

POLICE

# Employee Conduct: Investigations & Discipline

A Guidebook for the Public and Our Employees On What We Do and Why We Do It 2005

### MISSION OF THE CHARLOTTE-MECKLENBURG POLICE DEPARTMENT

The Charlotte-Mecklenburg Police Department will build problem-solving partnerships with our citizens to prevent the next crime and enhance the quality of life throughout our community, always treating people with fairness and respect.

### We value:

Our Employees
People
Partnerships
Open Communications
Problem Solving
Integrity
Courtesy
The Constitution of North Carolina
The Constitution of the United States

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### MISSION OF THE CMPD INTERNAL AFFAIRS BUREAU

The Charlotte-Mecklenburg Police Department Internal Affairs Bureau will act to preserve public trust and confidence in the Department by conducting thorough and impartial investigations of alleged employee misconduct, by providing proactive measures to prevent misconduct, and by always maintaining the highest standards of fairness and respect towards citizens and employees.

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Chief of Police Darrel W. Stephens

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Charlotte-Mecklenburg Police Department

It is my pleasure to present this guidebook on Employee Conduct Investigations and Discipline in the Charlotte-Mecklenburg Police Department. The guidebook is the result of discussions and feedback from both citizens and CMPD employees, and we are grateful to the U.S. Justice Department's Office of Community Oriented Policing Services for funding its development.

The men and women of the Charlotte-Mecklenburg Police Department value the public's trust. It is one of the most important ingredients in our success as an organization. Central to that trust is the Department's

ability to effectively police itself. Another foundation of success is conducting internal investigations and imposing discipline in a manner that our employees find trustworthy and consistent with our values. This guidebook is designed to explain to the public and our employees the process we use to investigate alleged wrongdoing by our own, and why we use the procedures we do. We provide this information in the hope that it helps engender and strengthen your trust in us.

I am proud of the service our employees deliver to our community, and the many productive partnerships we enjoy with our citizens. I hope that you find the information in this guidebook helpful and reassuring of our commitment to high standards of service and integrity.

Sincerely,

Darrel W. Stephens Chief of Police

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## THE FOCUS OF THIS GUIDEBOOK

This guidebook is intended to help the public, our employees and others interested in policing issues understand how the Charlotte-Mecklenburg Police Department (CMPD) thinks about and handles complaints alleging improper conduct by our sworn or civilian employees. We recognize that some people may be especially interested in police accountability issues and will find the information here of general interest. Many of our employees and much of the public we serve, however, will most likely find this document of most interest only when they or someone they know is involved in a complaint.

Following a brief discussion of police-related complaints in comparison to complaints about other public agencies or private companies, the organization of this guidebook is mostly chronological. That is, it begins with the filing of a complaint and tracks the procedures through complaint classification, assignment for investigation, investigation by a supervisor, adjudication of the complaint, imposition of discipline if appropriate, and appeal of findings by the subject employee or the complainant.

Also described are the procedures used to review certain types of CMPD employee conduct (such as uses of force and high-speed chases) which the department deems so important that we do not wait for a citizen or police employee to complain in order to investigate whether the rules of our organization were followed.

In broad terms, this guidebook tries to do two basic things: (1) describe *what* happens at each stage of the investigation and review process; and (2) explain *why* these procedures are used.

The *description* of each stage of complaint processing is intended to answer practical questions for those involved in a complaint: What happens next? What are my rights and responsibilities? Etc. The description will also be helpful for people wishing to compare CMPD procedures to those used in other agencies.

We provide explanations of why we process complaints as we do because we believe giving you reasons for our methods and decisions will help you-and us-better assess whether we are wisely applying our mission and values statements in devising and operating our complaint system. For the same reasons, we have forthrightly indicated in this guidebook some of the difficult questions about complaint handling that continue to be challenging to the CMPD and to other police organizations. While the CMPD is proud of its national reputation as a leader in effective and high integrity policing, we certainly have much to learn from other communities and from our own community and employees. We welcome your suggestions for our continual improvement of our complaint processing system.

## COMPLAINTS & OTHER "CUSTOMER" FEEDBACK

By dealing with *filed complaints*, this guidebook looks only at the tip of an iceberg of perceptions about the quality of work of the Charlotte-Mecklenburg Police Department. Every year, hundreds of thousands of Charlotteans and visitors to our region form impressions—positive or negative—about how well we do our work. Some impressions are formed firsthand by someone who has been in contact with a CMPD employee. Other impressions are based on word of mouth, news coverage, and other means.

How often do most of us take the time, in the rush of daily life, to tell any organization what we think of its service to us or to people we care about? If we are pleased with the performance of a bank teller, car mechanic, school teacher or police officer, we may take a moment to say thank you to the individual whose conduct we liked. But how often do most of us take the time to contact that employee's boss more formally to convey a compliment?

### Why don't more people say "Thank you"?

When we don't take the time to "file" a formal compliment, why is that? Too busy with a million other things? Not sure who to contact? Perhaps we think the employee was just doing his or her job, so there's no reason for us to go out of our way to formally express gratitude. There could be many other reasons why we don't formally compliment a job well done.

### Why don't more people complain?

What happens when we think a job was *not* well done? How often do we go beyond complaining to our friends and family and actually complain to the specific employee who disappointed us or to his or her organization? If we find a department store appliance salesman unfamiliar with his inventory, a bank loan officer who disparages our credit worthiness, or a nurse in the doctor's office who has difficulty taking a blood sample or answering questions about prescriptions, how likely are we to complain to the salesman, the loan officer, the nurse or their supervisors?

## EACH YEAR...

• In the late 1990s, 700-800 complaints were recorded by the CMPD annually. By 2002, total complaints were down to 439; in 2003, the total was 381.

• Of the 381 complaints received in 2003, 144 (37%) were filed by members of the public, and 237 (62%) were Department-initiated.

• CMPD employees and citizens encounter each other frequently in comparison to the number of complaints filed. Each year since the late 1990s, we have received between 750,000 and one million calls to the 911 emergency system, resulting in approximately 350,000 dispatches. Approximately 150,000 more policecitizen encounters occur each year not as a result of dispatches but due to officer-initiated contacts.

• The CMPD since the late 1990s has employed about 1,500 sworn officers and 450 civilian employees.

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Is our likelihood of formally complaining affected by some combination of self-censorship and obstacles we think the organization places in the path of our easily filing a complaint? Why might we hesitate to complain about the salesman, the banker, the nurse-or a police officer-whose work we found disappointing? Are we, again, just too busy? Do we believe we won't get any satisfaction? Are we worried that if we complain we'll get even worse service the next time from this employee or a coworker? Are we worried about some other form of retaliation? Suffice it to say, one can imagine a lot of reasons why many of us often express our frustration with police or other workers' performance only to a small circle of people who we believe care about us.

### The feedback we get represents more widely held perceptions of our work

It seems reasonable to believe that most customers bring only a fraction of their compliments and complaints to the attention of the organization whose conduct is at issue—a proposition that has not been researched for police customers but has been supported by studies of private sector retail customers. This guidebook doesn't deal with the nice things customers have to say about police work in Charlotte-Mecklenburg. It only addresses what happens—and why—when a person's complaint about the conduct of a sworn or civilian police employee comes to the attention of the police department.

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We take complaints seriously for many reasons. Besides the fact that each complaint is important in its own right, we believe each one may also reflect similar concerns held, but unexpressed, by other people. Because our police department is committed to continuous improvement, we take all the feedback we get, including positive and negative reviews, as opportunities to learn how we might do our jobs more effectively, efficiently, and legitimately. We know some people complain falsely, others complain sincerely but inaccurately, and others complain justifiably. We know some people who file false complaints are generally reputable citizens, and we know some of those who provide a public service by filing legitimate complaints are pretty unsavory people with serious criminal records.

### We are committed to learning from complaints

We may learn from all of these complaints. When an employee is performing poorly, we need to know that and to address it in some effective way. We may respond by retraining, reprimanding, suspending or recommending the firing of the employee. We may learn that the subject employee or a number of our employees have fallen into patterns of behavior or tactics that are not consistent with our expectations. Sometimes such patterns can best be addressed by changing procedures working conditions or that unintentionally made it difficult for the employees to avoid misconduct.

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To learn more about the CMPD's philosophy underlying our entire system of taking complaints, investigating them thoroughly, and dispensing fair and effective discipline when a police employee has broken our rules, see the CMPD "Discipline Philosophy." It is CMPD Directive # 100-004, which took effect 4/16/01. It is posted on the Department's website www.cmpd.org.

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At the other extreme, in the case of an unwarranted complaint, a citizen's group or our local government may honor a member of the CMPD for the very conduct that someone else chose to criticize. And if some people are attempting to impede legitimate police work by filing malicious, false complaints against officers, we need to learn about that as well.

### **Police "customers"**

We should say something at the outset about our use of the word "customer" in referring to those who experience police work firsthand. We use the term because we think it's helpful at times to compare customer feedback and complaint experiences in the police field and in other fields. In reading this guidebook and in thinking about constructive criticisms you might make of how the CMPD runs its complaint system, it may be helpful for you to try to recall service disputes you have had with other public agencies or privatesector companies. Were you ever satisfied with how one of your complaints was handled? If so, what do you believe were the ingredients of that successful experience? When you have been dissatisfied by the handling of your complaint, what were the factors that caused that unhappy experience?

In thinking about "customers" in the police context, we know that many people voluntarily seek the services of the police department (say, victims of crime or community residents or merchants working on problem-solving projects with their local officers). Such customers are somewhat like customers of many other public and private organizations who seek a powerful specialist to help them accomplish something. But often the "customer" is engaged involuntarily by the police—as a witness to a crime, suspect in a traffic infraction or more serious offense, as someone told to stop behaving in a disorderly way, etc.

These involuntary customers are somewhat like people contacted by any other enforcement agency (say, the IRS, a county department of social services, the health department or building department). A big difference, however, is that police have instantaneous and powerful enforcement authority. In some situations, our officer can force people to comply "right now" with his or her instructions, using physical means if the officer believes such methods are authorized by policy. Since police, unlike many other service providers in society, can-and frequently do-get involved with the public in situations of high conflict, it is no wonder that such conflict sometimes spills over past the heat of the moment and results in a person wanting to criticize the police.

## Methods for contesting the legitimacy of police actions

Criticism of the police might be expressed using various methods, such as a letter to the editor of a newspaper; speaking out at a community meeting; marching in protest and talking to the news media; attempting to change local or state law; a civil lawsuit; or asking a prosecutor to conduct a criminal investigation and prosecution of the police. In all of these methods, the person complaining usually hopes someone in addition to or instead of the police will look into and provide a judgment about the claims being made.

A person might also communicate his or her dissatisfaction with police conduct directly to a police employee or staff in another unit of our local government. Any such criticism, according to CMPD rules, will be assessed by the police department to see if it should be considered an administrative complaint. Every administrative complaint that meets certain basic criteria will be investigated by the police department. We do this because, like any organization that aspires to give good service, the CMPD needs to stay very well informed about whether our employees are carrying out their duties satisfactorily.

# FILING COMPLAINTS

We realize some people may be hesitant to file a complaint against police. If you feel that way, we want you to know that the CMPD welcomes and listens to all criticisms, from anyone, on any subject relating to the work of our employees. This includes anonymous complaints, which we try to investigate to the best of our ability. Sometimes with anonymous complaints we are unable to figure out whether the employee in question performed improperly, largely because the complaint investigator cannot ask the complainant for more details.

### Anonymous complaints

Not all police departments or other organizations readily accept anonymous complaints. For the reader who is not a police employee, does your employer accept anonymous complaints about your performance? If so, do you think that's fair? Does your employer seriously investigate an anonymous complaint? If so, do you think it might be hard to defend yourself against an unknown accuser?

Some of our employees dislike the CMPD's policy of accepting anonymous complaints. Some

employees believe anonymous complaints are likely to be frivolous or malicious. Some believe such complaints are too prone to be abused by criminals as a tactic to discredit good officers who are taking enforcement or other problem-solving action against such offenders.

These employees may be right about some anonymous complaints. Their criticism may apply as well to some complainants who identify themselves.

In fact, the CMPD rarely receives anonymous complaints—and almost never gets them from the public—as the following table shows.

Anonymous Complaints Received by the CMPD			
Year	Filed by CMPD Employees	Filed by Public	
2001	2	0	
2002	0	1	
2003	1	0	
2004	0	0	

Even though we get very few anonymous complaints, we owe it to our employees and the public to explain why the Department is willing to accept them.

We accept anonymous complaints not because we are interested in annoying our employees with frivolous accusations or thwarting their collaborative efforts with the public to address crime problems. Rather, we accept anonymous complaints because, like any organization aspiring to excellence, we want maximum feedback on how we are fulfilling our professional responsibilities.

We won't know until we look into a complaint whether it is legitimate or not. The police department needs to be attentive if someone tells us, even anonymously, that one of our employees is failing to adequately protect the community or harming police-community trust by engaging in misconduct.

### Trust: our most important asset

In policing, one of our greatest assets is trust between police and the public. Without sufficient trust, we will not get enough information from the public about crime problems and possible offenders. Without trust, we cannot build effective problem-solving partnerships with our community. Those partnerships are key to our properly serving and protecting the public. There are many things we do to try to earn and keep the trust of the increasingly diverse public we serve. One of these things is remaining open to hearing any and all complaints, no matter who files them and whether or not the complainant is identified.

Another crucial asset in any organization is trust among the employees of all ranks. Absent sufficient trust, we would work ineffectively, inefficiently, and more dangerously than necessary. Are false complaints likely to upset our employees? Sometimes. We attempt to minimize the harm by determining as quickly and accurately as possible whether any complaint — anonymous or otherwise — is valid.

### Major Objectives of Our Complaint Investigation System

• create citizen confidence that their complaints will be taken seriously and properly investigated

• create police employee confidence that complaints will be investigated within a reasonable amount of time and that they will be treated fairly and consistently

• appropriately correct employee behavior that is not consistent with our values or policies

• provide useful information to City and County officials, the CMPD, and the community about how police should behave in their encounters with citizens and about policy, operational, and training changes that might be made to help ensure professional police service to the public

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Would CMPD employees trust the Department's leadership even more if we were more restrictive in the complaints we accept for investigation? Maybe. But at what cost to our public trust?

In our democracy, we are faced with numerous, delicate balancing acts between conflicting rights and responsibilities. We in government employment must always remember that we are public servants. It's not *our* government or *our* police department *only*. We run our branch of government as stewards for the populace at large, which of course includes police employees.

Do we believe the customer is always right? No. But we must be sensitive to how powerful and intimidating we can sometimes be to our customers when they have a complaint about how we do our jobs. In the interest of fostering community trust, we in the police department must do our best to hear even a timid, poorly expressed, sincere criticism of how we do business. (We will address later the difference between a sincere but mistaken complaint and a malicious complaint.)



How should we strike the balance between protecting our employees against false complaints and assuring that the public feels welcome to give us negative feedback?

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#### How to file complaints

To bring a complaint to the police department's attention, the complainant should communicate in person, by telephone, letter or email, in any of the following ways:

#### **BY TELEPHONE:**

- the CMPD's Internal Affairs Bureau (704) 336-2336 or (704) 336-2183 Monday-Friday, 8:00 am – 5:00 pm
- the Watch Commander during evenings, weekends and holidays (704) 336-2141
- any CMPD division office (ask to speak to a supervisor)
- the City's Community Relations Committee (704) 336-2424 Monday-Friday, 8:00 am – 5:00 pm

### BY MAIL:

Charlotte-Mecklenburg Police Department Internal Affairs Bureau 601 E. Trade Street Charlotte, NC 28202

### **BY EMAIL:**

Via the CMPD's website (<u>www.cmpd.org</u>)

### **IN PERSON:**

- the CMPD's Internal Affairs Bureau 601 East Trade Street, Charlotte Monday-Friday, 8:00 am – 5:00 pm
- any CMPD division office
- the employee's supervisor if present at the time of the event
- any police employee
- the Community Relations Committee 600 East Trade Street, Charlotte
- the Mayor's office
- the City Manager's office

### Do our complainants find it easy to file complaints?

At the Department's request, the KPMG consulting firm surveyed citizens who filed complaints against police during 1998-99, finding:

"The majority of the respondents felt that a complaint was easy to file and that they were treated courteously both by the person taking the initial complaint and, subsequently, by the officer who interviewed them." (KPMG's Year 2000 audit report, p. 18)

According to CMPD directives, a complaint brought to the attention of any of these people or offices should promptly be called to the attention of the accused employee's supervisor or the Internal Affairs staff. A complainant should communicate his or her concerns by whichever of the methods he or she finds most comfortable. However, to minimize the number of times you are passed from one police employee to another before being able to file the complaint, we suggest:

• Try first to reach the office where the subject employee works, and ask to speak to a supervisor before airing your complaint.

• If you are unable to reach a supervisor at the office where the employee works, contact the Watch Commander's office in headquarters or use the CMPD's website.

Shortly after a complaint is received, and unless the complainant declines to participate, he or she should be interviewed in person by a complaint investigator. The investigator will be the employee's supervisor or an Internal Affairs sergeant. If the complainant is disabled and unable to come to the police department for an interview, we will make arrangements to conduct the interview in a place more convenient for the complainant, including his or her home.

Besides any other information a complainant wishes to present to the complaint investigator, it will assist us in commencing our investigation if the complainant can tell us:

- date and time of the event
- location of the event
- name or description of the involved employee(s)
- CMPD vehicle number(s) if applicable
- names of witnesses, if any

## The important first conversation between the complainant and complaint investigator

The old adage, "You never get a second chance to make a first impression" is important to us as we train our employees how to interact with a person wishing to file a complaint. The complainant may arrive to file the complaint days after the incident, and the raw emotion of his or her frustration at how the officer behaved may have subsided somewhat. Or the complainant may have been dwelling on the event to the point where he or she is really upset while explaining the complaint.

Even if the heat of the initial encounter has subsided, we realize that for some people, walking into a police office to provide details of a complaint places them in a bureaucratic setting that is unfamiliar, bewildering and intimidating. Even though we try to put complainants at ease so they can tell us calmly and clearly what happened from their point of view, we appreciate that this is a difficult conversation for some complainants.

As a result, we don't make a snap judgment that a complaint is frivolous if the complainant seems ill at ease in telling us what happened. The discomfort may just be nervousness at dealing with a powerful organization or having to complain against someone who wears the same badge as the complaint taker. On the other hand, a hesitant complainant may be embellishing or making up the story during the interview. Follow-up investigation will tell. Our job during this initial conversation is to treat the complainant respectfully, be a good listener, get his or her full story, ask detailed and probing questions in order to understand all the facts, and tape record or accurately write down what we are being told.

And, if it seems appropriate under the circumstances, our job is to allow the complainant to express frustration. Police officers try to keep the peace by calming angry people they encounter during calls for service. Similarly, a complaint investigator can provide a peacekeeping service by allowing an angry complainant to tell his or her story. As one officer put it, "Better to allow the person to vent verbally than to keep the emotions pent up only to erupt at some later time in a dangerous way." Another person we interviewed as background for this guidebook added: "Sometimes when a person is ticked off he wants to complain or vent immediately to someone willing to listen and affirm his feelings, not necessarily the substance of his complaint."

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We realize that misunderstandings and miscommunications can happen even when everyone in the complaint-filing conversation is reasonable, respectful and well motivated. Thus, among the complaint investigator's important tasks is figuring out whether the complainant feels respected and accurately heard.

Part of the reason it's so important for the complaint-taker to make a good "first impression" is that this is one of the very few times during the CMPD's processing of the complaint that the complainant may have firsthand contact with the CMPD. (Additional firsthand contacts might come during a follow-up interview of the complainant by an investigator and during a complainant's appeal of an adjudication in cases where appeals are permissible.)

In addition to collecting information from the complainant, the complaint investigator should endeavor to explain what the complainant should expect in terms of the complaint processing—and the complainant should feel free to ask for such an explanation. Among the key things the investigator should tell the complainant are the following:

• Who or what unit will investigate the complaint and when the complainant should expect to be contacted again.

• The complaint will be investigated thoroughly and reviewed for decision by the employee's supervisor and commanders.

• The complainant will be taken seriously and treated fairly and respectfully. (While a complainant with a criminal record may find that his or her credibility is evaluated in light of past truthfulness, we understand that sometimes it is precisely those with little power and ability to be taken seriously who may be victimized by abuses of power.)

• The complainant will not be required to testify at any hearing for an accused employee in order for the complaint to be heard and acted on.

• The complainant will not be retaliated against for making or pursuing a complaint or for appealing any decision that he or she has a right to appeal to the Citizens Review Board.

As CMPD complaint investigators and their supervisors think about the first impression they are making on a complainant, we must not forget that, from the point of view of the complainant, talking with the complaint-taker is of course *not* a "first impression" moment. That moment occurred in the incident that gave rise to the complaint, and that first impression of the CMPD was negative, or we would not be having this next conversation.

### Blessed—or cursed—are the peacemakers

What do private businesses do when a customer complains? If any of us complains about a store salesperson or a technician who came to our home to repair a computer or washing machine, a conscientious customer service representative might do a few things after hearing and writing down our complaint: • Say "I'm sorry" on behalf of the company (even if it's unclear whether any misconduct occurred)

• If possible, arrange a mutually convenient time when we could be served by a different salesperson or repair technician

• Invite us to meet in person with someone from customer service and the employee against whom we complained so that any misunderstandings or conflicts can be resolved

How many of these or related "peacemaking" steps could a conscientious CMPD complaint taker or investigator set in motion? It depends on a lot of considerations. There are many situations in which the complaint taker is unable to launch such conflict resolution. We understand this inability to do anything except commence a formal investigation may sometimes be a source of puzzlement and frustration to a complainant, the accused police employee, and the complaint taker as well.

In preparing this guidebook, we met with groups of police employees and members of the public to hear their perceptions and opinions about complaints and their processing by the CMPD. We heard many comments from both groups about how the formalities of the complaint reception and review process sometimes undermine effective and prompt conflict resolution.

"Why doesn't the Department apologize for mistakes, misconduct, or unacceptable service?" asked one Charlotte resident.

Another, a supervisor in a bank, wished the CMPD could behave more like his bank. He related that he took a call from a disgruntled customer. The customer recently moved to Charlotte and was uncertain how to make a withdrawal from an account he opened in another city. The customer called his Charlotte branch of the bank and was told by the call taker that it wasn't her job to answer such questions, and the customer should call a different phone number. The supervisor called the customer back and said, "I understand vou were less than satisfied with some customer service that you received from our company today, and I'm calling you to, first of all, tell you we're sorry; and second of all, to make sure that you get what you need." "That," the supervisor told our discussion group, "was really all it took."

### Can we say, "I'm sorry"?

So if a simple apology and promise that the customer will get better service soon can be so useful and economical in resolving disputes, why doesn't the CMPD just say "I'm sorry" more often? Would doing so help us resolve some complaints informally and save all concerned the nuisance, stress and expense of a protracted investigation and complaint review process?

The answer is that sometimes the CMPD complaint taker or someone else in our agency does offer a general apology or express regret that the complainant feels poorly treated by a member of the Department. But many complaint takers may be reluctant—as may everyone in the chain of command up through the chief of police—to offer an apology that may be premature or could be interpreted by lawyers as a technical admission of liability. Unfortunately, operating in a liability-laden environment often means being unable to say, "I'm sorry."

Remember that here we are focusing on the potential difficulty of the CMPD apologizing after a dissatisfied customer has filed a formal complaint. It may be possible for officers to prevent some dissatisfaction that leads to complaints simply by apologizing at the time of the event, if they sincerely are sorry. For instance, statements such as the following can go a long way toward resolving tension between an officer and a citizen: "I stopped your car because we are searching for a robbery suspect who is driving one like yours. You are not the person, so you are free to go. I am sorry for any inconvenience to you." Certainly we hope that our employees use good judgment and apologize when it's appropriate and prudent.

### Can we send another officer to help you?

Once a complaint has been filed, what about the other common move by customer service reps in the private sector—arranging for prompt, more satisfactory service to the complainant, perhaps by a different employee? In the nature of policecitizen interactions, often this is not possible. For example, if the customer was an involuntary customer of the police, probably the last thing he or she wants is another encounter with a cop. Still, if the complainant's expressed need for police service is an ongoing one (say, enforcement against disorderly behavior by neighborhood youth every weekend), it may be possible to resolve the complaint by arranging for more responsive police service at an appropriate time.

### Can we sit down and resolve things amicably?

What about a discussion involving the complainant, accused police employee, and someone who can help them talk out and resolve their differences in a mutually respectful and satisfactory way? This can - and sometimes does - occur, but recommending this path to someone who is complaining about police conduct can be a risky step for the complaint taker. It can be risky because a well-intended suggestion to attempt to reach an amicable, informal solution could deter a complainant from following his or her impulse to file a formal complaint. Such deterrence is a violation of CMPD policy.

### CMPD Rule of Conduct # 26: Citizen Complaints "...Employees may attempt to amicably resolve citizen complaints, but they will not attempt to prevent any citizen from lodging a formal complaint against any individual employee or against the Department."

Moreover, if the police conduct at issue is potentially a violation of CMPD rules, then it is unacceptable to the Department to have the matter "go away" after an informal dispute resolution, even if the complainant would be willing to leave the matter at that. Certain kinds of conduct by our employees are unacceptable to the CMPD, whether or not a particular affected member of the public is willing to let bygones be bygones after an apology and reconciliation between the disputants.



How should we strike the delicate balance between inviting people with minor complaints to seek a speedy, amicable resolution and assuring that they believe us when we say they are entitled to a formal investigation if they prefer that?

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An Internal Affairs Bureau staff member told a discussion group how he felt about the notion of resolving citizen complaints informally instead of using the full-blown investigation and review process:

"An amicable resolution is not going to apply to a serious allegation of misconduct. We take those very seriously, and it's going to be investigated regardless. If someone is alleging a use of force and they say, 'I just want him to apologize for hitting me,' that's not going to be something we would accept."

But an informal resolution might be possible for some less serious complaints, he allowed:

"A common one is the traffic stop scenario where there's an allegation or a concern about rudeness. We have the video cameras in each car now, and a lot of times we put the citizen with the sergeant and the officer to review the tape, watch the stop and discuss everything that happened. If the citizen and the person taking the complaint are comfortable with an amicable resolution to that situation, it won't go to the next step where it's an active investigation. However, if the citizen wants an active investigation or they can't amicably resolve the issue, it becomes an active investigation. But the serious allegations are not open for that discussion."

**11** randomly selected members of the public who filed complaints against CMPD employees during the late 1990s were asked by KPMG interviewers:

"If you could speak with the subject of the complaint and his/her boss instead of filing a complaint, would you?"

Interestingly, 7 of the 11 said yes. (KPMG's Year 2000 audit report, page 19 & Appendix E)

These numbers are too small to be statistically significant, but if they represent more widely held preferences, there may be substantial interest among the public in resolving at least

### certain types of complaints through conversations or mediations rather than investigations.

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Why might a person voicing a grievance about CMPD performance prefer an informal way of handling the problem? There are several possible reasons, among them:

- the time and inconvenience involved in complaining formally and providing evidence during the investigation;
- concerns that complaining formally will complicate the complainant's future dealings with the police, legal system or local government;
- the person's reluctance to exaggerate the extent of his or her dissatisfaction with the police; and
- a belief that better results can be obtained for all concerned if the complainant and involved police employee can be assisted in talking through their differences of opinion, clearing up any misunderstandings, and trying to come to an agreement about how to avoid tensions in the future.

Why might a police officer accused of minor misconduct prefer an alternative to the formal process for resolving a complaint? Twenty officers in another organization (Portland, Oregon) were surveyed after participating in mediations of minor misconduct allegations. They identified the following benefits to sitting down face to face with the complainant in a facilitated conversation:

"Instead of just hearing what the sergeant or IA tells you about some complaint, we get to understand what the complainant's concerns really were – and they get to really hear and understand our side. I felt the line of communication opened up."

"The citizen and I got to explain our actions in a friendly manner. I was able to see both sides of the situation and see how it escalated."

"What brought us here was misunderstandings. We cleared those up." "I was able to ask questions of the other side that I was not able to ask at the time of the incident. I could feel for the situation they were in as maybe they were also victims... [I would change] the way the original situation was handled."

Although the CMPD does not use mediation for citizen complaints, we will keep abreast of evolving practices around the nation. We will continue to assess whether our service to the community and fairness to our employees would benefit from modifying our procedures.

## AUTOMATIC INVESTIGATIONS WITHOUT COMPLAINTS

Just as we would not fail to investigate a potentially serious complaint simply because the complainant had a change of heart about pressing the matter formally, we automatically investigate certain types of activity. We commence these investigations promptly whether or not anyone outside or within the Department files a complaint. The activity subjected to this scrutiny includes all incidents in which:

- an officer uses physical force
- a person in police custody is injured
- vehicle pursuits occur
- police vehicles are involved in a collision
- a police employee is injured

In cases where the investigating supervisor believes an employee violated Department policy, a complaint investigation is launched. From that point forward, this becomes an "internal complaint," with the investigation and adjudication following the same procedures as those which apply to a citizen's complaint of misconduct.

Over the years, the pattern has held firm that these Department-initiated complaints outnumber the complaints filed by members of the public. For instance, during 2002, there were 171 citizen-initiated complaints and 268 Department-initiated complaints. In 2003, there were 144 citizen-initiated complaints and 237 Department-initiated complaints.

## INITIAL CLASSIFICATION OF THE COMPLAINT

Regardless of where within the CMPD the complainant decides to report his or her complaint—to IA or to a police employee outside of IA—there is a key threshold question that must be answered by the accused employee's supervisor or by an IA Bureau sergeant. The question is:

### If the allegations are proven true, would this constitute a violation of one of the CMPD's 40 Rules of Conduct?

The 40 Rules of Conduct are described in detail in a 10-page section of the CMPD Directives titled "Rules of Conduct," effective 11/29/04. A list of the Rules without detailed explanation appears in CMPD Directive # 200-001 and in an appendix to this guidebook.

If the answer to this key threshold question is YES, then the matter is handled formally. The complaint must be documented in the Internal Affairs Case Management System, where it is automatically assigned a case tracking number, and must be assigned to the appropriate supervisor for investigation. Complaints are given tracking numbers that allow us to monitor separately those filed by members of the public and those filed internally.

However, if the answer to the threshold question is NO, the matter will not be moved along for formal investigation. Still, we may find the criticism helpful, and may seek an informal reconciliation with the complainant, perhaps involving the accused officer.

## Criticisms that do not qualify as formal complaints

Some citizen criticisms which do not qualify as formal complaints may still provide useful learning and teaching opportunities. Some examples are:

• An officer's communication with a member of the public, although courteous, is unproductive in addressing a problem and, therefore, frustrating. A supervisor may work with the officer and citizen to resolve the problem and thus learn how to help other officers more effectively respond to the community's needs.

• The citizen does not accuse a police employee of misbehaving but challenges the wisdom, effectiveness, or fairness of one of our policies, tactics or enforcement actions. For instance, a citizen may believe that the combination of enforcement and other problem-solving tactics we used to address an on-going nuisance problem was needlessly harsh or unduly lenient to those causing the nuisance. Or in crowd control situations, a citizen may not like our traffic enforcement practices or the distance the CMPD places between protesters and the events they are protesting.

• A citizen is dissatisfied with the response time for, say, people loitering to sell drugs. Typically the police response time for such calls is about 35-40 minutes from the time the 911 call was placed. This response time is consistent with the CMPD's call prioritization, which helps to free police resources for emergency and high priority requests for service. Although the response time does not violate a Rule, the concern expressed offers an opportunity to educate the complainant about call prioritization and why that's important in addressing emergencies.

• Investigating a felony, a detective calls a suspect's employer to gather information about the suspect. By the end of the investigation, the detective has determined the person is no longer a suspect. Nonetheless, the target of the inquiry is embarrassed by the call to his employer and files a complaint that the detective has inappropriately contacted the employer. The detective's inquiry was a proper part of a legitimate criminal investigation, so no misconduct is alleged in the complaint. Perhaps the detective could corroborate to the employer that the investigation cleared the employee of the crime under investigation.

In addition to CMPD learning about how better to serve the public, criticisms that do not assert a rule violation may provide an opportunity for us to educate the complaining person about Department policies, procedures, or tactics. Indeed, as a citizen told us in a discussion group, it would be helpful if there were simple ways to find out, before filing a complaint, whether a formal complaint is warranted. "I'd like to know," he said, "who in the Department I can contact to find out if a particular police action or practice is lawful, ethical, prudent or otherwise appropriate so I can better evaluate whether my experience with the police officer warrants a complaint."

This guidebook attempts to provide some guidance on these questions by enumerating the types of misconduct covered by our Rules and by providing other information. However, for further assistance people should feel free to contact the Department or the Community Relations Committee at the phone numbers and locations listed earlier.

## ROUTING OF COMPLAINTS FOR INVESTIGATION & REVIEW

For matters treated as formal complaints, the commander of the Internal Affairs Bureau, a major who reports directly to the police chief, follows our policies to determine at what level of the organization the complaint will be investigated. Policy specifies who investigates rule violations according to their seriousness. Seriousness is calibrated according to the potential consequences of the alleged misconduct for the accused employee, the Department, and community confidence in the police.

Less serious matters are assigned for investigation to the employee's chain of command, with the initial investigation done by an immediate supervisor. All supervisors have been trained in conducting such inquiries. The more serious matters will be investigated from the outset by IA, whose personnel have received advanced training in conducting complex and sensitive investigations.

## Complaints investigated & reviewed by the accused employee's chain of command

Of the complaints sent for investigation to the accused employee's chain of command, the *least serious* will be reviewed after investigation by the chain of command up through the captain or a captain's civilian equivalent if the accused employee is not a sworn officer. Department-initiated complaints and the public's complaints handled in this way include those alleging:

• unexcused absence from court, training or other secondary duty

- discourtesy
- expressions of prejudice
- violation of off-duty employment rules
- failure to follow proper procedures in handling citizen complaints (including discouraging the filing of a complaint)
- failure to go through proper chain of command in conducting police business
- improper interference with the police work of other officers
- being late for work or unequipped or unprepared to perform duties
- personal appearance violations (improper uniform, personal grooming)
- failure to carry, display or reveal police identification except when impractical or dangerous
- unintentional damage to, loss or improper use of Department equipment
- failure to submit adequate or timely reports
- insufficient knowledge of regulations
- failure to keep police radio on and operating properly
- failure to have a functioning personal telephone
- use of tobacco in various situations
- failure to notify Department of legal proceedings arising out of employee's official actions or affecting employee's fitness for duty

Complaints alleging somewhat *more serious* infractions of our Rules of Conduct will be investigated and reviewed by the accused employee's chain of command up through the head of the Service Area (a major) or the Bureau (in the case of an accused civilian employee). Such complaints include those alleging:

- arrests, searches or seizures that are illegal or violate procedures
- absence from primary duty
- neglect of duty (failure to respond to calls, sleeping on duty, leaving assigned area, etc.)
- inadequate supervision of subordinates
- visiting a gambling establishment or house of prostitution except to perform police duties
- associating with criminals or suspects except as part of police duties

### Complaints investigated by Internal Affairs and reviewed by the entire chain of command

The *most serious* complaints—those investigated from the outset by IA and reviewed through the chain of command up to a major or the chief of police—are those alleging:

- use of force
- dishonesty
- abuse of position generally
- abuse of position specifically to solicit gifts, gratuities or services; or acceptance of such benefits if intended to influence a police action
- violations of pursuit driving directives
- other driving violations (not during pursuits)
- harassment of co-workers
- use of alcohol on duty or in uniform
- possession or use of illegal drugs
- unbecoming conduct
- unsatisfactory performance
- violations of residency requirements
- insubordination
- failure to participate as required in administrative investigations
- prohibited labor or political activity
- intentional damage of Department equipment

## Why do we classify complaints when we receive them?

Specifically, why do we classify complaints according to which units of the Department will conduct the initial investigation and how high in the chain of command the investigations will be reviewed? We do this because all parties to a complaint deserve to have the matter efficiently and fairly investigated, and the most serious complaints—which may involve the greatest harm to the complainant, the Department's reputation, or the employee's career—deserve the most specialized investigation and scrutiny by our top leaders. This is the respect any of us would want if we were the complainant or the accused employee in a serious case.

Moreover, we promptly classify complaints because the most serious matters may require emergency intervention by the Department to relieve the involved employee of duty pending an investigation. The chief or the chief's designee has the discretion under CMPD policy to place on administrative leave with pay an employee whose conduct may jeopardize the Department's efficient operation or the public's safety. This step can be taken prior to giving the employee an opportunity to explain or justify his or her behavior.



Investigations are conducted either by the employee's supervisor or by the IA investigator, who is a sergeant. Either way, the investigative steps are relatively standard:

- interview and obtain a statement from the complaining party
- interview and obtain a statement from any relevant witnesses
- obtain any physical, documentary or photographic evidence (if needed, investigators may search CMPD buildings, vehicles and other property)
- obtain any miscellaneous reports or materials relating to the complaint and actions of the employee
- review all statements and evidence prior to interviewing the accused employee, in order to prepare for that interview
- interview the accused employee
- transcribe all recorded interviews (IA investigators always record interviews and some other investigators do so)
- prepare a written summary of the evidence, the investigation process and the events surrounding the allegation of misconduct

## The accused employee's rights and obligations during the interview

Before beginning the interview, the investigator must inform the employee of the nature of the allegations against him or her and the complainant's identity, if known. The employee will also be informed of the name and rank of all persons present during the interview.

In these administrative investigations, accused employees must answer truthfully all questions put to them or face discipline for failure to cooperate. They will be notified that any information they provide may be used against them administratively but may not be used against them in a criminal prosecution. This notification is known as a "*Garrity*" warning, referring to a U.S. Supreme Court ruling having to do with police officers potentially facing both administrative and criminal investigation for the same conduct. (Any criminal investigation of a police employee will be conducted by a specialized criminal investigative unit of the Department or by another agency. Such investigations are not addressed in this guidebook.)

During an administrative investigation, accused employees do not have a right to be represented by counsel, but they may have a supervisor of their choosing present, so long as that supervisor did not directly participate in the incident being investigated. In administrative interviews, accused employees may be required to submit to a polygraph examination, and they also have the right to be polygraphed at their own request.

CMPD policy specifies that employees being interviewed will be given reasonable rest periods and will not be subjected to "any offensive or abusive language, nor threatened with dismissal or other disciplinary action." This protection from threats does not, however, relieve the interviewer of the obligation to inform the employee that refusal to answer questions or answer them truthfully can become the basis for disciplinary action.

### The length of investigations

In response to considerable feedback from accused officers, complainants and others, we established the goal in 2001 that Internal Affairs should complete its investigations within 45 days. Striving to meet this objective required adding additional IA investigators and developing better case management techniques.

### Attitudes Toward the Length of Investigations

The KPMG consulting firm surveyed some citizens who filed complaints against our employees during 1998-99 as well as some of the accused officers. While all had a number of positive things to say about the way CMPD handled complaints, the complainants and employees alike were united in their criticism of "the protracted length of time it takes to complete an IA investigation."

60% of the interviewed officers who had been the subjects of IA investiga-

tions said the amount of time it took to complete investigations "was a penalty in itself." Both complainants and targets of complaints said the problems posed by lengthy investigations could be reduced somewhat through more frequent and informative communication by IA about the status of the case and the reasons for delays. (KPMG's Year 2000 audit report, pages 15 & 19)

In fact, an officer in an interview conducted in preparation for this guidebook cautioned that speed is not the sole consideration: "I would prefer a thorough and competent investigation more than a timely one, so long as I'm kept apprised of the reason for delays."

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We are proud that the Department has been able over the past several years to reduce drastically the number of IA investigations that take longer than 45 days. Previously, it was not uncommon for the most serious IA investigations to run four months or longer. Often, the investigator's work was completed within a reasonable time, but undue delay occurred while a case was awaiting review and approval by IA managers.

We invested considerable additional resources in IA staffing and case management methods because we share the concerns expressed by our employees, complainants, and others who care about the quality of the CMPD. These stakeholders' concerns were summarized in a 1997 report the Department commissioned from the KPMG consulting firm:

"Delay in completing investigations may have negative consequences on the department, such as:

■ Delay of necessary corrective action leading to additional risks or vulnerabilities [for the] CMPD;

• Decrease in officer morale while waiting for outcome;

 Perception that citizen complaints against police officers are not important;

• Difficulty in locating witnesses or obtaining accurate statements;

• Reduces the effectiveness of the early warning system; and

■ Impairs the effectiveness of the disciplinary procedures used by CMPD." (page 33 of the 1997 report)

After the expansion of the IA staff to help conduct more timely investigations that staff now consists of a major, two captains, seven sergeants, and two clerical support personnel.

As an organization committed to continuous improvement, the CMPD celebrates our progress but keeps striving to do better. In 2004 we set a new challenge for ourselves: to complete not only the IA investigations but each *entire case* within 45 days. We will not always succeed, but our intention is to have the process, from initial complaint reception to adjudication and employee notification of the result, run no longer than 45 days. To that end, IA will strive to complete its investigations within 21 days of the time the complaint was received by the Department.

Sometimes it is impossible for the Department to meet its self-imposed timetables. This may be caused, for example, by unusual difficulties in locating witnesses or evidence and by employees being on leave of absence or military leave.

### Even reasonable-length investigations can be stressful experiences for all concerned

Depending on the severity of the alleged misconduct, such investigations and reviews can be enormously complex undertakings and stressful experiences for all concerned, including the investigator. To be sure, the investigation of a minor complaint generated within the Department (say the first time an employee has been late for training) probably will not be complicated or upsetting for anyone.

## Stresses on Accused Officers

How does a police officer feel while under a serious investigation by Internal Affairs? Everyone is an individual and may feel differently. But officers often feel one or more of the following ways:

I feel angry, confused, devalued, distrusted, embarrassed, insulted, misunderstood, unappreciated, unsettled, victimized, and worried. I withdraw from both my professional and personal relationships. Money is tight already, and if I can't work my extra job or I get suspended because of this complaint, how will I pay my bills? I don't sleep well. I wonder if I'll ever get the assignment or promotion I've wanted. I keep asking myself, "Does anyone hear what I'm saying? How do I prove something I didn't do?" This is all so unfair. I feel so isolated.

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Because we empathize with the anxiety and concern that all involved in a complaint may be feeling, we do our best to inform them at the outset what the process will be and how long it normally takes. If an investigation is taking longer than our intended time-frames, the investigator or a commanding officer should contact the complainant and the subject officer to provide a status report on case completion.

## Stresses on Complainants

How does a complainant feel while his or her complaint is being investigated by Internal Affairs? Everyone is an individual and may feel differently. But here is how many complainants feel:

I worry that I or my family might suffer retaliation by the officer or the department because I complained. I'm worried about calling the police about crime in my neighborhood until my case has been resolved. My family and I are anxious and frustrated not knowing the progress or outcome of my complaint. This only adds to the frustration and anger I feel in the first place over being singled out for unjust police action. I worry that, if it's just my word against the police officer's about what happened, I won't be believed. I just feel powerless and in the dark with "the system" and all the bureaucracy associated with the complaint process.

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### Are our investigations fair?

What's fair? Many of us use the term "unfair" freely and loosely. For example, most of the complainants whom Department consultants interviewed a few years ago said at the beginning of their interviews that they "did not believe that the [IA] investigation was complete or fair." (KPMG 2000 Report, page 19). But when asked by interviewers to explain why, most of these individuals said what they really meant was that IA took too long investigating and communicated too little with them about the case.

Similarly, officers who had been subjects of IA investigations and were interviewed in 1999 about their experiences told the researchers at first that they thought the IA process was "not fair." But when asked to explain why, most of the officers clarified that what they found unfair was the discipline imposed by the Department following IA's investigation. The investigation itself, they told researchers, was "fair, objective and thorough."

Thousands of books and articles have attempted to define the word "fair." For purposes of this guidebook, perhaps a helpful, partial definition of what produces a fair fact-finding process is one that has been widely accepted by governments in many nations: *The parties to a dispute must have a meaningful opportunity to be heard before a neutral decision maker.* (It is important to remember that a complainant is not a *party* in the complaint system in the same way that a plaintiff is a party in a civil lawsuit. Nevertheless, concepts of fairness developed in the litigation context still have some application to an administrative complaint system.)

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The administrative complaint review process is the police department's *internal* effort to police itself. It is not the only means for an aggrieved member of the public to bring charges that the police have harmed him or her.

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The CMPD attempts to provide a meaningful opportunity for the complainant's story to be heard by thoroughly interviewing him or her and recording verbatim what is alleged. These allegations are presented fully, along with any relevant evidence that investigation discovers, in a written report to the decision makers. If the decision makers feel the need, in order to fully understand the case, to hear in person from the complainant, they will provide that opportunity as well.

What about the second element of a fair process that the decision maker should be neutral? At first blush, one might be tempted to question the neutrality of the decision makers when almost all of them have the same employer as the accused police employee. Are such doubts illogical? Suppose a police officer filed a complaint alleging that a story about him or her in the *Charlotte Observer* was unfair, and the dispute was going to be investigated and adjudicated primarily by senior managers at the *Observer*. Or suppose any of us disputed a plumber's bill, and the plumber proposed having the disagreement resolved by a panel of other plumbers.

Assuming bias because the adjudicator and accused work for the same organization or are in the same occupation, however, may be leaping too quickly to conclusions. Managers in all kinds of organizations regularly are required as part of their jobs to resolve disagreements or competing requests among employees. Performing such managerial responsibilities competently requires making a decision that will best advance the mission of the organization, which is to provide excellent customer service while treating employees fairly. Similarly, resolving disputes between CMPD employees and CMPD customers requires that adjudicators focus on whether the employee gave good customer service within the standards set forth in our rules of conduct. In the CMPD, it is not in the managers' self interest to show favoritism toward employees against our customers when complaints are filed. We realize that human beings are not perfect, and sometimes a decision maker will fail to properly set aside personal sympathies. But we train and hold our supervisors and managers accountable for rendering decisions that are honest and based only on the facts of a case and the applicable rules and laws.

Nevertheless, we recognize that some in our community may doubt that police could honestly and accurately judge the conduct of their coworkers. For those who have such concerns, it is important to remember that the administrative complaint review process is the police department's *internal* effort to police itself. It is not the only means for an aggrieved member of the public to bring charges that the police have harmed him or her. Self-policing is not, we believe, an *alternative* to outside officials having the right to judge the professionalism and legality of CMPD work. It is a necessary *supplement* to external scrutiny and accountability. Also, as we will describe later in this guidebook, the process we use *within* the CMPD to review investigations of complaints attempts to achieve transparency, neutrality and other elements of fairness by including as reviewers or observers people not employed by the CMPD.

### The IA investigator's conclusion

The final step in an IA investigator's summary of the investigation is to provide an opinion (reviewed by supervisors within IA) about whether the investigation reveals "a fair probability" that the employee engaged in misconduct as alleged. This is similar to a "probable cause" finding in criminal cases. As we will explain below, the IA Bureau's determination on "fair probability" will be reviewed and can be rejected by members of the involved employee's chain of command.

## CHAIN OF COMMAND REVIEW OF INVESTIGATIONS

## Case review when there is *not* a fair probability that misconduct occurred

If IA does not find a fair probability that misconduct occurred, the next step is for the subject employee's captain and major or civilian equivalents to meet with IA staff to review the facts of the case. This meeting is sometimes called a "mini-board." If these members of the chain of command concur that misconduct is not sustainable by the evidence developed in the investigation, they will render one of three final dispositions: not sustained, exonerated or unfounded. (These terms are defined below.) But if the employee's commanders believe there is a fair probability of misconduct, they will recommend a full IA or bureau level chain of command hearing.

### Chain of command board hearing

This full IA or bureau level hearing is also set in motion directly if IA determines there *is* a fair probability that misconduct is demonstrated by the evidence. In such instances, the subject employee's full chain of command—from immediate supervisor through major or civilian equivalents assemble to meet with IA staff. Also attending this hearing is a staff member of the City/County Community Relations Committee (CRC). This government employee is a full participant and voting member of the board.

Besides the CRC staff member, a CRC citizen volunteer is welcome to serve as an auditormonitor of internal CMPD hearings eligible for review by the Citizens Review Board. This monitor is one of seven people who serve on a police review subcommittee of the 45-member Community Relations Committee. All members of the CRC are appointed by City Council and the County Board of Commissioners. The police review subcommittee members are appointed for one-year terms and may not serve more than two years in a row. They must be domiciled in and registered to vote in Mecklenburg County, sign a confidentiality agreement, receive training on policies and laws, and successfully complete the CMPD's eight-week Citizens Academy training on departmental rules and procedures. The auditormonitor does not participate in recommending findings or discipline but fully reviews the evidence and observes the decision-making process. This citizen presence in the hearing room helps to ensure that the rights of the accuser and the accused are not compromised and that the Department follows prescribed rules and procedures in bringing complaints to a conclusion.

If the accused employee wishes, one other person may be present as a full voting member of the board—a peer. This generally will be an employee in the same job classification as the accused employee. The peer board member is selected by the IA major from a pool of eligible employees. The other attendees at a chain of command board hearing are one or more IA staff. Their role is only to answer questions; they are not voting members of the board.

### The "Peer" on the Chain of Command Board

Just as the Community Relations Committee's voting member on the board helps ensure fairness to the complainant, a peer of the accused employee helps ensure fairness to the accused. The peer member serves only if requested by the accused employee, but the accused may not hand-pick an individual. Rather, the IA commander picks two employees from the accused's job classification so long as that peer is not a probationary employee, is not involved in the case to be heard, has not been disciplined within the previous 24 months, and is not on suspension or other leave. The accused may reject either or both of the first two peers selected by the IA commander. If both are rejected, two additional peers are offered, and the accused must select one of them or one will be appointed by the IA commander. The IA commander may also replace, for "just cause," any peer who has begun serving on the board.

The peer is a voting member of the board. To protect the confidentiality of the process, the peer is directed in a written notice "not to disclose to or discuss any information contained in the investigative file or obtained during the hearing with anyone other than Chain of Command Review Board members or Internal Affairs."

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At the hearing, the board typically hears from and questions the accused employee and any witnesses whose in-person testimony the board considers necessary for a full understanding of the case. The peer, if one has been selected, typically asks his or her questions first, followed by the remainder of the board from lowest to highest ranking member. This sequence is used in the hope that members of the panel will not be deterred from asking questions by previously having heard the views of higher-ranking personnel.

The subject employee is not entitled to be represented at the hearing by legal counsel. Prior to and as preparation for the hearing, however, the employee is given an opportunity to review and make notes from the entire case file. This can be done in the Internal Affairs office Monday through Friday, from 8:00 am to 5:00 pm. The employee also has a right to a copy of his or her own statement from the file. By contrast, witnesses or complaining employees are only allowed to receive or review their own statements, not the entire case file.

### Cases investigated by the employee's unit supervisor rather than by IA

Less serious misconduct investigations will be reviewed in the following manner:

- If the accused employee waives a hearing: The investigating supervisor and the employee's captain and major, or civilian equivalents, review the entire case investigation and reach one of four possible findings, as described below.
- If the accused employee requests a hearing: The investigating supervisor and the employee's captain and major, or civilian equivalents, convene a board hearing, where they hear from and question the employee and any witnesses necessary to provide a full understanding of the case. Then the board renders a finding, as described below.

#### The possible adjudications of any complaint

Regardless of how high in the chain of command a complaint investigation is reviewed, each complaint receives one of four findings:

- **Sustained**. The investigation disclosed sufficient evidence to prove the allegations by a preponderance of evidence.
- Not Sustained. The investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint. Another term for our "not sustained" finding, used in some other agencies, is "insufficient evidence."
- Exonerated. The acts which provided the basis for the complaint or allegation occurred, but the

investigation revealed they were justified, lawful, and proper.

• **Unfounded**. The investigation conclusively proved that the act or acts alleged did not occur.

In an effort to bring greater clarity and finality to complaint adjudications, as requested by CMPD employees and members of the public over a number of years, the Department in 2001 abandoned the use of a fifth possible adjudication: closing the investigation to an "information file." The abandoned classification, as one officer told researchers, left "clouds of uncertainty hanging around." This classification typically was used for investigations that failed to establish a fair probability that misconduct occurred. Cases that previously would have been closed with this ambiguous classification are now typically adjudicated as "not sustained" or, less often, as "unfounded" or "exonerated."

Complaint adjudications in 2002 and 2003, shown in the tables below, reflect the pattern of dispositions after we abandoned the "information file" category.

Complaint Dispositions by Employees Involved: All Complaints		
	2002	2003
Total employees	514	428
receiving complaints		
Sustained	49.2%	55.1%
Not Sustained	34.2%	32.2%
Exonerated	9.1%	6.8%
Unfounded	7.4%	5.8%

Complaint Dispositions by Employees Involved: Department-Initiated Complaints		
	2002	2003
Total employees	295	252
receiving complaints		
Sustained	72.9%	79.4%
Not Sustained	16.9%	13.9%
Exonerated	6%	3.6%
Unfounded	4%	3.1%

Complaint Dispositions by Employees Involved: Citizen-Initiated Complaints		
	2002	2003
Total employees receiving complaints	219	192
Sustained	17.4%	20.3%
Not Sustained	57.6%	60%
Exonerated	13.6%	10.4%
Unfounded	11.4%	9.3%

The overall rate at which complaints were sustained, as noted earlier, reflects the combining of very different rates at which Department-initiated and citizen-initiated complaints were sustained. This becomes clear by comparing the three tables above. For instance, the sustained rate in 2003 was 79.4% for Department-filed and 20.3% for citizen-filed complaints.

The majority of citizen-filed complaints result in a finding of "not sustained." Typically, the reason is a lack of independent witnesses who can help prove or disprove the allegation. As a result, the chain of command cannot—on preponderance of the evidence—determine that the alleged misconduct occurred. Nor can the chain of command determine conclusively in most cases that the misconduct did not occur; hence only about 9% of the citizen-initiated complaints in 2003 were ruled "unfounded."

### Possible discipline if a complaint is sustained

If the chain of command sustains a complaint of misconduct against an employee, it will apply the Department's "Discipline Philosophy" (section 100-004 of the CMPD Directives) to determine the appropriate sanction. The key values brought to this decision by the Discipline Philosophy are that the sanction should be fair, consistent, and aimed at preventing recurrences of the misconduct. The Discipline Philosophy was adopted in order to address widespread concerns over the years that discipline was meted out inconsistently over time and across service areas and bureaus. The philosophy statement also aims to more clearly articulate the kinds of factors that justify treating differently the same violation by two different employees.

### The Problem with Predetermined Penalties

In general conversation with employees, they often say they would like the Department to give them a list of the prohibited behaviors along with the consequences for engaging in those behaviors. But when employees are directly involved in the disciplinary process—either as the subject or in a review capacity—most want to con-

### sider the consequences in light of the circumstances that might have contributed to the violation.

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To be more specific, the severity of discipline should be set after weighing:

• Employee motivation

At the time the employee violated our rules, was he or she operating in the public interest (trying to accomplish some legitimate police objective) or in self-interest? An example of misconduct in the public interest is an officer who wrongfully infringes a speaker's free speech rights to quell a public nuisance. The reason this can be a close call for a police officer is that there are times, of course, when a speaker *can* lawfully be ordered to desist or relocate to prevent personal injury. A second example where an officer's decision could be in violation of our Rules of Conduct, but well motivated, would be an illegal search and seizure done in order to arrest a dangerous crime suspect. This is a valid objective but an improper method.

• Degree of harm produced by the misconduct

What was the monetary cost to the Department and community? What was the extent of personal injury? What was the impact on public confidence in the Department? An employee who sells illegal drugs, commits burglaries, or intentionally injures people, for example, shatters public confidence in the police.

• Employee experience

A relatively new employee (or more experienced employee in an unfamiliar assignment) will be given greater consideration when making judgmental errors than would an employee with more experience.

• Intentional/Unintentional

Generally, intentional misconduct will be punished more severely than unintentional rule violations.

An example of an *intentional* violation is an employee lying. This is one of the most serious offenses an employee can commit. An example of an *unintentional* violation is an officer accidentally backing his or her vehicle into a pole. Other unintentional violations could arise from a police officer thinking he or she was in compliance but being wrong about the technicalities of a directive. A key question in determining intention is what the subject employee knew or reasonably should have known when making the decision at issue. What the employee learned after the fact may be highly relevant to preventing recurrences of misconduct but has little to do with determining the employee's intentions.

• Employee's record

To the extent allowed by law and policy, an employee's record will be taken into consideration in determining the consequences of a failure to meet the Department's expectations. Persistent rule violators can expect to be dealt with more harshly than infrequent violators. An employee whose record reveals hard work and dedication to the community and Department will be given every consideration in the determination of any disciplinary action.

The Department strives to apply these factors in weighing discipline and to explain to accused personnel the rationale for disciplinary decisions.

Disciplinary options include:

- supervisory counseling
- written reprimand
- active suspension without pay for up to 30 working days (employee does not report to work; indeed, the employee is sent home immediately after being told of the suspension by the chain of command review board)
- suspended suspension (suspension is held in abeyance for a defined period of time—often one year—so long as no further violations of Rules occur)
- recommendation to the Civil Service Board for employment termination

The Chief has authority to dismiss employees exempt from Civil Service, who include probationary sworn employees (less than one year on the job), sworn members above the rank of major, and all civilian employees.

The discipline imposed on our employees in 2002 and 2003 is reported in the table below. The numbers are larger than the number of incidents of alleged misconduct in each year because counseling and written reprimands may be issued in addition to suspension and because a number of complaints involved multiple officers.

Discipline in Complaint Investigations		
	2002	2003
Counseling/written reprimand	133	127
Active suspension	587	406
Suspended suspension	131	126
Combined active &	718	532
suspended suspension		
Recommend termination	10	0

Regardless of the board's adjudication of a complaint, the Department may take a variety of steps — none of which are considered discipline - to assist employees in complying with rules of conduct in the future. These steps include mandatory re-training, special emphases in an employee's performance appraisal, and requiring an employee to obtain support through the Department's Employee Assistance Program. At first blush, some people might consider anything an employee is obligated to do following a hearing to be discipline. But remember that all employees in all kinds of government and private-sector organizations are required by the terms of their employment to participate in various professional development and quality control exercises.

### The misconduct we discipline most severely

Here are three examples of the kinds of misconduct by our employees that we have disciplined with either lengthy, active suspensions or with terminations of employment in recent years:

• One employee was disciplined for defrauding a dry cleaning service in connection with lost clothing. When the clothing was found, the employee refused to return the money the cleaner had paid as compensation. In addition, the employee requested and accepted compensation from the cleaner for lost clothing that was issued by the Department, not purchased by the employee. This individual was cited to the Civil Service Board for employment termination.

• An officer was involved in a use of force at the end of a pursuit. As the suspect was brought under control, the officer punched the subject in the face, causing a minor injury. During investigation, the officer told the truth about the event and was suspended for 20 working days without pay for using excessive force.

• An officer initiated a traffic stop of a citizen just outside of our jurisdiction in South Carolina, recording the event on the patrol vehicle's mobile video recorder (MVR). The officer's sergeant, believing the stop may have occurred in South Carolina, asked to see the employee to discuss the incident. The officer, on the way to see the supervisor, managed to initiate another traffic stop and record over the previous one. This tampering with the MVR recording of the earlier stop resulted in the officer being cited for employment termination by a chain of command review board.

In cases such as these, serious discipline is considered appropriate because the subject employees have breached our Department's core values—values such as honesty, integrity, professional service to the community and restraint in the use of force. Violation of these values undermines the public's trust in us.

## Should a complainant be punished for filing a false complaint?

We noted earlier that we encourage people to file a complaint who believe sincerely, even if incorrectly, that they have been mistreated by our employees. Having said that, what if people intentionally file false complaints?

For starters, why would anybody purposely file a false complaint—a complaint they *know* is false? They might just hate police or they might be trying to thwart legitimate police enforcement efforts. In the case of someone who has a pattern of filing false complaints (which we would detect through our complaint database), what are our remedies?

Should we send a warning letter, as some police departments do, telling the person that we are aware of his past abuses of the complaint system and suggesting that his complaints will not be taken seriously in the future unless he presents independent, corroborating evidence of the alleged misconduct? We are hesitant to send such a warning letter. But we will not hide our heads in the sand either, and when a complainant is a "regular customer," we will consider the honesty of past complaints in judging the veracity of uncorroborated allegations made in any new complaint. In really egregious cases, the Department would work with the Mecklenburg County District Attorney to investigate whether the complainant filed the complaint in order to conceal a crime, permit the continuation of criminal activity, or for some other illegal reason.

Short of such extreme circumstances, we would be reluctant to support legal action—civil or criminal—against a complainant. If a police officer, concerned about being libeled and otherwise harmed by a false complaint, sought the Department's assistance in pursuing a lawsuit against the complainant, we would weigh the following kinds of considerations: Is this a really egregious case of a knowingly false complaint? Can the victimized employee demonstrate damages? Can the maliciousness and untruth of the complaint be established beyond a reasonable doubt?

Surely a police employee may choose whether to undertake the expense and other burdens of bringing a lawsuit against a complainant. At the same time, the CMPD has to make an independent judgment whether to actively assist legal action against a complainant. Our decision will carefully weigh the importance of protecting our workforce against harassment and the public interest in having a police organization to which good faith complaints can easily be brought.

## Can we protect our reputation when the City settles a lawsuit alleging police misconduct?

A somewhat related issue is what steps, if any, the CMPD, City or County officials can and should take to defend the reputation of individual officers and the Department when a lawsuit against the CMPD and our employees is settled without any admission of wrongdoing by the police.

The public is well aware of the common practice of civil lawsuits being settled out of court in order to spare both parties the expense of litigation and the risks of losing at trial. Often, the settlement agreements specifically state that the defendant admits no wrongdoing even though the defendant will pay money to the plaintiff. But do casual observers of the process really believe a defendant who settles is innocent? We are aware that a police officer whose professionalism has been challenged in a lawsuit may feel tainted and unsupported when the local government's lawyers settle the case, no matter what the fine print in settlement papers says.

What is the police department to do in such cases? Could we do anything to better ensure that the public and our employees understand the meaning of a settlement in relation to an officer's professionalism? This is an issue we want both the public and our employees to know we in police leadership positions take very seriously.

Settlements can be good because they prevent the taxpayers from having to pay for the more expensive defense of protracted lawsuits. But we don't want our fiscal responsibility in settling a case that we believe lacks merit to be misunderstood as a tacit admission that the Department or our employees did something wrong.

## NOTIFICATIONS OF COMPLAINT DISPOSITIONS

Police officers (and their supervisors) are always notified of the dispositions of complaints against them, but the complainants are not always notified. North Carolina statutes governing the confidentiality of public employee personnel records (North Carolina General Statutes Section 160A-168) restrict the circumstances in which a complainant may receive certain types of disposition information.

## Who is Notified of Outcomes?

Police officers (and their supervisors) are always notified of the dispositions of complaints against them, but the complainants are not always notified. North Carolina statutes governing the confidentiality of public employee personnel records (North Carolina General Statutes Section 160A-168) restrict the circumstances in which a complainant may receive certain types of disposition information.

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Thus, under State law, only in cases where citizens have a right to appeal the Department's ruling on a complaint will they be notified of the finding (sustained, not sustained, exonerated, or unfounded). They will not, however, be notified of any discipline imposed on the accused officer. The notification letter will include a summary of the relevant facts of the case. The types of misconduct complaints whose disposition the complainant will be informed about are those alleging:

- Unbecoming conduct ("alleged behavior that is reprehensible enough to undermine the reputation of the department, the employee or public confidence in the department")
- Excessive use of force
- Arrest, search or seizure violations
- Discharge of firearms where personal injury or death resulted

In all other types of complaints, the only thing a complainant will be told at the conclusion of the case is that the case was investigated, and appropriate action was taken by the Department.

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How should we strike the balance between protecting the confidentiality of our employees' personnel records and maximizing public confidence that we take complaints and employee misconduct very seriously?

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We recognize that, as much as police officers welcome this privacy, many complainants and others will be concerned at being kept so uninformed. This is a dilemma for a police organization that values highly the confidence and respect of the public. It is hard for many complainants to understand why, when they have done their civic duty by reporting inappropriate police conduct, they are deprived of knowing the rulings on their complaints. Frankly, sometimes it is hard for department leaders to adequately explain the reasons for this secrecy. We can certainly quote the governing State law, and we are obliged to follow it. But if the shoe were on the other foot, and one of us in a police role was complaining about someone else's misconduct, we

think we might feel dissatisfied if we were prevented from knowing how our complaint was resolved.

We are mindful of the problem-solving, policecommunity relations benefits that some other police agencies enjoy because of their opportunity to provide somewhat detailed case outcome information to complainants. One example is Portland, Oregon, where the police department is nearly as large as ours. Below is the summary, published in a 2003 Portland annual report, of what a complainant initially alleged and the notification to the complainant at the conclusion of the investigation:

"The complainant alleged that a patrol car swerved into his lane and sped off without turn signals. lights, or siren. The complainant said he was forced to brake, causing his laptop computer to be damaged when it hit the dash. The IPR [complaint intake unit] gave him the phone number for Risk Management to make a property damage claim and referred the driving IAD.... allegation Α sergeant to admonished the officer about safe driving and proper use of emergency lights and siren. He then called the complainant and explained the action he had taken with the officer. The complainant thanked the sergeant for letting him know that the officer had been counseled."

The reality is that the CMPD does not have this same opportunity to reach closure with the complainant and achieve the same type of customer satisfaction. We recognize that the existing North Carolina law is a mixed blessing. It helps to protect the privacy interests of our employees, and that is good. But it also helps to undermine public confidence in the openness, honesty and fairness of our deliberations on citizen complaints, and that is bad.

There is an escape valve: In cases where the City Manager determines it is in the interest of protecting the Department's reputation to publicly disclose a complaint disposition, the City Manager can make that disclosure, so long as the City Council concurs.

### The loss of a learning opportunity

Since the right to keep various types of personnel

information private belongs to the affected employee, he or she is free to waive that right. But absent such a waiver, the findings and any discipline will be kept confidential in most cases. Importantly, that information is kept confidential not only from the public, but from police employees who do not supervise or manage the subject employee.

This means that accurate information about complaint outcomes and dispositions does not automatically become a source of learning for the rest of the organization about what behavior is ruled appropriate.

Under these circumstances, the Department strives to include numerous clear examples of appropriate and inappropriate employee conduct in training curricula. The facts of real cases are disguised in order to respect privacy rights, but enough information usually can be included to make very clear to trainees what is expected of them as they carry out their job responsibilities. Similarly, in our citizen's police academy and in various other community meetings with police, CMPD officials try to be as clear as possible, while still respecting employee privacy rights, about what constitutes appropriate police conduct. Moreover, the CMPD senior leadership has the opportunity to continually review and improve policy based on what we learn from the investigations and dispositions in misconduct cases.

## APPEALS OF CHAIN OF COMMAND BOARD RULINGS

### Appeals by the complainant

As noted above, North Carolina law authorizes complainants to appeal adverse findings by our Department in the kinds of cases likely to have the most serious consequences for public confidence in police: unbecoming conduct; excessive use of force; violations of arrest, search and seizure rules; and discharges of firearms resulting in personal injury or death.

A complainant's appeal goes to the Citizens Review Board (CRB), which was established by ordinance in September 1997. Of the CRB's 11 members, three are appointed by the Mayor, three by the City Manager, and five by the City Council.

The steps in the appeals process are as follows:

• The complainant files a notice of appeal. This must be filed with the City Clerk's office (at 600 East Fourth Street) within seven calendar days of receiving the closure letter from the CMPD. The procedures for appealing are described in the closure letter notifying the complainant of the case outcome and of his or her right to appeal. The complainant may also get information about how to file an appeal from the Community Relations Committee, which has a helpful brochure on the subject.

• The CRB schedules a hearing to review the case file and learn the facts of the case in person from both the complainant and a police department representative.

• If the CRB concludes (by majority vote) that there is some reason to believe the Police Chief may have abused his or her discretion in approving the adjudication of the complaint, the CRB will schedule a more extensive hearing. If the CRB does not find reason to believe the Chief abused his or her discretion, the complainant has no other administrative appeal rights.

• If, after this second hearing, the CRB concludes (by majority vote and based on a preponderance of the evidence) there was an abuse of discretion by the Chief, the CRB will recommend that the City Manager review the Chief's exercise of discretion. As with the earlier hearing, a CRB finding at this stage that the Chief's exercise of discretion was proper will end the complainant's right of administrative appeal.

• The City Manager, if asked to consider the matter by the CRB, will review the case and discuss it with the Chief.

• The City Manager will make a final decision, either accepting the Chief's exercise of discretion or directing the Chief to take further action in the investigation and adjudication of the complaint.

### Appeals by the subject employee

A sworn, nonprobationary employee who is disciplined by suspension without pay may appeal to the Civil Service Board (CSB). All recommendations for employment termination are heard by the CSB unless the employee resigns or waives the hearing. The CSB is a five-member panel established by City Charter and appointed by the Mayor and City Council. The CSB is the final authority on the hiring, promotion, demotion and termination of employment for all sworn police officers through the rank of major. Sworn employees above the rank of major are exempt from civil service protection. Civilian employees of the CMPD are also "at will" employees without civil service protection.

An employee who wishes to appeal discipline imposed by the Department must file a notice of appeal with the City Clerk (at 600 East Fourth Street) within 15 days of the date he or she is informed of the Chief's disciplinary order. The City Clerk's office notifies the Chief's office of the appeal. The CSB will schedule a hearing not less than 15 days nor more than 30 days from the date the notice of appeal is received by the Board. For good cause, the chairman of the CSB may continue the hearing beyond a 30-day period.

At the hearing, the employee may be represented by counsel. The employee has a right to call witnesses, present evidence, cross-examine adverse witnesses, and be present during all proceedings except the Board's deliberations. The Board may call the appealing employee as a witness. Technical objections by counsel are discouraged, and the rules of evidence are applied consistent with the personnel function and administrative nature of the tribunal. The Department has the burden of proof by a preponderance of evidence and presents its case first. A court reporter is present at all hearings, but the cost of transcripts must be born by the party wishing a transcript prepared. The Board makes decisions by majority vote and issues written findings of fact and conclusions of law.

If the Board finds that the employee has not violated the rule as charged by the Department, the Board may restore the employee to active duty and/or reimburse any pay lost during a suspension or separation. If the Board upholds the Department's findings and discipline of the officer, the Board may leave unchanged the discipline meted out by the Chief, or it may modify that penalty upward or downward. The most severe penalty the Board may impose is employment termination. CMPD sworn employees have the choice, instead of appealing to the Civil Service Board, to appeal a disciplinary action to the Chief of Police through the City's grievance process. Employees may not use both appeals routes. The City's grievance procedure provides that any sworn employee who has completed his or her probationary period of employment—and any civilian employee—who is suspended or discharged may file a grievance with the Chief of Police. This action must be taken in writing within five working days of being notified of the Chief's disciplinary action.

The Chief, in turn, has five days to respond to the employee or his or her representative. If the grievance is not settled to the satisfaction of the employee, he or she has five days after the Chief responds to bring the grievance—and all pertinent correspondence about it—to the City Manager's attention. The City Manager has 20 days to respond to the employee or his or her representative. The City Manager has the option, after conferring with the aggrieved employee and the employee's representative, to refer the matter to a mutually acceptable third party for a recommendation. If this step is taken, fees and expenses will be shared equally by the City and the employee.

### The Department's track record in Civil Service Board appeals

Appeals to the Civil Service Board can be time consuming and high profile events for the Department and the community, but they are not very frequent experiences. During the decade of the 1990s, for example, there were 41 appeals brought to the CSB. Over those years, the Department's findings and discipline were upheld by the CSB in 46.5% of the cases, modified (usually reducing penalties) in 29% and reversed in 24.5%.

Does a win-rate for the Department of less than 50% in employee appeals to the Civil Service Board mean the Department's findings and disciplinary decisions are overly harsh? In thinking about this question, the reader may wish to consider a few points:

First, very few employees challenge Department disciplinary decisions by appealing to the CSB.

Second, accused employees may not be represented by counsel at the chain of command

board hearing, but do have a right to an attorney in Civil Service Board hearings.

Third, the standard of review and burden of proof before the Civil Service Board are not what one might expect in thinking about appellate review of a governmental administrative decision. In many contexts outside of policing, an appellant challenging the ruling of an administrative body has the burden of persuading the review panel that the decision below is not supported by the evidence or in some other way is unreasonable. By contrast, it is the CMPD, not the disciplined officer, which has the burden of proof before the Civil Service Board. The Department must prove by a preponderance of the evidence that the facts support the finding and discipline. Thus, in many respects, the Civil Service Board hearing becomes a complete reconsideration of the question whether the officer engaged in misconduct and should be disciplined. Since reasonable people may differ, any time a case is completely reconsidered, by a different set of decision-makers, and with one of the parties for the first time represented by an attorney, it is not surprising that the outcome may change.

Given this pattern, over the years the Department has had a number of employees who persuaded the CSB to undo at least part of the discipline the police leadership thought was merited. Does this present problems for us, for the subject employee, and for the community? Sometimes yes, sometimes no. How well an employee reintegrates-and is accepted by supervisorsafter the employee wins a CSB appeal will depend partly on the nature of the alleged misconduct, the reasons for the appeal, and the attitudes expressed by all concerned during the complaint process.

Sometimes an employee appeals to the CSB alleging that his or her supervisor or commanders were discriminating-targeting the employee for punishment with trumped up charges because of a personal vendetta. In these circumstances, notwithstanding the employee's absolute right to appeal to the CSB, things inevitably get personal. The employee feels personally targeted for discrimination, and the commanders who sustained the complaint and imposed the discipline may feel angry at being accused on appeal of behaving improperly. A prevailing employee after this type of hostile appeal may be reassigned in order to minimize the risks of an untenable supervisorsubordinate relationship.

By the same token, if the Civil Service Board reverses a sustained finding in a case involving a citizen-initiated complaint, many factors may shape whether there are problems with the police employee providing professional, unbiased police service to the complainant and his or her friends and family. It falls to the employee's supervisor and commanders to help restore the employee to productive service and to help iron out any lingering tensions between the people who had a strong interest in the complaint on all sides. As with a Department-initiated complaint which is ruled not sustainable by the Civil Service Board, in some instances it may be in the best interest of the vindicated subject officer, the other employees in his or her unit, and the public to reassign the subject officer after the CSB ruling.

## The Department's track record in Citizens Review Board appeals

The Citizens Review Board became operational in 1999, and since then it has heard 38 appeals by complainants from CMPD decisions. As of late August 2004, the Citizens Review Board had upheld the Chief's exercise of discretion in every appeal brought to the CRB by a complainant.

Although 38 cases is not a particularly large number from which to reach a conclusion, we readily admit that it's unusual, in almost any field of endeavor-law, labor relations, government regulatory matters, sports, business, etc.-for one party to prevail all the time against its competitors. What does it mean that the CMPD has never lost a case before the Citizens Review Board? It could mean many things, and we readily acknowledge that it will mean different things to different people. Some may believe the CMPD is very good in making disciplinary decisions and defending them on appeal. Some may believe the grounds for appealing are weak or the appellants are ineffective at presenting their arguments to the CRB. Still others may believe the CRB is a rubber stamp for the Department, a view we do not share. Some people might argue that the CMPD's winning streak before the Citizens Review Board is at least partly due to citizen oversight of-and input into-CMPD complaint rulings. The logic might be that this citizen involvement prevents most of the errors that otherwise might cause successful appeals.

Yet another possible explanation could lie in the fact that the standard of review and burden of proof on appeal present high hurdles for appellants. Recall that in appeals by disciplined officers to the Civil Service Board the Department has the burden of proving misconduct by a preponderance of evidence. Yet here the burden falls on the complainant to prove that the Chief abused discretion in failing to sustain the complaint.

The truth may be that different explanations apply to different cases. Whatever the explanations may be, the CMPD maintains a high level of interest in understanding what the public and our employees *perceive* to be the reasons why the CMPD is batting .1000. We need your confidence that our appeals system is fair and will continue to strive to earn that confidence.

## HOW CAN WE SERVE YOU BETTER?

This Department's core values include respect for the public and our employees. We have tried, in this guidebook, to apply these values to enhance the reader's understanding of, and confidence in, our handling of misconduct allegations.

We began by observing that the focus of this guidebook is the tip of an iceberg of perceptions about the CMPD—perceptions both positive and negative. We of course have many other avenues—many well traveled—for the public and our employees to tell us how we're doing in our efforts to run a high integrity, effective police department.

But the complaint system is a key system for us, and for any organization that aspires to understand and meet the legitimate needs of its customers and employees. If you—the public and our employees—think we can do better, please tell us. If you think we have violated our own rules of conduct, please tell us. You may turn out to be correct or incorrect in believing one of our employees engaged in misconduct. But if you think one of our employees has crossed the line of proper conduct, we'd rather hear about it than have you keep your concerns bottled up, only to emerge at some other time and in some other expression of resentment and disrespect.

We hope, when we investigate your complaint, that the involved employee is revealed to have behaved properly. In that case, we'll still learn something from your complaint, and hopefully we will be able to help you better understand our standards and requirements for employee conduct. But if one of us has done something wrong, we want to know, want to learn from it, and want to correct the problem. The problem that produced unwanted behavior may be weaknesses in an individual employee. The problem might be primarily something beyond the employee's control, such as defects in one of our policies, procedures, or supervisory methods.

We feel proud of our organization and its employees. We feel proud and privileged to live and work in this community. If you have a suggestion for some way we can run a more effective, efficient, and legitimate complaint processing system, which will serve the public and our employees even better than our current system, please let us know. It is our goal to earn—and keep—your confidence and respect.

### Appendix Investigation Level & Review Level of Complaints in Relation to CMPD Rule of Conduct Allegedly Violated

*Note: This Appendix presents the same information contained in CMPD Directive # 200-001 (page 8), but formats the information according to the seriousness of the alleged Rule of Conduct violations.* 

### INVESTIGATION BY IA & REVIEW BY CHAIN OF COMMAND REVIEW BOARD (*Most serious allegations*)

- " Insubordination
- " Unsatisfactory performance
- " Unbecoming conduct
- " Residence requirements
- " Prohibited labor activity
- " Prohibited political activity
- " Failure to conform to local, state or federal laws
- " Use of alcohol on duty or in uniform
- " Possession and Use of Drugs
- " Abuse of position
- " Gifts and gratuities
- " Public statements and appearances that divulge confidential information
- " Use of weapons
- " Use of force
- " Improper use of property and evidence
- " Use of Department equipment (Intentional Damage)
- " Failure to participate as required in administrative investigations
- " Dishonesty
- " Harassment of fellow employees
- " Violations in connection with vehicle pursuits or other emergency driving
- Violations of driving requirements under normal conditions (not during pursuits or other emergency driving)

### INVESTIGATION BY CHAIN OF COMMAND & SERVICE AREA/BUREAU LEVEL REVIEW (Second most serious allegations)

- " Violation of any rules, procedures, or other directives of the department
- " Absence from primary duty
- " Neglect of duty (failure to respond to calls, sleeping on duty, leaving assigned area, etc.)
- " Associating except as part of police duties with criminals or suspects
- " Visiting a gambling establishment, house of prostitution or other prohibited establishments

except as part of police duties

- " Arrests, searches or seizures that are illegal or violate procedures
- " Inadequate supervision of subordinate employees

### INVESTIGATION BY CHAIN OF COMMAND & DISTRICT/ SECTION LEVEL REVIEW

### (Least serious allegations)

- " Insufficient knowledge of regulations
- " Failure to go through proper chain of command to conduct business
- " Failure to have a functioning telephone in residence
- " Late for work or unequipped or unprepared to perform duties
- " Absence from secondary duty (court, training, etc.)
- " Violation of off-duty employment rules
- " Personal appearance violations (improper uniform, personal grooming)
- " Use of tobacco on duty while in direct contact with public and in other prohibited situations
- " Failure to carry, display or reveal police identification except when impractical or dangerous
- " Discourtesy or expression of prejudice
- Failure to follow proper procedures in handling citizen complaints, including discouraging filing formal complaint
- " Improper interference with or investigation of police action being taken by another officer
- " Use of Department equipment (Unintentional Damage)
- " Failure to keep radio on and operating properly
- Failure to submit adequate or timely reportsFailure to notify Department of legal
- proceedings arising out of employee's official actions or affecting employee's fitness for duty