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" means 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" means the entity established by Local Law No. 1 for the year 1993, codified as §440 of the New York City Charter.

Full Board. “Full Board” refers to all current members of the Board which have been appointed pursuant to New York City Charter §440(b)(1).

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

Agency Staff. “Agency Staff” means employees of the Civilian Complaint Review Board, including Board investigators.

Mediation. "Mediation" means an informal process, voluntarily agreed to by a Complainant and/or Victim 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" means the Police Commissioner of the New York City Police Department, and where appropriate, his or her designee.

Police Department. "Police Department" means the New York City Police Department.

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

Police Department Advocate. "Police Department Advocate" means the Department Advocate, and includes any Assistant Department Advocate of the Police Department.

Prosecution. "Prosecution" means the administrative prosecution of department charges before a Trial Commissioner and includes all matters undertaken pursuant to such prosecution.

Trial Commissioner. "Trial Commissioner" refers to the Deputy Commissioner of Trials or Assistant Deputy Commissioner of Trials of the Police Department.

Personal Knowledge. "Personal Knowledge" means knowledge of a circumstance or fact gained through firsthand observation or experience.

Complainant. "Complainant" refers to a person with Personal Knowledge of alleged police misconduct who is filing a complaint on behalf of themselves or another person regarding the alleged misconduct.

Reporting Non-Witness. "Reporting Non-Witness" refers to a person(s) without personal knowledge of the alleged police misconduct filing a complaint on behalf of another person.

Victim. "Victim" refers to the person alleging harm by the alleged police misconduct.

Case. "Case" refers to an investigation undertaken by the Civilian Complaint Review Board.

§1-02 **Jurisdiction**.

(a) Pursuant to Chapter 18-A § 440 (c)(1) of the New York City Charter, 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 in effect.

(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.**

(a) A Victim, a parent if the Victim is a minor, legal guardian or legal representative, or any individual having personal knowledge (as defined in §1-01) of alleged misconduct by a member of the New York City Police Department, shall have standing to file a complaint.

(b) Complaints of alleged police misconduct filed by reporting non-witnesses (as defined in §1-01) may be investigated at the discretion of the Chair, Full Board, or the Executive Director. Among the factors to be considered are: the nature and/or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, the practicability of conducting a full investigation within the time prescribed by the statute of limitations and the numbers of complaints received by the Board regarding the incident.

(c) The Board shall have the power to review incidents involving members of the New York City Police Department and investigate Cases arising therefrom within the Board's jurisdiction under the New York City Charter.

§1-12 **Written 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.

§1-13 **Telephone or In-Person Complaints.**

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

§1-14 **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 Chair, Full 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 Chair, Full Board, or the Executive Director may refer the entire complaint to the other agency if in the determination of the Chair, Full Board, or the Executive Director it is appropriate for the entire complaint to be investigated by one single agency.

§1-15 **Late Complaints.**

(a) In the event a person with standing files a complaint with the Board after an18-month period of time since the incident date has elapsed, the Chair, Full Board, or the Executive Director will make the determination whether to investigate the complaint.

(b) In the event a person with standing files a complaint with the Board more than one year after the incident, the Chair, Full Board, or the Executive Director will make the determination whether to investigate the complaint.

(c) Among the factors to be considered in determining whether to investigate complaints made after one year or after an 18-month period of time since the incident date has elapsed are: the nature and/or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, the practicability of conducting a full investigation within any applicable limitation period, the reason for the late filing and the numbers of complaints received by the Board regarding the incident.

§1-16 **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, Agency Staff may utilize one or more of the

methods set forth in this subchapter, and any other techniques not enumerated here, as may be allowed by law 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, Victim, 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, or at the discretion of the Executive Director, subpoenas ad testificandum and duces tecum may be served. Such subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules.

(e) Pursuant to Chapter 18-A § 440 (d)(1) of the New York City Charter, it is the duty of the Police Department to provide such assistance as the Board may reasonably request, to cooperate fully with investigations by the Board and to provide the Board upon request records and other materials which are necessary for the investigation of complaints. .

§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 statements 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."

"Officer, have you also read and do you understand Patrol Guide Procedure 203-08, which states that absent exceptional circumstances, an officer will be dismissed from the Police Department for intentionally making a false official statement?"

(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 a qualified interpreter will be obtained from an official registry of interpreters or another reliable source as soon as possible.

(k) When requested , reasonable accommodations shall be made for persons with disabilities who are participating in an interview.

(l) Prior to the commencement of the interviewing of a Complainant, Victim and/or civilian witness, the following statement shall be read to such person, in sum and substance:

At the start of the interview:

> Today is [ENTER DATE] and the time is now [ENTER TIME]. I am Investigator [ENTER NAME] and I am conducting an official investigation into Civilian Complaint Review Board case number [ENTER CASE NUMBER]. In this case, an allegation of misconduct has been made against (a) member(s) of the New York City Police Department.
>
> This interview is taking place at [LOCATION], and is being recorded.
>
> For the record, please state your name, address, date of birth, occupation/employer (if any) and/or student status.
>
> Also present is/are [ENTER RECORD]
>
> Mr./Ms. [ENTER NAME], you are being asked to provide a statement pursuant to an official CCRB investigation under the authority granted the CCRB pursuant to section 440 of the New York City Charter. All statements made become part of the official investigative file and may be disclosed pursuant to subpoena or other document request to the extent permitted by law and in furtherance of criminal, administrative or civil litigation.
>
> Please be advised that you will be asked to sign a verification statement at the conclusion of this interview. ~~*Do you swear or affirm under penalty of perjury, as defined in the New York State Penal Law, that all of the statements you are about to provide in connection with this investigation are true to your knowledge*?~~
>
> Mr./Ms. [ENTER NAME], do you understand what I have just told you?

At conclusion of interview:

> Is there anything that I haven't asked you about that you wish to add to the record?
>
> I am now going to present for your signature the verification form I mentioned earlier. ~~*This form requires your signature and reflects the fact that you swore and affirmed under penalty of perjury, as defined in the New York State Penal Law, that the statements you have made in connection with this case are true to your knowledge.*~~

Have the witness sign the form.

(Sign the form as a commissioner of deeds or have someone who is a commissioner of deeds present to witness the civilian's signature and sign the form as a commissioner of deeds).

The time is now [ENTER TIME].

The interview is now concluded.

Subchapter D - Disposition of Cases

§1-31 **Assignment of Cases.**

(a) The Chair or the Executive Director 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 determine by resolution.

(b) Pursuant to Chapter 18-A §440 (c)(2) of the New York City Charter, no panel shall consist exclusively of members designated by the Council, Police Commissioner or selected by the Mayor. Panel membership shall be determined by the Chair, but each panel shall consist of at least one member designated by City Council, at least one designated by the Police Commissioner, and at least one designated by the Mayor; unless such a panel composition would interfere with or unreasonably delay the Civilian Complaint Review Board's operationsal ~~functions~~. Panel membership shall be rotated on a regular basis.

(c) Panel membership shall be randomly selected and rotated on a regular basis. If the Chair or the Executive Director determines that circumstances require it, the Chair or the Executive Director may re-assign a Case to a new panel.

§1-32 **Panel or Board Review of Cases.**

(a) The panel or the Full Board shall review the investigatory materials for each assigned Case, and report its findings and recommendations in writing.

(b) The panel or the Full 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, including 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) Pursuant to Chapter 18-A § 440 (c)(1) of the New York City Charter, 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 Full Board shall employ a "preponderance

of the evidence" standard of proof in evaluating Cases.

(c) ~~A report of t~~The findings and recommendations with respect to each Case reviewed by the Board shall be ~~prepared and transmitted~~ submitted to the Police Commissioner.

(d) Where the disposition of one or more allegations is "Substantiated," as defined in subdivision (e) of this section, the Board's findings and recommendations shall be forwarded in writing to the Police Commissioner within five business days 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. Based on its findings, the Board may recommend penalties of charges, command discipline or instructions with formalized training, or any combination of these. However, if the Board or Panel recommends charges to any Case allegation, all substantiated allegations shall be included as part of that recommendation.

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

(1) Substantiated: there was ~~evidence to establish by~~ a preponderance of evidence that 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: there was ~~evidence to establish by~~ a preponderance of the evidence that the acts alleged did occur but did not constitute misconduct.

(4) Unfounded: there was ~~evidence to establish by~~ a preponderance of the evidence that the acts alleged did not occur.

(5) Complaint Withdrawn: the Complainant withdrew the complaint.

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

(7) Victim Unavailable: the Victim could not be reached or 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) Victim Unidentified: the Board could not identify the Victim and therefore was unable to conduct a full investigation.

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

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

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

(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) Administrative Closure: the Case was referred to the Board by another agency, not by a member of the public, and the Board was unable to conduct a full investigation.

~~(f) Where the investigation reveals that the police officer committed misconduct falling outside the Board's jurisdiction as defied in Chapter 18-A § 440 (c)(1) of the New York City Charter, the Board may report such misconduct to the Police Commissioner.~~

§1-34 **Cases closed without a Full Investigation.**

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

(b) No Case(s) falling within categories (5) through (17) of §1-33(e) shall be closed by the Executive Director until copies shall first have been provided to any member of the Full Board who has asked to review copies of said Case(s).

(c) The Executive Director shall from time to time conduct an audit of Cases closed by the Executive Director pursuant to this rule. After an audit of the aforementioned sample of Cases, the Executive Director shall report

his or her review of those Cases to the Full Board.

Subchapter E - Administrative Prosecution

§1-41 **Introduction.**

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.

§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 Civilian Complaint Review Board. Such instances shall be limited to Cases in which there are parallel or related criminal investigations, or when, in the instance of an officer with no disciplinary history or prior substantiated Civilian Complaint Review Board 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 Civilian Complaint Review Board 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 Civilian Complaint Review Board 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 Civilian Complaint Review Board and shall include a detailed response to the Civilian Complaint Review Board's rebuttal. Upon receipt of such denial the

Board shall refrain from further Prosecution of the Case.

(f) In all Cases other than those in which the Board is ~~to~~ refraining from prosecuting, the Civilian Complaint Review Board shall promptly draft, and request that the Police Department Advocate serve on behalf of the Board, Charges against the subject officer.

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

(h) After a Case has been referred to the Administrative Prosecution Unit for Prosecution, the Chief Prosecutor or Executive Director, or either of their designees, shall make a formal request in writing to the Full Board when:

(1) The~~y~~ Administrative Prosecution Unit ~~are~~ is requesting that additional allegations be considered against a subject officer in addition to the allegations ~~currently~~ previously recommended by the Board; or

(2) The~~y~~ Administrative Prosecution Unit ~~are~~ is requesting that previously considered allegations against a subject officer that did not previously result in a substantiation by the Board be reconsidered for substantiation.

In the formal written request, the Chief Prosecutor or Executive Director, or either of their designees, shall detail their rationale for making said request. If the Full Board chooses to reopen the matter to add or reconsider any allegations, such matter shall be reopened considering the same criteria designated in §1-55(d) of these rules. Where the Board decides to substantiate additional allegations, the Civilian Complaint Review Board shall notify, in writing, all affected civilian and law enforcement parties of the changes to the allegation and/or charges.

(i) After a Case has been referred to the Administrative Prosecution Unit for Prosecution, the Chief Prosecutor or Executive Director may, upon approval by either the Chair or Full Board, dismiss any Charges ~~without permission of the Board~~. When any such Charge is dismissed, the Civilian Complaint Review Board shall notify, in writing, all affected civilian and law enforcement parties of the dismissal.

§1-43 **Expedited Cases**

If the Civilian Complaint Review Board becomes aware that a Case requires expedited Prosecution, the Civilian Complaint Review Board shall

make every reasonable effort to conclude such prosecution within the required time frame. If the Civilian Complaint Review Board determines that it will not be able to conclude such Prosecution within such time frame the Civilian Complaint Review Board 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 Civilian Complaint Review Board 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 Civilian Complaint Review Board 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 of conducting Prosecutions.

(c) The Board's attorneys and support staff appointed pursuant to this section shall be trained in all aspects of the Police Department's procedures and policies as they affect the Prosecutions.

(d) The Board's attorneys and support staff appointed pursuant to this section 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 Civilian Complaint Review Board in the creation and maintenance of this unit, including training and guidance in both legal and administrative matters.

(f) During the course of a Prosecution, the Civilian Complaint Review Board may 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 Civilian Complaint Review Board.

§1-46 **Other Matters Relating to Administrative Prosecutions**

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

(b) Where a Prosecution ends without the issuance by the Trial Commissioner of a report and recommendation, the Civilian Complaint Review Board shall forward to the Police Commissioner a final recommendation of the Civilian Complaint Review Board reflecting the results of its Prosecution of the Case. The Civilian Complaint Review Board 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 Civilian Complaint Review Board, or may ask the Civilian Complaint Review Board 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 Civilian Complaint Review Board's recommendation is rejected or modified, the Civilian Complaint Review Board 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 Civilian Complaint Review Board may conduct plea negotiations with subject officers and their attorneys, to be heard by a Trial Commissioner. The Police Commissioner shall be informed of any proposed plea and said plea shall be held in abeyance until approved by the Police Commissioner. In all Prosecutions in which the Police Commissioner rejects a negotiated plea, the Civilian Complaint Review Board shall be responsible for implementing the Police Commissioner's decision, including negotiating the Prosecution in a manner consistent with the Police Commissioner's determination or proceeding with the Prosecution.

(e) The Civilian Complaint Review Board shall provide to the Police Department quarterly status reports on its Prosecutions or 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 Civilian Complaint Review Board, 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 Civilian Complaint Review Board 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 Civilian Complaint Review Board 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 Full Board, the Full 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.**

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.

§1-53 **Communications with and Notifications to Complainants, Victims, and Reporting Non-Witnesses Regarding Status of Complaints.**

(a) Within seven business days of the receipt of a complaint, the Board shall notify a Complainant, Victim, and/or Reporting Non-Witness by telephone or letter that the Civilian Complaint Review Board has received his/her complaint, and shall identify the Case number and Agency Staff assigned to investigate the Case.

(b) The Civilian Complaint Review Board shall, within seven business days of a final decision of the Board, ~~of sending to the Police Commissioner its findings and recommendations in a case,~~ write to the Complainant and/or Victim with such findings and recommendations.

(c) If an allegation is substantiated and charges are recommended by the Board, the Civilian Complaint Review Board shall, as soon as it is determined under § 1-42, advise the Complainant and/or Victim 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 Civilian Complaint Review Board, the Civilian Complaint Review Board shall within seven business days of the Civilian Complaint Review Board's receipt of the Police Commissioner's final determination notify the Complainant and/or Victim by letter of the final action taken by the Police Commissioner.

§1-54 **Mediation.**

(a) A Complainant and/or Victim and the subject officer may choose to resolve a complaint by means of Mediation, unless the Board or a panel thereof determines that the complaint is not appropriate for mediation. The mediator shall be designated by the Executive Director.

(b) A Reporting Non-Witness does not have standing to participate in a Mediation, or refuse for such Mediation to occur. A Reporting Non-Witness who is a family member of a Victim can participate in Mediation whether the Victim participates or not, but cannot prevent such a Mediation from occurring.

(c) In the event one of the parties do not agree to Mediation, the complaint shall be referred to Agency Staff for investigation.

(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 mediator and all parties who have consented to the Mediation. Where appropriate, arrangements shall be made for a translator or interpreter to be present. In the case of a Complainant or Victim who is a minor, a parent or legal guardian must be present. Upon request, reasonable accommodations shall be made for persons with disabilities who are participating in a Mediation. 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 must also agree in writing to maintain such confidentiality. No records of any kind, including, but not limited to, stenographic, video, or audio, shall be made by any party.

(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 may terminate if either party announces his or her 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 may sign an agreement stating that each believes the issues have been satisfactorily resolved. The Director of Mediation, or any Agency Staff designated, shall advise the Board when a Mediation is concluded, whether such Mediation was successful or unsuccessful, and the Board shall forward this information to the Police Commissioner.

(i) If a Case is not successfully resolved through Mediation, any party may ask for the complaint to be investigated, and the complaint shall be referred to Agency Staff for investigation.

§1-55 **Reconsideration or Reopening of Cases.**

(a) Upon receipt of a written request to reconsider or reopen a Case from a Complainant, Victim or subject police officer, a Panel, Chair, or Executive Director may reopen:

(1) Any Case previously closed without a full investigation; or

(2) Any Case previously closed with a full investigation if

i. New evidence becomes available which could reasonably lead to a different finding or recommendation in the Case; or

ii. A previously unavailable or uncooperative witness becomes available which could reasonably lead to a different finding or recommendation in the Case; or

iii. If reopening the Case should be done in the interests of justice.

(b) Upon receipt of a written request sent by the Police Department

Advocate requesting the reconsideration or reopening of a previously fully investigated ~~and closed~~ Case with Panel findings and recommendations, a Panel, the Chair, or the Full Board may reconsider the penalty and/or disposition of an allegation, or reopen the Case if:

(1) The penalty recommended for the Case by the deciding panel or Full Board against any subject officer is found by the Full Board to be inappropriate or excessive; or

(2) There exists new facts or evidence that were not previously known by the deciding panel or Full Board which could reasonably lead to a different finding or recommendation in the Case; or

(3) There are matters of fact or law which are found to have been overlooked or misapprehended by the deciding panel or Full Board.

In considering requests from the Police Department Advocate, any such request shall be made to the Full Board within 30 days from receipt of the Civilian Complaint Review Board's initial findings and recommendations of a Case, absent good cause for any such delay beyond 30 days.

(c) The Full Board, Chair, a Panel, or Executive Director considering a request to reopen a Case shall have full discretion in making a 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, Victim, 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.

(d) If the Full Board, Chair, a Panel, or Executive Director decide to reconsider or reopen a previously closed Case, the following rules shall apply:

(1) If all members of the previously deciding panel are presently members of the Board, then that previously deciding panel shall be reconvened to reconsider the reopened Case.

(2) If any member of the previously deciding panel is no longer a member of the Board, then the remaining members of the previously deciding panel shall be reconvened with a replacement panel member as required by §1-31(b) to reconsider the reopened Case.

(3) If all members of the previously deciding panel are no longer members of the Board, then a randomly selected panel shall

be convened to reconsider the reopened Case.

§1-56 **Authority given to the Executive Director.**

(a) The authority given under these Rules to the Executive Director shall:

(1) be exercisable either by the Executive Director or by such members of Agency Staff or members of the Board as the Executive Director may designate, and

(2) be subject to such limitations as the Board may determine by resolution.

(b) Consistent with the Charter mandate and without relinquishing its oversight authority, the Board authorizes the Executive Director, in consultation with the Chair, to manage all matters related to the appointment of Agency Staff, the organizational structure, and the day-to-day operations of the Civilian Complaint Review Board.

§1-57 **Committees and Subcommittees.**

The Chair shall have authority to create committees and/or subcommittees for the purpose of assisting the Board in fulfilling its responsibilities pursuant to law. The members of any such created committees and/or subcommittees will be chosen by the Chair and Executive Director, and will be chosen from the Board as well as Agency Staff, subject to review by the Full Board.