

**MEMORANDUM**

**To: Board of Police and Fire Commissioners of the City of Madison**  
**From: Attorney Jenna E. Rousseau, PFC Legal Counsel**  
**Date: October 5, 2022**  
**RE: Consideration of Amendment to Rule 4(e)(v)(3)**

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We received a request from the City Attorney's Office to consider an amendment to Rule 4(e)(v)(3). Currently, Rule 4(e)(v) states:

4. Appointments pursuant to WS 62.13(4)

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e. Initial Appointment

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v. Probation

(1) All initial appointments shall be probationary for a period of eighteen months, and both the initial recommendation by the Chief for appointment and the initial approval of appointment by the Board shall to that extent be conditional.

(2) Probation will include training, orientation, and intensive evaluation, for the purposes of assuring successful performance and confirming the qualifications and fitness of the appointee for service.

**(3) If the Chief decides on a non-disciplinary basis during the course of probation to terminate the employment of an appointee, the Chief may withdraw the recommendation for appointment of that individual, who shall then be discharged and separated from the Department. The Chief shall then promptly report that decision and the resulting discharge and separation to the Board.**

(4) At the regular meeting of the Board immediately preceding the completion of the probationary period, the Chief shall forward to the Board the Chief's confirmation of the appointment recommendation, which shall then be subject to final Board approval, or the Chief shall withdraw the recommendation.

(5) The Chief may extend the initial probationary period up to a total period of twenty-four months without Board action by notifying the appointee and the Board of the extension. No further extension shall be permitted without approval of the Board.

(Emphasis added.)

The Wisconsin Supreme Court has held that a probationary officer has neither a constitutional nor a statutory right to a statement of specifications and a hearing on a city's decision not to retain him. *Kaiser v. Wauwatosa Board of Police & Fire Commissioners*, 104 Wis. 2d 498, 311 N.W.2d 646 (1981). Thus, during the probationary period for an initial appointment, a subordinate who does not successfully complete his or her probation may be dismissed without being provided with an explanation of the reason(s) for the dismissal. Consequently, the underlined and italicized language in Rule 4(e)(v)(3) above (“on a non-disciplinary basis”) has led to confusion.

I recommend amending Rule 4(e)(v)(3) to delete “on a non-disciplinary basis.”

[End of Memorandum]