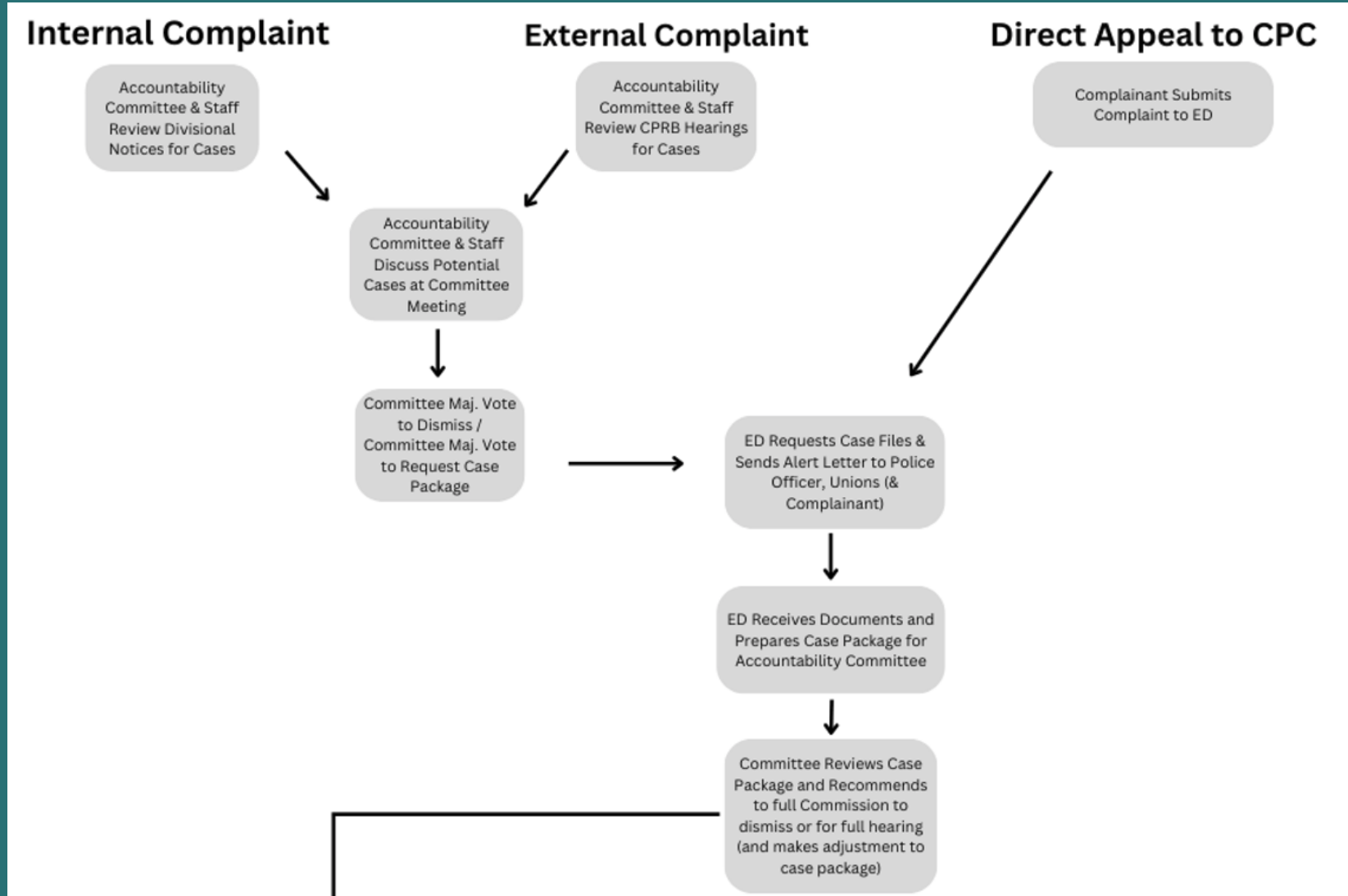


A teal-tinted background image of the Cleveland skyline, featuring prominent buildings like the Key Tower and the modern, curved building, with a bridge and trees in the foreground.

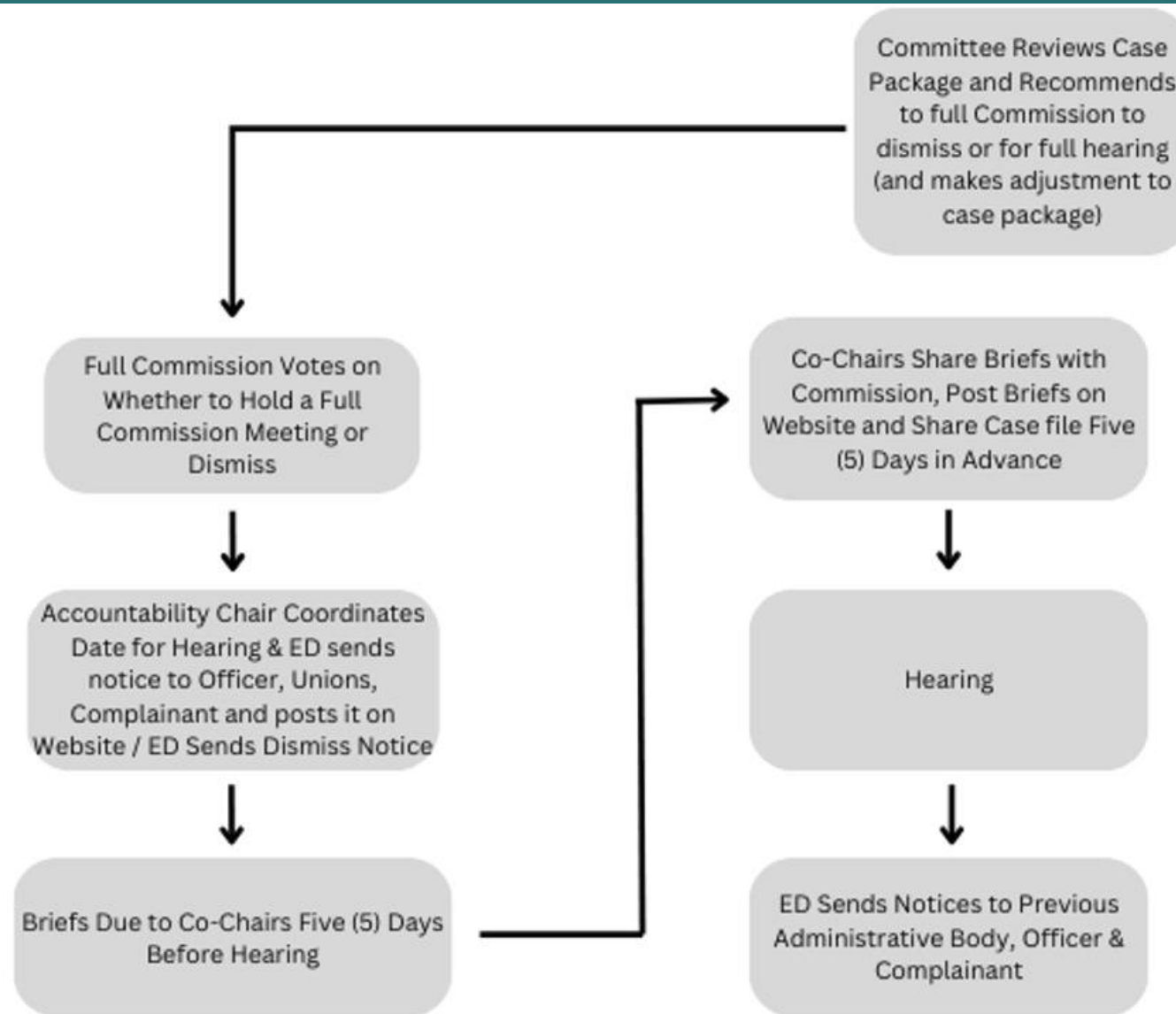
CLEVELAND COMMUNITY POLICE COMMISSION

Evidentiary Hearing Manual Draft | CPC Rules Committee
April 3, 2024

Workflow | 1



Workflow | 2



Modifying 2.4.4 Complaints Related to Past Actions

- Significant modification to flow with Evidentiary Hearing Manual
- Reduction to eliminate competing processes

2.4.4 Complaints Related to Past Disciplinary Actions

Per Charter § 115-5, the Commission is authorized to conduct independent investigations and/or evidentiary hearings into any previously adjudicated discipline decision for the purposes of increasing discipline or initiating discipline where none was imposed. This is a discretionary power and can be initiated by the Commission or requested by a member of the public. The appeal process is not automatic and must be via petition. Petitions shall be received in one of the following ways:

By a member of the public at an open public meeting.

By a member of the public via a written request.

By a commissioner on behalf of a member of the public.

After receipt of a petition, the Executive Director or his/her designee, will request the case file for the matter from the previous administrative authority within two (2) working days. The remaining procedures will follow what is outlined in Rule 2.6 of this Manual.

Accountability Committee Threshold for Recommending Cases

The Chair of the Accountability Committee and the Executive Director should review the minutes of each CPRB meeting to identify any cases of interest to the CPC. The Chair of the Accountability Committee, the Executive Director and other Accountability Commission Members can add cases to Accountability Committee's agendas for eligibility review. The Accountability Committee can discuss possible cases and may unilaterally remove a case from consideration, without requiring a vote by the full Commission, up until it requests case files and a package through the Executive Director. After requesting a case file and package through the Executive Director, all recommendations to dismiss or for hearings must be approved by the full Commission.

If the Accountability Committee decides by majority vote that sufficient facts exist in a case that may warrant the full Commission modifying a discipline decision, or if the Committee decides it needs the full case file before it makes that decision, the Committee Chair, through the Executive Director, would then send a memorandum or subpoena (if necessary) to the CPRB Chair or the Office of Professional Standard's ("OPS") Administrator requesting the complete investigation and discipline file on the matter. The Executive Director must send the records request within two (2) working days from the Accountability Committee's direction and CC: the Accountability Committee Chair on the communication. The Accountability Committee Chair may request a modification of the requested items through the Executive Director. The request may also include other relevant items to the matter such as hearing transcripts. The Executive Director must also simultaneously send a memorandum to the officer, the unions, and the person who filed the complaint ("Complainant") alerting them to possible CPC review (if the complainant provided their contact information to OPS.) The message should substantially read the templates in Appendix B and C of this Manual.

- The Accountability Committee needs a standard to determine when they should recommend a case for a full Commission hearing.
- Preponderance of the evidence is the standard for the full Commission, so this may be lesser.

Due Process Requirements

- *Cleveland Bd. Of Educ. V. Loudermill*, 1985 Supreme Court:
 - Due Process Clause says the deprivation of substantive rights like life, liberty, and property cannot be deprived w/o constitutionally adequate procedures
 - At least requires notice of charges and an opportunity to be heard (something less than a full evidentiary hearing is sufficient)
- Subsequent opportunity for appeal to Common Pleas pursuant to ORC § 2506.01:
 - § 2506.01 requires additional procedures if CPC wants to preserve the record for appeal
 - However, the record can be preserved if the Officer waives his/her right to the additional procedures
 - Notice is given to Officer in Hearing Notice Letter

2.6.3 Appeal Pursuant to ORC § 2506

According to ORC § 2506.01, every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, *commission*, department, or other division of any political subdivision of the state may be reviewed by the court of Common Pleas of the county in which the principal office of the political subdivision is located. This appeal process would include all final hearing decisions of the Community Police Commission.

To preserve the best record for appeal, additional due process procedures may be added to the Commission's hearings if they have been requested by the officer before or during the hearing. Specifically, the Officer may request:

- (1) The transcript to contain a report of all evidence proffered by the officer.
- (2) Offer and examine witnesses and present evidence in support;
- (3) Cross-examine witnesses purporting to refute the officer's position, arguments, and contentions;
- (4) Offer evidence to refute evidence and testimony offered in opposition to the officer's position, arguments, and contentions;
- (5) All testimony to be given under oath.
- (6) The Commission's subpoena power to acquire and present evidence.

Brief Compositions

Briefs should be in in the following format:

(1) Case Summary — including case Id., Officer(s) Name(s) and Badge Number(s), Allegations Summary, Referenced Policies, Factual Summary, Evidence Collection Breakdown, Procedural History, Current Discipline, etc.;

(2) Case Comparisons (optional) — A summary of comparable City of Cleveland discipline case comparisons within the relevant discipline matrix;

(3) Argument — the application of facts to case comparisons, existing discipline and counterarguments;

(4) Recommendation — A final recommendation with a conclusion.

- What should be the format for the briefs?
- Does the Officer have adequate access to possible case comparisons?

Evidentiary Hearing Agendas

- What should quorum requirements be for hearings?
- When and how often should the Commission allow for public comment?

2.6.7 Evidentiary Hearings

To begin the hearing, the Co-Chairs of the full Commission shall call the hearing to order, determine if there is a quorum of the full Commission, and then state the identifying information of the case and summarize the agenda for the hearing. An agenda may not be amended to include additional items beyond the purpose of the Evidentiary Hearing and should mirror the following sample agenda:

1. Call to Order;
2. Roll Call for Quorum;
3. Call of the Case (Case Identifying Information);
4. Public Comment;
5. Questions for CPC Executive Director (or his/her designee);
6. Questions for Officer (including counsel) if present;
7. Questions for additional witnesses (if summoned);
8. Public Comment;
9. Closing Comments by CPC Executive Director;
10. Closing Comments by Officer (including counsel);
11. Commission Discussion;

Overturn Standard for Commission

The Commission can only modify and impose final disciplinary action if a preponderance of the evidence in the matter shows that the original discipline, or the lack thereof, the CPRB or the DPS applied was inconsistent with similar cases subject to the same discipline matrix or contrary to the needs and concerns of the community. Commissioners should evaluate if a discipline decision is "Contrary to the needs and concerns of the community" by finding the officer's actions violate any of the following factors:

- **Lack of Cultural Competence:** The officer's actions demonstrated a grave misunderstanding or appreciation for the cultural nuances of the community where the action occurred and that this ignorance, if not corrected, will lead to severe mistrust and discord within the community.
- **Racial Bias and Profiling:** The officer's actions demonstrated implicit or explicit racial biases, via racial profiling, selective enforcement, or targeting certain groups disproportionately and this bias, if not corrected, will lead to severe mistrust and discord within the community.
- **Excessive Use of Force:** The officer's actions demonstrated excessive force, including police brutality or unjustified use of firearms, which if not corrected, will lead to escalating tensions and perpetuating fear and anger within the community.
- **Lack of Accountability and Transparency:** The previous discipline decision is an example of the CDP or the CPRB failing to hold officers accountable for misconduct or abuse of power, and if not corrected, it would reinforce a sense of impunity and erode public trust.

- Preponderance of the evidence (More likely than not 51%)
- Overturn if only contrary to similarly situated cases under the same discipline matrix
- A need for a catch-all? If so, it may be best to tie it to the words of § 115-5, "needs and concerns of the community."
- When is an officer discipline decision contrary to "the needs and the concerns of the community?" It may be best to evaluate against factors.
- Should the decision require meeting *all of* the factors or just *one* of the factors to satisfy the catch-all standard?

Recusal Process

- Governed by Ohio Ethics and Due Process requirements
- Mandatory and self-identified conflicts
- Restrictions on speech to preserve due process
- What should the investigation process be?
- What does recusal mean?
- What are the repercussions for not following the recusal procedures?

2.6.9 Commissioner Conduct Restrictions for Discipline Review

CPC Commissioners have an obligation to those who come before the Commission for discipline review, and the general public, to render final decisions in an unbiased, equitable, and ethical manner. To do this, Commissioners must be cognizant of their obligations under Ohio ethics laws, State and Federal constitutional requirements, and the rules agreed to by this Commission under this Manual. Simultaneously, in some situations, it is up to each Commissioner to self-determine whether some potential conflicts render him or her unable to issue an unbiased decision.

A CPC Commissioner must recuse him or herself if any of the following occur:

- (1) If the officer subject to the discipline or a complainant in a matter is a spouse, child, parent, sibling, grandparent, or grandchild of the Commissioner, or if the officer or complainant in a matter is a person living in the Commissioner's home and he or she is related to the Commissioner by blood or marriage;
- (2) If the officer subject to the discipline or a complainant in a matter has a financial relationship with the Commissioner (employee, employer, business partner, etc.); or
- (3) If he or she self-identifies a personal bias that would render him or her unable to provide a fair and just opinion on the matter. (These matters are unique per Commissioner and should be handled personally by each Commissioner on a case-by-case basis).