

## Civilian Complaint Review Board

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

#### **What are we proposing?**

The Civilian Complaint Review Board is revising multiple sections of its agency rules in order to implement new policies and procedures related to changes to Chapter 18-A § 440 of the New York City Charter and recent court decisions, simplify the language, create rules that will accelerate and make more transparent the investigative process, and to codify previously-adopted Board resolutions.

#### **When and where is the Hearing?**

The Civilian Complaint Review Board will hold a public hearing on the proposed rules. The public hearing will take place at 6:30pm on Wednesday, January 13, 2021. Due to the current health emergency, the public hearing for this rule is being scheduled as a virtual hearing, which may be accessed according to the information given below in this Notice.

#### **Join through Internet:**

- To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar.  
<https://nycccrb.webex.com/nycccrb/onstage/g.php?MTID=e6c88a2ef2825a9c172e056170b5fc9f4>
- Then follow the prompts.
- When prompted, enter the following meeting password: january
- When joining the meeting, choose either **“Use computer for audio,”** or **“Call in,”** for the audio portion of the public hearing. If you choose the “Call in” option, the information needed to connect (**phone number, Access Code and Attendee ID**) will automatically be presented to you immediately **after** you join the Webex meeting.
- If you have low bandwidth or inconsistent Internet connection, we suggest you use the “Call-in” option for the hearing. This will reduce the possibility of dropped audio and stutters.

#### **Join via phone only:**

To join the meeting only by phone, use the following information to connect:

Phone: +1-408-418-9388

Access code: 179 013 2430

Password (if requested): n/a

## How do I comment on the proposed rules?

Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Civilian Complaint Review Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to the Civilian Complaint Review Board at [ccrbrules@ccrb.nyc.gov](mailto:ccrbrules@ccrb.nyc.gov).
- **Mail.** You can mail comments to the Civilian Complaint Review Board, Attn: Heather Cook, Esq., 100 Church Street, 10<sup>th</sup> Floor, New York, New York, 10007.
- **Fax.** You can fax comments to the Civilian Complaint Review Board at 646-500-6149.
- **By Speaking at the Hearing.** During the public comment portion, please use the "raise hand" feature. Find your name on the participant list and hover over your name. A "raise hand" icon will appear. Since all attendees are muted upon entry, the moderator will go down the list of attendees that used the "raise hand" feature and unmute them accordingly. Comments are limited to 2 minutes.

## Is there a deadline to submit comments?

Please submit all written comments via website, email, or fax to the Civilian Complaint Review Board by January 11, 2021 at 5:00 p.m. All written comments via mail should be postmarked to the Civilian Complaint Review Board by January 8, 2021.

## Do you need assistance to participate in the Hearing?

You should inform the Agency (at least one week before the hearing date) if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can notify us by mail at the address given above, by email at [accessibility@ccrb.nyc.gov](mailto:accessibility@ccrb.nyc.gov), or by telephone by contacting Jeanine Marie at 212-912-2092.

## Can I review the comments made on the proposed rules?

You can review the online comments about the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all online and written comments, and a transcript of the hearing concerning the

proposed rules will be available on the Civilian Complaint Review Board's website.

**What authorizes the Civilian Complaint Review to make these proposed rules?**

Sections 1043 and 440 of the New York City Charter authorize the Civilian Complaint Review Board to make these proposed rules. The proposed rules were not included in the Civilian Complaint Review Board's regulatory agenda for this Fiscal Year because they were not contemplated when the Civilian Complaint Review Board published the agenda.

**Where can I find the Civilian Complaint Review Board's rules?**

The Civilian Complaint Review Board's rules are in Title 38-A, Chapter 1 of the Rules of the City of New York.

**What rules govern the rulemaking process?**

The Civilian Complaint Review Board must meet the requirements of Chapter 45: Section 1043 of the New York City Charter when creating or changing rules. This notice is made pursuant to the requirements of Chapter 45: Section 1043 of the New York City Charter.

**Statement of Basis and Purpose of Proposed Rule**

As a result of a November 2019 ballot initiative, there were a number of changes to Chapter 18-A § 440 of the New York City Charter, which defines the jurisdiction, composition, duties, and powers of the Civilian Complaint Review Board. Additionally, a May 2020 New York State Appellate Division, First Department ruling invalidated a portion of the Civilian Complaint Review Board's current rules. The purpose of this rule revision process is to incorporate the Charter changes, comply with the court ruling, modify the Board meeting schedule, and clarify certain language to make the rules more understandable.

With those goals in mind, the Civilian Complaint Review Board made the following proposed rule revisions:

- Amended §1-01 ("Definitions") to include "Abuse of Authority," "City Council Appointee," "Complainant," "Mayoral Appointee," "Police Commissioner Designee," "Public Advocate Appointee," "Sexual Misconduct," and "Sexual Humiliation." The definition of "Chair" was rewritten to reflect the new selection process. The definitions of "Civilian Complaint Review Board", "Executive Director", and "Full Board" were adjusted to include the full citation of the New York City Charter.

- Amended §1-02 (“Jurisdiction”) to include the Charter revision granting the Civilian Complaint Review Board jurisdiction to investigate untruthful material statements made by subject officers during the course of an investigation.
- Removed §1-11(c) (“Filing Complaints”)
- Adjusted the language of §1-14(b) (“Referrals of Complaints”) to add the word “the” before “Chair”.
- Rewrote §1-21 (“Statement of Policy”) to more clearly explain the policy for investigating complaints.
- Adjusted the language of §1-23(a), (b), (c), and (d) (“Obtaining Documentary and Other Evidence”) to clarify subpoena powers and the Board’s delegation of subpoena signature authority to the Executive Director.
- Rewrote §1-24 (“Conduct of Interviews”) to simplify language so the public and Police Officers can better understand the rights of Police Officers during Civilian Complaint Review Board interviews.
- Adjusted the language of §1-31(b) and (c) (“Assignment of Cases”) to reflect the Charter revision related to Board member appointments.
- Added §1-31(d) (“Assignment of Cases”), which was previous §1-31(c).
- Added §1-32(d) and (e) (“Panel or Board Review of Cases”) to clarify the Full Board and Panel voting requirements.
- Adjusted §1-33(a) (“Case Dispositions”) so the language would mirror Chapter 18-A § 440(c)(1) of the New York City Charter.
- Rewrote §1-33(d) (“Case Dispositions”) to more clearly explain the Civilian Complaint Review Board’s case dispositions and notification requirements to the Police Commissioner.
- Rewrote §1-33(e)(11) and (15) (“Case Dispositions”) to add language defining the dispositions of “Closed – Pending Litigation” and “Other Misconduct Noted.”
- Revised numbering of sections §1-33(e)(12), (13), (14), (16), (17), (18), and (19).

- Adjusted §1-34 (a) and (b) to reflect numbering changes to §1-33(e).
- Adjusted §1-36(d)(1) and (2) to clarify the process for reconvening the Board to reopen or reconsider a case.
- Removed §1-42(h)(1) and (2) (“Prosecution of Charges”) to comply with recent court decision (Lynch et al vs. The New York City Complaint Review Board et al, May 28, 2020, Appellate Division, First Department)
- Adjusted §1-44 (“Other Misconduct”) to add a new example of Other Misconduct after Charter revision granted the Civilian Complaint Review Board jurisdiction over untruthful material statements.
- Amended Rule §1-51(a) (“Meetings of the Board”) such that the Civilian Complaint Review Board’s Full Board will only be required to meet ten (10) times per year.
- Rewrote §1-52(b) (“Panel and Board Meetings: General Matters”) to clarify Board voting requirements.

Civilian Complaint Review Board’s authority to make these rules is found in Chapter 45: Section 1043 and Chapter 18-A § 440 of the New York City Charter.

New material is underlined. [Deleted material is in brackets.]

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

Title 38-A, Chapter 1 of the Rules of the City of New York are amended to read as follows:

### **Subchapter A: Definitions**

#### **§ 1-01 Definitions**

As used in this chapter:

**Abuse of Authority.** The term “Abuse of Authority” refers to misusing police powers. This conduct includes, but is not limited to, improper searches, entries, seizures, property damage, refusals to provide identifying information, intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions, and sexual misconduct.

**Agency Staff.** The term "Agency Staff" means employees of the Civilian Complaint Review Board, including Board investigators.

**Alleged Victim.** The term "Alleged Victim" refers to the person alleging harm by the alleged police misconduct.

**Case.** The term "Case" refers to an investigation undertaken by the Civilian Complaint Review Board.

**Chair.** The term "Chair" means the Chair of the Civilian Complaint Review Board, jointly appointed by the Mayor and the Speaker of the City Council pursuant to New York City Charter Chapter 18-A § 440(b)(1)(v).

**Charges.** The term "Charges" means charges and specifications brought by the Board against an officer with respect to an allegation falling within the jurisdiction of the Board and substantiated by the Board with the recommendation of charges and specifications.

**City Council Appointee.** The term "City Council Appointee" refers to a member of the Board appointed by the City Council to represent one of each of the five boroughs pursuant to New York City Charter Chapter 18-A § 440(b)(1)(i).

**Civilian Complaint Review Board.** The term "Civilian Complaint Review Board" or "Board" means the entity established by Local Law No. 1 for the year 1993, codified as Chapter 18-A § 440 of the New York City Charter.

**Complaint.** The term "Complaint" refers to a report of alleged police misconduct received by the Board.

**Complainant.** The term "Complainant" refers to a person with Personal Knowledge of alleged police misconduct who is filing a complaint on behalf of themselves or another person regarding the alleged misconduct.

**Executive Director.** The term "Executive Director" means the chief executive officer of the Civilian Complaint Review Board, appointed pursuant to New York City Charter Chapter 18-A § 440(c)(5).

**Full Board.** The term "Full Board" refers to all current members of the Board who have been appointed, pursuant to New York City Charter Chapter 18-A § 440(b)(1).

**Mayoral Appointee.** The term "Mayoral Appointee" means one of the five members of the Board appointed by the Mayor pursuant to New York City Charter Chapter 18-A § 440(b)(1)(iv).

**Mediation.** The term "Mediation" means an informal process, voluntarily agreed to by a Complainant and/or Alleged Victim and the subject officer and conducted with the assistance of a neutral third party, engaged in for the purpose of fully and frankly discussing alleged misconduct and attempting to arrive at a mutually agreeable resolution of a complaint.

**Personal Knowledge.** The term "Personal Knowledge" means knowledge of a circumstance or fact gained through firsthand observation or experience.

**Police Commissioner.** The term "Police Commissioner" means the Police Commissioner of the New York City Police Department, and where appropriate,

his or her designee.

**Police Commissioner Designee.** The term “Police Commissioner Designee” means one of the three members of the Board with a law enforcement background designated by the Police Commissioner and appointed by the Mayor pursuant to New York City Charter Chapter 18-A § 440(b)(1)(iii).

**Police Department.** The term "Police Department" means the New York City Police Department.

**Police Department Advocate.** The term "Police Department Advocate" means the Department Advocate and includes any Assistant Department Advocate of the Police Department.

**Prosecution.** The term "Prosecution" means the administrative prosecution of department Charges before a Trial Commissioner and includes all matters undertaken pursuant to such prosecution.

**Public Advocate Appointee.** The term “Public Advocate Appointee” means the member of the Board appointed by the Public Advocate pursuant to New York City Charter Chapter 18-A § 440(b)(1)(ii).

**Reporting Non-Witness.** The term "Reporting Non-Witness" refers to a person(s) without personal knowledge of the alleged police misconduct filing a complaint on behalf of another person.

**Sexual Misconduct.** The term “Sexual Misconduct” encompasses misconduct of a sexual nature alleged by a civilian against a member of the Police Department. It includes, but is not limited to, the following examples of misconduct: verbal sexual harassment; sexual harassment using physical gestures; sexual humiliation; sexually motivated police actions such as stops, summonses, searches, or arrests; sexual or romantic propositions; and any intentional bodily contact of a sexual nature, including but not limited to, inappropriate touching, sexual assault, rape, and on-duty sexual activity.

**Sexual Humiliation:** The term "Sexual Humiliation" refers to incidents in which an officer gratuitously shames or degrades a civilian in relation to their sexual organs or sexual behavior.

**Trial Commissioner.** The term "Trial Commissioner" refers to the Deputy Commissioner of Trials or the Assistant Deputy Commissioner of Trials of the Police Department.

**Victim.** The term "Victim" refers to the person harmed by at least one or more substantiated allegation(s) of police misconduct.

## **§ 1-02 Jurisdiction.**

(a) Pursuant to Chapter 18-A § 440 (c)(1) of the New York City Charter, the Board has the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, discourtesy, or

use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The Board also has the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received by the Board, if such statement was made during the course of and in relation to the Board's resolution of such complaint.

(b) The jurisdiction of the Board includes the prosecution of certain substantiated civilian complaints pursuant to a Memorandum of Understanding (MOU) executed by the Board and the Police Department on April 2, 2012, (as from time to time amended) during the period that such MOU is in effect.

(c) The findings and recommendations of the Board, and the basis therefor, regarding Case investigations and administrative Prosecutions will be submitted to the Police Commissioner.

### **Subchapter B: Initial Procedures**

#### **§ 1-11 Filing Complaints.**

(a) An Alleged Victim, a parent, legal guardian or legal representative if the Alleged Victim is a minor, or any individual having Personal Knowledge (as defined in 38-A RCNY § 1-01) of alleged misconduct by a member of the New York City Police Department, each have standing to file a complaint.

(b) Complaints of alleged police misconduct filed by Reporting Non-Witnesses (as defined in 38-A RCNY § 1-01) may be investigated at the discretion of the Executive Director or Chair of the Board. Among the factors to be considered are: the nature and/or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, the practicability of conducting a full investigation within the time prescribed by the statute of limitations and the numbers of complaints received by the Board regarding the incident.

[ (c) The Board has the power to review incidents involving members of the New York City Police Department and investigate Cases arising therefrom within the Board's jurisdiction under the New York City Charter.]

#### **§ 1-14 Referrals of Complaints.**

(a) Where the Board receives allegations about persons or matters falling within the sole jurisdiction of another agency (and not that of the Board), the Chair or the Executive Director will refer such allegations to such other agency.

(b) Where the Board receives allegations about persons or matters falling partly within the sole jurisdiction of another agency (and not that of the Board) and partly within the joint jurisdiction of both the other agency and the Board, the Chair in consultation with the Executive Director may refer the entire complaint to the other agency if in the determination of the Chair, in consultation



with the Executive Director, it is appropriate for the entire complaint to be investigated by one single agency.

(c) The Board can investigate any complaint or allegation that falls within the Board's jurisdiction, regardless of whether another agency is investigating or has previously investigated the same complaint or allegation.

### **Subchapter C: Fact-finding Process**

#### **§ 1-21 Statement of Policy.**

The [procedures to be followed in investigating complaints will be such as in the opinion of the] Full Board will determine the procedures for investigating complaints that will best facilitate accurate, orderly and thorough fact-finding.

#### **§ 1-23 Obtaining Documentary and Other Evidence.**

(a) Board investigators may make written or oral requests for information or documents.

(b) Board investigators or, as provided in 38-A RCNY § 1-32(b), a panel established pursuant to 38-A RCNY § 1-31, may interview the Complainant, Alleged Victim, the subject officer, and/or witnesses.

(c) Board investigators may make field visits for purposes such as examining the site of alleged misconduct and interviewing witnesses.

(d) Upon a majority vote of the members of the Full Board, subpoenas ad testificandum and duces tecum may be issued and served. Such subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules. Pursuant to New York City Charter Chapter 18-A § 440(c)(3), the Board may, subject to Chapter 17 of the New York City Charter, institute subpoena enforcement proceedings or request that the Corporation Counsel institute subpoena enforcement proceedings. The Board may delegate its subpoena authority and its authority to institute subpoena enforcement proceedings to the Civilian Complaint Review Board's Executive Director, subject to any conditions deemed appropriate by the Board. The authority delegated to the Executive Director to issue and enforce subpoenas may be revoked by the Board.

(e) The Board may obtain records and other materials from the Police Department which are necessary for [the] investigations [of complaints submitted to] undertaken by the Board, except such records and materials that cannot be disclosed by law. In the event that requests for records or other evidence are not complied with, investigators may request that the Board issue a subpoena duces tecum or a subpoena ad testificandum.

#### **§ 1-24 Conduct of Interviews.**

(a) [It is the intent of these Rules not to alter the rights afforded to police

officers by the Police Department Patrol Guide with respect to interviews in a manner that diminishes such rights, including but] Nothing in these rules shall be construed to alter the rights afforded to police officers by the Police Department Patrol Guide with respect to interviews. These rights include, but are not limited to, the right to notice of an interview, the right to counsel, and the right not to be compelled to incriminate oneself.

## **Subchapter D: Disposition of Cases**

### **§ 1-31 Assignment of Cases.**

(a) The Chair or the Executive Director will assign to a panel consisting of at least three Board members, or may assign to the Full Board for review, all Cases which have been fully investigated, and such other Cases or categories of Cases as the Board may determine by resolution.

(b) Pursuant to Chapter 18-A § 440(c)(2) of the New York City Charter, no panel will consist exclusively of members designated by the [Council,] Police Commissioner or [selected] appointed by the Mayor or the City Council. Panel membership will be determined by the Chair, but each panel will consist of at least one member [designated] appointed by City Council, at least one designated by the Police Commissioner, and at least one [designated] appointed by the Mayor; unless such a panel composition would interfere with or unreasonably delay the Civilian Complaint Review Board's operations. Panel membership will be rotated on a regular basis.

(c) Due to the special characteristics of their respective offices and appointments, the Public Advocate Appointee and the Chair may participate on a panel as either a Mayoral Appointee or a City Council Appointee.

([c]d) If the Chair or the Executive Director determines that circumstances require it, the Chair or the Executive Director may reassign a Case to a new panel.

### **§ 1-32 Panel or Board Review of Cases.**

(a) The panel or the Full Board will review the investigatory materials for each assigned Case and report its findings and recommendations in writing.

(b) The panel or the Full Board may, if it deems appropriate, return a Case to investigative staff for further investigation. A panel may conduct additional fact-finding, including interviews, in accordance with the provisions of 38-A RCNY § 1-24.

(c) Panel findings and recommendations are deemed to be the findings and recommendations of the Board. However, upon request of a member of the panel, or upon the direction of the Chair at the request of any member of the Board, the Case will be referred to the seated members of the Board for its consideration as a Full Board panel.

(d) If a Case has been referred to the Full Board, the Full Board may

take such action as it deems appropriate, including, but not limited to: making its own findings and recommendations, remanding the Case to a referring panel for further consideration or action, or remanding the Case for further investigation.

(e) If a case has been referred to a panel, a majority vote of panel members present shall be required to take action.

### **§ 1-33 Case Dispositions.**

(a) Pursuant to Chapter 18-A § 440(c)(1) of the New York City Charter, no finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the [sole] basis for any such finding or recommendation.

(b) Panels or the Full Board will employ a "preponderance of the evidence" standard of proof in evaluating Cases.

(c) The findings and recommendations with respect to each Case reviewed by the Board will be submitted to the Police Commissioner.

(d) Where the disposition of one or more allegations is "Substantiated," as defined in Subdivision (e) of this section, the Board's findings and recommendations will be forwarded in writing to the Police Commissioner within five business days and include appropriate pedigree information regarding the subject officer, the Case number and any other control or serial number assigned to the Case, and a summary of the pertinent facts. Based on its findings, the Board may recommend penalties of Charges, command discipline, formalized training, instructions [with formalized training], or any combination of these. However, if the Board or panel recommends Charges for any Case allegation against a subject officer, all substantiated allegations against that officer will be included as part of that recommendation.

(e) The following categories of Case investigation dispositions will be used in reports to the Police Commissioner:

(1) Substantiated: there was a preponderance of evidence that the acts alleged occurred and constituted misconduct.

(2) Unsubstantiated: there was insufficient evidence to establish whether or not there was an act of misconduct.

(3) Exonerated: there was a preponderance of the evidence that the acts alleged occurred but did not constitute misconduct.

(4) Unfounded: there was a preponderance of the evidence that the acts alleged did not occur.

(5) Complaint Withdrawn: the Complainant withdrew the complaint.

(6) Complainant Unavailable: the Complainant could not be reached or located.

(7) Alleged Victim Unavailable: the Alleged Victim could not be reached or located.

(8) Complainant Uncooperative: the participation of the Complainant was insufficient to enable the Board to conduct a full investigation.

(9) Alleged Victim Uncooperative: the participation of the Alleged Victim was insufficient to enable the Board to conduct a full investigation.

(10) Alleged Victim Unidentified: the Board could not identify the Alleged Victim and therefore was unable to conduct a full investigation.

(11) Closed—Pending Litigation: the Complainant or Victim chose not to cooperate with the investigation on the advice of counsel.

(12[1]) Officer Unidentified: the Board was unable to identify the officer who was the subject of the allegation.

(13[2]) Referral: the complaint was referred to another agency.

(14[3]) No Jurisdiction: the complaint does not fall within the jurisdiction of the Board.

(15[4]) Other Misconduct Noted: the Board found evidence during its investigation that an officer committed misconduct not traditionally investigated by the Board, but about which the Police Department should be aware.

(16[5]) Mediated: the parties to the mediation agreed that the complaint should be considered as having been resolved through mediation.

(17[6]) Mediation Attempted: the parties agreed to mediate the complaint but the civilian subsequently did not participate in the mediation.

(18[7]) Miscellaneous: the subject of the complaint is not currently employed by the Police Department as a police officer.

(19[8]) Administrative Closure: the Case was referred to the Board by another agency, not by a member of the public, and the Board was unable to conduct a full investigation.

### **§ 1-34 Cases Closed without a Full Investigation.**

(a) The Full Board, a panel, or the Executive Director may close without conducting a full investigation any Case falling within categories (5) through (19[7]) of 38-A RCNY § 1-33(e).

(b) No Case(s) falling within categories (5) through (19[7]) of 38-A RCNY § 1-33(e) will be closed by the Executive Director until copies have first been provided to any member of the Full Board who has asked to review copies of said Case(s).

(c) The Executive Director must from time to time conduct an audit of Cases closed pursuant to this rule. After an audit of the aforementioned sample of Cases, the Executive Director will report his or her review of those Cases to the Full Board.

### **§ 1-36 Reconsideration or Reopening of Cases.**

(a) Upon receipt of a written request to reconsider or reopen a Case from a Complainant, Alleged Victim, Victim or subject police officer, a panel, Chair, or Executive Director may:

- (1) Reopen any Case previously closed without a full investigation; or
- (2) Agree to reconsider any Case previously closed with a full investigation if
  - i. New evidence becomes available which could reasonably lead to a different finding or recommendation in the Case; or
  - ii. A previously unavailable or uncooperative witness becomes available which could reasonably lead to a different finding or recommendation in the Case; or
  - iii. If reopening or reconsidering the Case serves the interests of justice.

(b) Upon receipt of a written request sent by the Police Department Advocate requesting the reconsideration of a previously fully investigated Case with panel findings and recommendations, a panel, the Chair, or the Full Board may agree to reconsider the penalty and/or disposition of an allegation if:

- (1) The penalty recommended for the Case by the deciding panel or Full Board against any subject officer is found by the deciding panel or Full Board to be inappropriate or excessive; or
- (2) There exists new facts or evidence that were not previously known by the deciding panel or Full Board which could reasonably lead to a different finding or recommendation in the Case; or
- (3) There are matters of fact or law which are found to have been overlooked or misapprehended by the deciding panel or Full Board, or if reconsidering the case serves the interests of justice.

In considering requests from the Police Department Advocate, any such request must be made to the Chair, Executive Director, deciding panel, or Full Board, addressed to the Executive Director, within 30 days from receipt of the Civilian Complaint Review Board's initial findings and recommendations of a Case, absent good cause for any such delay beyond 30 days.

(c) The Full Board, Chair, a panel, or Executive Director considering a request to reopen or reconsider a Case will have full discretion in making a determination, and may properly consider all relevant circumstances, including, but not limited to: any delays on the part of the person requesting that the Case be reopened; new, material information as to the Complainant, Alleged Victim, Victim, the subject officer, or any civilian or police witness; and the practicability of conducting a full investigation of the allegations contained in the Case within any applicable limitation period.

(d) If a previously closed Case is reopened or reconsidered:

- (1) If all members of the previously deciding panel are presently members of the Board and available to meet, then that previously deciding panel

will be reconvened to reconsider the Case.

(2) If any member of the previously deciding panel is no longer a member of the Board or is unavailable to meet, then the remaining members of the previously deciding panel will be reconvened with a replacement panel member designated by the Chair as required by 38-A RCNY § 1-31(b) to reconsider the Case.

(3) If all members of the previously deciding panel are no longer members of the Board, the Chair will select a panel will be convened to reconsider the Case pursuant to 38-A RCNY § 1-32.

### **Subchapter E: Administrative Prosecution**

#### **§ 1-42 Prosecution of Charges.**

(a) Where the Board finds an allegation falling within its jurisdiction to have been substantiated against an officer and recommends that Charges be brought against such officer, the Board will promptly notify the Police Commissioner of its finding and recommendation.

(b) In those limited circumstances where the Police Commissioner determines that the Civilian Complaint Review Board's prosecution of the Charges would be detrimental to the Police Department's disciplinary process, the Police Commissioner shall so notify the Civilian Complaint Review Board. Such instances shall be limited to Cases in which there are parallel or related criminal investigations, or when, in the instance of an officer with no disciplinary history or prior substantiated Civilian Complaint Review Board complaints, based on such officer's record and disciplinary history the interests of justice would not be served.

(c) Any request by the Police Commissioner for the Civilian Complaint Review Board to refrain from prosecution of Charges shall be made in writing to the Civilian Complaint Review Board and shall include a detailed explanation for such request and a statement detailing what discipline if any the Police Commissioner would pursue on such officer.

(d) The Civilian Complaint Review Board 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 shall include a statement rebutting the Police Commissioner's explanation for his or her request.

(e) The Police Commissioner may deny such rejection within five business days of receipt of such rejection. Such denial shall be made in writing to the Civilian Complaint Review Board and shall include a detailed response to the Civilian Complaint Review Board's rebuttal. Upon receipt of such denial the Board shall refrain from further Prosecution of the Case.

(f) In all Cases other than those in which the Board is refraining from prosecuting, the Civilian Complaint Review Board shall promptly draft, and request that the Police Department Advocate serve on behalf of the Board, Charges against the subject officer.

(g) If the Civilian Complaint Review Board, acting through the Chair or Executive Director, believes that suspension or modified assignment of a subject officer would be prudent while a Prosecution is pending, the Civilian Complaint Review Board, acting through the Chair or Executive Director, shall make such recommendation to the Police Commissioner, who shall determine whether to suspend or modify the assignment of such officer.

(h) [After a Case has been referred to the Administrative Prosecution Unit for Prosecution, the Chief Prosecutor or Executive Director, or either of their designees, must make a formal request in writing to the deciding panel or, if necessary, the Full Board when:

(1) The Administrative Prosecution Unit is requesting that additional allegations be considered against a subject officer in addition to the allegations previously recommended by the Board; or

(2) The Administrative Prosecution Unit is requesting that previously considered allegations against a subject officer that did not previously result in a substantiation by the Board be reconsidered for substantiation.

In the formal written request, the Chief Prosecutor or Executive Director, or either of their designees, must detail their reasons for making said request. If the Full Board chooses to reopen the matter to add or reconsider any allegations, such matter will be reopened considering the same criteria designated in 38-A RCNY § 1-36(d). Where the Board decides to substantiate additional allegations, the Civilian Complaint Review Board will notify, in writing, all affected civilian and law enforcement parties of the changes to the allegation and/or Charges.

(i) After a Case has been referred to the Administrative Prosecution Unit for Prosecution, the Chief Prosecutor or Executive Director may, upon approval by either the Chair or Full Board, dismiss any Charges. When any such Charge is dismissed, the Civilian Complaint Review Board will notify, in writing, all affected civilian and law enforcement parties of the dismissal.

#### **§ 1-44 Other Misconduct.**

If during the course of a Prosecution the Civilian Complaint Review Board becomes aware of possible misconduct falling outside its jurisdiction, such as [the making of a false statement by an officer] a superior officer's failure to supervise, the Board shall not itself prosecute such possible misconduct but shall instead immediately refer such possible misconduct to the Police Department for investigation and possible prosecution by the Police Department. The Civilian Complaint Review Board will provide to the Police Department such assistance as may be requested, in the investigation or Prosecution by the Police Department of such possible misconduct and shall, if necessary, coordinate its Prosecution with that of the Police Department. Other misconduct will be noted in case dispositions by categories describing the possible misconduct and the evidence of such misconduct.

## **Subchapter G: Board Meetings, Organization, and Delegated Authority**

### **§ 1-51 Meetings of the Board.**

(a) The Full Board [must] shall meet at least [monthly] one time each month, at which meeting it [will] shall consider [Cases] cases referred to it and conduct any other business.

[(b)] [If a Case has been referred to] Notwithstanding the [Full Board] foregoing, the Full Board [may take such action as it deems appropriate, including, but] shall not [limited to: making its own findings] be required to meet in the months of August and [recommendations, remanding the Case to a referring panel for further consideration or action, and remanding the Case for further investigation.] December.

### **§ 1-52 Panel and Board Meetings: General Matters.**

(a) If a Board member has a personal, business or other relationship or association with a party to or a witness in a Case before a panel to which such member has been assigned, the member must disclose this situation to the Chair, and request that the Case be transferred to another panel. If a Board member has such relationship in a Case before the Full Board, the member should recuse themselves from deliberations or action in connection with that Case.

(b) [Board members must be present at a meeting of the Board or a panel in person or, subject to such limitations as the Board may by resolution from time to time determine, by videoconference in order to register their votes.] A Board member may not abstain from voting unless the member is subject to subdivision (a) of this section.



**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

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

**RULE TITLE:** Miscellaneous Rule Amendments

**REFERENCE NUMBER:** 2020 RG 068

**RULEMAKING AGENCY:** Civilian Complaint Review Board

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: December 1, 2020

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

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

**RULE TITLE: Miscellaneous Rule Amendments**

**REFERENCE NUMBER: CCRB-4**

**RULEMAKING AGENCY: Civilian Complaint Review Board**

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/ Francisco X. Navarro  
Mayor's Office of Operations

December 1, 2020  
Date