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Seattle Community Police Commission

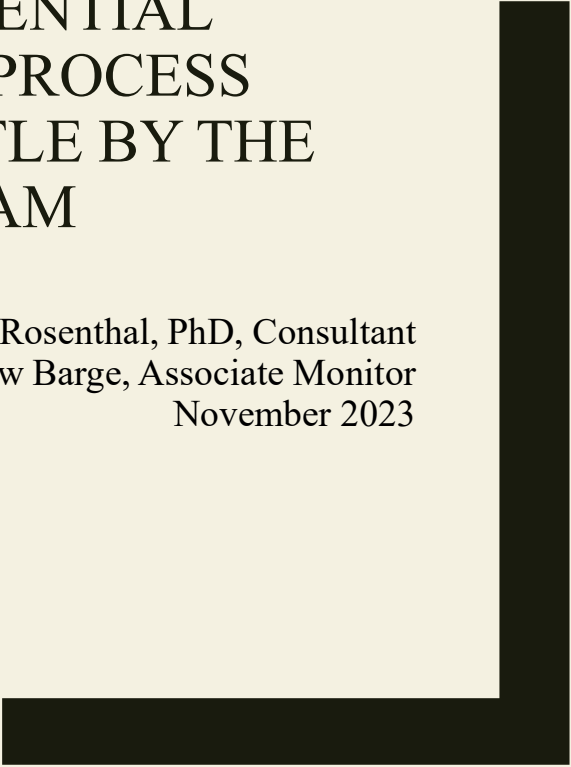
Appeals Process White Paper

February 21, 2024



WHITE PAPER REGARDING POTENTIAL
CIVILIAN COMPLAINT APPEALS PROCESS
PREPARED FOR THE CITY OF SEATTLE BY THE
SEATTLE MONITORING TEAM

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INTRODUCTION & BACKGROUND

- On May 2, 2017, the Seattle City Council adopted Resolution No. 31753, which, among other things, directed the CPC to “convene meetings with and lead stakeholders in assessing the need for and developing a complainant appeal process that is consistent with employee due process rights, and provide any recommendations adopted by the stakeholder group to the Council for consideration.”
- Further, on November 21, 2022, the Seattle City Council approved a resolution proposing that the Office of Professional Accountability (“OPA”) convene a workgroup to “examine a right of appeal system for OPA findings.”
- The CPC Complainant Appeals Workgroup and the City subsequently requested that the federal Monitoring Team evaluate and report back on the strengths and weaknesses of the appellate model of oversight to assist the City in determining whether the creation of an appellate process would support or detract from police accountability in Seattle.

INTRODUCTION & BACKGROUND

- Police oversight entities or programs have generally been classified into three categories based on function: “Investigation-focused,” “Review-focused,” and “Auditor/monitor-focused.”
- Typically, “appellate agencies” have not been not been considered or classified as a separate model, given that “patterns in the organizational data indicate[] [that] appellate functions can be found across a range of agencies, including investigative and auditor/monitor systems that operate with a combination of professional staff and oversight boards composed of **community volunteers.**” [U.S. Department of Justice, Office of Justice Programs Diagnostic Center, Civilian Oversight of Law Enforcement: Assessing the Evidence 23–24 (2016).]

INTRODUCTION & BACKGROUND

In this document we have chosen to define the “appellate model” of civilian oversight of the police as any civilian oversight of law enforcement agency or program that

1. is independent of the relevant police department, and
2. provides community complainants with the opportunity to seek a review of a “not sustained” finding made after an internal investigation of an allegation of police misconduct.

INTRODUCTION & BACKGROUND

- Although there is a significant amount of literature and research evaluating the strengths and weaknesses of civilian oversight of law enforcement systems dating back to 2001, there has been no literature published specifically addressing the effectiveness of the appellate function within civilian oversight of police agencies.
- There are, however, some references to the challenges that “culpability-focused” oversight agencies – which emphasize the review of findings and imposition of discipline in specific cases over issues relating to police policy, practice, training, and equipment – have encountered.

METHODOLOGY

- Based on original research conducted by University of Idaho Professor Joseph DeAngelis in collaboration with Monitoring Team consultant, Dr. Richard Rosenthal, the Monitoring Team was able to identify twenty-six (26) agencies nationwide with identified appellate functions.
- These programs purport to allow a community complainant to appeal a “not sustained” misconduct investigation finding to an independent oversight agency.
- Interviews were conducted with representatives of the six (6) largest jurisdictions from the 26 identified cities – to include all of the cities with populations greater than, equal to, or reasonably similar to the population of Seattle.

METHODOLOGY

- These representatives included program administrators, oversight board members, and city legal advisors. All participants were promised confidentiality to ensure that they could be honest and forthright in their discussions of their programs.
- Interviewees were asked to share details on their agency's appellate process, including how many appeals were generally received, how those appeals were handled and the processes that were used in adjudicating the appeals, the timeliness of the process and the ultimate results of any appeals. Participants further shared their opinions on how well the process functioned and its impact on relationships with the police, the community, and complainants.
- In addition, program websites and published reports and statistics were reviewed to obtain as much objective data as possible regarding how these programs were being administered.

METHODOLOGY

The Cities used in this evaluation included:

- *Charlotte, North Carolina (with a population greater than Seattle;*
- Three cities with similar populations to that of Seattle:
 - *Boston, Massachusetts;*
 - *Portland, Oregon, and*
 - *Memphis, Tennessee*
- Two additional jurisdictions with populations over 500,000, but smaller than Seattle:
 - *Spokane County, Washington*
 - *Albuquerque, New Mexico.*

COMPLAINT HANDLING IN SEATTLE

- All community complaints of police misconduct relating to the Seattle Police Department are currently referred to and reviewed and investigated by the Office of Professional Accountability (“OPA”) which is structurally independent of the Seattle Police Department.
- OPA investigations are overseen by the Office of the Inspector General (“OIG”). OIG is charged with making sure OPA classifies complaints appropriately, and reviews completed OPA investigations to evaluate whether investigations are objective, thorough, and timely.
- Upon the completion of an OPA investigation, the OPA Director makes findings on the allegations made in the complaint, and those findings are forwarded to the employee’s chain of command.

COMPLIANT HANDLING IN SEATTLE

- Ultimately, the Chief of Police is the final adjudicator of any complaint.
- However, if the Chief disagrees with the OPA Director on any finding, they are required to explain their position, in writing, in a publicly accessible document.
- There is currently no provision allowing a complainant to appeal the OPA Director's recommendations nor the Chief's ultimate finding.

COMPLIANT HANDLING IN SEATTLE

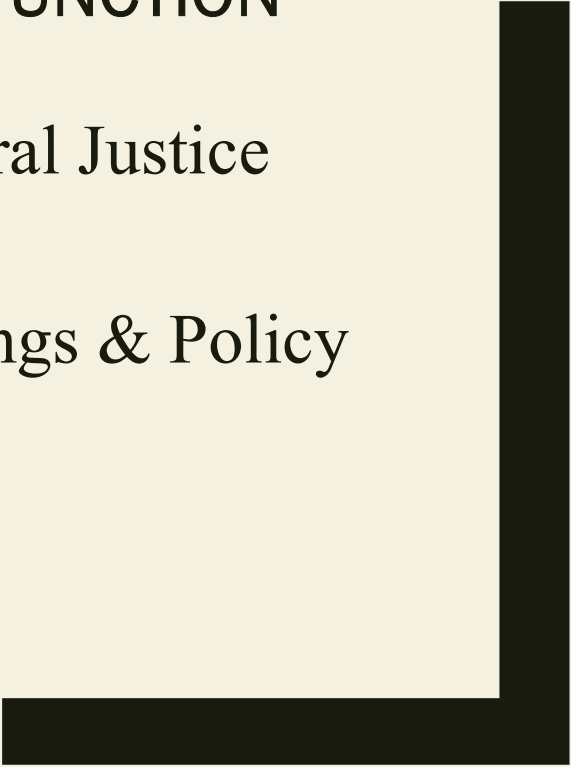
- The Seattle process differs from traditional disciplinary processes in that complaint investigations are supervised by a civilian, mayoral appointee, who subsequently makes findings that, if not followed by the Chief, must be publicly explained by the Chief.
- In practice, the Chief does not regularly overturn OPA's findings: "In 2022, none of the OPA director's recommended findings were overturned by the chief of police. Since 2015, the chief has overturned less than 2% of OPA findings." [Seattle Office of Professional Accountability, 2022 Annual Report, p. 22].

BASIS FOR THE APPELLATE MODEL

- As noted by interviewees, the jurisdictions that were reviewed generally established their appellate function based on arguments that the ability to appeal the findings of a complaint investigation promotes procedural justice and provides a greater level of transparency to an otherwise opaque and confidential personnel process.
- Additionally, it has been argued that oversight and accountability are enhanced when the appellate process involves stakeholders or community members outside the Department, helping to ensure that the agency holds its personnel to the performance expectations embodied in the agency's policies.



STRENGTHS OF THE APPELLATE FUNCTION

1. Enhanced Perceptions of Procedural Justice
 2. Increased Transparency
 3. Opportunities for Improved Findings & Policy Changes
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WEAKNESSES OF THE APPELLATE FUNCTION

1. Lack of Timely Adjudication of Cases
2. No “Best Practices” in Appeals Adjudication
3. Lack of Effectiveness: Inability of COLE Board Members to Make Evidence-Based Decisions that Withstand Arbitration or Judicial Review
4. Lack of Effectiveness: Findings Consistently Rejected or Ignored by Ultimate Decision Makers
5. Lack of Satisfaction Among Participating Parties

TIMELINESS

- To be able to timely adjudicate cases, an oversight agency with an appellate function must be adequately staffed and have strict timeliness provisions in place for the filing, review, and adjudication of cases.
- The oversight agency must
 - *be timely notified of the disposition of cases,*
 - *have a process by which Internal Affairs files can be expeditiously obtained and reviewed upon the filing of an appeal, and*
 - *have staff who can coordinate timely file reviews by board members and potentially identify and summarize issues for board discussion.*

COMMON PROBLEMS WITH ADJUDICATIONS

- Full evidentiary hearings sometimes include requiring oversight board members to act like judges and for City Attorney's or City staff to intervene if certain basic rules of evidence or procedure are not being followed.
- These hearings can go on for hours and monopolize the time that a board has for reviewing or considering policy matters or conducting other business.
- In some cases, police officers and/or police command staff refuse to participate, particularly where they do not believe the Department or its employee's will receive a fair and unbiased hearing

LACK OF EFFECTIVENESS

- Of the six jurisdictions identified, none reported a single instance where their Police Chief or City Manager (the ultimate adjudicators of the complaints) accepted a recommendation to overturn a finding or impose discipline on a case that was originally “not sustained” by the Department.
- None of the identified appellate bodies has been provided with the authority to be the final adjudicators of a community complaint against the police.

POLICE UNION ISSUES

- The Collective Bargaining Agreements (CBA) with the police unions would very likely need to be amended.
- With the City already struggling to implement the many provisions of the 2017 Accountability Ordinance that are currently blocked by the CBAs, the City would be required to re-prioritize its accountability demands and the appellate function could potentially negatively impact other potential city goals to ensure the current accountability system is able to function effectively.

PRAGMATIC PROBLEMS

1. The potential to file an appeal by a complainant would necessarily negatively impact on the timelines in the finality of disciplinary decisions.
2. Any appeal outcome in favor of the complainant would quite likely be subject to subsequent arbitration processes that could reverse any decision to “sustain” a finding of misconduct.
3. The City would likely need to create yet another accountability partner (i.e., a commission to hear appeals, perhaps like the Boston Internal Affairs Oversight Panel) and staff that panel accordingly.
4. The appellate function would necessarily cause conflict between the panel, the OPA, police command staff, the police unions, and the complainant and/or the public.

RED FLAG

The fact that no other city examined for the present paper has had a single instance where an oversight panel challenge to a “not sustained” finding has resulted in a “sustained” finding should also serve as a warning that the appellate model of oversight has been generally proven not to effectively improve the imposition of discipline in policing.

ADDITIONAL ISSUES

Any attempt to create an appellate body or to give that appellate body the authority to make final disciplinary decisions (which would likely require a Charter change and changes to the current CBA's) would raise a slew of additional questions:

- How the board would be constituted?
- Would the board be elected? Appointed? If appointed, by whom?
- What would the qualifications be for the board members?
- How would due process protections be assured?

OVERALL CONCLUSIONS/RECOMMENDATIONS

- Given the general ineffectiveness of the appellate model in comparable jurisdictions, it seems unlikely that the application of additional time and resources to create and manage an appellate function would meaningfully strengthen police accountability in Seattle.
- Instead, the SPD and the OPA should move forward with plans to give complainants an opportunity to be heard through victim-impact statements to be made at or prior to pre-disciplinary hearings, and
- the OPA should continue to assign staff to provide ombudsman-type support to help complainants navigate through the process and better understand the rationale for why decisions are made.

