

# Myths and Truths about the Office of Police Conduct Review (OPCR)

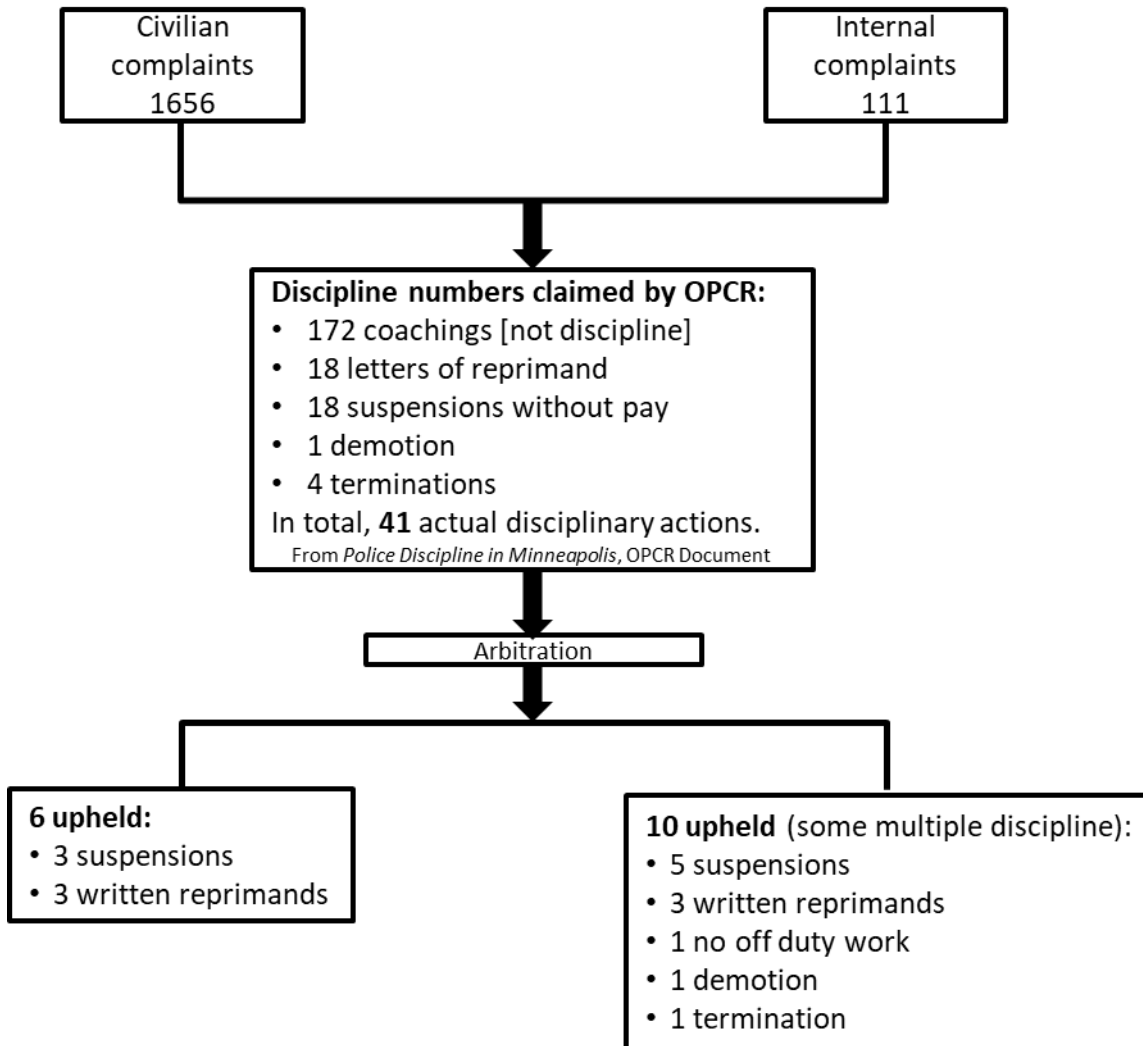
By Communities United Against Police Brutality

In October 2012, Minneapolis replaced the Civilian Review Authority with the Office of Police Conduct Review (OPCR). A look at the statistics related to complaints received and adjudicated by this agency shows how ineffective it is:

- Civilian complaints submitted 10/1/12 through 6/30/17: **1656**
- Civilian complaints sustained and disciplined during the same period: **6**
- This represents a **0.36%** sustain and discipline rate. The national average for oversight bodies is 7-8% (*Civilian Review Boards*).

## The Numbers Explained

CUAPB gets our data on OPCR complaints directly from the agency through requests under the MN Government Data Practices Act. Despite this, representatives of the OPCR often attempt to claim that our data is somehow wrong or false. Part of the issue is differences in wording. In their annual reports, the OPCR attempts to pad their results by including cases sent for coaching and counseling in their discipline numbers. Under state law, coaching and counseling is not discipline. Further, while most complaints are received from members of the public, some complaints are generated internally and the OPCR includes those in their totals.



## **Discipline through the OPCR Process**

Through the 2nd quarter of 2017 (4-3/4 years) there have been 16 OPCR cases that have been closed with discipline. 14 officers are involved - Rod Weber and Michael Friestleben have both been disciplined in two cases.

Of those 16 cases, **6 are the result of civilian complaints**: two 40 hour suspensions, one 10 hour suspension, and three written reprimands.

- Goltart: 10 hr suspension for language. The use of force complaint was found to have no merit.
- Seidl: Written reprimand for use of discretion.
- Devick: Written reprimand for language and failure to report use of force. The use of force complaint was found to have no merit.
- Silva: Written reprimand for something about handling of property or evidence.
- Lehner: 40 hr suspension for use of force.
- Weber: 40 hr suspension for something to do with employee injury and domestic abuse.

Note just one discipline for use of force - and that was only due to the department's desire to terminate Lehner for other reasons. The termination was reduced to a suspension by an arbitrator.

The other **10 are due to internal complaints**:

- Hildreth: 30 hr suspension and letter of reprimand for failure to report use of force
- Toscano: 40 hr suspension and no off duty work for 3 mo for unapproved off-duty work and lying about overtime hours reported but not worked
- Friestleben: demotion for **two** complaints for a personnel issue
- Chamberlain: 80 hr suspension and letter of reprimand for use of force from a complaint initiated by his supervisor, with a civilian complaint coming only after the investigation had begun; it didn't even go to an OPCR panel.
- Fischer: 10 hr suspension related to use of force reporting. She self-reported her violation.
- Schnickel: 120 hr suspension for code of ethics and code of conduct violations. Reported by a Wisconsin officer.
- Feucht: Letter of reprimand. Disciplined by internal affairs for failure to report use of force, after the OPCR panel failed to find any merit to the civilian complaint of excessive force.
- Moua: Termination for Garrity violation, code of ethics violation, and a vehicle violation.
- Weber: Was terminated but the status of this case has now changed back to open.

## **Not Civilian Review**

Another important fact to know about this agency: There are five steps to adjudicating a complaint. While the agency would have you think they provide civilian oversight of police, the truth is that all five levels of the complaint process are controlled by city staff or the police department. A complaint to the OPCR is a complaint to the police themselves. In fact, this agency warns complainants that they are subject to Minn. Stat. §609.505, which criminalizes so-called "false complaints" to police.

Even when the OPCR review panel issues a finding of merit in a case, the case is then reviewed by a three-member Internal Affairs panel. Only if that panel agrees with the OPCR panel is the case referred to the police chief for discipline. In essence, the OPCR is a gateway for Internal Affairs. The process is so byzantine that it is not surprising that only 16 cases have been sustained and disciplined in 4¾ years, with only six originating from the community.

## **Myths about Civilian Oversight of Police**

In its document *How State Law Affects Civilian Oversight*, the City of Minneapolis provides very misleading information about the effects of state law on civilian oversight agencies. The document claims that MN statute 626.89 places limits on the ability of civilian oversight statewide. This is only partially true in that civilian oversight bodies are not able to make findings of fact as a result of the addition of Subd. 17 to this statute. However, the statute still allows recommendations on the merits of a case. When Subd. 17 was passed in 2012, the city attorney advised that it would have little impact on the functioning of the Minneapolis Civilian Review Authority. Yet, Civil Rights Director Velma Korbelt used this change in state statute as the excuse to eliminate civilian oversight of police.

Korbelt goes further in her attempt to defend the OPCR. In a July 26, 2017 online blog on the department's website, she compares the OPCR to the Civilian Review Authority (CRA), which she dismantled through a secret process in 2012. Her main argument seems to be that the OPCR completes their process more quickly than the CRA. This is not surprising—the CRA was deeply under-resourced, with only two investigators. In contrast, the OPCR has 9 investigators. She also cites “a complete lack of communication between [the CRA] and the MPD” but she doesn't explain that this was due to recalcitrance by the police department and a failure of the mayor and city council to require the chief to follow the ordinance in disciplining officers based on sustained CRA complaints.

Korbelt implies in her blog piece that the OPCR is superior to the CRA because it can compel officer testimony—but the CRA could also compel officer testimony under Garrity—there is no difference. She then alleges that this ability to compel testimony under Garrity is “very similar to subpoena power”—an utter falsehood as the ability to compel testimony relates to a statement from the subject of the complaint and subpoena power applies to evidence such as videotapes from private businesses and other non-city sources. Korbelt also falsely states that the CRA lacked “direct data access” but as a city agency, the CRA had the exact same access to data as the current OPCR.

Finally, Korbelt asserts that “the OPCR is giving civilians meaningful control over MPD disciplinary procedures” but as we have shown, community members have virtually no meaningful input into the process. Further, complaints from community members are far less likely to be sustained. When the Civil Rights Department proposed the OPCR model, the National Association for Civilian Oversight of Law Enforcement (NACOLE) expressed serious concerns about the new structure: “NACOLE's primary concern is that, as proposed, the model for Minneapolis will effectively eliminate civilian oversight unless it is clear that the staff is predominately civilian (non-police) and works under the supervision and authority of a civilian answerable directly to the Mayor” (Ilana B.R. Rozenzweig, August 22, 2012).

## **Recommendation**

In August 2013, the Star Tribune ran a front page, above-the-fold article: 439 Complaints: No Discipline in reference to the ineffectiveness of the OPCR. At that time, the city council decided to give the OPCR another year to produce results but has never revisited the record of the OPCR.

With a 0.36% sustain and discipline rate for complaints from community members, the results of the OPCR are so far below the national average that the model is a subpar outlier. This model cannot be fixed. It needs to be scrapped and a mechanism of true civilian oversight needs to replace it. There must be a robust process in which the community determines what such a mechanism looks like.

## REFERENCES

*439 Complaints: No Discipline.* Furst, R. August 28, 2013. Minneapolis Star Tribune.  
<http://www.startribune.com/no-minneapolis-cops-have-been-disciplined-after-439-complaints/221422101/>

*Citizen Review of the Police, 1994 A National Survey.* Walker, S., & Wright, B. January 1995.  
Fresh Perspectives - Police Executive Research Forum. 43

*Civilian Review Boards.* PoliceConduct.net, a project of Cato Institute. Washington, DC.  
<https://www.policemisconduct.net/explainers/civilian-review-boards/>

*Embracing Citizen Oversight: A Police Executive's Guide to Improving Accountability.*  
Evenson, M. University of Alaska Fairbanks.  
[www.uaf.edu/files/justice/EvensonProjFinal311.doc](http://www.uaf.edu/files/justice/EvensonProjFinal311.doc)