissal		3 Years
"B"	5-20 Days	15-30 Days	Dismissal	3 Years
"C"	2-10 Days	5-20 Days	15-30 Days To Dismissal	2 Years
"D"	Rep.-5 Days	2-10 Days	10-20 Days	2 Years
"E"	Rep.-2 Days	2-5 Days	5-10 Days	1 Year
"F"	Reprimand	Rep.-2 Days	2-5 Days	1 Year

## **APPENDIX "B"**

### **THE DEFENSE**

In the Fire Department, the defense shall mean an attorney, an officer, or the accused member himself, who has taken the responsibility of defending a member under charges at an Official Trial Board Hearing in action, lack of action, and / or incident, which led to filing of Fire Department charge(s).

An officer shall have the right to refuse his/her assignment as the defense in particular case if he/she believed that, because of his / her personal feelings and / or the nature of the case, he/she could not defend the accused member in a proper and efficient manner.

If the accused member pleads "Not Guilty", the defense shall develop a defense that will give the accused member the best opportunity to display his/her innocence.

If the accused member pleads "Guilty" or "Guilty with Explanation", the defense shall develop a defense that will give the accused member the best opportunity to display the circumstances that led to the violation and the reasons for his/her actions, without violating his/her civil rights.

The defense shall submit to the Officer of the Internal Affairs Unit or his/her representative, prior to the day of an Official Trial Board Hearing, a list of the names of persons he/she needs to appear as witnesses at the trial.

The defense shall present the evidence of his/her case in the form of exhibits to the members of the Official Trial Board.

The defense shall have the right to have a copy of any written material that the prosecuting officer presents to the Trial Board members as exhibits for the prosecution.

The defense shall have the right to cross-examine any witness brought before the Trial Board members by the prosecuting officer.

## APPENDIX "C"

### THE PROSECUTION

In the Fire department, a prosecuting officer shall mean an officer who has been assigned the responsibility of prosecuting an accused member of the Fire Department at an Official Trial Board Hearing.

A prosecuting officer shall prosecute an accused member of the Fire Department in a proper and efficient manner without fear or threat of his/her position, or promise of any kind, or for anything of value.

The Internal Affairs Officer or his/her representative, shall have the power and authority to appoint a member or person who shall prosecute a case against a Firefighter, Lieutenant, or Captain in the Fire Department.

- (A) If an attorney is designated to prosecute an accused member, the Accused member shall be given this information no later than seventy-two (72) hours prior to his/her Official Trial Board Hearing.

An officer shall have the right to refuse his/her assignment as prosecuting officer in a particular case if he/she believes that, because of his/her personal feelings and/or the nature of the case, he/she could not prosecute the accused member in a proper and efficient manner.

A prosecuting officer shall be responsible for conducting an investigation of the alleged violation.

If his/her investigation shows that no violation occurred because of statements and interviews that clearly indicate no violation, the prosecuting shall recommend that the charges be dropped or dismissed.

If additional violations are discovered during his/her investigation of the original charge, the prosecuting officer shall, on behalf of the Fire Department, file charges against the member.

The prosecuting officer shall present the evidence of his/her assigned case in the form of exhibits to the members of the Official Trial Board.

The prosecuting officer shall submit to the Officer of the Internal Affairs Unit or his/her representative prior to the day of an Official Trial Board Hearing, the list of the names of persons he/she needs to appear as witnesses at the trial.

The prosecuting officer shall have the right to have a copy of any written material that the defense presents to the Trial Board members as an exhibit for the defense.

The prosecuting officer shall have the right to cross-examine any witness brought before the Trial Board members by the defense.

The prosecution shall have the right, within five (5) working days after the notification of an Official Trial Board's decision, to appeal to a three (3) member panel at conference if the prosecution feels that:

- (A) Trial Board Proceedings were not carried out in a fair and impartial manner without prejudice to the prosecution.
- (B) The finding of innocent or not guilty was not supported by the preponderance of the evidence.
- (C) The punishment levied was too lenient in view of the character of the offense.