

## NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

Notice is hereby given in accordance with section 1043(b) of the Charter of the City of New York ("Charter") that the Civilian Complaint Review Board ("CCRB") proposes the adoption of revised rules governing the referral, disposition and closing of certain types of cases, membership of panels of the board, the referral of certain cases from panels to the full board, the definitions of certain case dispositions, participation in meetings by means of videoconferencing, and the re-opening of cases.

These rules are proposed pursuant to sections 1043 and 2303(b)(11) of the Charter and section 19-503 of the Administrative Code of the City of New York. These proposed rules were not included in a regulatory agenda for the CCRB for Fiscal Year 2008, because they were not anticipated when such agenda was under consideration.

A public hearing on these proposed rules will be held by the CCRB at its offices at 40 Rector Street, 2nd Floor, New York, NY 10006 at 09:30 A.M. on April 8, 2009. Persons wishing to testify at the hearing may notify the CCRB in advance, either in writing or by telephone to the CCRB's Office of Intergovernmental and Legal Affairs at the address given below. Any request for a sign language interpreter or other form of reasonable accommodation at the hearing for a disability must be submitted to such office in writing, or by TTY/TDD no later than April 1, 2009. Written comments may be mailed or emailed to the CCRB's Office of Intergovernmental and Legal Affairs at the address given below to be received no later than 09:30 A.M. on April 8, 2009.

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Note: *[Material inside brackets has been deleted]*  
Material underlined has been added.

*Section 1. A defined term set forth in section 1-01 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§1-01 Definitions.**

As used in this chapter:

\* \* \*

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

\* \* \*

*Section 2. The title of Subchapter B of Title 38A of the Rules of the City of New York is amended to read as follows:*

**Subchapter B - Initial Procedures [for Filing Complaints]**

*Section 3. Section 1-13 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§1-13 Referrals of Complaints.**

(a) [When] Where the Board receives [a complaint] allegations about persons or matters [not] falling within the [Board's] 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 [the complaint to the appropriate agency. When the Board receives a complaint that concerns persons and matters both within and not within the Board's jurisdiction, it shall, except as otherwise provided in §1-22 and §1-44, investigate and determine those aspects of the complaint that concern persons and matters that are within the Board's jurisdiction, and shall refer those aspects of the complaint not within the Board's jurisdiction to the appropriate agency for action].

(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.

*Section 4. Section 1-22 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§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. [Where appropriate, the Executive Director may recommend that a case be closed prior to investigation on the basis that the complaint concerns persons or matters not within the Board's jurisdiction or does not state a prima facie case. Such recommendations shall be subject to approval by a panel.]

*Section 5. The title of Subchapter D of Title 38A of the Rules of the City of New York is amended to read as follows:*

**Subchapter D - [Board Review] Disposition of Cases**

*Section 6. Section 1-31 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§1-31 Assignment of Cases.**

[When the investigation of a case has been completed by Board staff, or a recommendation has been made by the Executive Director that the case be closed prior to investigation, the Chair shall assign the case to a panel consisting of at least three Board members, or may assign the case to the full Board for review.]

(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 [designated] determined by the Chair, [provided that no such] but each panel shall consist [exclusively] of [members] at least one member designated by the City Council, [or] at least one designated by the Police Commissioner, [or selected] and at least one designated by the Mayor. Panel membership shall be rotated on a regular basis.

*Section 7. Section 1-32 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§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) [Where the Executive Director has recommended pursuant to §1-22 that a case be closed prior to investigation, the panel or the Board shall review such recommendation, and prepare a report of its findings and recommendations. 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) 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.

~~[(d)]~~(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 [action in accordance with the provisions of §1-41] its consideration.

*Section 8. Section 1-33 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§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) [Panels of the Board shall utilize] The following categories of case investigation dispositions shall be used in reports to the Police Commissioner:

(1) Substantiated: the [the investigation disclosed sufficient evidence to establish by preponderance of the evidence that the subject officer has committed the] acts alleged did occur and did constitute misconduct.

(2) Unsubstantiated: [the investigation disclosed] there was insufficient evidence to establish [by a preponderance of the evidence that the alleged misconduct occurred] whether or not there was an act of misconduct.

(3) Exonerated: the [subject officer] acts alleged did occur but did not [commit an act of] constitute misconduct [ , i.e., the incident occurred but the officer's actions were lawful and proper].

(4) Unfounded: the acts [complained of] alleged did not occur.

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

(6) Complainant [or victim unavailable] Unavailable: the complainant could not be located.

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

[(8) Case closed prior to investigation.]

[9] (8) Complainant [or victim failed to cooperate] 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) [Department Employee] Officer Unidentified: the board was unable to identify the officer who was the subject of the allegation.

[10] (11) [Referred] 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) [Complaint mediated] 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.

[12] (17) Other: [to be specified] as from time to time determined by the Board.

*Section 9. Title 38A of the Rules of the City of New York is amended by adding a new section 1-34, to read as follows:*

**§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.

*Section 10. Subdivision (b) of section 1-47 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§1-47 Panel and Board Meetings: General Matters.**

(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.

*Section 11. Section 1-50 of Title 38A of the Rules of the City of New York is amended to read as follows:*

**§1-50 Reconsideration or Reopening of Cases.**

[Where new evidence is obtained or a previously unavailable or uncooperative party becomes available with eighteen months of the Board's submission of findings and recommendations to the Police Commissioner, and such new evidence or the availability of such party may reasonably lead to a different finding or recommendation, a case may, at the Board's discretion, be reopened at the request of a party and where appropriate, an amended report may be prepared and submitted to the Police Commissioner.]

(a) The Board may on receipt of a written request from a complainant or victim or police officer re-open any case closed by a panel or the full board where new evidence or a previously unavailable or uncooperative witness becomes available and in the determination of such panel or full Board 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, re-open any case closed without a full investigation under §1-34.

(c) Where following receipt of a request to reopen a case closed without a full investigation under §1-34, 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 or the full Board for its consideration.

(d) 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.

*Section 12. Title 38A of the Rules of the City of New York is amended by adding a new section 1-51, to read as follows:*

**§ 1-51 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.

## Statement of Basis and Purpose of Proposed Rules

### Overview

The Civilian Complaint Review Board currently closes certain cases without conducting a full investigation, for example, when a complainant withdraws a complaint, cannot be located or does not co-operate with an investigation. Under the Board's current rules, such cases can only be closed following a vote by a panel of the Board.

During the period 2003 to 2007, 32,536 cases were submitted by staff to panels of the Board with the recommendation that they be closed without conducting a full investigation. The Board accepted such recommendation in 32,532 such cases. The Board has, therefore, determined to amend the rules so as to authorize the Executive Director or an authorized senior staff member to close certain cases without their first being referred to a panel. Such authorization would be subject to certain limitations, as from time to time determined by the Board.

The Board believes that the revised rule will permit cases to be closed without conducting a full investigation, in appropriate circumstances, more speedily and at less cost to the Board, without adversely affecting the interests of the public or of police officers.

The Board has also conducted a review of its other rules, and determined that certain of them, such as the rule dealing with the referral of certain cases to other agencies and that dealing with the re-opening of cases, be revised so as to provide greater clarity, consistency and efficiency.

### Detailed Changes

Proposed rule §1-13 clarifies the language dealing with the referral of complaints to other agencies and provide that where a complaint contains allegations falling partly within the sole jurisdiction of another agency and partly within the jurisdiction both of such other agency and of the Board, the Board or the Executive Director may refer the entire complaint to the other agency if the person making the determination determines that it is appropriate for the entire complaint to be investigated by one single agency.

Proposed rule §1-22 is deleted, insofar as such section deals with complaints concerning persons or matters not within the jurisdiction of the Board or not stating a prima facie case. Such matters are now dealt with by §§1-33(12) and (13) and §1-34.

Proposed rule §1-31 clarifies the language dealing with the assignment of cases to panels of the Board and codifies the existing practice regarding the

assignment of Board members to panels, whereby each such panel contains 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.

The proposed rulemaking deletes §1-32(b), relating to cases recommended to be closed under §1-22, because the relevant provision of §1-22 is itself deleted. Such provision in §1-22 is replaced by §§1-33(12) and (13).

Proposed rule §1-32(c) (formerly §1-32(d)) provides that cases referred to the full Board shall be so referred for consideration by the Board, and not, as at present, as provided in §1-41 (which governs cases referred as a substantiated case to the police commissioner). This change is to correct a manifest error.

Proposed rule §1-33(d) simplifies certain terms used in case dispositions, so as to make them easier to understand, and defines other terms for the first time.

Proposed rule §1-34 authorizes the Board or the Executive Director to close without conducting a full investigation cases in which a complainant voluntarily withdraws a complaint, a complainant or alleged victim cannot be located, the participation of a complainant or alleged victim was insufficient to enable the Board to conduct a full investigation, a subject officer cannot be identified or ceases to be employed by the police department as a police officer, a complaint is referred to another agency, does not fall within the jurisdiction of the Board or does not state a prima facie case, a case is mediated or a complainant or alleged victim agrees to mediate a case but subsequently does not participate in a mediation, or as from time to time determined by the Board. Prior to the closure of any case under §1-34, board members must be afforded an opportunity to review such case.

Proposed rule §1-47 permits, subject to such limitations as the Board may by resolution from time to time determine, Board members to attend and vote by videoconference at a meeting of the Board or a panel.

Proposed rule §1-50 changes the provisions concerning the re-opening of cases. Under the proposed rule, the Executive Director may at the written request of a complainant or alleged victim re-open any case closed without a full investigation and must refer to a panel or the full Board for its decision any such request which he or she decides not to grant. The proposed rule removes the requirement that any request to re-open a case be made within 18 months of its closure but provides that any person considering such a request shall have full discretion in making his or her determination and may properly consider, among other things, any delays on the part of the person requesting that the case be re-opened, and the practicability of conducting a full investigation within any applicable limitation period.

Proposed rule §1-51 provides that where authority is granted under the rules to the Executive Director, such authority shall (except in relation to certain complaints containing allegations falling within the jurisdiction both of the Board and of another agency) 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 determine; and that the authority granted under the rules to the Executive Director shall be subject to such limitations as the Board may by resolution from time to time determine. This provision will ensure an appropriate degree of administrative flexibility, under the control of the Board, in the Board's operations.