

Collective Bargaining

City of San Antonio &
San Antonio Police Officers Association



March 5, 2021

Maria Villagomez, Deputy City Manager
Elizabeth Provencio, First Assistant City Attorney

Example 1

Officer A

Offense: Conduct

- 3.04(C) Conduct & Behavior,
- 3.26 Treatment of Prisoners,
- Procedure 701 Crime Scene Duties

Police Chief serves Indefinite Suspension

Arbitrator Reduced to 45-day Suspension

Example 1: Officer A

The Misconduct

- The Officer challenged a detained individual to a fight, stating: **“I’m gonna beat you’re a**. That’s what I’m going to do. Are you ready?”**
- The Officer subsequently unhandcuffed the suspect and said **“You can get out. Let’s go . . . run . . . do something. . . do something.”**
- The suspect did not engage the Officer in a fight, was re-handcuffed (reportedly too tight) and placed back in the vehicle. When the suspect asked what the charges were against him, the Officer replied, **“I’ll think of something.”**

Example 1: Officer A

The Misconduct

- The Officer was then overheard on his dash-cam video berating and degrading the suspect using profane language, for example, calling him a **“dumb f***”, a coward, trashy, and a “sorry human being.”**

Example 1: Officer A Arbitrator's Decision – 45 Day Suspension

- Officer argued, among other things, that the punishment imposed was disproportionately severe because “[o]ther SAPD Officers have been sustained on similar or even worse allegations but have not been indefinitely suspended[.]”
- 7 Comparators introduced.
- Ultimately, the Arbitrator found Chief did not recognize or consider the mitigating factors (treatment of the suspect; state of mind or physical condition).
- Last chance agreement not persuasive.

Example 2

Officer B

Offense: Conduct

- 3.04(c) Conduct and Behavior – Threats including violence

Police Chief serves Indefinite Suspension

Arbitrator Reduced to 90-day Suspension

Example 2: Officer B

The Misconduct

- **“I’m soo freaking p***. I’m going to end you! I told you’re A** to never harass me or my family. You continue to play games. Im going to END YOU!!!”**
- **“It doesn’t matter if im alone for the rest of my life. YOU ARE DONE.”**
- **“Sick B***h”**
- **“Dead B***h soon”**
- **Officer left voicemails threatening: “Your whole world is going to blow apart; I could just string you up and shake the life out of you; I could really choke the life out of you.”**

Example 2: Officer B Arbitrator Decision – 90 Day Suspension

- Officer was placed on indefinite suspension after the recipient of the messages made a complaint to the City.
- Arbitrator found that **the allegations of a violation were true** and the Officer did violate Rule 3.04 – Arbitrator substituted a 90-day temporary suspension for the violation.

Example 2: Officer B Arbitrator Decision – 90 Day Suspension

- The Arbitrator considered comparator evidence for an “Officer Z”.
- The City and Officer Z had agreed to a 90-day suspension when Officer Z engaged in domestic violence (choking). The Arbitrator noted that Officer Z actually choked the victim while Officer **B** only threatened to do so. Additionally, the record shows that the complainant provoked Officer **B** but the record is silent on whether Officer Z was provoked. Based on that, the indefinite suspension was inconsistent with Officer Z’s discipline.

Example 3

Officer C

Offense: Conduct

- **3.04 (c) Conduct & Behavior** - threatening messages to ex-wife

Police Chief serves Indefinite Suspension

Arbitrator Reduced to 45-day Suspension

Example 3: Officer C

The Misconduct

- “I just saw your father at Lowes and he called [sic] completely ignored me. This is not how u should raise our family...to hate. Not once did I tell my family u were f***ing some1 in my house while I was starving and we were still married. I’m telling u now if he talks shit Im knocking him out[.]
- **YOUR FAULT FOR CREATING A HOSTILE ENVIRONMENT.”**
- “Stupid f***en bitch. U are such a f***en idiot. . . .”
- “That’s twice now...u better warn him to stay away.”

Example 3: Officer C

The Misconduct

- **After I f*** him up, I'm going to f*** u up.**
- **Both your parents are here...**
- **. . . You deserve EXACTLY where you are and where you are headed.**
- **Your daddy better be there because I'm on the way."**

Example 3: Officer C

Arbitrator Decision – 45 Day Suspension

- Counsel offered over 15 comparator cases
- Arbitrator quoted as “claiming ‘disparate treatment’ . . . is one of the **most effective union defenses against discipline, especially discharges.**”
- “...the fair and just remedy is to reduce the suspension to the level imposed on the lesser-punished errant officer in the past.”

Example 3: Officer C Arbitrator Decision – 45 Day Suspension

- Although Comparators went back as far as 2012 and **domestic violence** was **and is** a concern for the Chief, the Arbitrator still reduced **the Chief's decision to a 45-day suspension**

Example 4

Officer D

Offense:

- 3.02 Truthfulness;
- 3.04 Conduct & Behavior;
- 3.11 Use of Intoxicants;
- 3.18 Safe Operation of Vehicles;
- 313 Authorized use of City Vehicles

Police Chief serves Indefinite Suspension

Arbitrator Reduced to 90-Day Suspension

Example 4: Officer D

The Misconduct

- Officer involved in the shooting death of an individual while on shift.
- Individual shot was the ex-boyfriend of a woman that the Officer was having a sexual relationship with.
- While on shift and in a City vehicle, Officer transported the woman between her home and the club.

Example 4: Officer D

The Misconduct

- When dropping off the woman at her house, the Officer and the woman were confronted by her armed ex-boyfriend who shot at the couple while in the City vehicle.
- After a car pursuit, the parties again confronted each other with Officer shooting and killing the ex-boyfriend with his service weapon.

Example 4: Officer D

The City Asserted

- The Officer:
 - Violated the rules using City vehicles in transporting the female to and from the club
 - Violated the rule against use of intoxicants by drinking while on shift
 - Violated the rule requiring truthfulness when he lied in a sworn statement about the incident
 - Violated his responsibility to serve the public by failing to exercise sound judgment when he chose not to disengage from the confrontation
 - Misused City equipment
- **→ Officer admitted to some of the violations**

Example 4: Officer D

Arbitrator Decision – 90 Day Suspension

- “In this case the City has chosen to inflict the industrial counterpart of “capital punishment” on an officer who has a ten (10) year discipline free record with numerous decorations and awards (see background) including officer of the year twice. As noted above, his supervisor, previous supervisor, and others have rated him a gifted asset in his Gang Unit assignment.

Example 4: Officer D

Arbitrator Decision – 90 Day Suspension

- Summary testimony of ... Association President ... “spoke to ‘disparate treatment’ of the SAPD and knew of officers allowed a second chance for violations equal to or worse than D’s.”

Example 4: Officer D

Arbitrator Decision – 90 Day Suspension

- There is not question that Appellant violated certain rules as charged. Given his record and other mitigating circumstances, he is deserving of “progressive discipline” rather than “capital punishment”.
- Reduced Indefinite Suspension to 90 days even though the testimony included NO specific comparators.

Example 5

Officer E

Offense: Conduct

- 3.04 (c) Conduct & Behavior

Police Chief serves Indefinite Suspension

Arbitrator Reduced to 10-Month Suspension

Example 5: Officer E

The Misconduct

- Officer detained an African American male at the River Center Mall for possible criminal trespassing. After handcuffing the suspect, the Officer was recorded on his body worn camera using excessive and racially charged profane **language** toward the subject, including repeatedly using the N-word.
- **Suspect: Why Am I going to Jail? What for?**
- **Officer: For Being a F*****up N***a**

Example 5: Officer E Arbitrator Decision – 10-Month Suspension

- The Arbitrator found a clear violation of the rule based on the evidence.
- The Arbitrator stated that “[t]here was evidence that two other police officers in two other incidents used the word ‘faggot’ towards civilians and neither was fired[.]”

Example 5: Officer E Arbitrator Decision – 10-Month Suspension

- “I have also considered the other cases cited involving SAPD officers using a derogatory sexual orientation term who received lesser discipline, albeit in different circumstances altogether.”
- In overturning the indefinite suspension, the Arbitrator relied, in part, on “other similar incidents (although not four-square on all points) where lesser punishment was given[.]”

Why the Association's Proposal Does NOT work

2/26/21 Association Proposal

... the arbitrator may mitigate the Chief's disciplinary action only if the disciplinary action is not consistent with comparative disciplinary actions issued by the Chief against other similarly situated officers. The Chief may present evidence of prior relevant sustained disciplinary action against the Officer that the Chief used to determine the disciplinary action if the Chief outlined the prior disciplinary action in the original written statement and charges.

The 2/26/21 SAPOA Proposal

- **Fails to acknowledge the problem with Arbitrators substituting their judgment for the Chief's judgment on Officer standards.**
- **SAPOA's proposal is nothing more than the status quo and only reinforces the existing process.**
- **To implement this proposal would perpetuate bad precedent, rather than course correct.**

Collective Bargaining

City of San Antonio &
San Antonio Police Officers Association



March 5, 2021

Maria Villagomez, Deputy City Manager
Elizabeth Provencio, First Assistant City Attorney