



Police Review Commission

ACTION MINUTES OF THE REGULAR MEETING OF THE POLICE REVIEW COMMISSION

North Berkeley Senior Center
1901 Hearst Street
Berkeley, California

Date: Wed. November 28, 2001
Time: 7:30 p.m.

1. ROLL CALL 7:30 PM
Commissioners Present: Gleich, Ritchie (8:15), Sherman, Schlosberg, Sternberg, White
Commissioners Absent: DeBose, Farrell
PRC Staff: Barbara Attard
BPD Personnel: Lt.Stone, Sgt. Morizono
2. PUBLIC COMMENT
3. MINUTES OF THE NOVEMBER 14, 2001 MEETING
Gleich/Sherman (Moved/Seconded) to approve the meeting minutes. Passed Unanimously.
4. PRC OFFICER'S REPORT (For Discussion or Action)
 - a) New Filings—Three since last meeting
 - b) Boards of Inquiry—Upcoming Boards were discussed
 - c) Administrative Closure Recommendation PRC Case #1881, Complainant Hillsman
White/Sherman (Moved/Seconded) to approve the administrative closure. Passed unanimitously.
 - d) Appeal for Late Filing PRC Case #1904, Complainant Chan

2121 McKinley Av., Berkeley, CA 94703 TEL: (510) 644-6716 FAX: (510) 644-6570 TDD (510) 644-6915
E-Mail: prc@ci.berkeley.ca.us Website: <http://www.ci.berkeley.ca.us/prc/>



Mr. Chan explained his reasons for filing his complaint late.

White (Moved) (No Second) to deny late filing. This item will be brought back for the December 12 meeting.

5. BPD.CHIEF'S REPORT-None
6. COMMITTEE REPORTS (For Discussion or Action)-None
7. OLD BUSINESS (For Discussion or Action)
 - a. Caloca Update—City Attorney Sara Reynoso

The City Attorney's Office previously briefed the PRC regarding the impact of *Caloca v. County of San Diego*, 72 Cal.App.4th 1209, which held that under the Public Safety Officers Procedural Bill of Rights Act (Government Code Section 3300 et seq.) police officers must be afforded an administrative appeal of sustained findings of misconduct issued by the PRC. Sara Reynoso summarized the following points from her November 20th memorandum to the PRC:

The following summarizes the appeal hearing procedures the City intends to implement in February 2002 after the City has put all the administrative procedures needed for the processing of the appeals in place.

1. The appeal procedures shall only apply to PRC final decisions. PRC decisions that are relied upon by the Police Chief or City Manager for imposing discipline on the subject officer shall be appealable only under the grievance procedure in the Memorandum of Understanding between the City and BPA. In the event a subject officer requests a *Caloca* appeal hearing and the City subsequently initiates disciplinary action against the subject officer based on the PRC's decision, the MOU grievance procedures supersede the *Caloca* appeal process and the *Caloca* appeal shall not be processed.
2. The scope of appeal shall be limited to PRC sustained findings of misconduct. However, in the event the PRC issues a decision not sustaining the complaint but in the body of its decision questions the veracity of the officer or makes other disparaging comments about the officer, the subject officer may submit a letter to the City Manager which will be placed in the PRC file.
3. A subject officer wishing to appeal a PRC decision must file a written notice of appeal with the City Manger within fifteen days after receipt of the PRC's written decision and findings, or the right of appeal is waived.
4. PRC shall prepare a written transcript of the hearing within 60 days of the date the subject officer files the written notice of appeal with the City Manager.
5. The City Manager shall appoint a three-person hearing panel to hear the appeal of the PRC sustained finding. The appeals panel shall schedule the hearing, at which the subject officer and PRC, or their respective representatives, shall be present. The appeal panel shall either hear oral argument or receive written argument from both the subject officer and PRC. No new evidence will be considered unless the party wishing to introduce the new evidence can

establish that despite reasonable good faith efforts, the party could not have discovered and presented the evidence at the PRC's original proceedings or the evidence was erroneously excluded by the PRC. The sole issue on appeal shall be whether the PRC's decision is supported by clear and convincing evidence.

6. The appeal panel shall issue a written decision within 30 days after receiving written argument and/or oral argument from the parties. A copy of the written decision shall be placed in the PRC and Police Department's files along with the PRC's original decision. The decision shall be final and no further review or appeal shall be provided.
7. City Manager will continue the current practice of reviewing the PRC's decisions and advising the PRC in writing whether he agrees or disagrees with its decision if the subject officer does not file an appeal of the PRC's sustained finding and the time period to file such an appeal has expired.
8. Procedures for appeal hearings for PRC decisions issued after the City received the BPA's demand to meet and confer on September 27, 1999. Subject officers shall have 60 days from the date City notifies the officer of the new appeal procedures, in which to request an appeal. If no appeal is requested in that time period, the officer waives his/her appeal rights.

The City Manager intends to assign three senior management level employees to sit on the appeal panel. Since continuity in the early stages of implementing this process will be important, the City Manager intends that the same three staff members hear all PRC appeals for the immediate future. Since the City has no experience with these types of appeals, we cannot project how many PRC decisions will be appealed by subject officers and what impact the appeal process may have on the current PRC staff. It is anticipated that after this appeal process has been in place at least six to twelve months the City will be better able to determine what additional costs are associated with these appeals.

Several commissioners raised questions and concerns about the process.

BPA president Randy Files stated that the BPA is not in agreement with some of the appeal process as outlined by the City Attorney. The BPA would like a full evidentiary hearing at the appeal level. The BPA plans to bring a lawsuit to challenge the procedures as outlined.

8. NEW BUSINESS (For Discussion or Action)--None
9. COMMUNICATIONS
10. ADJOURNMENT

White/Sherman (Moved/Seconded) to meeting at approximately 8:45 PM. Passed unanimously.