

## 2.6 CPC Discipline Review Procedures

The Community Police Commission (“CPC” or “the Commission”) serves as the final authority within the City of Cleveland to determine the sufficiency of discipline imposed on officers. CPC has discretionary authority, with due process for officers, to order increased discipline or impose discipline where none was imposed, by the Chief of Police, executive head of the police force, or the Civilian Police Review Board (hereinafter referred to as reviewing agencies). In limited circumstances CPC may order a decrease in discipline. City Charter § 115-5(h)(i)-(ii).

CPC may review final disciplinary decisions *sua sponte*, or through complaints via petition pursuant to CPC Manual Rule 2.4.4.

To determine whether the discipline or non-discipline imposed upon a Cleveland Division of Police (“CDP”) member is sufficient, the CPC “may, at its discretion, and upon notice, hold evidentiary hearings[.]” *Id.*

The following procedures shall apply when the CPC exercises its authority with respect to determinations of discipline imposed on members of the CDP. “Any order by the [CPC] to increase or impose discipline will be final and the chief and executive head of the police force must follow it.” *Id.*

### 2.6.1 General Principles

- (1) **Due Process:** All hearings shall be conducted in a fair, impartial, and transparent manner that respects the due process rights of officers and complainants.
- (2) **Notice:** The CPC Executive Director must give notice to the respondent officer, unions, and the applicable reviewing agency, within five (5) days of requesting a case file to review a disciplinary determination.
- (3) **Burden of Proof:** The standard of proof shall be a preponderance of the evidence. The Commission can only modify final disciplinary determinations if a preponderance of the evidence in the matter shows that the original discipline, or the lack thereof, was misapplied pursuant to the applicable Charter, Corrective Action guidance, Manual of Rules, or Discipline Matrix at the time of the incident. “Preponderance of the evidence” means the greater weight of evidence; for example, based on all of the evidence it is more likely than not that original discipline imposed, or lack thereof, was or was not misapplied.
- (4) **Right to Counsel:** All parties may be represented by legal counsel.
- (5) **Garrity Rights:** The CPC acknowledges that public employees may not be compelled through investigations, hearings, interviews, or otherwise by their employers to incriminate themselves pursuant to the Fifth and Fourteenth Amendments of the United States

Constitution or any analogous rights under Ohio law. This right against self-incrimination is colloquially referred to as an employee's "Garrity Rights."

### **2.6.2 Preparing the Case Package for the Accountability Committee**

The CPC's Executive Director, or their designee, shall prepare a case package for review before the CPC's Police Accountability Committee (the "Committee"). The Executive Director shall request all documents and records necessary to prepare the case package within seven (7) days after receiving a petition. The Executive Director shall send the case package to the Committee within fifteen (15) business days after receiving the complete case file.

The case package shall include:

- (1) Case Summary — including case ID., Officer(s) Name(s) and Badge Number(s), Allegations Summary, Referenced Policies, Factual Summary, Evidence Collection Breakdown, Relevant Discipline Policies, Current Discipline, etc.;
- (2) Case Comparisons — A summary of comparable City of Cleveland discipline case comparisons with the relevant discipline matrix;
- (3) Full Case File — The complete case file, as transmitted by the previous reviewing agency;
- (4) Review — A brief review of possible Commission decisions;
- (5) Jurisdiction — A statement on why the CPC can review the case, its procedural status, and the procedural history leading up to the CPC hearing (including any CBA Grievance); and
- (6) Any additional special circumstances or concerns that may be relevant to the decision to review the case, including an explanation of any documents or records the Executive Director believes to be missing from the case file transmitted by the previous reviewing agency.

If any of the foregoing is missing from the case package, the absence of the document(s) and the reason(s) for the absence shall be specifically noted.

### **2.6.3 File Review by the Accountability Committee**

The Committee shall meet within fifteen (15) days after receiving the case package from the Executive Director and:

- (1) Review the case package and decide on whether to have a hearing or to make a recommendation to the full Commission not to review the case;

- a. The standard for this decision is whether the Committee determines that the facts in a case provide a reasonable basis that may warrant the full Commission to modify a disciplinary decision;
- (2) If approving the review of a case for hearing the Committee Chair shall:
- a. Coordinate Commission calendars with Co-Chairs to set a hearing within thirty (30) days after the date the Committee passes its recommendation to set the case for a hearing;
  - b. Send notice of hearing to the officer and unions, through the Chief of Police and the Co-Chairs within five (5) days;
  - c. Send notice of hearing to Complainants (if applicable), through the Co-Chairs, and post notice to the Commission website within five (5) days;
  - d. Coordinate continuance requests (twenty-four [24] hours in advance notice required and one per party) through the Co-Chairs;
- (3) If recommending that the CPC not review a case or set it for hearing, the Committee Chair shall:
- a. State the reason(s) for non-review of the case ;
  - b. Prepare non-review motion for full Commission;
    - If non-review is approved by the Commission, prepare notices for Unions, Officers, and Complainants (if applicable) through the Executive Director within five (5) days.
  - c. If the Committee's non-review recommendation is due to the incompleteness of the case file as transmitted by the previous reviewing agency, coordinate a meeting of the Committee to affirmatively determine a recommendation to the Commission on the appropriate legal action or other actions to take with respect to the reviewing agency. This meeting shall take place within fifteen (15) days of approving the non-review recommendation.

The Committee shall decide whether to make a recommendation for an Evidentiary Hearing within fifteen 15days of the first Committee meeting on the matter. If not, it must send notice to the full Commission detailing the reasons for its delay.

#### **2.6.4 Pre-Hearing Procedures**

The officer, acting pro-se or through counsel, may submit a pre-hearing brief to the Commission in advance of the Evidentiary Hearing. The following rules shall apply when submitting any pre-hearing brief:

- (1) Briefs are due to Commission Co-Chairs via e-mail at least ten (10) days in advance of the hearing;
- (2) Briefs are optional;
- (3) Briefs are limited to topics concerning the increase, decrease or implementation of discipline;
- (4) The length of briefs shall not exceed ten (10) pages (not including exhibits).
- (5) Response briefs are not permitted;
- (6) Amendments to briefs are not allowed, unless new evidence relative to the level or implementation of discipline has been discovered (as decided by the Chair of the Committee );
- (7) The Commission must ensure all briefs (and evidence therein) are completely redacted pursuant to the Ohio Public Records Act, other state laws, and federal laws before releasing to the public.

Briefs should be in the following format:

- (1) Case Summary — including case ID, Officer(s) Name(s) and Badge Number(s), Allegations Summary, Referenced Policies, Factual Summary, Evidence Collection Breakdown, Procedural History, Current Discipline, etc.;
- (2) Case Comparisons (optional) — A summary of comparable City of Cleveland discipline case comparisons within the relevant discipline matrix;
- (3) Argument – the application of facts to case comparisons, existing discipline and counterarguments;
- (4) Review — A final review with a conclusion. (For the Executive Director, this is a review of the Commission’s options pursuant to the applicable Discipline Matrix/GPO).

In addition to the officer, the CPC’s Executive Director should prepare a brief for the full Commission that incorporates their review. The Executive Director’s Case package may serve as

their brief or they may amend it. The Co-Chairs must distribute the briefs, ensure documents are properly redacted, and post them on the Commission's website.

### **2.6.5 Conduct of Hearing**

Evidentiary hearings shall be held by the Commission either as a standalone hearing or as the only item of business at any regularly scheduled full commission meeting.

#### **2.6.5.1 Hearing Format**

The evidentiary hearing shall proceed by the following process with participation by each party either pro se, per their designee, or per legal counsel as applicable:

- (1) Call of the Case
- (2) Roll Call for Quorum;
- (3) Executive Director Summary;
- (4) Opening Statements;
  - a. Each party may present a brief opening statement outlining their case not to exceed ten (10) minutes.
  - b. Complainant(s) shall go first, followed by the respondent officer.
- (5) Presentation of Evidence and Questions for the Parties
  - a. The Executive Director, Complainant(s), and Officer, in that order, may present evidence and witnesses. Parties may cross-examine witnesses called by other parties.
  - b. Questions for the parties or cross-examination of witnesses is permitted by all Commissioners.
- (6) Closing Statements
  - a. Each party may present a closing statement summarizing their arguments not to exceed ten (10) minutes.
- (7) Commission Discussion
- (8) Commission Vote

(9) Public Comment

(10) Adjourn

### **2.6.5.2 Hearing Procedures**

The following provisions shall apply during the evidentiary hearing:

- (1) Commissioners shall reserve the right to ask questions of the Executive Director, the Officer (including or through counsel), and/or any additional witness, person, or party during or after the relevant portion of the hearing and associated presentation;
- (2)
- (3) Public comments shall be limited to three minutes per commenter and comment time is not transferable from one commenter to another;
- (4) Each Commissioner is limited to speaking twice during the discussion portion of the hearing, for up to five minutes total;
- (5) Questions and time are not transferrable among Commissioners;
- (6) Any requests for additional time or questions must be made in a motion and confirmed by a majority of Commissioners. The motion is not debatable.

### **2.6.5.3 Hearing Decisions**

Upon conclusion of the evidentiary hearing, the Commission shall, by majority vote of the quorum, make one of the following findings:

- (1) To increase the previous discipline decision, or to impose discipline where previously there was none;
- (2) To decrease the previous discipline decision (only if the Commission determines that the officer is facing retaliation for protected activity or for whistleblowing about misconduct);
- (3) To affirm the previous discipline decision or lack thereof; or
- (4) To stay the matter for further investigation.

### **2.6.6 Record and Appeal**

A court reporter shall be available at any evidentiary hearing upon the request of any party at their own expense.

The Co-Chairs of the Commission shall memorialize the Final Decision of the Commission using the Hearing Decision Form (Appendix - ). In addition to reviewing discipline, Commissioners may also identify any recommended changes to police tactics, training, or policy arising in the matter. The Co-Chairs shall record any majority-voted recommendations for the Commission's Policy or Training Committees to consider.

The Co-Chairs shall cause the Hearing Decision Form to be mailed to the officer, complainant, and Executive Director by first-class mail within five (5) days of the evidentiary hearing. Pursuant to City Charter § 115-5(h)(i)-(ii), the CPC's decision shall constitute a final order, adjudication or decision, subject to appeal Ohio Revised Code § 2506, *et seq.* or as otherwise permitted by law.

## **2.6.7 Restrictions on Commissioner Conduct**

### **2.6.7.1 Conflicts of Interest**

A CPC Commissioner shall recuse themselves if any of the following occur:

- (1) If the officer subject to the discipline or a complainant in a matter is a spouse, child, parent, sibling, grandparent, or grandchild of the Commissioner, or if the officer or complainant in a matter is a person living in the Commissioner's home and they are related to the Commissioner by blood or marriage;
- (2) If the officer subject to the discipline or a complainant in a matter has a financial or fiduciary relationship with the Commissioner (employee, employer, business partner, etc.);  
or
- (3) If the Commissioner self-identifies a personal bias that would render them unable to provide a fair and just opinion on the matter. (These matters are unique per Commissioner and should be handled personally by each Commissioner on a case-by-case basis).

### **2.6.7.2 In the Event of a Conflict of Interest**

If a Commissioner has a conflict of interest, they shall state on the record that they have a conflict, leave the room, and shall be specifically prohibited from taking part in any activity related to the conflicted matter, including, but not limited to the following activities on the conflicted matter:

- (1) Voting;
- (2) Participating in discussions;

- (3) Participating in deliberations;
- (4) Making recommendations;
- (5) Being present in any session during which the Committee or the Commission deliberate on the conflicted matter;
- (6) Providing advice to other Commissioners or staff;
- (7) Formally or informally lobbying; or
- (8) Taking any other action on the conflicted matter.

### **2.6.7.3 Prohibition on Discussion**

Commissioners shall refrain from discussing any pending case outside of the evidentiary hearing, including:

- (1) Discussing the merits of a case's subject matter with the case's complainant, the public, the media, officer(s) at issue, fellow Commissioners and administrative Commission staff, or CPRB/OPS and DPS board members and administrative staff. A Commissioner's response on the matter, if prompted, must be limited to explaining this policy to that individual.
- (2) Discussing the merits of a case's subject matter in a committee report not within the Police Accountability Committee;
- (3) Making any motions to increase, decrease, or implement discipline outside the scope of an Evidentiary Hearing.

### **2.6.8 Additional Provisions**

- (1) At all times the Commissioners and staff of the Commission must act in accordance with all relevant state and local laws, including but not limited to the Ohio Ethics Law and Ohio Sunshine Laws. No provision of this manual is intended to contradict or supersede any federal, state, or local law. Violations of this policy or applicable law may result in sanctions, including a prosecutorial referral;
- (2) All commission notices may be in the form of an e-mail, except as expressly noted herein;
- (3) All Appendixes to this policy should be considered templates and may be amended before transmitting to better fit the exact circumstances of a matter.