

**OFFICE OF POLICE COMPLAINTS**

**NOTICE OF FINAL RULEMAKING**

The Police Complaints Board, pursuant to the authority set forth under the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1106(d) (2012 Repl.)), hereby gives notice of the repeal of Chapter 21 (The Citizen Complaint Review Board and the Office of Citizen Complaint Review) of Title 6 (Personnel), Subtitle A (Police Personnel) of the District of Columbia Municipal Regulations (DCMR) and adoption of the following Chapter 21 in its place.

The newly amended regulations provide necessary updates to old rules and ensure consistency with recent statutory changes to D.C. Official Code §§ 5-1101-1115 from the Neighborhood Engagement Achieves Results Amendment Act of 2016, effective June 30, 2016 (D.C. Law 21-125; 63 DCR 4659 (April 1, 2016)).

The rulemaking was published in the *D.C. Register* as a proposed rulemaking on October 6, 2017 at 64 DCR 9907. One comment was received. The comment received related the notification of complaint resolution by mediation, Subsection 2115.12. Language was included to clarify that notification is sent to the subject officer, complainant, and Metropolitan Police Department.

This rule was adopted as final on November 30, 2017, and will be effective upon publication of the notice in the *D.C. Register*.

**Chapter 21, THE CITIZEN COMPLAINT REVIEW BOARD AND THE OFFICE OF CITIZEN COMPLAINT REVIEW, of Title 6-A DCMR, POLICE PERSONNEL, is repealed in its entirety and replaced to read as follows:**

**CHAPTER 21 THE POLICE COMPLAINTS BOARD AND  
THE OFFICE OF POLICE COMPLAINTS**

**Secs.**

- 2100 SOURCE OF AUTHORITY**
- 2101 PURPOSE**
- 2102 THE POLICE COMPLAINTS BOARD**
- 2103 THE OFFICE OF POLICE COMPLAINTS**
- 2104 JURISDICTION**
- 2105 STANDING TO FILE A COMPLAINT**
- 2106 FILING COMPLAINTS**
- 2107 TIMELINESS**
- 2108 INITIAL REVIEW OF COMPLAINTS**

<b>2109</b>	<b>WITHDRAWAL OF COMPLAINTS</b>
<b>2110</b>	<b>DISMISSAL OF COMPLAINTS</b>
<b>2111</b>	<b>REFERRAL OF COMPLAINT TO THE UNITED STATES ATTORNEY</b>
<b>2112</b>	<b>POLICY TRAINING REFERRAL OF COMPLAINTS</b>
<b>2113</b>	<b>RAPID RESOLUTION REFERRAL OF COMPLAINTS</b>
<b>2114</b>	<b>CONCILIATION OF COMPLAINTS</b>
<b>2115</b>	<b>MEDIATION OF COMPLAINTS</b>
<b>2116</b>	<b>INVESTIGATION OF COMPLAINTS</b>
<b>2117</b>	<b>SELECTION OF THE COMPLAINT EXAMINER</b>
<b>2118</b>	<b>DUTIES OF COMPLAINT EXAMINER</b>
<b>2119</b>	<b>PRELIMINARY HEARING CONFERENCE</b>
<b>2120</b>	<b>HEARING PROCEDURES</b>
<b>2121</b>	<b>RECORD OF HEARING</b>
<b>2122</b>	<b>FINDINGS OF FACT AND DETERMINATION</b>
<b>2123</b>	<b>FINAL REVIEW PANEL</b>
<b>2124</b>	<b>EFFECTIVE DATE OF REGULATIONS</b>
<b>2199</b>	<b>DEFINITIONS</b>

**2100 SOURCE OF AUTHORITY**

2100.1 The Police Complaints Board (the “Board” or “PCB”) and the Office of Police Complaints (“OPC”) were established on March 26, 1999 by the Council of the District of Columbia in the Office of Citizen Complaint Review Establishment Act of 1998 (the “Act”), D.C. Law 12-208, subsequently codified as Chapter 11 of Title 5 of the D.C. Official Code. D.C. Official Code §§ 5-1101 *et seq.*, as amended. The Board is the governing authority of OPC and has power to promulgate rules implementing the provisions of the Act. D.C. Official Code § 5-1106(d).

**2101 PURPOSE**

2101.1 The purpose of these regulations is to implement the authority delegated to the Board and OPC by establishing an effective, efficient, and fair system of independent review and resolution of complaints by the public against sworn members of the District of Columbia Metropolitan Police Department (“MPD”) and the District of Columbia Housing Authority Police Department (“DCHAPD”), which have cooperative agreements with the MPD as provided in D.C. Official Code § 5-1107(j).

2101.2 In addition, it is the mission of the Board and OPC to improve the relationship between MPD and DCHAPD, their officers, and the community.

**2102 THE POLICE COMPLAINTS BOARD**

2102.1 The Board shall consist of five (5) residents of the District of Columbia, one of whom shall be a member of the MPD and four (4) of whom shall have no current

affiliation with any law enforcement authority. Members of the Board shall be uncompensated and shall serve terms of three (3) years or until a successor has been appointed. A Board member may be reappointed, as provided by D.C. Official Code § 5-1104(b).

- 2102.2 The Board shall meet as frequently as it determines necessary, but it shall meet at least quarterly. Public notice of regular Board meetings and the location of the meetings shall be made in the *D.C. Register* and on the OPC website. Similar notice will be provided for any rescheduled or special meeting of the Board.
- 2102.3 All meetings of the Board shall be open to the public, unless the Board determines that the meeting, or portion thereof, should be closed. Closure is appropriate only when the matter subject to discussion would, if written, be exempt from disclosure under D.C. Official Code § 2-534. No resolution, rule, act, regulation, or other official action of the Board shall be effective unless taken, made, or enacted at an open meeting.<sup>1</sup>
- 2102.4 A quorum for the transaction of business shall be three (3) members of the Board.
- 2102.5 An audio recording and minutes shall be kept for all such meetings and shall be made available to the public.
- 2102.6 The Board shall conduct periodic reviews of the citizen complaint review process, and shall make recommendations, where appropriate, to the Mayor, the Council, the Chief of MPD, and the Director of the District of Columbia Housing Authority ("DCHA Director") concerning the status and the improvement of the citizen complaint process. The Board shall, where appropriate, make recommendations to the above-named entities concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers, as provided by D.C. Official Code § 5-1104(d).
- 2102.7 The Board may monitor and evaluate MPD's handling of, and response to, First Amendment assemblies, as defined in § 5-333.02, held on District streets, sidewalks, or other public ways, or in District parks, as provided by D.C. Official Code § 5-1104(d-1).

## **2103 THE OFFICE OF POLICE COMPLAINTS**

- 2103.1 OPC shall be headed by an Executive Director, who is appointed by the Board to serve a term of three (3) years, or until a successor is appointed. An Executive Director may be reappointed. The Board may remove the Executive Director from office for cause.

---

<sup>1</sup> See D.C. Official Code § 1-207.42 (2016 Repl.).

- 2103.2 The Executive Director shall be an attorney who is an active member in good standing of the District of Columbia Bar.
- 2103.3 The Executive Director shall employ such persons or retain such volunteers on a full-time or part-time basis as he or she deems appropriate. The Executive Director may hire contractors to resolve particular cases. Complaint investigators may not be persons currently or formerly employed by the MPD or DCHAPD.
- 2103.4 The Executive Director shall create a pool of mediators and complaint examiners, subject to the approval of the Board. Such mediators and complaint examiners may not be current or former employees of the MPD or DCHAPD.
- 2103.5 The Executive Director may delegate his or her powers or authorities to other employees of OPC as appropriate.

## **2104 JURISDICTION**

- 2104.1 OPC shall have the authority to receive a complaint against a member or members of the MPD or DCHAPD (herein jointly referred to as “subject officers”) that alleges abuse or misuse of police powers by such member or members, including:
- (a) Harassment;
  - (b) Use of unnecessary or excessive force;
  - (c) Use of language or conduct that is insulting, demeaning or humiliating;
  - (d) Discriminatory treatment based upon a person’s race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business;
  - (e) Retaliation against a person for filing a complaint pursuant to the Act; or
  - (f) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.
- 2104.2 OPC shall have the sole authority to dismiss, conciliate, mediate, adjudicate, or refer for further action to MPD or DCHAPD a complaint received under § 2104.1.
- 2104.3 Complaints that allege misconduct that is not within the authority of OPC to review shall be referred to the Police Chief for further processing by the MPD or DCHAPD, as appropriate.

2104.4 OPC shall have authority to audit citizen complaints referred to the MPD or the DCHAPD for further action.

2104.5 OPC, under the authority of the Executive Director, and as provided by D.C. Official Code §§ 5-1104(d-2)(1) and (d-2)(2), shall review, with respect to the MPD:

- (a) The number, type, and disposition of complaints received, investigated, sustained, or otherwise resolved;
- (b) The race, national origin, gender, and age of the complainant and the subject officer or officers;
- (c) The proposed discipline and the actual discipline imposed on a police officer as a result of any sustained complaint;
- (d) All use of force incidents, serious use of force incidents, and serious physical injury incidents as defined in MPD General Order 907.07; and
- (e) Any in-custody death.

## **2105 STANDING TO FILE A COMPLAINT**

2105.1 A complaint may be filed with OPC by:

- (a) An alleged victim;
- (b) Any individual having personal knowledge of alleged police misconduct; or
- (c) The parent, legal guardian, or legal representative of either (a) or (b) above.

## **2106 FILING COMPLAINTS**

2106.1 A complaint must be on a form approved by OPC, reduced to writing and signed by the complainant or the complainant's parent, legal guardian or legal representative. Complaint forms shall conclude with the following statement: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true."

2106.2 If the complainant is represented by an attorney or other legal representative who files the complaint on behalf of the complainant, the complaint must be accompanied by a statement signed by the complainant that he or she has retained the representative for the purposes of investigation, mediation, conciliation or adjudication of the complaint.

- 2106.3 Complaints may be submitted electronically through the OPC website. The complainant shall assert the truthfulness of the statements within the complaint by electronic signature.
- 2106.4 If a paper complaint form is requested by telephone or other means, OPC shall send a complaint form and a self-addressed return envelope to the requestor's address. OPC may also send complaint forms electronically, refer individuals to the OPC website, or to locations in the District of Columbia where complaint forms may be found.
- 2106.5 A complaint may be presented in person at OPC's business address. When a complaint is received in a form other than the form referred to in § 2106.1 or § 2106.3, the complainant will be asked to complete and sign a form approved by OPC. Once the approved form is completed and signed, it will be attached to any written document(s) provided by the complainant. Upon signature, the complaint shall be deemed received.
- 2106.6 A complaint may be received by United States Postal Service, private delivery service, email, or facsimile. When it is received, it shall be date-stamped. If the format of the complaint does not comply with § 2106.1, an employee of OPC will be assigned to make arrangements with the complainant to assist him or her in properly completing a complaint form approved by OPC.

## **2107 TIMELINESS**

- 2107.1 Unless extended for good cause, a complaint form must be received by OPC within ninety (90) days from the date of the incident that is the subject of the complaint.
- 2107.2 The Executive Director may, in his or her discretion, extend the deadline for filing for good cause.

## **2108 INITIAL REVIEW OF COMPLAINTS**

- 2108.1 Upon the receipt of a complaint, OPC shall create a case file for the complaint, designate a number for the complaint, enter the case in a database, and preserve any body-worn camera evidence.
- 2108.2 OPC may request additional information from the complainant, and collect any evidence necessary for the initial review.
- 2108.3 The Executive Director shall screen each complaint and shall take one of the following actions:
- (a) Dismiss the complaint, with the concurrence of one member of the Board;

- (b) Refer the complaint to the United States Attorney for the District of Columbia for possible criminal prosecution;
- (c) Attempt to conciliate the complaint;
- (d) Refer the complaint to mediation;
- (e) Refer the complaint to investigation;
- (f) Refer the complaint to the MPD or DCHAPD for investigation because the complaint falls outside of the authority of OPC to review;
- (g) Refer the subject police officer or officers to complete appropriate policy training by the MPD or the DCHAPD; or
- (h) Refer the complaint to MPD or DCHAPD for rapid resolution.

**2109 WITHDRAWAL OF COMPLAINTS**

2109.1 A complaint may be withdrawn orally or in writing from further consideration at any time by the complainant.

**2110 DISMISSAL OF COMPLAINTS**

2110.1 A complaint may be dismissed on the following grounds:

- (a) The complaint is deemed to lack merit;
- (b) The complainant refuses to cooperate with the investigation; or
- (c) The complainant willfully fails to participate in good faith in the mediation process.

2110.2 A complaint may be dismissed upon the concurrence of one (1) member of the Board.

**2111 REFERRAL OF COMPLAINT TO THE UNITED STATES ATTORNEY**

2111.1 If the Executive Director determines that the misconduct alleged in the complaint or disclosed by investigation may be criminal in nature, he or she shall refer the case to the United States Attorney for the District of Columbia for possible criminal prosecution.

2111.2 The Executive Director shall give written notification of such referral to the Chief of Police of the MPD or DCHAPD, the complainant and subject officer(s). If

requested by the United States Attorney, OPC shall delay notification of the referral to one or more of these parties until the United States Attorney determines that notification is appropriate.

2111.3 The Executive Director shall transmit copies of all relevant files to the United States Attorney, maintain a record of each referral, and record the disposition of each referred matter.

2111.4 If the United States Attorney declines in writing to prosecute, then the Executive Director may take any such action under § 2108.3, as applicable.

## **2112 POLICY TRAINING REFERRAL OF COMPLAINTS**

2112.1 If the Executive Director finds that an officer appears to be in violation of an MPD General Order, District Code, constitutional ruling, or other guiding authority, and that correction is best accomplished through additional training, the complaint may be referred to MPD or DCHAPD.

2112.2 OPC will notify MPD or DCHAPD in writing of the allegation(s), the rationale for policy training, and what type of policy training would be most appropriate.

## **2113 RAPID RESOLUTION REFERRAL OF COMPLAINTS**

2113.1 If the Executive Director finds that an officer acted in compliance with all rules and regulations, then the Executive Director may refer the complaint to MPD or DCHAPD to contact the complainant to address the concerns.

2113.2 OPC will notify MPD or DCHAPD in writing of the allegation(s) and the rationale for rapid resolution.

## **2114 CONCILIATION OF COMPLAINTS**

2114.1 If deemed appropriate by the Executive Director and if the complainant and the subject officer agree to participate, the Executive Director may attempt to resolve a complaint by conciliation. The complainant and the subject officer shall be notified of the date, time and place for the conciliation session. The conciliation session(s) may be conducted by telephone.

2114.2 The conciliation process will involve the complainant, the subject officer, the Executive Director, and an interpreter, if requested. In the case of a minor or incompetent adult, a parent, legal guardian or personal representative must be present. In appropriate cases arising from the same set of facts, more than one complainant and more than one subject officer may be asked to participate in the same conciliation process.



- 2114.3 No oral or written statement made during the conciliation process may be used by OPC, the MPD or DCHAPD as a basis for any discipline or recommended discipline of any subject officer or officers or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.
- 2114.4 The parties, their attorneys, other representatives and participants shall not disclose to anyone oral or written statements made during the conciliation process for any reason, including any statements made or documents prepared for the conciliation process by any party, attorney or representative for any party or other participant. Parties who participate in conciliation sessions will be required to sign a confidentiality agreement submitting to these terms. The parties may agree in writing that a conciliation agreement shall not be a public document and shall not be available to the public.
- 2114.5 If conciliation resolves the complaint, then resolution of the complaint shall be evidenced by a written agreement signed by the Executive Director, the complainant and the subject officer. The agreement may provide for any terms satisfactory to the parties, except that the subject officer may only provide assurances or agree to undertakings that are within his or her control and cannot bind the Chief of Police, the MPD or DCHAPD as part of any conciliation agreement.
- 2114.6 OPC shall place a copy of the conciliation agreement in the complaint file, provide copies to the parties and furnish a copy to the Chief of Police. OPC shall monitor implementation of the agreement. If a party fails to abide by the agreement, the aggrieved party may contact OPC. In response to such a contact or in the ordinary course of monitoring, the Executive Director may investigate whether a breach of the agreement has occurred. If the Executive Director finds that the officer or complainant violated the agreement, he or she may take any such action under § 2108.3 as applicable.
- 2114.7 If the Executive Director determines that conciliation efforts are unsuccessful, the Executive Director may take any such action under § 2108.3 as applicable.

## **2115 MEDIATION OF COMPLAINTS**

- 2115.1 OPC may refer complaints to mediation. Mediation is a way for the complainant and the subject officer to meet face-to-face with a neutral third party in an attempt to resolve their differences. OPC shall be permitted to contract for mediation services.
- 2115.2 If the Executive Director refers the complaint to mediation, the complainant and the subject officer shall be notified of the time, date and location of the mediation session. The mediator shall be chosen from a pool of persons selected by the Executive Director and approved by the Board, taking into account the factors set forth in D.C. Official Code § 5-1106(c).

- 2115.3 Once the matter has been referred to mediation, if the complainant fails to participate in good faith in the mediation process, the Executive Director may take any such action under § 2108.3 as applicable.
- 2115.4 If the subject officer refuses to participate in good faith in the mediation process, the Executive Director shall notify the Chief of Police for appropriate disciplinary action. In addition, the Executive Director may take any such action under § 2108.3 as applicable.
- 2115.5 The mediation session will involve the complainant, the subject officer, the mediator and an interpreter, if requested. In the case of a minor or incompetent adult, a parent, legal guardian or personal representative must be present. In appropriate cases arising from the same set of facts, more than one complainant and more than one subject officer may be asked to participate in the same mediation session. No other person may be present or participate in mediation sessions, except as determined by the mediator to be required for a fair and expeditious mediation of the complaint.
- 2115.6 No oral or written statement made during the mediation process may be used by OPC, the MPD, or DCHAPD as a basis for any discipline or recommended discipline of any subject officer or officers, or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.
- 2115.7 The parties and mediators shall not disclose to anyone oral or written statements made during the mediation session for any reason, including any statements made or documents prepared for the mediation procedure by any party, attorney or representative for any party or other participant. Parties who attend mediation sessions will be required to sign a confidentiality agreement submitting to these terms.
- 2115.8 The parties shall not subpoena the mediator, or documents or records submitted to the mediator, for any later judicial or administrative proceedings related to the dispute, and the mediator shall not voluntarily testify on behalf of any party at any subsequent proceeding.
- 2115.9 The mediation session(s) will continue as long as the mediator believes it may result in the resolution of the complaint, except that it may not extend beyond thirty (30) days from the date of the initial mediation session without the approval of the Executive Director.
- 2115.10 The Executive Director shall not refer a complaint to mediation involving a subject officer who has either participated in mediation for similar alleged misconduct within the previous twelve (12) months or where a complaint examiner has within the previous twelve (12) months sustained a complaint against the subject officer for similar alleged misconduct.

- 2115.11 If mediation resolves the complaint, then resolution of the complaint shall be evidenced by a written agreement signed by the mediator, the complainant and the subject officer.
- 2115.12 The mediator shall provide copies of the mediation agreement to the parties and OPC. OPC shall place a copy of the mediation agreement in the complaint file. OPC shall send notification of case resolution by mediation to the subject officer, complainant, and MPD.
- 2115.13 If the mediation does not resolve the complaint, the Executive Director may take any such action under § 2108.3 as applicable.

## **2116 INVESTIGATION OF COMPLAINTS**

- 2116.1 The investigation shall be completed in an expeditious and efficient manner.
- 2116.2 The Executive Director may issue subpoenas under seal of the Superior Court of the District of Columbia compelling the complainant, the subject officer(s), witnesses, and other persons to respond to written or oral questions, produce relevant documents or other evidence necessary to carry out a proper investigation of the complaint.
- 2116.3 Service of a subpoena on a subject officer or other employee of the MPD or DCHAPD is deemed effective by service on the relevant Chief of Police or his/her designee who shall deliver the subpoena to the subject officer.
- 2116.4 If the complainant refuses or fails to cooperate in the investigation, the Executive Director may dismiss the complaint.
- 2116.5 If the subject officer, or an employee of the MPD or the DCHAPD refuses or fails to cooperate in the investigation, the Executive Director shall notify the relevant Chief of Police in writing. The Chief of Police shall institute appropriate disciplinary action against the officer or employee and shall notify the Executive Director of the outcome of the action.
- 2116.6 At the conclusion of the investigation, the Chief Investigator shall forward the file with a report of investigation to the Executive Director. The Executive Director shall take one of the following actions:
- (a) Refer the complaint to a complaint examiner to determine whether a violation of D.C. Official Code § 5-1107(a) has occurred;
  - (b) Dismiss the complaint if, based on the file and report of investigation, report, it is determined that the complaint lacks merit, as defined in § 2110.3;

- (c) Direct the investigator to undertake additional investigation;
- (d) Refer the complaint to conciliation or mediation;
- (e) Refer the subject officer or officers to appropriate policy training;
- (f) Refer the complaint for rapid resolution; or
- (g) Refer the complaint to the United States Attorney's Office.

2116.7 If the Executive Director refers the complaint to a complaint examiner, he or she shall provide a copy of the report of investigation and related exhibits to the subject officer. The officer may, within ten (10) calendar days, provide the complaint examiner a written response to the investigator's report.

2116.8 The Executive Director shall notify in writing all parties to the complaint of his or her decision under § 2116.6, and in the case of dismissal, provide a brief statement of the reasons.

## **2117 SELECTION OF THE COMPLAINT EXAMINER**

2117.1 The complaint examiner shall be chosen from a pool of persons selected by the Executive Director and approved by the Board, taking into account the factors set forth in D.C. Official Code § 5-1106(c).

2117.2 In order to remain in the pool, complaint examiners must adjudicate at least one investigation per fiscal year. In addition, complaint examiners must attend at least one OPC training per fiscal year.

2117.3 A complaint examiner who cannot consider a case in a fair and impartial manner because of personal prejudice or bias, shall not consider that case and shall so inform the Executive Director. Examples of personal bias include, but are not limited to:

- (a) Familial relationship or friendship with parties to the complaint;
- (b) Being a party to the complaint;
- (c) Witnessing material events relevant to the complaint;
- (d) Having a financial interest in the outcome of the case;
- (e) Holding a bias for or against a party that is sufficient to impair the examiner's impartiality.

2117.4 Either party may challenge the impartiality of the complaint examiner at any time by written complaint addressed to the Executive Director who shall issue a written opinion within seven (7) calendar days of receipt of the challenge. The Executive Director's decision is final and unappealable.

2117.5 Complaint examiners shall avoid making public comment on any complaints, investigations and matters before OPC unless compelled to do so by a court of competent jurisdiction.

## **2118 DUTIES OF COMPLAINT EXAMINER**

2118.1 The complaint examiner shall consider the complaint in a fair and impartial manner, ensure that facts are fully elicited, adjudicate all issues and avoid undue delay.

2118.2 If the parties express a willingness to resolve the complaint through conciliation, the complaint examiner may act as a conciliator. Any resulting written conciliation agreement may be kept confidential pursuant to D.C. Official Code § 5-1110(b)(2), and neither any such agreement nor any oral nor written statement made by a party during the course of the conciliation or mediation process may be used as a basis for any discipline or recommended discipline of the subject police officer or officers or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

2118.3 Based on a review of the report of investigation and file, the complaint examiner may determine the merits of a complaint without conducting an evidentiary hearing. The complaint examiner may do so only when (1) the subject officer has had an opportunity pursuant to § 2116.7 to file a response to the report of investigation and (2) the material in the report and file present no genuine issue of material fact in dispute requiring an evidentiary hearing. In such cases, the complaint examiner shall issue findings of fact and a determination on the merits within thirty (30) days of the assignment of the matter, in accordance with § 2122 below.

2118.4 Upon review of the report of investigation and file and the evidence adduced at any evidentiary hearing, the complaint examiner shall make written findings of fact regarding all material issues of fact, and shall determine whether each allegation of misconduct is unfounded, sustained, presents insufficient facts or whether the officer is exonerated, as such terms are defined in § 2122.2 below. In making a determination, the complaint examiner will consider the definitions of misconduct contained in these regulations, as well as any regulation, policy, procedure or order that prescribes standards of conduct for officers.

2118.5 Based on a review of the report of investigation and file, the complaint examiner may determine that additional investigation is required. In such cases, the complaint examiner shall promptly notify the Executive Director, who may order

the investigator to investigate the issues identified by the complaint examiner. Such additional investigation shall be completed within thirty (30) days. Upon completion, the Executive Director shall transmit the supplemental report and file to the complaint examiner and to the subject officer and shall make them available to the complainant. In cases requiring additional investigation, the time allowed for the complaint examination to be completed will be tolled.

2118.6 If the complaint examiner determines that no additional investigation is required and that an evidentiary hearing is required, he or she shall proceed in accordance with §§ 2119 and 2120 below.

## **2119 PRELIMINARY HEARING CONFERENCE**

2119.1 If the complaint examiner determines that an evidentiary hearing is necessary, a preliminary hearing conference shall be scheduled within forty (40) days of his or her assignment to the matter. The conference may be conducted by telephone or in person and may include the parties or their designated representatives. Notice of such conference shall include the time, date and location of the conference and shall be sent to all parties and their representatives.

2119.2 Prior to the preliminary hearing conference, OPC shall make a copy of the report of investigation and related exhibits available to the complainant.

2119.3 The complaint examiner may permit discovery only in extraordinary circumstances. Depositions of parties or witnesses will not be permitted. The parties may, no later than seven (7) days prior to the preliminary hearing conference, submit to the complaint examiner requests for documents or tangible evidence that are reasonably believed to contain or reveal information directly relevant to the incident or incidents in question. Discovery of facts that pre-date the incident(s) in question and of facts relating solely to the character, credibility or motivation of any party or witness will not be permitted. The complaint examiner shall grant, modify or deny these requests at the preliminary hearing conference. Discovery requests filed less than seven (7) days before the preliminary hearing conference will be denied. Those in custody or control of documents or tangible evidence permitted to be discovered will furnish such items within ten (10) days after the preliminary hearing conference.

2119.4 At the preliminary hearing conference, the complaint examiner will determine which of the witness statements furnished will be added to the hearing record. The parties will designate those witnesses whose statements are made part of the hearing record they wish to cross-examine. The complaint examiner may also request the attendance of witnesses who he or she wishes to examine. Witnesses not subject to examination, as determined by the complaint examiner, are not required to attend the hearing.

2119.5 The complaint examiner shall accomplish the following objectives at the preliminary hearing conference:

- (a) Facilitate the exchange of relevant information, including resolving discovery requests as provided in § 2119.3;
- (b) Reach any stipulations of fact that will reduce the length and complexity of the hearing;
- (c) Determine the authenticity of any documents;
- (d) Determine which witness statements to add to the hearing record, which witnesses will testify at the hearing and to determine whether to permit subsequent witness statements to be submitted in light of any discovery permitted;
- (e) Present, discuss, or resolve any matters as may aid in the orderly disposition of the proceeding or expedite the presentation of evidence;
- (f) Set the time, date and location of the evidentiary hearing, which shall occur no more than sixty (60) days after his or her assignment to the matter; and
- (g) Determine whether the complaint can be resolved through mediation or conciliation and to undertake either process if appropriate.

2119.6 If the parties resolve the complaint at this conference, the complaint examiner shall draft a written conciliation agreement and have both parties sign it. The agreement shall then be entered into the file and submitted to the Executive Director.

2119.8 Failure of a party to appear at the preliminary hearing conference may result in a decision against that party. The subject officer and complainant may request that their presence be waived provided an attorney or other representative is attending the conference on their behalf.

## **2120 HEARING PROCEDURES**

2120.1 The complaint examiner must provide the complainant and the subject officer at least twenty (20) days advance notice of the hearing. The notice shall include the time, date and location of the hearing. If requested by the complainant or the subject officer within ten (10) days of the date of the hearing notice, OPC shall provide an interpreter for the hearing.

2120.2 The Executive Director may cause the issuance of subpoenas to compel the appearance of witnesses, the complainant, the subject officer, the production of

documents, and any other evidence as may be necessary for purposes of the hearing.

2120.3 All hearings shall be open to the public, unless the Executive Director approves the request of the complaint examiner to close the hearing to the public.

2120.4 The complainant may represent him or herself during the hearing or any phase of the complaint examination process, or may be represented by an attorney or other representative of their choice or by a law student under the supervision of a licensed attorney. OPC may assist in obtaining pro bono counsel for the complainant. Subject officers may represent themselves or be represented by a member of or an attorney for the police officers' labor organization, or by another representative of their own choosing.

2120.5 Hearings shall be conducted in accordance with the following provisions:

(a) *Burden and Standard of Proof:* The burden shall be on the complainant to show by a preponderance of the evidence that the alleged misconduct actually occurred.

(b) *Exhibits:* All evidence to be considered in the case, including, but not limited to, all records 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. Such exhibits shall be preserved by the complaint examiner and shall be turned over to OPC at the conclusion of the proceedings, to be filed with other closed records.

(c) *Rules of Evidence:* District of Columbia rules of evidence shall not apply to these hearings. Any objection, including grounds for such objection, may be stated orally and shall be included in the record. The complaint examiner shall consider and rule upon objections as appropriate. The complaint examiner may admit all evidence, which possesses probative value, including reliable hearsay. Evidence which is irrelevant, immaterial or which is unduly repetitious shall be excluded.

2120.6 The failure of the subject officer and his or her representative to appear at the hearing, without good cause as determined by the complaint examiner, may be considered in the weighing of the evidence.

2120.7 If the complainant fails to appear at the hearing, without good cause as determined by the complaint examiner, the complaint examiner may ask that the complaint be dismissed by the Executive Director with the concurrence of a member of the Board.

2120.8 If the complaint examiner finds good cause for the complainant's failure to appear, the hearing will be promptly rescheduled.



- 2120.9 Examples of good cause for failure to appear include, but are not limited to:
- (a) Sudden, severe illness or accident;
  - (b) Death or serious illness in the immediate family, such as spouse, partner, children, parents, siblings;
  - (c) Incarceration; or
  - (d) Inclement weather.
- 2120.10 If a witness designated by the complaint examiner at the preliminary conference to testify fails to appear at the hearing, the complaint examiner will determine how to proceed.
- 2120.11 The hearing shall proceed in the following order:
- (a) *Opening the Hearing:* The complaint examiner shall begin the hearing by briefly stating the complaint allegations and the procedural rules, including any additional rules.
  - (b) *Opening Statement:* The complainant, or his or her representative, shall make a short oral statement to the complaint examiner first. The subject officer, or his or her representative, shall follow.
  - (c) *Presentation of Evidence and Witnesses:* All witnesses shall be introduced and sworn in by the complaint examiner. The complainant shall present his or her witnesses first, and the subject officer may introduce witnesses second. Each party may introduce evidence as necessary during questioning of witnesses. Each party has the right to cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination. All witnesses may be questioned by the complaint examiner.
  - (d) *Closing Statements:* At the close of the presentation of evidence, the complaint examiner may provide each party with the opportunity for closing statements. The complainant shall proceed first and the subject officer shall follow.
  - (e) *Final Briefs:* The complaint examiner may direct parties to submit final briefs. The complaint examiner will set a due date for final briefs, and they shall not exceed ten (10) typewritten double-spaced pages unless the complaint examiner agrees in advance to accept a longer submission.

## **2121 RECORD OF HEARING**

- 2121.1 The complaint examiner shall maintain the official record of the case until final findings of fact and a determination of the complaint are made.
- 2121.2 The record shall include:
- (a) Any notices or other procedural matters reduced to writing;
  - (b) All evidence, witness statements added to the record and exhibits received and considered;
  - (c) All memoranda or information submitted by any party in connection with the case;
  - (d) A copy of the investigative report and file;
  - (e) A court reporter's stenographic notes of the hearing or a tape-recording of the hearing; and
  - (f) A transcript of the hearing, if one was prepared.
- 2121.3 The record of the hearing shall be closed upon completion of the hearing, or receipt of the final written briefs, if any.
- 2121.4 The court reporter's stenographic notes of the hearing shall be transcribed if requested by a party or if ordered by the complaint examiner. If a transcript is made, the party requesting the transcript may be required to pay a reasonable charge.

## **2122 FINDINGS OF FACT AND DETERMINATION**

- 2122.1 Within thirty (30) days of either the conclusion of the hearing, the submission of final briefs, if required, or the assignment to a complaint examiner of a case that does not require an evidentiary hearing, the complaint examiner shall make written findings of fact and a determination of the merits of the complaint.
- 2122.2 In the merits determination, the complaint examiner shall make one of the following findings about each allegation in the complaint:
- (a) "Unfounded," where the investigation determined no facts to support that the incident complained of actually occurred;
  - (b) "Sustained," where the complainant's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper;

- (c) “Insufficient facts,” where there are insufficient facts to decide whether the alleged misconduct occurred; or
- (d) “Exonerated,” where a preponderance of the evidence shows that the alleged conduct did occur but did not violate the policies, procedures, practices, orders or training of the MPD or DCHAPD.

2122.3 If the complaint examiner finds that no allegation in the complaint is sustained or the subject officer is exonerated on all allegations, the Executive Director shall dismiss the complaint and send written notice of such determination, along with copies of the merits determination, to the Chief of Police, the complainant, and the subject officer.

2122.4 If the complaint examiner determines that one or more allegations in the complaint is sustained, the Executive Director shall transmit OPC’s investigative report, together with the attached exhibits, as well as the merits determination of the complaint examiner, to the Chief of Police for appropriate action. OPC shall also provide the complainant and subject officer with written notices of such determination, along with copies of the merits determination.

2122.5 The complaint examiner’s written findings of fact and determination may not be rejected by the Chief of Police unless they clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.

**2123 FINAL REVIEW PANEL**

2123.1 If the Chief of Police finds that the merits determination clearly misapprehends the record and is not supported by substantial, reliable, and probative evidence in the record, the Chief of Police shall return the merits determination to the Executive Director for review by a final review panel. This request must be received within forty-five (45) days of the merits determination being sent to the Chief of Police.

2123.2 The final review panel shall be comprised of three complaint examiners selected by the Executive Director, and shall not include the complaint examiner who prepared the original merits determination.

2123.3 The final review panel shall review the complete record without taking any additional evidence and shall issue a written decision within thirty (30) days from assignment, with supporting reasons, regarding the correctness of the merits determination.

2123.4 The final review panel shall uphold the merits determination as to any allegations of the complaint unless it concludes that the determination regarding the

allegation clearly misapprehends the record and is not supported by substantial, reliable, and probative evidence in the record.

2123.5 A copy of the final review panel's decision shall be transmitted to the Executive Director, complainant, subject officer(s) and the Chief of Police.

2123.6 If the final review panel finds that the merits determination sustaining one or more of the allegations should be reversed in whole, the Executive Director shall dismiss the complaint and notify the Chief of Police and parties to the complaint in writing.

2123.7 If the final review finds that the merits determination sustaining one or more of the allegations should be upheld in whole or in part, then the upheld allegations will be sent in writing to the Chief of Police for action in accordance with § 2122.4. The parties will also be notified of the decision in writing.

## **2124 EFFECTIVE DATE OF REGULATIONS**

2124.1 These regulations shall be effective upon publication of a Notice of Final Rulemaking in the D.C. Register.

## **2199 DEFINITIONS**

2199.1 Whenever used in these regulations, unless plainly evident from the context that a different meaning is intended, the following terms are defined as follows:

**Allegation(s):** The conduct that forms the basis of a complaint for misconduct.

**Board:** The Police Complaints Board, which consists of five members appointed by the Mayor and confirmed by the Council of the District of Columbia.

**Chief of Police:** The Chief of the Metropolitan Police Department or District of Columbia Housing Authority Police Department.

**Complainant:** The person filing a complaint with OPC who alleges that he or she is a victim of, the guardian, parent or personal representative of a victim or, or has personal knowledge of alleged misconduct by a sworn member of the MPD or DCAHPD.

**Complaint:** An allegation of misconduct made by a person against a sworn officer who was either on-duty at the time of the incident or who, while off-duty, was acting under color of law during an incident occurring within the District of Columbia.

**Complaint Examiner:** The person designated by the Executive Director to determine the merits of a complaint.

**Conciliation:** A process whereby the Executive Director or his designated representative meets with the complainant(s) and the subject officer(s) and attempts to settle the allegations in a mutually satisfactory manner.

**Day:** In computing any period of time prescribed or allowed by the Act or these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

**Discriminatory treatment:** Conduct by a member of the MPD or DCHAPD that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia.

**Evidentiary hearing:** A proceeding overseen by a complaint examiner at which testimony and other evidence is presented in order to determine the merits of a complaint.

**Excessive or Unnecessary Force:** Unreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the “reasonableness” of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively and physically resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD or DCHAPD, including adherence to the Use of Force Framework; and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.

**Harassment:** Words, conduct, gestures or other actions directed at a person that are purposefully, knowingly or recklessly in violation of the law or internal guidelines of the MPD or DCHAPD, so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right,

privilege, power or immunity. In determining whether conduct constitutes harassment, OPC will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices and training of the MPD or DCHAPD, the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.

**Insulting, demeaning or humiliating language or conduct:** Language or conduct that is intended to or has the effect of causing a reasonable person to experience distress, anxiety or apprehension.

**Mediation:** An informal dispute resolution process, facilitated by a neutral third party, whereby the complainant and the subject officer meet in good faith to discuss the alleged misconduct with the goal of reaching a resolution of the complaint.

**Mediator:** A neutral third party who has contracted with OPC to attempt to mediate disputes between complainants and subject officers.

**Merits Determination:** The complaint examiner's written findings of fact regarding all material issues of fact and law. This document will include the complaint examiner's determination as to whether each allegation of misconduct is unfounded, sustained, presents insufficient facts, or whether the officer is exonerated.

**Misconduct:** Abuse or misuse of police power by a sworn officer directed toward any person who is not a sworn officer, including: (1) harassment; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning or humiliating; (4) discriminatory treatment; (5) retaliation; and (6) failure to wear or display required identification or to identify oneself when requested.

**Personal Knowledge:** Direct knowledge of the incident from which the allegations arose, as the victim of or witness to the alleged misconduct.

**Preponderance of Evidence:** Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

**Policy Training:** A referral of a complaint to the MPD or DCHAPD when the action of the officer appears to be a violation of an MPD General Order, District Code, constitutional ruling, or other guiding authority and correction is best accomplished through additional training.

**Rapid Resolution:** A referral of a complaint to MPD or DCHAPD when it appears the officer acted in compliance with all rules and regulations to

direct the MPD or DCHAPD to contact the complainant and address the concerns of the complainant.

**Retaliation:** Action that discriminates against a person for making or attempting to make a complaint pursuant to the Act, including action taken against a person because he or she has opposed any practice made unlawful by this Act or because he or she has made a complaint or expressed an intention to file a complaint, testified, assisted, or participated in any manner in an investigation, mediation, conciliation, complaint examination or other proceeding under this Act.

**Review Panel:** A panel of three complaint examiners, appointed by the Executive Director that reviews and determines the merits of allegations in the complaint that the Chief of Police determines is not supported by the evidence.

**Subject Officer:** A sworn member of the MPD or DCHAPD against whom an allegation of misconduct has been made in a complaint.