



City of Cleveland
Justin M. Bibb, Mayor

Department of Public Safety
Karrie D. Howard, Director
601 Lakeside Avenue, Room 230
Cleveland, Ohio 44114-1015
216/664-2560 • Fax: 216/664-3734
www.cleveland-oh.gov

Pre-Disciplinary Hearing

July 1, 2022

Patrol Officer Michael Phelps #1074
C/o Bureau of Traffic
2001 Payne Avenue
Cleveland, Ohio 44114

Re: CPD2020-0113

Patrol Officer Phelps #1074:

Please be advised, in accordance with Article 28 of the collective bargaining agreement between the City of Cleveland and the Cleveland Police Patrolmen's Association, a pre-disciplinary hearing has been re-scheduled to determine whether you violated the following provisions of the Manual of Rules, Department of Public Safety and the Rules of the Civil Service Commission of the City of Cleveland.

STATEMENT OF POLICY

In part: The Manual of Rules sets forth the conduct and behavior to be followed by officers and employees. Any violation of these rules shall be a basis for disciplinary action. Disciplinary action includes, but is not limited to, verbal and written reprimands and the preferring of Divisional charges which can result in suspension, loss of pay, demotion or termination. The rules and standards contained in this manual shall apply whether the officer or employee is on or off duty. Where a conflict exists between a Rule and a General Police Order, the Rule provision shall be adhered to.

SPECIFICATIONS

Specification #1: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off duty, at 1303 W. 58th Street (The Cleveland Police Patrolmen's Association/Zone Car Lounge) did engage in workplace violence when you became involved in a physical fight with other members of the Cleveland Division of Police, all in violation of General Police Order 1.1.08. (*Group III Violation*)

Specification #2: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off-duty at 1303 West 58th Street (The Cleveland Police Patrolmen's Association/Zone Car Lounge) did engage in a physical fight with other members of the Cleveland Division of Police which resulted in you being criminally charged for City of Cleveland Codified Ordinance 621.03: Assault (2020-CRB-013796). This charge was dismissed on Rule 29 by the court, in violation of Manual of Rules 2.01. (*Group III Violation*)

Specification #3: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off duty at 1303 West 58th Street (The Cleveland Police Patrolmen's Association/Zone Car Lounge), failed to report officer misconduct after observing and becoming aware that multiple members of the Cleveland Division of Police, including yourself, were engaged in or attempted to engage in a physical fight, in violation of General Police Order 1.07.05. (*Group III Violation*)

Specification #4: (CPD2020-0113) On or about November 15, 2020, you, Patrol Officer Michael Phelps #1074, while off duty did engage in acts that tend to reasonably diminish the esteem of the Division of Police when you attempted to fight another member of the Division of Police, in violation of General Police Order 1.1.03 and Manual of Rules 5.01, 5.08 and 5.09. (*Group II Violation*)

These specifications are in violation of the rules and procedures of the Division of Police, Department of Public Safety.

RULES, POLICIES AND PROCEDURES

City of Cleveland, Codified Ordinance 621.03: Assault (effective: 4/19/13)

- (a) No person shall knowingly cause or attempt to cause physical harm to another.
- (b) No person shall recklessly cause serious physical harm to another.
- (c) Whoever violates this section is guilty of assault, a misdemeanor of the first degree.

General Police Order 1.1.03: Standards of Conduct and Courtesy (effective: 3/1/02)

POLICY: Division members shall be resourceful and polite when dealing with the general public. This includes but is not limited to personal, physical and telephone contact.

PROCEDURES: Division of Police personnel shall:

- I. Not engage in any conduct, speech or acts while on or off duty, which would reasonably tend to diminish the esteem of the Division of Police or its personnel in the eyes of the public (Rule 5.01).

General Police Order 1.1.08 Violence in the Workplace (effective March 1, 2002)

POLICY: It is the policy of the Division of Police to prohibit any form of workplace violence. This includes the recognition that a place of employment free from the fear of violence is fundamental to the health and well being of both employees and citizens. The policy applies to sworn and non-sworn members of the Division and also to volunteers and interns working with or under the Division's guidance.

DEFINITIONS:

Workplace Violence – Behavior or conduct consisting of, but not limited to, oral and written threats, harassment, intimidation, physical attack or property damage, either occurring at, or arising from, the employee's place of work with the city, and occurring outside the normal course of law enforcement activities.

Threat: The expression of a present or future intent to cause physical or psychological harm. An expression constitutes a threat without regard to whether the person communicating has the present ability to do the harm, and without regard to whether the expression is conditional, contingent or future.

Intimidation: Behavior or communication intended to coerce or induce fear including, but not limited to, stalking.

Physical Attack: Unwanted or hostile physical contact including, but not limited to, hitting, fighting, pushing, showing or throwing objects.

PROCEDURES:

I. The Division of Police shall use Division Rules and regulations, the Sexual Harassment policy and Civil Service rules and regulations to secure the workplace from violence and to protect employees from its effects. Persons engaged in workplace violence may also be personally subject to other civil or criminal liabilities.

II. Members shall report workplace violence within 24 hours of the occurrence. However, the failure to make such a report within 24 hours does not negate the requirement of a proper investigation and response. This applies to all Division employees.

General Police Order 1.07.05: Internal Complaints of Misconduct (effective: 2/21/20)

POLICY: It is the policy of the Division to ensure that all allegations of member misconduct observed or that a member becomes aware of are reported to a supervisor, Internal Affairs or anonymously to Internal Affairs (IA) or the Employee Assistance Unit (EAU). All allegations of misconduct shall be considered and fully, fairly, and efficiently investigated.

DEFINITIONS:

Misconduct - any improper conduct, other than minor infractions as defined in this policy, including an alleged violation of Division policy, procedure, regulation, order, federal or state law, or other standards of conduct required of Division members including the improper use of force.

Administrative Misconduct - an allegation of misconduct, which if true, would be a violation of a CDP rule, regulation, policy, or procedure.

Criminal Misconduct - an allegation of misconduct, which, if true, would be a violation of a City of Cleveland Codified Ordinance, the Ohio Revised Code, or a Federal Criminal Statute.

PROCEDURES:

I. Reports of Member Misconduct

- B. All complaints of member misconduct shall be taken and considered regardless of the source.
- C. All members who observe or become aware of any act(s) of misconduct by another member shall:

1. Immediately verbally report the incident to a supervisor or Internal Affairs and shall follow-up with a Form-1 report of the incident as directed by the supervisor or Internal Affairs.
- D. Where an act of any misconduct is reported to a supervisor, the supervisor shall immediately document and report the incident, via Division tracking software, forwarding the entry to the Internal Affairs Superintendent for review and assignment in accordance with IA procedures and copy the Platoon Commander.
- E. Anonymous Reporting of Member Misconduct
 1. In instances where the member wants to remain anonymous, the member may report the act of misconduct by:
 - a. An anonymous call to the IAU, at which point the reporting member will be provided with a unique number generated through Division tracking software.
- F. Failure to report an act of misconduct is an egregious offense and will subject the member to the disciplinary process and, if sustained, will subject the member to discipline, up to and including termination.

Manual of Rules for the Conduct and Discipline of Employees of the Cleveland Division of Police

II. ADMINISTRATIVE COMPLIANCE

- 2.01 Personnel shall not violate any law of the United States, the State of Ohio, Charter provision or ordinance of the City of Cleveland, or neglect to perform any duty required by law, nor shall they engage in any conduct that would constitute a crime under the laws of the United States, the State of Ohio, or the Charter provisions or ordinances of the City of Cleveland.

IV. DUTY

- 4.12 Personnel shall be considered to be on duty at all times for purposes of discipline.

V. BEHAVIOR

- 5.01 Personnel shall not engage in any conduct, speech or acts while on duty or off duty that would reasonably tend to diminish the esteem of the Division of Police or its personnel in the eyes of the public.
- 5.08 Personnel shall conduct themselves in such a manner as to command the respect of the public.
- 5.09 Personnel shall be courteous and respectful in their speech, conduct, and contact with others.

HEARING INFORMATION

The pre-disciplinary hearing is re-scheduled for **Friday, July 8, 2022 at 0900 hours** in the **Cleveland Public Auditorium (Room LL09)**. Should you desire union representation, it is your responsibility to notify your union of this hearing. All officers shall have an opportunity to testify.

All testimony provided during the hearing shall be given the same weight as sworn testimony; therefore, your statements can and may be used against you at the hearing or at a later date. **Any documentation that could explain any of the above allegations shall be forwarded to the Case Preparation Unit a minimum of 48 hours prior to the scheduled hearing. Any new or additional evidence brought to the hearing will result in the hearing to be suspended and the matter shall be returned to the Internal Affairs Unit or the Police Review Board for consideration, as appropriate. In addition, it is also your responsibility to bring the documentation to this scheduled hearing.**

If you are to have witnesses appear on your behalf, a Form-1 listing their names must be provided to the Case Preparation Unit via email (CasePrep@clevelandohio.gov) a minimum of 48 hours prior to the scheduled hearing. It is your responsibility to notify said witnesses of the date and time of the hearing. In addition, it is your sole responsibility to ensure the attendance of any witnesses appearing on your behalf. Prior permission for any Division member's attendance **MUST be obtained from the Case Preparation Unit. Any witnesses that will appear are to be in full uniform of the day. No overtime shall accrue as a result of their attendance.**

In accordance with General Police Order 1.1.12: Sworn Officers Uniform Regulations, you are to appear in **"CLASS A" UNIFORM** and have your badge, city issued service weapon, and identification card with you. Failure to attend as ordered may subject you to additional disciplinary charges. You shall **PERSONALLY** contact the Case Preparation Unit (216-623-5022) **IMMEDIATELY** if there are any conflicts that would cause your lack of attendance to the scheduled hearing.

THIS WILL BE YOUR TOUR OF DUTY

THESE CHARGES MAY BE AMENDED AT A LATER DATE

Sincerely,



Karrie D. Howard, Chief Director
Department of Public Safety

KDH:dad:bpc:cld:kas

cc: Dornat Drummond, Interim Chief, Division of Police
Timothy Hennessy, Assistant Director, Department of Public Safety
George E. Coulter, Assistant Director, Department of Public Safety
Jakimah R. Dye, Assistant Director, Department of Public Safety
Sammy Morris, Acting Deputy Chief, Field Operations
Gordon Holmes, Commissioner, Bureau of Traffic
Brian Carney, Commander, Bureau of Compliance
Christopher Viland, Superintendent, Internal Affairs Unit
Melissa Dawson, Sergeant, Officer-in-Charge, Employee Assistance Unit
Jeffrey Follmer, President, Cleveland Police Patrolmen's Association
William Menzalora, Chief Assistant Director of Law
Michael Pike, Assistant Director of Law
Amanda Boutton, Assistant Director of Law
Paul Patton, Director, Department of Human Resources
Richard Rosenthal, Member, Monitoring Team
Michael Evanovich, Investigator, Department of Justice
Jason Goodrick, Executive Director, Cleveland Community Police Commission
Hassan Aden, Federal Monitoring Team