

CITY OF ALBUQUERQUE



CIVILIAN POLICE OVERSIGHT BOARD

Thursday, July 14, 2016 – 5:00 PM
Vincent E. Griego Chambers, Basement Level
City/County Government Center – One Civic Plaza NW
Albuquerque, New Mexico

Members Present:

Beth Mohr, Chair
Leonard Waites, Vice Chair
Joanne Fine
Susanne Brown
Dr. Carlotta A. Garcia
Dr. Lisa M. Orick-Martinez
Rev. Dr. David Z. Ring III

Members Absent

Eric Cruz

Others Present:

Edward Harness, Exec. Director
Mark Baker, Esq.
IA Commander Jeremy McRae
Jessica Hernandez, City Attorney
Bill Slauson, APD Executive Director
Miriam Verploegh, CPOA Analyst
Natalee Davila, IA Program Data Analyst
Diane McDermott, CPOA Investigator
Paul Skotchdopole, CPOA Investigator
Erin O'Neil, CPOA Investigator
Michelle Contreras, Senior Admin. Assist.

Minutes

I. Welcome and call to order: Chair Mohr called the meeting to order at 5:07 p.m.

II. Pledge of Allegiance – Vice Chair Waites led the Board in the Pledge of Allegiance.

III. Approval of the Agenda: Copies of the agenda were distributed. Amendments to the agenda are as follows:

A. On item X, correct the OIS case number to I-2015-37.

B. On item XII, letter f, ii., 1. Budget 2017 should be Budget for Fiscal Year 17.

C. Member Ring moved to approve the agenda as amended. Member Fine seconded the motion. **Approved.**

For: Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites.

IV. Public Comments

A. Tadeusz Niemyjski - Summary of comments to the Board: Mr. Niemyjski says that he has had experience with the Civilian Police Oversight Agency, old and new and nothing has changed. It looks to him that it the oversight is of civilians instead of APD. The Executive Director agrees with the findings of the investigator, and then the Chief of Police agrees with the Executive Director and now the Board the same way and agrees with the Executive Director. There is something is wrong when cops start investigating cops. Something is wrong when Executive Director, who is a retired cop and the APD Union Lawyer is a retired cop His whole point is that the whole system is dysfunctional, without cameras, without witnesses, nothing can be done and nothing will change.

B. Geraldine Amato – Summary of comments to the Board: Ms. Amato says that the 24-7 propaganda machine is revved up on high speed. The press is

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deliberately chosen to foster certain perspectives on reality. Racism is deliberately taken as a tool to divide folks and to make one group of people think they are persecuted more than the other. She says that the media and the press are all controlled by the international banks and the cartels. Over the years, grants and loans have incrementally taken control away from the locals and over to the Feds. There are similar parallels with the Dallas debacle and the 1963 assassination of President Kennedy. She has read several books written by former police officers. She says that the adoption of the United States Constitution put us on a Reservation and took us away from the Republic. The second blow was that the British Bench and Bar was set up here. She says that we have been dealing with the erosion of the original Republic ever since. In conclusion, there is significance between the deaths of former Presidents Thomas Jefferson and John Adams, who both died on July 4, 1826, which was the 50th Anniversary of the Declaration of Independence.

- C. **Pete Dinelli** – Summary of comments to the Board: Mr. Dinelli thanks the Commission for allowing him to speak to them. He wants to extend his appreciation to the Board for their hard work. The reason that he is here speaking to the Board today is the result of the Federal Monitor's 3rd report. Mr. Dinelli has been following this issue very closely for the last couple of years. He has read all three (3) reports and has looked at the Personnel Report recommendations by Dr. Alexander Weiss and the Organizational Plan. In the third report, Mr. Dinelli says his attention was drawn to the findings that were made regarding the present Command Staff, who actually had to be trained on how to investigate police officers. He would like to place an idea in the Board's ears to ask the Monitor to look at re-organizing the Albuquerque Police Department and to do it very drastically. In addition, he says that he has been advocating City Councilors the idea of appointing a Civilian Police Commissioner to oversee Albuquerque Police Department and the Albuquerque Fire Department. In particular, he would like to see Internal Affairs civilianized, which would be under the appointed Commissioner.

V. Review and Approval of Minutes

- A. Vice Chair Waites made a motion to amend item VI, letter B of the June 9, 2016 minutes to reflect that Assistant City Attorney Jenica Jacobi agreed that the 36 policies went through without the Police Oversight Board working on them. Member Fine seconded the motion. **Approved.**

For: Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites.

VI. Discussion: Letters and Responses from Chief and 2nd letter sent to Chief

- A. Executive Director Edward Harness has not heard back from the Chief of Police regarding the Use of Force of Policy (2nd Letter), which was sent to the Chief on or about the June 12 or June 13. As of July 14, 2016, the Chief has another 15 days to respond to the POB's 2nd letter regarding the policy changes. For more detailed information regarding the original letters, please refer to the Police Oversight Board minutes for June 9, 2016.
- B. Members discussed the finalized letter dated July 14, 2016 requesting APD-related data. The draft letter was discussed and approved at the June 9, 2016 POB meeting. Refer to the POB minutes from June 9, 2016 POB, Item XII, letter F, ii, letter a. **See attachment "A" for letter dated July 14, 2016 to Chief Gorden Eden from POB requesting APD-related data.**

VII. Discussion of DOJ Monitor's Third Report

- A. CPOA Director Harness discussed with the Police Oversight Board the DOJ Independent Monitor's report that was issued on July 1, 2016.
 - i. Copies of the report were sent out to the Board Members that afternoon. The Independent Monitor's Third Report can be found here: <https://www.cabq.gov/police/documents-related-to-apds-settlement-agreement>
 - ii. DOJ Attorney Elizabeth Martinez sent an email to Director Harness advising that the POB and the CPOA are now stakeholders in the Settlement Agreement and will be allowed to address the Court for the status conference with Judge Brack on July 28, 2016 at 1:00 p.m.
 - iii. The Monitoring team is pleased with the work the Board and the Civilian Police Oversight Agency are doing and the progress they are making.
 - iv. The Monitoring Team and the CPOA/POB are concerned with the Use of Force investigations as highlighted in the report. The Serious Use of Force and the Critical Incident Review Team (CIRT) concerns will be addressed later on in the meeting.
 - v. The CPOA is doing a good job with its investigations and the Monitoring team has found the cases to be thorough.
 - vi. The one case that was highlighted regarding the credibility of a witness, the Monitoring team is asking for more substantiated writing within that as to why the investigator found one side more credible than the other. Director Harness has spoken with the CPOA Investigative Staff regarding this issue and will move forward and make improvements in this area.
- B. **July 28, 2016 Status Conference with Judge Brack**
 - i. Chair Mohr read the email from DOJ Attorney Elizabeth Martinez that Director Harness referenced in Item VII, A, ii.
 - ii. Director Harness clarified for Member Brown that the POB and CPOA are not stakeholders like other Community Organizations involved in the Settlement Agreement. The POB and CPOA are a party to the action created as a result of the Settlement Agreement.
 - iii. Member Ring wanted clarification on who will be representing the POB at the July 28, 2016 Status Conference with Judge Brack. In response, Chair

Mohr said she sent an email to Attorney Elizabeth Martinez notifying her that someone from the POB might attend the Status Conference and the only issue they would bring to Judge Brack was the POB's concern for not being included in the policy process of the 36 policies that were previously passed without POB's review.

- iv. Director Harness indicated that based on Chair Mohr's broadly-based email to Attorney Elizabeth Martinez, the POB may want to entertain sending someone to address the Court regarding the broadly-based policy of timelines. This issue is addressed in Item VII, letter D.
 - v. Director Harness and Attorney Mark Baker will be attending the status conference on July 28th.
 - vi. Attorney Mark Baker recommended the following:
 - a. A POB Member to attend the Status Conference as input from a Board Member would be more impactful.
 - b. Clarified to the Members the procedure in which Judge Brack would like all the parties to confer with each other prior to bringing it to his attention in Court.
 - c. The POB come up with several issues they want to discuss in advance with the DOJ and APD prior to the Status Conference.
 - vii. Members discussed some of the issues the POB would like to address, they are:
 - a. The policy decision making process;
 - b. The quality of investigations done by APD Internal Affairs and CIRT;
 - c. Use of Force case review timelines.
 - d. POB Training process.
 - viii. Member Fine made a motion that the people we listed can go: Dr. Brown, Dr. Orick-Martinez, Ms. Fine, potentially Mr. Waites, if he can change his schedule, along with Mr. Harness and Mr. Baker, attend this meeting and have the authority to speak on behalf of the board. Member Brown seconded the motion. **Approved.**
For: Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites.
 - a. Prior to the motion, Vice Chair Waites wanted clarification on who will gather the speaking points. Chair Mohr responded that she, Mr. Baker, his staff and Mr. Harness will help gather speaking topics for the meeting.
 - b. The Status Conference will be held on July 28, 2016 at 1:30 p.m. at the Federal Courthouse, 421 Gold St. SW, Albuquerque, NM 87102 in the large Ceremonial Courtroom.
- C. Letter to the Court re: Correspondence with Chief re: Policy.** The Discussion relating to correspondence with the Chief of Police was previously addressed earlier in the meeting. See Item VI, A.
- D. Meaningful Civilian Oversight – CIRT**
- i. **Case review timelines.** Members discussed their review timelines set for Use of Force CIRT cases, which is currently 5 to 7 days.
 - a. Attorney Mark Baker has raised the 5 to 7 day timeline issue with the City Attorney Jessica Hernandez and is awaiting a response.

- b. Director Harness spoke about the POB/CPOA 7-day timeline:
 - 1. There is a flaw in the system.
 - 2. In his communication with APD Command Staff, he was told that they get 72 hours to review the file.
 - 3. The chart that was put together in Case Review is correct.
 - 4. The 7-day timeline is APD's attempt to fit the review period for all the parties within 30 days.
 - 5. The impossible-to-meet timelines are the reason that there is a lack in quality of the review process.
- ii. In order for a meaningful oversight to occur, the following must occur:
 - a. Paragraph 191 of the Settlement Agreement needs to be amended or stricken;
 - b. The union must live up to its pledge to negotiate with the POB/CPOA and the City in accordance with the changes in the ordinance;
 - c. In order for a quality review and a quality investigation, the timelines must be expanded.
 - d. Members discussed the POB training process and will be added to the list of topics to discuss prior to the Status Conference. See item VI, B, vii, d.

VIII. Consent Agenda Cases: The cases on the consent agenda have been individually reviewed by the Board members and the POB agrees with the CPOA's findings. The findings become part of the officer's file, if applicable.

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		

Vice Chair Waites made a motion to approve the *Administratively Closed Cases*.

Member Fine seconded the motion. **Approved.**

For: Brown, Fine, Mohr, Ring, Waites.

B. Cases more than 120 Days

099-15 115-15

Member Fine made a motion to approve *Cases more than 120 Days* as written by the CPOA Staff. Member Ring seconded the motion. **Approved.**

For: Brown, Fine, Mohr, Ring, Waites.

C. Cases less than 120 Days

057-16 058-16 090-16

Member Fine made a motion to approve the *Cases less than 120 days* as written.

Vice Chair Waites seconded the motion. **Approved.**

For: Brown, Fine, Mohr, Ring, Waites.

D. Copies of the full findings letters to citizens can be found at:

<http://www.cabq.gov/cpoa/findings-letters/civilian-complaints-pob-findings>

- IX. CIRT Cases 005-16 and 017-16:** According to the Agreement between the APD Union and the City of Albuquerque, the POB is not allowed to know the identity of the police officer named in the complaint. In accordance with the bargaining agreement, the CPOA does not reveal the officer's name to the Board. Director Harness read a summary of each of the following cases:
- A.** The Amended Police Oversight Ordinance was published on June 23, 2016. The amendment brought forth the review of serious Use of Force cases. The CIRT cases are coming to the Executive Director on a random basis with a 7-day turnaround timeline. They are coming as Critical Incident Review Team (CIRT) reviews.
 - B.** Prior to the discussion of the following CIRT cases, Director Harness spoke about another CIRT case that was sent back to Chief Eden without any comment or recommendations.
 - C. C-005-16:** Director Harness summarized CIRT case 005-16 to the POB. After his review of this CIRT case, Director Harness sent a Memorandum to Chief Gorden Eden requesting that this case be investigated by Internal Affairs regarding the actions of Officer K and Investigator B. **See attachment "B" for Memorandum to Chief Gorden Eden from CPOA Executive Director Edward Harness dated June 30, 2016.**
 - D. C-017-16:** Director Harness summarized CIRT case 017-16 to the POB. After his review of this CIRT case, Director Harness sent a Memorandum to Chief Gorden Eden recommending a finding of Sustained for Lt. W. for violating 1-39, Body Worn Camera policy. **See attachment "C" for Memorandum to Chief Gorden Eden from CPOA Executive Director Edward Harness dated July 7, 2016.**
 - E.** Members discussed that Director Harness, voluntarily and as part of the process, send a copy of the Memorandum regarding CIRT cases to Case Review Subcommittee Chair Leonard Waites and POB Chair Beth Mohr.
- X. OIS – Alfred Redwine I-2015-37.** This case is an Officer-Involved Shooting that occurred on March 25, 2014 and the victim is Alfred Redwine.
- A.** In accordance with the newly amended Police Oversight Ordinance, this Board can now review the administrative investigations related to Officer-Involved Shootings, whether or not the District Attorney has completed their investigation and as long as the District Attorney's Office does not object to the POB doing its administrative review.
 - B.** District Attorney Kari Brandenburg has approved the POB to hear OIS I-2015-37.
 - C.** The District Attorney's Office will do their best to shield themselves from the POB's review and the results of OIS I-2015-37.
 - D.** Director Harness will make the materials from OIS I-2015-37 available for the POB members to review.
 - E.** At a minimum, the POB should have 90 days to do its review.
 - F.** Member Fine made a motion to go forward as a Board on the administrative investigation of the Alfred Redwine case I-2015-37. Vice Chair Waites seconded the motion. **Approved.**

For: Brown, Fine, Mohr, Ring, Waites

- G. Member Ring made a motion to recess for dinner. Member Brown seconded the motion, **Approved.**
For: Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

----Dinner break at 6:21 p.m. Meeting reconvened at 6:49 p.m. ----

XI. Reports from Subcommittees:

- A. Outreach Subcommittee – Leonard Waites, Chair:** For more information regarding POB Outreach Subcommittee meetings and minutes, please refer to our website located here: <http://www.cabq.gov/cpoa/subcommittees/outreach-committee>. A copy of *CPOA Outreach: 07-14-2016 Updates to the POB* was distributed. Outreach Chair Waites presented an update of the following topics (See attachment “D”):
- i. The NACOLE Conference;
 - ii. The 2nd Community Policing Councils (CPC’s) Summit;
 - iii. Appeal Process tab on the CPOA’s website;
 - iv. The Independent Monitor’s Outreach office.
- B. Policy and Procedure Subcommittee – Dr. Susanne Brown, Chair.** For more information regarding POB Policy and Procedure Subcommittee meetings and minutes, please refer to our website located here: <http://www.cabq.gov/cpoa/subcommittees/policy-procedure-review-committee>
- i. Member Brown did not have a report.
 - ii. Member Brown commented that she was encouraged by City Attorney Jessica Hernandez’s comments during a status conference call on June 16, 2016 regarding the input received from individuals regarding any policy and what they will be doing with it. She says that this was something that they really wanted as well as the CPC’s.
 - iii. The next meeting for the Policy and Procedure Subcommittee will be on Wednesday, July 20, 2016 at 10:00 a.m. and the location to be determined at a later date.
- C. Case Review Subcommittee – Leonard Waites:** For more information regarding POB Case Review Subcommittee meetings and minutes, please refer to our website located here: <http://www.cabq.gov/cpoa/subcommittees/case-review-committee-crc> Case Review Subcommittee Chair Leonard Waites gave the following report:
- i. Case Review Subcommittee Chair Waites says that their meetings are always very productive and informative and they discuss a variety of different topics.
 - ii. The CPOA Executive Director’s recommendations for Serious Use of Force cases (UOF/CIRT) have been sent to Chief Eden. Copies of the recommendations were sent to Case Review Subcommittee Chair Waites, POB Chair Mohr and the Independent Monitor Dr. Ginger. This procedure will continue for future Serious Use of Force cases.
 - iii. The DOJ has confirmed that the POB and the CPOA are parties as defined in the Settlement Agreement.

- iv. Federal Judge Brack has agreed to listen to the CPOA/POB concerns regarding the Settlement Agreement.
- v. There will be a Status Conference on July 28, 2016 and the CPOA/POB must present their concerns 7 days prior to this hearing.
- vi. Timelines of all investigations are a concern and will continue to be a concern until it is corrected.
- vii. As part of their review of cases, the Case Review Subcommittee members suggested that they could make comments on the Findings Letters in Sharepoint prior to appearing at future meetings.
- viii. The next meeting of the Case Review Subcommittee will be held on September 1, 2016 at 10:30 a.m.

D. Personnel Subcommittee – Beth Mohr. For more information regarding POB Personnel Subcommittee meetings and minutes, please refer to our website located here: <http://www.cabq.gov/cpoa/subcommittees/personnel-committee>. Subcommittee Chair Beth Mohr gave the following report:

- i. The Personnel Subcommittee met on July 6, 2016 to discuss the evaluation process for CPOA Executive Director Harness and discussed the following:
 - a. Basic questions that would be part of the evaluation.
 - b. The evaluation process would be expanded to include other parties but not limited to City Attorney’s Office, APD, PPRP, OPA, CPCs, IA, CPOA Staff, POB Members, Dr. Ginger, DOJ, etc. to weigh in on Director Harness’ evaluation using Survey Monkey.
- ii. The next meeting of the Personnel Subcommittee will be held on Wednesday, August 10, 2016 at 4:00 p.m. at Plaza Del Sol, 600 2nd Street NW.

XII. Reports from City Staff:

A. APD, Commander Jeremy McRae, Internal Affairs: Commander McRae gave a report on Statistical Data for the Month of June, 2016. Copies of the following documents were distributed (See “Attachment E”):

- i. *APD Internal Affairs, Statistical Data for the Month of June 2016.*
- ii. *Graph: Internal Investigations, Year to Date (January through June), Year to date total received cases 2011 through 2016;*
- iii. *Graph: Internal Investigations January through June.*
- iv. Commander McRae clarified the types of investigations cited in the Independent Monitor’s report, which were Supervisory Review investigations used for standard use of force cases.
 - a. These investigations are separate and apart from Internal Affairs and CIRT investigations.
 - b. In regards to Internal Affairs and CIRT cases, the major concern was with the timelines and initiating cases. Commander McRae is taking steps to develop more concrete timelines so that they can address the issues as represented in the Monitor’s Report.
 - c. The information gathered and used for the Supervisory Review investigations cited in the Monitor’s report was done prior to the significant training that has since taken place. The trainings were a 40-

- hour mandated Use of Force training for all officers within APD and a 24-hour specific Supervisory Use of Force training.
- v. Since the trainings took place, they have been seeing the quality of those investigations improve.
 - vi. They are not stopping there and continue to look at other ways to provide quality checks within the process.
 - vii. The investigations cited in the Monitor's report were not specifically Internal Affairs investigations that the monitoring team found fault with, they found fault with their timelines.
 - viii. Commander McRae clarified for Member Fine that the CIRT team is a brother/sister to Internal Affairs division as they are under the Internal Affairs Division but separate.
 - ix. The difference between the CIRT team and IA is that the CIRT team is concerned with cases that are classified under the Settlement Agreement as Serious Use of Force and their main function is to look at the entire case for training and possible policy issues. However, if the case results in misconduct, then the CIRT investigation case is stopped and then transferred to IA for an investigation.
 - x. Commander McRae clarified with Member Brown the Standard Use of Force is initiated by the Sergeants because they are the immediate supervisors who begin a sequential review.
 - xi. Regarding officers annual employee evaluations:
 - a. Officers are evaluated at the beginning and end of a bid or annual work assignment.
 - b. Member Brown requested a copy of the form that is used to evaluation officers. Commander McRae said he could provide an example but the process is going to an electronic process.
 - c. Mr. Bill Slauson says that APD is moving into a new employee evaluation program called Talent Management and it will go live in a month or so. This program will replace the paper based evaluation and will all be online. The employee reviews will be more frequent and will provide an opportunity where people can access it wherever they are.
 - d. Mr. Slauson says that he can provide access to the training module of Talent Management to the POB.
 - e. Mr. Slauson clarified to Member Brown that APD does not do a 360 review.
 - xii. Probation and Parole on-call phone number was tested and broadcasted throughout the department. This included Juvenile Probation. For more information, please refer to the June 9, 2016 minutes, attachments "A" and "B."
 - xiii. Chief Eden has always been concerned with the ever increasing duties of Officers and has made some progress in regards on two types of calls that will significantly decrease the number of calls.
- B. City Council:** No one present to give report.
- C. Mayor's Office.** No one present to give report.
- D. City Attorney:** City Attorney Jessica Hernandez gave a summary to the POB:

- i. She is pleased that she was able to be at the meeting and hear the POB's concerns.
- ii. During the meeting, she and Mr. Slauson were discussing about how to follow up on some of the issues.
- iii. APD wants to address the POB's concerns.
- iv. Ms. Hernandez and Mr. Slauson have set up a meeting for the next day July 15, 2016 at 10:30 a.m. with APD to discuss the issues.
- v. Ms. Hernandez discussed with the board the following issues will be discussed at the July 15, 2016 meeting:
 - a. The issue of the Garrity statements has been discussed at length with the DOJ and the APOA. APD is in the middle of the DOJ and APOA. Ms. Hernandez says that they are working on this issue. She says that it is a practical challenge and it is recognized as an issue and they are trying to work through it.
 - b. Ms. Hernandez is in contact with Lt. for IA and will discuss the 7-day turn-around time that the POB has been concerned about and will discuss this issue at the meeting.
 - c. The Citizen Academy will be one of the topics that she will be discussing at the meeting to figure out how to address it.
- vi. Mr. Slauson is very active in OPA and the feedback form was one of the things he created in order to develop a two-way dialog concerning policy comments and/or input.
- vii. Members discussed with Ms. Hernandez the frustration of the longevity of POB training.
- viii. The POB will give Ms. Hernandez a copy of the letter requesting access to data. Ms. Hernandez recommended the Mr. Slauson be included in the letters.
- ix. Mr. Slauson gave a summary of the following:
 - a. John Whisonant will be contacted to clarify the issues in PowerDMS.
 - b. The POB can call John Whisonant or Mr. Slauson to set up the training on Power DMS.
 - c. Discussed the timelines for posting new SOP's on APD's website:
 - 1. Mr. Slauson says that he doesn't know what the average time to post the new policies because it is a whole new process.
 - 2. He instructed his staff in OPA is not to rush it.
 - 3. The whole purpose of OPA is to look at policies in depth, to take into careful consideration the aspects and influence that each policy has on the department and the community and not requiring a deadline.
 - 4. They are moving forward at a good pace and most of all the UOF policies are nearly done. This means that OPA's recommendations will be interjected into the process starting with the SOPRC and then the PPRB and then back to the OPA.
 - 5. Typically, the SOPRC meets one week and the PPRB meets the following week but they have done same week SOPRC and

PPRB. Once a policy makes it through the OPA, it probably will be about a month or so.

6. The six month deadline is when review starts, not the time they end it as to give lot of thought on each policy.
7. They are indexing out list of policies based on the time they were approved by the Monitor. So the UOF Suites were the first ones, those will 6 months the expiration was around June. We started our review process with the OPA before then and conclude in July and maybe early August.
8. The POB has representatives in each step of the process: OPA, SOPRC, PPRB.
9. At the POB's request, Mr. Slauson will email the 36 policies that were previously approved by the Monitor.

E. Community Policing Councils: No one present to give report.

F. CPOA Reports:

i. CPOA Executive Director Edward Harness: Director Harness gave the following report for the CPOA:

a. Budget FY17 approved. A copy of the document titled *Civilian Police Oversight Agency, Fund 110, FY/17 Approved Budget* was distributed and discussed. **See attachment "F."**

b. Mediation guidelines. A draft copy of the document titled *Memorandum of Understanding, Civilian Police Oversight Agency—Mediation Protocol* was distributed and discussed. **See attachment "G."**

1. CPOA Analyst Dr. Verploegh researched mediation programs across the country that involved civilian oversight and combined those standards with our obligations under the Settlement Agreement and the Ordinance.
2. Ms. Verploegh drafted the Memorandum of Understanding.
3. Director Harness welcomes the POB's input on the MOU.
4. Proposes in 14 days, that if he receives no comment, will have the parties sign the MOU.
5. The MOU is real clear on outlining what will and what won't be mediated and which officers will be eligible for mediation.
6. The MOU will give us a better impetus towards sparking better participation within the program.
7. The MOU will be presented as part of the Monitor's 4th report.
8. The discrepancy is that mediation is to be used first as outlined in the Settlement Agreement and the Ordinance. However, the conflict is that the Settlement Agreement says that no cases of misconduct shall be mediated. Misconduct is a broad definition because all the complaints are of alleged misconduct.
9. The MOU outlines and defines misconduct in order to narrow the parameters of the mediation process.

10. The MOU will meet the spirit of the Settlement Agreement so that there is a definition of misconduct as it relates to mediation without interfering with the definition of misconduct itself.
 11. The MOU was drafted after having conversations with Mr. Giaquinto of the Monitoring team. The mediation process was approved by the Monitoring team and now the MOU is the policy to back it up.
 12. Discussed mediation with APOA and APD prior to initiating any mediation and they all approved of the program.
- c. **Frank Tillman.** Director Harness gave a summary to the POB regarding the Command Staff and Chief Eden's response in reference to Frank Tillman's resignation.
1. Chief Eden agreed with the CPOA's recommendation that Officer Frank Tillman be terminated. However, prior to being terminated, Officer Frank Tillman resigned from the department.
 2. The Command Staff did not agree with the CPOA's recommendation to sustain SOP Violation 1-04-4B regarding inattentive to duty.
 3. Members discussed the outcome of Frank Tillman's Officer Certification and that it is up the Law Enforcement Academy Board to revoke his certification.
 4. APD will be passing the disciplinary file to the Certification unit in Santa Fe.
 5. Members discussed their concern that Frank Tillman will take his behavior to other cities/departments if his certification is not revoked.
 6. APD Internal Affairs Analyst Natalie Davila clarified for the POB that Frank Tillman's file will have in it "resignation in lieu of termination" so when and if he applies for jobs in other departments/cities, the information will be in his file. Most departments will physically come to view a file at IA. There have been other departments who have come to view Frank Tillman's file.
 7. Chief Eden found that the allegation that former APD officer Frank Tillman violated SOP 1-04-4W is unsubstantiated. The Chief did not find that a preponderance of the evidence supported the claim that Frank Tillman was untruthful.
 8. The non-concurrence letter from Chief Eden and the CPOA's Findings letter for Frank Tillman will be posted to the CPOA's website.
 9. The non-concurrences are detailed within the annual report.
- ii. **Miriam Verploegh, CPOA Analyst.** Prior to the POB Meeting, Director Harness emailed POB members a document titled: *Reasoning for 90 day Restriction on Citizen Complaints: Agenda Items July 14th POB Meeting.*

See attachment "H." Director Harness gave the following report for Miriam Verploegh.

1. Dr. Verploegh put together a purpose statement and a suggested policy for consideration and included research from other jurisdiction as to the limitation for filing complaints—the timelines.
2. Dr. Verploegh researched other communities and groups who are dealing with the same issue. This research was provided to the POB.
3. The average acceptance of the agencies researched was 174 days.
4. Members discussed the possibility of extending the timeline to up to a year.
5. This topic will be added to the list to bring to DOJ and Judge Brack.
6. City Attorney Jessica Hernandez to meet with Director Harness to explore further to see what the actual requirement is.

XIII. Meeting with Counsel re: Closed session to discuss matters subject to the attorney-client privilege pertaining to threatened or pending litigation in which the CPOA is or may become a participant-Board Attorney Mark Baker.

- A. The CPOA is coordinating with City staff to respond to IPRA Requests so that they are being processed and responded to.
- B. The Board did not meet in closed session during this meeting, as there were no matters to discuss with Attorney Mark Baker at this time.

XIV. Other Business: There was no other business.

XV. Adjournment: Member Fine made a motion to adjourn the meeting. Member Brown seconded the motion. **Approved.**
For: Brown, Fine, Garcia, Mohr, Orick-Martinez, Ring, Waites

Meeting adjourned at 8:35 p.m.

*Next regularly scheduled POB meeting will be on
Thursday, August 11, 2016 at 5 p.m. in the Vincent E. Griego Chambers.*

APPROVED:



Beth Mohr, Chair
Civilian Police Oversight Agency



Date

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

ATTACHMENTS

Civilian Police Oversight Agency
Edward Harness, Esq., Executive Director

Police Oversight Board

Beth Mohr, Chair

Leonard Waites, Vice Chair

Dr. Susanne Brown

Eric H. Cruz

Joanne Fine

Carlotta A. Garcia

Dr. Lisa M. Orick-Martinez

Rev. Dr. David Z. Ring III

July 14, 2016

Chief Gordon E. Eden
Albuquerque Police Department
400 Roma NW
Albuquerque, NM 87102

SUBJECT: Police Oversight Board Request for APD-related Data

The Civilian Police Oversight Agency (CPOA) is tasked with exploring trends within Albuquerque Police Department (APD) data as a way to generate positive change in training, policies, internal accountability, and officer discipline. Recent attempts to analyze trends and issues relevant to APD – and its officers – revealed that the CPOA does not have the appropriate access to the data needed to meet the goals outlined in the agreement and the ordinance.

Based on the expectations of the settlement agreement, the CPOA and the Police Oversight Board (POB) are formally requesting access from APD to all the data needed to meet Department of Justice (DOJ) requirements as outlined below:

1. Officer demographics, to include: (a) education level, (b) race, (c) military status, (d) date of hire, (e) rank, (f) age, and (g) sex
2. Arrest and citation data, to include: (a) age, (b) sex, (c) race, (d) arrest date, (e) arrest time, (f) arrest location, (g) incident offence, (h) incident location, (i) charge, (j) charge description, (k) district, (l) neighborhood, (m) mental health status, and (n) homeless status
3. APD-owned vehicle accident data, to include: (a) case number, (b) date, (c) time, (d) shift, (e) area, (f) unit, (g) location, and (h) circumstances
4. Take-home vehicle data, to include: (a) number of vehicles issued, and (b) number of officers who live outside city limits
5. Comments on policy in Power DMS

The data provided by APD will allow the CPOA and the POB to make relevant recommendations regarding training, policy, and discipline for APD. Please reference the access requirement to data and subsequent expectation of analysis as outlined in paragraphs 277, 282, 283, and 292 of the DOJ Settlement Agreement.

“Attachment A”

POB and CPOA accesses to complete data are vital for compliance with the Settlement Agreement and to effectively analyze trends within APD, a task required by City Ordinance.

We look forward to working with you in ensuring we both comply with the settlement agreement. We anticipate your reply to our recommendations above, in compliance with your obligations under §9-4-1-5(C)(5)(b).

Sincerely,



Beth A. Mohr, Chair
Police Oversight Board

CC: City Council President Dan Lewis
Mayor Richard J. Berry
City Attorney Jessica Hernandez
James Ginger Ph.D.
United States Attorney Damon Martinez
City Clerk Natalie Howard
Edward Harness, Esq., Executive Director

“Attachment A”



City of Albuquerque
Civilian Police Oversight Agency

Richard J. Berry, Mayor

Edward W. Harness, Esq., Executive Director

Interoffice Memorandum

June 30, 2016

To: Gordon Eden – Chief of Police Albuquerque Police Department
From: Edward W. Harness, Esq., Executive Director
Subject: C-005-16

Chief Eden:

After reviewing the investigative materials in C-005-16 I recommend an Internal Investigation regarding the actions of Officer K and Investigator B.

1. Officer K's description of events doesn't make sense and appear to be untruthful. A review of the lapel video does not support the officer's statements.
 - a. The subject is a highly intoxicated individual that does not engage the ignition of the vehicle in an attempt to flee, i.e. a dome light does not come on when one starts a car. The attempt to flee is the premise for the initial use of force.
 - b. The initial use of force is not an arm bar, but was an escort hold.
 - c. The subject is taken to the ground and never hand cuffed
 - d. The subject is never patted down for weapons.
 - i. The subject is allowed to lie on the ground without being handcuffed with other officers on the scene for over 10 minutes.
2. Investigator B. reviews this case under the use of force policy in effect 4-1-2016, this incident occurred 1-29-2016
 - a. I question Investigator B's review of the entire incident, including but not limited to the wrong policy, the lack of consistency between the officer's actions and his statements, the actual evaluation of force used, and lack of comment on officer safety.

Based upon my review of this investigation I recommend the initiation of an internal investigation based upon the issues stated above.

Edward W. Harness, Esq.
Executive Director
CPOA

“Attachment B”



City of Albuquerque
Civilian Police Oversight Agency

Richard J. Berry, Mayor

Edward W. Harness, Esq., Executive Director

Interoffice Memorandum

July 7, 2016

To: Gordon Eden – Chief of Police Albuquerque Police Department
From: Edward W. Harness, Esq., Executive Director
Subject: C-017-16

Chief Eden:

After reviewing the investigative materials in C-017-16 I recommend a finding of **SUSTAINED** for violating 1-39, the body worn camera policy against, Lt. W. By his own words he failed to properly record the incident involving himself, Sgt. S. and the subject. Lt. W. responded to a call for service, he did not record the incident in its entirety; there was not an identified equipment malfunction. Therefore, he is in violation of 1-39.

In my opinion, there need not be an additional internal investigation. The CIRT file contains enough information to support my recommended finding.

This department should strive for fair and equal treatment of all its officers. In the past the department has sustained other officers for similar behavior.

Edward W. Harness, Esq.
Executive Director
CPOA

“Attachment C”

CPOA Outreach: 07-14-2016 Updates to the POB

- **NACOLE: National Association for Civilian Oversight of Law Enforcement**
 - Funds were secured from City Council to support the Annual Conference.
 - Sponsorships are still needed, so if any Board Members have suggestions on whom we may ask, please let Chair Mohr or Director Harness know as soon as possible.
 - We want to encourage community member to mark their calendar's for Sunday, September 25th from 1:00-2:30pm. NACOLE will be hosting a FREE Community Meeting titled: "Advancing Community Trust". More information will be announced as we get closer to the date.
- **CPC's:**
 - The CPOA will be hosting the 2nd CPC Summit later this month. Please note that although this is open to the public, there will be **NO** time dedicated to public comment. The sole purpose of this summit is to help the CPC's review the Third Monitor's Report. They will be presenting to the Judge at the Status Conference.
- **Website:**
 - The Appeal Process has a new tab on the CPOA website that helps explain the proper way to submit an appeal according to the City Ordinance.
- **Monitor's Outreach Office:**
 - CPOA currently building a community partnership with the Monitor's Outreach Office. We will have more to report on this partnership next POB meeting. The phone number to their office is 505-767-5833

"Attachment D"

POLICE OVERSIGHT BOARD
INTERNAL AFFAIRS
STATISTICAL DATA FOR THE MONTH OF JUNE 2016

APD 911 Communications Center
 Dispatched calls for Service for JUNE 2016: 43,680

INTERNAL CASES FOR THE MONTH OF JUNE 2016

I's

Internal Cases Received: 10
 Comprised of:

- 6-Internal Affairs Investigated case
- 4-Area Command Investigated cases

Internal Cases Administratively Closed: 1

Internal Cases Mediated: 0

Total Internal Cases Completed the Month of JUNE: 16
 Comprised of:

- 6-Internal Affairs Investigations
- 3-Area Command
- 7-Preventable Vehicle Accident

Discipline imposed for Internal Cases/ JUNE 2016:

3: Verbal Reprimand
8: Letter of Reprimand
1:8 hour Suspension
2:16 hour Suspension
1:48 hour Suspension

Standard Operating Procedures (recommended)

Admin Orders:
 3-1-6B 3-5-2A5 3-66-3C2a 3-72-B9 3-72-2B2

Conduct:
 1-04-1E 1-04-3F1 1-04-4D 1-04-4J1

General Order:
 1-05-2E1 1-18-2A1 1-18-2C4 1-18-2D10-7
 1-39-1A 1-39-2B 1-39-2D 1-39-3B
 1-39-4 1-39-4B4 1-39-4E1 1-39-6B

Procedure:
 2-24-3B1 2-18-2G3

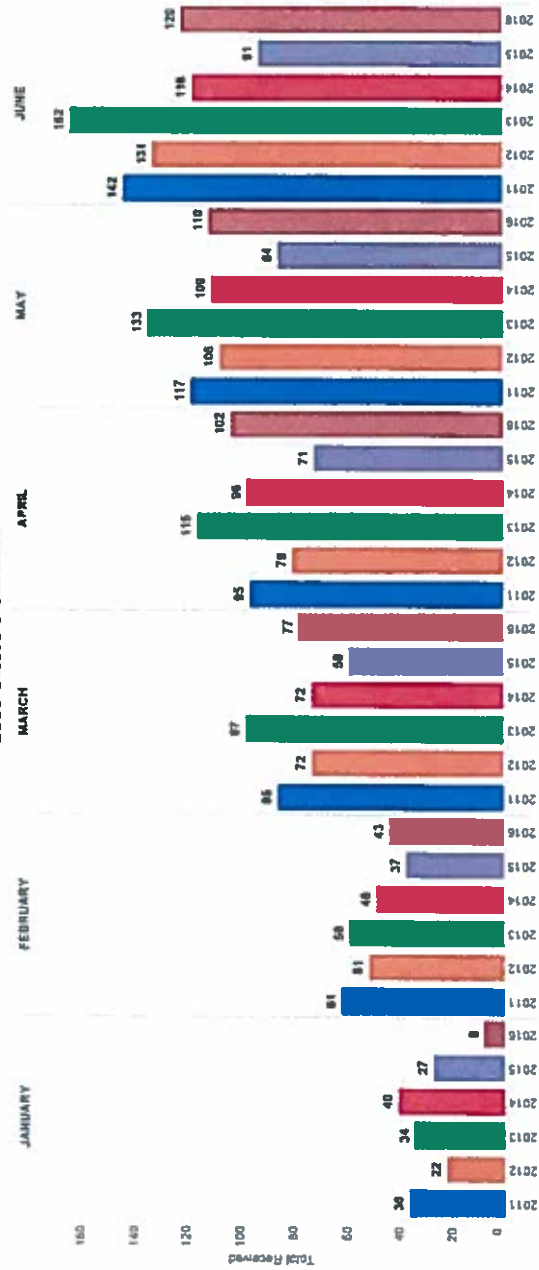
Firearm Discharge:
 2-52-3A

Pending Cases for the Month of JUNE 2016: 8

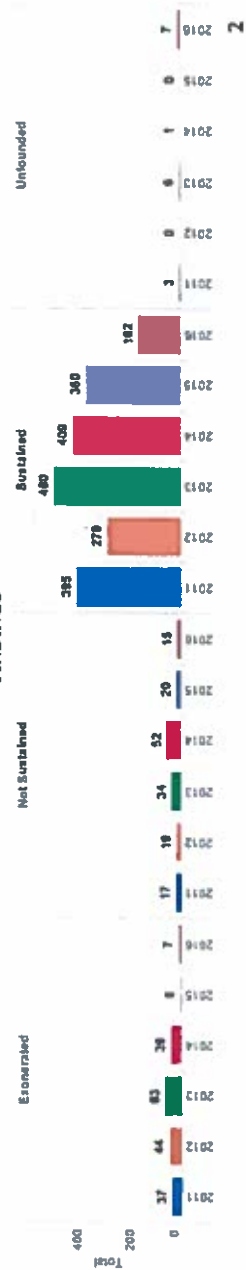
“Attachment E”

**INTERNAL INVESTIGATIONS
YEAR TO DATE
(JANUARY THROUGH JUNE)**

**YEAR TO DATE TOTAL RECEIVED CASES
2011 THROUGH 2016**

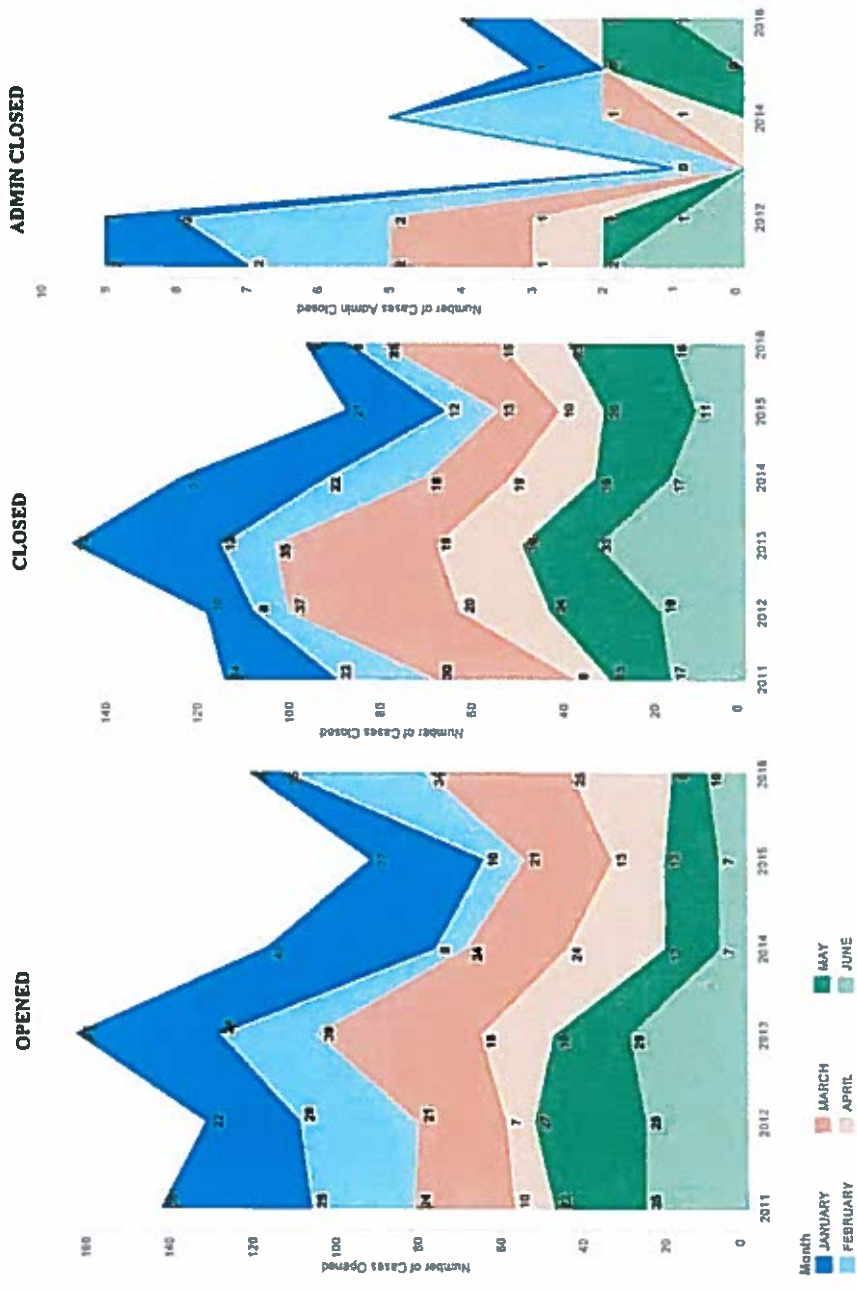


FINDINGS



“Attachment E”

**INTERNAL INVESTIGATIONS
JANUARY THROUGH JUNE**



“Attachment E”

**CIVILIAN POLICE OVERSIGHT AGENCY
FUND - 110
FY/17 APPROVED BUDGET**

Date 6/20/2016 Time *

Page - 1 -

	<u>POS.</u>	<u>PERSONNEL</u>	<u>EXPENSES</u>	<u>CAPITAL</u>	<u>TRANSFERS</u>	<u>TOTAL</u>
FY/16 APPROVED BUDGET	8	700,920	304,080	0	0	1,005,000
TECHNICAL ADJUSTMENTS:						
Salary Forecast Adjustments		(15,932)				(15,932)
OEB - Dental/Admin Fee/Retiree Health Adj		(3,024)				(3,024)
Salary Accrual - 1 day		(2,128)				(2,128)
One Time Funding - Attorney/Training/Supplies			(131,700)			(131,700)
Telephone			(924)			(924)
Network						0
Telephone Op - VolP					1,256	1,256
RISK - Workers Comp					829	829
RISK - Tort & Other					24,189	24,189
Rounding		(566)				(566)
SUBTOTAL	0	(21,650)	(132,624)	0	26,274	(128,000)
DEPARTMENT REQUEST	8	679,270	171,456	0	26,274	877,000
EXECUTIVE DECISIONS						
ISSUE PAPERS:						
SUBTOTAL	0	0	0	0	0	0
CIP COMING-ON-LINE:						
SUBTOTAL	0	0	0	0	0	0
TOTAL FY/17 PROPOSED BUDGET	8	679,270	171,456	0	26,274	877,000
NET / PERCENT CHANGE	0	-3.1%	-43.6%	n/a	n/a	-12.7%
COUNCIL DECISIONS						
Wage Adjustment Increase		7,000				7,000
One-Time for Outside Counsel and Training			100,000			100,000
SUBTOTAL	0	7,000	100,000	0	0	107,000
TOTAL FY/17 APPROVED BUDGET	8	686,270	271,456	0	26,274	984,000
NET / PERCENT CHANGE	0	-2.1%	-10.7%	n/a	n/a	-2.1%
NONRECURRING APPROPRIATIONS - INFORMATION ONLY						
One-Time for Outside Counsel and Training			100,000			100,000
SUBTOTAL	0	0	100,000	0	0	100,000

“Attachment F”

Memorandum of Understanding
Civilian Police Oversight Agency--Mediation Protocol

I. Parties

This Memorandum of Understanding (MOU) functions as an agreement between the Civilian Police Oversight Agency, the Albuquerque Police Department, and the Department of Justice about the specific circumstances when a civilian complaint will be appropriate for mediation. 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 resolving complaints about police misconduct. 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 expert officials 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(G)(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 findings, and its conclusions in writing. APD and the Civilian Police Oversight Agency shall

¹ Proctor, Jon, Clemmons, AJ 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://cnbj.legistar.com/legislationDetail.aspx?ID=2724100&GUID=13BDB459-1A35-434C-8215-0EE1FDC48D72&Options=ID|Text|Search|police+oversight>

"Attachment G"

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, and 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 Civilian Police Oversight 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 file:

- 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 Civilian Police Oversight Agency, the Albuquerque Police Department, and the Department of Justice. This MOU shall become effective upon signature by the authorized officials from the Civilian Police Oversight Agency, the Albuquerque Police Department, and the Department of Justice 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 G"

Edward Harness - Executive Director
Albuquerque Civilian Police Oversight
600 2nd Street NM, Room 813 | PO Box 1293 | Albuquerque, New Mexico 87102
Direct: 505-924-3794 | Fax: 505-924-3775

Dan Giaquinto
Department of Justice
New Jersey
dgiaquinto@drlaw.com

Bill Slauson
Exec Director/APD Supp Bureau
Albuquerque Police Department
APD Law Enforce Ctr
505/768-2427
BSlauson@cabq.gov

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

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

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

“Attachment G”

Reasoning for 90 Day Restriction on Citizen Complaints:
Agenda Item July 14th POB Meeting

Purpose Statement:

The purpose of this recommendation is to suggest that the CPOA implement a time limitation on the acceptance of citizen complaints. A clear limitation on investigations conducted will allow the CPOA to dedicate resources to outcomes more likely to result in effective discipline or policy recommendations, which in turn will lead to oversight that is more meaningful. Below is a recommendation for a new policy, evidence that supports the recommendation, and a review of 14 other oversight agencies and their policies on complaint acceptance.

Recommended Policy:

All citizen complaints will be accepted by the CPOA. When the date of incident occurred more than 180 calendar days from the date of filing, complaints will be accepted, but not fully investigated.

The above provides an easy to understand limitation that does not open itself to a claim of subjective, capricious decision-making by the POB or the Director. If this absolute deadline is unpalatable then the addition of the following could be added.

Additional:

If, however, the complaint involves an alleged criminal violation, a significant rule violation (such as excessive use of force), or the complainant can show good cause for not making the complaint within the specified time limit the Executive Director, with approval of the Police Oversight Board or designated sub-committee, shall have the discretion to assign the complaint for investigation.

Background:

One of the goals of oversight is to provide discipline of officers when misconduct has occurred against community members. The goal of discipline is to modify behavior so correct choices are made. Whether the discipline comes in the form of punishment or education and training it must be timely in order to be effective. An open time limit where all cases regardless of circumstance or severity are investigated does not provide timely discipline and is ineffective at modifying behavior. In the past, a time limit of 90 days was placed by Ordinance on when complaints could be investigated, regardless the reason of delay in filing. The revised POB Ordinance gives the POB authority to decide its own time limits. The Settlement Agreement Paragraph 170 states all complaints will be accepted regardless of when filed. Paragraph 170 also states that civilians should file promptly so that full investigations can be made expeditiously, which allows for the full range of disciplinary and corrective actions to be available. In other words, all complaints will be accepted, but stale, untimely complaints that lack the full range of disciplinary actions should not be subjected to full investigations. Judge Brack, the Court's signor for the Settlement

“Attachment H”

Agreement, stated stale, informal complaints will generally not, and generally cannot, result in a disciplinary investigation.

The challenges of investigating complaints greater than 180 days are numerous. The memories of both complainants and officers for an incident are questionable the longer the time lapse, especially for calls that are more commonplace. Often the evidence, such as lapel videos, is unavailable as the retention period is 120 days currently¹. Investigations evaluate officers' actions on the policy in effect at the time of incident. Policies have been rapidly changing since the Settlement Agreement so little value is gained by reviewing old incidents in the light of old policies. Even if a violation can be substantiated and disciplinary options are still available, disciplining officers for actions taken possibly years past does not likely modify behavior in a positive way or address their current skillset as an officer. Complications with the Collective Bargaining Agreement may arise from changes in assignments or rank if untimely discipline is attempted to be imposed

Statistical Summary:

Below is a description of all the cases accepted beyond 90 days between the opening of the time limit and the end of April 2016. This data shows that 14% of the caseload consisted of cases beyond the 90-day limit and none of those cases were sustained.

- 74 cases between 2014 and 2016 were accepted over the time limit of 90 days
- There are 541 cases between 2014 and 2016
- Out of 74 cases that were investigated outside of the time limit
 - 52 have been closed
 - 9 exonerated
 - 8 unfounded
 - 5 not sustained and
 - 30 administratively closed
 - There were no sustained findings in the 74 cases accepted outside of the time limit

Perspective of the DOJ:

The third Monitor's report addressed the issue of unrestricted complaint filing. In section 4.7.156 Assessing Compliance with Paragraph 170: Complaint Receipt Process page 224, the monitoring team argued, "Complaints that are made after a significant delay from the date of incident are often difficult to investigate, with witnesses and evidence sometimes difficult to locate, and many times complainants, subjects, and witnesses having faded memories due to passage of time. These types of complaints tend to consume valuable investigative resources without a fair chance of reaching a resolution with a dispositive finding. They also may be a factor in leading to the CPOA backlog. The monitor suggests that the parties continue to assess this issue to determine whether some time limitation-related staffing changes may need to be embodied in a revision to the CASA or into policy."

¹ If the limitation for full investigations is adopted videos should be retained for at least 210 days.

"Attachment H"

Time Constraints in other U.S. Oversight Agencies

Example time frames in other departments are outlined below. The average acceptance of complaint over these 15 agencies was 174-day limit. This means that on average oversight bodies had an average limit of 174 days for accepting complaints.

- 1. City of Madison**
Guideline for Complaint Acceptance Citizen Complaints will not be investigated if the complaint is received more than 90 days after the alleged incident will be limited to a supervisory review of the available information. Unless the complaint involves an alleged criminal violation, a significant rule violation (such as excessive use of force), or the complainant can show good cause for not making the complaint within the specified time limit.
- 2. Baltimore Maryland**
Are not required to investigate complaints outside 90 day window but the police force could choose to do so if it wanted to.
- 3. Denver police**
Community complaints against officers should be filed as soon as possible. It is expected that a complaint involving minor misconduct (such a discourtesy) will be filed within 60 days of the incident and a complaint involving serious misconduct (such as unreasonable use-of-force) will be filed within 6 months of the incident. Exceptions to these timeliness rules may be made if good cause is shown.
- 4. San Diego**
Intake: Complaints must be written, signed under penalty of perjury, and filed within one year of the incident, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the period of incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired.
- 5. Berkley**
Intake: In addition to accepting policy complaints regarding general departmental policies, the PRC also investigates complaints of alleged misconduct against individual officers. Such complaints must be written, signed by the aggrieved person, and filed within 90 days of the incident.
- 6. Portland**
The complainant delayed too long in filing the complaint to justify present examination (PCC 3.221.120(F)(2)). AIM classifies as "Filing Delay." It is desirable that complaints be filed soon after the incident. Memories are fresher, witnesses are easier to locate, and physical evidence may still be recoverable. If misconduct was committed, it is in the bureau, public, and officials interests to take disciplinary or corrective action as soon as possible. If misconduct was not committed, employees are entitled to swift exoneration. As a general rule IPR permits more delay for complaints of serious misconduct and less

“Attachment H”

delay for complaints of minor misconduct. IPR waives the time requirement for good cause. "Good cause" for a filing delay may include a defense attorney advice to the complainant to wait until criminal charges are resolved. Good cause may include a language barrier, a physical or mental disability, and confusion about how to file a complaint, a reasonable fear of retaliation, or a reasonable delay in the complainant discovery of the misconduct.

Except for good cause, complaints of minor misconduct involving courtesy, communications, and minor rules violations that might be handled as service complaints should be filed within 60 days of the incident. If IPR dismisses a complaint of minor misconduct on timeliness grounds, IPR may forward the complaint to the Bureau (e.g., Chief Office, IAD, or Precinct Commander) or other appropriate public agency in accordance with Section 3.a.(4) (Actions on complaints) above. (b) Except for good cause, complaints of serious misconduct including, for example, excessive force that causes substantial physical injury, egregious acts of disparate treatment, or major rules violations should be filed within 6 months of the incident. IPR may waive the time limit if there is substantial corroborating evidence of the misconduct. (c) There is no specific deadline for complaints alleging serious criminal conduct or corruption. Such complaints will be evaluated on their merits with due consideration for the quantity and quality of available evidence.

7. City of Miami

All complaints must be submitted within a year of the date of the incident giving rise to the complaint. Complaints submitted after one year of the alleged misconduct may, however, be reviewed by the CIP only if approved by a majority vote of its members.

8. City of Riverside California

The community police review commission will review only those complaints filed against sworn police personnel and that are filed within six months of the incident that gave rise to the complaint.

9. Boise Idaho

You have 90 days from the date of the incident to file your complaint.

10. Pittsburg

You may call, write, fax or drop in to the office and tell us what happened. We will log your initial contact as a pending complaint. A pending complaint must be filed within 6 months of the incident causing the complaint and is kept on file until you convert it to a Citizen Complaint (also within the 6 month period) by describing the situation under oath.

11. Minneapolis

Any person who has personal knowledge of alleged misconduct on the part of a Minneapolis police officer may file a complaint with the office of police conduct review by submitting said complaint by means of any readily available method approved by the office. The office shall endeavor to facilitate the complaint filing process by providing multiple and accessible avenues for the filing of complaints. Absent extenuating

“Attachment H”

circumstances deemed sufficient to warrant untimely filing, no person may file a complaint if more than two hundred seventy (270) days have elapsed since the alleged misconduct.

12. Washington DC

The Office of Police Complaints (OPC) provides a variety of ways to file a police misconduct complaint. A completed, signed complaint form must be received within 45 days of the date of the incident.

13. Philadelphia

The Police Advisory Commission accepts complaints against Philadelphia Police Officers regarding incidents which occurred within 180 days of the time of filing.

14. Sacramento

OPSA must receive a complaint within one (1) year from the date of the incident upon which the complaint is based.

15. Department of Justice Civil Rights Claim:

You should file your complaint as soon as possible. In some instances, depending on the applicable statute, you may have only 180 days after the alleged incident of discrimination to file with the OCR. In other instances, you may have at most one year after the alleged incident of discrimination to file with the OCR.

In Conclusion:

A clearly stated limitation of when full investigations will take place will encourage the timely filing of complaints. The investigations conducted will dedicate resources to outcomes more likely to result in effective discipline or policy recommendations, which in turn will lead to oversight that is more meaningful.

“Attachment H”