

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed rule amendment pertaining to disciplinary proceedings against civilian and uniform members of Police Department.

Date / Time: November 28, 2012 from 11:00 AM to 1:00 PM

Location: Civilian Complaint Review Board
40 Rector Street, 2nd Floor,
New York, New York, 10006

Contact: Deputy Commissioner, Legal Matters,
One Police Plaza, Room 1406,
New York, New York 10038

Proposed Rule Amendment

Pursuant to the authority vested in the New York City Police Department by Sections 434(b) and 1043 of the New York City Charter, the New York City Police Department intends to adopt amendments to its rules pertaining to disciplinary proceedings against civilian and uniform members of the Police Department before the Deputy Commissioner of Trials and substantiated civilian complaints against uniform members of the Police Department. This proposed rule did not appear in the Department's regulatory agenda because promulgation of the rule was not anticipated at the time.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to Deputy Commissioner, Legal Matters, by mail or electronically through NYC RULES at www.nyc.gov/nycrules by November 26, 2012.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Deputy Commissioner, Legal Matters, by November 20, 2012.
- Written comments and a summary of oral comments received at the hearing will be available three days after the hearing at the contact address above between the hours of 10:00 AM and 5:00 PM.

STATEMENT OF BASIS AND PURPOSE

Chapter 15 of Title 38 of the Rules of the City of New York outlines the rules governing adjudication of disciplinary proceedings applicable to uniform and civilian members of the New York City Police Department. The Rules require amendment due to the execution in April, 2012 of a Memorandum of Understanding by the Civilian Complaint Review Board and the New York City Police Department, concerning the prosecution of substantiated civilian complaints.

Subchapter B of Chapter 15, entitled “Substantiated Civilian Complaints Against Uniform Members,” was promulgated in 2001 in order to implement the terms of a similar memorandum, executed that year, which ultimately did not take effect. The proposed amendments to Subchapter B would update the rules to reflect the terms of the Memorandum of Understanding executed in 2012, which will take effect when these Rule amendments take effect.

The Memorandum of Understanding reflects an agreement between the two agencies that the Civilian Complaint Review Board, rather than the New York City Police Department, will conduct administrative prosecutions of substantiated civilian complaints in which the Board has recommended that Charges and Specifications be preferred against a subject officer. The Memorandum of Understanding outlines the responsibilities of the two agencies, including provisions regarding mutual assistance, information sharing, and the procedures to be followed by both agencies as the prosecutions proceed.

Conforming changes are also made to Subchapter A of Chapter 15, entitled “Disciplinary Proceedings Against Civilian and Uniform Members before the Deputy Commissioner of Trials,” to incorporate the participation of attorneys of the Civilian Complaint Review Board in the disciplinary prosecution process, as well as to update the Rules to reflect current procedures.

New matter is underlined; deleted matter is in brackets.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section one. Section 15-01 of Subchapter A of Chapter 15 of Title 38 of the Rules of the City of New York is amended to read as follows:

§15-01 Definitions.

Advocate. "Advocate" [shall mean] means the Department Advocate or Assistant Advocates of the New York City Police Department and also means an attorney designated by the Commissioner to prosecute a disciplinary proceeding before the Deputy Commissioner of Trials, including an attorney conducting such prosecution on behalf of the Civilian Complaint Review Board in accordance with a Memorandum of Understanding executed on April 2, 2012 by the CCRB and the Department during the period that such MOU is applicable.

Charges and Specifications. "Charges and Specifications" [shall mean] means a written accusation or accusations of misconduct against a civilian or uniform member of the Department, specifying the activity or conduct at issue, along with the date, time and place of occurrence.

Civilian Complaint Review Board. "Civilian Complaint Review Board" or "CCRB" means the New York City Civilian Complaint Review Board.

Department. "Department" [shall mean] means the New York City Police Department.

Deputy Commissioner of Trials. "Deputy Commissioner of Trials" [shall mean] means the Deputy Commissioner or Assistant Deputy Commissioners in charge of New York City Police Department disciplinary hearings.

Respondent. "Respondent" [shall mean] means a uniform or civilian member of the Department against whom Charges and Specifications have been preferred.

§ 2. Section 15-02 of Subchapter A of Chapter 15 of Title 38 of the Rules of the City of New York is amended to read as follows:

§15-02 Jurisdiction.

The Deputy Commissioner of Trials shall have jurisdiction over disciplinary matters adjudicated by the Department [except as provided in subchapter B of this chapter]. This jurisdiction shall include the authority to render any ruling or order necessary and appropriate for the efficient adjudication of disciplinary proceedings instituted against civilian and uniform members of the Department.

(a) *Applicability.* These Rules shall apply to the conduct of all proceedings heard before the Deputy Commissioner of Trials including pre-hearing, hearing and post-hearing proceedings.

(b) *Construction, Modification and Waiver.* These Rules shall be liberally construed in order to promote just and efficient adjudication of disciplinary proceedings. Upon notice to all parties, the Deputy Commissioner of Trials shall have the authority to modify or waive these Rules where no undue hardship or prejudice to any party shall result from such modification.

§ 3. Section 15-06 of Subchapter A of Chapter 15 of Title 38 of the Rules of the City of New York is amended to read as follows:

§15-06 Report to Police Commissioner.

(a) (1) After the Hearing is concluded the Deputy Commissioner of Trials will review the testimony and evidence adduced and prepare a Draft Report and Recommendation [for submission to the Police Commissioner].

(2) The Draft Report and Recommendation shall consist of a summary and analysis of the testimony, recommended findings of fact and conclusions of law, and recommendations for the disposition of the Charges and Specifications. [The Report and Recommendation along with the transcript of the proceeding, unless waived, and all exhibits received in evidence shall be forwarded to the Police Commissioner for review and final action.]

(b) All parties, and their counsel or other representative shall be sent a copy of the Draft Report and Recommendation [, at the time it is forwarded to the Police Commissioner,] in order to afford them an opportunity to comment thereon. It is the [respondent's] party's or the [respondent's] party's representative's responsibility to submit written comments timely or a final determination may be made [by the Police Commissioner] without such comments having been considered.

(c) The [respondent] parties will be allowed a specified [number of days] period of time from the receipt of the Draft Report and Recommendation to submit comments. Such comments must be in writing and confined to the evidence in the record. The [respondent] parties shall provide [a copy] copies of such comments to [the Department Advocate] the Deputy Commissioner of Trials who will, upon receipt of all such comments, forward them to the adverse parties [at the time that they are submitted to the Deputy Commissioner of Trials]. Upon receipt of such comments, the Deputy Commissioner of Trials will [forward them] finalize the Report and Recommendation. The Report and Recommendation will then be forwarded to the Police Commissioner along with the [Report and Recommendation] transcript of the proceeding, unless waived, all exhibits received in evidence, and any comments submitted by the parties pursuant to this section.

(d) If the Deputy Commissioner of Trials finds the respondent guilty of any charges, the respondent's employment record will be reviewed prior to determining a recommended penalty. The respondent may review his or her employment record prior to its submission to the Deputy Commissioner of Trials.

§ 4. Section 15-08 of Subchapter A of Chapter 15 of Title 38 of the Rules of the City of New York is amended to read as follows:

§15-08 Final Review.

(a) After reviewing the record of the proceeding and the Report and Recommendation of the Trial Commissioner, the Police Commissioner will make a final determination. The Police

Commissioner may approve the recommendation or modify the findings or the penalty consistent with the record.

(b) In the event a respondent enters a plea of guilty in return for a specific recommended sanction by the Trial Commissioner, and the Commissioner upon review imposes a greater sanction, the respondent will be allowed to accept the Commissioner's penalty or withdraw his or her guilty plea and proceed to a Hearing.

(c) The written final determination shall be served on the respondent, his or her attorney or representative if one appeared at the Hearing, and the [Department] Advocate.

§ 5. Subchapter B of Chapter 15 of Title 38 of the Rules of the City of New York is amended to read as follows:

SUBCHAPTER B: SUBSTANTIATED CIVILIAN COMPLAINTS AGAINST UNIFORM MEMBERS

§15-11 Definitions.

[Administrative Prosecution. "Administrative Prosecution" shall mean all actions taken after substantiation of a civilian complaint by CCRB in accordance with a Memorandum of Understanding executed by the CCRB and the Department during the period that such MOU is applicable.]

Chair. "Chair" [shall mean] means the Chair of the New York City Civilian Complaint Review Board.

Charges and Specifications. "Charges and Specifications" [shall mean] means a written accusation or accusations of misconduct against a uniform member of the Department, specifying the activity or conduct at issue, along with the date, time and place of occurrence.

Civilian Complaint Review Board. "Civilian Complaint Review Board" or "CCRB" [shall mean] means the New York City Civilian Complaint Review Board.

Department. "Department" [shall mean] means the New York City Police Department.

Department Advocate. "Department Advocate" or "DAO" means the Department Advocate or Assistant Advocates of the New York City Police Department.

Deputy Commissioner of Trials. "Deputy Commissioner of Trials" means the Deputy Commissioner or Assistant Deputy Commissioners in charge of New York City Police Department disciplinary hearings.

Executive Director. "Executive Director" [shall mean] means the Executive Director of the New York City Civilian Complaint Review Board.

FADO. "FADO" means allegations of excessive force, abuse of authority, discourtesy or offensive language contained in civilian complaints falling within the jurisdiction of the Civilian Complaint Review Board.

[**Office of Administrative Trials and Hearings.** "Office of Administrative Trials and Hearings" or "OATH" shall mean the New York City Office of Administrative Trials and Hearings.]

Police Commissioner. "Police Commissioner" or "Commissioner" [shall mean] means the Police Commissioner of the City of New York.

§15-12 [Jurisdiction] Prosecution of Charges and Specifications.

(a) Upon substantiation by the Civilian Complaint Review Board (CCRB) of one or more FADO allegations contained in a civilian complaint against a uniformed member of the NYPD, CCRB shall notify the Police Commissioner of the substantiation and CCRB's disciplinary recommendation. Subject to the provisions of subdivision (b) of this section, civilian [Civilian] complaints found to be substantiated by the [Civilian Complaint Review Board (CCRB)] CCRB in which CCRB has recommended that Charges and Specifications be preferred shall be prosecuted by the CCRB pursuant to a Memorandum of Understanding (MOU) executed on April 2, 2012 by the CCRB and the Department during the period that such MOU is applicable.

(b) In those limited circumstances where the Commissioner determines that CCRB's prosecution of Charges and Specifications in a substantiated case would be detrimental to the Department's disciplinary process, the Commissioner shall notify CCRB of this determination. These instances shall be limited to cases in which 1) there are parallel or related criminal investigations, or 2) when, in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, and based on such officer's record and disciplinary history, the interests of justice would not be served.

Any request by the Commissioner for the CCRB to refrain from prosecution of Charges and Specifications in accordance with this section shall be made in writing to the CCRB, include a detailed explanation for such request and a statement detailing what discipline if any the Police Commissioner would pursue on such uniformed officer.

The CCRB may reject such request to refrain from prosecution within five business days of receipt of such request. Such rejection shall be made in writing and include a statement rebutting the Commissioner's explanation for his or her request.

The Commissioner may deny such rejection within five business days of receipt of such rejection. Such denial shall be made in writing to CCRB and include a detailed response to CCRB's rebuttal. Upon receipt of such denial the CCRB shall refrain from further prosecution of the case. [Where such prosecutions include the filing of Charges and Specifications against the subject officer, an Administrative Law Judge of the Office of Administrative Trials and Hearings (OATH) shall conduct any hearing necessary to the prosecution of the case and issue a report containing proposed findings of fact and a recommended decision to the Police Commissioner.]

§15-13 Expedited Cases.

Upon receipt of notification that a complaint has been found to be substantiated by the CCRB accompanied by a recommendation that Charges and Specifications be preferred, the DAO shall inquire as to whether the nature of the substantiated allegation and the status of the

subject officer requires expedited prosecution of the substantiated case. In such cases, or in similar cases where the need for such expedited prosecution arises while the prosecution is pending, the DAO shall advise CCRB's Chair and Executive Director of the need for expedited prosecution. CCRB shall make every reasonable effort to conclude the prosecution within the required time frame. If CCRB determines that it will not be able to conclude the prosecution within the required time frame, CCRB will decline to prosecute the case and request that the DAO undertake the prosecution of such case.

§15-14 Other Misconduct.

If during the course of its prosecution of a substantiated civilian complaint, CCRB becomes aware of possible misconduct falling outside its FADO jurisdiction (such as the making of a false statement), which is alleged to have been committed by the subject officer, CCRB shall immediately refer the allegation of such other misconduct to NYPD for investigation. CCRB shall not itself undertake the prosecution of such other misconduct. CCRB shall provide assistance to NYPD as requested for purposes of investigation or prosecution of the alleged misconduct. If necessary, CCRB and the Department Advocate shall coordinate their prosecutions of such related cases.

[§15-13] §15-15 Assistance by Department and Application of Department [Rules, Regulations, and] Procedures and Disciplinary Policies.

[To assist CCRB in its prosecutorial function and OATH in its adjudicatory function, the Department shall provide to CCRB and OATH all relevant Department rules, regulations, and disciplinary policies. To the extent practicable and relevant, CCRB shall comply with Department Patrol Guide Series 206, "Disciplinary Matters" and shall utilize Department forms such as Charges and Specifications (PD468-121) and Supervisor's Complaint Report/Command Discipline Election Report (PD468-123), provided that if amendments or variations in Department forms utilized by CCRB are appropriate, they shall be developed jointly by the parties.]

CCRB personnel conducting administrative prosecutions pursuant to the MOU executed on April 2, 2012 shall familiarize themselves with and apply Department disciplinary policies and standards to the extent practicable and relevant. Attorneys and support staff shall be trained in all aspects of Department procedures and policies as they affect such administrative prosecution, including the provisions of Subchapter A of this Chapter. The Department shall provide all reasonable assistance requested by CCRB in the creation of a unit of attorneys and support staff responsible for conducting administrative prosecutions, including training and guidance in both legal and administrative matters. During the course of its administrative prosecution, CCRB's prosecutorial staff may contact the DAO to request the assistance of Department personnel as needed to effectively evaluate, prepare, and prosecute the case. The DAO shall arrange for Department personnel to provide reasonable assistance to CCRB.

[§15-14 Expedited Cases.

Where the nature of the substantiated allegation and the status of the subject officer requires expedited prosecution of the substantiated case, the Department shall notify the Chair and the Executive Director of the need for expedited prosecution. CCRB shall make every reasonable effort to conclude the prosecution and provide a recommendation to the Police

Commissioner within the requested time frame, including contacting OATH as necessary to request expedited procedures as provided in §1-26(c) of Title 48 of the Rules of the City of New York.

§15-15 Summary of Employment History.

Upon request by CCRB, the Department shall provide a summary of the employment history of the respondent as provided in the Memorandum of Understanding referenced in §15-12. CCRB may similarly obtain a summary of employment history for a witness officer upon demonstrating to the Department a particularized need for such summary based upon the facts and circumstances of a specific administrative prosecution. Such summary shall not include records relating to complaints against the respondent which are unsubstantiated, exonerated, unfounded, or open. Where the case has received a hearing at OATH and the Administrative Law Judge has determined that the petition shall be sustained in whole or in part, he or she may request the subject officer's summary of employment history from CCRB.]

§15-16 Conclusion of Administrative Prosecution.

At the conclusion of the administrative prosecution, in all instances other than cases culminating in a report and recommendation by [OATH] the Deputy Commissioner of Trials, the CCRB shall forward to the Commissioner a final recommendation reflecting the results of its prosecution of the case. The CCRB shall include all relevant forms, memoranda and background information to assist the Commissioner in making [and implementing] a final disciplinary determination. If the case culminated in a hearing before [OATH] the Deputy Commissioner of Trials, [OATH shall forward to the Commissioner the report and recommendation accompanied by the transcript of the proceedings and the exhibits received in evidence, with a copy of the report and recommendation to CCRB. Upon receipt of a copy of the report and recommendation, CCRB may provide to the Commissioner a letter commenting on the OATH report and recommendation] the provisions of Subchapter A of this Chapter shall apply, subject to the provisions of §15-19 of this Subchapter.

§15-17 Police Commissioner's Determination.

(a) In all instances other than cases culminating in a report and recommendation by [OATH] the Deputy Commissioner of Trials, upon receiving the final recommendation of CCRB with accompanying documents, the Commissioner may accept, reject, or modify the recommendation presented, or may ask CCRB for additional investigative or background information in its possession. He or she may also request further investigation or development of the record in the case to enable him or her to make a final determination in the case. If CCRB's recommendation is rejected or modified, CCRB will then be responsible for [implementing the Commissioner's decision and] taking [the] any appropriate follow-up action [as directed], such as proceeding with prosecution of the subject officer, engaging in additional investigation, or further developing the record in the case. [After taking the appropriate follow-up action, the CCRB shall forward to the Commissioner a final recommendation as provided in §15-16.]

(b) [In cases culminating in a report and recommendation by OATH, the Commissioner may accept, reject, or modify the report and recommendation based upon the record presented. He may in the alternative remand the matter to OATH, stating his reasons therefor, with instructions

for further proceedings as appropriate. In the event of such a remand, CCRB shall take appropriate steps in conformance with the reasons set forth in the Police Commissioner's statement for remand to reopen the case.

(c) The Department shall notify CCRB of the final disciplinary result and specific penalty in each case within thirty calendar days of the [imposition of the specific penalty] Commissioner's final determination.

§15-18 Correspondence Following Final Determination of Substantiated Civilian Complaints.

In any case substantiated by the CCRB in which the Police Commissioner intends to impose discipline that is of a lower level than that recommended by CCRB or by the Deputy Commissioner of Trials, the Commissioner shall notify the CCRB, with notice to the subject officer, at least ten business days prior to the imposition of such discipline. Such notification shall be in writing and include a detailed explanation of the reasons for deviating from CCRB's recommendation including but not limited to each factor the Commissioner considered in making his or her decision. The CCRB and the subject officer may respond to such a notification within five business days of its receipt, after which the Commissioner shall make a final determination.

§15-19 Confidentiality.

(a) Documents or verbal information provided to CCRB by the Department or created by CCRB pursuant to the MOU executed on April 2, 2012 shall be considered confidential to the extent provided by New York State Civil Rights Law § 50-a or any other applicable law. CCRB shall not disclose any such document or verbal information to any person, organization or agency without first notifying the Department's Deputy Commissioner, Legal Matters and providing the Deputy Commissioner, Legal Matters a reasonable opportunity to review the proposed disclosure. This restriction on disclosure shall not apply to disclosures to the Deputy Commissioner of Trials, DAO, or the Department's Internal Affairs Bureau.

(b) Notwithstanding the provisions of subdivision (a) of this section, the CCRB and Department may also exchange information pursuant to subdivision (b) of §15-12 and §15-18 of this Subchapter to the extent that the disclosure of such information does not tend to reveal the identity of a party or witness involved in the investigation or prosecution of the substantiated civilian complaint which is the subject matter of the correspondence.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Prosecution of Certain Cases of Police Misconduct

REFERENCE NUMBER: NYPD-3

RULEMAKING AGENCY: Police Department

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi
Mayor's Office of Operations

10/17/2012
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Prosecution of Certain Cases of Police Misconduct

REFERENCE NUMBER: 2012 RG 060

RULEMAKING AGENCY: New York City Police Department

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 16, 2012