



The Pursuit of Excellence
by the Charlotte-Mecklenburg Police



Employee Conduct:
Investigations & Discipline

A Guidebook for the Public and Our Employees
On What We Do and Why We Do It
2005

MISSION OF THE CHARLOTTE-MECKLENBURG POLICE DEPARTMENT

The Charlotte-Mecklenburg Police Department will build problem-solving partnerships with our citizens to prevent the next crime and enhance the quality of life throughout our community, always treating people with fairness and respect.

We value:

- Our Employees • People • Partnerships**
- Open Communications • Problem Solving • Integrity**
- Courtesy • The Constitution of North Carolina**
- The Constitution of the United States**



MISSION OF THE CMPD INTERNAL AFFAIRS BUREAU

The Charlotte-Mecklenburg Police Department Internal Affairs Bureau will act to preserve public trust and confidence in the Department by conducting thorough and impartial investigations of alleged employee misconduct, by providing proactive measures to prevent misconduct, and by always maintaining the highest standards of fairness and respect towards citizens and employees.

Published January 2005 by the Charlotte-Mecklenburg Police Department

The development of this document was supported by Grant # 2002-HSWX-0020 from the Office of Community Oriented Policing Services, U.S. Department of Justice. COPS Office support enabled the Charlotte-Mecklenburg Police Department to enlist Bill Geller, Director of Geller & Associates, to collaborate in writing this guidebook. Points of view or opinions contained in this document are those of the author and do not necessarily represent the official position of the U.S. Department of Justice.



Chief of Police Darrel W. Stephens



Charlotte-Mecklenburg Police Department

It is my pleasure to present this guidebook on Employee Conduct Investigations and Discipline in the Charlotte-Mecklenburg Police Department. The guidebook is the result of discussions and feedback from both citizens and CMPD employees, and we are grateful to the U.S. Justice Department's Office of Community Oriented Policing Services for funding its development.

The men and women of the Charlotte-Mecklenburg Police Department value the public's trust. It is one of the most important ingredients in our success as an organization. Central to that trust is the Department's ability to effectively police itself. Another foundation of success is conducting internal investigations and imposing discipline in a manner that our employees find trustworthy and consistent with our values. This guidebook is designed to explain to the public and our employees the process we use to investigate alleged wrongdoing by our own, and why we use the procedures we do. We provide this information in the hope that it helps engender and strengthen your trust in us.

I am proud of the service our employees deliver to our community, and the many productive partnerships we enjoy with our citizens. I hope that you find the information in this guidebook helpful and reassuring of our commitment to high standards of service and integrity.

Sincerely,

Darrel W. Stephens
Chief of Police

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There are many things we do to try to earn and keep the trust of the increasingly diverse public we serve. One of these things is remaining open to hearing any and all complaints, no matter who files them and whether or not the complainant is identified.

Another crucial asset in any organization is trust among the employees of all ranks. Absent sufficient trust, we would work ineffectively, inefficiently, and more dangerously than necessary. Are false complaints likely to upset our employees? Sometimes. We attempt to minimize the harm by determining as quickly and accurately as possible whether any complaint — anonymous or otherwise — is valid.

Major Objectives of Our Complaint Investigation System

- create citizen confidence that their complaints will be taken seriously and properly investigated
• create police employee confidence that complaints will be investigated within a reasonable amount of time and that they will be treated fairly and consistently
• appropriately correct employee behavior that is not consistent with our values or policies
• provide useful information to City and County officials, the CMPD, and the community about how police should behave in their encounters with citizens and about policy, operational, and training changes that might be made to help ensure professional police service to the public

Would CMPD employees trust the Department's leadership even more if we were more restrictive in the complaints we accept for investigation? Maybe. But at what cost to our public trust?

In our democracy, we are faced with numerous, delicate balancing acts between conflicting rights and responsibilities. We in government

employment must always remember that we are public servants. It's not our government or our police department only. We run our branch of government as stewards for the populace at large, which of course includes police employees.

Do we believe the customer is always right? No. But we must be sensitive to how powerful and intimidating we can sometimes be to our customers when they have a complaint about how we do our jobs. In the interest of fostering community trust, we in the police department must do our best to hear even a timid, poorly expressed, sincere criticism of how we do business. (We will address later the difference between a sincere but mistaken complaint and a malicious complaint.)



How should we strike the balance between protecting our employees against false complaints and assuring that the public feels welcome to give us negative feedback?

How to file complaints

To bring a complaint to the police department's attention, the complainant should communicate in person, by telephone, letter or email, in any of the following ways:

- BY TELEPHONE:
• the CMPD's Internal Affairs Bureau (704) 336-2336 or (704) 336-2183 Monday-Friday, 8:00 am – 5:00 pm
• the Watch Commander during evenings, weekends and holidays (704) 336-2141
• any CMPD division office (ask to speak to a supervisor)
• the City's Community Relations Committee (704) 336-2424 Monday-Friday, 8:00 am – 5:00 pm

BY MAIL:
Charlotte-Mecklenburg Police Department
Internal Affairs Bureau
601 E. Trade Street
Charlotte, NC 28202

- Say “I’m sorry” on behalf of the company (even if it’s unclear whether any misconduct occurred)
- If possible, arrange a mutually convenient time when we could be served by a different salesperson or repair technician
- Invite us to meet in person with someone from customer service and the employee against whom we complained so that any misunderstandings or conflicts can be resolved

How many of these or related “peacemaking” steps could a conscientious CMPD complaint taker or investigator set in motion? It depends on a lot of considerations. There are many situations in which the complaint taker is unable to launch such conflict resolution. We understand this inability to do anything except commence a formal investigation may sometimes be a source of puzzlement and frustration to a complainant, the accused police employee, and the complaint taker as well.

In preparing this guidebook, we met with groups of police employees and members of the public to hear their perceptions and opinions about complaints and their processing by the CMPD. We heard many comments from both groups about how the formalities of the complaint reception and review process sometimes undermine effective and prompt conflict resolution.

“Why doesn’t the Department apologize for mistakes, misconduct, or unacceptable service?” asked one Charlotte resident.

Another, a supervisor in a bank, wished the CMPD could behave more like his bank. He related that he took a call from a disgruntled customer. The customer recently moved to Charlotte and was uncertain how to make a withdrawal from an account he opened in another city. The customer called his Charlotte branch of the bank and was told by the call taker that it wasn’t her job to answer such questions, and the customer should call a different phone number. The supervisor called the customer back and said, “I understand you were less than satisfied with some customer service that you received from our company today, and I’m calling you to, first of all, tell you we’re sorry; and second of all, to make sure that you get what you need.” “That,” the supervisor told our discussion group, “was really all it took.”

Can we say, “I’m sorry”?

So if a simple apology and promise that the customer will get better service soon can be so useful and economical in resolving disputes, why doesn’t the CMPD just say “I’m sorry” more often? Would doing so help us resolve some complaints informally and save all concerned the nuisance, stress and expense of a protracted investigation and complaint review process?

The answer is that sometimes the CMPD complaint taker or someone else in our agency does offer a general apology or express regret that the complainant feels poorly treated by a member of the Department. But many complaint takers may be reluctant—as may everyone in the chain of command up through the chief of police—to offer an apology that may be premature or could be interpreted by lawyers as a technical admission of liability. Unfortunately, operating in a liability-laden environment often means being unable to say, “I’m sorry.”

Remember that here we are focusing on the potential difficulty of the CMPD apologizing *after* a dissatisfied customer has filed a formal complaint. It may be possible for officers to prevent some dissatisfaction that leads to complaints simply by apologizing at the time of the event, if they sincerely are sorry. For instance, statements such as the following can go a long way toward resolving tension between an officer and a citizen: “I stopped your car because we are searching for a robbery suspect who is driving one like yours. You are not the person, so you are free to go. I am sorry for any inconvenience to you.” Certainly we hope that our employees use good judgment and apologize when it’s appropriate and prudent.

Can we send another officer to help you?

Once a complaint has been filed, what about the other common move by customer service reps in the private sector—arranging for prompt, more satisfactory service to the complainant, perhaps by a different employee? In the nature of police-citizen interactions, often this is not possible. For example, if the customer was an involuntary customer of the police, probably the last thing he or she wants is another encounter with a cop. Still, if the complainant’s expressed need for police service is an ongoing one (say, enforcement against disorderly behavior by neighborhood youth every weekend), it may be possible to resolve the

complaint by arranging for more responsive police service at an appropriate time.

Can we sit down and resolve things amicably?

What about a discussion involving the complainant, accused police employee, and someone who can help them talk out and resolve their differences in a mutually respectful and satisfactory way? This can — and sometimes does — occur, but recommending this path to someone who is complaining about police conduct can be a risky step for the complaint taker. It can be risky because a well-intended suggestion to attempt to reach an amicable, informal solution could deter a complainant from following his or her impulse to file a formal complaint. Such deterrence is a violation of CMPD policy.



**CMPD Rule of Conduct # 26:
Citizen Complaints**

“...Employees may attempt to amicably resolve citizen complaints, but they will not attempt to prevent any citizen from lodging a formal complaint against any individual employee or against the Department.”



Moreover, if the police conduct at issue is potentially a violation of CMPD rules, then it is unacceptable to the Department to have the matter “go away” after an informal dispute resolution, even if the complainant would be willing to leave the matter at that. Certain kinds of conduct by our employees are unacceptable to the CMPD, whether or not a particular affected member of the public is willing to let bygones be bygones after an apology and reconciliation between the disputants.



How should we strike the delicate balance between inviting people with minor complaints to seek a speedy, amicable resolution and assuring that they believe us when we say they are entitled to a formal investigation if they prefer that?



An Internal Affairs Bureau staff member told a discussion group how he felt about the notion of resolving citizen complaints informally instead of using the full-blown investigation and review process:

“An amicable resolution is not going to apply to a serious allegation of misconduct. We take those very seriously, and it’s going to be investigated regardless. If someone is alleging a use of force and they say, ‘I just want him to apologize for hitting me,’ that’s not going to be something we would accept.”

But an informal resolution might be possible for some less serious complaints, he allowed:

“A common one is the traffic stop scenario where there’s an allegation or a concern about rudeness. We have the video cameras in each car now, and a lot of times we put the citizen with the sergeant and the officer to review the tape, watch the stop and discuss everything that happened. If the citizen and the person taking the complaint are comfortable with an amicable resolution to that situation, it won’t go to the next step where it’s an active investigation. However, if the citizen wants an active investigation or they can’t amicably resolve the issue, it becomes an active investigation. But the serious allegations are not open for that discussion.”



11 randomly selected members of the public who filed complaints against CMPD employees during the late 1990s were asked by KPMG interviewers:

“If you could speak with the subject of the complaint and his/her boss instead of filing a complaint, would you?”

Interestingly, 7 of the 11 said yes. (KPMG’s Year 2000 audit report, page 19 & Appendix E)

These numbers are too small to be statistically significant, but if they represent more widely held preferences, there may be substantial interest among the public in resolving at least

- use of force
- dishonesty
- abuse of position generally
- abuse of position specifically to solicit gifts, gratuities or services; or acceptance of such benefits if intended to influence a police action
- violations of pursuit driving directives
- other driving violations (not during pursuits)
- harassment of co-workers
- use of alcohol on duty or in uniform
- possession or use of illegal drugs
- unbecoming conduct
- unsatisfactory performance
- violations of residency requirements
- insubordination
- failure to participate as required in administrative investigations
- prohibited labor or political activity
- intentional damage of Department equipment

Why do we classify complaints when we receive them?

Specifically, why do we classify complaints according to which units of the Department will conduct the initial investigation and how high in the chain of command the investigations will be reviewed? We do this because all parties to a complaint deserve to have the matter efficiently and fairly investigated, and the most serious complaints—which may involve the greatest harm to the complainant, the Department’s reputation, or the employee’s career—deserve the most specialized investigation and scrutiny by our top leaders. This is the respect any of us would want if we were the complainant or the accused employee in a serious case.

Moreover, we promptly classify complaints because the most serious matters may require emergency intervention by the Department to relieve the involved employee of duty pending an investigation. The chief or the chief’s designee has the discretion under CMPD policy to place on administrative leave with pay an employee whose conduct may jeopardize the Department’s efficient operation or the public’s safety. This step can be taken prior to giving the employee an opportunity to explain or justify his or her behavior.

● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● **INVESTIGATION OF THE COMPLAINT** ● ● ● ● ● ● ● ● ● ● ● ● ● ● ● ●

Investigations are conducted either by the employee’s supervisor or by the IA investigator, who is a sergeant. Either way, the investigative steps are relatively standard:

- interview and obtain a statement from the complaining party
- interview and obtain a statement from any relevant witnesses
- obtain any physical, documentary or photographic evidence (if needed, investigators may search CMPD buildings, vehicles and other property)
- obtain any miscellaneous reports or materials relating to the complaint and actions of the employee
- review all statements and evidence prior to interviewing the accused employee, in order to prepare for that interview
- interview the accused employee
- transcribe all recorded interviews (IA investigators always record interviews and some other investigators do so)
- prepare a written summary of the evidence, the investigation process and the events surrounding the allegation of misconduct

The accused employee’s rights and obligations during the interview

Before beginning the interview, the investigator must inform the employee of the nature of the allegations against him or her and the complainant’s identity, if known. The employee will also be informed of the name and rank of all persons present during the interview.

In these administrative investigations, accused employees must answer truthfully all questions put to them or face discipline for failure to cooperate. They will be notified that any information they provide may be used against them administratively but may not be used against them in a criminal prosecution. This notification is known as a “*Garrity*” warning, referring to a U.S. Supreme Court ruling having to do with police officers potentially facing both administrative and criminal investigation for the same conduct. (Any criminal

investigation of a police employee will be conducted by a specialized criminal investigative unit of the Department or by another agency. Such investigations are not addressed in this guidebook.)

During an administrative investigation, accused employees do not have a right to be represented by counsel, but they may have a supervisor of their choosing present, so long as that supervisor did not directly participate in the incident being investigated. In administrative interviews, accused employees may be required to submit to a polygraph examination, and they also have the right to be polygraphed at their own request.

CMPD policy specifies that employees being interviewed will be given reasonable rest periods and will not be subjected to “any offensive or abusive language, nor threatened with dismissal or other disciplinary action.” This protection from threats does not, however, relieve the interviewer of the obligation to inform the employee that refusal to answer questions or answer them truthfully can become the basis for disciplinary action.

The length of investigations

In response to considerable feedback from accused officers, complainants and others, we established the goal in 2001 that Internal Affairs should complete its investigations within 45 days. Striving to meet this objective required adding additional IA investigators and developing better case management techniques.



Attitudes Toward the Length of Investigations

The KPMG consulting firm surveyed some citizens who filed complaints against our employees during 1998-99 as well as some of the accused officers. While all had a number of positive things to say about the way CMPD handled complaints, the complainants and employees alike were united in their criticism of “the protracted length of time it takes to complete an IA investigation.”

60% of the interviewed officers who had been the subjects of IA investiga-

tions said the amount of time it took to complete investigations “was a penalty in itself.” Both complainants and targets of complaints said the problems posed by lengthy investigations could be reduced somewhat through more frequent and informative communication by IA about the status of the case and the reasons for delays. (KPMG’s Year 2000 audit report, pages 15 & 19)

In fact, an officer in an interview conducted in preparation for this guidebook cautioned that speed is not the sole consideration: “I would prefer a thorough and competent investigation more than a timely one, so long as I’m kept apprised of the reason for delays.”



We are proud that the Department has been able over the past several years to reduce drastically the number of IA investigations that take longer than 45 days. Previously, it was not uncommon for the most serious IA investigations to run four months or longer. Often, the investigator’s work was completed within a reasonable time, but undue delay occurred while a case was awaiting review and approval by IA managers.

We invested considerable additional resources in IA staffing and case management methods because we share the concerns expressed by our employees, complainants, and others who care about the quality of the CMPD. These stakeholders’ concerns were summarized in a 1997 report the Department commissioned from the KPMG consulting firm:

- “Delay in completing investigations may have negative consequences on the department, such as:
 - Delay of necessary corrective action leading to additional risks or vulnerabilities [for the] CMPD;
 - Decrease in officer morale while waiting for outcome;
 - Perception that citizen complaints against police officers are not important;
 - Difficulty in locating witnesses or obtaining accurate statements;
 - Reduces the effectiveness of the early warning system; and



The "Peer" on the Chain of Command Board

Just as the Community Relations Committee's voting member on the board helps ensure fairness to the complainant, a peer of the accused employee helps ensure fairness to the accused. The peer member serves only if requested by the accused employee, but the accused may not hand-pick an individual. Rather, the IA commander picks two employees from the accused's job classification so long as that peer is not a probationary employee, is not involved in the case to be heard, has not been disciplined within the previous 24 months, and is not on suspension or other leave. The accused may reject either or both of the first two peers selected by the IA commander. If both are rejected, two additional peers are offered, and the accused must select one of them or one will be appointed by the IA commander. The IA commander may also replace, for "just cause," any peer who has begun serving on the board.

The peer is a voting member of the board. To protect the confidentiality of the process, the peer is directed in a written notice "not to disclose to or discuss any information contained in the investigative file or obtained during the hearing with anyone other than Chain of Command Review Board members or Internal Affairs."



At the hearing, the board typically hears from and questions the accused employee and any witnesses whose in-person testimony the board considers necessary for a full understanding of the case. The peer, if one has been selected, typically asks his or her questions first, followed by the remainder of the board from lowest to highest ranking member. This sequence is used in the hope that members of the panel will not be deterred from asking

questions by previously having heard the views of higher-ranking personnel.

The subject employee is not entitled to be represented at the hearing by legal counsel. Prior to and as preparation for the hearing, however, the employee is given an opportunity to review and make notes from the entire case file. This can be done in the Internal Affairs office Monday through Friday, from 8:00 am to 5:00 pm. The employee also has a right to a copy of his or her own statement from the file. By contrast, witnesses or complaining employees are only allowed to receive or review their own statements, not the entire case file.

Cases investigated by the employee's unit supervisor rather than by IA

Less serious misconduct investigations will be reviewed in the following manner:

- *If the accused employee waives a hearing:*
The investigating supervisor and the employee's captain and major, or civilian equivalents, review the entire case investigation and reach one of four possible findings, as described below.
- *If the accused employee requests a hearing:*
The investigating supervisor and the employee's captain and major, or civilian equivalents, convene a board hearing, where they hear from and question the employee and any witnesses necessary to provide a full understanding of the case. Then the board renders a finding, as described below.

The possible adjudications of any complaint

Regardless of how high in the chain of command a complaint investigation is reviewed, each complaint receives one of four findings:

- **Sustained.** The investigation disclosed sufficient evidence to prove the allegations by a preponderance of evidence.
- **Not Sustained.** The investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint. Another term for our "not sustained" finding, used in some other agencies, is "insufficient evidence."
- **Exonerated.** The acts which provided the basis for the complaint or allegation occurred, but the

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investigation revealed they were justified, lawful, and proper.

- **Unfounded.** The investigation conclusively proved that the act or acts alleged did not occur.

In an effort to bring greater clarity and finality to complaint adjudications, as requested by CMPD employees and members of the public over a number of years, the Department in 2001 abandoned the use of a fifth possible adjudication: closing the investigation to an “information file.” The abandoned classification, as one officer told researchers, left “clouds of uncertainty hanging around.” This classification typically was used for investigations that failed to establish a fair probability that misconduct occurred. Cases that previously would have been closed with this ambiguous classification are now typically adjudicated as “not sustained” or, less often, as “unfounded” or “exonerated.”

Complaint adjudications in 2002 and 2003, shown in the tables below, reflect the pattern of dispositions after we abandoned the “information file” category.

Complaint Dispositions by Employees Involved: All Complaints		
	2002	2003
Total employees receiving complaints	514	428
Sustained	49.2%	55.1%
Not Sustained	34.2%	32.2%
Exonerated	9.1%	6.8%
Unfounded	7.4%	5.8%

Complaint Dispositions by Employees Involved: Department-Initiated Complaints		
	2002	2003
Total employees receiving complaints	295	252
Sustained	72.9%	79.4%
Not Sustained	16.9%	13.9%
Exonerated	6%	3.6%
Unfounded	4%	3.1%

Complaint Dispositions by Employees Involved: Citizen-Initiated Complaints		
	2002	2003
Total employees receiving complaints	219	192
Sustained	17.4%	20.3%
Not Sustained	57.6%	60%
Exonerated	13.6%	10.4%
Unfounded	11.4%	9.3%

The overall rate at which complaints were sustained, as noted earlier, reflects the combining of very different rates at which Department-initiated and citizen-initiated complaints were sustained. This becomes clear by comparing the three tables above. For instance, the sustained rate in 2003 was 79.4% for Department-filed and 20.3% for citizen-filed complaints.

The majority of citizen-filed complaints result in a finding of “not sustained.” Typically, the reason is a lack of independent witnesses who can help prove or disprove the allegation. As a result, the chain of command cannot—on preponderance of the evidence—determine that the alleged misconduct occurred. Nor can the chain of command determine conclusively in most cases that the misconduct did not occur; hence only about 9% of the citizen-initiated complaints in 2003 were ruled “unfounded.”

Possible discipline if a complaint is sustained

If the chain of command sustains a complaint of misconduct against an employee, it will apply the Department’s “Discipline Philosophy” (section 100-004 of the CMPD Directives) to determine the appropriate sanction. The key values brought to this decision by the Discipline Philosophy are that the sanction should be fair, consistent, and aimed at preventing recurrences of the misconduct. The Discipline Philosophy was adopted in order to address widespread concerns over the years that discipline was meted out inconsistently over time and across service areas and bureaus. The philosophy statement also aims to more clearly articulate the kinds of factors that justify treating differently the same violation by two different employees.



The Problem with Predetermined Penalties

In general conversation with employees, they often say they would like the Department to give them a list of the prohibited behaviors along with the consequences for engaging in those behaviors. But when employees are directly involved in the disciplinary process—either as the subject or in a review capacity—most want to con-

Consider the consequences in light of the circumstances that might have contributed to the violation.



To be more specific, the severity of discipline should be set after weighing:

- Employee motivation
At the time the employee violated our rules, was he or she operating in the public interest (trying to accomplish some legitimate police objective) or in self-interest? An example of misconduct in the public interest is an officer who wrongfully infringes a speaker's free speech rights to quell a public nuisance. The reason this can be a close call for a police officer is that there are times, of course, when a speaker *can* lawfully be ordered to desist or relocate to prevent personal injury. A second example where an officer's decision could be in violation of our Rules of Conduct, but well motivated, would be an illegal search and seizure done in order to arrest a dangerous crime suspect. This is a valid objective but an improper method.
- Degree of harm produced by the misconduct
What was the monetary cost to the Department and community? What was the extent of personal injury? What was the impact on public confidence in the Department? An employee who sells illegal drugs, commits burglaries, or intentionally injures people, for example, shatters public confidence in the police.
- Employee experience
A relatively new employee (or more experienced employee in an unfamiliar assignment) will be given greater consideration when making judgmental errors than would an employee with more experience.
- Intentional/Unintentional
Generally, intentional misconduct will be punished more severely than unintentional rule violations.

An example of an *intentional* violation is an employee lying. This is one of the most serious offenses an employee can commit. An example of an *unintentional* violation is an

officer accidentally backing his or her vehicle into a pole. Other unintentional violations could arise from a police officer thinking he or she was in compliance but being wrong about the technicalities of a directive. A key question in determining intention is what the subject employee knew or reasonably should have known when making the decision at issue. What the employee learned after the fact may be highly relevant to preventing recurrences of misconduct but has little to do with determining the employee's intentions.

- Employee's record
To the extent allowed by law and policy, an employee's record will be taken into consideration in determining the consequences of a failure to meet the Department's expectations. Persistent rule violators can expect to be dealt with more harshly than infrequent violators. An employee whose record reveals hard work and dedication to the community and Department will be given every consideration in the determination of any disciplinary action.

The Department strives to apply these factors in weighing discipline and to explain to accused personnel the rationale for disciplinary decisions.

Disciplinary options include:

- supervisory counseling
- written reprimand
- active suspension without pay for up to 30 working days
(employee does not report to work; indeed, the employee is sent home immediately after being told of the suspension by the chain of command review board)
- suspended suspension (suspension is held in abeyance for a defined period of time—often one year—so long as no further violations of Rules occur)
- recommendation to the Civil Service Board for employment termination

The Chief has authority to dismiss employees exempt from Civil Service, who include probationary sworn employees (less than one year on the job), sworn members above the rank of major, and all civilian employees.

The discipline imposed on our employees in 2002 and 2003 is reported in the table below. The

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numbers are larger than the number of incidents of alleged misconduct in each year because counseling and written reprimands may be issued in addition to suspension and because a number of complaints involved multiple officers.

Discipline in Complaint Investigations		
	2002	2003
Counseling/written reprimand	133	127
Active suspension	587	406
Suspended suspension	131	126
Combined active & suspended suspension	718	532
Recommend termination	10	0

Regardless of the board's adjudication of a complaint, the Department may take a variety of steps — none of which are considered discipline — to assist employees in complying with rules of conduct in the future. These steps include mandatory re-training, special emphases in an employee's performance appraisal, and requiring an employee to obtain support through the Department's Employee Assistance Program. At first blush, some people might consider anything an employee is obligated to do following a hearing to be discipline. But remember that all employees in all kinds of government and private-sector organizations are required by the terms of their employment to participate in various professional development and quality control exercises.

The misconduct we discipline most severely

Here are three examples of the kinds of misconduct by our employees that we have disciplined with either lengthy, active suspensions or with terminations of employment in recent years:

- One employee was disciplined for defrauding a dry cleaning service in connection with lost clothing. When the clothing was found, the employee refused to return the money the cleaner had paid as compensation. In addition, the employee requested and accepted compensation from the cleaner for lost clothing that was issued by the Department, not purchased by the employee. This individual was cited to the Civil Service Board for employment termination.
- An officer was involved in a use of force at the end of a pursuit. As the suspect was brought under control, the officer punched the subject in the face, causing a minor injury. During investigation, the officer told the truth about the event and was

suspended for 20 working days without pay for using excessive force.

- An officer initiated a traffic stop of a citizen just outside of our jurisdiction in South Carolina, recording the event on the patrol vehicle's mobile video recorder (MVR). The officer's sergeant, believing the stop may have occurred in South Carolina, asked to see the employee to discuss the incident. The officer, on the way to see the supervisor, managed to initiate another traffic stop and record over the previous one. This tampering with the MVR recording of the earlier stop resulted in the officer being cited for employment termination by a chain of command review board.

In cases such as these, serious discipline is considered appropriate because the subject employees have breached our Department's core values—values such as honesty, integrity, professional service to the community and restraint in the use of force. Violation of these values undermines the public's trust in us.

Should a complainant be punished for filing a false complaint?

We noted earlier that we encourage people to file a complaint who believe sincerely, even if incorrectly, that they have been mistreated by our employees. Having said that, what if people intentionally file false complaints?

For starters, why would anybody purposely file a false complaint—a complaint they *know* is false? They might just hate police or they might be trying to thwart legitimate police enforcement efforts. In the case of someone who has a pattern of filing false complaints (which we would detect through our complaint database), what are our remedies?

Should we send a warning letter, as some police departments do, telling the person that we are aware of his past abuses of the complaint system and suggesting that his complaints will not be taken seriously in the future unless he presents independent, corroborating evidence of the alleged misconduct? We are hesitant to send such a warning letter. But we will not hide our heads in the sand either, and when a complainant is a "regular customer," we will consider the honesty of past complaints in judging the veracity of uncorroborated allegations made in any new complaint.

Thus, under State law, only in cases where citizens have a right to appeal the Department’s ruling on a complaint will they be notified of the finding (sustained, not sustained, exonerated, or unfounded). They will not, however, be notified of any discipline imposed on the accused officer. The notification letter will include a summary of the relevant facts of the case. The types of misconduct complaints whose disposition the complainant will be informed about are those alleging:

- Unbecoming conduct (“alleged behavior that is reprehensible enough to undermine the reputation of the department, the employee or public confidence in the department”)
- Excessive use of force
- Arrest, search or seizure violations
- Discharge of firearms where personal injury or death resulted

In all other types of complaints, the only thing a complainant will be told at the conclusion of the case is that the case was investigated, and appropriate action was taken by the Department.



How should we strike the balance between protecting the confidentiality of our employees’ personnel records and maximizing public confidence that we take complaints and employee misconduct very seriously?



We recognize that, as much as police officers welcome this privacy, many complainants and others will be concerned at being kept so uninformed. This is a dilemma for a police organization that values highly the confidence and respect of the public. It is hard for many complainants to understand why, when they have done their civic duty by reporting inappropriate police conduct, they are deprived of knowing the rulings on their complaints. Frankly, sometimes it is hard for department leaders to adequately explain the reasons for this secrecy. We can certainly quote the governing State law, and we are obliged to follow it. But if the shoe were on the other foot, and one of us in a police role was complaining about someone else’s misconduct, we

think we might feel dissatisfied if we were prevented from knowing how our complaint was resolved.

We are mindful of the problem-solving, police-community relations benefits that some other police agencies enjoy because of their opportunity to provide somewhat detailed case outcome information to complainants. One example is Portland, Oregon, where the police department is nearly as large as ours. Below is the summary, published in a 2003 Portland annual report, of what a complainant initially alleged and the notification to the complainant at the conclusion of the investigation:

“The complainant alleged that a patrol car swerved into his lane and sped off without turn signals, lights, or siren. The complainant said he was forced to brake, causing his laptop computer to be damaged when it hit the dash. The IPR [complaint intake unit] gave him the phone number for Risk Management to make a property damage claim and referred the driving allegation to IAD.... A sergeant admonished the officer about safe driving and proper use of emergency lights and siren. He then called the complainant and explained the action he had taken with the officer. The complainant thanked the sergeant for letting him know that the officer had been counseled.”

The reality is that the CMPD does not have this same opportunity to reach closure with the complainant and achieve the same type of customer satisfaction. We recognize that the existing North Carolina law is a mixed blessing. It helps to protect the privacy interests of our employees, and that is good. But it also helps to undermine public confidence in the openness, honesty and fairness of our deliberations on citizen complaints, and that is bad.

There is an escape valve: In cases where the City Manager determines it is in the interest of protecting the Department’s reputation to publicly disclose a complaint disposition, the City Manager can make that disclosure, so long as the City Council concurs.

The loss of a learning opportunity

Since the right to keep various types of personnel

recommendations for employment termination are heard by the CSB unless the employee resigns or waives the hearing. The CSB is a five-member panel established by City Charter and appointed by the Mayor and City Council. The CSB is the final authority on the hiring, promotion, demotion and termination of employment for all sworn police officers through the rank of major. Sworn employees above the rank of major are exempt from civil service protection. Civilian employees of the CMPD are also “at will” employees without civil service protection.

An employee who wishes to appeal discipline imposed by the Department must file a notice of appeal with the City Clerk (at 600 East Fourth Street) within 15 days of the date he or she is informed of the Chief’s disciplinary order. The City Clerk’s office notifies the Chief’s office of the appeal. The CSB will schedule a hearing not less than 15 days nor more than 30 days from the date the notice of appeal is received by the Board. For good cause, the chairman of the CSB may continue the hearing beyond a 30-day period.

At the hearing, the employee may be represented by counsel. The employee has a right to call witnesses, present evidence, cross-examine adverse witnesses, and be present during all proceedings except the Board’s deliberations. The Board may call the appealing employee as a witness. Technical objections by counsel are discouraged, and the rules of evidence are applied consistent with the personnel function and administrative nature of the tribunal. The Department has the burden of proof by a preponderance of evidence and presents its case first. A court reporter is present at all hearings, but the cost of transcripts must be born by the party wishing a transcript prepared. The Board makes decisions by majority vote and issues written findings of fact and conclusions of law.

If the Board finds that the employee has not violated the rule as charged by the Department, the Board may restore the employee to active duty and/or reimburse any pay lost during a suspension or separation. If the Board upholds the Department’s findings and discipline of the officer, the Board may leave unchanged the discipline meted out by the Chief, or it may modify that penalty upward or downward. The most severe penalty the Board may impose is employment termination.

CMPD sworn employees have the choice, instead of appealing to the Civil Service Board, to appeal a disciplinary action to the Chief of Police through the City’s grievance process. Employees may not use both appeals routes. The City’s grievance procedure provides that any sworn employee who has completed his or her probationary period of employment—and any civilian employee—who is suspended or discharged may file a grievance with the Chief of Police. This action must be taken in writing within five working days of being notified of the Chief’s disciplinary action.

The Chief, in turn, has five days to respond to the employee or his or her representative. If the grievance is not settled to the satisfaction of the employee, he or she has five days after the Chief responds to bring the grievance—and all pertinent correspondence about it—to the City Manager’s attention. The City Manager has 20 days to respond to the employee or his or her representative. The City Manager has the option, after conferring with the aggrieved employee and the employee’s representative, to refer the matter to a mutually acceptable third party for a recommendation. If this step is taken, fees and expenses will be shared equally by the City and the employee.

The Department’s track record in Civil Service Board appeals

Appeals to the Civil Service Board can be time consuming and high profile events for the Department and the community, but they are not very frequent experiences. During the decade of the 1990s, for example, there were 41 appeals brought to the CSB. Over those years, the Department’s findings and discipline were upheld by the CSB in 46.5% of the cases, modified (usually reducing penalties) in 29% and reversed in 24.5%.

Does a win-rate for the Department of less than 50% in employee appeals to the Civil Service Board mean the Department’s findings and disciplinary decisions are overly harsh? In thinking about this question, the reader may wish to consider a few points:

First, very few employees challenge Department disciplinary decisions by appealing to the CSB.

Second, accused employees may not be represented by counsel at the chain of command

board hearing, but do have a right to an attorney in Civil Service Board hearings.

Third, the standard of review and burden of proof before the Civil Service Board are not what one might expect in thinking about appellate review of a governmental administrative decision. In many contexts outside of policing, an appellant challenging the ruling of an administrative body has the burden of persuading the review panel that the decision below is not supported by the evidence or in some other way is unreasonable. By contrast, it is the CMPD, not the disciplined officer, which has the burden of proof before the Civil Service Board. The Department must prove by a preponderance of the evidence that the facts support the finding and discipline. Thus, in many respects, the Civil Service Board hearing becomes a complete reconsideration of the question whether the officer engaged in misconduct and should be disciplined. Since reasonable people may differ, any time a case is completely reconsidered, by a different set of decision-makers, and with one of the parties for the first time represented by an attorney, it is not surprising that the outcome may change.

Given this pattern, over the years the Department has had a number of employees who persuaded the CSB to undo at least part of the discipline the police leadership thought was merited. Does this present problems for us, for the subject employee, and for the community? Sometimes yes, sometimes no. How well an employee reintegrates—and is accepted by supervisors—after the employee wins a CSB appeal will depend partly on the nature of the alleged misconduct, the reasons for the appeal, and the attitudes expressed by all concerned during the complaint process.

Sometimes an employee appeals to the CSB alleging that his or her supervisor or commanders were discriminating—targeting the employee for punishment with trumped up charges because of a personal vendetta. In these circumstances, notwithstanding the employee's absolute right to appeal to the CSB, things inevitably get personal. The employee feels personally targeted for discrimination, and the commanders who sustained the complaint and imposed the discipline may feel angry at being accused on appeal of behaving improperly. A prevailing employee after this type of hostile appeal may be reassigned in order to minimize the risks of an untenable supervisor-subordinate relationship.

By the same token, if the Civil Service Board reverses a sustained finding in a case involving a citizen-initiated complaint, many factors may shape whether there are problems with the police employee providing professional, unbiased police service to the complainant and his or her friends and family. It falls to the employee's supervisor and commanders to help restore the employee to productive service and to help iron out any lingering tensions between the people who had a strong interest in the complaint on all sides. As with a Department-initiated complaint which is ruled not sustainable by the Civil Service Board, in some instances it may be in the best interest of the vindicated subject officer, the other employees in his or her unit, and the public to reassign the subject officer after the CSB ruling.

The Department's track record in Citizens Review Board appeals

The Citizens Review Board became operational in 1999, and since then it has heard 38 appeals by complainants from CMPD decisions. As of late August 2004, the Citizens Review Board had upheld the Chief's exercise of discretion in every appeal brought to the CRB by a complainant.

Although 38 cases is not a particularly large number from which to reach a conclusion, we readily admit that it's unusual, in almost any field of endeavor—law, labor relations, government regulatory matters, sports, business, etc.—for one party to prevail all the time against its competitors. What does it mean that the CMPD has never lost a case before the Citizens Review Board? It could mean many things, and we readily acknowledge that it will mean different things to different people. Some may believe the CMPD is very good in making disciplinary decisions and defending them on appeal. Some may believe the grounds for appealing are weak or the appellants are ineffective at presenting their arguments to the CRB. Still others may believe the CRB is a rubber stamp for the Department, a view we do not share. Some people might argue that the CMPD's winning streak before the Citizens Review Board is at least partly due to citizen oversight of—and input into—CMPD complaint rulings. The logic might be that this citizen involvement prevents most of the errors that otherwise might cause successful appeals.

Appendix

**Investigation Level & Review Level of Complaints
in Relation to CMPD Rule of Conduct Allegedly Violated**

Note: This Appendix presents the same information contained in CMPD Directive # 200-001 (page 8), but formats the information according to the seriousness of the alleged Rule of Conduct violations.

**INVESTIGATION BY IA & REVIEW
BY CHAIN OF COMMAND REVIEW
BOARD (*Most serious allegations*)**

- " Insubordination
- " Unsatisfactory performance
- " Unbecoming conduct
- " Residence requirements
- " Prohibited labor activity
- " Prohibited political activity
- " Failure to conform to local, state or federal laws
- " Use of alcohol on duty or in uniform
- " Possession and Use of Drugs
- " Abuse of position
- " Gifts and gratuities
- " Public statements and appearances that divulge confidential information
- " Use of weapons
- " Use of force
- " Improper use of property and evidence
- " Use of Department equipment (Intentional Damage)
- " Failure to participate as required in administrative investigations
- " Dishonesty
- " Harassment of fellow employees
- " Violations in connection with vehicle pursuits or other emergency driving
- " Violations of driving requirements under normal conditions (not during pursuits or other emergency driving)

**INVESTIGATION BY CHAIN
OF COMMAND & SERVICE
AREA/BUREAU LEVEL REVIEW
(*Second most serious allegations*)**

- " Violation of any rules, procedures, or other directives of the department
- " Absence from primary duty
- " Neglect of duty (failure to respond to calls, sleeping on duty, leaving assigned area, etc.)
- " Associating except as part of police duties with criminals or suspects
- " Visiting a gambling establishment, house of prostitution or other prohibited establishments

- except as part of police duties
- " Arrests, searches or seizures that are illegal or violate procedures
- " Inadequate supervision of subordinate employees

**INVESTIGATION BY CHAIN
OF COMMAND & DISTRICT/
SECTION LEVEL REVIEW
(*Least serious allegations*)**

- " Insufficient knowledge of regulations
- " Failure to go through proper chain of command to conduct business
- " Failure to have a functioning telephone in residence
- " Late for work or unequipped or unprepared to perform duties
- " Absence from secondary duty (court, training, etc.)
- " Violation of off-duty employment rules
- " Personal appearance violations (improper uniform, personal grooming)
- " Use of tobacco on duty while in direct contact with public and in other prohibited situations
- " Failure to carry, display or reveal police identification except when impractical or dangerous
- " Discourtesy or expression of prejudice
- " Failure to follow proper procedures in handling citizen complaints, including discouraging filing formal complaint
- " Improper interference with or investigation of police action being taken by another officer
- " Use of Department equipment (Unintentional Damage)
- " Failure to keep radio on and operating properly
- " Failure to submit adequate or timely reports
- " Failure to notify Department of legal proceedings arising out of employee's official actions or affecting employee's fitness for duty