

## **Minneapolis Civilian Police Review Authority Administrative Rules**

### **Rule 1.**

**A. Source of Authority.** The Minneapolis Civilian Police Review Authority, hereinafter referred to as the "Authority," was established by Ordinance of the City of Minneapolis March 21, 2003. The Authority includes a Board of seven members and an administrative staff consisting of a Manager, a Community Outreach Advocate, investigators, and other support staff as necessary. (Minneapolis Code of Ordinances. Title 9 Chapter 172.)

**B. Effective Date.** The effective date of the following Rules is November 21, 2003.

**C. Purpose.** The purpose of the following Rules of Procedure is to facilitate and guide the independent civilian police review process in Minneapolis, Minnesota. This process shall be based on due regard for the Constitutional and Legal Rights of all persons, and shall promote the highest possible degree of mutual respect between the Minneapolis Police Department and the Community.

To achieve the purpose, the Authority shall receive, consider, investigate and make a determination regarding complaints or grievances brought by the Public against any Minneapolis Police Officer. These Rules provide for the impartial, independent and prompt investigation, and disposition of complaints and grievances in a manner which protects the Public and individual Officers of the Minneapolis Police Department who may become involved in such complaints.

The Authority shall encourage members of the Public to bring forward legitimate complaints concerning abuse and improper conduct. The desired result of the Authority and of these rules is to strengthen public confidence and to assure that the highest standards of professionalism are observed in the handling and disposition of allegations of abuse of authority.

The procedures of these Rules shall be liberally construed to achieve these objectives:

**D. Application.** The following Rules shall be employed by the Authority to govern the receipt and processing of Complaints. The Authority shall provide information concerning its findings of fact, determinations and other relevant information, subject to the provisions and limitations of the law.

**E. Severability.** If any provision of this set of Rules or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not effect other provisions of the rule or application of any other part of this regulation

which can be given effect without application of the invalid provision. To this end the provisions of all sections, subsections, or subdivisions herein and the various applications thereof are declared to be severable.

**Rule 2. Scope of Authority.** The authority shall receive complaints that allege misconduct by an individual police officer or officers acting in their own discretion, including, but not limited to the following:

- a. Use of excessive force.
- b. Inappropriate language or attitude.
- c. Harassment.
- d. Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age or sexual orientation.
- e. Theft.
- f. Failure to provide adequate or timely police protection.
- g. Retaliation for filing a complaint with the review authority.  
(Ord. §172.20)

**Rule 3. Definitions.** Whenever used in these Rules, unless plainly evident from the context that a different meaning is intended, the following terms mean:

**Adequate and timely.** Such length of time as may fairly, properly, and reasonably be allowed or required, having regard to the nature of the act or duty, or of the subject matter, and to the attending circumstances.

**Authority.** The Minneapolis Civilian Police Review Authority. The Authority includes a Board of seven members, a Manager, Community Outreach Advocate, Investigators and Administrative Staff (Minneapolis Code of Ordinances, Title 9, Chapter 172.)

**Board.** The Board of Directors of the Minneapolis Civilian Police Review Authority, which consists of seven members.

**Chief.** The Chief of Police in the City of Minneapolis.

**Preponderance of the Evidence.** The greater weight of the evidence supports the decision.

**Complainant.** The person filing a complaint with the Minneapolis Civilian Police Review Authority who alleges that he/she has been aggrieved by the conduct of sworn Officer or Officers of the Minneapolis Police Department.

**Complaint.** The allegation, signed and sworn, by a complainant regarding an Officer or Officers of the Minneapolis Police Department.

**Confidential Data.** The Minnesota Government Data Practices Act defines "confidential data on individuals" as data which cannot be made public and is inaccessible to the individual subject of that data.

**Day.** Monday through Friday, except holidays recognized by the City of Minneapolis during regular business hours.

**Department.** The Minneapolis Police Department.

**Deputy Chief.** The appropriate deputy chief assigned to the division of the accused officer.

**Discrimination.** Disparate treatment of persons because of their race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, or sexual orientation.

**Excessive Force.** The officer's particular use of force was not "objectively reasonable" in light of the facts and circumstances confronting the Officer without regard to the officer's underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. Factors to be considered include the following: 1) the severity of the crime at issue; 2) whether the subject posed an immediate threat to the safety of officers or others, and 3) whether the subject was actively resisting arrest or attempting to evade arrest by flight. (Graham v. Connor. 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)).

**Family Member.** For the purposes of these rules, family members shall include domestic partners as defined by Minneapolis Code Chapter 142.

**Final Disposition.** A final disposition occurs when the Chief makes a final disciplinary decision, regardless of the possibility of any later proceedings or court proceedings. In the case of proceedings before the Minneapolis Civil Service Commission or arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the Civil Service Commission or arbitration proceedings.

**Garrity Warning.** Under Garrity v. New Jersey, U.S. 493 (1967), and Gardner v. Broderick, Police Commissioner of New York, 392 U.S. 283 (1968), a police officer can be ordered to give a statement regarding actions taken by him/her while employed with the Minneapolis Police Department. The failure to answer such questions pertaining only to the scope of their duty may form the basis of an officer's dismissal or result in disciplinary proceedings against that officer. The rights of an officer in regard to this warning are that any statements given under this warning, or the fruits thereof, compelled as a condition of employment,

cannot then be used in any subsequent criminal proceeding against the employee except in cases of alleged perjury by the employee giving the statements where the criminal charge is based upon the falsity of the statement given.

**Harassment.** Inappropriate words, gestures, and other actions which are intended to annoy, alarm or abuse another person.

**Hearing Panel.** The hearing panel consists of three (3) persons appointed by the Authority Chairperson to weigh and consider all reliable and credible evidence presented and file a report containing findings of fact and a determination of whether the complaint is sustained.

**Inappropriate language, attitude or conduct.** That language or action, which under the circumstances may be rendered unnecessarily confrontational or otherwise inappropriate. This may include, but is not limited to such conduct as racial, sexual or ethnic slurs (i.e. the use of any common or slang terms, which are generally perceived to be derogatory in nature to refer to any member of a racial, ethnic, religious group, or to refer to any person's nationality, sex, sexual orientation, or affectional preference, or which may constitute sexual harassment).

**Investigator.** A person, hired by the Authority, who is a civilian with prior experience or training as an investigator, to conduct the Authority's complaint investigations. A civilian, for purposes of this provision, is a person who is not now, nor has ever been a sworn officer of the Minneapolis Police Department.

**Manager.** A person hired by the Director of the Minneapolis Civil Rights Department, required to be an Attorney at Law, to manage the ongoing operation of the Authority and to execute functions to aid the Authority in carrying out its purpose.

**Mediation.** An informal dispute resolution process, facilitated by a neutral third party, attended by the Complainant and the Officer for the purpose of fully, thoroughly, and frankly discussing the alleged misconduct and attempting to arrive at a mutually agreeable resolution of the Complaint.

**Mediator.** A neutral third party in contract with the Authority to mediate disputes between Complainants and Officers.

**Order to Cooperate.** The Minneapolis Police Department and all other City of Minneapolis employees and officials, by ordinance shall, except as expressly prohibited by any other law, respond promptly to any and all reasonable requests for information, for participation in hearings, and for access to data and records for the purposes of enabling the Authority to carry out its responsibilities. The failure by any official or employee of the Minneapolis Police Department or by

any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct.

**Officer.** A sworn Officer or Officers of the Minneapolis Police Department against whom an allegation of misconduct has been made in a Complaint.

**Perjury.** The willful assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in an Authority proceeding as part of his/her evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is or in an affidavit, or otherwise, such assertion being material to the issue or point of inquiry and known to such witness to be false.

A person is guilty of perjury if in any official proceedings s/he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and s/he does not believe it to be true.

**Personal Knowledge.** Direct knowledge of the allegations or incident from which the allegations arose, namely the victim of the alleged misconduct by an Officer or a witness to that alleged misconduct.

**Private Data.** The Minnesota Government Data Practices Act defines "private data on individuals" as data that is not public and is accessible to the individual subject of that data.

**Public Data.** The Minnesota Government Data Practices Act defines "public data not on individuals" and "public data on individuals" as data which is accessible to the public.

**Tennessee Warning.** The title given to the notice which the Minnesota Government Data Practices Act requires the Civilian Review Authority staff and/or the Board to give to an individual when the Civilian Review Authority staff and/or the Board asks the individual to provide private or confidential data about him/herself. The Authority and the Department must take appropriate steps to ensure that the data is only used and only disseminated consistent with what has been stated in the "Warning." In this "Warning", individuals must be informed of the following:

- a. Why the data is being collected and how it will be used within the Authority and the Department collecting it;
- b. Whether the individual is legally required to provide the data or may refuse to do so;
- c. What the consequences are to the individual of either providing or not providing the data; and
- d. The identities of other persons and agencies who have a legal right to have access to the data being provided.

**Tolled.** When time limitations established within these rules are suspended or temporarily stopped because of other procedures.

**Vulnerable person.** Vulnerable person means:

- a. A person who is a resident or inpatient of a facility (a hospital or other entity required to be licensed pursuant to Minn. Stat. §§ 144.50 to 144.58.); a nursing home required to be licensed to serve adults pursuant to Minn. Stat § 144A.02; an agency, day care facility or residential facility licensed to serve adults pursuant to Minn. Stat. §§ 245.781 to 245.812; or a home care provider licensed under section Minn. Stat. § 144A.46;
- b. A person who received services at or from a facility required to be licensed under Minn. Stat. §§ 245.781 to 245.812, except a person receiving outpatient services for treatment of chemical dependency or mental illness;
- c. A person who receives services from a home care provider licensed under Minn. Stat. § 144A.46; or
- d. A person who, regardless of residence or type of service received, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status. (Minn. Stat. § 626.557.)

#### **Rule 4. Administration**

##### **A. Interpreters**

- a. The Manager shall have discretionary authority to provisionally qualify, utilize and compensate interpreters. Each party in need of an interpreter shall give notice to the Manager within seven (7) days of receipt of the Notice of Hearing so that appropriate arrangements may be made.
- b. The Rules of confidentiality shall apply to an interpreter utilized in any stage of the review process including, but not limited to a mediation session, interview, panel hearing or reconsideration hearing. The interpreter shall not have had any personal or professional involvement with any of the issues of the particular case prior to the hearing.

**B. Liability of Board Members.** No member of the Board of the Authority shall be liable to any person for damages or equitable relief by reason of any action taken or recommendation made by a Board member or by the Authority, if the action taken was within the scope of the functions of the Authority and if the Board member was not in violation of the law and the board member acted in the reasonable belief that such member's action was warranted by the facts known to such member after reasonable effort to obtain the facts of the matter.

**C. Amendment of Rules.** These Rules may be altered or amended at any regular or special meeting of the Authority by vote of the Board according to the procedures set forth in Minneapolis Code, Section 172.40, and subject to approval by the Minneapolis City Council.

**D. Assistance and Information From Authority.** If any party desires assistance or information, which can legally be made public, he or she may request such from the Authority. This may include, but is not limited to: assistance in filling out forms; having rules read, explained and/or interpreted; distributing of public information; and keeping the parties to a Complaint regularly informed on the progress of their particular case, in accordance with the provision of the Minnesota Government Data Practices Act and § 1 (C) of these Rules.

**Rule 5. Conduct of Monthly Meetings.**

**A. Regular Meeting.** The Board shall meet once every month at a regularly scheduled time and place. The meeting shall be for the purposes of discussing, deciding or receiving information as a group on issues relating to the official business of the Authority.

**B. Notice.** A schedule of the regular meetings shall be on file in the City Clerk's office and available to City staff and the public. If there is a deviation in the meeting time or place, notice must be provided as required for a special meeting.

**C. Quorum.** A quorum of the Board shall be four (4) members. A quorum may not, as a group, discuss or receive information on official business in any setting under the guise of a private social gathering.

**D. Public Access.** In any open meeting, the public must have access to at least one copy of any printed materials, excluding data classified as not public, relating to the agenda items of the meeting. This includes information prepared or distributed by or at the direction of the governing body or its employees and which are:

- distributed at the meeting to all members of the governing body
- distributed before the meeting to all members
- available in the meeting room to all members

**E. Closed Meetings.** Before closing a Board meeting, the chair shall state on the record the specific statutory grounds permitting the meeting to be closed and describe the subject to be discussed.

**F. Vote Recording.** Votes of the members of the Authority on any action taken in an open meeting must be recorded in a journal kept for that purpose and that such journal be open to the public during normal business hours.

**F. Roberts Rules.** Robert's Rules of Order Newly Revised shall be the parliamentary authority for all matters not specifically set forth in these rules.

**Rule 6. Collection and Dissemination of Data**

**A. Responsible Authority.** The City's designated Responsible Authority shall be the Civilian Review Authority's "Responsible Authority". The Manager shall be responsible for working with the Responsible Authority and assuring that the Authority complies with the Minnesota Government Data Practices Act, other Minnesota statutes, applicable Ordinances of the City of Minneapolis and applicable provisions of these Rules.

**B. Types of Data.**

**1. Generally.**

- a. All data collected by the Authority shall be considered personnel data and, as such, is private data, as defined by Minnesota Government Data Practices, §13.43, except for that data described in the following sections of Rule 6: §B.1.b., §B.1.c., §B.2, and §B.3.
- b. Some personnel and, therefore, private data shall become public upon final disposition of a disciplinary case, as defined by the Minnesota Government Data Practices Act, §13.43 Subd. 2(b).
- c. Investigative data and certain criminal data shall be considered confidential in accordance with these rules, and as defined by Minnesota Government Data Practices Act.
- d. Information from review authority investigations shall be shared only with staff assigned to the review authority (Ordin 172.170). The City Attorney's Office shall have access to authority files as needed to fulfill its legitimate legal and ethical obligations to provide legal services to the City, its officers, and employees, except that the criminal division shall have access only as provided by court order, the rules of criminal procedure, or clearly established constitutional or statutory law.

**2. Investigative Data.** Data created or collected by the Authority which is part of an active investigation is confidential data until the Board makes a final decision, as described in these Rules below (Rule 11.K and Rule 12.E), at which point the data collected in the investigation and the summary thereof shall become private or nonpublic data. Nothing in this subsection shall be construed to make nonpublic that data that is already designated as public by law and these Rules.

**3. Criminal Data which is Confidential.** The Manager may, in consultation with the Chief and the City Attorney and/or County Attorney classify as confidential certain data created and collected by the Authority in the course of the investigation of a complaint and which the Manager determines are or probably will be material in a criminal case.

**4. Public Data.** The following data created and collected by the Authority shall be public:

- a. The name and address of the Complainant;
- b. The name, badge number, rank and job description of the Officer;
- c. The fact that a complaint has been filed against the Officer;
- d. The status of a Complaint. The following shall be considered status information:
  1. The fact that a complaint has been withdrawn by the Complainant.
  2. The fact that a Complaint has been dismissed.
  3. The fact that a Complaint is in mediation.
  4. The fact that a mediation agreement has been reached.
  5. The fact that a Complaint is being investigated.
  6. The fact that a Complaint has been referred to a panel of the board for hearing;
  7. The fact that a Request for Reconsideration to the full board is pending.
  8. The fact that a complaint was not sustained, or that a complaint was sustained.
  9. The fact that a Complaint has been referred to the Chief.
- e. The final disposition of any disciplinary action, together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the City of Minneapolis.

**C. Request for Access to Data.** Upon request to the Manager, a person shall be permitted to inspect and/or copy public data at reasonable times and places. Upon request, a person shall be informed of the data's meaning.

**D. Denial of Access to Data.** If the Manager determines that the requested data is classified so as to deny the requesting person access, the Manager or his or her designee shall inform the requesting person of the determination either orally at the time of the request, or in writing as soon after that time as possible, and shall cite the specific statutory section, temporary classification, or specific provision of law on which the determination is based. Upon the request of any person denied access to data, the responsible authority or designee shall certify in writing that the request has been denied and cite the specific statutory section, temporary classification, or specific provision of law upon which denial was based.

**E. Charge for Providing Requested Data.** If a person requests data for the purpose of inspection, the responsible authority may not assess a charge or require the requesting party to pay a fee to inspect the data. However, if a person requests copies, or electronic transmittal of the data to the person, the Authority may require the requesting person to pay the actual costs of searching for and retrieving government data, but may not charge for separating public from not public data. If the Authority is not able to provide copies at the time a request is made, copies shall be supplied as soon as reasonably possible.

## **Rule 7. Filing a Complaint.**

- A. Standing to File.** Any person, including a minor, who has personal knowledge of alleged misconduct on the part of an officer may file a complaint with the Authority by submitting a complaint either by telephone, in writing, or in person at the Authority, except that:
1. A parent or legal guardian may file on behalf of a minor.
  2. A family member, conservator, or legal guardian may file on behalf of a vulnerable person.
  3. In a case involving death or incapacitation of a person, a family member may file a complaint on behalf of the deceased.
- B. Period of Limitation.** A complaint must be filed with the Authority within one (1) year of the time of the alleged misconduct. (Ord. §172.160)
- C. Writing and Signature Required.** No complaint will be deemed filed with the Authority until it has been reduced to writing and signed by the Complainant and received by the Authority. Until a complaint is reduced to writing and signed by the complainant, the Complaint shall be treated as a tentative complaint and held in a "pending" file until a formal complaint is made.
- D. Penalty of Perjury.** Complaint forms will conclude with the following words: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true."
- F. Information Required.** The complainant must provide at a minimum, the following information:
1. Name, address, telephone number, date of birth; if a complaint is filed on behalf of someone else, this information concerning the minor, deceased person or the vulnerable adult must also be filed.
  2. Alternate means of contact; if a complaint has been filed on behalf of someone else, this information concerning the minor or the vulnerable adult must also be filled;
  3. Written statement setting forth the allegation(s), including: date, time and location of the alleged misconduct and any other pertinent details;
  4. Identification of police officer (badge and/or name and/or description). The assigned investigator will assist the complainant with identification in the event that a complainant is unable to produce a badge number or name.
- G. Amendment of Complaint.** A signed complaint may be amended throughout the course of the investigation. Circumstances under which a complainant may amend his/her Complaint include, but are not limited to, new evidence having been obtained such as a new witness coming forward or the

recollection of pertinent information. This amendment must also be in written form and signed under penalty of perjury.

- H. Withdrawal of Complaint.** A Complainant may withdraw from the review process at any point in the proceedings by submitting a written, date and signed notice to the Authority of the complainant's intention to withdraw. The signed withdrawal statement must include an affirmation that the Complainant has not been coerced or intimidated into withdrawing the complaint.

In the case of such withdrawal, The Manager may give the case file to the Chief, if:

- a. The Manager determines that the file contents could be material in a criminal case; or
  - b. The Chief makes a request for the file.
- I. Refiling of the Complaint.** The stopping of the complaint process does not prevent the Complainant from filing another complaint within the prescribed limitations period of the Minneapolis Code of Ordinances, Title 9, Chapter 172, §172.60, and these Rules.

## **Rule 8. Complaint Investigation.**

- A. File Creation.** A file will be opened for each complainant as of the date the signed complaint is received in the office of the Authority.

### **B. Notice of Receipt of Signed Complaint**

1. The Complainant shall receive written notice of receipt of their signed complaint. This Notice shall be mailed no later than five (5) business days from the date of the receipt of the signed complaint in the Office of the Authority.
2. Notice of the filing of a signed complaint and of the specific allegations contained therein will be forwarded to the Officer, the Deputy Chief, and the Chief of Police, within five (5) days of the filing of a signed complaint.
3. A copy of the Authority Rules delineating the procedures will be forwarded to all parties along with the Notice of Receipt of the Complaint.
4. Information regarding the possibility of mediation will be forwarded to all parties along with the Notice of Receipt of the Complaint.

**C. Notice.**

1. Before beginning the investigation, and at such times during an investigation as may be necessary, the Manager will notify the Chief, or the Chief's designee, to determine if there is a pending or possible criminal investigation of the conduct which is the subject of the complaint.
2. The Manager has the discretion to hold its process in abeyance, if such investigation might impede or harm a criminal investigation. If the Authority's investigation is held in abeyance, the Authority time constraints shall be tolled. (Ord. § 172.90)

During such time as the Authority may hold its proceedings in abeyance, the Authority shall request the Chief to take appropriate steps to assure preservation of the following items of evidence:

- a. The original Emergency Communications Center ("ECC") tapes relevant to the complaint.
- b. All police reports, records, evidence and any other documentation relevant to the case.
- c. Names, addresses, telephone numbers, and any statements of other information from Witnesses.

**D. Garrity Notice to Chief of Police.** A "Notice to Give Garrity Warning" shall be sent by the Manager to the chief requesting him/her to order the Officer(s) to cooperate with the investigation. With this order to cooperate, the chief shall give a Garrity Warning.

**E. Requirement of Cooperation in Investigation.** The Minneapolis Police Department and all other City of Minneapolis employees and officials shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, and for access to data and records for the purpose of enabling the Authority to carry out its responsibilities under this chapter. The failure by an official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct, unless such failure to comply is pursuant to the Officer's or employee's statutory or constitutional rights. Ord. §172.180)

If the chief fails to cooperate with the Authority in giving the order to cooperate and the Garrity Warning, the Chief shall, in writing state his/her reasons for doing so and submit said reasons to the Authority and the Mayor. The Mayor shall either sustain the Chief's decision, or order the Chief to cooperate.

**F. Copies of Sworn Statements.** The Officer, complainant and any witnesses, shall , upon their request, be given a true and correct copy of their own signed, sworn statement(s) without unnecessary delay.

**G. Conclusion of Investigation.** At the conclusion of the investigation, the investigator shall forward the file with a report of findings to the Manager.

**H. Time Limit for Investigation.** The investigation shall be completed within sixty (60) days of the date a signed complaint was filed. The Authority may once extend this deadline by an additional thirty (30) days with written explanation of the reason(s) for the extension. (Ord. § 172.90)

**Rule 9. Investigation Review.** Within seven (7) days of the date the written summary is submitted, the review authority manager shall review the investigative file and written summary. In conducting the review of the investigation, the review authority manager shall seek input from the community outreach advocate. The review authority manager may recommend further investigation that shall be completed within thirty (30) days. In all cases in which no further investigation is recommended, the review authority manager shall present the case at the next meeting of a hearing panel of the review authority allowing for proper notice to the complainant and the police officer.

**Rule 10. Mediation.**

**A. Availability.** The Authority shall inform all complainants and Officers of the possibility of mediation as an alternative to the Authority's processes. Such information shall be included with the notice of the receipt of the signed complaint pursuant to Rule 8.B.4.

**B. Agreement Required.** Both the Complainant and the Officer must agree to mediation for mediation to proceed. If at any point during the investigation or while a complaint is pending before the Board, a party requests mediation, the Authority shall inform the other party of the request for mediation and shall inquire as to the other party's interest in mediation.

**C. Scheduling.** If the Complainant and Officer agree, the Authority shall schedule a mediation session at the earliest convenient time. Written notice of the time, date and location of the first mediation session shall be provided each party and the Chief of Police.

**D. Procedure.**

1. The mediation session(s) will consist of the Complainant, the Officer, and the Mediator. In the case of a minor, a parent or legal guardian may be present. In the case of a vulnerable person, a family member, conservator or legal guardian must be present. If an interpreter is requested, arrangements will be made to have one present upon request by either party. No other person may be present. No record of the proceeding will be taken.

2. Procedures and guideline for mediation will be established at the beginning of the mediation process through agreement of all participants.
3. The mediation session(s) will continue as long as the mediator and the parties feel progress is being made in the resolution of the issues. The mediation process shall terminate when either party announces its unwillingness to continue mediation or when the parties sign an agreement setting forth the resolution of the disputed issue(s).
4. No record will made of the mediation proceedings, and no information discussed will be used in subsequent proceedings. (Minn. Stat. 595.02. Subd. 1(k) (1989).
5. A notice shall be sent the Chief informing the Chief either that the mediation was successful and the Complaint was dismissed or that mediation was unsuccessful and the matter has been reactivated before the Authority.
6. A copy of the mediation agreement will not be sent to the Chief.
7. The Authority shall monitor the mediation process and the implementation of a mediation agreement.
8. If one party fails to abide by the mediation agreement, the aggrieved party may contact the Authority within 15 days of violation of the agreement to reactivate the matter before the Authority.

**E. Tolling of Time.** In no case shall the time for mediation extend beyond thirty (30 ) days from the date the Authority has received notice of willingness to participate in mediation from both the complainant and the Officer. In order to facilitate and encourage mediation, the Authority time limitations and deadlines will be tolled during mediation.

## **Rule 11. Hearings by Board.**

**A. Hearing Panels.** At each month's regularly scheduled Board meeting, the Chairperson shall appoint Hearing Panel(s) to conduct hearings during the subsequent month. Each Hearing Panel shall consist of three (3) members of the review authority. The Authority Chairperson shall designate a Chairperson for each Panel. When appointing Hearing Panels, the Chairperson shall make reasonable efforts to ensure that hearings are held within thirty (30) days of the completion of investigations.

**B. Notice of Hearing.** Authority staff shall give notice of the date and time of the hearing and the membership of the Hearing Panel, within two (2) days of the appointment of the Panel, to the complainant and the Officer.

**C. Duties of Hearing Panel.** It shall be the duty of each Hearing Panel member to conduct a fair and impartial hearing, to assure that the facts are fully elicited, and to adjudicate all issues and avoid undue delay.

**D. Personal Bias or Prejudice.** A Hearing Panel Member shall be disqualified from sitting on that Hearing Panel if he/she has a demonstrated personal bias or prejudice, or the appearance thereof, in the outcome of the complaint. This does not include holding or manifesting any political or social attitude or belief which does not preclude objective consideration of a case on its merits.

Examples of personal bias or prejudice include, but are not limited to:

- a. Familial relationship, close friendship or close working relationship with parties material to the Complaint;
- b. Witnessing events material to the inquiry;
- c. Being a party to the Complaint;
- d. Holding a bias for or against a particular party that is sufficient to impair the Panel member's impartiality;
- e. Having a financial interest in the outcome of the Hearing.

**E. Discretionary Withdrawal by Hearing Panel Member.** A member of a Hearing Panel may withdraw from that panel whenever that member deems himself or herself to be disqualified.

**F. Request for Withdrawal by a Party to the Case.**

1. Within five (5) days of receipt of the notice of membership of the Hearing Panel, either the Manager, the Complainant or the Officer may file with the Chairperson of the Authority, a written challenge, for cause, to remove a member of the Hearing Panel.
2. Cause is limited to those definitions of personal bias or prejudice delineated in Rule 11.D. above. When a challenge for cause is filed, the Chairperson shall contact the challenged Hearing Panel Member as soon as possible. If the Authority Chairperson and the challenged Hearing Panel Member agree that the challenge is for good cause, then the member shall withdraw and the Chairperson of the Authority shall appoint another board member as a replacement.
3. If the challenged Panel Member does not agree that the challenge is for good cause, the Chairperson shall decide the merits of the challenge and replace the Member or not. If a challenge to a Panel Member is rejected, the written challenge and the Chairperson's written response shall be incorporated into the record.

**G. Burden and Standard of Proof.** The burden shall be on the Manager to prove that the misconduct alleged in the Complaint did occur. The standard of proof shall be “preponderance of the evidence”.

**H. Affirmative Defense.** It shall be an affirmative defense for the Officer that he/she acted in accordance with the rules, regulations and training of the department.

**I. Complainant's and Officer's Role in the Hearing.**

1. Neither the Complainant nor the Officer will be present when the Manager presents the investigatory findings of fact and recommendations to the Hearing Panel.

**2. Order of Speaking.** The Complainant shall address the panel first. The Complainant and the Officer shall have the opportunity to reserve up to five minutes in order to respond to comments made by the other. Should the officer not address the panel, the time reserved by the complainant is waived.

The officer and his/her representative shall be permitted to remain in the room when the Complainant or his/her representative presents to the panel. The Complainant and his/her representative shall be permitted to remain in the room when the Officer or his/her representative presents to the panel.

**K. Findings of Fact and Determination.**

**1. Findings of Fact.** The Hearing Panel shall determine each and every material fact raised in the Complaint and reduce these findings to writing.

**2. Determination.** For the Determination, the Hearing Panel shall make one of the following decisions:

- a. Complaint sustained; or
- b. Complaint not sustained.

**3. Time Limit.** Within thirty (30) days of the hearing, the Hearing Panel shall make Findings of Fact and a Determination of the complaint.

**4. Notice.** The Authority shall immediately send notice of the Hearing Panel's Determination to the Complainant and the Officer.

**5. Reconsideration.** If the complainant disagrees with the dismissal, he/she may submit a written Request for Reconsideration to the board for review of the Hearing Panel's decision as provided in Rule 12.

**L. Submission to Chief for Disciplinary Action.** When a complaint is sustained, a copy of the investigative case file, the Findings of Fact and Determination shall be submitted to the Chief, who shall make a disciplinary decision based upon this information. The Chief, within thirty (30) days of the receipt of the record, shall provide the Authority and the Mayor with a written explanation of the reasons(s) for his/her disciplinary decision.

The review authority shall provide notice to the complainant of the final disciplinary decision.

## **Rule 12. Reconsideration Hearings**

**A. Time.** Within five (5) days of receipt of the Hearing Panel's Findings of Fact and Disposition, the Complainant may submit a written request for Reconsideration to the Board.

**B. Content.** The Request for Reconsideration must state the reasons for reconsideration and any other special circumstances, including but not limited to the availability of new evidence that was not known to the Complainant or could not have been discovered by that Complainant by the exercise of due diligence.

### **C. Procedure.**

**1. Scheduling the Reconsideration Hearing.** The Board shall reconsider the complaint at its next regularly scheduled meeting that is not less than ten (10) days after the filing of the request.

**2. Disqualification of Board Member.** A Board member shall be disqualified from sitting on that Hearing Panel if he/she has a demonstrated personal bias or prejudice, or the appearance thereof, in the outcome of the complaint as described in Rule 11. A Board member may withdraw from hearing the case as provided in Rule 11 or a party may request withdrawal as provided in Rule 11.

**3. Time.** The Complainant, the officer, or their respective representatives, shall each have 10 minutes to address the Board regarding the case before the panel.

**4. Order of Speaking.** The Complainant shall address the panel first. The complainant shall have the opportunity to reserve up to five minutes in order to respond to comments made by the officer. Should the officer not address the panel, the time reserved by the complainant is waived.

The officer and his/her representative shall be permitted to remain in the room when the Complainant or his/her representative presents to the panel. The Complainant and his/her representative shall be permitted to remain in the room when the Officer or and his/her representative to the panel.

**D. Notice.**

**1. Notice of Appeal.** The review authority staff shall provide written notification to the officer of the request for reconsideration.

**2. Notice of Reconsideration Hearing.** At least ten (10) days prior to the reconsideration hearing, the review authority shall provide written notification to the complainant and the police officer of the date, time and place of the reconsideration hearing.

**3. Notice of Reconsideration Decision.** The review authority shall provide written notification of its reconsideration decision to the complainant and officer.

**E. Reconsideration Decision.** For the Reconsideration Decision, the Board shall make one of the following decisions:

1. The Board may sustain the prior hearing panel decision regarding the complaint.
2. The Board reject the prior hearing panel decision regarding the complaint and forward the matter to the Chief for discipline as provided in Rule 11.L.
3. If the review authority determines that the request for reconsideration alleges newly discovered evidence, the complaint should be remanded to authority staff to investigate and resubmit findings within thirty (30) days. The Board may sustain or reject the prior hearing panel decision based upon the resubmitted findings.

**F. Time Limit.** Within thirty (30) days of the Reconsideration Hearing the Board shall issue the Reconsideration Decision except where a case has been remanded, the Board shall issue the Reconsideration Decision within 30 days of the receipt of the resubmitted findings.

**Rule 13. Case Record**

**A. Maintaining the Record.** The Hearing Panel Chairperson shall designate a member of the hearing panel to maintain the official record of the case file until the issuance of the Findings of Fact and Determination. Hearing panel members may enter a concurring or dissenting comment to the panel's findings into the official record for the case file. Upon issuance of the Findings of Fact and Determination, the Manager shall maintain the official record of the case file. The manager shall retain the case file according to the Responsible Authority's record retention schedule.

**B. Content.** The Record shall contain:

- a. The complaint.
- b. Any and all notices or other procedural matters that have been reduced to writing.

- c. All investigatory data collected.
- d. The findings of fact and the determination, including any concurring or dissenting opinions.