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FREDERICK DAVIE
CHAIR

September 13, 2019

The Honorable James P. O’Neill
Police Commissioner of the City of New York
New York City Police Department
One Police Plaza
New York, New York 10038

Re: **Report on the Administrative Prosecution Unit
Fourth Quarter of 2018**

Dear Commissioner O’Neill:

This report will address the following matters: (i) the upward departure by the Police Commissioner in a guilty verdict issued by an Assistant Deputy Commissioner of Trials (“ADCT”); (ii) cases retained by the Police Commissioner; (iii) the reversal of a retained case by the Police Commissioner; (iv) the treatment of Administrative Prosecution Unit (“APU”) pleas by the Police Commissioner; (v) the dismissal of cases by the APU; (vi) the size of the APU’s docket; and (vii) the length of time to serve Respondents.

i. **Upward Departure of A Guilty Verdict Upheld by the Police Commissioner**

In the fourth quarter of 2018, two (2) CCRB guilty verdicts and two (2) not guilty verdicts for trials conducted before the Deputy Commissioner of Trials (“DCT”) were upheld. In one (1) of the cases, the Police Commissioner approved the guilty verdict and upgraded the penalty. The APU treats each officer against whom an allegation is substantiated as a separate case.¹ As the final arbiter of discipline, the Police Commissioner may accept, reject, or modify any trial verdict or plea.²

Case One, Guilty Verdict, Penalty Upgraded

The Complainant jumped over the entry of a subway and was stopped and arrested by the Respondent and his partners, who were all in plain clothes. A search incident to arrest was

¹ Because the APU treats each officer as a separate “case,” all APU data discussed in this report uses the same terminology. While there may be trials or incidents that involve multiple officers, the word “case” should be interpreted as “case against a single officer.”

² See N.Y. Civ. Serv. Law § 75; N.Y.C. Admin. Code § 14-115; N.Y. City Charter § 434; N.Y. City Charter § 440; 38 RCNY § 15-12; 38 RCNY § 15-17; 38 RCNY § 1-46.

performed and officers recovered prescription medication for diabetes from the Complainant's person. The Complainant was transported to the stationhouse for processing and the Respondent informed the Complainant that he would be transported to central booking, at which point the Complainant requested medical attention because he was not feeling well. The Respondent repeatedly ignored the Complainant's requests for food and his diabetes medication. The Complainant repeatedly requested medical attention for over four hours, at which point he was moved to a solitary holding cell. The Complainant continued to ask for medical attention and paced back and forth, afraid to lie down and fall asleep because he felt sick. The Respondent then entered Complainant's holding cell, placed him in handcuffs and leg shackles, removed him from the holding cell, and chained him together with four (4) other prisoners. The Respondent then pushed surveillance cameras upward toward the ceiling and punched the Complainant on the left side of his face, underneath his eye. The Complainant fell to the ground, hit his face, and lost consciousness.

The Board substantiated two (2) allegations against the Respondent for abusing his authority by failing to obtain medical treatment without sufficient legal authority and for wrongfully using physical force by striking the Complainant in the face without police necessity. At trial, the CCRB recommended a penalty of the forfeiture of twenty-five (25) vacation days. The Respondent was found guilty of both allegations and the ADCT recommended a penalty of the forfeiture of twenty-five (25) vacation days. The Police Commissioner approved the guilty verdict, and departed upward, imposing a penalty of the forfeiture of twenty-five (25) vacation days and one (1) year of dismissal probation.

ii. Cases Retained by the Police Commissioner

The New York City Police Department ("NYPD" or the "Department") retained three (3) cases pursuant to Provision Two of the Memorandum of Understanding ("MOU") in the fourth quarter of 2018.

Provision Two of the MOU states:

[I]n those limited instances where the Police Commissioner determines that CCRB's prosecution of Charges and Specifications in a substantiated case would be detrimental to the Police Department's disciplinary process, the Police Commissioner shall so notify CCRB. Such instances shall be limited to such cases in which there are parallel or related criminal investigations, or when, in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer's record and disciplinary history the interests of justice would not be served.

Cases One, Two, and Three, Retained with Discipline

The Complainant was on the second floor of her home when she heard a booming sound coming from the first floor. Two (2) of the Respondents proceeded to enter the home. After inquiring about her residency in the home, the Respondents proceeded to search the apartment, because they received a call about children breaking into an abandoned home. The Complainant informed the Respondents that she was a resident of the home and that it was not abandoned. The

officers continued their search, entering and searching several more rooms. One of the Respondents asked the Complainant for her identification, and she provided it to him. Before the Respondents left, one stated: “We could arrest you right now, so we suggest you leave.” The Respondents left the home and the Complainant realized she did not get her identification back. She went outside and asked one of the Respondents for her identification, and he stated that he did not know what she was talking about and allegedly did not return her identification.

Later that same day, the Complainant and her partner went to the precinct to file a complaint. The third Respondent, a Detective, did not process their civilian complaint. The first two (2) Respondents were also present at the stationhouse and did not process the Complainant’s CCRB complaint. The Board substantiated three (3) allegations of abuse of authority, one against each of the Respondents, for failing to process a civilian complaint. The Police Commissioner retained all three (3) cases and imposed Command Discipline A, citing the Respondents’ recent evaluations, lack of disciplinary history, and the interests of justice.

iii. Reversal of a Decision to Retain a Case

The CCRB would like to note your decision not to retain a case against a member of the NYPD who abused his authority when they stopped a Complainant without sufficient legal authority and wrongfully used force without police necessity, after initially informing the Agency of your intent to do so.

You initially decided that pursuing the Charges and Specifications recommended by the CCRB would be detrimental to the Police Department’s disciplinary process because the Respondent had no disciplinary history and no prior substantiated CCRB complaints. The CCRB’s written response to the letter informing us of your determination pointed out that an invocation of Provision Two of the MOU several days before the statute of limitations expired would threaten the legitimacy and validity of the process implemented by the two (2) agencies.

You agreed not to retain the case, and to serve Charges on the Respondent, allowing the APU to move forward with the case. I support your decision not to retain the case, and look forward to the opportunity to prove that the alleged misconduct occurred, as well as our continued collaboration in holding police officers accountable when they commit misconduct.

iv. Treatment of APU Pleas

In the fourth quarter of 2018, the Department finalized four (4) pleas. The APU makes penalty recommendations for all cases in which Charges and Specifications are substantiated by the Board. The APU uses a number of factors to determine its recommendations to the Deputy Commissioner of Trials (“DCT”), including, but not limited to: a Member of Service’s (“MOS”) length of service, rank, and disciplinary history; the facts of the case; the strength of the case; the vulnerability of the victim; the extent of injury, if any; the number of Complainants; and DCT precedent of analogous charges. The APU’s penalty recommendations tend to be consistent for MOS who are similarly situated.

Pleas Closed				
Period	Plea Approved	Pleas Closed At Discipline Level Below Agency Recommendations		
		Plea Penalty Reduced	Plea Set Aside, Discipline Imposed	Plea Set Aside, No Discipline Imposed
4 th Quarter 2015 (4Q15)	5	0	1	0
1 st Quarter 2016 (1Q16)	11	0	0	0
2 nd Quarter 2016 (2Q16)	20	2	12	2
3 rd Quarter 2016 (3Q16)	22	0	4	2
4 th Quarter 2016 (4Q16)	17	1	2	0
1 st Quarter 2017 (1Q17)	13	0	1	0
2 nd Quarter 2017 (2Q17)	5	0	0	0
3 rd Quarter 2017 (3Q17)	3	1	1	3
4 th Quarter 2017 (4Q17)	2	5	3	0
1 st Quarter 2018 (1Q18)	6	7	1	0
2 nd Quarter 2018 (2Q18)	0	1	0	0
3 rd Quarter 2018 (3Q18)	6	0	0	0
4 th Quarter 2018 (4Q18)	4	0	0	0

As seen in the chart above, for all four (4) plea cases in the fourth quarter of 2018, the Police Commissioner approved the penalty agreed to by the CCRB.

v. Dismissal of Cases by the APU

When in the course of investigating a case the APU discovers new evidence that makes it improper to prosecute misconduct against a MOS, the APU dismisses the Charges against that Respondent. The APU did not dismiss any cases in the fourth quarter of 2018.

vi. The APU's Docket

As seen in the following table, the APU's docket saw a slight increase in the fourth quarter of 2018, after a one-quarter decline. The APU's docket increased from a total of one hundred four (104) cases in the third quarter of 2018, to a total of one hundred five (105) cases in the fourth quarter of 2018.

Cases in Open Docket					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
4 th Quarter 2015	349	48	31	366	4.9%
1 st Quarter 2016	366	24	53	337	-7.9%
2 nd Quarter 2016	337	16	89	264	-21.7%
3 rd Quarter 2016	264	15	65	211	-20.1%
4 th Quarter 2016	211	7	53	165	-21.8%
1 st Quarter 2017	165	5	38	132	-20.0%
2 nd Quarter 2017	132	11	24	119	-9.8%
3 rd Quarter 2017	119	14	23	110	-7.6%
4 th Quarter 2017	110	10	36	84	-23.6%
1 st Quarter 2018	84	28	20	92	9.5%
2 nd Quarter 2018	92	21	6	107	16.3%
3 rd Quarter 2018	106	11	13	104	-1.9%
4th Quarter 2018	101	16	12	105	4.0%

vii. Time to Serve Respondents

As can be seen in the following chart, the length of time NYPD Department Advocate’s Office (“DAO”) took to serve Respondents after the APU filed Charges with the Charges Unit increased between the third and fourth quarters of 2018.

As of December 30, 2018, there were twenty-eight (28) Respondents who had not been served with Charges. In the fourth quarter of 2018, Respondents waited an average of one hundred five (105) days before being served with Charges.³ This marks an increase from the third quarter of 2018, when there were thirty-nine (39) Respondents who had not yet been served with Charges and the average length of time for service was ninety (90) days.

³ The increase in time to serve respondents is likely due to the inclusion of: (a) three (3) cases which went through the reconsideration process; (b) one (1) case that was the subject of the Provision Two request discussed above; and (c) one (1) case where the Respondent was on long-term sick leave.

Time to Serve Respondents			
Period	Number of Respondents Served	Average Length to Serve Respondent	Average Length to Serve Respondents (Business Days)
4 th Quarter 2015	37	58	42
1 st Quarter 2016	26	135*	97
2 nd Quarter 2016	27	182*	131
3 rd Quarter 2016	26	121*	87
4 th Quarter 2016	15	108*	78
1 st Quarter 2017	3	42	31
2 nd Quarter 2017	0	N/A	N/A
3 rd Quarter 2017	2	37	27
4 th Quarter 2017	9	44	33
1 st Quarter 2018	7	80	58
2 nd Quarter 2018	15	132	95
3 rd Quarter 2018	17	89	63
4th Quarter 2018	15	105	75
* In 2016 there was an increase in the number of cases where the Department requested reconsiderations of cases where the Board substantiated Charges and Specifications, which led to an increase in the time it took the Department to serve Respondents.			

The CCRB strives for efficiency in the disciplinary process. While the CCRB was encouraged by the decrease in the time it took to serve Respondents in the third quarter of 2018, the increase in this quarter indicates a need for the NYPD to attempt to reduce the average time to serve Respondents to thirty (30) days. This will help ensure that APU prosecutions are processed in a timely manner and that cases are resolved more expeditiously for both members of the Department and the people of the City of New York.

Thank you for your consideration.

Sincerely,



Jonathan Darche
Executive Director

Cc: CCRB Chair Frederick Davie
Deputy Commissioner Rosemarie Maldonado
Deputy Commissioner Kevin Richardson