

The Case for an Independent Police Accountability System:

Transforming the Civilian Review Process in Rochester, New York

**By Barbara Lacker-Ware
and Theodore Forsyth**

ABSTRACT

The purpose of this document is to improve the accountability of the Rochester Police Department through a robust civilian oversight system. The City of Rochester's civilian review process embodied in the Civilian Review Board does not adequately address the instances of police misconduct by officers in the Rochester Police Department (RPD). Civilians file complaints with the RPD's internal affairs office, the Professional Standards Section (PSS), which investigates them. These investigations and their findings are submitted to the Civilian Review Board (CRB) and the Chief of Police, who each make their own findings. The CRB has no power to independently investigate complaints, no power to compel testimony or evidence, and no power to discipline officers. The Chief of Police makes the final determination as to whether the complaint against the officer is sustained, and if so, what, if any discipline is administered. This process lacks transparency and accountability, and many individuals and organizations believe it perpetuates a system of officer misconduct resulting in ongoing mistreatment of some civilians in Rochester, NY.

The authors researched: annual reports of the CRB 2001-2015 and PSS 2002-2015, the history of Rochester's civilian review processes, and how the current process works. We compared the CRB, PSS, and Chief of Police findings and recommendations. We examined how the CRB was established, its make-up, and how it is funded. We reviewed the records of disciplinary consequences imposed by the RPD in instances of officer misconduct. We studied civilian review processes in other areas of the United States.

Our research indicates a lack of accountability and transparency within the RPD, resulting in continued occurrences of police officer misconduct. The PSS process involves the police investigating themselves, and there is no independent review of police misconduct that calls officers to account for their actions or enacts appropriate discipline that would deter the misconduct. The process through which the CRB is funded involves an apparent conflict of interest. The CRB has no power to investigate complaints. Instead, the police, through PSS, conduct all investigations of complaints. In many cases CRB findings mirror PSS findings, and there is no appeal process. The CRB is not adhering to portions of the 1992 ordinance that established it, and the ordinance itself does not address the need for an independent body to provide true accountability and transparency in incidents where civilians are mistreated by the police. There is no real opportunity for civilians to have their complaints heard in a just and fair process outside of the control of the RPD, short of filing a lawsuit, which is often not a realistic alternative, due to cost and other factors.

We recommend the abolition of the current Civilian Review Board and the establishment of a Police Accountability Board (PAB) through a City Council ordinance. The PAB would be completely autonomous and funded separately from the RPD, have investigative powers, and issue subpoenas to compel testimony and evidence. The PAB would make the final decision on the disposition of complaints and the recommended discipline to be imposed on officers if the complaints against them are sustained. This recommendation has been endorsed by numerous organizations and community leaders in Rochester, New York.

SUMMARY OF REPORT FINDINGS

Findings/Data

1. From 2002 to 2015, only 2% of civilian complaints of unnecessary force have been sustained by the Chief of Police and only 5% by the Civilian Review Board. (In contrast, Syracuse's Citizen Review Board's sustain rate was 23% in 2015.)
2. From 2008 to 2013, the Rochester Police Department (RPD) Professional Standards Section (PSS) did not sustain ANY civilian complaints for unnecessary use of force.
3. During the 14 years reviewed in the data, the harshest penalties meted out to the police officers for sustained complaints of excessive use of force were 6 suspensions.
4. From 2008 to 2015, there were no internal investigations regarding use of force by RPD officers; over the same time period there were 156 investigations of "procedure."
5. The Civilian Review Board (CRB) exonerated officers (meaning what they did was considered lawful) at a higher rate than the RPD most years.
6. When the Chief of Police disagreed with the CRB's recommended findings, he exonerated officers in all cases where the CRB sustained the complaint (meaning the officers' conduct was considered unlawful).
7. After the 2011 – 2012 City Council Commission review of the CRB, the Chiefs of Police sustained fewer civilian complaints, according to PSS reports, than they had before the Commission was established.
8. Civil lawsuits against the City of Rochester for police misconduct cost taxpayers millions of dollars each year.

Discipline

1. RPD officers can appeal any disciplinary action related to a civilian complaint through a three-person police appeal board, which could include a potentially sympathetic commander and a civilian of their choosing (per police union contract).
2. 77% of all types of civilian complaints filed 2002 – 2015 resulted in counseling memos or letters of reprimand as the only discipline for RPD officers.
3. Officers were suspended 7 times more for procedural violations during 2008 – 2015 and 10 times less for violations of force during 2002 – 2007.
4. In 2003, three different officers were cited for separate instances of: sexual harassment of a minor, an in-custody death, and shooting a bystander; all of which resulted in

suspensions. After 2003, PSS reports no details on discipline of officers for use of force.

Management/Process

1. The Center for Dispute Settlement (CDS) has served as the City of Rochester's contractor for the Civilian Review Board (CRB) for 24 years.
2. In 2012, the City established a process of requesting proposals to administer the CRB. This process has favored CDS to remain the sole contractor for the CRB, an apparent conflict of interest. In 2012, City Council administered the process. In 2015, the Rochester Police Department took over this administration.
3. The CRB is not independent. It receives training from the RPD and uses police investigators to conduct investigations into civilian complaints of police misconduct.
4. The Request for Proposals to administer the CRB includes the Chief of Police being able to remove anyone from the CRB based on undefined "bias"; this stipulation is not found in the 1992 ordinance establishing the CRB.
5. The majority of the CRB panel chairs have been either CDS staff or members of the CDS Board of Directors. This violates the 1992 ordinance that the panelists be volunteers.
6. The number of panelists and chairs has dwindled over the years to a select few who do not represent the racial or ethnic composition of the City of Rochester.
7. Information is not readily available to the public about the number of complaints made against a specific officer or the types of disciplinary measures that have been taken, if any.
8. The CDS's Community Advocate does not actually advocate for the civilian complainant.
9. The CRB offers no formal appeal process for complainants who disagree with the final dispositions of their complaints.
10. The CRB has never requested further investigation of a civilian complaint to the level of Rochester City Council; in 24 years, City Council has never reviewed a single civilian complaint.
11. The transmission of CRB recommended findings via voicemail to PSS seems to be an inadequate and insecure method.

KEY ELEMENTS OF THE PROPOSED POLICE ACCOUNTABILITY BOARD

1. The Civilian Review Board (CRB), established by a 1992 City Council ordinance, shall be abolished.
2. An independent Police Accountability Board (PAB) shall be established, which will be an autonomous office of the City separate from the Rochester Police Department (RPD).
3. The PAB shall be prohibited from contracting with, hiring, or consulting with the Center for Dispute Settlement (CDS) in any administrative capacity.
4. The PAB will be a civilian-controlled process for hearing civilian complaints about police misconduct. Its oversight will ensure accountability and transparency regarding the powers exercised by members of the RPD.
5. The PAB will report to the Rochester City Council and be funded through the budgetary process of the City of Rochester.
6. The PAB will hire an administrator, administrative staff, and independent investigator(s) who are not currently nor ever have been employed by the RPD or any other law enforcement agency.
7. The PAB will consist of 11 members who are residents of the City of Rochester and will serve terms of four years.
8. Six members of the PAB will be elected by the public. Four members of the PAB will be appointed by City Council and one by the Mayor. PAB members shall not be employed or formerly employed by the RPD or any law enforcement agencies while serving as a Board member.
9. The PAB will evaluate the efficacy of existing RPD policies, procedures and practices. The PAB may identify major problems or trends within the RPD and will make recommendations to the Chief of Police for appropriate and necessary changes to policies, practices, and procedures. It will share these recommendations publicly.
10. The PAB may conduct investigations into the conduct of specific members of the RPD concerning any allegation of misconduct and may investigate complaints of police misconduct independently of any investigation conducted by PSS.
11. PSS will provide full PSS reports, recommendations, and investigatory case files to the Police Accountability Board.
12. The PAB shall be trained in civil and human rights law, anti-racism, implicit bias, gender identity and sexual orientation, disability rights, both physical and mental disabilities, RPD and NY police policies and procedures, and other relevant state and local laws.

13. Complaints will be received directly by the Police Accountability Board or by the Rochester Police Department's Professional Standards Section (PSS) and will be referred from one to the other.
14. The PAB Chair shall establish a regular rotation of PAB members to serve on hearing panels composed of three members of the PAB.
15. The PAB, by majority vote of its members, may issue subpoenas to compel the attendance of witnesses, police officers, and the production of any records necessary to complete the investigation of a civilian complaint.
16. If the hearing panel finds that misconduct has occurred, the PAB will have the authority to recommend disciplinary sanctions including but not limited to reprimand, retraining, suspension, demotion, or dismissal.
17. If the panel believes there is evidence of criminal conduct, the complaint and its file will be forwarded to the Monroe County District Attorney's Office and/or to the NYS Attorney General's office to request that a Special Prosecutor be appointed.
18. The panel may also recommend that restitution be paid to the complainant by the City for damage to real or personal property, costs related to medical or mental health treatment, or other losses causally related to the incident.
19. The Chief of Police must share his or her final determination with the PAB and the complainant; where the Chief imposes lesser discipline or no discipline than recommended, he must explain and justify such action.
20. A disciplinary matrix will be established, and if the PAB and the Chief of Police fail to agree on the discipline to be imposed, the PAB will determine the discipline.
21. If any person who has filed a civilian complaint is not satisfied with the final determination, the complainant may file an appeal with the Police Accountability Board.
22. The PAB will publish monthly, quarterly, and annual reports related to the number and type of complaints, the types of force used, discipline recommended and administered, and appeals requested.