

Rules of the Civilian Complaint Review Board

(Rules of the City of New York, Title 38A, Chapter 1)

Subchapter A - Introduction

§1-01 Definitions.

As used in this chapter:

Chair. "Chair" shall mean the Chair of the Civilian Complaint Review Board, appointed pursuant to New York City Charter §440(b)(1).

Civilian Complaint Review Board. "Civilian Complaint Review Board" or "Board" shall mean the entity established by Local Law No. 1 for the year 1993, codified as §440 of the New York City Charter.

Executive Director. "Executive Director" shall mean the chief executive officer of the Civilian Complaint Review Board, appointed pursuant to New York City Charter §440(c)(5).

Mediation. "Mediation" shall mean an informal process, voluntarily agreed to by a complainant and the subject officer and conducted with the assistance of a neutral third party, engaged in for the purpose of fully and frankly discussing alleged misconduct and attempting to arrive at a mutually agreeable resolution of a complaint.

Police Commissioner. "Police Commissioner" shall mean the Police Commissioner of the New York City Police Department.

Police Department. "Police Department" shall mean the New York City Police Department.

§1-02 Jurisdiction.

(a) The Board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability.

(b) The jurisdiction of the Board shall include the prosecution of certain substantiated civilian complaints pursuant to a Memorandum of Understanding (MOU) executed by the Board and the Police Department on April 2, 2012, (as from time to time amended) during the period that such MOU is applicable.

(c) The findings and recommendations of the Board, and the basis therefor, regarding case investigations and administrative prosecutions shall be submitted to the Police Commissioner.

Subchapter B - Initial Procedures

§1-11 Filing Complaints.

Written complaints may be sent to the Board's offices by mail or email or may be submitted in person at that office during operating hours. Written complaints may be filed on forms furnished by the Board. The Board will accept written complaints filed at local precincts and forwarded by the Police Department. The Board will also accept complaints submitted through the CCRB's website and by such other methods as the Board may determine.

§1-12 Telephone or In-Person Complaints.

Telephone complaints will be received twenty-four hours a day, seven days a week by the Board. Complainants may also report complaints in person at the Board office during operating hours. Complaints may also be filed at public locations to be designated by the Board.

§1-13 Referrals of Complaints.

(a) Where the Board receives allegations about persons or matters falling within the sole jurisdiction of another agency (and not that of the Board), the Board or the Executive Director shall refer such allegations to such other agency.

(b) Where the Board receives allegations about persons or matters falling partly within the sole jurisdiction of another agency (and not that of the Board) and partly within the joint jurisdiction of both the other agency and the Board, the Board or the Executive Director may refer the entire complaint to the other agency if in the determination of the Board or the Executive Director it is appropriate for the entire complaint to be investigated by one single agency.

§1-14 Notification to the Police Department.

With respect to complaints about officers and matters within the Board's jurisdiction, the Board shall notify the Police Department of the actions complained of within a reasonable period of time after receipt of the complaint.

Subchapter C - Fact-Finding Process

§1-21 Statement of Policy.

The procedures to be followed in investigating complaints shall be such as in the opinion of the Board will best facilitate accurate, orderly and thorough fact-finding.

§1-22 Method of Investigation of Complaints.

In investigating a complaint, Board investigatory personnel may utilize one or more of the methods set forth in this subchapter, and any other techniques not enumerated here, as may be useful in conducting an investigation.

§1-23 Obtaining Documentary and Other Evidence.

(a) Board investigators may make written or oral requests for information or documents.

(b) Board investigators or, as provided in §1-32(c), a panel established pursuant to §1-31, may interview the complainant, the subject officer or witnesses.

(c) Board investigators may make field visits for purposes such as examining the site of alleged misconduct and interviewing witnesses.

(d) Upon a majority vote of members of the Board, subpoenas ad testificandum and duces tecum may be served. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.

(e) The Board may obtain records and other materials from the Police Department which are necessary for the investigation of complaints submitted to the Board, except such records and materials that cannot be disclosed by law. In the event that requests for records or other evidence are not complied with, investigators may request that the Board issue a subpoena duces tecum or a subpoena ad testificandum.

§1-24 Conduct of Interviews.

(a) It is the intent of these Rules not to alter the rights afforded to police officers by the Police Department Patrol Guide with respect to interviews so as to diminish such rights, including but not limited to the right to notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

(b) A member of the Police Department who is the subject of a complaint shall be given two business days notice prior to the date of an interview, to obtain and consult with counsel. A member of the Police Department who is a witness in an investigation of a complaint shall be given a period of time, up to two business days, to confer with counsel.

(c) All persons interviewed may be accompanied by up to two representatives, including counsel. Such counsel or representative may advise the person interviewed as circumstances may warrant, but may not otherwise participate in the proceeding.

(d) Prior to the commencement of the interviewing of a police officer, the following statement shall be read to such officer:

"You are being questioned as part of an official investigation of the Civilian Complaint Review Board. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

If you refuse to testify or to answer questions relating to the performance of your official duties, your refusal will be reported to the Police Commissioner and you will be subject to Police Department charges which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent Police Department charges."

(e) Interviews shall be scheduled at a reasonable hour, and reasonable requests for interview scheduling or rescheduling shall be accommodated. If possible, an interview with a police officer shall be scheduled when such officer is on duty and during daytime hours. Interviews may be conducted at the Board's offices or other locations designated by the Board.

(f) The interviewer shall inform a member of the Police Department of the name and position of the person in charge of the investigation, name and position of the interviewer, the identity of all persons present at the interview, whether the member is a subject or witness in the investigation, the nature of the complaint and information concerning all allegations, and the identity of witnesses and complainants, except that addresses need not be disclosed and confidential sources need not be identified unless they are witnesses to the alleged incident.

(g) The interviewer shall not use off-the-record questions, offensive language or threats, or promise of reward for answering questions.

(h) The interviewer shall regulate the duration of question periods with breaks for such purpose as meals, personal necessity and telephone calls. The interviewer shall record all recesses.

(i) Interviews shall be recorded by the CCRB. No other recordings are permitted.

(j) If a person participating in an interview needs an interpreter, he or she shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview. A qualified interpreter will be obtained from an official registry of interpreters or another reliable source.

(k) Reasonable accommodations shall be made for persons with disabilities who are participating in an interview. Persons requiring such accommodations shall advise the Board investigator of such need as soon as possible after being notified of the date and time of the interview.

Subchapter D - Disposition of Cases

§1-31 Assignment of Cases.

(a) The Chair shall assign to a panel consisting of at least three Board members, or may assign to the full Board for review, all cases which have been fully investigated, and such other cases or categories of cases as the Board may by resolution from time to time determine.

(b) Panel membership shall be determined by the Chair, but each panel shall consist of at least one member designated by the City Council, at least one designated by the Police Commissioner, and at least one designated by the Mayor. Panel membership shall be rotated on a regular basis.

§1-32 Panel or Board Review of Cases.

(a) The panel or the Board shall review the investigatory materials for each assigned case, and prepare a report of its findings and recommendations.

(b) The panel or the Board may, if it deems appropriate, return a case to investigative staff for further investigation or a panel may, upon approval of the Board, conduct additional fact-finding interviews in accordance with the provisions of §1-24.

(c) Panel findings and recommendations shall be deemed the findings and recommendations of the Board. However, upon request of a member of the panel, or upon the direction of the Chair at the request of any member of the Board, the case shall be referred to the full Board for its consideration.

§1-33 Case Dispositions.

(a) No finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the basis for any such finding or recommendation.

(b) Panels or the Board shall employ a "preponderance of the evidence" standard of proof in evaluating cases.

(c) A report of the findings and recommendations with respect to each case investigation reviewed shall be prepared and transmitted to the Police Commissioner. Where the disposition of one or more allegations is "Substantiated," as defined in subdivision (d) of this section, such report shall be forwarded in writing within five business days of such substantiation and shall include appropriate pedigree information regarding the subject officer, the case number and any other control or serial number assigned to the case, and a summary of the pertinent facts.

(d) The following categories of case investigation dispositions shall be used in reports to the Police Commissioner:

(1) Substantiated: the acts alleged did occur and did constitute misconduct.

(2) Unsubstantiated: there was insufficient evidence to establish whether or not there was an act of misconduct.

(3) Exonerated: the acts alleged did occur but did not constitute misconduct.

(4) Unfounded: the acts alleged did not occur.

(5) Complaint Withdrawn: the complainant voluntarily withdrew the complaint.

(6) Complainant Unavailable: the complainant could not be located.

(7) Victim Unavailable: the victim could not be located.

(8) Complainant Uncooperative: the participation of the complainant was insufficient to enable the Board to conduct a full investigation.

(9) Victim Uncooperative: the participation of the victim was insufficient to enable the Board to conduct a full investigation.

(10) Officer Unidentified: the board was unable to identify the officer who was the subject of the allegation.

(11) Referral: the complaint was referred to another agency.

(12) No Jurisdiction: the complaint does not fall within the jurisdiction of the Board.

(13) No Prima Facie Case: the complaint does not state a prima facie case.

(14) Mediated: the parties to the mediation agreed that the complaint should be considered as having been resolved through mediation.

(15) Mediation Attempted: the parties agreed to mediate the complaint but the civilian subsequently did not participate in the mediation.

(16) Miscellaneous: the subject of the complaint is not currently employed by the Police Department as a police officer.

(17) Other: as from time to time determined by the Board.

§1-34 Cases closed without a Full Investigation.

(a) The Board or the Executive Director may close without conducting a full investigation any case falling within categories (5) through (17) of §1-33.

(b) Prior to the closure of any case under § 1-34(a), board members must be afforded an opportunity to review such case.

Subchapter E - Administrative Prosecution

§1-41 Introduction.

(a) This Subchapter E is adopted pursuant to a Memorandum of Understanding (the "MOU") dated April 2, 2012 and made between the Police Commissioner and the Chair, concerning the administrative prosecution by the Board of cases in which it finds that an allegation falling within its jurisdiction has been substantiated against an officer and recommends that formal charges and specifications be brought against such officer. The MOU takes effect on the date on which this Subchapter E takes effect and applies to allegations substantiated by the Board and in which the Board has recommended that charges and specifications be preferred on or after such date. This Subchapter E shall not create any rights or benefits in any third parties.

(b) In this subchapter:

"Case" means in relation to any Prosecution, the subject matter of such Prosecution.

"Charges" means charges and specifications brought by the Board against an officer in respect of an allegation falling within the jurisdiction of the Board and substantiated by the Board with the recommendation that charges and specifications be preferred.

"Police Department Advocate" means the department advocate, and includes any assistant department advocate, of the Police Department.

"Prosecution" means the administrative prosecution of Charges by the Board before a Trial Commissioner and includes all matters ancillary to or undertaken in anticipation of or in preparation for such prosecution.

"Trial Commissioner" means in relation to any Prosecution, the deputy commissioner of trials or assistant deputy commissioner of trials of the Police Department, having jurisdiction over such Prosecution.

§1-42 Prosecution of Charges.

(a) Where the Board finds an allegation falling within its jurisdiction to have been substantiated against an officer and recommends that Charges be brought against such officer the Board shall promptly notify the Police Commissioner of its finding and recommendation.

(b) In those limited circumstances where the Police Commissioner determines that the Board's prosecution of the Charges would be detrimental to the Police Department's disciplinary process, the Police Commissioner shall so notify the CCRB. Such instances shall be limited to cases in which there are parallel or related criminal investigations, or when, in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer's record and disciplinary history the interests of justice would not be served.

(c) Any request by the Police Commissioner for the Board to refrain from prosecution of Charges shall be made in writing to the CCRB and shall include a detailed explanation for such request and a statement detailing what discipline if any the Police Commissioner would pursue on such officer.

(d) The CCRB may reject such request to refrain from prosecution within five business days of receipt of such request. Such rejection shall be made in writing and shall include a statement rebutting the Police Commissioner's explanation for his or her request.

(e) The Police Commissioner may deny such rejection within five business days of receipt of such rejection. Such denial shall be made in writing to the CCRB and shall include a detailed response to the CCRB's rebuttal. Upon receipt of such denial the Board shall refrain from further prosecution of the case.

(f) In all cases other than those which the Board is to refrain from prosecuting, the CCRB shall promptly draft, and request that the Police Department Advocate serve on behalf of the Board, Charges against the subject officer.

(g) If the CCRB believes that suspension or modified assignment of a subject officer would be prudent while a Prosecution is pending, the CCRB shall make such recommendation to the Police Commissioner, who shall determine whether to suspend or modify the assignment of such officer.

§1-43 Expedited Cases

If the CCRB receives notice from the Police Department, or it becomes clear to the CCRB, that a Case requires expedited prosecution, the CCRB shall make every reasonable effort to conclude such prosecution within the required time frame. If the CCRB determines that it will not be able to conclude such prosecution within such time frame the CCRB shall decline to prosecute such case and shall request that the Police Department Advocate undertake such prosecution.

§1-44 Other Misconduct

If during the course of a Prosecution the CCRB becomes aware of possible misconduct falling outside its jurisdiction, such as the making of a false statement by an officer, the Board shall not itself prosecute such possible misconduct but shall instead immediately refer such possible misconduct to the Police Department for investigation and possible prosecution by the Police Department. The CCRB shall provide to the Police Department such assistance as may be requested, in the investigation or prosecution by the Police Department of such possible misconduct and shall, if necessary, coordinate its Prosecution with that of the Police Department.

§1-45 Police Department Procedures and Disciplinary Practices

(a) The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations.

(b) The Board shall establish and maintain a unit of appropriately qualified and experienced attorneys and support staff of sufficient number to

undertake in a timely and effective manner the responsibility for the administrative prosecution of substantiated civilian complaints.

(c) The Board's attorneys and support staff shall be trained in all aspects of the Police Department's procedures and policies as they affect the administrative prosecution of its cases.

(d) The Board's attorneys and support staff shall, to the extent practicable and relevant, familiarize themselves with and apply in relation to Prosecutions, Police Department disciplinary policies and standards.

(e) The Police Department shall provide all reasonable assistance requested by the CCRB in the creation and maintenance of this unit, including training and guidance in both legal and administrative matters.

(f) The CCRB may during the course of a Prosecution contact the Police Department Advocate to request the assistance of employees of the Police Department in the evaluation, preparation and prosecution of the Case. In such instances, the Police Department Advocate shall arrange for the Police Department to provide reasonable assistance to the CCRB.

§1-46 Other Matters Relating to Administrative Prosecutions

(a) The Police Department shall upon receipt send to the CCRB a copy of each report and recommendation issued by the Trial Commissioner in respect of a Prosecution. The CCRB may provide to the Trial Commissioner a letter commenting on such report and recommendation, commonly referred to as a "Fogel" letter.

(b) In all cases in which a Prosecution ends without the issuance by the Trial Commissioner of a report and recommendation, the CCRB shall forward to the Police Commissioner a final recommendation of the CCRB reflecting the results of its Prosecution of the Case. The CCRB shall include all relevant forms, memoranda and background information to assist the Police Commissioner in making a final disciplinary determination.

(c) The Police Commissioner may accept, reject, or modify the recommendation presented by the CCRB, or may ask the CCRB for additional investigative or background information in its possession. The Police Commissioner may also request further investigation or development of the record to enable him or her to make a final disciplinary determination. If the CCRB's recommendation is rejected or modified, the CCRB will be responsible for taking any appropriate follow-up action, such as proceeding with the Prosecution, engaging in additional investigation, or further developing the record.

(d) The CCRB may conduct plea negotiations with subject officers and their attorneys, to be heard by a Trial Commissioner and presented to the Police Commissioner for final determination. In all cases in which the Police Commissioner rejects a negotiated plea, the CCRB shall be responsible for implementing the Police Commissioner's decision, including negotiating the Case in a manner consistent with the Police Commissioner's determination or proceeding with the Prosecution.

(e) The CCRB shall provide to the Police Department status reports on its Prosecutions quarterly and as otherwise requested by the Police Department.

(f) In any case substantiated by the Board in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by the Board or by the Trial Commissioner, the Police Commissioner shall notify the CCRB, with notice to the subject officer, at least ten business days prior to the imposition of such discipline. Such notification shall be in writing and shall include a detailed explanation of the reasons for deviating from the Board's or, as the case may be, the Trial Commissioner's, recommendation, including but not limited to each factor the Police Commissioner considered in making his or her decision. The CCRB and the subject officer may respond to such notification within five business days of its receipt, after which the Police Commissioner shall make a final determination.

(g) The Police Department Advocate shall ensure that the CCRB is notified of the final disciplinary result and specific penalty in each case prosecuted by the Board within thirty calendar days of the Police Commissioner's final determination.

Subchapter F - Miscellaneous Matters

§1-51 Meetings of the Board.

(a) The full Board shall meet at least one time each month, at which meeting it shall consider cases referred to it and conduct any other business.

(b) If a case has been referred to the Board, the Board may take such action as it deems appropriate, including, but not limited to, making its own findings and recommendations, remanding the case to a referring panel for further consideration or action, and remanding the case for further investigation.

§1-52 Panel and Board Meetings: General Matters.

(a) If a Board member has a personal, business or other relationship or association with a party to or a witness in a case before a panel to which such member has been assigned, the member shall disclose this situation to the Chair, and shall request that the case be transferred to another panel. If a Board

member has such relationship in a case before the full Board, the member should recuse himself or herself from deliberations or action in connection with that case.

(b) Board members must be present at a meeting of the Board or a panel in person or, subject to such limitations as the Board may by resolution from time to time determine, by videoconference in order to register their votes.

§1-53 Communications with and Notifications to Complainants Regarding Status of Complaints.

(a) Within seven business days of the receipt of a complaint, the Board shall notify a complainant by telephone or letter that the Board has received his/her complaint, and shall identify the case number and staff member(s) assigned to the case.

(b) The Board shall, within seven business days of sending to the Police Commissioner its findings and recommendations in a case, write to the Complainant with such findings and recommendations.

(c) If an allegation is substantiated and charges are recommended by the Board, the Board shall, as soon as it is determined under § 1-42, advise the complainant in writing whether such allegation will be prosecuted and, if it will, whether the Board or the Police Department Advocate will be responsible for prosecuting it.

(d) Where there is an administrative prosecution by the Board, the Board shall within seven business days of the Board's receipt of the Police Commissioner's final determination notify the complainant by letter of the final action taken by the Police Commissioner.

§1-54 Mediation.

(a) A complainant may choose to resolve a complaint by means of mediation, provided the subject officer agrees to mediation as provided herein, and unless the Board or a panel thereof determines that the complaint is not appropriate for mediation.

(b) Unless the Board or panel thereof determines that a complaint is not appropriate for mediation, a complainant requesting mediation and the subject officer shall be sent a notice formally offering them the opportunity to voluntarily engage in the mediation process.

(c) Both the complainant and the subject officer must agree to mediation within ten days of such notification being sent in order for mediation to proceed. In the event one or both parties do not agree to mediation, the

complaint shall be referred to Board investigatory personnel for investigation. The mediator shall be designated by the Executive Director.

(d) Written notice of the time, date and location of the first mediation session shall be provided to each party. Such notice shall be accompanied by a description of procedures and guidelines for mediation. Subsequent session(s) shall be scheduled by a member of the Board's mediation staff if the mediation is not completed at the first session.

(e) Those present at the mediation session shall include the complainant, the subject officer and the mediator. Where appropriate, arrangements may be made for a translator or interpreter to be present. In the case of a complainant who is a minor, a parent or legal guardian shall be present. Where the Executive Director determines that a complainant who is an adult requires assistance in order to comprehend or participate in mediation, such adult may be accompanied by a family member or legal guardian. Parties' representatives or counsel may be available outside the room where the mediation is being conducted.

(f) All information discussed or statements made at a mediation session shall be held in confidence by the mediator, and the parties shall also agree in writing to maintain such confidentiality. No stenographic record, minutes or other record of the mediation session shall be maintained.

(g) The mediation session(s) shall continue as long as the participants believe that progress is being made toward the resolution of the issues. The mediation process shall terminate if either party announces its unwillingness to continue mediation, the mediator believes no progress is being made, or the complainant fails to attend two or more mediation sessions without good cause shown.

(h) If mediation is successful, the parties shall sign an agreement stating that each believes the issues have been satisfactorily resolved. The mediator shall advise the Board that the mediation has been successfully concluded, and the Board shall forward this information to the Police Commissioner.

(i) If a case is not successfully resolved through mediation, the complainant or police officer may ask for the complaint to be investigated, and the complaint shall then be referred to Board's investigative staff for investigation.

§1-55 Reconsideration or Reopening of Cases.

(a) The Board may on receipt of a written request from a complainant or victim or police officer re-open any case closed following a full investigation, if new evidence or a previously unavailable or uncooperative witness becomes

available and in the determination of a panel constituted to consider such request such new evidence or the prospective availability or cooperation of such witness may reasonably lead to a different finding or recommendation.

(b) The Executive Director may on receipt of a written request from a complainant or victim or police officer, re-open any case closed without a full investigation. If the Executive Director decides not to reopen such case, such request shall (except as from time to time otherwise directed by the Board) be submitted to a panel for its consideration.

c) Any person considering a request to reopen a case shall have full discretion in making his or her determination, and may properly consider all relevant circumstances, including, but not limited to, any delays on the part of the person requesting that the case be reopened; new, material information as to the complainant, the subject officer or any civilian or police witness; and the practicability of conducting a full investigation of the allegations contained in the case within any applicable limitation period.

§1-56 Authority given to the Executive Director.

The authority given under these Rules to the Executive Director shall

(a) except in relation to § 1-13(b), be exercisable either by the Executive Director or by such members of the senior staff of the Board as the Executive Director may from time to time designate, and

(b) be subject to such limitations as the Board may by resolution from time to time determine.