



GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF CITIZEN COMPLAINT REVIEW



REGULATIONS

Published in
District of Columbia Register
August 30, 2002

TABLE OF CONTENTS

2100	SOURCE OF AUTHORITY.....	1
2101	PURPOSE.....	1
2102	THE BOARD.....	1
2103	THE OFFICE.....	1
2104	JURISDICTION	2
2105	STANDING TO FILE A COMPLAINT.....	2
2106	FILING COMPLAINTS.....	2
2107	TIMELINESS.....	3
2108	INITIAL REVIEW OF COMPLAINTS	4
2109	WITHDRAWAL OF COMPLAINTS	4
2110	DISMISSAL OF COMPLAINTS.....	4
2111	REFERRAL OF COMPLAINT TO THE UNITED STATES ATTORNEY	4
2112	CONCILIATION OF COMPLAINTS	5
2113	MEDIATION OF COMPLAINTS.....	6
2114	INVESTIGATION OF COMPLAINTS	8
2115	SELECTION OF THE COMPLAINT EXAMINER.....	9
2116	DUTIES OF COMPLAINT EXAMINER.....	10
2117	PRELIMINARY HEARING CONFERENCE	11
2118	HEARING PROCEDURES.....	11
2119	RECORD OF HEARING.....	13
2120	FINDINGS OF FACT AND DETERMINATION.....	14
2121	FINAL REVIEW PANEL.....	15
2122	EFFECTIVE DATE OF REGULATIONS	15
2199	DEFINITIONS	15

**CHAP. 21 THE CITIZEN COMPLAINT REVIEW BOARD AND
THE OFFICE OF CITIZEN COMPLAINT REVIEW**

2100 SOURCE OF AUTHORITY

2100.1 The Citizen Complaint Review Board (the “Board” or “CCRB”) and the Office of Citizen Complaint Review (the “Office” or “OCCR”) 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. The Board is the governing authority of the Office and has power to promulgate rules implementing the provisions of the law. 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 Office 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 covered law enforcement agencies.

2102 THE BOARD

2102.1 The Board shall consist of five residents of the District of Columbia, one of whom shall be a member of the MPD and four 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, 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.

2102.3 A quorum for the transaction of business shall be three members of the Board.

2103 THE OFFICE

2103.1 The Office shall be headed by an Executive Director, who is appointed by the Board to serve a term of three (3) years. The term can be renewed. The Board may remove the Executive Director from office for cause.

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.
- 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.
- 2103.5 The Executive Director may delegate his or her powers or authorities to other employees of the Office as appropriate.

2104 JURISDICTION

- 2104.1 The Office shall have the authority to receive and to dismiss, conciliate, mediate, or adjudicate a citizen complaint against a member or members of the MPD and covered law enforcement agencies (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; or
 - (e) Retaliation against a person for filing a complaint pursuant to the Act.

2105 STANDING TO FILE A COMPLAINT

- 2105.1 An alleged victim, an alleged victim’s legal guardian, parent or personal representative or any individual having personal knowledge of alleged officer misconduct shall have standing to file a complaint.
- 2105.2 Complaints that are filed by someone other than the alleged victim or legal guardian, parent or personal representative of the alleged victim are not subject to conciliation or mediation unless the alleged victim also participates.

2106 FILING COMPLAINTS

- 2106.1 Consistent with the requirements set forth in D.C. Official Code §§ 5-1107(e) and (f) and in § 2106.3 of these regulations, a complaint form must be on a form approved by the Office, reduced to writing and signed by the complainant or the complainant’s parent, guardian or legal representative. Complaint forms shall 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.” 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.

2106.2 If a complaint form is requested by telephone, the Office shall send a complaint form and a self-addressed return envelope to the requested address. The Office may also refer individuals to locations in the city where complaint forms may be found.

2106.3 A complaint may be presented in person at the Office's business address. When a complaint is received in a form other than the form referred to in § 2106.1, the complainant will thereafter be asked to complete and sign a form approved by the Office. 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.

2106.4 A complaint may be received by mail. When it is received, it shall be date-stamped. If the format of the complaint does not comply with these regulations, an employee of the Office will be assigned to make arrangements with the complainant to assist him or her in properly completing a complaint form approved by the Office.

2107 TIMELINESS

2107.1 To be timely, a signed complaint form must be received by the Office within forty-five (45) days from the date of the incident that is the subject of the complaint.

2107.2 The Executive Director may waive the deadline for filing for good cause. Examples of good cause may include, but are not necessarily limited to:

- (a) Serious illness;
- (b) Incarceration;
- (c) Death or serious illness in the complainant's immediate family;
- (d) Mistaken but timely filing of a complaint with the wrong government agency or office;
- (e) Misleading or erroneous information from the Office as to the time by which the complaint must be filed;
- (f) Illiteracy of the complainant;
- (g) Severely limited economic resources which prevented the timely filing of the complaint; or
- (h) Reasonably demonstrated lack of knowledge of the Office, provided that in such case the deadline may not be extended for more than 90 days.

2108 INITIAL REVIEW OF COMPLAINTS

- 2108.1 Upon the filing of a complaint, the Office shall create a case file for the complaint, designate a number for the complaint, and enter the new case in a database.
- 2108.2 The Office may request additional information from the complainant.
- 2108.3 Within seven (7) working days of the receipt of the formal complaint, or within seven (7) days of receipt of the additional information requested, 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; or
 - (f) Refer the complaint to the MPD for investigation because the complaint falls outside of the authority of the Office to review.

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) If, after the Executive Director refers a complaint for mediation, the complainant willfully fails to participate in good faith in the process.
- 2110.2 In order to dismiss a complaint pursuant to § 2110.1(a), (b), or (c), the Executive Director must secure the concurrence of a member of the Board. The Executive Director shall make reasonable efforts to request such concurrences equally among all members of the Board. Upon concurrence, the Executive Director shall promptly give the complainant, the subject officer(s) and Chief of Police written notice of the dismissal and shall provide a brief statement of the reasons.

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, the complainant and subject officer(s). If requested by the United States Attorney, the Office shall delay notification of the referral to one or more of these parties until the United States Attorney has determined that notification is appropriate.
- 2111.3 The Executive Director shall send copies of all relevant files to the United States Attorney, maintain a record of each referral and ascertain and record the disposition of each referred matter.
- 2111.4 If the United States Attorney declines in writing to prosecute, the Office shall resume consideration of the complaint. The Executive Director may thereafter dismiss the complaint, conciliate the complaint, or refer the complaint for mediation or investigation.

2112 CONCILIATION OF COMPLAINTS

- 2112.1 The Office may refer appropriate complaints for conciliation as an alternative to the other dispute resolution methods authorized by the Act.
- 2112.2 If deemed appropriate by the Executive Director and if the complainant and the subject officer agree to participate, the Executive Director or a designee may attempt to resolve a complaint by conciliation. The complainant and the subject officer shall be notified about the date, time and place for the conciliation session. The conciliation session(s) may be conducted by telephone.
- 2112.3 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. If deemed appropriate by the Executive Director, the supervisor of the subject officer can also be invited to participate in the conciliation process, although the supervisor may not be compelled to participate.
- 2112.4 No oral or written statement made during the conciliation process may be used by the Office or the MPD or the covered law enforcement agency as a basis for any discipline or recommended discipline of any subject officer or officers, nor in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.
- 2112.5 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.

- 2112.6 If conciliation is successful, resolution of the complaint shall be evidenced by a written agreement signed by the Executive Director, the complainant and the subject officer, and may provide for oral apologies or assurances, written undertakings, or any other terms satisfactory to the parties. However, 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 or the MPD or the covered law enforcement agency as part of any conciliation agreement.
- 2112.7 The Office shall place a copy of the conciliation agreement in the complaint file and monitor implementation of the conciliation agreement. If a party fails to abide by this agreement, the aggrieved party may contact the Office which, if it finds a violation, may take such action against the complainant or the subject officer as is authorized by the Act, as the Executive Director deems appropriate. Action that can be taken against a subject officer found to be in non-compliance with the conciliation agreement may include, but not necessarily be limited to, referring the underlying complaint for investigation by the Office or notifying the Chief of Police and requesting that discipline be instituted for non-compliance. Action that can be taken against a complainant found to be in non-compliance with the conciliation agreement may include, but not necessarily be limited to, a dismissal of the complaint.
- 2112.8 If the Executive Director determines that conciliation efforts are unsuccessful, the Executive Director may dismiss the complaint, refer the complaint to mediation, or refer the complaint for investigation.

2113 MEDIATION OF COMPLAINTS

- 2113.1 The Office may refer appropriate complaints to mediation as an alternative to the Office's other dispute resolution methods. 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. The Office shall be permitted to contract for mediation services.
- 2113.2 If the Executive Director refers the complaint to mediation, the complainant and the subject officer shall be notified in writing about 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).
- 2113.3 Once the matter has been referred to mediation, if the complainant fails to participate in good faith in the mediation process, the Executive Director can

dismiss the complaint or refer it to conciliation, investigation or to a complaint examiner for adjudication of the merits if the Executive Director determines that further investigation is unnecessary.

- 2113.4 If the subject officer refuses to participate in good faith in the mediation process, such refusal or failure shall result in the institution of appropriate disciplinary action by the Chief of Police. In addition, the Executive Director shall refer the complaint for investigation by the Office, or may refer the complaint for adjudication if further investigation is deemed unnecessary.
- 2113.5 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. If deemed appropriate by the Executive Director, the supervisor of the subject officer can also be invited to participate in the mediation session, although the supervisor cannot be compelled to participate. 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.
- 2113.6 No oral or written statement made during the mediation process may be used by the Office or the MPD or the covered law enforcement agency as a basis for any discipline or recommended discipline of any subject officer or officers, nor in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.
- 2113.7 The parties, their attorneys, representatives 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. The parties may agree in writing that a mediation agreement shall not be a public document and shall not be available to the public.
- 2113.8 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.
- 2113.9 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.

- 2113.10 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 12 months sustained a complaint against the subject officer for similar alleged misconduct.
- 2113.11 If mediation is successful, resolution of the complaint shall be evidenced by a written agreement signed by the mediator, the complainant and the subject officer, and may provide for oral apologies or assurances, written undertakings, or any other terms satisfactory to the parties. However, 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 or the MPD or the covered law enforcement agency as part of any mediation agreement.
- 2113.12 The mediator shall provide copies of the mediation agreement to the parties and the Office. The Office shall place a copy of the mediation agreement in the complaint file and shall forward a copy of the mediation agreement to the Chief of Police for monitoring of the subject officer's compliance with the terms of any agreement reached after mediation. Alternatively, the Chief of Police may delegate to the Office the task of ensuring the subject officer's compliance.
- 2113.13 If a party fails to abide by the mediation agreement, the aggrieved party may contact the Office which, if it finds a violation, may take such action as is authorized by the Act against the complainant or the subject officer, as the Executive Director deems appropriate. Action that can be taken against a subject officer found to be in non-compliance with the mediation agreement may include, but not necessarily be limited to, referring the underlying complaint to the Office for investigation or notifying the Chief of Police and requesting that discipline be instituted for non-compliance. Action that can be taken against a complainant found to be in non-compliance with the mediation agreement may include, but not necessarily be limited to, a dismissal of the complaint.
- 2113.14 If the mediation does not resolve the complaint, the Executive Director may dismiss the complaint or refer it to conciliation, for investigation by the Office or to a complaint examiner for adjudication of the merits if the Executive Director determines that further investigation is unnecessary.

2114 INVESTIGATION OF COMPLAINTS

- 2114.1 The investigation shall be completed in an expeditious and efficient manner.
- 2114.2 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.

- 2114.3 Service of a subpoena on a subject officer or other employee of the MPD or the covered law enforcement agency is deemed effective by service on the Chief of Police or his/her designee who shall deliver the subpoena to the subject officer.
- 2114.4 If the complainant refuses or fails to cooperate in the investigation, the Executive Director may dismiss the complaint.
- 2114.5 If the subject officer or an employee of the MPD or the covered law enforcement agency refuses or fails to cooperate in the investigation, the Executive Director shall notify the 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.
- 2114.6 At the conclusion of the investigation, the Chief Investigator shall forward the file with an investigative report of findings to the Executive Director. The Executive Director shall take one of the following actions:
- (a) Refer the complaint to a complaint examiner to determine the merits of the complaint if there is reasonable cause to believe that a violation of D.C. Official Code § 5-1107(a) has occurred;
 - (b) Dismiss the complaint in accordance with D.C. Official Code §§ 5-1107 and 5-1108 if, based on the file and investigative report, there is no reasonable cause to believe that a violation has occurred;
 - (c) Direct the investigator to undertake additional investigation;
 - (d) Refer the complaint to conciliation or mediation; or
 - (e) Refer the complaint to the United States Attorney's Office.
- 2114.7 The Executive Director shall notify in writing all parties to the complaint of his or her decision and in the case of dismissal, provide a brief statement of the reasons.

2115 SELECTION OF THE COMPLAINT EXAMINER

- 2115.1 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).
- 2115.2 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.

2115.3 Complaint examiners shall avoid making public comment on all pending complaints, investigations and matters, whether or not they are serving on particular cases.

2116 DUTIES OF COMPLAINT EXAMINER

2116.1 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.

2116.2 If the parties express a willingness to resolve the complaint through conciliation or mediation, the complaint examiner may act as a conciliator or mediator. Any resulting written conciliation or mediation agreement may be kept confidential pursuant to D.C. Official Code § 5-1110 (h), 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.

2116.3 Based on a review of the investigative report 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 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 to the complaint examiner.

2116.4 Upon review of the investigative 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 § 2120.2 of these regulations. In making a determination, the complaint examiner may consider the definitions of misconduct contained in these regulations, as well as any MPD regulation, policy, procedure or order that prescribes standards of conduct for officers.

2116.5 Based on a review of the investigative report 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 shall 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. In cases requiring additional investigation, the time allowed for the complaint examination to be completed will be tolled.

2116.6 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 §§ 2117 and 2118 below.

2117 PRELIMINARY HEARING CONFERENCE

2117.1 If the complaint examiner determines that an evidentiary hearing is necessary, a preliminary hearing conference shall be scheduled within fifteen (15) 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.

2117.2 The conference shall be conducted by the complaint examiner for the following purposes:

- (a) To facilitate the exchange of relevant information;
- (b) To reach any stipulations of fact;
- (c) To determine the authenticity of any documents;
- (d) To identify all witnesses known at the time;
- (e) To present, discuss, or resolve any matters as may aid in the orderly disposition of the proceeding or expedite the presentation of evidence;
- (f) To 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) To determine whether the complaint can be resolved through mediation or conciliation and to undertake either process if appropriate.

2117.3 If the parties resolve the complaint at this conference, the complaint examiner shall draft a written mediation or conciliation agreement and have both parties sign it. The agreement shall then be entered into the file and submitted to the Executive Director.

2117.4 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 and send an attorney or other representative to attend the conference.

2118 HEARING PROCEDURES

2118.1 The complaint examiner must provide the complainant and the subject officer at least twenty (20) days notice of the hearing. The notice shall include the time, date and location of the hearing as well as the name of the complaint examiner. If

requested by the complainant within ten (10) days of the date of the hearing notice, the Office shall provide an interpreter for the hearing.

- 2118.2 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.
- 2118.3 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.
- 2118.4 The complainant may be represented during the hearing or any phase of the complaint examination process by himself or herself, by an attorney or other representative of his or her own choosing or by a law student under the supervision of a licensed attorney. 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.
- 2118.5 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 the Office 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.
- 2118.6 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.
- 2118.7 The failure of the complainant to appear at the hearing, without good cause as determined by the complaint examiner, may result in dismissal of the complaint by the Executive Director with the concurrence of a member of the Board.

2118.8 The complaint examiner, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be promptly rescheduled.

2118.9 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.

2118.10 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 shall provide each party with the opportunity for closing statements. The complainant shall proceed first and the subject officer shall follow.
- (e) *Closing of the Hearing:* After closing statements, the complaint examiner may direct parties to submit final briefs and shall close the hearing. Final briefs shall not exceed ten (10) typewritten double-spaced pages unless the complaint examiner agrees in advance to accept a longer submission.

2119 RECORD OF HEARING

2119.1 The complaint examiner shall maintain the official record of the case until final findings of fact and a determination of the complaint are made.

2119.2 The record shall include:

- (a) Any notices or other procedural matters reduced to writing;
- (b) All evidence 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.

2119.3 The record of the hearing shall be closed upon completion of the hearing, or receipt of the final written briefs, if any.

2119.4 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.

2120 FINDINGS OF FACT AND DETERMINATION

2120.1 Within thirty (30) days of either the conclusion of the hearing, the submission of written 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.

2120.2 In the merits determination, the complaint examiner shall make one of the following decisions 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;
- (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 the covered law enforcement agency.

2120.3 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.

2120.4 If the complaint examiner determines that one or more allegations in the complaint is sustained, the Executive Director shall transmit the Office'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. The Office shall also provide the complainant and subject officer with written notices of such determination, along with copies of the merits determination.

2120.5 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.

2121 FINAL REVIEW PANEL

2121.1 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.

2121.2 The final review panel shall be comprised of three complaint examiners selected by the Executive Director, not including the complaint examiner who prepared the merits determination.

2121.3 The final review panel shall review the complete record without taking any additional evidence and shall issue a written decision, with supporting reasons, regarding the correctness of the merits determination.

2121.4 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.

2121.5 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.

2121.6 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.

2122 EFFECTIVE DATE OF REGULATIONS

2122.1 These regulations shall be effective on 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:

Board: The Citizen Complaint Review 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 the covered law enforcement agency.

Complainant: The person filing a complaint with the Office who alleges that he or she is a victim of, the guardian, parent or personal representative of, or has personal knowledge of alleged abuse or misuse of police powers by a sworn member of the Metropolitan Police Department or an officer of a covered law enforcement agency.

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 the “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.

Covered Law Enforcement Agency: 1) the District of Columbia Housing Authority Police Department; or 2) any law enforcement agency that, pursuant to the Act, has a cooperative agreement with the MPD that requires coverage by the Office; provided that the chiefs of the respective law enforcement department or agency shall perform the duties of the MPD Chief of Police for the members of their departments or agencies.

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 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Discriminatory treatment: Conduct by a member of the MPD or an officer of a covered law enforcement agency 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 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 the covered law enforcement agency; and 6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.

Executive Director: An active member in good standing of the District of Columbia Bar who is appointed to a three-year term by the Board to head the Office.

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 the covered law enforcement agency, 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, the Office 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 the covered law enforcement agency, the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.

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 arriving at a mutually acceptable resolution of the complaint.

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

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; and (5) retaliation.

MPD: The Metropolitan Police Department of the District of Columbia.

Office: The Office of Citizen Complaint Review.

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.

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 a covered law enforcement agency against whom an allegation of misconduct has been made in a complaint.