

**Minneapolis Civilian Police
Review Authority**

**Administrative
RULES**

Approved by the Board of Directors of the
Minneapolis Civilian Review Authority

Wednesday, October 31, 1990

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**MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY
ADMINISTRATIVE RULES**

1.0 Source of Authority

1.01 The Minneapolis Civilian Police Review Authority, hereinafter referred to as the "Authority," was established by Ordinance of the City of Minneapolis January 26, 1990. The Authority includes a Board of seven members, an Executive Director, Investigators, and Administrative Staff. (Minneapolis Code of Ordinances, Title 9, Chapter 172.)

1.1 Effective Date

1.11 The effective date of the following Rules is January 1, 1991.

1.12 Purpose

1.121 The purpose of the following Rules of Procedure is to facilitate and guide the independent civilian police review process in Minneapolis, Minnesota. This process shall be based on due regard for the Constitutional and Legal Rights of all persons, and shall promote the highest possible degree of mutual respect between the Minneapolis Police Department and the Community.

1.122 To achieve this purpose, the Authority shall receive, consider, investigate and make a determination regarding complaints or grievances brought by the Public against any Minneapolis Police Officer. These Rules provide for the impartial, independent and prompt investigation and disposition of complaints and grievances in a manner which protects the Public and Individual Officers of the Minneapolis Police Department who may become involved in such complaints.

1.123 The Authority shall encourage members of the Public to bring forward legitimate complaints concerning abuse and improper conduct. The desired result of the Authority and of these rules is to strengthen public confidence and to assure that the highest standards of professionalism are observed in the handling and disposition of allegations of abuse of authority.

1.124 The provisions of these Rules shall be liberally construed to achieve these objectives.

1.13 **Application**

1.131 The following Rules shall be employed by the Authority to govern the receipt and processing of Complaints. The Authority shall provide information concerning its findings of fact, determinations and other relevant information, subject to the provisions and limitations of the law.

1.14 **Scope of Authority**

1.141 The Authority shall receive complaints that allege misconduct by an individual police officer or officers acting in their own discretion, including, but not limited to the following:

- a. use of excessive force;
 - b. inappropriate language or attitude;
 - c. harassment;
 - d. discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability or age;
 - e. theft;
 - f. failure to provide adequate or timely police protection.
- (Ord. §172.20)

1.142 Under the above provision, (d) and (f) constitute misconduct only if the activity involved is within the individual officer's control, as opposed to a failure to provide services or protection based on a system failure.

1.15 **Period of Limitation**

1.151 A complaint must be filed with the Authority within one (1) year of the time of the alleged misconduct. (Ord. §172.160)

1.16 **Interpreters**

1.161 The Executive Director shall have discretionary authority to provisionally qualify, utilize and compensate interpreters. Each party in need of an interpreter shall give notice to the Authority within seven (7) days of receipt of the Notice of Hearing so that appropriate arrangements may be made.

1.162 The Rules of Confidentiality shall apply to an interpreter utilized in any stage of the review process including, but not limited to a mediation session, interview or evidentiary hearing. The interpreter shall not have had any personal or professional involvement with any of the issues of the particular case prior to the hearing.

1.17 Assistance and Information From Authority

1.171 If any party desires assistance or information, which can legally be made public, he or she may request such from the Authority. This may include, but is not limited to: assistance in filling out forms; having rules read, explained and/or interpreted; distributing of public information; and keeping the parties to a Complaint regularly informed on the progress of their particular case, in accordance with the provisions of the Minnesota Government Data Practices Act and §1.2 of these Rules.

1.18 Severability

1.181 If any provision of this set of Rules or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions of the rule or application of any other part of this regulation which can be given effect without application of the invalid provision. To this end the provisions of all sections, subsections, or subdivisions herein and the various applications thereof are declared to be severable.

1.2 Collection and Dissemination of Data

1.21 Responsible Authority

1.211 The Executive Director is the "Responsible Authority" and as such is responsible for assuring that the Authority complies with the Minnesota Government Data Practices Act, of the Minnesota Code, and applicable Ordinances of the City of Minneapolis and applicable provisions of these Rules.

1.22 Types of Data

1.221 All data collected by the Authority shall be considered personnel data and, as such, is private data, as defined by Minnesota Government Data Practices, §13.43, except for that data described in the following sections of these Rules: §1.222, §1.223, §1.23, §1.24 and §1.25.

1.222 Some personnel and, therefore, private data shall become public upon final disposition of a disciplinary case, as defined by the Minnesota Government Data Practices Act, §13.43 Sub. 2(b).

1.223 Investigative data and certain criminal data shall be considered confidential, in accordance with these Rules (§1.23 and §1.24) and as defined by Minnesota Government Data Practices Act (§13.02 and §13.82).

1.23 Investigative Data

1.232 Data created or collected by the Authority which is part of an active investigation is confidential data until the Executive Director makes a Probable Cause Determination or No Probable Cause Determination, as described in these Rules below (§6.161), at which point the data collected in the investigation and the summary thereof shall become private or nonpublic data. Nothing in this subsection shall be construed to make nonpublic that data that is already designated as public by law and these Rules.

1.24 Criminal Data which is Confidential

1.241 The Executive Director may, in consultation with the Chief and the City Attorney and/or County Attorney, classify as confidential certain data created and collected by the Authority in the course of the investigation of a complaint and which the Executive Director determines are or probably will be material in a criminal case.

1.25 Public Data

1.251 The following data created and collected by the Authority shall be public:

- a. The name and address of the Complainant;
- b. The name, rank and job description of the Officer;
- c. The fact that a complaint has been filed against the Officer;
- d. The status of a Complaint. The following shall be considered status information:
 1. The fact that a Complaint has been withdrawn by the Complainant;
 2. The fact that a Complaint has been dismissed;
 3. The fact that a Complaint is in mediation;
 4. The fact that a mediation agreement has been reached;
 5. The fact that a Complaint is being investigated;
 6. The fact that a Complaint has been referred to an Evidentiary Hearing Panel;
 7. The fact that the Officer has been exonerated;
 8. The fact that a Complaint has been referred to the Chief;
- e. The final disposition of any disciplinary action, together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the City of Minneapolis.

1.26 Request for Access to Data

1.261 Upon request to the Executive Director, a person shall be permitted to inspect and/or copy public data at reasonable times and places. Upon request, a person shall be informed of the data's meaning.

1.27 Denial of Access to Data

1.271 If the Executive Director determines that the requested data is classified so as to deny the requesting person access, the Executive Director or his or her designee shall inform the requesting person of the determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific statutory section, temporary classification, or specific provision of law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of law upon which denial was based.

1.28 Charge for Providing Requested Data

1.281 If a person requests data for the purpose of inspection, the responsible authority may not assess a charge or require the requesting party to pay a fee to inspect the data. However, if a person requests copies, or electronic transmittal of the data to the person, the Authority may require the requesting person to pay the actual costs of searching for and retrieving government data, but may not charge for separating public from not public data. If the Authority is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.

1.3 Liability of Board Members

1.30 No member of the Board of the Authority shall be liable to any person for damages or equitable relief by reason of any action taken or recommendation made by a Board member or by the Authority, if the action taken was within the scope of the functions of the Authority and if the Board member acted in the reasonable belief that such member's action was warranted by the facts known to such member after reasonable effort to obtain the facts of the matter.

1.31 Amendment of Rules

1.311 These Rules may be altered or amended at any regular or special meeting of the Authority by vote of the full Board, but only after appropriate notice and public hearing, consultation with the Minneapolis Chief of Police and others, and subject to approval by the Minneapolis City Council.

2.0 **Definitions**

2.001 Whenever used in these Rules, unless plainly evident from the context that a different meaning is intended, the following terms mean:

2.01 ***Adequate and timely***

2.011 Such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty, or of the subject-matter, and to the attending circumstances.

2.02 ***Authority***

2.021 The Minneapolis Civilian Police Review Authority. The Authority includes a Board of seven members, an Executive Director, Investigators and Administrative Staff. (Minneapolis Code of Ordinances, Title 9, Chapter 172.)

2.03 ***Board***

2.031 The Board of Directors of the Minneapolis Civilian Police Review Authority, which consists of seven members.

2.04 ***Chief***

2.041 The Chief of Police in the City of Minneapolis.

2.05 ***Clear and Convincing***

2.051 The standard of proof in the evidentiary hearings.

2.052 "Clear and Convincing" means that measure or degree of proof which will produce in the mind of the trier(s) of fact a firm belief or conviction as to allegations sought to be established; it is intermediate, being more than mere preponderance, but not to the extent of such certainty as is required by beyond a reasonable doubt.

2.06 ***Complainant***

2.061 The person filing a complaint with the Minneapolis Civilian Police Review Authority who alleges that he/she has been aggrieved by the conduct of a sworn Officer or Officers of the Minneapolis Police Department.

2.07 ***Complaint***

2.071 The allegation, signed and sworn, by a complainant regarding an Officer or Officers of the Minneapolis Police Department.

2.08 **Conference**

2.081 The Pre-evidentiary Hearing Conference. This conference will be held prior to the evidentiary hearing, with the Hearing Panel Chairperson, the Officer and/or his/her representative, the Complainant, and the Executive Director in attendance, for purposes of planning for the orderly, expeditious and fair conduct of the evidentiary hearing.

2.09 **Confidential Data**

2.091 The Minnesota Government Data Practices Act defines "confidential data on individuals" as data which cannot be made public and is inaccessible to the individual subject of that data.

2.10 **Day**

2.101 Monday through Friday, except holidays recognized by the City of Minneapolis, during regular business hours.

2.11 **Department**

2.111 The Minneapolis Police Department.

2.12 **Deputy Chief**

2.121 The appropriate deputy chief assigned to the division of the accused officer.

2.13 **Discrimination**

2.131 Disparate treatment of persons because of their race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability or age.

2.14 **Executive Director**

2.141 A person hired by the Authority, required to be an Attorney-at-Law, to manage the ongoing operation of the Authority and to execute functions to aid the Authority in carrying out its purpose.

2.15 **Excessive Force**

2.151 The officer's particular use of force was not "objectively reasonable" in light of the facts and circumstances confronting the Officer without regard to the officer's underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. Factors to be considered include the following: 1) The severity of the crime at issue; 2) whether the suspect posed an immediate threat to the safety of officers or others, and 3) whether the subject was actively resisting arrest or attempting to evade arrest by flight. (Graham v. Connor, 109 S. Ct. 1865, 104 L. Ed. 2d 443, 1989.)

2.16 **Family**

2.161 Relation to Complainant because of immediate family status, adoption, or by being a significant other.

2.17 **Final Disposition**

2.171 A final disposition occurs when the Chief makes a final disciplinary decision, regardless of the possibility of any later proceedings or court proceedings. In the case of proceedings before the Minneapolis Civil Service Commission or arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the Civil Service Commission or arbitration proceedings.

2.18 **Garrity Warning**

2.181 Under Garrity v. New Jersey, 385 U.S. 493 (1967), and Gardner v. Broderick, Police Commissioner of New York, 392 U.S. 273 (1968), a police officer can be ordered to give a statement regarding actions taken by him/her while employed with the Minneapolis Police Department. The failure to answer such questions, pertaining only to the scope of their duty, may form the basis of an officer's dismissal or result in disciplinary proceedings against that officer. The rights of an officer in regard to this warning are that any statements given under this warning, or the fruits thereof, compelled as a condition of employment, cannot then be used in any subsequent criminal proceeding against the employee except in cases of alleged perjury by the employee giving the statements where the criminal charge is based upon the falsity of the statement given.

2.19 **Harassment**

2.191 Inappropriate words, gestures, and other actions which are intended to annoy, alarm or abuse another person.

2.20 **Hearing Panel**

2.201 The evidentiary hearing panel, consisting of one (1), three (3), five (5) or seven (7) persons, appointed by the Authority Chairperson to conduct the hearing and make Findings of Fact and Determinations.

2.21 **Inappropriate language or Conduct**

2.211 That language or action, which under the circumstances may be rendered inappropriate. This may include, but is not limited to such conduct as racial, sexual or ethnic slurs (i.e., the use of any common or slang terms, which are generally perceived to be derogatory in nature to refer to any member of a racial, ethnic, religious group, or to refer to any person's nationality, sex or sexual preference, or which may constitute sexual harassment).

2.22 Investigator

2.221 A person, hired by the Authority, who is a civilian with prior experience or training as an investigator, to conduct the Authority's complaint investigations. A civilian, for purposes of this provision, is a person who is not now, nor has ever been a sworn officer of the Minneapolis Police Department.

2.23 Mediation

2.231 An informal dispute resolution process, facilitated by a neutral third party, whereby the Complainant and the Officer mutually agree to amicably come together to try to resolve the issue(s) of the Complaint.

2.24 Mediator

2.241 A neutral third party in contract with the Authority to mediate disputes between Complainants and Officers.

2.25 Order to Cooperate

2.251 The Minneapolis Police Department and all other City of Minneapolis employees and officials, by ordinance shall, except as expressly prohibited by any other law, respond promptly to any and all reasonable requests for information, for participation in evidentiary hearings, and for access to data and records for the purposes of enabling the Authority to carry out its responsibilities. The failure by any official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct.

2.26 Officer

2.261 A sworn Officer or Officers of the Minneapolis Police Department against whom an allegation of misconduct has been made in a Complaint.

2.27 Perjury

2.271 The willful assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in an Authority proceeding as part of his/her evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in person in an evidentiary hearing, or in an affidavit, or otherwise, such assertion being material to the issue or point of inquiry and known to such witness to be false.

2.272 A person is guilty of perjury if in any official proceedings s/he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and s/he does not believe it to be true.

2.28 **Person**

2.281 One who may file a Complaint: an adult, a minor with an adult's assistance, an adult filing on behalf of a minor, or a vulnerable adult with assistance from a family member, a guardian or other court appointed representative.

2.29 **Personal Knowledge**

2.291 Direct knowledge of the allegations or incident from which the allegations arose, namely the victim of the alleged misconduct by an Officer or a witness to that alleged misconduct.

2.30 **Private Data**

2.301 The Minnesota Government Data Practices Act defines "private data on individuals" as data that is not public and is accessible to the individual subject of that data.

2.31 **Public Data**

2.311 The Minnesota Government Data Practices Act defines "public data not on individuals" and "public data on individuals" as data which is accessible to the public.

2.32 **Review Panel**

2.321 A Panel of Board members appointed, when the Executive Director makes a No Probable Cause determination, to review and determine the adequacy of the investigation in the case and/or the appropriateness of the No Probable Cause determination.

2.33 **Tennessee Warning**

2.331 "Tennessee Warning" is the title given to the notice which the Minnesota Government Data Practices Act requires the Department to give to an individual when the Department asks the Officer to provide private or confidential data about him/herself. In this "Warning," individuals must be informed of the following:

- a. Why the data is being collected and how it will be used within the Authority and the Department collecting it;
- b. Whether the individual is legally required to provide the data or may refuse to do so;
- c. What the consequences are to the individual of either providing or not providing the data; and
- d. The identities of other persons and agencies who have a legal right to have access to the data being provided.

2.332 The Authority and the Department must then take appropriate steps to ensure that the data is only used and only disseminated consistent with what has been stated in the "Warning."

2.33 Tolled

2.331 When time limitations established within these rules are suspended or temporarily stopped because of other procedures.

2.34 Vulnerable Adult

2.341 Vulnerable adult⁷ means any person 18 years of age or older:

- a. Who is a resident or inpatient of a facility (a hospital or other entity required to be licensed pursuant to sections 144.50 to 144.58 of Minn. Stat.; a nursing home required to be licensed to serve adults pursuant to section 144A.02 of Minn. Stat.; an agency, day care facility or residential facility licensed to serve adults pursuant to sections 245.781 to 245.812 of Minn. Stat.; or a home care provider licensed under section 144A.46);
- b. Who receives services at or from a facility required to be licensed under sections 245.781 to 245.812, except a person receiving outpatient services for treatment of chemical dependency or mental illness;
- c. Who receives services from a home care provider licensed under section 144A.46 of Minn. Stat.; or
- d. Who, regardless of residence or type of service received, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status. (Minn. Stat. §626.557.)

3.0 Standing to File a Complaint

3.01 Any person who has personal knowledge of alleged misconduct on the part of an Officer may file a complaint with the Authority by submitting a complaint either by telephone, in writing, or in person at locations to be determined by the Authority.

3.02 No complaint will be deemed filed with the Authority until it has been reduced to writing and signed by the Complainant. Until a complaint is reduced to writing and signed by the complainant, the Complaint shall be treated as a tentative complaint and held in a "pending" file until a formal complaint is made.

3.03 Complaint forms will conclude with the following words: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true." No criminal charges of perjury will be brought without the concurrences of the Chief and the Authority.

3.04 At least one of the above-mentioned locations will not be affiliated with the Department, nor staffed by Department employees.

3.05 "Person" means a victim of the alleged misconduct or a witness of the alleged misconduct, as referenced in §3.01 of these Rules.

3.06 Exceptions to §3.05 are:

- a. In the case of a minor, the parent or legal guardian may file a complaint on behalf of the minor.
- b. In a case involving the death of a person, a family member may file a complaint on behalf of the deceased.
- c. In the case of a vulnerable adult, a family member, conservator or legal guardian may file a complaint on behalf of the vulnerable adult.

3.1 **Information Required**

3.11 The Complainant must provide, at a minimum, the following information:

- a. Name, address, telephone number, date of birth; if pursuant to §3.06, a complaint has been filed on behalf of someone else, this information concerning the minor, deceased person or the vulnerable adult must also be filed.
- b. Alternate means of contact; if pursuant to §3.06, a complaint has been filed on behalf of someone else, this information concerning the minor or the vulnerable adult must also be filed;
- c. Written statement setting forth the allegation(s), including: date, time and location of the alleged misconduct and any other pertinent details;
- d. Identification of police officer (badge and/or name and/or description).

3.12 **Amendment of Complaint**

3.121 A signed complaint may be amended until thirty (30) days after its initial filing.

3.122 Circumstances under which a Complainant may amend his/her Complaint include, but are not limited to, new evidence having been obtained such as a new witness coming forward or the recollection of pertinent information.

3.123 This amendment must also be in written form and signed under penalty of perjury.

3.13 **Withdrawal of Complaint**

3.131 A Complainant may withdraw from the review process at any point in the proceedings by submitting a written, dated and signed notice to the Authority of the complainant's intentions to withdraw. The signed withdrawal statement must include an affirmation that the Complainant has not been coerced or intimidated into withdrawing the Complaint.

3.132 In the case of such withdrawal, the Executive Director may give the case file to the Chief, if:

- a. The Executive Director determines that the file contents could be material in a criminal case; or
- b. The Chief makes a request for the file.

3.2 **Initial Intake**

3.21 Complaints will be gathered by the Authority staff from all intake areas from the previous working day.

3.22 A file will be opened for each Complainant as of the date the complaint is received in the office of the Authority.

3.23 If a signed complaint is not received at the office of the Authority within fifteen (15) days of the initial receipt, the Authority will close the file until such time as the Complainant submits a signed complaint.

3.24 This stopping of the complaint process does not prevent the Complainant from filing another complaint within the prescribed limitations period of the Minneapolis Code of Ordinances, Title 9, Chapter 172, §172.160, and these Rules.

3.25 In unusual circumstances, the Executive Director may authorize an investigation to begin prior to the end of the fifteen (15) day period for receiving a signed complaint. However, at the end of the fifteen (15) day period, the investigation must stop and the file will be closed.

3.3 **Notice of Receipt of Signed Complaint**

3.31 The Complainant shall receive written notice of receipt of their signed complaint. This Notice shall be mailed no later than five (5) business days from the date of the receipt of the signed Complaint in the Office of the Authority.

3.32 Notice of the filing of a signed complaint and of the specific allegations contained therein will be forwarded to the Officer, the Deputy Chief, and the Chief of Police, within five (5) days of the filing of a signed complaint.

3.33 A copy of the Authority Rules delineating the procedures will be forwarded to all parties along with the Notice of Receipt of the Complaint.

3.4 Preliminary Review

3.41 In the interest of expediting the processes of the Authority, and without compromising any parties' claim(s), the Authority has delegated to the Executive Director the authority to make an initial decision based upon a Preliminary Review.

3.411 Within thirty (30) days of the date that a signed complaint is filed, the Executive Director shall make one of the following three (3) decisions:

- a. recommend the case for mediation;
- b. that no further action warranted (dismissal); or
- c. forward the case to investigation.

4.0 Dismissal

4.01 The reasons for Dismissal of a Complaint may include but are not limited to the following:

- a. No dispute as to material fact exists. And, no reasonable person could sustain a complaint based upon such facts;
- b. Even if all of the complainant's alleged statements are true, no act of misconduct exists;
- c. The alleged facts are so unbelievable that no reasonable person could sustain the complaint based on such facts;
- d. Failure of the complainant to cooperate.

4.02 Upon dismissal of a complaint, the Executive Director shall prepare a written report stating his/her reason(s), which report shall be sent to the Chairperson of the Authority and to the Complainant and the Officer.

4.03 If the Complainant disagrees with the dismissal, he/she may submit a written appeal to the Board for review of the Executive Director's decision.

4.031 The Board, at its next regular meeting, shall either:

- a. ratify the Executive Director's decision; or
- b. refer the case back to the Executive Director for a decision regarding mediation or investigation.

4.032 The Complainant and the Officer shall receive written notice of the Board's decision.

5.0 Mediation

5.11 The Authority shall inform all Complainants and Officers of the possibility of mediation as an alternative to the Authority's processes. Mediation is an informal process, held before a neutral third party, attended by the Complainant and the Officer for the purpose of fully, thoroughly, and frankly discussing the alleged misconduct and attempting to arrive at a mutually agreeable resolution of the Complaint.

5.12 In cases in which the Executive Director decides not to dismiss the complain, he/she may decide that the case is appropriate for mediation.

5.13 The Executive Director shall inform the Chief of this decision to proceed to mediation.

5.14 Mediation shall not be available to an Officer who has participated in mediation, under the auspices of the Authority, for a serious similar misconduct allegation or a similar misconduct allegation within the previous 12 months.

5.15 This determination shall be communicated to the Complainant and the Officer. Both the Complainant and the Officer must agree to mediation, within ten (10) days of receiving notice of the Executive Director's referral to mediation, for it to proceed, otherwise, the case shall be referred to investigation.

5.16 If the Complainant and the Officer agree, the Authority shall schedule a mediation session at the earliest convenient time. Written notice of the time, date and location of the first mediation session shall be provided each party.

5.17 The mediation session(s) will consist of the Complainant, the Officer, and the Mediator. In the case of a minor, a parent or legal guardian must be present. In the case of a vulnerable adult, a family member, conservator or legal guardian must be present. If an interpreter is requested, arrangements will be made to have one present upon request by either party. No other person may be present. No record of the proceeding will be taken.

5.18 Procedures and guidelines for mediation will be established at the beginning of the mediation process through agreement of all participants.

5.19 The mediation session(s) will continue as long as the mediator and the parties feel progress is being made in the resolution of the issues. The mediation process shall terminate when either party announces its unwillingness to continue mediation or when the parties sign an agreement setting forth the resolution of the disputed issue(s).

5.20 However, in no case shall the time for mediation extend beyond thirty (30) days from the date the Authority has received notice of willingness to participate in mediation from both the Complainant and the Officer. In order to facilitate and encourage mediation, the Authority time limitations and deadlines will be tolled during mediation.

5.21 The Authority or its designated agent shall monitor the mediation process and the implementation of a mediation agreement. If one party fails to abide by this agreement, the aggrieved party may pursue a hearing before the Authority.

5.22 No record will be made of the mediation proceedings, and no information discussed will be used in subsequent proceedings. (Minn. Stat. §595.02, Subd. 1(k) (1989)).

5.23 A copy of the mediation agreement will not be sent to the Chief.

6.0 Investigation

6.01 Upon a determination that there is reason to believe that a violation may have occurred in accordance with the City of Minneapolis Code of Ordinances, Title 9, Chapter 172, §172.20, the Authority shall proceed with an investigation of the complaint.

6.1 Time Limit

6.11 The investigation shall be completed within one-hundred and twenty (120) days of the date a signed complaint was filed. The Authority may once extend this deadline by an additional sixty (60) days with written explanation of the reason(s) for the extension. (Ord. §172.90)

6.12 Consultation with the Chief

6.121 Before beginning the investigation, the Executive Director shall consult with the Chief on all pertinent matters regarding the pending investigation. The Executive Director and the Chief shall discuss the possibility of a criminal investigation and charge.

6.13 Criminal Investigation and/or Charges

6.131 The Executive Director shall also consult with the City Attorney and the County Attorney to determine if there is a related current criminal investigation.

6.132 After the above-mentioned consultations, the Executive Director has the discretion to hold its process in abeyance, if such investigation might impede or harm a criminal investigation. If the Authority's investigation is held in abeyance, the Authority time constraints shall be tolled. (Ord. §172.90)

6.133 During such time as the Authority may hold its proceedings in abeyance, the Authority shall request the Chief to take the appropriate steps to assure preservation of the following items of evidence:

- a. The original Emergency Communications Center ("ECC") tapes relevant to the complaint;
- b. All police reports, records, evidence and any other documentation relevant to the case;
- c. Names, Addresses, Telephone Numbers, and any Statements or other information from Witnesses.

6.14 Notice to Chief of Police

6.141 Once a decision has been made by the Executive Director or the Board to proceed with an investigation, a "Notice to Give Garrity Warning" shall be sent, by the Executive Director, to the Chief requesting him/her to order the Officer(s) to cooperate with the investigation. With this order to cooperate, the Chief shall give a Garrity Warning.

6.15 Requirement of Cooperation in Investigation

6.151 The Minneapolis Police Department and all other City of Minneapolis employees and officials shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, for participation in evidentiary hearings, and for access to data and records for the purpose of enabling the Authority to carry out its responsibilities under this Chapter. ~~The failure by an official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct, unless such failure to comply is pursuant to the Officer's or employee's statutory or constitutional rights.~~ (Ord. §172.120)

6.152 ~~If the Chief fails to cooperate with the Authority in giving the order to cooperate, and the Garrity Warning, the Chief shall, in writing, state his/her reasons for doing so and submit said reasons to the Mayor. The Mayor shall either sustain the Chief's decision, or order the Chief to cooperate.~~

6.16 Copies of Sworn Statements

6.161 The Officer, Complainant and any witnesses, shall, upon their request, be given a true and correct copy of their own signed, sworn statement(s) without unnecessary delay.

6.17 Conclusion of Investigation

6.171 At the conclusion of the Investigation, the Investigator shall forward the file with a report of findings to the Executive Director. The Executive Director shall then make one of two determinations:

- a. There is Probable Cause to believe that a violation of Minneapolis City Ordinance, Title 9, Chapter 172, §172.20 has occurred and therefore the matter shall proceed to an Evidentiary Hearing; or
- b. There is No Probable Cause to believe that a violation of Minneapolis City Ordinance, Title 9, Chapter 172, §172.20 has occurred and the Complaint shall be dismissed as:
 1. Officer exonerated, for one of two reasons:
 - (a) The facts alleged in the complaint are true but do not constitute misconduct by the Officer; or
 - (b) The facts alleged in the complaint are not true; or
 2. Insufficient evidence to sustain the complaint.

6.18 No Probable Cause Determination

6.181 If there is a No Probable Cause determination by the Executive Director, the Complainant, the Officer, and the Police Chief shall be notified in writing within five (5) days.

6.182 If the Complainant disagrees with the No Probable Cause determination, s/he may, in writing petition the Authority Chairperson to appoint a Review Panel. The petition shall specifically state:

- a. the inadequacies of the investigation; and
- b. how these inadequacies should be remedied.

6.183 In response to this petition from the Complainant, the Chairperson of the Authority may, upon review of the merits of the petition, appoint a Review Panel of no more than three members of the Board.

6.184 The purpose of a Review Panel is not to receive evidence, but merely to assess whether additional investigation is warranted. The Executive Director shall make a presentation to the Review Panel on how the investigation has been conducted (e.g., who was interviewed, what documents have been obtained, etc.). The Complainant may very briefly present arguments on additional persons who should be interviewed and/or additional documents and materials to be collected.

6.185 The Review Panel shall either

- a. Sustain the No Probable Cause determination;
- b. Refer the case back to the Executive Director for specific additional investigation; or
- c. Make a Probable Cause determination and refer the case for Evidentiary Hearing.

7.0 Evidentiary Hearing

7.01 When the Executive Director makes a Probable Cause determination, he/she shall inform the Chairperson of the Authority. Within five (5) days, he/she shall give notice to the Complainant, the Officer and the Chief. The notice to the Officer shall include the specific findings of the Probable Cause Determination.

7.011 The Authority shall make reasonable efforts to commence and complete an evidentiary hearing within forty-five (45) days, but no longer than sixty (60) days, of the Executive Director giving notice of a Probable Cause determination.

7.012 The Chairperson of the Authority shall appoint a Hearing Panel, within five (5) days of receipt of the Probable Cause determination, of one, three, five, or seven members of the Board to conduct an evidentiary hearing.

7.013 The Authority Chairperson shall designate a Chairperson for each Panel.

7.014 Notice of the membership of the Hearing Panel shall be given, within five (5) days of the appointment of the Panel, to the Complainant and the Officer.

7.015 The Authority Chairperson may appoint a Hearing Panel of one member in cases in which the evidence is not significantly controverted and in which the Authority's processes will be expedited by the appointment of one-member Panel.

7.016 If a written objection to a one-member Panel is filed within five (5) days of receipt of the "Notice of the Appointment of the Hearing Panel," by either the Complainant, or the Officer, the Authority Chairperson shall appoint a Hearing Panel of at least three members.

7.1 Duties of Hearing Panel

7.11 It shall be the duty of each Hearing Panel member to conduct a fair and impartial hearing, to assure that the facts are fully elicited, and to adjudicate all issues and avoid undue delay.

7.12 Subject to the Rules and Regulations of the Authority and laws of the City of Minneapolis and the State of Minnesota, the Hearing Panel shall have the following authority with respect to the cases between the time the cases are assigned to it and the time it makes its findings of fact and determination.

- a. Administer Oaths and Affirmations;
- b. Rule on Evidentiary Issues;
- c. Regulate the course of the Hearing;
- d. If appropriate or necessary, expel persons from the hearing for contemptuous conduct;
- e. Examine witnesses;
- f. Adjourn the hearing as the needs of justice and good administration require;
- g. Take other action as necessary, as authorized by the Rules and Regulations of the Authority.

7.13 Personal Bias or Prejudice

7.131 A Hearing Panel Member shall be disqualified from sitting on that Hearing Panel if he/she has a demonstrated personal bias or prejudice, or the appearance thereof, in the outcome of the Complaint. This does not include holding or manifesting any political or social attitude or belief which does not preclude objective consideration of a case on its merits.

7.132 Examples of personal bias or prejudice include, but are not limited to:

- a. Familial relationship, close friendship or close working relationship with parties material to the Complaint;
- b. Witnessing events material to the inquiry;
- c. Being a party to the Complaint;
- d. Holding a bias for or against a particular party that is sufficient to impair the Panel member's impartiality;
- e. Having a financial interest in the outcome of the Hearing.

7.14 Discretionary Withdrawal by Hearing Panel Member

7.141 A member of a Hearing Panel may withdraw from that panel whenever that member deems himself or herself to be disqualified.

7.15 Request for Withdrawal by a Party to the Case

7.151 Within five (5) days of receipt of the notice of membership of the Hearing Panel, either the Executive Director, the Complainant or the Officer may file with the Chairperson of the Authority, a written challenge, for cause, to a member of the Hearing Panel.

7.152 Cause is limited to those definitions of personal bias or prejudice delineated in § 7.132 above. When a challenge for cause is filed, the Chairperson shall contact the challenged Hearing Panel Member as soon as possible. If the Authority Chairperson and the challenged Hearing Panel Member agree that the challenge is for good cause, then the member shall withdraw and the Chairperson of the Authority shall appoint another board member as a replacement.

7.153 If the challenged Panel Member does not agree that the challenge is for good cause, the Chairperson shall decide the merits of the challenge and replace the Member or not. If a challenge to a Panel Member is rejected, the written challenge and the Chairperson's written response shall be incorporated into the record.

7.2 Pre-Evidentiary Hearing Conference

7.201 The Authority, after designation of the Hearing Panel, shall direct the Officer and his/her counsel, by written notice, to appear, along with the Executive Director, at a specified time, date and location for a Conference.

7.202 A Conference held under this section shall be held at such time as the Hearing Panel Chairperson may specify, in no case, more than fifteen (15) days from either the Notice of membership of the Hearing Panel or the resolution of all challenges to members of the Hearing Panel.

7.203 This Conference is not for presentation of evidence, but for the exchange of relevant information. The Conference shall be conducted by the Hearing Panel Chairperson for the following purposes:

- a. simplification, clarification, and specification of the issues;
- b. obtaining of stipulations, any agreed upon admissions of fact, the contents and authenticity of any and all documents to avoid unnecessary proof, and any known, subsequent requests for subpoenaed information;
- c. identification of any and all witnesses known to the parties at that time, any known, subsequent requests for witness subpoenas, and the limitation of the number, if any, of expert witnesses;
- d. sharing of pertinent information, whether inculpatory or exculpatory, including exchanging summaries expressing the nature of witness(es) testimony;
- e. other steps necessary to expedite the presentation of evidence;
- f. The time, date and setting of the evidentiary hearing; notice of which will be sent to each party, at least ten (10) days prior to the scheduled hearing. This scheduling shall be conducted with due regard for the work schedules of the Officer and the Complainant; and
- g. Such matters as may aid in the orderly disposition of the proceeding.

7.204 The Hearing Panel Chairperson shall enter into the record the actions taken at the Conference. This shall control the subsequent course of proceedings unless modified for good cause.

7.2051 If settlement is reached at this Conference, the Hearing Panel Chairperson shall draft a written settlement agreement and have it signed by both parties. This agreement shall then be entered into the file. The implementation of this settlement will be monitored by the Authority.

7.2052 In order for a settlement to be reached, the Executive Director shall have received from the Complainant a signed authorization to attempt a settlement. Such settlement requires the subsequent agreement of the Complainant.

7.21 **Failure to Appear at Prehearing Conference**

7.211 The failure of a party to appear at the Conference may result in a decision against that party. The Officer may, in advance, request that his/her presence be waived if they choose to have a representative at the Conference.

7.212 Requests for a new Conference must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled Conference date. The Hearing Panel Chairperson, upon showing of good cause, may excuse such failure to appear. In such event, the Conference will be rescheduled.

7.3 **Requirement of Cooperation in the Evidentiary Hearing**

7.31 The requirement of the Officer to cooperate delineated in Minneapolis Code of Ordinances, Title 9, Chapter 172, §172.120 and above in these Rules (§6.12) and the Order to Cooperate (with the appropriate Garrity warning) earlier given by the Chief shall continue in effect for the Evidentiary Hearing.

7.4 **Consolidation**

7.41 Whenever two or more separate complainants have arisen from the same incident or event, the Chairperson of the Authority may, in his/her discretion and on his/her own initiative or in response to a request from any of the parties, move to consolidate the cases into one Evidentiary Hearing.

7.42 If a party should object, and is able to show with good cause that his/her case will be prejudiced by the consolidation, that party may remain severed.

7.5 Rules of Evidence

7.51 The Executive Director and the Officer or his/her representative, shall have the right to present his/her case or defense by oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The Hearing Panel may admit all evidence which possesses probative value, including reliable hearsay, if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of their serious affairs. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

7.52 Burden and Standard of Proof

7.521 The burden shall be on the Executive Director to prove that the misconduct alleged in the Probable Cause determination did occur. The standard of proof shall be "Clear and Convincing" evidence.

7.53 Affirmative Defense

7.531 It shall be an affirmative defense for the Officer that he/she acted in accordance with the rules, regulations and training of the Department.

7.54 Exhibits

7.541 All evidence to be considered in the case, including, but not limited to, all records and documents in the possession of either party, or a true and accurate photocopy, shall be marked as that party's exhibit and offered and made a part of the record.

7.55 Objection to Conduct of Hearing

7.551 Any objection, including grounds for such objection, with respect to the conduct of the hearing, may be stated orally or in writing, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

7.56 Failure to Appear at the Evidentiary Hearing

7.561 The failure of the Officer, and/or his/her representative, or the Executive Director to appear at the Evidentiary Hearing, without good cause, may be considered by the Hearing Panel in weighing the evidence before it.

7.562 The failure of the Complainant to appear at the Evidentiary Hearing, without good cause, shall require the Hearing Panel to decide either:

- a. To proceed with the Evidentiary Hearing and consider the failure to appear in weighing the evidence before it; or
- b. Dismiss the complaint.

7.204 The Hearing Panel Chairperson shall enter into the record the actions taken at the Conference. This shall control the subsequent course of proceedings unless modified for good cause.

7.2051 If settlement is reached at this Conference, the Hearing Panel Chairperson shall draft a written settlement agreement and have it signed by both parties. This agreement shall then be entered into the file. The implementation of this settlement will be monitored by the Authority.

7.2052 In order for a settlement to be reached, the Executive Director shall have received from the Complainant a signed authorization to attempt a settlement. Such settlement requires the subsequent agreement of the Complainant.

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7.211 The failure of a party to appear at the Conference may result in a decision against that party. The Officer may, in advance, request that his/her presence be waived if they choose to have a representative at the Conference.

7.212 Requests for a new Conference must be made, in the absence of extraordinary circumstances, within five (5) days after the scheduled Conference date. The Hearing Panel Chairperson, upon showing of good cause, may excuse such failure to appear. In such event, the Conference will be rescheduled.

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7.42 If a party should object, and is able to show with good cause that his/her case will be prejudiced by the consolidation, that party may remain severed.

7.5733 Cross examination of witnesses shall be conducted in a sequence and in a manner determined by the Hearing Panel Chairperson to expedite the hearing while ensuring a fair hearing. The Chairperson shall make rulings as are necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

7.5734 All evidentiary testimony presented to prove or disprove a fact at issue shall be under oath or affirmation. Testimony in written form shall be signed and sworn by the affiant.

7.5735 Any witness, including the Complainant and the Officer, may be represented and counseled by personal legal counsel during that witness' testimony. This personal legal counsel shall only be present during that witness' testimony and may not participate in the process.

7.5736 If the Complainant or the Officer refuses to testify in the Evidentiary Hearing, the Panel may, along with other facts and circumstances of the case, draw an adverse inference from that failure to testify.

7.58 Complainant's Role in the Evidentiary Hearing

7.581 In accordance with the provisions of the Minnesota Government Data Practices Act, the Complainant may not be present during the evidentiary hearing, except when he or she is testifying as a witness.

7.582 If the Executive Director does not call the Complainant as a witness, therefore subject to cross examination, the Officer may call the Complainant as a witness for cross examination.

7.583 Upon completion of the Complainant's direct testimony and while still under oath, may make additional comments.

7.59 Closing Statements

7.591 At the close of the presentation of evidence, the Hearing Panel shall provide the Executive Director and the Officer with opportunities for closing statements. The Executive Director shall proceed first, reserving time for rebuttal if he/she so chooses, followed by the Accused Officer or his/her representative.

7.60 Closing of the Hearing

7.601 After the closing statements, the Hearing Panel Chairperson shall either:

- a. Close the hearing;
- b. Continue the hearing, by setting up another hearing date, time and setting; or
- c. With the agreement of both parties, leave the record open to provide further documentation or evidence for the record.

7.7 Continuance

7.71 The granting of a continuance will be allowed for just cause.

7.712 A request for continuance of the hearing shall be submitted to the Hearing Panel Chairperson, in writing, at least ten (10) days prior to the scheduled hearing date and shall be served upon all parties to the Complaint.

7.713 If time does not permit, the party requesting the continuance shall notify the Hearing Panel Chairperson and the other parties by telephone regarding the circumstances and the need for a continuance.

7.714 If a continuance is granted, a new hearing date will be established in consultation with all parties.

7.715 In determining whether just cause exists, due regard shall be given to the ability of the party requesting the continuance to effectively proceed without a continuance.

- a. Just Cause shall include, but is not limited to: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of a hearing; unavailability of a material witness; a substitution of the representative or attorney of a party if the substitution is shown to be required; an order from an accused police officer's commanding officer to report to duty during the time of the hearing because of an emergency or lack of others in the same capacity to take the officer's place; an agreement for a continuance by all parties provided it is shown that more time is clearly necessary to complete preparation for the hearing and the parties and the Hearing Panel Chairperson have agreed to a new date, or the parties have agreed to a settlement of the case which has or will likely be approved by the final decision maker.
- b. Just Cause shall not include: intentional or avoidable delay; failure of a representative or attorney to properly utilize time limitations authorized by ordinance.

7.716 During the hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the Hearing Panel Chairperson may, by agreement of both parties, either:

- a. order that additional testimony or information be submitted in written form; or
- b. continue the hearing to a future date and oral notice on the record shall be sufficient.

7.8 Record of Hearing

7.81 Maintaining the Record

7.811 The Hearing Panel Chairperson shall maintain the official record of the case until the issuance of the Findings of Fact and Determination.

7.812 Content

7.8121 The Record shall contain:

- a. Any and all notices or other procedural matters that have been reduced to writing;
- b. All evidence received or considered;
- c. An audiomagnetic recording of the hearing;
- d. All memoranda or data submitted by any party in connection with the case;
- e. A transcript of the hearing, if one was prepared.

7.813 Closing of the Record

7.8131 The record of the hearing shall be closed upon the completion of the testimony, or receipt of the final written memorandum, if any, or late-filed exhibits which the parties and the Hearing Panel Chairperson have agreed should be received into the record.

7.814 Transcript

7.8141 The audiomagnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the Hearing Panel Chairperson. If a transcript is made, the Authority shall require the requesting party who request copies of the transcript from the Authority to pay a reasonable charge therefor.

8.0 Disposition

8.1 Time Limit

8.11 Within thirty (30) days of the closing of the record of an evidentiary hearing, the Hearing Panel shall make Findings of Fact and a Determination of the complaint.

8.12 Findings of Fact and Determination

8.121 For the Determination, the Hearing Panel shall make one of the following decisions:

- a. Officer exonerated, for one of two reasons:
 1. The facts alleged in the complaint are true but do not constitute misconduct by the Officer; or
 2. The facts alleged in the complaint are not true;
- b. Insufficient evidence exists to sustain the complaint; or
- c. Complaint sustained.

8.13 The Authority shall immediately send notice of the Hearing Panel's Findings of Fact and Determination to the Complainant and the Officer.

8.2 Reconsideration

8.21 Within five (5) days of receipt of the Hearing Panel's Findings of Fact and Disposition, either the Complainant or the Officer may submit a written Request for Reconsideration to the Authority. The Request for Reconsideration must state the reasons for review and any other special circumstances, including but not limited to the availability of new evidence that was not known to the party or could not have been discovered by that party by the exercise of due diligence.

8.22 The Request for Reconsideration shall be distributed to the members of the Hearing Panel. Within ten (10) days of receipt of the Request for Reconsideration, the members of the Hearing Panel shall be polled by the Chairperson of the Hearing Panel to determine if the decision should be reconsidered.

8.23 If there is a decision to reconsider, then a reconsideration hearing will be scheduled to receive any new evidence, or a Panel meeting held to sustain or reject the prior decision regarding the complaint.

9.0 Submission to Chief for Disciplinary Action

9.01 When a complaint is sustained, and after the period for reconsideration, the Findings of Fact and Determination shall be submitted to the Chief, who shall make a disciplinary decision based upon this information. The Chief, within thirty (30) days of the receipt of the record, shall provide the Authority and the Mayor with a written explanation of the reason(s) for his/her disciplinary decision. (Ord. §172.130)