

OAKLAND CITIZENS' POLICE REVIEW BOARD (CPRB)
ADMINISTRATIVE HEARING PROCEDURES
October 18, 2007

OPEN SESSION

- Step 1 In Open Session, the Board Chair will call the case, by name and number, and welcome the parties to the proceedings. The Board Chair will explain that after public comment the hearing will be a closed hearing and no disclosure of information from the hearing prohibited by law from disclosure will be made at the conclusion of the hearing.
- Step 2 Public comment prior to the commencement of the hearing. Speakers will be limited to 3 minutes.
- Step 3 At the conclusion of public comment, the Board Chair will announce that the hearing will be closed to individuals other than the Complainant and Subject officers and their legal representatives. All members of the public, including the media will be excused from the room. Witnesses, including witness officers will wait outside the hearing room until they are called to testify. The Board Chair will explain that witnesses are not allowed to discuss their testimony with any other witnesses until after they have testified. Furthermore, witnesses who have completed their testimony should not discuss or speak about the case with any witnesses who have not yet testified.

The Chair will state that only unless the parties waive this limitation, two individuals will cross examine the parties and witnesses during the closed hearing on this complaint. The two examiners shall be either (1) the Board Hearing Officer and one Board member or (2) two Board members. Other members of the Board and the Hearing Officer may submit questions in writing to the two Board examiners for purposes of cross examination of the parties and witnesses. The Board members will move and approve the appointment of the two Board examiners for the purpose of this hearing.

The Chair will announce that the hearing will be bifurcated – the complainant and complainant witnesses will first be cross examined by the two Board examiners out of the presence of the officers, officers' representative or witnesses. The Complainant and Complainant's representative will then be excused. The individual officers will then be cross examined by the two Board examiners out of the presence of the Complainant, Complainant's representative or witnesses. The officers will then be excused.

Step 4 The CPRB Secretary will ensure that the parties, witnesses, and representatives have filled out the appearance sheets so the CPRB has a record of the persons who appeared at the hearing. The CPRB Secretary will also ensure that the parties, witnesses, and representatives have signed confidentiality statements which will be reviewed by the Hearing Officer at the commencement of the hearing. The parties, witnesses and representatives will be asked to leave the hearing room.

CLOSED SESSION

Summary of the Case:

Step 5 The Chair will ask the investigator to present the staff summary. The investigator will summarize the key facts of the case, highlighting the facts that are disputed and not disputed and will summarize the police procedures and policies involved.

Questioning of Complainant and Witnesses:

Step 6 The Complainant and the Complainant's representative will be summoned to the hearing room. The Board's Legal Advisor, who is the Hearing Officer, will explain the hearing process:

- This is not a court of law but testimony will be given under oath, which means the parties and witnesses will be asked to swear or affirm that the testimony they will give is true and correct to the best of their ability and belief.
- The Board has copies of any statements previously given by the party or witness, which have been entered into evidence. The party or witness will not be asked to repeat what was in the statement but will be asked questions by the two Board examiners.
- The Complainant or his/her representative may object to questions posed by the two Board examiners. The Hearing Officer will decide whether the questions may be asked. The Hearing Officer will also monitor the Board examiners' questions to ensure they are appropriate and will redirect the questioning if repetitive, irrelevant, or inappropriate.
- The Hearing Officer also will decide procedural questions and what can be presented at the hearing.

Step 7 The Hearing Officer will explain how the hearing will proceed:

- The Complainant provides testimony.
- The Complainant may be questioned by the two Board examiners who may ask questions submitted to them in writing by other members of the Board and the Hearing Officer.
- The Complainant may present additional evidence, including additional witnesses. If Complainant has brought any materials with him/her that

are not included in the distributed packet, such as photographs, drawings, additional medical records, Complainant must first show them to the Hearing Officer, who will decide whether to allow it to be considered, asking questions as necessary.

- Additional witnesses for Complainant will be questioned by the two Board examiners as described in Step 3 above.
- After the Complainant and Complainant's witnesses have been questioned, the Complainant and/or his/her representative may provide a 3 minute summary of their case.
- The Complainant and the representative will then be excused from the hearing.
- Deliberative Session: The Board will hold a deliberative session to deliberate on the evidence and vote regarding the allegations. No announcement of the Board's decision will be made at the conclusion of the deliberative session.
- Within seven days of the hearing, CPRB staff will mail a copy of the Board's findings to the Complainant and Subject Officers as permitted by law.

Step 8 Complainant will be called forward and sworn in by the Hearing Officer.

Step 9 Complainant will be asked whether he or she has additional documents or witnesses to present. The Hearing Officer will decide whether the documents or witnesses will be allowed, deciding whether it is relevant and whether it is cumulative because it is already in the record.

Step 10 The two designated Board examiners may ask questions of Complainant. Other Board members and the Hearing Officer may submit written questions to the examiners for additional cross examination.

Step 13 Additional witnesses on behalf of Complainant are called forward, sworn in, and questioned by the two Board examiners as describe in Step 3 above.

Step 14 The Investigator summarizes any other evidence in support of Complainant's contentions, if any, not presented by the Complainant.

Step 15 Closing Statement: After all the Complainant and Complainant witnesses have been questioned, the Complainant and/or his/her representative may provide a 3 minute summary of their case. At the conclusion of closing statements, the Complainant and/or his/her representative will be excused from the room.

Questioning of Subject Officer and Witnesses:

- Step 16 The Subject Officer and the Officer's representative will be summoned to the hearing room. The Board's Legal Advisor, who is the Hearing Officer, will explain the hearing process:
- This is not a court of law but testimony will be given under oath, which means the parties and witnesses will be asked to swear or affirm that the testimony they will give is true and correct to the best of their ability and belief.
 - The Board has copies of any statements previously given by the party or witness, which have been entered into evidence. The party or witness will not be asked to repeat what was in the statement but will be asked questions by the two Board examiners.
 - The Officer or the representative may object to questions posed by the two Board examiners. The Hearing Officer will decide whether the questions may be asked. The Hearing Officer will also monitor the Board examiners' questions to ensure they are appropriate and will redirect the questioning if repetitive, irrelevant, or inappropriate.
 - The Hearing Officer also will decide procedural questions and what can be presented at the hearing.
- Step 17 The Hearing Officer will explain how the hearing will proceed:
- The subject Officer provides testimony.
 - The Officer may be questioned by the two Board examiners who may ask questions submitted to them in writing by other members of the Board and the Hearing Officer.
 - The Officer may present additional evidence, including additional witnesses. If the Officer has brought any materials with him/her that are not included in the distributed packet, such as photographs, drawings, additional medical records, the Officer must show them to the Hearing Officer, who will decide whether to allow it to be considered, asking questions as necessary.
 - Additional witnesses for the Officer will be questioned by the two Board examiners in the same manner as described on Step 3 above.
 - After the Officer and the Officer's witnesses have been questioned, the Officer and/or his/her representative may provide a 3 minute summary of their case.
 - The Officer and the representative will then be excused from the hearing.
 - Deliberative Session: The Board will hold a deliberative session to deliberate on the evidence and vote regarding the allegations. No announcement of the Board's decision will be made at the conclusion of the deliberative session.
 - Within seven days of the hearing, CPRB staff will mail a copy of the Board's findings to the Complainant and Subject Officers as permitted by law.

- Step 18 The subject Officer will be called forward and sworn in by the Hearing Officer.
- Step 19 The Officer will be asked whether he or she has additional documents or witnesses to present. The Hearing Officer will decide whether the documents or witnesses will be allowed, deciding whether it is relevant and whether it is cumulative because it is already in the record.
- Step 20 The two designated Board examiners may ask questions of the Officer and other Board members and the Hearing Officer may submit written questions to the examiners for additional cross examination.
- Step 21 Additional witnesses on behalf of the Officer are called forward, sworn in, and questioned by the two Board examiners as describe in Step 3 above.
- Step 22 The Investigator summarizes any other evidence in support of the Officer's contentions, if any, not presented by the Officer
- Step 23 Closing Statement: After all the Officers and Officer witnesses have been questioned, the Officer and/or his/her representative may provide a 3 minute summary of their case. At the conclusion of closing statements the Officer and/or his/her representative will be excused from the room.

Questioning of Oakland Police Department Representative:

- Step 24 A Representative from the Oakland Police Department designated by the Chief of Police is offered the opportunity to present a statement of policies, rules and procedures, and training in effect which relate to the officers' conduct under the circumstances of the case. The Board urges the Chief of Police to provide a representative knowledgeable in OPD policies, rules, and training at Board hearings to respond to Board questions as necessary.

The two Board examiners may ask questions in the same manner as described in Step 3 above.

Deliberation, Findings and Notification to Parties:

- Step 25 Deliberative Session: The Board will then hold a deliberative session. The Legal Advisor will review the Internal Affairs file on this matter, if any, and determine whether the Board may review any matters contained in that file. The Board will deliberate on the evidence, with advisement from the Legal Advisor regarding the facts that legally need to be decided, and the OPD policies, procedures and/or rules that are involved. The Board will vote on the allegations. The hearing will conclude at the end of the vote. No disclosure of information from the hearing prohibited by law from disclosure will be made at the conclusion of the hearing.

- Step 26 Within seven days of the hearing, the Board's staff will send written notice to the Complainant and the Subject Officers of the Board's recommended disposition of the complaint. The notice will advise whether the allegations in the complaint have been sustained, not sustained, exonerated or unfounded. Should discipline be recommended, the written notice to the Complainant will not contain the type of discipline recommended but only a statement of whether discipline was recommended.
- Step 27 Should discipline be recommended by the Board, the Board's staff will prepare written findings of fact and legal conclusions and prepare a report to the City Administrator within 30 days of the hearing.
- Step 28 Within 10 days of City Administrator's disposition on the Board's findings, the Board's staff will send written notice to the Complainant and the Subject Officers the City Administrator's actions on the Board's recommendations. The notice will advise whether the allegations in the complaint have been sustained, not sustained, exonerated or unfounded. Should discipline be recommended, the written notice to the Complainant will not contain the type of discipline recommended but only a statement of whether discipline was recommended.