

City of Minneapolis

Office of Police Conduct Review

Panelist Instructions

Updated 2/15/2013

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Before the Panel

1. Panels are comprised of two civilian and two sworn panelists. Individuals are selected to participate at equal intervals by OPCR supervisors, and the panels are scheduled on an as-needed basis by OPCR Administrative staff
2. It is important to review panel cases in advance of the panel session; they are available in the OPCR Civilian Unit Office (Room 239 of City Hall).
 - a. Please notify Charlie Schwartz (Charlie.Schwartz@minneapolismn.gov) in advance to ensure the files are available.
3. Convene to discuss the case at the scheduled date and time. Meetings will take place in Room 241 of City Hall. For an in depth discussion on reviewing a case file and evidence, see page 10.

Preparing the review document

1. Begin filling out the review panel document for the corresponding case.
2. Fill in each member's name on the left hand side of the first page (see image on right). Please indicate the Chair in the designated space as well.

Panelists in Attendance (Sign below)

Panelist 1	<hr/> Civilian 1
Panelist 2	<hr/> Civilian 2
Panelist 3	<hr/> Sworn 1
Panelist 4	<hr/> Sworn 2

3. Record the votes of each panel member on the right hand side of the document in the corresponding Panelist and allegation sections. Review Panel votes for each allegation may be:
 - a. **Merit** (SEE STEP 7)
 - b. **No Merit** (See STEP 8)
 - c. **Remand for further investigation** (SEE STEP 9)
 - d. **Split decision** (SEE STEP 10)

<u>INTERNAL USE ONLY</u>	
<u>Allegation 1</u>	
2 - Inappropriate Language or Attitude	
Civilian 1 Vote	None Selecte ▾
Civilian 2 Vote	None Selecte ▾
Sworn 1 Vote	None Selecte ▾
Sworn 2 Vote	None Selecte ▾
<u>Allegation 2</u>	
1 - Excessive Force	
Civilian 1 Vote	None Selecte ▾
Civilian 2 Vote	None Selecte ▾
Sworn 1 Vote	None Selecte ▾
Sworn 2 Vote	None Selecte ▾
<u>Allegation 3</u>	
1 - Excessive Force	
Civilian 1 Vote	None Selecte ▾
Civilian 2 Vote	None Selecte ▾
Sworn 1 Vote	None Selecte ▾
Sworn 2 Vote	None Selecte ▾
<u>Allegation 4</u>	
2 - Inappropriate Language or Attitude	
Civilian 1 Vote	None Selecte ▾
Civilian 2 Vote	None Selecte ▾
Sworn 1 Vote	None Selecte ▾
Sworn 2 Vote	None Selecte ▾
<u>Allegation 5</u>	
8 - Violation of MPD P&P Manual	
Civilian 1 Vote	None Selecte ▾
Civilian 2 Vote	None Selecte ▾
Sworn 1 Vote	None Selecte ▾
Sworn 2 Vote	None Selecte ▾

CONTINUE TO THE ALLEGATION IN DETAIL SECTIONS

ALLEGATIONS IN DETAIL PAGE

1. Excessive Force: It is alleged that while the Complainant was speaking with the hotel manager, Officer [redacted] grabbed the Complainant, threw the Complainant against a wall, placed a forearm across the Complainant's throat, held the Complainant in a chokehold for approximately one minute, and then placed the Complainant on the floor where the Complainant was handcuffed.

Supportive Findings:

YES <input type="checkbox"/>	NO <input type="checkbox"/>	REMAND <input type="checkbox"/>	SPLIT <input type="checkbox"/>
<i>This allegation has merit.</i>	<i>This allegation does not have merit.</i>	<i>Remand to investigation for additional information.</i>	<i>There is no majority vote.</i>

MERIT ALLEGATIONS

4. When the panel recommends that an allegation **has merit**:
 - a. Write **“ON HOLD FOR LOUDERMILL HEARING”** in the supportive findings section.

Supportive Findings:

ON HOLD FOR LOUDERMILL HEARING

- b. **Move to the next allegation detail page.**
- c. Complete the review panel document for each allegation recommended to be without merit (STEP 8), without enough information to continue (STEP 9), or with a split decision (STEP 10).
- d. Notify OPCR administrative staff of the allegation determined to have merit.
- e. OPCR administrative staff will schedule a Loudermill Hearing. For additional information on Loudermill Hearings, see the Internal Affairs Manual (October 2012).

NO MERIT ALLEGATIONS

5. When the panel recommends that an allegation **has no merit**:
 - a. The panel chair will begin completing the Review Panel Recommendation
 - b. In the box under *Supportive Findings*, enter any explanation you wish to provide for your vote.
Note: You may copy and paste information from the electronic version of the case's investigative summary provided by OPCR Staff.

Supportive Findings:

- c. The **panel chair** will select the checkbox next to NO and initial in the text box next to it.

NO <input type="checkbox"/>
<i>This allegation does not have merit.</i>

REMANDING ALLEGATIONS

6. If the Review Panel is unable to reach a vote due to a lack of information in the file, members may vote to remand the case to OPCR investigators.
 - a. The panel chair should complete the supportive findings section under the allegation that the panel believes to need more information.

Supportive Findings:

- b. The panel should clearly identify what information is lacking to guide OPCR staff.
- c. The **panel chair** will select the checkbox next to REMAND and initial in the text box next to it.

REMAND <input checked="" type="checkbox"/>
<i>Remand to investigation for additional information.</i>

SPLIT DECISIONS

7. The review panel may be unable to reach a majority decision when two (2) members vote for one recommendation and two (2) vote for another.
 - a. In the text box labeled supportive findings, the chair will include a brief summary of the disagreement between panel members.

Supportive Findings:

- b. The **panel chair** should check the checkbox next to SPLIT and initial in the text box next to it.

Note: No Loudermill Hearing is required when there is a split decision.

SPLIT <input type="checkbox"/>
<i>There is no majority vote.</i>

8. Continue to the next allegation and repeat

9. Once the review panel document is completed for each allegation, it should be returned to OPCR staff. This should be done via email within the next three business days if the document is not completed at the time of the hearing.

Discussing a Case and Coming to a Recommendation

When the panel meets, they will discuss the case thoroughly to determine whether an allegation has merit. The standard of proof required to find merit in an allegation is the *preponderance of evidence*, or more likely than not that the alleged actions occurred.

In determining whether an allegation has merit, the reviewer must rely only upon the evidence in the case, which must be thoroughly reviewed. Evidence consists of witness statements, including those of subject officers, witness officers, and civilian witnesses.

Evidence also includes documents, photographs, diagrams and videos which are part of the case file. All other items which are contained in the investigative file, including the complaint and the subject officer's disciplinary history when relevant, are also evidence in a case.

The reviewer must consider only the evidence contained in the investigative file and any reasonable inferences to be drawn from that evidence. An inference is a deduction or a conclusion which reason and common sense lead the reviewer of fact to draw from other facts that have been proved.

Evidence may be direct or circumstantial. Circumstantial evidence is the proof of facts or circumstances from which the existence or nonexistence of other facts may reasonably be inferred. All other evidence is direct evidence. The law makes no distinction between direct and circumstantial evidence.

The reviewer is expected to use his/her common sense and life experiences when making recommendations. However, he/she is not to base any conclusions on information known to him/her regarding the matter or the persons involved in the matter if that information is not part of the investigative file.

Panelists must judge the credibility of witnesses and the weight to be given their statements. In doing so, he/she should take into consideration the witnesses' means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of their statements; the consistency or lack of consistency in their statements; their motives; whether their statements are contradicted or supported by other evidence; their bias, prejudice, or interest, if any; their manner or demeanor while making statements; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses. In considering witness credibility, the reviewer should apply the same criteria to all witnesses regardless of whether the witness is a subject officer, a witness officer, a complainant, a civilian witness, a supervisor or a command officer.

The reviewer should not automatically consider any type of witness, such as a citizen or a subject/witness officer, to be more credible than another type of witness simply because that witness is or is not a police officer. Furthermore, he/she is not to afford any particular degree of credibility to a witness simply because of that witness' rank.

There may be instances where a reviewer of fact receives conflicting evidence and different accountings from different witnesses. It should be remembered that this does not necessarily mean that a witness is intentionally being untruthful, although that is a possibility to be considered. Discrepancies in a witness' statement or between one witness and another do not necessarily mean that either witness should be discounted.

Where such discrepancies exist, the reviewer should consider, based upon all the facts and circumstances, whether the discrepancies result from an intentional falsehood or from some other reason. Additionally, the reviewer should consider whether any discrepancy relates to a matter which is significant or insignificant to the issue to be determined. Based on all of these stated considerations and all the facts, circumstances, and evidence in the case, the reviewer may believe all, part or none of any witness' statements. He/she may also determine what weight, if any, to give to any witness' statements.

The weight or sufficiency of evidence is not necessarily determined by the number of witnesses presenting evidence in support of or against a particular issue. An issue should not be decided by the simple process of counting the number of witnesses on opposing sides. The test to be applied is not the number of witnesses but the convincing force of the evidence presented by the witnesses. The reviewer must thoroughly review the policy, procedure, rule, regulation or directive alleged to be violated and apply it to the facts as he/she determines them. The reviewer must do so without regard for whether he/she personally agrees with the particular policy, procedure, rule, regulation or directive or whether he/she believes it should be amended or repealed.

A finding of whether or not a violation has been proven by a preponderance of the evidence must be based on a fair and rational consideration of all of the evidence and only the evidence in the case. The finding must not be based on or be influenced by any of the following:

- Guesses or speculation;
- Facts not contained in the investigative file;
- Sympathy, bias, or prejudice for or against the subject officer, any witness, any other person involved, the Department or its administration, or any other person or entity having an interest in the case;
- The reviewer's personal assessment of the subject officer's reputation, work history or discipline history, where such evidence is not a part of the investigative file or is not relevant to the determination of whether there is sufficient evidence to issue a recommendation for the violation currently being considered;
- The rank of the subject officer unless rank is an element of the alleged violation;
- The anticipated or perceived effect which the finding may have on the subject officer, such as the penalty that might be imposed or the effect that the finding may have on areas outside of

the discipline system but within the discretion of the Chief of Police such as off duty employment, assignment, appointment, promotion or the like;

- The anticipated or perceived effect which the finding may have on any witness or other involved person, the Department or its administration, the public or public opinion, or any other person or entity having an interest in the case.

The Loudermill Hearing

The purpose of this hearing is to allow the accused employee and/or his or her representative an opportunity to respond to the allegations **deemed to have merit** by offering any mitigating circumstances which should be considered by the panel prior to its final recommendation to the Chief of Police. The entire panel must be in attendance for this hearing and the hearing must be audio recorded, preferably with a digital recorder.

The panel chair will read the Loudermill statement template (see the next section), filling in the appropriate wording specific to the case and then give the employee and the employee's representative(s) a chance to respond. The role of the panel is simply to listen to what the officer has to say about the charges. During their response, the accused employee (and/or his/her representatives) may, among other things, expound on the information in the case, ask the panel to consider mitigating circumstances, and/or give the panel any other information that is relevant to the case or investigation.

After the employee responds to the charges, the panel chair will excuse the employee and his/her representatives from the room. The panel will then discuss the information presented to determine if any changes in the recommendation are appropriate. The audio recorder should be turned off during this discussion. Based on the employee's response, as well as any mitigating or aggravating circumstances, the panel may:

- Return the case to the OPCR for further investigation
- Reverse its preliminary recommendation on any of the allegations
- Uphold its recommendation on any of the allegations.

Once the decision is reached, the panel chair then invites the accused employee back in the room, the hearing is officially back on the record, and the audio recorder is turned back on. The panel chair shall notify the accused employee of its recommendation. The Chief of Police will make the final decision and determine what discipline (if any) will be imposed.

The Loudermill Statement

RECORDER ON.

“This is a Category “B” panel convened for OPCR case # 00-00. It is (day, month, date, year), and we are in Room 241 of City Hall. The panel chair is (name, title and assignment) assisted by panel member (name and title), and panel member (name and title). (Employee Name) is alleged to have violated (Policy & Procedure Number, Section and Title). This violation took place on (date and time) when (employee name) was alleged to (brief narrative description). This panel met on (date and time) to review the finding(s) of the investigation. In that panel meeting, the panel sustained the finding(s) that (employee name) had violated (Policy & Procedure Number, Section and Title). At this point, (employee name), you have an opportunity to request that we hear and consider any mitigating circumstances.”

[Statement by the person or representative.]

“At this time, we will take a break to consider our decision in light of the information you have given us. Break taken at (time).”

RECORDER OFF.

[At this point, the panel discusses whether the information provided by the alleged violator, union/federation representative or attorney changes the proposed recommendation(s) to the Chief. Any changes are noted on the review panel document.]

Panel reconvenes.

RECORDER ON.

“The panel has reconvened at (time). After considering the information presented by (employee/union/federation representative or attorney), this panel will recommend to the Chief of Police that the allegation of _____, has [merit/no merit]. We will also recommend _____ (Example: recommendations on any other allegations). As a category “B” violation, the record of this panel meeting will remain in your IAU file for three years. It may also be used for consideration for imposition of discipline for three years from the date of the initial incident. Panel adjourned at (time).”

RECORDER OFF.