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|---|---|
| **From:** | Anil Karia |
| **To:** | ORLawEnf Commmission; Boss Frederick |
| **Cc:** | Emmert Angie |
| **Subject:** | Commission on Statewide Law Enforcement Standards of Conduct and Discipline -- Commissioner Karia Draft Aggravating/Mitigating Factors for Discussion |
| **Date:** | Tuesday, July 12, 2022 5:00:04 PM |
| **Attachments:** | DRAFT Karia Mitgating and aggravating factors for discussion 7.12.22.docx |



Fred,

Please distribute to the Commission.

Thanks,
Anil

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Fellow Commissioners,

In anticipation of our upcoming discussion of aggravating/mitigating factors, I found it helpful to put my thoughts in writing. Please see the attached document for your review, consideration, and discussion at one of our next meetings.

Regards,

Anil Karia

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**DRAFT MITIGATING AND AGGRAVATING FACTORS**

For Discussion Purposes Only

Alternative A (From LESC Staff with Karia edits)

| MITIGATING FACTORS | AGGRAVATING FACTORS |
|---|---|
| Positive employment history. | Prior disciplinary history. |
| Self-reported the violation. | Delay in reporting. |
| Unintentional conduct . | Intentional conduct. |
| Limited impact upon the agency's mission, reputation, or relationship with the community. | Significant impact upon the agency's mission, reputation, or relationship with the community. |
| Limited nature and extent of property damage or harm. | Significant nature and extent of property damage or harm. |
| Officer attempted to ameliorate or correct the conduct or behavior. | Officer made efforts to conceal or cover up conduct or behavior |
| Officer accepted responsibility. | Officer does not accept responsibility if misconduct is undisputed |
| Motivated by public interest or wellbeing of others. | Motivated by personal interest or gain |
| No repeated or other sustained misconduct. | Failure to meet documented expectations |
| Role of the officer (subordinate to supervisor on scene). | Supervisory position. |
| Officer attempted to de-escalate the encounter (limited to use of force cases). | Officer failed or declined to attempt to de-escalate the encounter even though feasible to do so (limited to use of force cases). |
| | |
| Potential for Rehabilitation. | No potential for rehabilitation. |
| The nature of the event was unpredictable, volatile, or unfolded rapidly, not allowing time for deliberate action. | The nature of the event allowed time for deliberate reflection or action. |
| Extraordinary circumstances or hardships that may be relevant. | Victim's vulnerability that is related to the misconduct. |
| The lack of training or experience that is germane to the incident. | The presence of training or experience that is germane to the incident. |
| Other relevant factors (case-by-case basis) | Other relevant factors (case-by-case basis) |

- An aggravating or mitigating factor will not be applied if already included in determining whether misconduct occurred (example: intentionality).
- The application of aggravating or mitigating factors must be explained in writing by the disciplinary body as part of its final disciplinary action. A disciplinary body may apply an objective points system to the application of the aggravating or mitigating factors.

Alternative B (Portland Model)

**DRAFT MITIGATING AND AGGRAVATING FACTORS**

For Discussion Purposes Only

| *Note: The mitigating and aggravating factors are used only to alter a corrective action level within a specified category, and these factors do not alter the category of conduct. An aggravating or mitigating factor will not be considered if already considered in determining the category.* | **CALCULATION** |
|---|---|
| **Aggravating Factors - Add point/s** | Points |
| Intentional conduct | 2 |
| Significant impact on community member or City operations/mission | 2 |
| Significant property damage or serious physical injury | 2 |
| Does not accept responsibility if policy violation is undisputed | 1 |
| Delay in reporting | 1 |
| Attempt to cover up conduct or behavior | 2 |
| Motivated by personal interest | 1 |
| Failure to meet documented expectations | 1 |
| Supervisory Position | 1 |
| Other (specified on a case-by-case basis) (Only to be used by final decision maker) | 1 |
| **Total:** | |
| | **14** |
| **Mitigating Factors - Subtract point/s** | Points |
| Unintentional conduct | 1 |
| No impact on commuity member or City operations/mission | 1 |
| No property damage or physical injury | 1 |
| Self-reported the violation | 1 |
| Attempt to ameliorate or correct the error (but not done to hide the error) | 2 |
| Positive attitude; accepts responsibility | 2 |
| Motivated by public interest or wellbeing of others | 2 |
| Positive work history | 1 |
| No repeated or other sustained violations | 2 |
| Other (specified on a case-by-case basis) (Only to be used by final decision maker) | 1 |
| **Total:** | |
| | |
| **CALCULATION** | **14** |
| Each factor that applies receives a corresponding point value. Factors that do not apply receive no point value. Subtract mitigation total (green) from aggravation total (red). If the number is negative, corrective action is mitigated. If the number is positive, the violation is aggravated. If the number is 0, the violation is neither mitigated nor aggravated. Aggravating and mitigating factors apply to the totality of the conduct sustained. Note: An aggravating or mitigating factor will not be considered if already considered in determining the category. | **0** |

**DRAFT MITIGATING AND AGGRAVATING FACTORS**

For Discussion Purposes Only

Alternative C (Portland factors without point system)

| Aggravating Factors |
|---|
| Intentional conduct |
| Significant impact on community member or City operations/mission |
| Significant property damage or serious physical injury |
| Does not accept responsibility if policy violation is undisputed |
| Delay in reporting |
| Attempt to cover up conduct or behavior |
| Motivated by personal interest |
| Failure to meet documented expectations |
| Supervisory Position |
| Other (specified on a case-by-case basis) (Only to be used by final decision maker) |

| Mitigating Factors |
|---|
| Unintentional conduct |
| No impact on community member or City operations/mission |
| No property damage or physical injury |
| Self-reported the violation |
| Attempt to ameliorate or correct the error (but not done to hide the error) |
| Positive attitude; accepts responsibility |
| Motivated by public interest or wellbeing of others |
| Positive work history |
| No repeated or other sustained violations |
| Other (specified on a case-by-case basis) (Only to be used by final decision maker) |

- An aggravating or mitigating factor will not be applied if already included in determining whether misconduct occurred (example: intentionality).
- The application of aggravating or mitigating factors must be explained in writing by the disciplinary body as part of its final disciplinary action. A disciplinary body may apply an objective points system to the application of the aggravating or mitigating factors.