

In the Matter of the Application of

Index No. 080073/2015

THE NEW YORK CITY CIVILIAN COMPLAINT  
REVIEW BOARD

*Petitioner*

*against*

THE OFFICE OF THE DISTRICT ATTORNEY  
FOR THE COUNTY OF RICHMOND

*Respondent*

x

**PETITIONER'S SUPPLEMENTAL**  
**MEMORANDUM OF LAW IN FURTHER**  
**SUPPORT OF THE VERIFIED PETITION**

**Preliminary Statement**

Following this Court's invitation during oral argument on June 12, 2015, the petitioner New York City Civilian Complaint Review Board ("CCRB") submits this supplemental memorandum of law addressing the meaning and scope of N.Y.C. Charter § 440(f) in this proceeding, and in further support of its application for an order directing the limited and controlled disclosure of the evidence and testimony presented to the Grand Jury of Richmond County to CCRB to use in examining the circumstances surrounding the July 17, 2014 death of Eric Garner in Staten Island (individually and collectively, the "Evidence") under the broadest protective measures shielding the Evidence from public disclosure necessary pursuant to CPL § 190.25(4) and Judiciary Law § 2-b(3).

## Statement of Facts

The facts in support of CCRB's position and application for the relief sought herein are set forth in CCRB's papers in support of its application dated May 7, 2015 and June 10, 2015, and at the oral argument held before this Court on this matter on June 12, 2015.

## Argument

### POINT I

#### THE HOLDS AT ISSUE IN THIS CASE ARE COMPULSORY PURSUANT TO N.Y.C. CHARTER § 440(f)

##### **A. CCRB Is Required to Comply with a Hold Absent Clear Evidence of Abuse**

While CCRB is vested with jurisdiction over NYPD police officers and broad investigative powers to effect that jurisdiction pursuant to N.Y.C. Charter § 440, its powers are specifically limited by N.Y.C. Charter § 440(f), which states:

The provisions of [N.Y.C. Charter § 440] shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.

In interpreting N.Y.C. Charter § 440(f), the law must be construed to have some meaning and purpose. *Matter of Williams v. City of New York*, 66 A.D.3d 1203, 1205 (3d Dept. 2009) (“Under well-established rules of statutory construction, each word of a statute is to be given effect”), *citing* McKinney's Cons Laws of NY, Book 1, *Statutes* § 231 and *Matter of SIN, Inc. v. Dept. of Finance*, 71 N.Y.2d 616, 621-622 (1988) (courts should impart plain meaning to unambiguous and nontechnical language). Given the Charter's plain text limiting CCRB's investigative powers so as not to interfere with

parallel grand jury investigations – and the lack of any language distinguishing between state and federal investigations – the holds imposed on CCRB by the respondent Office of the District Attorney for the County of Richmond and the United States Attorney’s Office for the Eastern District of New York (“EDNY USAO”) are compulsory upon CCRB.

The legislative history of N.Y.C. Charter § 440(f) supports this interpretation. In considering Local Law 1 of 1993 – which enacted what is now N.Y.C. Charter § 440 – the City Council elected to retain N.Y.C. Charter § 440(f)’s limiting language from the former provision creating CCRB as a unit of NYPD. Indeed, the City Council’s legislative counsel opined to the City Council that then-CCRB’s authority was:

...subject to the jurisdiction of a court, grand jury, district attorney or other law enforcement agency to investigate and prosecute a member of the NYPD for a violation of law.

Thus, criminal charges against a member of the NYPD would be processed through the criminal justice system by means of, for example, a grand jury indictment in the case of a felony charge.

Report of the Legal Div. of the New York City Council, Bill Jacket, LL 1/1993, at 12.

After being provided with the opinion of its legal counsel that CCRB’s powers must yield on request to ongoing grand jury investigations, the City Council chose to retain those limitations in what is now N.Y.C. Charter § 440(f). Therefore, the legislative intent to create mandatory holds is clear.

Section 440(f) of the Charter also follows New York’s liberal approach to granting stays of civil proceedings in deference to criminal investigations and prosecutions. *Zonghetti v. Jeromack*, 150 A.D.2d 561 (2d Dept. 1989) (civil proceeding

concerning same allegations currently being prosecuted may be stayed to “avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources”), *De Siervi v. Liverzani*, 136 A.D. 527, 528 (2d Dept. 1988) (“Although the pendency of a criminal proceeding does not give rise to an absolute right under the United States or New York State Constitutions to a stay of a related civil proceeding” court noted that “it has also been held that there is no question but that the court may exercise its discretion to stay proceedings in a civil action until a related criminal dispute is resolved”) (internal quotations and citations omitted) and *Britt v. International Bus Servs., Inc.*, 255 A.D.2d 143, 144 (1<sup>st</sup> Dept. 1998) (holding that stay was appropriate pending commencement of criminal proceeding “within a reasonable time”). Given New York’s approach with regard to generic civil proceedings without the codified deference imposed by N.Y.C. Charter § 440(f), the Charter’s impact here is unquestionable.

Of course, CCRB could rightly challenge a prosecutor’s hold request when that request showed clear evidence of abuse of the hold process. *See, e.g., People v. Natal*, 75 N.Y.2d 379, 384-385 (1990) (discussing limitations upon a district attorney’s subpoena power), *citing People v. Hamlin*, 58 A.D.2d 631, 632 (2d Dept. 1977), *People v. Boulet*, 88 Misc. 2d 353, 354 (Rochester City Ct., 1976) and *People v. Arocho*, 85 Misc. 2d 116 (Sup. Ct., New York Co. 1976). However, given the broad investigative powers held by criminal prosecutors and grand juries, any such situation would likely be exceedingly rare, and there is no evidence of bad faith here.<sup>1</sup> In that light, and given the plain meaning of N.Y.C. Charter § 440(f), CCRB was bound to follow the holds here.

---

<sup>1</sup> Although statements given to CCRB are not – contrary to the District Attorney’s Office’s concerns at oral argument – subject to production under *Rosario*, they may be sought for use in criminal proceedings. *People v. Smith*, 206 A.D.2d 102 (1<sup>st</sup> Dept. 1994) and *People v. Nova*, 206 A.D.2d 132 (1<sup>st</sup> Dept. 1994) (noting that district attorney possesses open access to City agency files pursuant to County Law § 932

**B. Even if Not Mandatory, the Respondent Intended for CCRB to Comply with Its Hold Demand**

Even if the Respondent's demand was actually optional, the Respondent's conduct in issuing the demand evinces its intent and expectation that such hold demands be obeyed by CCRB. Just as a law should not be interpreted in a way that would render its words meaningless, neither should one party's written demand to another. Regardless of whether the Respondent's hold was legally mandatory or enforceable in the form imposed, the fact that it was issued shows the Respondent's desire and intent to limit CCRB's investigative functions, which CCRB accepted in light of N.Y.C. Charter § 440(f). As such, this Court should give force to that mutual agreement. *Beal Savings Bank v. Sommer*, 8 N.Y.3d 318, 324-325 (2007) (Court held that "construction of an unambiguous contract is a matter of law," that a reader "should not render any portion meaningless," and that contract should be "interpreted to give effect to its general purpose") (internal quotations and citations omitted). The Respondent's demand for a hold, the general purpose of that demand, and CCRB's agreement to abide by the terms of that demand could not be clearer. To hold otherwise would create an inherently illogical and inequitable result where CCRB would be punished in this proceeding for complying with the Respondent's prior demand for cooperation.<sup>2</sup>

---

while holding that such records were not subject to discovery on that basis), and *People v. Wesley*, New York Co. Ind. 4362/2014 (Melissa C. Jackson, J. May 7, 2015) (granting protective order shielding all but CCRB's final reports and audio or video recordings concerning prior substantiated complaints against subject officer or the incident at issue).

<sup>2</sup> Further, it would be inequitable for the Respondent to expect CCRB to comply with its hold demand until the grand jury proceedings concluded, but then to ignore the EDNY USAO hold demand and re-launch its investigation.

**C. CCRB's Application Here Does Not Violate the Hold Imposed by Federal Authorities**

The plainest evidence that CCRB's application here does not violate the hold imposed by EDNY USAO is that EDNY USAO has not appeared in this matter despite being on notice of it having been filed.<sup>3</sup> Although not named as a party to this proceeding, EDNY USAO could have intervened freely in this matter pursuant to CPLR 1012(a) or 1013. *See, e.g., Matter of Riches v. New York City Council*, 2008 NY Slip Op 32030(U), \*1 (Sup. Ct., New York Co. 2008) (noting intervention of United States Attorney for the Southern District of New York to seek stay of summary inquiry proceeding). EDNY USAO's choice not to intervene here indicates its lack of opposition to CCRB's application.

---

<sup>3</sup> Additionally, CCRB's application does not violate the terms of EDNY USAO's hold because CCRB is seeking evidence and testimony that has already been given to the Grand Jury of Richmond County rather than approaching witnesses and obtaining new statements in the present.

## CONCLUSION

For the reasons set forth herein, petitioner CCRB respectfully requests that this Court issue an Order finding that CCRB has a compelling and particularized need to obtain the Evidence, that the interests of justice substantially favor highly controlled disclosure of the Evidence to CCRB in support of its investigation of the circumstances surrounding Eric Garner's death, and that this Court grant such other, further or different relief as this Court deems just and proper.

Dated: New York, New York  
June 26, 2015

Respectfully submitted,



---

BRIAN KRIST  
Assistant Deputy Executive Director  
of Investigations  
VASUDHA TALLA  
Executive Agency Counsel  
*Attorneys for Petitioner*  
Civilian Complaint Review Board  
City of New York  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007  
(212) 912-7235

Mina Malik, Esq.  
Jonathan Darche, Esq.  
*Of Counsel*