

CITY OF ALBUQUERQUE



POLICE OVERSIGHT BOARD CASE REVIEW SUBCOMMITTEE

July 7, 2016 – 10:30 a.m.

Plaza del Sol Building, 600 2nd Street NW
3rd Floor Planning Dept., Small Conference Room

Members Present

Leonard Waites, Chair
Joanne Fine
Dr. Carlotta Garcia

Members Absent

Others Present

Edward Harness, Exec. Director
Miriam Verploegh
Diane McDermott
Michelle Contreras

MINUTES

- I. **Welcome and Call to Order:** Chair Waites called the meeting to order at 10:35 a.m.
- II. **Approval of the Agenda:** Copies of the Agenda were distributed. Subcommittee Member Fine made a motion to approve the agenda. Member Garcia seconded the motion. **Approved.**
For: Fine, Garcia, Waites
- III. **Approval of Minutes:** Copies of the Minutes from the Case Review Subcommittee meeting on June 2, 2016 were distributed. Subcommittee Member Fine made a motion to approve the minutes as written. Member Garcia seconded the motion. **Approved.**
For: Fine, Garcia, Waites.
- IV. **Public Comments:** None.
- V. **CPOA Report – Edward Harness, Executive Director**
 - A. Director Harness discussed with the committee the Serious Use of Force cases that are coming to the CPOA from the CIRT team.
 - i. Director Harness states that CIRT will be sending Serious UOF cases to the Civilian Police Oversight Agency on a random basis and without notice.
 - ii. As of this date, the CPOA has received three (3) Serious UOF/CIRT cases.
 - iii. Members discussed several of the Serious UOF/CIRT cases.
 - iv. The Director has sent his recommendations for the two (2) Serious UOF/CIRT cases to the Chief of Police.
 - v. The Director will be sending his recommendation for the third Serious UOF/CIRT case today, July 7, 2016.
 - vi. Member Fine discussed that Case Review Subcommittee Chair Leonard Waites and DOJ Monitor Dr. Ginger to be copied in any letters or memorandums sent to Chief Eden concerning the CIRT process.
 - vii. Members discussed timelines for all investigations and the possibility to set aside the timelines as laid out in paragraph 191 of the Settlement Agreement.

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- viii. The DOJ has confirmed that the POB/CPOA are parties as defined in the Settlement Agreement. Judge Brack has agreed to listen to any concerns that the POB/CPOA have concerning the Settlement Agreement. The POB/CPOA can send their concerns, in writing, to Judge Brack seven (7) days before the July 28, 2016 hearing.
 - ix. The discussion of UOF/CIRT cases will be brought up at the full Police Oversight Board (POB) meeting.
 - x. The POB to request Mark Baker, Legal Counsel for the Board, to attend the hearing on July 28, 2016 in Federal Court.
- B.** Director Harness distributed and discussed a revised listing of pending Officer Involved Cases for years 2011 through 2016. **See attachment "A."**
- i. Director Harness has reviewed and ranked four (4) Officer Involved Shooting cases highlighted in purple on the chart.
 - ii. All four (4) cases that are highlighted in purple have had an administrative investigation completed and they are still at the District Attorney's Office.
 - iii. Director Harness has identified the two priority cases, they are: Alfred Redwine and Mary Hawkes cases.
 - iv. District Attorney Brandenburg has responded to the Alfred Redwine case but not the Mary Hawkes case.
 - v. POB to vote on whether to begin the POB review of Alfred Redwine.
- C.** Civilian Police Oversight Analyst Miriam Verploegh distributed a draft Memorandum of Understanding – Mediation Protocol. **See attachment "B."**
- i. The MOU lays out the CPOA's mediation protocols.
 - ii. Director Harness will present the MOU to the full POB for their comment and/or approval.

VI. Review of Cases: The Subcommittee members agreed with the CPOA's findings of the following CPCs:

A. Administratively Closed Cases

021-16	034-16	051-16	078-16	082-16
087-16	092-16	093-16	095-16	100-16
101-16	102-16	103-16		

- i. Members discussed editing the letter to the citizen for **CPC 100-16**: Change case number in the body of the letter from CPC 051-16 to CPC 100-16.
- ii. Member Fine made a motion to accept all the *Administratively Closed* cases as written with the one correction listed in item VI. i. Member Garcia seconded the motion. **Approved.**

For: Fine, Garcia, Waites

B. Cases less than 120 Days

057-16	058-16	090-16
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- i. Member Fine made a motion to accept all the *Cases less than 120 days* as written. Member Garcia seconded the motion. **Approved.**

For: Fine, Garcia, Waites

C. Cases more than 120 Days

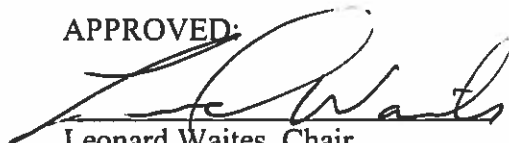
099-15	115-15
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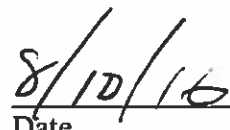
- i. Member Fine made a motion to accept all the *Cases more than 120 days* as written. Member Garcia seconded the motion. **Approved.**

For: Fine, Garcia, Waites

- D. Members discussed the possibility of commenting on the letters in SharePoint before coming to the Case Review Subcommittee meeting.
 - E. Director Harness will be looking at collaborating with MHRAC on how to deal with citizens have mental health issues.
 - F. Member Fine will get cards from 2-1-1 to distribute to the CPOA and Dr. Ginger's office.
 - G. Director Harness to discuss with the full POB about re-visiting the 90 day time limits for investigations.
- VII. **Review of Appeals.** The appeals listed on the Case Review Agenda for July 7, 2016 were previously heard at the Police Oversight Board Meeting on June 9, 2016.
- VIII. **Discussion regarding whether to/not approve the review of administrative findings of officer involved shooting cases which have not yet cleared the criminal process of the District Attorney's Office.** This discussion was previously addressed in item V, letter B.
- IX. **Other Business.** None.
- X. **Next Meeting:** The next meeting of the Case Review Subcommittee will be held on September 1, 2016 at 10:30 a.m.
 - A. Member Fine suggested that whenever a room is reserved for the subcommittee meeting, to send an Outlook invitation to the members so that it will be placed on their calendars.
- XI. **Adjournment:** Chair Waites made a motion to adjourn the meeting. Member Fine seconded the motion. **Approved.** Meeting adjourned at 11:51 a.m.
For: Fine, Garcia, Waites

APPROVED:


Leonard Waites, Chair
Case Review Subcommittee


Date

CC: Julian Moya, City Council Staff
Natalie Howard, City Clerk
Dan Lewis, City Council President

PENDING OIS CASES/2011-2016

Case #	DOI	Where is it?	Letter from DA	Waiver	Out of Time	VICTIM
I-2011-154	5/10/2011	Pending ROB Review	Yes		Yes	Gomez, Alan
I-2012-129	3/19/2012	Pending ROB Review	Yes		Yes	Tillson, Daniel
I-2012-152	8/21/2012	Pending ROB Review	No		Yes	Alencio, Gary
I-2012-240	6/20/2012	Pending ROB Review	No		Yes	Chaves, Santiago
I-2014-78	10/28/2012	Pending ROB Review	No		Yes	Ortega, Joaquin
E-2014-48	7/5/2013	Pending ROB Review	Yes		Yes	Wood, Vincent
I-2016-44	10/26/2013	Homicide Unit - DA?	No	Yes	N/A	
I-2015-50	10/15/2013	Pending ROB Review	Yes	Yes	N/A	Garcia, Bobby (Robert)
I-2014-119	12/17/2013	Pending ROB Review	No		Yes	Sherill, Shane
I-2014-50	2/20/2014	Pending ROB Review	No		Yes	Canine
I-2014-191	3/19/2014	Pending ROB Review	No	Yes	N/A	Boyd, James
	5/3/2014	Homicide Unit Pre-DA	No	No	No	Martin, Armand
	5/22/2014	IA Division Post-DA	Yes	No	No	Chaves, Ralph
						Robertson, Jeremy
I-2014-190	10/16/2014	Pending ROB Review	No	No	Yes	Canine
I-169-15	12/14/2014	Pending ROB Review	Yes	Yes	N/A	Armendariz, Ramiro
	1/13/2015	Homicide Unit Pre-DA	No	No	No	Cook, Christopher
						O'Keefe, John
	5/28/2015	Homicide Unit Pre-DA	No	No	No	Gabalton, Danan
	6/4/2015	Homicide Unit Pre-DA	No	No	No	Garcia, Rodrigo
	7/31/2015	Homicide Unit Pre-DA	No	No	No	Gabalton, Danan
						Molina, Rafael
I-171-15	9/30/2015	IA Division Pre-DA	No	No	No	Anchondo, Oscar
C-8-15	12/15/2015	IA Division Pre-DA	No	No	No	Rodriguez, Jose
C-2-16	1/11/2016	IA Division Pre-DA	No	No	No	Salazar, Daniel
C-7-16	2/2/2016	IA Division Pre-DA	No	No	No	Alvarado, Edgar
C-23-16	5/24/2016	IA Division Pre-DA	No	No	No	Montoya, Mario
C-26-16	5/28/2016	IA Division Pre-DA	No	No	No	Humphrey, Dennis

Attachment "A"

**Memorandum of Understanding
Civilian Police Oversight Agency—Mediation Protocol**

I. Parties

This Memorandum of Understanding (MOU) sets for the terms and understanding between the Civilian Police Oversight Agency (CPOA), the Albuquerque Police Department (APD), and the Albuquerque Police Officer's Association (APOA) to clarify when mediation will be appropriate for civilian complaints. This MOU works to clarify when a complaint should and should not be considered for mediation.

II. Background

Community-Police Mediation is an alternative to the traditional way of handling police complaints. Complainants have the opportunity to sit down with the officer in a neutral and confidential setting, with the assistance of a professional mediator. Research has found that mediation is far more likely to lead to satisfaction among complainants and officers than the traditional complaint-handling process. It also is more likely to result in fewer future citizen complaints against a particular officer than traditional methods, and is more likely to result in a timely resolution when compared to formal investigations.¹

It is important to note that several models of best practice for mediation assert that mediation, while an important and useful tool, should not be used in all cases. Most experts in mediation of civilian complaints agree that the seriousness of an allegation is one factor in the determination of whether or not to mediate. For example, in nearly all mediation programs use of force is considered ineligible for mediation. Furthermore, research on eligibility for mediation asserts that cases involving criminal charges, officers with a history of citizen complaints, officers who have been named in three citizen complaints in the past 12 months, or officers with a similar misconduct allegation within the previous 12 months should not be referred to mediation.² The purpose of this Memorandum is to assert the importance of mediation while clarifying the eligibility requirements for civilian complaints to be considered for mediation.

III. Misconduct Threshold for Mediation Consideration

The current settlement agreement and the city ordinance provide the only available clarification to the CPOA for when and how to mediate. According to the city ordinance Section 1, Section 9-4-1-4(C) clause e and section 9-4-1-6(C)(3), mediation should be the first option for resolution of civilian police complaints. The agreement goes on to explain in Section 3. Section 9-4-1-6 S number 3 that "Mediators should be independent of the CPOA, APD, and the City, and should not be former officers or employees of APD. At the discretion of the Director an impartial system of mediation should be considered appropriate for certain complaints. If all parties involved reach an agreement, the mediation is considered successful and no investigation will occur"³

The current settlement agreement states in paragraph 84 that, "APD and the Civilian Police Oversight Agency shall investigate all misconduct complaints and document the investigation, its

¹ Proctor, Jon; Clemmons, AJI and Rosenthal, Richard. 2009. "Discourteous Cops and Unruly Citizens: Mediation Can Help" Community Policing Dispatch. COPS

² Walker, S., C.A. Archbold, and L. Herbst. *Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders*. Web Version. Washington, D.C.: Office of Community Oriented Policing Services, 2002.

³ Albuquerque City Council Ordinance.
<https://cabo.legistar.com/LegislationDetail.aspx?ID=2724100&GUID=13BDB459-1A35-434C-8215-0FE1FDC48D72&Options=ID|Text|Search=police+oversight>

Attachment "B"

findings, and its conclusions in writing. APD and the Civilian Police Oversight Agency shall develop and implement a policy that specifies those complaints other than misconduct that may be resolved informally or through mediation."⁴ In order to determine what counts as misconduct two formal definitions were acquired. The first comes from a report by produced by the ACLU that defines police misconduct as the inappropriate or illegal actions taken by police officers in connection with their official duties. Police misconduct can lead to miscarriage and sometimes involves discrimination or obstruction of justice.⁵ Furthermore, we can understand misconduct through the federal civil enforcement of misconduct provision which states that it is unlawful for, "State or local law enforcement officers to engage in a pattern or practice of conduct that deprives persons of rights protected by the Constitution or laws of the United States. (42 U.S.C. 5 14141). The types of conduct covered by this law include, among other things, excessive force, discriminatory harassment, false arrests, coercive sexual conduct, and unlawful stops, searches or arrests."⁶ Based on the requirements for mediation, the definition of misconduct model examples of eligibility criteria from other agencies the following requirements have been developed.

IV. Eligibility for Mediation

A. Cases will be evaluated for eligibility for mediation by the CPOA, Executive Director based upon two criteria, case eligibility and officer eligibility.

Case Eligibility: All complaints will be considered eligible for mediation when the complaint involves a dispute with a member of the public rather than a disagreement with departmental policy. The following cases should not be considered for mediation absent exceptional circumstances:

- 1) Cases listed as 1-5 offenses in the Chart of Sanctions
- 2) Cases involving substantial injury to either complainant or officer;
- 3) Cases involving sexual or racial slurs;
- 4) Cases involving use of force allegations;
- 5) Cases regarding criminal charges or questions of law such as search or detention issues.

Officer Eligibility: Mediation will not be available to officers who have any of the following in their OCC or MCD files:

- 1) Sustained case within the past year;
- 2) A prior mediation within the past six months;
- 3) Three mediations within the past two years.
- 4.) Serious similar misconduct allegation or a similar misconduct allegation within the previous 12 months

V. Duration

This MOU is at-will and may be modified by mutual consent of authorized officials from the CPOA, the APD, and the APOA. This MOU shall become effective upon signature by the authorized officials from the Civilian Police Oversight Agency, the Albuquerque Police Department, and the Albuquerque Police Officer's Association and will remain in effect until modified or terminated by any one of the partners by mutual consent.

⁴ Department of Justice and Albuquerque Police Department. Settlement Agreement. Paragraph 84.

⁵ Gratl, Jason. 2011. "Report Following a Public Interest Investigation into a Chair-Initiated Complaint Respecting the Death in RCMP Custody of Mr. Robert Dziekanski". BC Civil Liberties Association.

⁶ Department of Justice. 2012. "Addressing Police Misconduct" US Department of Justice Civil rights Division, Department of Justice.

Attachment "B"

Edward Harness, Executive Director
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600 2nd Street NM, Room 813
Albuquerque, New Mexico 87102

Shaun Willoughby, President
Albuquerque Police Officer's Association
3813 Hawkins Rd NE
Albuquerque, NM 87109

Gordon Eden, Chief of Police
Albuquerque Police Department
400 Roma Ave NW
Albuquerque, NM 87102

Date:
(Partner signature)
(Partner name, organization, position)

Date:
(Partner signature)
(Partner name, organization, position)

Date:
(Partner signature)
(Partner name, organization, position)

Attachment "B"