

David Bicking and Michelle Gross,

Case Type: Mandamus

Court File No.: _____

Petitioners,

v.

**PETITION FOR WRIT
OF MANDAMUS**

Timothy Dolan, Chief of Police of
the City of Minneapolis and Donald
Bellfield, Chair of the Board of the
Civilian Police Review Authority,
Minneapolis, Minnesota,

Relators.

Now come the Petitioners seeking a writ of mandamus requiring Minneapolis Police Chief Dolan to comply with the mandatory provisions of the Minneapolis Ordinance relating to disciplining Minneapolis police officers for sustained complaints made to the Civilian Police Review Authority ("CRA"), and requiring Donald Bellfield, Chair of the Board of the CRA, to perform his mandatory duty to notify the City Council that Chief Dolan is failing to obey his mandate.

PETITIONERS

1. David Bicking ("Bicking") is a resident of Minneapolis, and Hennepin County.
 - a. Bicking is a board member of the Minneapolis CRA.
 - b. In his capacity as board member, Bicking helped to develop the Minneapolis CRA Participation in Performance Review of MPD Chief Dolan dated December 2009 (Attachment A) ("Dolan Performance Review"). The Dolan

Performance Review “present[ed] in detail the Minneapolis CRA’s input and participation in the performance review of the Minneapolis Chief of Police.” (Att. A, p. 2). The Dolan Performance Review found unsatisfactory performance in several areas, including failure to discipline police officers once the CRA has sustained a civilian complaint, and the Chief improperly utilizing a *de novo* review of CRA cases, ***in violation of Minneapolis Ordinance 172.130(a)***. This means, in essence, that instead of disciplining police officers once the CRA had sustained a complaint, the Police Department *started the process over and managed to find no violation or insufficient evidence*.

c. The December 2009 Dolan Performance Review was adopted by the full CRA board.

d. As a CRA board member, Bicking has a duty to obey the CRA Ordinance. He also has a duty to the public to ensure that the CRA complies with the Ordinance, and with its own mission statement (Att. A, p. 2).

e. As one of the drafters of the Dolan Performance Review, Bicking understands that pursuant to Mpls. Ord. 172.130(d), “The civilian police review authority chairperson shall notify the executive committee of the chief’s failure to comply with the requirements of this section [section 172.130, Disciplinary Decision], and such failure may subject the chief to disciplinary action.” (Att. A, p. 9).

f. It is important that public officials be held accountable to the law, but it is particularly important that the Chief of Police set an example by scrupulously following all laws.

g. Mayor R. T. Rybak has nominated Minneapolis Police Chief Dolan for re-appointment. That appointment must be approved by the governing body. First the Executive Committee of the City Council, then the Public Safety & Health Committee of the City Council, and then the full City Council must approve Mayor Rybak's re- appointment, before Dolan may continue as Chief of Police. The Executive Committee is scheduled to take up the issue on February 17, 2010, with action by the Public Safety & Health Committee scheduled for March 3, 2010, and consideration by the full City Council scheduled for March 12, 2010. Time is of the essence.

h. To date, CRA Board Chair has not complied with his mandate to notify the Executive Committee of the City Council of Chief Dolan's failure to comply with the Disciplinary Decision section of the Ordinance.

i. At the February 3, 2010 CRA meeting, Bicking and others attempted to get Chair Bellfield to comply with his mandate, but they were unsuccessful.

j. As a board member, Bicking is responsible to the City of Minneapolis, to ensure that board members and the Chair are acting in the best interests of the People of the City of Minneapolis. Just as a board member of a private corporation has a duty to ensure that the board is acting in the best interests of the corporation, so too, must Bicking act in an attempt to force the Board Chair to act in the City's best interests, that is in the best interests of the People of the City of Minneapolis.

k. This duty is particularly important now that the CRA has adopted the Dolan Performance Review, and the Executive Committee is actively, within this timeframe, reviewing Chief Dolan's potential re-appointment. Failure to notify the Executive Committee at this time of the CRA's Performance Review, and its contents; and the mandate of Mpls. Ord. 172.130(d) would be tantamount to dereliction of duty.

Chief of Police Dolan has admitted that the City of Minneapolis has a duty to protect the public from police officer use of excessive force. However, Chief Dolan has not been complying with his duty under the Discipline section of Mpls. Ordinance 172.130. Failure to discipline officers and hold them accountable, encourages bad conduct by police, fosters a belief that police are above the law, and puts the public in danger.

m. Pursuant to Mpls. Ord. 172.130, "The chief's disciplinary decisions shall be based on the adjudicated facts *as determined by the civilian review authority board*, and shall not include a de novo review of the facts by the Minneapolis Police Department's internal affairs unit or any other police officer, unit or division." (Emphasis added). This means that once the CRA finds facts, the police cannot decide that the facts were different or "not that bad." Despite mandatory language in the Mpls. Ordinance, the Dolan Performance Review details that the Chief has, indeed, allowed de novo review of facts. This has contributed further to the Chief's failure to discipline police officers and hold them accountable.

n. The Dolan Performance Review describes how the failure to comply with his mandate has resulted in only a few police officers being disciplined.

o. The Chief's refusal to follow his mandate under law results in the City failing in its duty to protect the public from police excessive force and other misconduct.

p. Because Bellfield has refused to comply with his mandate, the Executive Committee has not been notified of the failure of the Chief to comply with the CRA Ordinance, and that, under the ordinance, "such failure may subject the Chief to disciplinary action." The Executive Committee is the very Committee that should be on full notice of Dolan's deficiencies before deciding whether to send his potential re-appointment to the Council for a vote.

q. Bicking has been unable to obtain compliance with the Ordinance in any other manner, and a speedy resolution of this issue is required. Indeed, time is of the essence.

2. Michelle Gross ("Gross") is a Registered Nurse and resident of Minneapolis, and Hennepin County.

a. Gross is the President of Communities United Against Police Brutality, an organization committed to fighting police brutality and all forms of police misconduct.

b. Gross has been involved in several efforts to revitalize the CRA, to revise the Minneapolis CRA Ordinance so that it would meaningfully protect citizens from misconduct by police. She has attended numerous CRA meetings; she has requested that the current CRA Board comply with the CRA Ordinance.

c. Gross is aware that adequate discipline of police officers who do wrong, is a deterrent against future wrongs by police, and that failure to

discipline tolerates and even encourages police misconduct. Gross' beneficial interest is focused on those who are victims of misconduct at the hands of Minneapolis Police, those who have complained to Communities United Against Police Brutality about police misconduct, and those who will be victims in the future, *but need not be if the Ordinance is respected as the law*. In the recent year, Minneapolis citizens have been victims of police misconduct, police excessive force, police who steal, police who rob, and other forms of serious police misconduct. The tendency of Minneapolis and other government officials to look the other way when police misbehave has allowed police misconduct to grow from a problem to a crisis. The citizens who are the future victims of police misconduct must have an avenue to do all they can to address the problem, and prevent the misconduct.

RELATORS

3. Timothy Dolan is the current Chief of Police of Minneapolis, Minnesota ("Dolan" or "Chief"). As Chief, he must comply with all laws, including but not limited to the Minneapolis Ordinances, and specifically Mpls. Ord. 172.130. Pursuant to Chapter 3, sec. 23, the City Council may prescribe additional duties to Chief Dolan at any time.

4. Donald Bellfield is the current Chair of the CRA Board. He is specifically mandated by Mpls. Ord. 172.130 to "notify the executive committee of the chief's failure to comply with" the Minneapolis CRA Ordinance (see discussion above).

5. Both Relators have failed in their specific mandates, as discussed in this Petition, and Attachment A hereto.

PETITION FOR WRIT

A. The rights involved are substantial. Numerous complaints, reports, statistics and case studies confirm that large numbers of the public are the victims of police misconduct, false arrest and/or police brutality. The Relators have a legal duty to perform. Both of them have failed in their specific, mandatory duty.

B. There is no plain, speedy and adequate remedy at law. Time is of the essence. The CRA has now adopted the Dolan Performance Review, and the re-appointment of the Chief will be acted on within four weeks. The Executive Committee is due to act on February 17, 2010.

C. This writ process will provide relief. The Executive Committee can and should be immediately notified of Dolan's failure to comply with Ordinance 172.130.

This Court has authority to provide that relief without any further hearing.

Accordingly, a peremptory writ is requested, which specifically compels Donald Bellfield, by February 16, 2010, to notify the Executive Committee of Dolan's failure to comply with Section 172.130 of the CRA Ordinance, and that said Ordinance also states that such failure may subject the Chief to disciplinary action, and to forward to the Committee a copy of Attachment A (Dolan Performance Review) which provides documentation of such failure, and to provide this Court with proof that he has done so. An alternative writ is requested in the alternative.

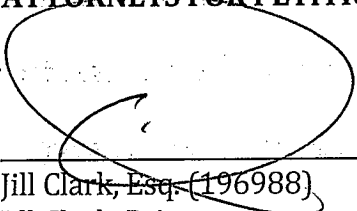
D. Chief Dolan is commanded to appear at a hearing on _____, 2010, at _____, before the Honorable _____, to show cause why he has failed to comply with his mandate under Mpls. Ord. 172.130.

WHEREFORE, pursuant to Minn. Stat. §586.01 *et seq.*, and the general equitable

discretion of this Court, Petitioners seek the relief requested above.

Dated: February 11, 2010

ATTORNEYS FOR PETITIONERS



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ACKNOWLEDGEMENT

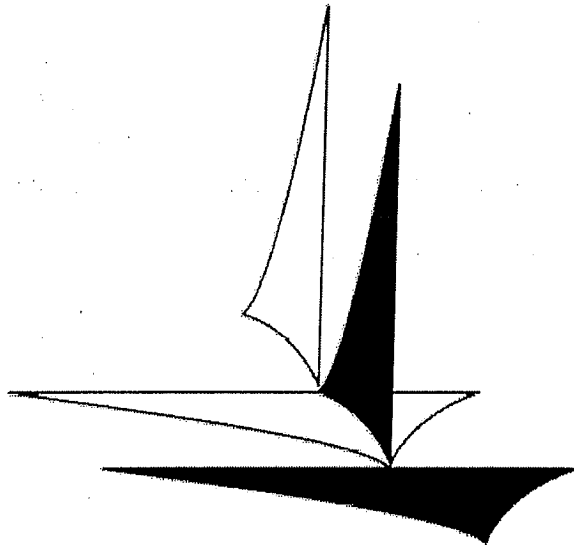
The undersigned hereby acknowledged that, pursuant to Minn. Stat. § 549.21, Subd. 2, costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party of parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: February 11, 2010

ATTORNEYS FOR PETITIONERS.



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Minneapolis
City of Lakes

CIVILIAN POLICE REVIEW AUTHORITY

**CRA PARTICIPATION IN PERFORMANCE REVIEW
OF MPD CHIEF DOLAN**

DECEMBER 2009

Serving citizens and police officers with honesty and integrity

ATT. **A**

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Executive Summary

The Minneapolis Civilian Police Review Authority Board members are residents of Minneapolis appointed by the Minneapolis City Council and Mayor to fairly, objectively and independently consider complaints of misconduct by members of the Minneapolis Police Department, and to issue determinations based on findings of fact and evidence to promote adherence to the highest standard of police conduct and to foster mutual respect between the Minneapolis Police Department and all the populations of the city of Minneapolis.

This document presents in detail the Minneapolis Civilian Police Review Authority's input and participation in the performance review of the Minneapolis Chief of Police. It is the Authority's first ever participation in the performance review process of the police chief and it addresses problems and issues as well as gives feedback, suggests areas of improvement and makes recommendations of actions which should be undertaken to preserve, improve and expand upon the relationship between the Minneapolis Police Department and the Minneapolis Civilian Police Review Authority.

Specifically, the Minneapolis Civilian Police Review Authority Board found:

Unsatisfactory performance in the following areas:

- ISSUANCE OF DISCIPLINE IN SUSTAINED CASES
- DE NOVO REVIEW OF SUSTAINED CASES
- REASONS GIVEN FOR DISCIPLINE DECISIONS
- USE OF RECONSIDERATION OPTION
- NOTIFICATION OF FINAL DISPOSITION OF DISCIPLINARY DECISION
- RESPONSE TO POLICY INQUIRIES

Improvement desired in performance in the following areas:

- TIMELINESS OF DISCIPLINARY DECISIONS
- OFFICER AVAILABILITY FOR INTERVIEWS
- OFFICER AVAILABILITY FOR MEDIATION
- AVAILABILITY OF VIDEOS
- MPD RESPONSE TO LACK OF OFFICERS' TRUTHFULNESS
- RESPONSE TO POLICY RECOMMENDATIONS
- EARLY INTERVENTION SYSTEM

Satisfactory performance in the following areas:

- COMMUNICATION OF DECISIONS
- PACC PROCESS AND MEETINGS

Good performance in the following areas:

- REVISION OF CRA DETERMINATION
- AVAILABILITY OF POLICE REPORTS AND OTHER EVIDENCE
- POLICE TRAINING FOR CRA MEMBERS

Each performance area is detailed below and specifically conforms with Minneapolis Code of Ordinance Title 9, Chapter 172, Civilian Police Review Authority.

Introduction

It is generally accepted that all employees should have a regular performance review, for the employer to convey expectations, give feedback on performance, and suggest areas of improvement. It is not the role of the Minneapolis Civilian Police Review Authority (CRA) to provide a comprehensive performance review for Police Chief Dolan, but the CRA Ordinance recognizes that the CRA does have the duty and the power to "participate in the performance review of the chief of police."¹ In addition, the section of the ordinance regarding the chief's disciplinary decisions includes the provision, "The level of compliance with this section shall be included as an element of the chief's annual performance evaluation."² The CRA Board believes that its role is to participate in the evaluation of those actions of the Chief that directly bear on the ability of the CRA to function efficiently and accomplish its mission.

Timothy Dolan joined the Minneapolis Police Department (MPD) in 1983 and was appointed Interim Chief in April 2006 after the departure of Chief McManus. He was appointed Police Chief in October 2006 for a term which expires in January 2010. He may be re-appointed at that time, at the discretion of the mayor with the approval of the City Council. It is our understanding that the Chief received his first performance review a few months ago. The CRA was not notified until after the review was completed, so it could not participate in that review, as called for in the CRA Ordinance. The CRA Board offers this participation in the performance review at this time so that our conclusions may inform the public and any decision makers who are interested in evaluating or improving the cooperation between the MPD and the CRA.

The CRA has chosen an evaluation period which covers all of 2008 and the first three Quarters of 2009.³ We have not looked at earlier performance because most of the current CRA Board members have been on the board only since 2008. This evaluation considers not only the personal actions of Chief Dolan, but also the record of the MPD as a whole. Chief Dolan is ultimately responsible for the performance of the MPD and its officers.

This evaluation includes a review of the 25 disciplinary decisions the Chief made from January 1, 2008 through October 31, 2009. The CRA also reviewed the Chief's and the MPD's interaction with the CRA, including but not limited to, the level of cooperation with the board and staff, the availability of evidence, the adherence to the CRA ordinance, and the MPD's overall willingness to operate within the spirit of the CRA ordinance.

We hope that this report will be helpful to all those with an interest in the Chief's performance and in the relationship between the MPD and the CRA.

¹ Minneapolis Code of Ordinances, Title 9, Section 172.60(h). See Appendix D for text.

² Section 172.130(d).

³ Statistics for this evaluation period are publicly available in the CRA's 2008 Annual Report, 2009 Semi-Annual Report, and 2009 Third Quarter Report. Statistical summaries for each month are also available as part of the monthly board meeting minutes. See Appendix G for links.

Performance of Chief Dolan Relevant to CRA

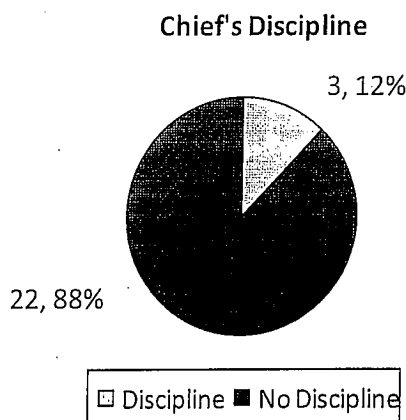
This section is organized in accordance with the various responsibilities of the MPD relative to the CRA, as contained in the CRA Ordinance and in the recommendations of the CRA Working Group (2006), as agreed to by the MPD.

172.130 DISCIPLINARY DECISIONS

ISSUANCE OF DISCIPLINE IN SUSTAINED CASES

PERFORMANCE GOAL: The Police Chief is given discretion in the imposition of discipline in cases which have been sustained by the CRA. Nevertheless, the CRA expects that, once a case has been fully investigated, and a hearing panel of three members has voted to sustain a complaint, that the MPD will impose appropriate discipline. The CRA can only accomplish its mission, and the public can only have confidence in the fairness and effectiveness of the CRA process, if sustained cases result in consistent discipline of officers who violate MPD policy.

OBSERVATIONS: Most sustained cases have not led to discipline. During the evaluation period, the CRA has received discipline decisions from the MPD on 25 cases that were sustained. In only 3 cases (12%) was any discipline imposed on the officers involved.⁴ Some cases involve more than one officer. Of the 37 officers who were found by the CRA to have engaged in misconduct, 5 officers (14%) were disciplined: three received letters of reprimand, two received oral reprimands. The chart below shows the percentage of sustained complaints with and without discipline based on disciplinary decisions made by the MPD during the relevant evaluation period.



For more context on the number of sustained cases sent for discipline, and the factors already considered by the CRA before a case is sustained, see Appendix B.

The CRA strives "to promote the adherence to the highest standard of police conduct"⁵ Consistent and meaningful discipline in cases of documented misconduct is important to deter future misconduct. The MPD has seriously undermined the most important function of the CRA by nearly always refusing to discipline its officers in response to sustained civilian complaints.

Another aspect of the CRA mission is to "foster mutual respect." That requires transparency, but, under the State Data Practices Act, the public only has access to information about cases where discipline is issued. If the MPD does not issue discipline, the

⁴ This is a significant decline from earlier years. In 2007, out of 14 sustained cases, 4 (29%) resulted in discipline. In 2006, out of 41 sustained cases, 21 (51%) resulted in discipline.

⁵ CRA Mission Statement, see Appendix C

complainant never even knows whether the CRA has sustained his/her complaint. The MPD has made it more difficult for the public to trust the police or evaluate the role of civilian oversight.

PERFORMANCE RATING: *Unsatisfactory.*

DE NOVO REVIEW OF SUSTAINED CASES

PERFORMANCE GOAL: Compliance with 172.130(a): "The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board, and shall not include a de novo review of the facts by the Minneapolis Police Department's internal affairs unit or any other police officer, unit, or division." If the Chief does not agree with the adjudicated facts, the Chief may request a reconsideration under 172.130(b)(3) and present additional evidence and argument.

OBSERVATIONS: After a review of a sustained case, the MPD sends the CRA a letter stating whether discipline was imposed or not, and the reasons for their decision. Of the decisions received by the CRA during the evaluation period, in 9 out of 22 cases in which discipline was not imposed, the MPD cited the reason, "insufficient evidence." In all of these cases, that was the only reason given. This constitutes a de novo review of the adjudicated facts. An MPD representative also discusses their decision in each case with the CRA board in closed session. In a number of cases, the reasoning of the MPD was based on an account of the incident which directly contradicted the "findings of fact" which are determined by the CRA hearing panel. The MPD has asserted several reasons for the claim of "insufficient evidence," such as: the officer's account was more credible than the complainant's account, the availability of additional information, the alleged bias of the CRA investigator, or the CRA's assessment did not include a "totality of the circumstances" analysis. None of these are valid reasons for the MPD to unilaterally overturn the CRA's adjudicated facts. The MPD has been routinely violating the clear language of the CRA Ordinance. See Appendix E for further discussion of this issue.

PERFORMANCE RATING: *Unsatisfactory.*

REASONS GIVEN FOR DISCIPLINE DECISIONS

PERFORMANCE GOAL: The CRA ordinance anticipates that the Chief has cause to impose discipline once the CRA has sustained an allegation of misconduct.

OBSERVATIONS: The Chief has used various justifications to avoid disciplining officers. In addition to disagreeing with adjudicated facts, justifications for no discipline have included the age of the complaint, the reckoning period, and the criminal past of the complainant. In 6 of the 22 sustained cases where the Chief has not imposed discipline, the age of the case has been given as a reason. In 5 cases, it was the only reason. See the letter in Appendix F for further discussion of this concern. In other cases, the MPD disagrees with the CRA as to whether the adjudicated facts constitute a violation of policy. On these occasions, the MPD should use the reconsideration option to present their case to the full CRA Board.

PERFORMANCE RATING: *Unsatisfactory.*

REVISION OF CRA DETERMINATION

PERFORMANCE GOAL: Compliance with 172.130(a): "In cases where the civilian review authority board has determined that specific facts constitute a violation of the Minneapolis Police Department policy and procedure manual, under no circumstances should the Minneapolis Police Department internal affairs unit or any other police officer, unit, or division be allowed to alter, augment, or revise the designation."

OBSERVATIONS: The MPD has complied; in no case has it attempted to alter a finding of "sustained." There has been no incentive for the MPD to alter a CRA finding because under the State Data Practices Act a CRA "sustained" finding never becomes public if no discipline is issued.

PERFORMANCE RATING: *Good.*

USE OF RECONSIDERATION OPTION

PERFORMANCE GOAL: Under the CRA Ordinance, the only alternative to disciplining in a sustained case, or not imposing discipline for a valid articulated reason, is for the MPD to "(3) Make a one time written request that the review authority reconsider the sustained finding."

OBSERVATIONS: The addition of this provision to the CRA Ordinance was supported by the MPD and the Police Federation. In discussions of cases that result in no discipline, the CRA board has often urged the MPD representative to use this option rather than simply stating "insufficient evidence." Nevertheless, the MPD has never exercised this option.

PERFORMANCE RATING: *Unsatisfactory.*

COMMUNICATION OF DECISIONS

PERFORMANCE GOAL: Compliance with 172.130(b)(1) & (2): The chief of police shall notify the CRA of the disciplinary decision. Compliance with 172.130(b)(4): "the review authority may require the chief (or his/her designee) to appear at a meeting of the full board ... to discuss the basis for the determination."

OBSERVATIONS: The MPD has notified the CRA of the Chief's decisions to impose discipline or not to impose discipline. The Chief's representative has always been willing to come and discuss the discipline decision when asked.

PERFORMANCE RATING: *Satisfactory.*

NOTIFICATION OF FINAL DISPOSITION OF DISCIPLINARY DECISION

PERFORMANCE GOAL: The CRA has the affirmative duty to notify the Complainant of the final disciplinary decision. Because officers have certain appeal rights under their collective bargaining agreement, the CRA depends on the MPD to notify the CRA of the stage of the grievance or the completion of the grievance process.

OBSERVATIONS: The MPD has not established a regular process to provide the CRA with updates of grieved disciplinary decisions. Further, the MPD does not routinely notify the CRA that a disciplinary decision has been grieved. This failure to notify the CRA of the completion of the grievance process is an additional hindrance to the internal transparency of the disciplinary process.

PERFORMANCE RATING: *Unsatisfactory.*

TIMELINESS OF DISCIPLINARY DECISIONS

PERFORMANCE GOAL: Compliance with 172.130(b): The chief of police shall notify the CRA of the disciplinary decision within thirty (30) days (except where noted) of receipt of the case from the review authority.

OBSERVATIONS: The notification of the Chief's disciplinary decision during the evaluation period averaged 90 days. Over the past three months, the Chief has made a significant reduction in the time to provide notification of the disciplinary decision.

PERFORMANCE RATING: *Improvement Desired.*

172.180 COOPERATION

OFFICER AVAILABILITY FOR INTERVIEWS

PERFORMANCE GOAL: Compliance with 172.180: "The Minneapolis Police Department ... shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, for participation in hearings and mediations, and for access to data and records..."

OBSERVATIONS: All officers have appeared for their interviews eventually. The majority are cooperative. However, some require multiple requests or even CRA staff to contact their supervisors. There has been noticeable improvement since Chief Dolan issued a policy that directs officers to obey the City ordinance requirement. It is understandable that officers do not like having to participate in investigations of misconduct by themselves or other officers, but the CRA believes that the situation is made worse by a culture of disdain for the CRA within the MPD. This culture is reinforced by the contention of MPD leadership that CRA investigations and determinations are biased and/or incompetent. The 2008 CRA Annual Report notes a hesitancy of some officers to timely comply with CRA requests, but the 2009 Semi-Annual Report notes that this is not currently causing significant delays.

PERFORMANCE RATING: *Improvement Desired.*

OFFICER AVAILABILITY FOR MEDIATION

PERFORMANCE GOAL: Same as above.

OBSERVATIONS: Similar to above. In addition, it appears that some officers are using supposed schedule conflicts to drag out the process. Because the CRA must rely on volunteer mediators with limited availability, it is particularly important that officers cooperate with scheduling and follow through on their commitments. The timeliness of some mediations has been significantly impacted by officer lack of cooperation. While all officers have eventually complied with participation in mediation, approximately 20% require extra staff effort to schedule them for mediations.

PERFORMANCE RATING: *Improvement Desired.*

AVAILABILITY OF VIDEOS

PERFORMANCE GOAL: Same as above. In this case, good cooperation would mean consistent availability of squad car and Safe Zone videos within a week of request.

OBSERVATIONS: Previously, the policy of the MPD was to provide videos only after review by their legal staff. That created considerable delays and occasional loss of evidence. Therefore, the CRA is very supportive of the new policy by which videos can be obtained directly from the relevant precinct. Timeliness in obtaining videos is greatly improved. However, there are still instances where multiple requests are required, and delays of up to a year in responding to requests, causing considerable delay in CRA investigations.

PERFORMANCE RATING: *Improvement Desired.*

AVAILABILITY OF POLICE REPORTS AND OTHER EVIDENCE

PERFORMANCE GOAL: Same as above for videos.

OBSERVATIONS: The availability of police reports and other non-video evidence has generally been very good. CRA investigations have not been delayed.

PERFORMANCE RATING: *Good.*

MPD RESPONSE TO LACK OF OFFICERS' TRUTHFULNESS

PERFORMANCE GOAL: Cooperation in accordance with 172.180 means officers' full compliance with MPD Policy 5-101.01, Truthfulness⁶, and consistent discipline for those who do not comply.

OBSERVATIONS: A review of investigators' written summaries shows that the investigators assess the officers to be credible in the majority of cases. However, in a small number of cases, it is evident that officers have not been truthful; in some cases, their testimony is contradicted by video evidence. Lying in CRA interviews is misconduct subject to discipline. As time and staffing permit, the CRA wishes to pursue this misconduct, along with the original allegations from the complainant. In the instances where the CRA has done this in the past, we have not been encouraged by the response from the MPD. The MPD has not taken the initiative to address officers' untruthfulness during their evaluation of the complaint file, choosing to only address the complaint's allegations. It is the CRA's understanding that MPD policy provides for discipline, up to termination, for officers who are found to be lying during investigations and/or in their police reports.⁷

PERFORMANCE RATING: *Improvement Desired.*

RESPONSE TO POLICY INQUIRIES

PERFORMANCE GOAL: Compliance with 172.180. In this case, includes compliance with process and timelines outlined in recommendation #6 in the CRA Working Group Final Report.

OBSERVATIONS: Since the implementation of this recommendation in 2006, only one set of inquiries has been submitted to the MPD through the PACC process: a request for Taser[®] device policy information and statistics, submitted to the PACC on April 8, 2009. The response was due in 30 – 60 days. It was received in November, five months after the expected time.

PERFORMANCE RATING: *Unsatisfactory.*

RESPONSE TO POLICY RECOMMENDATIONS

PERFORMANCE GOAL: Same as above.

OBSERVATIONS: Again, only one recommendation has been submitted, regarding Taser[®] device policy, also on April 8, 2009. The response was received in a timely manner, on June 10, 2009. The response was a full denial of the recommendation. That is the prerogative of the MPD. However, the CRA believes that the recommendation was never taken seriously. This is indicated, not just by the tone of the denial, but by the mistake made by the MPD regarding the policy the CRA was recommending. The CRA recommended a return to the policy immediately prior to 8/17/07 – a policy which was implemented in April 2006. The discussion in the MPD denial letter referred instead to a policy on stun guns which was written in 1993, eight years before the first purchase of Taser[®] devices by the MPD.

PERFORMANCE RATING: *Improvement Desired.*

172.185 NOTIFICATION OF OFFICER REINSTATEMENT

Not applicable during the evaluation period: no notification given. To our knowledge, no dismissed officers were reinstated.

⁶ MPD Policy and Procedure Manual, Section 5-100, at <http://www.ci.minneapolis.mn.us/mpdpolicy/>

⁷ Officers giving statements to CRA investigators are subject to a *Garrity* Warning advising them that discipline, up to termination, can be imposed for untruthful testimony. The MPD uses a Discipline Matrix, which is not made public, to associate particular types of misconduct with levels of discipline (though the MPD Oct. 2009 Complaint Process Manual creates an exception that allows the Chief to vary from the matrix, making the matrix non-binding). In a recent statement to the press Chief Dolan was quoted as saying that fireable offences include "where people may have lied either in an official statement or misused their authority, we also take those at a high level where that's either going to be a termination or somebody's probably going to leave on their own volition." Brandt Williams, "In Minneapolis, Costs of Police Misconduct Add Up," Minnesota Public Radio, at <http://minnesota.publicradio.org/display/web/2009/11/02/police-misconduct> (Nov. 1, 2009).

CRA WORKING GROUP REPORT⁸

POLICE TRAINING FOR CRA MEMBERS

PERFORMANCE GOAL: Implementation of Working Group recommendation #8, more training on police accountability issues for CRA Staff and Board.

OBSERVATIONS: The MPD has been very cooperative in providing additional training for the CRA Board, including the Citizens Academy, ride-alongs, and training on use of force and Taser[®] devices. The CRA also appreciates the invitation to do presentations for the MPD Citizen's Academy.

PERFORMANCE RATING: *Good.*

PACC PROCESS AND MEETINGS

PERFORMANCE GOAL: Implementation of Working Group recommendation #5, form and work with the Police Accountability Coordinating Committee (PACC).

OBSERVATIONS: The MPD and the CRA began PACC meetings in 2006. The MPD has participated in the scheduled PACC meetings. Consistent scheduling remains a challenge for the agencies.

PERFORMANCE RATING: *Satisfactory.*

EARLY INTERVENTION SYSTEM

PERFORMANCE GOAL: Implementation of Working Group recommendation #2, improve Early Intervention System (EIS) for MPD. The CRA would like to see its data and experience used in a proactive way to warn of, and prevent, misconduct, not just to punish it after the incident. That would be the best way for the CRA to accomplish its mission, and we would like to cooperate with the MPD on this project.

OBSERVATIONS: It is our understanding that the MPD has been working on developing and implementing an EIS for over a year. The MPD has not formally involved the CRA in any aspects of the development of an EIS or suggested inclusion of CRA data in a proposed EIS.

PERFORMANCE RATING: *Improvement Desired.*

SUMMARY OF PERFORMANCE EVALUATIONS

The performance of Police Chief Dolan is far more negative than positive in those aspects of his job which impact the ability of the CRA to function effectively and accomplish its mission. The Chief's performance has been unsatisfactory in a number of areas, particularly those which are most important to the CRA: the failure to issue discipline and the justifications given. The frequent denial of discipline on the grounds of "insufficient evidence" violates the CRA Ordinance, and it should be considered misconduct by the Chief, subject to discipline.⁹ There are other areas of concern, such as the failure to use the reconsideration option, the lack of notification of the final disposition of cases, the resistance to the CRA's policy function, timely availability of videos, inadequate response to officer untruthfulness, and slow progress in implementing an Early Intervention System.

There are some positive areas, appreciated by the CRA, including availability of police reports and evidence, the encouragement of officers to cooperate in interviews and mediations, cooperation by the MPD in providing training for CRA Board members, inclusion in the MPD's Civilian Police Academy

⁸ Civilian Review Authority Working Group Final Report (2006). See Appendix G for link.

⁹ Note that the CRA Ordinance, Section 172.130(d) provides that, "The civilian police review authority chairperson shall notify the executive committee of the chief's failure to comply with the requirements of this section [section 172.130, Disciplinary Decision], and such failure may subject the chief to disciplinary action." At its December 2009 meeting, the CRA Board passed a motion in support of the chairperson, if and when he invokes this provision.

and the MPD Police Academy training schedules, and implementation of the PACC process. The above evaluations also note some areas of recent improvement, such as better access to videos and more timely discipline decisions. Unfortunately, the Chief's performance has gotten worse in the area most important to the CRA: the imposition of discipline in sustained cases of misconduct.

The CRA wishes to see improvement in the performance of the MPD and Chief Dolan, while we simultaneously strive to improve our own performance. The CRA wishes to establish a relationship of cooperation and mutual respect between the MPD and the CRA, so that the CRA can achieve its mission "to promote the adherence to the highest standard of police conduct and to foster mutual respect between the Minneapolis Police Department and all the populations of the city of Minneapolis." In that spirit, we offer the following recommendations.

Recommendations for Performance Improvements

172.130 DISCIPLINARY DECISIONS

- Provide more consistent disciplinary decisions on CRA-sustained complaints in fairness to officers: Consistent disciplinary decisions also foster compliance with MPD policies and implicitly acknowledge the hard work of the vast majority of officers who consistently adhere to the highest standards of conduct as defined by the MPD Policy & Procedure Manual.
- Increase responsiveness to *citizen* complaints and concerns. Disciplinary statistics document a lack of concern for citizen-initiated complaints, specifically those directed to the CRA. Because the majority of complaints filed with the CRA come from African Americans, there is a lack of responsiveness to concerns from African American populations in Minneapolis.
- Cease *de novo* reviews of CRA findings and instead utilize the provision of 172.130(b)(3) added to the CRA Ordinance in 2006 for making one-time written requests that the CRA reconsider sustained findings. Section 172.130(a) of the CRA ordinance prohibits *de novo* review of facts adjudicated by the CRA. Should the Chief believe that additional facts are relevant to a CRA finding, but were not considered by the CRA, or that there is insufficient evidence to support a sustained finding by the CRA, the procedure mandated by 172.130(b) of the CRA ordinance provides that "the chief or his/her designee shall appear before the entire review authority board to present the factual and legal basis on which the chief asserts that the complaint(s) should be not sustained."
- Increase the quality of written notifications to the CRA of decisions not to impose discipline on CRA-sustained complaints under 172.130(b)(2):
 - Eliminate "insufficient evidence" as a reason for not imposing discipline, because that rationale is prohibited by 172.130(a).
 - Eliminate "age of complaint" as a reason for not imposing discipline. Even where a disciplinary decision would not remain in an officer's file, a decision to impose discipline allows CRA records to eventually become available to the public to increase the transparency of the CRA process.
 - Eliminate reliance on reckoning periods as a reason for not imposing discipline on a sustained case, because, properly implemented, reckoning periods are only relevant to *enhancement* of discipline for later infractions related to an earlier incident with an active complaint. The MPD Complaint Process Manual should be revised to eliminate a recent change that states or implies that after a reckoning period would have expired discipline should not be imposed, as that change undermines the fundamental purpose of reckoning periods—for progressive discipline—and is contrary to CRA Ordinance.
 - Focus the reasons for not imposing discipline on the content of the CRA's findings:
 - Address all sustained findings for all officers identified in the complaint.

- Avoid lengthy discussions of allegations not sustained by the CRA that supplant discussion of sustained findings.
 - Ensure that mitigating factors are not alternatives to CRA factual findings.
- Establish a regular process to notify the CRA with updates of grieved disciplinary decisions, and especially the final disposition of the case.
- Comply with 30-day limit for issuing disciplinary decisions on CRA-sustained complaints under 172.130(b), and utilize written requests for 30-day extensions of time 172.130(b)(4).¹⁰

172.180 COOPERATION

- Make officers and evidence, such as squad videos, more readily available to CRA investigators, and foster timely resolution of CRA mediation proceedings.
- Impose discipline in cases where the CRA has determined the officer was not truthful.
- Increase receptiveness to CRA policy inquiries and recommendations:
 - Increase the use of written policies and reduce cursory reference to standards set in officer training that are not detailed in the MPD Policy & Procedure Manual, in order to provide for public access to MPD policies and encourage consistent implementation. Written policies in no way preempt training efforts.
 - Implement the April 1, 2009 CRA policy recommendation regarding Conducted Energy Devices (CEDs) “[t]hat Section 5-314 of the MPD Policy and Procedure Manual be revised to contain exactly the same text as appeared in Section 5-318 of the MPD Policy and Procedure Manual prior to the change made on August 17, 2007.”¹¹
- Accept the invitation from the CRA Chair to attend a CRA Board Meeting.
- Include the CRA in discussions of proposed MPD policies relevant to the CRA’s mission, especially when the CRA’s experience or research would be helpful.
- Increase transparency and increase the public availability of documents.
- Utilize CRA determinations to improve officer training in order to reduce the likelihood of future complaints and foster mutual respect between officers and citizens.

172.185 NOTIFICATION OF OFFICER REINSTATEMENT

- None.

CRA WORKING GROUP REPORT

- Comply with the 30/60 day response period for CRA policy inquiries and recommendations established by the 2006 Civilian Review Authority Working Group Final Report
- Implement a formal Early Intervention System (EIS) (also called an “early warning system”) recommended by PERF and the 2006 CRA Working Group to address potential issues in a non-disciplinary setting before they arise.

¹⁰ See PERF Final Report, p. 69.

¹¹ This CRA recommendation refers to the text of section 5-318 of the MPD Policy & Procedure Manual implemented 4/14/2006 as a condition for city council funding for a purchase of Taser® brand CEDs passed on 2/24/2006, and not to policies from much earlier time periods. The CRA notes that section 5-306 of the MPD Policy & Procedure Manual, which applies to *all* uses of force including those involving CEDs, states: “As soon as reasonably practical, determine if anyone was injured and render medical aid consistent with training and request Emergency Medical Service (EMS) if necessary.” However, the CRA has no objection to adding redundant requirements for medical care to current section 5-314 that go beyond the provisions of old section 5-318 before 8/17/2007.

Approval

This report was approved by the CRA Board at a meeting on December 16, 2009. The CRA Board consists of the following volunteer members, appointed by the Mayor and the City Council:

| | | | |
|----------------------|---------|-------------------|---------|
| Don Bellfield, Chair | Ward 8 | Pam Franklin | Ward 2 |
| Sharlee Benson | Ward 11 | Patrick Kvidera | Ward 1 |
| Justin Terrell | Ward 8 | Vernon Wetternach | Ward 6 |
| David Bicking | Ward 9 | Austen Zuege | Ward 10 |

Appendix A: Definition of Performance Ratings

Good: Performance helps the CRA accomplish its mission. Meets or exceeds all legal requirements or expectations.

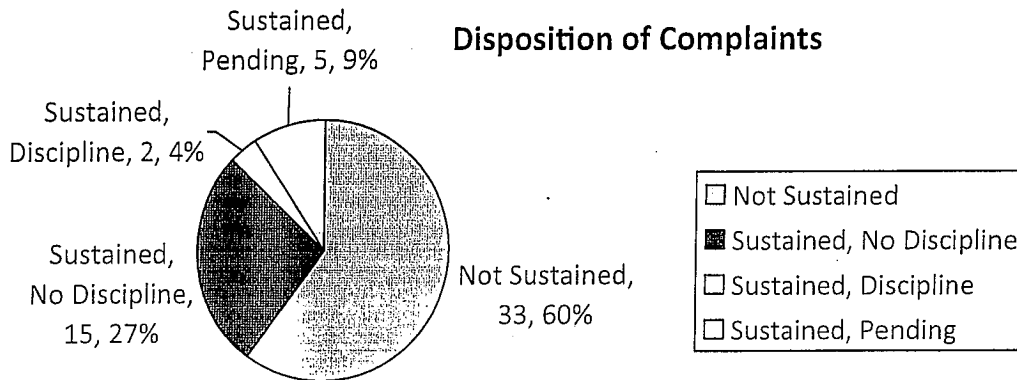
Satisfactory: Meets all Ordinance requirements and meets all reasonable expectations of the CRA in those areas that are important for the CRA to accomplish its mission.

Improvement Desired: Meets minimum standard required by the CRA Ordinance, but performance is a hindrance to the success or functioning of the CRA.

Unsatisfactory: Performance does not meet minimum standards and/or does not comply with city ordinances. Performance may constitute misconduct.

Appendix B: Disposition of CRA Cases

The data below shows that a minority of the cases heard by CRA panels are determined to be sustained, and therefore sent to the Police Chief for a disciplinary decision. For a CRA hearing panel to determine that an allegation is sustained, it must determine that there is a preponderance of evidence to show that an officer engaged in misconduct, considering the totality of the circumstances and considering the credibility of the complainant, the officer, and any witnesses. In addition to the cases shown below, many cases are dismissed (primarily due to inability to contact the complainant or lack of continuing cooperation of the complainant), and some are successfully mediated. The chart below shows the outcome of the 55 cases in which the CRA issued sustained or not sustained determinations during the evaluation period.¹²



¹² This chart is based only on determinations made by the CRA during the evaluation period, whereas the chart on page 4 includes discipline decisions received from the MPD during the evaluation period relating to cases where the CRA issued determinations before 2008.

Appendix C: CRA Mission Statement

The Minneapolis Civilian Police Review Authority Board are citizens of Minneapolis appointed by the Minneapolis City Council and Mayor to fairly, objectively and independently consider complaints of misconduct by members of the Minneapolis Police Department, and to issue determinations based on findings of fact and evidence to promote the adherence to the highest standard of police conduct and to foster mutual respect between the Minneapolis Police Department and all the populations of the city of Minneapolis.

Appendix D: Full Text of Relevant Sections of CRA Ordinance

Minneapolis Code of Ordinance, Title 9, Chapter 172, Civilian Police Review Authority, available online at: http://www.ci.minneapolis.mn.us/cra/docs/CRA_ORDINANCE_CHAPTER_172_03-27-09.pdf.
Text below current as of 12/16/09.

172.60. Review authority--Substantive duties and powers.

- (a) Receive complaints alleging misconduct on the part of a Minneapolis police officer and conduct such investigations and inquiries as may reasonably appear necessary to find the facts with respect to the complaints.
- (b) Conduct hearings related to complaints as provided in this chapter.
- (c) Forward all investigatory findings and case recommendations to the chief of police.
- (d) Conduct a program of research and study for the purpose of ascertaining how the objectives of this title may be attained and sustained.
- (e) Compile statistics relating to complaints of police officer misconduct and present results of such analysis on a quarterly basis to the Public Safety and Regulatory Services Committee.
- (f) Review Minneapolis Police Department policies and training procedures and make recommendations for change.
- (g) Facilitate, along with Minneapolis Police Department, appropriate cultural awareness training for sworn officers as determined by the review authority.
- (h) Participate in the performance review of the chief of police.
- (i) Create and implement a community outreach program. Coordinate outreach activities with the Minneapolis Commission on Civil Rights.
- (j) Submit quarterly reports to the public safety and regulatory services committee as to the activities of the review authority.

172.130. Disciplinary Decision.

- (a) Upon conclusion of the hearing and request for reconsideration process, the review authority shall forward the investigatory file, the findings of fact and the panel determination to the chief of police. The chief's disciplinary decision shall be based on the adjudicated facts as determined by the civilian review authority board, and shall not include a de novo review of the facts by the Minneapolis Police Department's internal affairs unit or any other police officer, unit, or division. In cases where the civilian review authority board has determined that specific facts constitute a violation of the Minneapolis Police Department policy and procedure manual, under no circumstances should the Minneapolis Police Department internal affairs unit or any other police officer, unit, or division be allowed to alter, augment, or revise the designation.
- (b) In all cases where the review authority sustained the complaint, the chief of police shall do one of the following within thirty (30) days (except where noted) of receipt of the case from the review authority:
 - (1) Impose discipline and notify the review authority in writing that discipline has been imposed; or

- (2) Determine that no discipline will be imposed and notify the review authority in writing of such determination and the reasons for such determination; or
- (3) Make a one time written request that the review authority reconsider the sustained finding; or
- (4) Submit in writing to the review authority a request for an extension of time, not to exceed an additional thirty (30) days, to take one of the actions in subparagraphs (1) through (3) with a statement of the reason for the extension and a proposed date by which one of such actions will be taken. If the chief has determined that no discipline will be imposed pursuant to subparagraph (2), the review authority may require the chief (or his/her designee) to appear at a meeting of the full board, which shall be closed to the public pursuant to Minnesota Statutes Section 13D.05, subdivision 2, to discuss the basis for the determination. If the chief has requested that the review authority reconsider a sustained finding, the chief or his/her designee shall appear before the entire review authority board to present the factual and legal basis on which the chief asserts that the complaint(s) should be not sustained. After the review authority has reconsidered the matter, the decision of the review authority shall be provided to the chief in writing. If the review authority again determines that the complaint(s) should be sustained, the chief may then take one of the actions specified in subparagraphs (1), (2) or (4), above.
- (c) The review authority shall provide notice to the complainant of the final disciplinary decision.
- (d) The level of compliance with this section shall be included as an element of the chief's annual performance evaluation, pursuant to section 172.60(h) of this section. The civilian police review authority chairperson shall notify the executive committee of the chief's failure to comply with the requirements of this section, and such failure may subject the chief to disciplinary action.

172.180. Requirement of cooperation by the Minneapolis Police Department and all other city employees and officials with the review authority. 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, for participation in hearings and mediations, and for access to data and records for the purpose of enabling the review authority to carry out its responsibilities under this chapter. 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. The police officer identified in the complaint may, but shall not be required to, attend the public portion of the scheduled hearing.

172.185. Notification of officer's reinstatement. In the event that a dismissed officer has been reinstated to the Minneapolis Police Department, the chief of police shall provide notification to the civilian review authority of the officer's return to the department within thirty (30) days of the officer's reinstatement.

Appendix E: Discussion of Chief's Justification for No Discipline **From 2008 CRA Annual Report**¹³

The MPD provided the following explanations for not imposing discipline on the officers in 2008: investigator bias, dispute with the facts contained in the hearing panel determination, and insufficient evidence.

During closed board meetings, the Assistant Chief provides the MPD's rationale for its disciplinary decisions; however, in a practical sense, it is unrealistic for the MPD to change its disciplinary decision at the time the Assistant Chief makes a presentation to the board because the officer has been notified of the Chief's disciplinary decision. Nevertheless, the CRA disputes the Chief's decisions during the closed session. The

¹³ Pages 25 - 27.

CRA believes that the proper method for the MPD to handle their assertions is through the exercise of the Chief's reconsideration option. Below, the CRA discusses each of the MPD's assertions.

First, the assertion that a CRA investigator was biased in the investigation fails to recognize that the civilian board makes the final determination on the allegations, not the investigator. The CRA believes this assertion would have been justified as a reconsideration of the sustained finding before the entire board. Reconsideration by the entire board would have allowed the MPD to present an argument against the investigator's work and afforded the full board an opportunity to carefully consider the assertions made against the investigator and the decision made by the hearing panel.

Second, the MPD's dispute with the facts found by the hearing panel typically included facts that are not considered by the hearing panel, e.g. the criminal past or associations of the complainant and the good record of the officer. The board does not consider the number of complaints that an officer has received during the course of his employment when considering the facts of an incident or the past criminal acts and criminal associations of the civilian. Those facts are not germane to the question of whether the misconduct occurred in the particular situation before the CRA hearing panel. Those facts may be recognized as mitigating and aggravating factors during the imposition of discipline. However, if during the MPD disciplinary panel review, where the officer is afforded another opportunity to explain the appropriateness of his or her actions, the MPD learns of new evidence that should have been presented during the course of the CRA investigation, the reconsideration option is a suitable venue for the Chief to make the argument against the sustained allegation.¹⁴ If the disciplinary panel should base its decision for a recommendation of no discipline on the officer's presentation, the MPD should return the sustained finding back to the board for a reconsideration of the finding in light of the new evidence presented by the officer during the disciplinary panel stage.

Third, on the majority of sustained complaints that the MPD declines to discipline, the MPD provides a letter that states there was insufficient evidence to support discipline against the officer for the alleged acts; however, the letters lack detail as to what was deficient about the evidence. This assertion by the MPD has the appearance of an additional assessment of the CRA file and the hearing panel's findings of facts, which would be in direct conflict with the ordinance. Moreover, the want of written details raises a question of the MPD's sincerity in operating within the spirit of the CRA ordinance. The MPD's assertion of insufficient evidence, like the assertion above, would be ripe for a board reconsideration of the hearing panel's sustained finding. The reconsideration would provide the MPD with an opportunity to present an argument as to why the evidence is insufficient to discipline, thus the sustained allegation should be reversed. Although the Assistant Chief provides additional information to support the disciplinary decision during closed board meetings, the information provided is not an official recording for the file and it does not allow the board an opportunity to make a change in the sustained finding, if necessary.

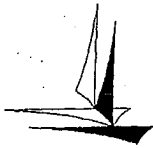
As stated above, each of the three reasons provided above for no discipline would have been suitable for reconsideration. In 2006, the Minneapolis City Council amended the CRA ordinance to provide the Chief the reconsideration as an opportunity to directly dispute a sustained CRA finding with the CRA board by presenting a factual or legal basis as support for his assertion that the allegation should not have been sustained and therefore no discipline is required.¹⁵ The reconsideration is especially important when the Chief has determined that discipline is not warranted on a sustained complaint because of insufficient evidence.

¹⁴ In theory, the officer's presentation during the disciplinary panel review should be the same as the CRA interview and hearing panel presentation. The officer has the ability to have representation at the disciplinary panel review and the CRA interview and hearing stages.

¹⁵ Central to the CRA Working Group's examination was the Chief of Police's lack of discipline on sustained CRA complaints.

Appendix F: Discussion of Reckoning Period Justification as a Bar to Discipline

Below is a copy of a letter addressing the concerns raised by the CRA:



Minneapolis
City of Lakes

**Civilian
Police Review Authority**

301 4th Avenue South - Room 670
Minneapolis MN 55415-1019

Office 612 673-8500
Fax 612 673-5510
TTY 612 673-2157

December 2, 2009

Mayor R. T. Rybak
Council Member Don Samuels
Council Member Scott Benson
Minneapolis City Hall
350 South 5th Street
Minneapolis, MN 55415

Dear Mayor Rybak and Council Members Samuels and Benson:

This letter is to formally express the Minneapolis Civilian Review Authority's (CRA) objection to the establishment of the MPD Discipline Matrix that became effective October 1, 2009, specifically, the section that establishes a "statute of limitations" for the imposition of discipline on sustained complaints. (See Attachment 1). This letter will present the CRA's objections and concerns regarding the policy and provide three recommendations. The objections are attached as Attachment 2. The recommendations are attached as Attachment 3. Attachment 4 provides a recent Minn. Post article on the CRA.

The MPD Administrative Announcement issued September 24, 2009, states specifically that **"the MPD will not impose discipline for infractions which are determined to be SUSTAINED beyond the reckoning period for that violation as defined by the MPD in the complaint process manual and policy and procedure manual."** The practical application of this statement means that even when the MPD receives a sustained CRA complaint it will not base its decision for corrective action on the facts of the timely filed complaint, but determine the level of the discipline and then determine if the complaint is beyond the "statute of limitations" for discipline. Essentially, the MPD will ignore the infraction if it determines that the date of the sustained determination is beyond its "statute of limitations." It is very disconcerting that the MPD implies that this new disciplinary matrix is based on the "changing" values of the organization.

While the CRA did not have the opportunity to provide input during the development of this policy, in spring 2009, the CRA expressed concerns about the denial of discipline on CRA sustained complaints that the MPD had considered were "too old." The CRA expressed concerns about the impact that the policy would have on the CRA and the City's efforts to



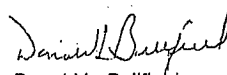
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Affirmative Action Employer


effectively address the public's concerns about police accountability. The CRA also expressed concern about the motivation behind this new policy considering that it was a radical change from its past practice and that considering the increases in the MPD IAU investigative resources (which should allow the IAU to process complaints faster) that the policy appeared to be directed solely at CRA complaints. As mentioned in the September 2009 Results Minneapolis, the 2008 CRA Annual Report and 2009 CRA Semi Annual Reports, up until March 2009, the MPD did not have an issue with imposing discipline on cases beyond the reckoning period. In 2006, nineteen of the twenty-one complaints that the MPD disciplined on were well beyond the reckoning period. In 2007, two of the four cases the MPD disciplined on were beyond the reckoning period. In 2009, before the MPD policy change, one of the cases disciplined on was beyond the reckoning period.

The most troubling aspect of the establishment of this new policy is that it allows the MPD (without external input) to usurp the requirements imposed on the MPD under the CRA ordinance. The policy is in direct conflict with the CRA ordinance. The policy allows the MPD the unintended discretion to reject and overrule CRA sustained complaints, not for a legal or factual basis or timeliness of the filing, but because it determined that a complaint is "too old" after the complaint had been investigated and adjudicated. Moreover, the policy has the potential to further reduce MPD management's ability to effectively correct officer behavior. In light of the increase in the number of misconduct complaints filed with the CRA, the timing of, the creation of, and rationale for this policy, appear to be contrary to the City's strong stand on police accountability.

The CRA understands the MPD administration, officers, and citizens' concerns that CRA investigations and adjudications take too long and are outside of the CRA ordinance timeframes. The CRA has continuously advocated for additional resources and adjusted the CRA process in efforts to reduce timelines. The CRA has had some success in reducing the timeline through process adjustments; however, the increase in the number of complaints causes an increase in the investigative timelines. The MPD policy appears to exploit the CRA's resource limitations and creates an additional hindrance to effective police accountability.

Sincerely,


Donald L. Bellfield
CRA Board Chair


Samuel L. Reid II
CRA Manager

cc: Council Member Elizabeth Glidden
Council Member Cain Gordon
Council Member Betsy Hodges
Council Member Robert Lilligren
Council Member Ralph Remington
Civil Rights Director Michael Jordan
Chief Tim Dolan
Assistant Chief Sharon Lubinski
Deputy Chief Robert Allen
Deputy Chief Scott Gerlicher
CRA Board members
Jeremy Hanson Willis, Chief of Staff, Mayor's Office
Sherman Patterson, Policy Aide, Mayor's Office
Joel Fussy, Assistant City Attorney