

INTRADEPARTMENTAL CORRESPONDENCE

December 6, 2018
1.0

TO: Honorable Members of the Board of Police Commissioners

FROM: Executive Director, Board of Police Commissioners

SUBJECT: Board of Police Commissioners Response to City Council Ad Hoc Committee on Police Reform Relative to Qualifications for Hearing Examiners

RECOMMENDED ACTIONS

1. Approve the Report of the Executive Director and TRANSMIT to the City Council Ad Hoc Committee on Police Reform
2. Recommended revised minimum qualifications for Hearing Examiners are:
 - a. Shall not have a criminal record that would impact their ability to act impartially as a Board of Rights panel member or conduct an Administrative Appeal Hearing.
 - b. Should have a record of responsible community service.
 - c. Preferably a resident of the City of Los Angeles.
 - d. Shall not presently be employed as a peace officer. If a former peace officer at least one year since their separation from their employing agency.
 - e. Should have at least three year’s experience in human resources, personnel relations, labor relations, or personnel matters related to recommending, administering, adjudicating or reviewing the administration of discipline.

DISCUSSION

This report is in response to a request from the City Council Ad Hoc Committee on Police Reform relative to the implementation of Charter Amendment Measure C, which was approved by the voters on May 16, 2017. The request is that the Police Commission (Commission), “with the assistance of the City Attorney, to make changes to the qualifications for civilian hearing examiners, including enhancing diversity, increasing the number of City residents, and allowing for the inclusion of retired command staff police officers which would require a minimum one-year cooling off period for retired LAPD command staff.”

In accordance with the City Charter the Chief of Police has sole authority to impose discipline on a Los Angeles Police Officer. Those matters that fall within the Board of Rights process are when the Chief of Police finds an officer has committed misconduct and he recommends

termination, demotion or suspension. Attached is the Report of the Chief Legislative Analyst (attachment 1), dated February 15, 2018 providing background information on the Board of Rights Process and Hearing Examiners.

Should a police officer want to appeal the recommended discipline the Board of Rights is the process that is used. Currently, a Board of Rights panel is composed of two police officers with a rank of Captain or higher and one civilian. The Board of Rights panel has the final authority to determine innocence or guilt and recommend the penalty. The Chief of Police may either accept the penalty recommendation or reduce it. There have been no changes to this process since June 1992 when the City Council placed Measure F on the ballot, which was approved by the voters with changes to the Board of Rights process. Among those changes was the reconstitution of the Board of Rights replacing one of the three police officers rank of Captain or higher with a civilian member. Additionally, as a result of the meet and confer process between the City and the Los Angeles Police Protective League the current Memorandum of Understanding provides that a Hearing Examiner will conduct an Administrative Appeal process. That process is discussed below in more detail.

In 2017 there were 55 Board of Rights and 55 Administrative Appeal Hearings. To date in 2018 there have been 69 Board of Rights and 40 Administrative Appeal Hearings.

The civilian panel member is considered a Hearing Examiner and is a part-time as needed City employee of the Commission. Currently there are 37 Hearing Examiners for the Board of Rights and Administrative Appeal process, of which 29 reside in the City. It is recommended that the current Hearing Examiners remain due to their knowledge and experience in the process. The demographics of the current pool of Hearing Examiners is:

	White	African American	Hispanic	Asian American	Total
Males	17	4	2	1	24
Females	10	1	1	1	13

The current minimum qualifications to be a Board of Rights Hearing Examiner are:

1. Shall not have a criminal record that would impact the Hearing Examiner candidate's ability to act impartially as a Board of Rights member.
2. Should have a record of responsible community service.
3. Shall not presently be employed as a full-time law enforcement officer.
4. Preferably a resident of the City of Los Angeles.

5. Shall have at least seven year's experience with arbitration, mediation, or administrative hearings, or comparable work experience. Experience in human resources, labor relations, personnel relations or employee discipline is preferred.

In January 2017, the City Council approved the placement of Charter Amendment Measure C on the May 2017 City ballot. Charter Amendment Measure C was designed to provide police officers accused of misconduct the option of choosing between a Board of Rights panel composed of two police officers with a rank of Captain or higher and one civilian, or a panel of three civilians. Measure C was approved by the voters on May 16, 2017.

With approval by the voters of Measure C the City Council is authorized to adopt a new ordinance that would provide for the qualifications, selection process, and compensation for civilian board members. The City Council created an Ad Hoc Committee on Police Reform, which was tasked with finding ways to increase transparency, fairness and accountability in police disciplinary matters.

On November 6, 2018, the City Council Ad Hoc Committee on Police Reform recommended for City Council action the below recommendations (attachment 2) which were adopted by the City Council on November 14, 2018:

1. REQUEST the City Attorney to prepare and present a draft Ordinance implementing the provisions of Charter Amendment C, regarding civilian membership on LAPD's Board of Rights panels.
2. **REQUEST the Police Commission, with the assistance of the City Attorney, to make changes to the qualifications for civilian hearing examiners, including enhancing diversity, increasing the number of City residents, and allowing for the inclusion of retired command staff police officers which would require a minimum one-year cooling off period for retired LAPD command staff.**
3. REQUEST the City Attorney, with the assistance of the City Administrative Officer (CAO) and LAPD, to report with recommendations, budget needs, and an implementation plan to have the City Attorney's office act as the LAPD's Advocate for all Board of Rights hearings.
4. INSTRUCT the LAPD, with the assistance of the City Attorney, to report on options to make comprehensive, anonymized reports on police disciplinary matters available to the public on a regular basis.

Staff has conferred with the President and Vice-President of the Board and Public Safety General Counsel, Office of the City Attorney as requested in recommendation #2 above. The following revised minimum qualifications for Hearing Examiners are submitted for your consideration and if approved to transmit to the City Council Ad Hoc Committee on Police Reform:

Honorable Members of the Board of Police Commissioners
Board of Police Commissioners Response to City Council Ad Hoc Committee on Police Reform
Relative to Qualifications for Hearing Examiners

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1.0

1. Shall not have a criminal record that would impact their ability to act impartially as a Board of Rights panel member or conduct an Administrative Appeal Hearing.
2. Should have a record of responsible community service.
3. Preferably a resident of the City of Los Angeles.
4. Shall not presently be employed as a peace officer. If a former peace officer at least one year since their separation from their employing agency.
5. Should have at least three years' experience in human resources, personnel relations, labor, or personnel matters related to recommending, administering, adjudicating or reviewing the administration of discipline.

Recommendation #4 is responsive to the City Council's Ad Hoc Committee on Police Reform recommendation, however expands beyond the Los Angeles Police Department, does not include a specific rank and requires the candidate to have the experience listed in Recommendation #5.

Recommendation #5 reduces the minimum experience requirement from seven years to three years and does not include mediation, arbitration or administrative hearing experience, however those with that experience would still be eligible to apply. In addition to the Hearing Examiners participating on the Board of Rights panel they also act as the Hearing Officer for Administrative Appeals in accordance with Memorandum of Understanding No. 24, between the Police Officers, Lieutenant and Below Representation Unit, Sections 9.0 thru 9.8 (Attachment 2).

Matters subject to an Administrative Appeal are:

1. General Dispute that may arise from a Department-initiated transfer for purposes of punishment.
2. Discipline of 22 days or less involving tenured employees where the employee waives a Board of Rights and admits guilt to the offense. The appeal is limited to the degree of the penalty.
3. Termination of entry-level probationary employees for misconduct involving a liberty interest.
4. Categorical Use of Force adjudications resulting in administrative disapproval – extensive retraining.
5. Non-Categorical Use of Force adjudications resulting in administrative disapproval – verbal counseling, tactical debrief, or extensive retraining.

During an Administrative Appeal Hearing the Hearing Officer presides over the Administrative Hearing and may examine witnesses. It is important that Hearing Examiner have experience in administering human resources, personnel matters and in the administration of discipline when they are member of the Board of Rights panel and presiding over an Administrative Appeal. The

Hearing Examiner is required to prepare a report of their finding with a rationale for their decision based on the facts that were presented to them and recommendations for the Chief of Police to consider. The Board of Rights and Administrative Appeal process are administrative hearings and should the decision of the panel be adverse to the employee, the employee may seek a Writ of Mandate to the Superior Court.

It is recommended that the pool of Hearing Examiners increase from the current 37 by 20 to provide for sufficient Hearing Examiners to participate in Board of Rights panels and Administrative Appeals. This will also provide the opportunity to increase the diversity of the pool. To ensure that there is an outreach to the minority members of the community recruitment for the additional Hearing Examiners will be done in various minority publications and organizations. In the event it is determined that there is not a sufficient pool of Hearing Examiners the pool can be increased by another recruitment process.

It is recommended that the screening and interview of Hearing Examiner applicants be conducted by two Commissioners with staff support from the Executive Director. The two Commissioners will then recommend to the Board the appointment of applicants from that process. Since the appointment of Hearing Examiners is a personnel matter that process will be conducted by the Commission in closed session.

Upon their appointment Hearing Examiners will receive an orientation and training in the Board of Rights and Administrative Appeal processes from the City Attorney and staff from the Internal Affairs Group.

Compensation for Hearing Examiners as part-time as need City employees if for less than four hours in a day \$450.00 and for more than four hours in a day \$900.00.

Should you have any questions or require additional information please do not hesitate to contact me at (213) 236-1400.

Respectfully submitted,


RICHARD M. TEFANK, Executive Director
Board of Police Commissioners

BOARD OF
POLICE COMMISSIONERS
Approved December 11, 2018
Secretary Maria Silva

Attachments

ATTACHMENT 1

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: February 15, 2018

TO: Honorable Members of the City Council

FROM: Sharon M. Tso *SMT*
Chief Legislative Analyst

Council File No: 17-0071-S1

Assignment No: 17-04-0421

Police Department Board of Rights Hearings, Hearing Examiners, Liability & Legal Issues

Summary

On January 24, 2017, the Council placed Charter Amendment C, relative to civilian membership on the Police Department's Board of Rights (BOR) panels, on the May 16, 2017 General Municipal Election ballot. That same day, the Council adopted two Motions related to this issue: one (Wesson – Englander – Koretz, Council File No. 17-0071) to create an Ad Hoc Committee on Police Reform, to review the criteria, selection process and enabling ordinance that governs civilian Hearing Examiners, and another (Wesson – Koretz – Price – Bonin – et al., Council File No. 17-0071-S1) instructing the Office of the Chief Legislative Analyst (CLA), with the assistance of the City Administrative Officer (CAO), City Attorney, and the Police Department (LAPD) to report on issues related to the LAPD's BOR disciplinary procedures. On May 16, 2017, the City's voters approved Charter Amendment C.

This Office was directed to report on the below items in Motion (17-0071-S1):

1. An implementation plan to conduct hearings throughout the City with respect to BOR issues;
2. A review of Civilian Hearing Examiners, including the application process, criteria for selection and options to increase the pool of civilian Hearing Examiners from the City, and the role of the Police Commission;
3. A report on liability claims, payouts and pending actions related to the LAPD, including recommendations to reform risk management and budgetary practices with respect to LAPD-related liability claims; and
4. A legal analysis of *Copely v. Superior Court* and other cases related to increasing transparency with respect to the BOR.

Recommendations

As the Council considers issues related to reforming the disciplinary process for the LAPD, it may wish to take some or all of the following actions that could result in more transparency and citizen participation in police disciplinary hearings:

1. Instruct the CLA to work with the Office of the Chair of the Ad Hoc Committee on Police Reform to identify suitable locations for meetings to be held throughout the City, develop a schedule for meetings and ensure public notification.
2. Request the City Attorney to report on what changes to Hearing Officer job requirements may be made to encourage more residents of the City to apply for these positions which conform with legal requirements for administrative hearings.

3. Support and/or sponsor state legislation that would open up disciplinary hearings of police officers to the public.
4. Direct the LAPD, with the assistance of the City Attorney, to report on options to make anonymized reports on police disciplinary matters available to the public.

Background

In the wake of the 1991 Rodney King decision and resulting civil unrest, then-Mayor Tom Bradley formed the Independent Commission on the Los Angeles Police Department, chaired by Warren Christopher, who later went on to serve as Secretary of State under President Clinton, to review issues within the LAPD. The Independent Commission made various recommendations for reform. In response to the Independent Commission's report the City Council placed Charter Amendment F on the June 1992 ballot to implement many of the proposed changes. Charter Amendment F passed with nearly 67 percent of voters in favor of the changes. Among these changes was a reconstitution of the Police Department's Board of Rights to include civilians in the process. As described in the CLA's January 6, 2017 report (Council File No. 16-0331), the Board of Rights hears cases where an officer is accused of misconduct by the Chief of Police and recommended for termination, or cases where the Chief has decided that an officer be suspended or demoted and the officer appeals that decision. Prior to Charter Amendment F, a Board of Rights was composed of three command-level police officers with the rank of Captain or above. Charter Amendment F reduced the number of police officers to two, and added a civilian Hearing Examiner appointed by the Police Commission.

No changes to the composition of the Board of Rights have been made since Charter Amendment F. In January 2017, the Council approved the placement of a proposed Charter Amendment on the May 2017 City ballot, which would give the Council authority to enact an ordinance to give an officer accused of misconduct the right to have their case heard by an all-civilian Board of Rights panel. On January 24, 2017, the Council approved the creation of an Ad Hoc Committee on the Board of Rights, which is tasked with finding ways to increase transparency, fairness and accountability in police disciplinary matters. Charter Amendment C was approved by the voters on May 16, 2017.

Public Hearing Implementation Plan

In recent years, a number of Council Committees have held special meetings on issues of particular concern to the residents of the City, such as commercial cannabis activity, street vending, sidewalk repairs, The Department of Water and Power and the minimum wage. Many of these meetings took place in locations across the City, and were often scheduled for weekday evenings in order to ensure the broadest public participation possible. The Ad Hoc Committee on Police Reform can hold meetings in a similar manner on this issue. The CLA's Office could work with the Chair of the Ad Hoc Committee to identify appropriate locations for these meetings across the City, and could work to assist in identifying dates and times for these meetings that enable the public to fully participate in the proceedings.

Review of Civilian Hiring Examiners and Options for Reform

Civilian Hearing Examiners are "as-needed" employees of the Board of Police Commissioners (Commission). When the Commission determines that there is a need for additional examiners, the Executive Director of the Police Commission posts the position on the City's website, where

applicants can apply. Applicants are required to submit their resume, application and cover letter to the Commission. Currently, the minimum qualifications for Civilian Hearing Examiners are:

1. Shall not have a criminal record that would impact the Hearing Examiner candidate's ability to act impartially as a BOR member;
2. Should have a record of responsible community service;
3. Shall not be presently employed as a full-time law enforcement officer;
4. Preferably a resident of the City of Los Angeles; and
5. Shall have at least seven years' experience with arbitration, mediation, administrative hearings or comparable work.

The application for Civilian Hearing Examiners asks questions related to interactions with the LAPD or other law enforcement agencies, as well as questions about educational background and membership in professional organizations. If an applicant meets the requirements, they are interviewed by the Executive Director of the Police Commission. Successful candidates are then offered an "as-needed" position, and can be called upon to serve as a Hearing Examiner at BOR hearings.

The Civilian Hearing Examiner position, and the role of the Commission in hiring them, was established by an ordinance adopted by the City Council in September 1994. As these regulations were established by Ordinance, the Council could change or amend the requirements for Civilian Hearing Examiners in order to encourage the participation of City residents. Any changes proposed by the Council should be vetted by the City Attorney to ensure continued compliance with the Administrative Hearing requirements for disciplinary procedures in the Peace Officer's Procedural Bill of Rights.

The role of the Commission is limited to the hiring of Civilian Hearing Examiners, the provision of orientation and training for Civilian Hearing Examiners, and the maintenance of a pool of qualified Examiners, scaled to the needs of the Department. The Commission also has the authority to remove members of the pool at its discretion. Other than providing a pool of Civilian Hearing Examiners for BOR hearings, the Commission has no role in the disciplinary process of the Department.

Currently, the Commission employs 37 individuals on an as-needed basis for three-year terms. There is no limit on the number of terms an Examiner can be appointed to, and the average Examiner has served for multiple terms. Civilian Hearing Examiners are paid \$900 for a full-day hearing, \$450 for a half-day hearing, and \$900 for a final report. BOR Hearings can last for multiple days. There were 28 BOR hearings in 2017.

Liability and Risk Management Issues

According to the CAO, each year the City's budget includes an appropriation to the Liability Claims Account, which is intended to cover the costs of payments or settlements for claims against the City. The total budgeted for this purpose in 2017-18 was \$89.09 million. This amount was determined based on a combination of factors, including historical spending trends, an assessment of pending cases and the related City exposure, and the availability of funds. In recent years, actual payouts have exceeded this budgeted amount, and the City has been required to transfer funds from other accounts in order to meet the obligation. In 2017-18, for example, it was anticipated that total

payouts may exceed \$89.09 million, so an additional \$20 million was budgeted in the Unappropriated Balance, Reserve for Extraordinary Liability for payouts exceeding the regular liability payout budget, for a total of \$109.09 million. The CAO has reported in the Financial Status Reports that there remains potential unbudgeted expenditures for liability claims in 2017-18. For comparison purposes, in Fiscal Year 2016-17 the City included \$68.4 million in the budget and \$57.8 million in the Unappropriated balance for liability claims, but paid out over \$201.3 million.

Of the provided \$89.09 million budgeted for liability payouts in Fiscal Year 2017-18, \$80.34 million was allocated to the Miscellaneous Liability Payouts account and \$8.75 million was allocated to the Department of Public Works, Bureau of Sanitation (BOS) account. The funds in the Miscellaneous Liability Payouts account are used to pay for liability payouts of all departments except the BOS.

The City Attorney reports that during Fiscal Year 2016-17 the City made liability payments in 108 legal cases involving the LAPD and that the total cost of these payments was \$47 million. The majority of these payments were the result of civil rights or excessive/unlawful arrest claims (\$30.3 million) and labor/employment claims (\$16 million). However, it should be noted that a number of these payments have resulted from actions by LAPD officers that occurred over five years before payment, and a number of the incidents that resulted in payments may not be reviewable by a BOR.

As a result of growing liability issues, the LAPD implemented a new Risk Management and Harm Reduction Strategy in February 2015. This strategy was implemented with the objective of reducing the recurring and measurable physical, organizational, and financial harms caused by certain police-related activities such as uses of force and employee involved traffic collisions.

In 2015, the City Attorney and CAO also began to take steps to address growing liability and risk management issues. In December 2015, a Motion (Krekorian – Cedillo, Council File No. 15-1432) was introduced requesting a report on the history of liability payouts for each department, and to identify the greatest sources of liability claims over the previous five years. Shortly after that Motion was introduced, the CAO released its report on the issue, and described the CAO Risk Management Division and City Attorney's efforts to reduce liability claims, which included tracking liability claims by department. However, liability claims remain a significant issue, and the CAO and City Attorney are continuing to work to address the problem.

Analysis of *Copley V. Superior Court* and Other Cases

The City Attorney states that in 2006, the California Supreme Court analyzed and decided the extent to which the California Public Records Act (CPRA) required disclosure of records of a county civil service commission ("CSC") regarding a peace officer's administrative appeal of a disciplinary matter (*Copley Press, Inc. v. Superior Court*). While the *Copley* decision was focused primarily on access to records pertaining to the administrative appeal, the rationale employed by the Court concerning the confidentiality of peace officer personnel records and information applies with equal force to the openness of such hearings to the public.

The City Attorney states that in *Copley*, the San Diego Civil Service Commission scheduled a closed hearing for a deputy sheriff appealing a termination notice, as this Commission conducts

administrative appeal hearings on behalf of the San Diego Sheriff's Department. Copley Press requested and was denied access to the hearing. Copley Press then served a CPRA request on the Commission, requesting "any documents filed with, submitted to, or created by the Commission concerning the appeal (including its finding and decision) and any tape recordings of the hearing." The Commission withheld most of the requested records, including the deputy's name, asserting exemptions to disclosure under the CPRA. Copley Press filed a Petition for Writ of Mandate in the Superior Court, which ultimately resulted in the California Court of Appeal hearing the matter and ordering nearly all requested records disclosed, including the deputy's name. The California Supreme Court then granted review of this decision, and reversed it.

One of the main issues addressed by the State Supreme Court was whether the San Diego Civil Service Commission was properly considered part of the deputy's "employing agency," as the peace officer personnel privilege limits confidentiality of such files to those maintained by the officer's employing agency. According to the appellate court, the confidentiality provided by state law did not apply to the testimony of percipient witnesses to an event, from documents not maintained in the officer's personnel file, or from material generated from the administrative appeal added to the officer's file. Therefore, the Court of Appeal concluded that the Commission's records were not exempt under the CPRA.

The California Supreme Court disagreed. First, the Supreme Court affirmed that the peace officer personnel privilege of Penal Code § 832.7 applied in civil, criminal and administrative proceedings. Importantly, the Court emphasized that the word "confidential" establishes a general condition (presumption) of confidentiality, with limited exceptions. The Court next addressed and rejected the Copley Press's argument that because the Commission does not employ peace officers, its files are not "maintained... by the officer's employing agency," as required under the definition of a personnel record. Specifically, the Court held that because the civil service commission had been designated to provide an appeal that the officer's employer is required by law to provide in connection with taking punitive action, it was reasonable to conclude that the Commission is functioning as part of the "employing agency," and that any file it maintains regarding an officer's disciplinary appeal constitutes a file maintained by the officer's employing agency.

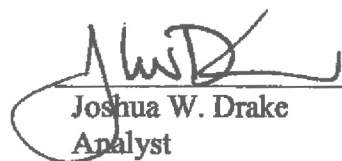
The City Attorney states that the law grants local agencies discretion to determine rules and procedures for administrative appeals. Discretion can be exercised to select a third party to hear the appeal or, as in the case of the LAPD, can select one or more individuals within the law enforcement agency to hear it. However, the City Attorney states that the Court cautioned that discretion must be exercised consistent with any constitutional or statutory limitations.

Respecting the release of the deputy's name, the Supreme Court concluded in its *Copley* decision that the identity of an involved officer is confidential when related to or part of a disciplinary process, and that the legislative history of the pertinent Penal Code sections confirms the Legislature's intent to prohibit release of any information identifying the individuals involved, in an effort to protect personal privacy rights of both, citizens and officers. Finally, in response to the Copley Press's argument that public policy compelled disclosure of the requested records, the Court found that the Legislature had already heard and considered such arguments prior to passing and then amending Penal Code Sections 832.5, 832.7 and 832.8, and reaffirmed that "...the desirability of confidentiality in police personnel matters does outweigh the public interest in

openness.” The Court concluded that the state legislature, not the court, is the appropriate venue for this type of policy consideration.

According to the City Attorney, the *Copley* Court declined to rule on whether a law enforcement department or agency should close peace officer administrative appeal hearings. While the San Diego Civil Service Commission’s practice was to close such hearings, the deputy’s disciplinary appeal in *Copley* was resolved prior to hearing. As such, neither the Court of Appeal nor the California Supreme Court ruled on this issue. However, as maintaining open Boards of Rights hearings conflicts with the rationale employed by the *Copley* Court in reaching its conclusion regarding the confidentiality of ‘records’ of these administrative appeals, the City Attorney states that the *Copley* decision strongly supported requiring that the administrative hearing itself, where the subject matter of the complaint or disciplinary investigation was discussed and adjudicated, would also be privileged and required closure. This interpretation of the breadth of *Copley* was later affirmed by the Court of Appeal in *Berkeley Police Association v. City of Berkeley*. In that case, the court determined public hearings, would necessarily violate Section 832.7 of the Penal Code by disclosing information obtained from an officer’s confidential personnel record. Like the Supreme Court in *Copley*, the *Berkeley* Court remarked that to the extent a closed process is less effective than an open one in accomplishing the objectives supporting civilian oversight, it was a matter that must be addressed by the Legislature.

While *Copley* and other case law makes clear that peace officer personnel records and information, including complaint investigations and the identity of an officer when connected to a complaint or disciplinary matter, are confidential and may not be disclosed in the absence of compliance with the procedures set forth in the Penal and Evidence Codes, the City Attorney states that the City is not without options to increase transparency and access to the LAPD’s BOR process and decisions. The City Attorney states that the City could require enhancement of existing LAPD reports containing statistical information on the number, type or disposition of complaints made against officers, so long as said information is in a form which does not identify the individuals involved. Finally, the LAPD could continue its current practice of releasing the names of officers involved in officer-involved shootings and other significant uses of force incidents at or near the time of the event.


Joshua W. Drake
Analyst

Attachment: Motion (Wesson – Koretz – Price – Bonin – et al.)

SMT:jwd

MOTION

In the wake of Rodney King in 1991, then-Mayor Tom Bradley formed an independent Commission on the Los Angeles Police Department (LAPD), informally known as the Christopher Commission. The Commission was created to conduct a full and fair examination of the structure and operation of the LAPD, including its recruitment and training practices, internal disciplinary system, and citizen complain system. With the publication of the report, the City Council placed Charter Amendment F on the June 2, 1992 State of California Primary Election ballot to reform the Los Angeles Police Department.

Charter Amendment F passed with nearly 67 percent of the vote in 1992. Warren Christopher, the architect of the amendment, called the disciplinary changes "a critical aspect" of the measure that received little attention during the campaign because they are complicated and difficult to explain to voters, according to the Los Angeles Times. It has been over 20 years since the disciplinary changes have been thoroughly reviewed and evaluated, including most importantly the adjudication process known as the Board of Rights and the roles of command officers and civilian Hearing Examiners.

The current civilian Hearing Examiners meet high standards in order to serve on a Board of Rights panel. However after 25 years of this policy, the City should evaluate and determine whether the pool of civilians should be increased to include greater diversity more focused on residents of the City, retired police officers, and former command staff. Over those two decades, there have been several complaints by officers and residents related to the Board of Rights process that can be summarized into three categories: fairness, liability, and transparency.

According to a report written in 2000 by the former Chair of the Elected Charter Reform Commission and current Dean of the UC Irvine School of Law Erwin Chemerinsky, after reviewing these issues in the aftermath of the LAPD Rampart Division scandal, the Board of Rights needed to be reconstituted. According to Chemerinsky, "The current disciplinary system is widely distrusted by officers. Many believe that it often is controlled ... and is used in an arbitrary fashion, sparing command staff from punishment and imposing sanctions on the rank and file. This perception causes friction between leadership and the rank and file, undermines morale, and reinforces the code of silence as officers are unwilling to make complaints in a process they distrust." One of three options recommended by the Commission according to Chemerinsky's report, "... likely the most promising, would be a civilian review board ...", or an all-civilian Board of Rights. Since 1992, no changes have been made to the composition of the Board of Rights.

Furthermore, as the City Council is well aware, there has been a recent spike in the number of liability claims and liability payouts, some of which includes LAPD matters. Repairing the disciplinary system can be a significant factor in increasing the trust between the public and the City. That increased trust can and should lead to a reduced number of jury awards and settlement payouts. Programs like the recently implemented emBRACE LA, as well as a reconstituted and reformed Board of Rights, are two of many strategies that are needed to increase the trust between our communities and the LAPD.


Lastly, as noted by the Chief Legislative Analyst (CLA) in a report dated January 6, 2017, as a result of a State of California Supreme Court decision in 2006, *Copley Press v. Superior Court*, "... the Court held that records of an administrative appeal of sustained misconduct charges against a police officer are confidential and may not be disclosed to the

public. This decision prevents the public disclosure of disciplinary hearings, and as a result LAPD does not make public the results of hearings." This has led to frustration by the public and media with respect to how Board of Rights hearings have been conducted over the last decade, as well as how decisions are made regarding suspension, demotion, or termination. Increasing transparency will build confidence and trust between the community and the City.


WE THEREFORE MOVE to INSTRUCT the CLA, with the assistance of the CAO, City Attorney, and LAPD, to report back within 90 days to the AdHoc Committee on the LAPD Board of Rights with respect to the following issues:


1. An implementation plan to conduct hearings throughout the City and in the community with respect to the Board of Rights and the issues as described above and below.
2. A thorough and comprehensive review of civilian Hearing Examiners, including the application process, the criteria for selection, options to increase the pool of civilians from residents of the City, and the role of the Police Commission
3. A comprehensive report of liability claims, liability payouts, and pending actions related to the LAPD. This report should also contain recommendations to reform risk management and budgetary practices with respect to LAPD-related liability claims and made available to be considered during the FY 2017-18 Budget process.
4. A complete legal analysis of *Copley v. Superior Court* and other relevant cases related to increasing transparency with respect to the Board of Rights. This report should contain options, whether via state legislation, Charter Amendment, or municipal ordinance, to provide further access to the public with respect to Board of Rights hearings and decisions.

PRESENTED BY:



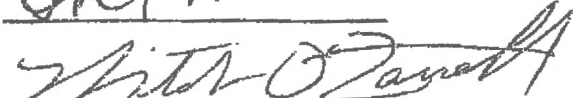

HERB J. WESSON, JR.
Councilmember, 10th District


PAUL KORETZ
Councilmember, 5th District


CURREN D. PRICE, JR.
Councilmember, 9th District


MIKE BONIN
Councilmember, 11th District

SECONDED BY:

ORIGINAL

MAR 20 2017

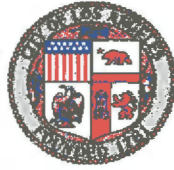
ATTACHMENT 2

HOLLY L. WOLCOTT
CITY CLERK

City of Los Angeles
CALIFORNIA

OFFICE OF THE
CITY CLERK

SHANNON D. HOPPE
EXECUTIVE OFFICER



ERIC GARCETTI
MAYOR

Council and Public Services Division

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PATRICE Y. LATTIMORE
DIVISION MANAGER

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When making inquiries relative to
this matter, please refer to the
Council File No.: [17-0071-S1](#)

OFFICIAL ACTION OF THE LOS ANGELES CITY COUNCIL

November 16, 2018

Council File No.: [17-0071-S1](#)

Council Meeting Date: November 14, 2018

Agenda Item No.: 6

Agenda Description: AD HOC COMMITTEE ON POLICE REFORM REPORT relative to the Los Angeles Police Department Board of Rights hearings, hearing examiners, and liability and legal issues.

Council Action: AD HOC COMMITTEE ON POLICE REFORM REPORT - ADOPTED

Council Vote:

ABSENT	BOB BLUMENFIELD
YES	MIKE BONIN
YES	JOE BUSCAINO
YES	GILBERT A. CEDILLO
ABSENT	MITCHELL ENGLANDER
YES	MARQUEECE HARRIS-DAWSON
ABSENT	JOSE HUIZAR
YES	PAUL KORETZ
YES	PAUL KREKORIAN
ABSENT	NURY MARTINEZ
YES	MITCH O'FARRELL
YES	CURREN D. PRICE
ABSENT	MONICA RODRIGUEZ
YES	DAVID RYU
YES	HERB WESSON

HOLLY L. WOLCOTT

Adopted Report(s)

Title

Report from Ad Hoc Committee on Police Reform

Date

11/06/2018

AD HOC COMMITTEE ON POLICE REFORM REPORT relative to the Los Angeles Police Department (LAPD) Board of Rights hearings, hearing examiners, and liability and legal issues.

Recommendations for Council action:

1. REQUEST the City Attorney to prepare and present a draft Ordinance implementing the provisions of Charter Amendment C, regarding civilian membership on LAPD's Board of Rights panels.
2. REQUEST the Police Commission, with the assistance of the City Attorney, to make changes to the qualifications for civilian hearing examiners, including enhancing diversity, increasing the number of City residents, and allowing for the inclusion of retired command staff police officers which would require a minimum one-year cooling off period for retired LAPD command staff.
3. REQUEST the City Attorney, with the assistance of the City Administrative Officer (CAO) and LAPD, to report with recommendations, budget needs, and an implementation plan to have the City Attorney's office act as the LAPD's Advocate for all Board of Rights hearings.
4. INSTRUCT the LAPD, with the assistance of the City Attorney, to report on options to make comprehensive, anonymized reports on police disciplinary matters available to the public on a regular basis.

Fiscal Impact Statement: Neither the CAO nor the Chief Legislative Analyst has completed a financial analysis of this report.

Community Impact Statement: None submitted.

SUMMARY

At the meeting held on October 24, 2018, your Ad Hoc Committee on Police Reform Committee considered a CLA report relative to LAPD Board of Rights hearings, hearing examiners, and liability and legal issues. After an opportunity for public comment was held, the Committee moved to approve the amended recommendations as detailed above. This matter is now forwarded to the Council for its consideration.

Respectfully Submitted,

AD HOC COMMITTEE ON POLICE REFORM

MEMBER

VOTE

WESSON: YES
KORETZ: YES
ENGLANDER: ABSENT
CEDILLO: YES
HARRIS-DAWSON: YES

ME 10/24/18

-NOT OFFICIAL UNTIL COUNCIL ACTS-

ATTACHMENT 3

**MEMORANDUM OF UNDERSTANDING NO. 24
FOR JOINT SUBMISSION TO THE CITY COUNCIL REGARDING**

**POLICE OFFICERS, LIEUTENANT AND BELOW
REPRESENTATION UNIT**

**THIS MEMORANDUM OF UNDERSTANDING made and entered into
this 15th day of April, 2015,**

as amended the 28th day of August, 2015, and

as amended the 4th day of April, 2018

BY AND BETWEEN

THE CITY OF LOS ANGELES

AND

THE LOS ANGELES POLICE PROTECTIVE LEAGUE

July 1, 2014 through July 31, 2019

notified the grievant in writing that it would hear the grievance. Failure of the Police Commission to respond within the time limits shall entitle the grievant to process the grievance at the next level.

- c. If the Police Commission decides not to hear the grievance, or the written decision at the Chief of Police Review does not settle the grievance, the League may request arbitration in accordance with Article 8.4, Step 5.

ARTICLE 8.7 EXPEDITED ARBITRATION PROCEDURE

By mutual agreement, the parties may submit any grievance which has reached the arbitration level to expedited arbitration. The expedited arbitration procedures are as follows:

1. The selection of the arbitrator shall be conditioned upon the arbitrator's ability to submit a written ruling to the parties within 48 hours.
2. An expedited arbitration shall not be officially transcribed unless it is requested by Management or the League. In the event of such a request, the party requesting the transcript shall pay the cost.

SECTION 9.0 ADMINISTRATIVE APPEALS

The parties agree that the procedures in Section 9.0 may be modified during the term of this MOU if there is mutual agreement on the modifications. This section is not applicable for matters involving reassignment of a sworn employee from an advanced paygrade position, deselection from a bonus position, or denial of promotion on grounds other than merit. Such matters shall be conducted in conformance with rules and procedures adopted by the Department.

A "dispute" as used in this Section is not intended to limit the definition of a "grievance" in this MOU or as defined in the Employee Relations Ordinance. If a matter is a "grievance," it must be processed through the grievance procedure, and not through the administrative appeal process specified in this Section. Conversely, if a matter is subject to administrative appeal, it must be processed through the administrative appeal process, and not through the grievance process. Tenured employees wishing to appeal only the penalty for a suspension of one to 22 days may use this process subject to the provisions of Article 9.1.B. For all appeals conducted pursuant to the provisions of this Section, the recommendation of the hearing officer is non-binding on the Chief of Police.

ARTICLE 9.1 MATTERS SUBJECT TO AN ADMINISTRATIVE APPEAL

A. General Dispute

A general dispute may arise from a Department-initiated transfer for purposes of punishment.

Note: The League and the employees it represents reserve the right to challenge a dispute concerning a transfer on constitutional or other legal grounds.

B. Discipline of 22 Days or Less Involving Tenured Employees

Includes the following:

1. A sustained personnel complaint disposition that is not subject to a hearing before a Board of Rights (paper penalty, including "sustained, no penalty"); or,
2. A penalty of a one- to 22-day suspension if the employee agrees to:
 - a. Waive a Board of Rights hearing; and,
 - b. Admit guilt; and,
 - c. Limit the appeal to the degree of penalty (with the understanding that the original penalty cannot be increased).

C. Termination of Entry-Level Probationary Employees for Misconduct Involving a Liberty Interest

Misconduct involves a liberty interest when the misconduct results in charges of dishonesty or involves moral turpitude that could:

1. Stigmatize the employee's reputation; and,
2. Seriously impair the employee's opportunity to earn a living, or seriously damage the employee's standing or association in the community; and,
3. The employee asserts the allegations are false.

Note: This only applies to entry-level probationary termination and not to termination on probation from a promotional position.

D. Categorical Use of Force Adjudications Resulting In Administrative Disapproval – Extensive Retraining

Includes findings for:

1. Tactics
2. Drawing and Exhibiting
3. Use of Force

Note: Findings of Administrative Disapproval – Notice to Correct Deficiencies and Administrative Disapproval – Personnel Complaint may be appealed through separate procedures established for those actions.

Effective April 1, 2018, and including any request for an administrative hearing made to the Internal Affairs Administrative Division whether accepted or rejected prior to this date, Paragraph E below is added to this Article.

E. Non-Categorical Use of Force Adjudications Resulting In Administrative Disapproval – Verbal Counseling, Tactical Debrief, or Extensive Retraining

Includes findings for:

1. Tactics
2. Use of Force

Note: Findings of Administrative Disapproval – Notice to Correct Deficiencies and Administrative Disapproval – Personnel Complaint may be appealed through separate procedures established for those actions.

ARTICLE 9.2 NOTIFICATION OF EMPLOYEE; REQUEST FOR HEARING

If an employee decides to administratively appeal a matter specified in Article 9.1, the employee shall, within the below specified time period, notify the Department that the employee requests an administrative appeal hearing. If the last day of the appeal period falls on a weekend or City holiday, such period shall be extended to the next business day. If the employee fails to request a hearing within the prescribed time, the decision of the Chief of Police shall be binding. Requests for an administrative appeal hearing shall be filed as specified below.

A. General Dispute

A request to appeal a matter falling within the definition of a general dispute, as defined in Article 9.1.A., shall be filed within 20 calendar days after the date the

employee was notified, or the effective date of the appealable action, whichever is later. The request shall be filed on an Administrative Appeal, Form 1.84, with the Employee Relations Administrator.

B. Discipline of 22 Days or Less Involving Tenured Employees

A request to appeal a disciplinary matter involving a tenured employee, as defined in Article 9.1.B., shall be filed within 20 calendar days after the employee was served with a penalty not subject to a hearing before a Board of Rights (paper penalty); or a Complaint and Relief From Duty, Suspension or Demotion, Form 1.61, for a one-to 22-day suspension. The request shall be filed on an Administrative Appeal, Form 1.84, with the Advocate Section, Internal Affairs Administrative Division.

Note: A sworn tenured employee may elect to appeal a one-to-22-day suspension to either a Board of Rights or an administrative appeal subject to the provisions of each procedure. The election of either procedure shall constitute a binding election of the appeal procedure chosen and an absolute waiver of the alternate appeal procedure.

C. Termination of Entry-Level Probationary Employees for Misconduct Involving a Liberty Interest

A request to appeal the termination of a probationary employee for a matter involving a liberty interest, as defined in Article 9.1.C., shall be filed within 20 calendar days after the employee was served with the decision of the Chief of Police on a Notice of Termination or Suspension of Sworn Probationary Employee, Form 1.61.1. The request shall be filed on an Administrative Appeal, Form 1.84, with the Advocate Section, Internal Affairs Administrative Division.

D. Categorical Use of Force Adjudications of Administrative Disapproval – Extensive Retraining

A request to appeal a Categorical Use of Force (CUOF) finding of Administrative Disapproval – Extensive Retraining shall be filed within twenty (20) calendar days after the employee was served by the employee's commanding officer with the decision of the Chief of Police on a CUOF Internal Process Report, Form 01.67.01. The request shall be filed on an Administrative Appeal, Form 1.84.00, with the Advocate Section, Internal Affairs Administrative Division.

If the last day of the appeal period falls on a weekend or City holiday, such period shall be extended to the next business day. If the employee fails to request a hearing within the prescribed time, the decision of the Chief of Police shall be binding.

Effective April 1, 2018, and including any request for an administrative hearing made to the Internal Affairs Administrative Division whether accepted or rejected prior to this date, Paragraph E below is added to this Article.

E. Non-Categorical Use of Force Adjudications of Administrative Disapproval – Verbal Counseling, Tactical Debrief, or Extensive Retraining

A request to appeal a Non-Categorical Use of Force (NCUOF) finding of Administrative Disapproval – Verbal Counseling, Tactical Debrief, or Extensive Retraining shall be filed within twenty (20) calendar days after the employee was served with the decision completed by the Commanding Officer, Use of Force Review Division on a NCUOF Internal Process Report, Form 01.67.04. The request shall be filed on an Administrative Appeal, Form 1.84.00, with the Advocate Section, Internal Affairs Administrative Division.

If the last day of the appeal period falls on a weekend or City holiday, such period shall be extended to the next business day. If the employee fails to request a hearing within the prescribed time, the decision of the Chief of Police shall be binding.

ARTICLE 9.3 PURPOSE OF ADMINISTRATIVE APPEAL HEARINGS

The purpose of an administrative appeal hearing is based on the type of administrative appeal requested. The employee shall have the right to appear in-person at the hearing and present information specifically related to the purpose of such hearing as stated below.

A. General Dispute

The purpose of an administrative appeal hearing for a general dispute relating to a Department-initiated transfer is to provide the employee an opportunity to appeal the Department's action. The Department bears no burden of proof in this hearing. Evidence is not required but may be provided by the Department. The Department may present a case at its discretion. Should the Department elect to present a case, notice of this decision must be given to the appellant and/or his or her representative/attorney no later than two business days prior to the date of the hearing. The hearing officer may request specific information from the Department, but may not compel the Department to present a case. Notwithstanding a decision by the Department to present a case, it bears no burden of proof in the administrative appeal hearing.

B. Discipline of 22 Days or Less Involving Sworn Employees

1. For an administrative appeal of discipline that is not subject to a hearing before a Board of Rights (paper penalty) involving sworn tenured

employees, the Department shall bear the burden of proof to establish by a preponderance of evidence that the Department's action should remain.

2. The purpose of an administrative appeal hearing for discipline of a one-to-22-day suspension involving sworn tenured employees is to provide the employee an opportunity to challenge the degree of the penalty, with the understanding that the original penalty cannot be increased.

C. Termination of Entry-Level Probationary Employees for Misconduct Involving a Liberty Interest

The purpose of an administrative appeal hearing for the termination of a sworn entry-level probationary employee based on charges of misconduct involving a liberty interest is to provide the employee an opportunity to refute the charge, clear the employee's name, and establish a formal record of the circumstances surrounding the employee's termination. The Department bears no burden of proof in this hearing. Evidence is not required but may be provided by the Department. The Department may present a case at its discretion. Should the Department elect to present a case, notice of this decision must be given to the appellant and/or his or her representative/attorney no later than two business days prior to the date of the hearing. The hearing officer may request specific information from the Department, but may not compel the Department to present a case. Notwithstanding a decision by the Department to present a case, it bears no burden of proof in the administrative appeal hearing.

D. Categorical Use of Force Adjudications of Administrative Disapproval – Extensive Retraining

The purpose of an administrative appeal hearing for a Categorical Use of Force Adjudication of Administrative Disapproval – Extensive Retraining is to provide the employee an opportunity to appeal the Department's action. The Department shall bear the burden of proof to establish by a preponderance of evidence that the Department's action should remain.

Effective April 1, 2018, and including any request for an administrative hearing made to the Internal Affairs Administrative Division whether accepted or rejected prior to this date, Paragraph E below is added to this Article.

E. Non-Categorical Use of Force Adjudications of Administrative Disapproval – Verbal Counseling, Tactical Debrief, or Extensive Retraining

The purpose of an administrative appeal hearing for a Non-Categorical Use of Force Adjudication of Administrative Disapproval – Verbal Counseling, Tactical Debrief, or Extensive Retraining is to provide the employee an opportunity to appeal the Department's action. The Department shall bear the burden of proof

to establish by a preponderance of evidence that the Department's action should remain.

ARTICLE 9.4 SELECTION OF HEARING OFFICER; RESPONSIBILITIES

The hearing officer shall be a civilian member of the Police Commission's approved list of hearing officers. The selection of the hearing officer shall be completed within five business days of the date the employee requests a hearing. The Police Commission staff shall conduct a random selection of five names from the approved list and provide those names to the Department Advocate. The selection shall be done by a striking process with each party having two strikes. The Department shall strike first, then the employee, until only one name is left. That person shall be the hearing officer.

A hearing officer shall recuse him or herself if they believe they have a conflict of interest with the case or have engaged in any action that would create the appearance of impropriety, bias, or would cast doubt on their impartiality. Such recusal shall be submitted in writing to the commanding officer of the entity responsible for the appeal hearing. The commanding officer of the entity responsible for the appeal hearing shall make a decision regarding the recusal and notify the affected employee and his/her representative within five business days. If necessary, a new hearing officer shall be selected within five business days of the notification.

Disputes regarding the recusal of a hearing officer for any of the above reasons that cannot be resolved by the commanding officer of the entity responsible for the appeal hearing may be submitted to the Director of the Office of Administrative Services for general disputes, or the Chief of Professional Standards Bureau for discipline.

The hearing officer shall convene the hearing in no less than 15 days nor more than 30 days from the date of his or her selection. The hearing officer may continue the proceedings, once commenced, for periods up to 21 days. If the hearing officer, due to illness or prescheduled vacation, is unable to begin the hearing within 30 days, the employee appealing may either select another hearing officer by starting the selection process anew or may waive the 30-day period to allow the hearing officer to return. If the employee opts to waive the 30-day period, the hearing officer, upon return from illness or vacation, shall commence the hearing within 30 days.

The hearing officer may examine witnesses testifying for the Department or employee, if any are presented. However, the hearing officer shall not consider issues or matters that were not originally stated at the time the administrative appeal was filed or matters that are beyond the scope of the administrative appeal hearing purpose. The formal rules of evidence do not apply, although the hearing officer shall have discretion to exclude evidence that is irrelevant or the presentation of which will otherwise consume undue time. For disciplinary matters that are not subject to a hearing before a Board of Rights (paper penalty), or when the employee has not previously admitted guilt for penalties, the hearing officer shall read the charge(s) to the employee and elicit a "guilty" or "not guilty" response from the employee to each charge.

ARTICLE 9.5 DISCOVERY; SUBPOENAS; WITNESSES; RECORD OF HEARING

- A. **Discovery.** Discovery shall consist of copies of all reports and materials used to substantiate the final decision as to the matter being appealed. If the Department deems any item of discovery to be confidential, it shall remain confidential for all purposes. Discovery material shall be provided as soon as practicable after selection of a hearing officer, but no later than 14 days prior to the date the hearing commences. Discovery disputes shall be referred to the hearing officer for resolution prior to the hearing date. The decision of the hearing officer shall be final.

For appeal hearings of Categorical Use of Force Adjudications of Administrative Disapproval – Extensive Retraining discovery shall consist of copies of Department-generated reports or materials used to substantiate the decision as to the matter being appealed. These include the following:

1. The Intradepartmental Correspondence, Form 15.2, from the Chief of Police to the Board of Police Commissioners.
2. Use of Force Review Board checklist form.
3. A Use of Force Review Board Minority Report, if applicable.
4. An electronic copy of the Force Investigation Division investigation that was used by the Use of Force Review Board, the Chief of Police and the Board of Police Commissioners.
5. The PowerPoint presentation(s) used to brief the Board of Police Commissioners.
6. Other materials requested will be considered on a case-by-case basis.

For appeal hearings of Non-Categorical Use of Force Adjudications of Administrative Disapproval – Verbal Counseling, Tactical Debrief, or Extensive Retraining, discovery shall consist of copies of Department-generated reports or materials used to substantiate the decision as to the matter being appealed. These include the following:

1. The Internal Processing Reports (IPRs).
2. The Use of Force face sheet printed from the TEAMS II system.
3. All photographs, video recordings and audio recordings.
4. All reports (arrest, follow-up investigation, medical reports, etc.).

5. The investigating sergeant's chronological log and notes.
 6. The final adjudication notes entered into the TEAMS II Use of Force system by Use of Force Review Division.
 7. Other materials requested will be considered on a case-by-case basis.
- B. **Subpoenas.** Subpoenas shall be issued pursuant to the authority provided by the Los Angeles City Charter. Subpoenas may be quashed by written motion to the hearing officer, who will decide the issue.
- C. **Witnesses.** The Department and the employee have the right to call and cross-examine witnesses, whose testimony shall be given under oath. A complete list of witnesses to be called shall be delivered to the other party no later than seven days before the hearing, except rebuttal witnesses. Department employees called as witnesses shall be served with a Notice of Hearing, and witnesses other than Department employees shall be served by subpoena. The Department representative shall be responsible for obtaining all subpoenas. Each party is responsible to serve their own subpoenas.
- D. **Record of Hearings.** All testimony shall be given under oath. The Department shall audio record the hearing. The Department will provide the employee a free copy of the recording. The employee may also record the hearing with his or her own audio recording device if desired.

ARTICLE 9.6 FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER

At the conclusion of the hearing, after reviewing all information presented, the hearing officer shall prepare a report recommending that: (1) the charge(s) be sustained or not sustained (paper penalty); (2) the penalty remain the same or be reduced; or (3) the appeal be denied or granted. The hearing officer shall articulate in the report the basis for the findings. The hearing officer shall also complete the decision portion of a Decision of the Hearing Officer Administrative Appeal Hearing and Order of the Chief of Police, Form 1.73.1, and forward this with the hearing officer's report to the Chief of Police within 30 days of the conclusion of the hearing.

ARTICLE 9.7 FINAL DETERMINATION

The Chief of Police shall make a final decision in the matter within 30 days of receiving the Form 1.73.1 and the hearing officer's report, and shall complete the Order of the Chief of Police portion of Form 1.73.1. The Chief of Police may adopt or reject, in whole or in part, the proposed findings of the hearing officer, as appropriate under the circumstances. The decision of the Chief of Police shall be final. The Form 1.73.1 and the hearing officer's report shall be returned to the Advocate Section, which shall cause it to be served on the employee and distributed within 10 days.

If necessary, TEAMS II will be updated to report findings that are overturned through the administrative appeal process.

ARTICLE 9.8 EX PARTE COMMUNICATIONS PROHIBITED

Ex parte communications with the hearing officer by either party regarding the subject matter of the hearing while proceedings are pending is prohibited. No person shall attempt to influence the decision of a hearing officer outside of the hearing or off the record. The hearing is considered to be pending from the time the hearing officer is selected until the Chief of Police issues the complete Form 1.73.1.

SECTION 10.0 REPRESENTATION

ARTICLE 10.1 RIGHT TO REPRESENTATION

This Article shall not be construed to make discipline, transfers, promotions, or probationary employee terminations grievable or arbitrable. It is mutually agreed that the provisions of this Article do not limit what the law requires. The right to representation during the investigation and adjudication of misconduct, categorical use of force investigation, an administrative appeal and grievance presentation is not to be denied to any employee.

Any interview of an employee in connection with an investigation that the employee reasonably believes may result in disciplinary action against the employee will entitle the employee to a representative of the employee's choice. The employee has the right to choose a representative, subject only to reasonable consideration of the representative's availability and the urgency of the investigation. The representative may be a Department employee from the rank of lieutenant or below, or legal counsel (at the employee's expense), or both. A Director of the League shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any non-criminal information received from any employee under investigation or obtained as a representative of that employee in relation to employment matters. This does not apply if the Director is a percipient witness to criminal acts under investigation.

All references to "on-duty representation" in Section 10.0 of this MOU shall refer to those representatives who are currently Department employees, excluding Directors of the League and any employee who represents him or herself. There is no provision for the use of on-duty time or overtime for an accused employee or grievant to prepare a defense or grievance initiation or appeal.

In cases where the Department takes a video recording of an interview, a copy of the recording will be provided to the employee at no cost.