

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CIVILIAN COMPLAINT REVIEW BOARD (CCRB)
AND THE POLICE DEPARTMENT (NYPD) OF THE CITY OF NEW YORK
CONCERNING THE CCRB ADMINISTRATIVE PROSECUTION PROCESS

IT IS AGREED BY AND BETWEEN THE PARTIES THAT:

1. Effective June 25, 2001, CCRB shall undertake the administrative prosecution of all civilian complaints against NYPD uniformed officers which have been substantiated by CCRB on or after said date. All substantiated civilian complaints prosecuted by CCRB in accordance with this Memorandum of Understanding (MOU) in which Charges and Specifications are preferred against NYPD uniformed officers and for which a hearing is required shall be heard by the New York City Office of Administrative Trials and Hearings (OATH).
2. NYPD's Department Advocate's Office (DAO) shall remain responsible for the administrative prosecution of all civilian complaints substantiated or referred by CCRB to the Police Commissioner prior to June 25, 2001.
3. The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations.
4. CCRB and NYPD shall amend their respective chapters of the Rules of the City of New York in conformance with the City Administrative Procedure Act and this MOU to the extent necessary or appropriate to implement this MOU.
 - I. Preparation for CCRB Administrative Prosecutions
5. CCRB shall establish a unit of appropriately qualified and experienced attorneys and support staff of sufficient number to undertake the responsibility for administrative prosecution of substantiated civilian complaints in a timely and effective manner. Attorneys and support staff shall be trained in all aspects of NYPD procedures and policies as they affect administrative prosecution.
6. NYPD shall provide all reasonable assistance requested by CCRB in the creation of this unit, including training and guidance in both legal and administrative matters.
7. CCRB personnel shall in their administrative prosecution function familiarize themselves with and apply NYPD disciplinary policies and standards to the extent practicable and relevant, for example, in their charging decisions and their analysis of potential negotiated penalties. However, CCRB shall independently conduct its administrative prosecution. CCRB may conduct plea negotiations and reach agreements with subject officers and their attorneys, to be presented to the Police Commissioner for final determination.
8. To the extent practicable and relevant, CCRB shall comply with NYPD Patrol Guide

Series 206, "Disciplinary Matters" and shall utilize NYPD forms such as Charges and Specifications (PD468-121) and Supervisor's Complaint Report/Command Discipline Election Report (PD468-123), provided that if amendments or variations in NYPD forms utilized by CCRB are appropriate, then such amendments or variations shall be developed jointly by the parties. NYPD shall provide all reasonable assistance to CCRB in training CCRB personnel and introducing NYPD procedures and forms for CCRB use.

II. Administrative Prosecution Process

9. For purposes of this MOU, the Administrative Prosecution Process shall be deemed to refer to all actions taken by CCRB in accordance with this MOU after substantiation of a civilian complaint.
10. Upon substantiation by CCRB on or after June 25, 2001 of one or more allegations of excessive force, abuse of authority, discourtesy or offensive language (FADO) contained in a civilian complaint against a uniformed member of the service, CCRB shall notify NYPD's Disciplinary Assessment Unit (DAU) of the substantiation and CCRB's penalty level recommendation. Notification shall be made in writing to DAU as soon as possible, and in no event longer than five business days following substantiation, and shall include appropriate pedigree information regarding the subject officer, the CCRB case number and any other control or serial number assigned to the case, a summary of the pertinent facts, and the Board's recommendations in the case.
11. Upon receipt of notification of substantiation, DAU shall ensure that appropriate inquiries are made within NYPD to determine whether the nature of the substantiated allegation and the status of the subject officer requires expedited prosecution of the substantiated case, for example, where the subject officer has filed for vested or service retirement, or is scheduled for imminent promotion. In such cases, DAU shall advise CCRB's Chair and Executive Director of the need for expedited prosecution. CCRB shall make every reasonable effort to conclude the prosecution and provide a recommendation to the Police Commissioner within the requested time frame, including contacting OATH as necessary to request expedited procedures as provided in §1-26(c) of Title 48 of the Rules of the City of New York.
12. CCRB may at the time of notification of substantiation, or any subsequent time during the course of its administrative prosecution, make a request to DAU for a summary of the subject officer's employment history. Within ten business days of its receipt of such a request, DAU shall forward to CCRB a completed form "Summary of Employment History" for each subject officer, accompanied by the officer's last three yearly personnel evaluations if available and a completed "Background Information Report" prepared by the subject officer's Commanding Officer. Copies of the form Summary of Employment History and Background Information Report are attached hereto as Appendix A. CCRB may similarly obtain a summary of employment history for a witness officer upon demonstrating to DAU a particularized need for such summary based upon the facts and circumstances of a specific administrative prosecution. With respect to both subject and witness officers, CCRB may obtain yearly personnel evaluations for years prior to the last three years upon demonstrating to DAU a particularized

need for such summary based upon the facts and circumstances of a specific administrative prosecution. DAU shall also advise CCRB whether the subject officer is on probation, dismissal probation, or the subject of any other type of NYPD monitoring program or procedure relevant to the prosecution of the substantiated complaint.

13. In any proceedings before OATH, at the request of the presiding Administrative Law Judge, CCRB may provide to the presiding Administrative Law Judge a copy of the subject officer's Summary of Employment History and Background Information Report.

14. Where administrative prosecution of a substantiated civilian complaint would be inadvisable or inappropriate for reasons outside the control of CCRB, such as the pendency of a criminal action or corruption investigation, NYPD may make a written request to CCRB's Chair and Executive Director that CCRB refrain from commencing or continuing its prosecution until such time as the prosecution would no longer interfere with a pending matter or otherwise be inappropriate. The request shall include any explanatory information that NYPD can reasonably provide. Upon receiving such request, CCRB shall not commence or continue a prosecution as requested until it receives a written notification from NYPD no longer than twenty business days from NYPD's determination that the prosecution need no longer be delayed.

15. If during the course of its prosecution of a substantiated civilian complaint CCRB becomes aware of possible misconduct falling outside its FADO jurisdiction, such as the making of a false statement, which is alleged to have been committed by the subject officer, CCRB shall immediately refer the allegation of other misconduct to NYPD for investigation and shall not itself undertake the prosecution of such allegation. CCRB shall provide assistance to NYPD as requested for purposes of investigation or prosecution of the alleged misconduct. If necessary, CCRB and DAO shall coordinate their separate prosecutions of such related cases.

16. CCRB may in its prosecutorial discretion consider all available levels of disciplinary penalty in evaluating a substantiated case and may recommend penalties ranging from informal discipline such as Instructions or Command Discipline through Charges and Specifications, with either negotiated plea or trial. CCRB may also elect to recommend that the case be dismissed or otherwise not be prosecuted.

17. Should CCRB elect to file Charges and Specifications against a subject officer, service of Charges and Specifications upon the officer shall be accomplished by CCRB utilizing NYPD's Court Appearance Control System to schedule the subject officer for an appearance at CCRB to be served. If CCRB is unable to accomplish service in this manner in a particular instance after reasonable effort, or emergency circumstances preclude an initial attempt to utilize the Court Appearance Control System, CCRB may request through DAU the assistance of NYPD as needed.

18. During the course of its administrative prosecution, CCRB's prosecutorial staff may contact DAU to request the assistance of the subject officer's Commanding Officer or other NYPD personnel as needed to effectively evaluate, prepare, and prosecute the case. DAU shall arrange for NYPD personnel to provide reasonable assistance to CCRB.

19. Should CCRB require the physical appearance of an incarcerated person as part of its administrative prosecution, CCRB may contact DAU to request the assistance of the NYPD. NYPD shall provide all reasonable assistance in securing the appearance and safeguarding the prisoner.

20. Should CCRB determine that suspension or modified assignment of the subject officer would be prudent during the pendency of prosecution, CCRB shall contact DAU to confer on the matter and, if NYPD is in agreement, DAU shall facilitate such suspension or modified assignment.

21. CCRB shall modify its existing Computerized Tracking System to reflect data relevant to its administrative prosecution function, which shall be available to NYPD online. Upon request, CCRB shall provide to DAU a status report on the prosecution of any individual case.

III. Final Recommendation to Police Commissioner

22. At the conclusion of the CCRB administrative prosecution, in all instances other than cases culminating in a report and recommendation by OATH, CCRB shall forward to the Police Commissioner a final recommendation reflecting the results of its prosecution of the case, which may include a plea negotiation. CCRB shall include all relevant forms, memoranda and background information to assist the Police Commissioner in making a final disciplinary determination.

23. In all instances other than cases culminating in a report and recommendation by OATH, the Police Commissioner may accept, reject, or modify the recommendation presented, or may ask CCRB for additional investigative or background information in its possession. He may also request further investigation or development of the record in the case to enable him to make a final disciplinary determination. If CCRB's recommendation is rejected or modified, CCRB will then, notwithstanding any inconsistent provision of this MOU, be responsible for implementing the Police Commissioner's decision and taking the appropriate follow-up action, such as filing Charges and Specifications against the subject officer, proceeding with prosecution of the subject officer, engaging in additional investigation, or further developing the record in the case. For example, if the Police Commissioner rejects a plea negotiation, CCRB shall be responsible for scheduling the case for trial or modifying its offer consistent with the Police Commissioner's decision. After taking the appropriate follow-up action, CCRB shall forward to the Police Commissioner a final recommendation consistent with paragraph 22 of this MOU.

24. Upon receipt of a report and recommendation by OATH, CCRB may provide to the Police Commissioner a letter commenting on the OATH report and recommendation. The Police Commissioner may accept, reject, or modify the report and recommendation based upon the record presented. He may in the alternative make a request to OATH that the record be reopened, stating his reasons therefor. If such a request is made, CCRB shall take appropriate steps to reopen the case and arrange for scheduling of a supplemental hearing.

25. If CCRB's recommendation is for Instructions or Command Discipline and the Police

Commissioner approves the recommendation, NYPD will forward the relevant forms or memoranda to the subject officer's Commanding Officer for implementation.

26. DAU shall ensure that CCRB is notified of the final disciplinary result and specific penalty in each case within thirty calendar days of the imposition of the specific penalty.

IV. Confidentiality

27. All documents provided to CCRB by NYPD pursuant to this MOU are to be treated as privileged and confidential in accordance with NYS Civil Rights Law §50-a. CCRB shall not disclose any such document to any person or agency except for an OATH Administrative Law Judge without first notifying DAU and providing NYPD a reasonable opportunity to contest the disclosure.

28. CCRB shall treat as confidential all verbal information falling within the scope of Civil Rights Law §50-a or other similar statute or rule which is provided to CCRB by NYPD in furtherance of an administrative prosecution. CCRB shall not disclose such information except as necessary in the course of the prosecution.

V. General Provisions

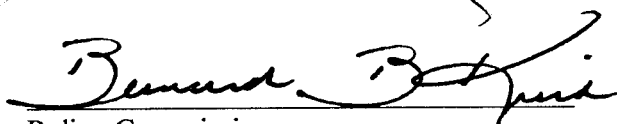
29. The Police Commissioner may terminate this MOU upon notice to CCRB. Upon such termination, the parties shall make appropriate arrangements with respect to pending matters.

30. This MOU is not intended nor shall it be construed to create any rights or benefits in any third parties.

31. If at any time the parties to this MOU determine that this MOU can not be implemented substantially in the manner set forth herein for any reason, administrative prosecution of substantiated civilian complaints shall be performed by NYPD.

Agreed to as of April 27, 2001


Chair, Civilian Complaint Review Board


Police Commissioner

POLICE DEPARTMENT
 CITY OF NEW YORK
 SUMMARY OF EMPLOYMENT HISTORY
 DATE PREPARED _____

Last Name First Name M.I. Shield No. Tax Reg. No.

Duty Status Date Appointed to PD

Present Command Date Assigned

Prior 3 Commands Dates Assigned

ARREST ACTIVITY

Felony Misdemeanor Violation

CHRONIC SICK YES NO

Category Dates

DEPARTMENTAL RECOGNITION

Award Command Date of Occurrence

PRIOR DISCIPLINE (Schedule "B" CDs and/or Charges)

Date of Incident Charge/Allegation Disposition Penalty Imposed

ATTACHMENTS: (check if provided or indicate reason if not provided)

Commanding Officer's Background Information Report
 Last 3 Evaluations

PREPARED BY: TITLE NAME PRINTED SIGNATURE



**DISCIPLINARY ASSESSMENT UNIT
BACKGROUND INFORMATION REPORT**
PD 468-147 (Rev. 2-01)-HI

COMMAND SER.NO. _____

D.A.U. SER. NO. _____

DRAFT

| | | | | | | | |
|----------------------------------------------------|---------------------|---------------------|-------------|-------------------|----------------|-------------------------|--|
| CHARGES AND SPECIFICATIONS PREFERRED BY | | RANK/SURNAME | | FIRST | | COMMAND | |
| RESPONDENT | RANK/SURNAME | FIRST | M.I. | SHIELD NO. | COMMAND | APPOINTMENT DATE | |

PART A
 NUMBER OF "B" COMMAND DISCIPLINES _____ NUMBER OF "A" COMMAND DISCIPLINES _____
 (which have not been purged per P.G. 206-2)

PART B EVALUATION BY COMMANDING OFFICER

ON A SCALE OF 0-10, (10) IS HIGH, THIS MEMBER IS RATED _____ WITH REGARD TO ABILITY AND EFFECTIVENESS.

UNLESS THESE CHARGES AND SPECIFICATIONS ARE THE CULMINATION OF A LONG TERM CONDITION, DO NOT LET THEM AFFECT THIS RATING.

- | | | |
|---------------------------------------------|--------------------------|--------------------------|
| | YES | NO |
| • IS THIS MEMBER ON DISCIPLINARY PROBATION? | <input type="checkbox"/> | <input type="checkbox"/> |
| • IS THIS MEMBER ON ENTRY LEVEL PROBATION? | <input type="checkbox"/> | <input type="checkbox"/> |
| • IS THIS MEMBER A PROVISIONAL EMPLOYEE? | <input type="checkbox"/> | <input type="checkbox"/> |
| • WOULD COMMAND DISCIPLINE BE APPROPRIATE? | <input type="checkbox"/> | <input type="checkbox"/> |

PART C COMMANDING OFFICERS COMMENTS

THE FOLLOWING SPACE IS TO BE UTILIZED TO COMMENT ON THE MEMBER'S PERFORMANCE IN GENERAL OR THESE CHARGES AND SPECIFICATIONS IN PARTICULAR. (THE MEMBER'S COMMANDING OFFICER IS REQUIRED TO PROVIDE INFORMATIVE, APPROPRIATE COMMENTS, PARTICULARLY AS IT RELATES TO NUMERICAL RATING IN PART B).

DRAFT

PART D IT IS IMPERATIVE THAT YOU REPLY TO THIS REQUEST WITHIN FIVE (5) DAYS OF RECEIPT.

| | | | | |
|--------------------|---------------------------|-----------|---------|------|
| COMMANDING OFFICER | RANK/TITLE - NAME (Print) | SIGNATURE | COMMAND | DATE |
|--------------------|---------------------------|-----------|---------|------|

INSTRUCTIONS: COMMANDING OFFICER FORWARD THIS REPORT IMMEDIATELY, TO THE DISCIPLINARY ASSESSMENT UNIT.