

City of Minneapolis

Office of Police Conduct Review

Panelist Instructions

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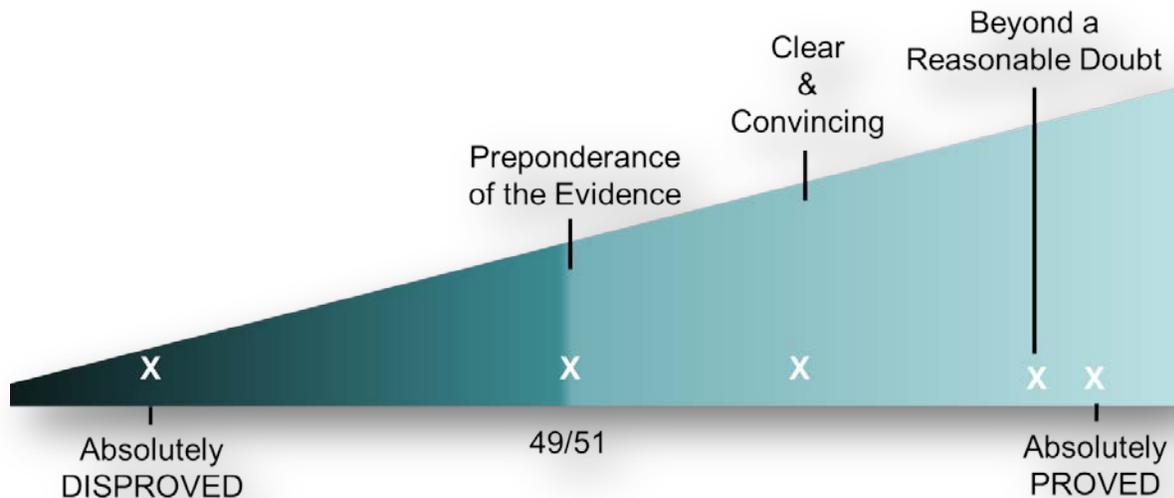
**The Panelist Instructions were approved by the Office of Police
Conduct Review Joint Supervisors – Director Michael K. Browne
and Commander DeChristopher Granger on April 8, 2014 as
prepared by OPCR Legal Analyst Ryan Patrick.**

Before the Panel Convenes

1. Panels are comprised of two civilian and two sworn panelists. Individuals are selected to participate at equal intervals by OPCR supervisors, and the panels are scheduled on an as-needed basis by OPCR Administrative staff.
2. It is important for each panelist to review the case(s) before the panel convenes. They are available in the OPCR Civilian Unit Office (Room 239 of City Hall).
 - a. Please contact Leda Schuster (Leda.Schuster@Minneapolismn.gov) or Ryan Patrick (Ryan.Patrick@minneapolismn.gov) in advance to ensure the files are available.
3. Convene to discuss the case at the scheduled date and time. Meetings will generally take place in Room 241 of City Hall.

Case Discussions and Recommendations

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



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

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

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

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

The reviewer is expected to use his/her common sense, independent thought, and the principals embodied in MPD 2.0, accountability, integrity, and public trust. The panelist is not to base any conclusions on information known to him/her regarding the matter or the persons involved in the matter if that information is not part of the investigative file.

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

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

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

Where such discrepancies exist, the reviewer should consider, based upon all the facts and circumstances, whether the discrepancies result from an intentional falsehood or from some other

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

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

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

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

Preparing the review document

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

Panelists in Attendance (Sign below)

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

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

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

CONTINUE TO THE ALLEGATION IN DETAIL SECTIONS

ALLEGATIONS IN DETAIL PAGE

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

Supportive Findings:



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

MERIT ALLEGATIONS

4. When the panel recommends that an allegation **has merit**:
 - a. The panel chair will begin completing the Review Panel Recommendation
 - b. In the box under *Supportive Findings*, enter a recommendation as to whether the allegation is supported (for merit) along with reference to the investigative evidence which supports the recommendation..
Note: You may copy and paste information from the electronic version of the case's investigative summary provided by OPCR Staff.

Supportive Findings:

- c. The **panel chair** will select the checkbox next to YES and initial in the text box next to it.

YES <input type="checkbox"/>
<i>This allegation has merit.</i>

NO MERIT ALLEGATIONS

5. When the panel recommends that an allegation **has no merit**:
- The panel chair will begin completing the Review Panel Recommendation
 - In the box under *Supportive Findings*, enter a recommendation as to whether the allegation is not supported (for no merit) along with reference to the investigative evidence which supports the recommendation.
- Note:** You may copy and paste information from the electronic version of the case's investigative summary provided by OPCR Staff.

Supportive Findings:



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

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

REMANDING ALLEGATIONS

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

Supportive Findings:



- c. The **panel chair** will select the checkbox next to REMAND and initial in the text box next to it.

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

SPLIT DECISIONS

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

Supportive Findings:

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

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

8. Continue to the next allegation and repeat when applicable.
9. Once the review panel document is completed for each allegation, it should be returned to OPCR staff. This may be done via email within the next three business days if the document is not completed during the time the panel is convened.

Post Review Panel Process

Precinct Panel

After the Review Panel makes a merit recommendation, the OPCR legal analyst shall create and send the chief's investigation packet to the Office of the Chief. The packet shall consist of the complaint, investigative summary, and the review panel recommendation. In merit cases, the legal analyst shall deliver the original case file, including all materials provided to the review panel and the review panel recommendation to the commander of the Internal Affairs Unit in preparation for discipline panel review.

Discipline panels are composed of MPD supervisors, with a command staff member functioning as the panel chair. Once the panel is selected, the discipline panel will review the case and assign potential violation categories (A, B, C, or D) to the allegations with merit recommendations. The officer will be notified of the merit recommendation and the potential violation category, and a *Loudermill* hearing shall be held for cases where discipline may be imposed. After conclusion of the hearing, the officer will be notified of the final discipline panel recommendation, which is documented and forwarded with the case file to the appropriate Bureau Head for review.

Office of the Chief

The bureau head will review the case and supplements and issue a final recommendation on the allegations to the Office of the Chief. This determination along with the entire case file will be submitted to the Office of the Chief for review. The chief or chief's designee will issue a final determination on whether allegations are sustained, what category they will be sustained at, and what discipline, if any, will result.

Return of Case File to the OPCR

Upon completion of the chief's final determination, the complete case file will be returned to the Internal Affairs unit for processing. When processing is completed, the Commander of the Internal Affairs Unit will return the completed case file, including recordings of the *Loudermill* hearing, the discipline worksheets, and all related documents to the OPCR Civilian Unit.

The Internal Affairs Unit shall monitor any appeals-activity after the case file is returned to the Civilian Unit. Any notifications regarding the filing or outcome of an appeal shall be provided to the Civilian Unit to update the file. Upon expiration of any appeal-period and after all appeals have been exhausted, the case shall be closed. The release of OPCR case information shall be in accordance with the Minnesota Government Data Practices Act.