



## CAPTAINS ENDOWMENT ASSOCIATION

POLICE DEPARTMENT CITY OF NEW YORK

CHRIS MONAHAN  
President

ROBERT HACHEMEISTER  
1<sup>st</sup> Vice President

### VIA Electronic Filing

Honorable James Yates  
United States District Judge  
United States District Court  
for the Southern District of New York  
500 Pearl Street New York, New York 10007-1312

December 23, 2024

Re: *Floyd, et al. v. City of New York*, No. 08 Civ. 1034 (AT); *Davis, et al. v. City of New York, et al.*, No. 10 Civ. 0699 (AT); *Ligon, et al. v. City of New York, et al.*, No. 12 Civ. 2274 (AT).

Your Honor:

I am President of the NYPD Captain's Endowment Association (C.E.A.). The CEA is the Police Union representing 795 NYPD members of the service in the Executive ranks of Captain through Chief.

Thank you for giving us the opportunity to review the draft "recommendations" set forth in the latest draft of the report on NYPD Discipline.

I write to respectfully submit our comments (attached) on the proposed recommendations from the Inspector General's Report on Police Discipline, as these have a direct impact upon our union members.

Please note that we have not commented on all the recommendations but have limited our comments to certain specific recommendations.

On behalf of all the hard-working men and women of the CEA, I thank your Honor for his consideration.

Respectfully,

/s/

Christopher T. Monahan

President

**CONSOLIDATED NYPD CAPTAIN'S ENDOWMENT ASSOCIATION'S COMMENTS ON  
PROPOSED RECOMMENDATIONS IN DRAFT DISCIPLINE REPORT**

<b>Text Of Draft Recommendation (redlined)</b>	<b>Comments</b>
<b><u>Transparency</u></b>	
<p>1. Any items in the Departmental Manual pertaining to 4<sup>th</sup> Amendment or 14<sup>th</sup> Amendment enforcement, compliance, and related discipline should be made publicly available including: procedures, supervisory responsibility, investigations, interviews, reporting and decision-making regarding misconduct, interaction with Civilian Complaint Review Board (CCRB) or other investigative bodies. Such provisions in the Departmental Manual, which includes the Patrol Guide and the Administrative Guide, should be publicly posted and available, with exceptions as provided in NYC Admin. Code § 14-164 (confidential information non-routine investigative techniques, material which could compromise safety or ongoing investigations and operations).</p>	
<p>2. Proposed changes to the Disciplinary System Penalty Guidelines or the Department Manual pertaining to 4<sup>th</sup> Amendment or 14<sup>th</sup> Amendment enforcement, compliance, and related discipline, should be made available to the Monitor prior to adoption. The Monitor, after consultation with the Community Liaison, may direct that such proposed changes be made public or presented for public comment.</p>	
<p>3. Complainants and officers should be advised every 60 days of the status of a pending complaint, including where it is pending and causes for delay. When either CCRB or the Internal Affairs Bureau (IAB) sends notice of an outcome to a complainant, the complainant should be advised with particularity which allegations were substantiated along with a listing of any other outcomes and any specific penalty or guidance ordered.</p>	

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<p>4. Upon receiving notice and a directive to impose discipline or guidance of a substantiated SQFS (Stop, Question, Frisk, Search of Person) finding by CCRB, the CO must report back to the Department Advocates Office (DAO) the final result, including the specific penalty or guidance imposed and the date of imposition, within 30 days. This should be forwarded immediately to CCRB and be made publicly available. Any complainant should be personally advised of the penalty outcome.</p>	<p>This is violative of an Officer's due process rights, by unilaterally removing RCNY Title 38 sec.1-42, which mandates CCRB's obligations in its Prosecutions of Charges and usurps the Police Commissioner's authority and discretion to make final disciplinary determinations. <i>Id.</i> sec.1-42.</p> <p>Additionally, this imposes an additional work task upon Commanding Officers and as such is subject to collective bargaining.</p>
<p>5. Command disciplines imposed for SQFS misconduct are not "technical" findings under Public Officer's Law § 86 and should be publicly available under FOIL. (<i>See, United Fire Officers Ass'n v de Blasio</i>, 846 F. App'x 25, 33 [2d Cir. 2021]).</p>	
<p>6. NYPD's "Officer Profile" (<a href="https://nypdonline.org/link/2">https://nypdonline.org/link/2</a>) posting of "Disciplinary History" should include all substantiated SQFS allegations accepted by the Police Commissioner (with date of incident and specific outcome, including guidance or penalty).</p>	
<p>7. When CCRB has referred Other Possible Misconduct Noted (OPMN) to NYPD arising from an SQFS investigation, the Department should promptly advise CCRB of the disposition, level of discipline, and penalty, if any, imposed. Substantiated dispositions should be listed on the publicly posted online profile and in CCRB's listing of MOS disciplinary outcomes.</p>	
<p>8. The Law Department should review and assess the accuracy of its public postings pursuant to Admin. Code § 7-114 (Civil actions regarding the police department and covered individuals), and update or correct if necessary:</p>	
<p>a. The Code requires an online posting indicating whether a case was resolved by payment by the city, employer, or covered individual (officer) or another person paying on behalf of a covered individual and, if so, the amount of such payment. This should specify if the Law Department declined to represent or if indemnification was denied.</p>	

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<p>b. The Code requires a delineation of whether the complaint alleges use of force, assault and battery, malicious prosecution false arrest or imprisonment, or deprivation of a right pursuant to chapter 8 of title 8 of the Code (right of security against unreasonable search and seizure and against excessive force regardless of whether such force was used in connection with a search or seizure.)</p>	
<p>i. Included therein, the posting should include a column indicating if the complaint alleges an illegal stop, frisk, or search.</p>	
<p><b><u>Complaint Processing</u></b></p>	
<p>9. CCRB and NYPD should agree upon one set of descriptions for findings and outcomes and apply them uniformly. In particular:</p>	
<p>a. "Exonerated" in SQFS cases should be reinstated by CCRB as a finding, and reserved exclusively for cases where it is demonstrated that the subject officer engaged in the alleged conduct, but the officer's actions were lawful and proper.</p>	
<p>b. "Unfounded" in SQFS cases should be applied in cases of misidentification or where it is demonstrated that the officer did not perform the acts or engage in the conduct attributed to the officer.</p>	
<p>c. In SQFS cases, if there is insufficient evidence to determine whether or not the acts alleged occurred or that the officer performed the acts or engaged in the conduct attributed to the officer, the case is "unsubstantiated" not "unfounded."</p>	

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<p>10. In any case containing an SQFS allegation where there is overlap of separate investigations or a split in investigations of the same complaint, encounter or subject officer, NYPD and CCRB should coordinate the investigations, sharing information and explaining differences in outcome. CCRB should have access to any interview by IAB of any police witnesses regarding the subject matter of the complaint being investigated by CCRB. Where separate investigations (by NYPD and CCRB) of an encounter have occurred, DAO should present both matters to the Police Commissioner for reconciliation or resolution. If the findings regarding SQFS conduct are inconsistent, the Police Commissioner should describe, in writing, the reasons for the final decision.</p>	
<p>11. Deputy Commissioner of Trials should be provided with a complete CPI (not just a Summary of Employment History) and disciplinary history, including matters which have been sealed or did not result in discipline and including investigations by IAB. While prior unsubstantiated allegations cannot, in and of themselves, form the basis for a finding of misconduct, unsubstantiated matters may be considered in weighing assertions, claims or defenses of good faith, mistake, motive, intent, identity, common scheme or plan, or in identifying patterns of misconduct.</p>	
<p>12. When investigating misconduct, CCRB and NYPD should examine and consider allegations, findings, judgments and settlements, made in court or before the Comptroller, for related complaints, inconsistent statements, and in assessing credibility, motive, assertions of good faith or mistake, and in identifying patterns of misconduct, as well as when recommending or imposing a penalty.</p>	
<p>13. A CCRB panel should have available upon request a complete disciplinary history of the subject officer, including all Departmental investigations, when recommending a penalty for substantiated SQFS misconduct. The CCRB executive director should be able to obtain this history at an earlier point, upon request, during investigation, when relevant to any of the issues arising in that investigation.</p>	

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<p>14. In SQFS investigations, in light of the fact that substantiated CCRB recommendations are reviewed after referral by Departmental employees and, in all cases, are subject to a final outcome determination by the Police Commissioner, preliminary screening by police designees on every CCRB panel is not necessary. In concordance with the City Charter, CCRB should eliminate its supplemental requirement that a police designee must be one of the members of every SQFS panel and, as well, should eliminate the two-step process recently put in place that requires a secondary review by a panel with a police designee before a substantiation.</p>	
<p>15. Upon substantiating an SQFS allegation, the CCRB panel should separately and clearly delineate findings of fact.</p>	
<p>16. When CCRB cases with SQFS allegations are "closed pending litigation," CCRB should review the matter upon conclusion of the litigation and determine, if requested by the complainant, whether to re-open the matter for investigation or recommendation. The Law Department should send a notice to the Legal Bureau or IAB upon conclusion of litigation, when advised that a CCRB investigation was closed pending litigation. The IAB liaison should be responsible for advising CCRB of the status.</p>	<p>This unfairly tolls and/or extends the applicable Statute of Limitations, which violates by keeping members in a "holding pattern" i.e., with open disciplinary cases, resulting in lost opportunity for transfers and opportunities for promotion.</p>

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<p>17. Materials or statements presented to the Comptroller while processing a claim which includes a claim of SQFS misconduct should be made available to CCRB upon request. If needed, CCRB should seek consent from complainants to obtain GML § 50-h transcripts.</p>	
<p>18. Materials filed or presented in the course of litigation which includes a SQFS claim, unless privileged, should be made available to CCRB, by the Law Department upon request. Such materials should be considered, by CCRB and the Police Commissioner, in a related disciplinary proceeding.</p>	<p>If such materials are presented, they should also be made available, where applicable, for use in mitigating the members' liability in a given case.</p>

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<p>19. In any SQFS investigation, when assessing the credibility of the subject officer's statements, CCRB should seek and have full access to the entire investigative file or court record of any case alleging a 4th or 14th Amendment violation, where the officer had been the subject of an adverse credibility <u>finding or is the subject of a pending investigation</u> for making an untruthful, misleading, or false statement, whether sworn or not. <u>If IAB is investigating</u>, or has investigated, a subject officer for an untruthful, false or misleading statement in connection with a current CCRB case, the CCRB should have full access to the file of such investigation and any statements the officer made regarding the encounter for consideration in the pending matter. <u>If CCRB finds that an officer testified untruthfully about material facts pertaining to the encounter, it may disregard the officer's testimony.</u> Such a determination, if made, is entitled to deference when reviewed by the Police Commissioner.</p>	<p>This recommendation (see highlighted portion) is especially problematic in that completely violates due process, and moreover is in direct conflict with No. 21 where the Police Commissioner is given strict guidelines when making a credibility assessment of a witness, including "conclusive evidence." Ostensibly this recommendation imposes two different standards in assessing credibility, one for Members of the Service and another for civilians.</p>
<p>20. "Training" as a finding should be individualized, addressing the specific circumstances of SQFS misconduct, performed in-person (not video), and completed within a reasonably short period of time after the misconduct finding is finalized.</p>	
<p>21. In any case where an SQFS allegation was substantiated, when writing after a departure or deviation from a panel recommendation or from the Penalty Guidelines, or when retaining a case, the Police Commissioner should separately and clearly delineate findings of fact and conclusions of law if the basis for departure is either.</p>	



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<p>a. In finding facts, CCRB's determination is not conclusive but is entitled to deference and weight. If the Police Commissioner does not accept material facts found by CCRB, he should specify the facts which were not accepted. Such determination should not be made upon a credibility assessment of a witness absent identified inconsistent statements or extrinsic evidence, in the record, contravening or supporting the witness' statement. If the Police Commissioner has considered evidence outside the record reviewed by CCRB, he should notify CCRB. Upon such notice, CCRB should have the option to re-open the hearing or reconsider the matter.</p>	
<p>b. After a substantiated allegation of SQFS misconduct, if the penalty or level of discipline imposed by the Police Commissioner is less than that recommended by the CCRB panel, but the reason for departure or deviation is an act of lenity, separate from a disagreement over the findings of fact or conclusions of law, the Police Commissioner should explain the factors considered in lenity. Along with such explanation, the statement should contain a list all prior disciplinary investigations and their outcome, whether conducted within NYPD or at CCRB.</p>	
<p>c. When setting aside a substantiated allegation of SQFS misconduct, or finding of guilt, by either an NDA, DUP or "not guilty" determination, the Police Commissioner should specify any factual finding and any legal conclusions that form the basis for the action. This should be publicly available, and a copy should be sent by CCRB to any complainant in the matter.</p>	
<p>22. The Police Commissioner, upon accepting a command discipline recommendation from CCRB in an SQFS case, may direct a specific penalty or guidance. If the choice of penalties is referred to the Commanding Officer (CO), the CO should apply the Disciplinary Guidelines and inform the Police Commissioner and DAO of the penalty imposed. The CO is not free to deviate from the Guidelines without first conferring with DAO.</p>	

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<p>23. As recommended by the Commission to Combat Police Corruption (CCPC), IAB referrals for Charges and Specifications should be noted in the CPI, as “referred not charged,” when DAO declines to bring charges.</p>	
<p><b><u>“Good Faith” and “Mistakes”</u></b></p>	
<p>24. If the subject officer asserts “good faith,” “inadvertence,” “mistake,” or asserts that misconduct was an “isolated” incident (under PG 212-11), the panel should have complete access to all prior investigations where an SQFS allegation was investigated at CCRB and within NYPD, whether or not prior cases were substantiated or “sealed.”</p>	<p>This serves only to prejudice the panel.</p>
<p>a. If guidance rather than discipline is recommended by CCRB or directed by the Police Commissioner for an SQFS violation, it should be limited to “isolated cases of erroneous but good faith stops or frisks,” as specified in PG 212-11 or when permitted under paragraph (b) or (c). <b><u>Such a finding for an improper stop or frisk, is not permitted more than one time for an officer.</u></b> The Department should include, in its posted officer profile, a listing, (including identification of the officer) of each time guidance or no penalty, in lieu of an assessment of penalty days or lost time, was ordered as a result of such finding.</p>	<p>Limiting good faith mistakes to a “one time only” will have a chilling effect on officers taking enforcement action. Moreover, this recommendation has a disproportionate impact on those officers in commands where enforcement actions are taken more frequently, i.e., high volume arrest commands, commands that execute search warrants, etc.</p>
<p>b. “Good faith” or “mistakes” are to be measured objectively. The “good faith” or “mistake” asserted in defense must not only be an honestly held belief or a subjectively honest mistake, but it also must be an objectively reasonable belief or an objectively reasonable mistake measured by the standard of a reasonably trained police officer’s point of view.</p>	
<p>c. “Good faith” or “Complexity” or “Misunderstanding of the Law” is not a basis for NYPD to NDA, DUP, or to find an officer “Not Guilty” of an SQFS violation but may be used in mitigation. “Good faith,” “Complexity,” or “Misunderstanding of the Law” is not to be considered in mitigation of SQFS allegations against an officer on more than one occasion.</p>	

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<p>d. CCRB and the Department should maintain a separate descriptive index, publicly available and posted monthly, for each case where a finding of “mistake” or “good faith” is utilized as justification for reducing a discipline recommendation or excusing misconduct, specifically identifying the officer and the circumstances of the complaint and finding.</p>	
<p>25. When making a disciplinary recommendation, the CCRB panel should itemize, with specificity any aggravating or mitigating circumstances found and explicitly state whether any assertions of “good faith,” “mistake,” or “inadvertence,” were rejected or accepted.</p>	
<p>26. <b>Corporation Counsel’s decision to deny representation or indemnification, in litigation involving the same encounter, based upon wrongdoing or recklessness should be taken into consideration by CCRB and the Police Commissioner in assessing a case and should preclude a finding of mitigation, good faith, inadvertence or mistake.</b> Corporation Counsel should notify NYPD Legal Bureau upon each such declination and a record should be kept by DAO, which record will be made available to CCRB during the course of any related investigation or prosecution. CCRB should be advised of the “general basis” for declination or denial, i.e., a brief description of why representation was denied.</p>	<p>This worsens the <b>current Law Department Policy of non-indemnification and/or representation, where an MOS served with Charges is declined representation before there is a finding of guilt in the Trial Room.</b> This policy is memorialized in Legal Bureau Bulletin Vol. 47, No. 6 of 2017.</p> <p>One example of this was in <u>Payamps v. City of NY</u> 1:22-cv-00563 where Inspector Jesse Lance, who was the subject of charges was left without Law Department representation and the Captains Endowment Association paid for his representation in that case until he was found Not Guilty of all charges in the NYPD Trial room. Here, <b>this recommendation adds proverbial insult to injury by additionally precluding mitigation of a penalty where the member has not yet been proven guilty of any wrongdoing.</b></p>

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<p>27. In cases where SQFS allegations are not substantiated, CCRB should continue to refer failures to file a stop report to NYPD for investigation. However, if CCRB determines that an officer has abused authority by an improper stop or frisk, it should then fully investigate and independently determine if a stop report should have been filed and was not. In such a case if a stop report is “missing,” CCRB should list the failure, if substantiated, as either a separately substantiated offense under the Disciplinary System Penalty Guidelines, or as an aggravating factor, rather than referring the matter to NYPD for later, or separate, investigation. The determination by CCRB is entitled to deference and should only be disregarded by the Police Commissioner in extraordinary circumstances, explained in writing.</p>	
<p>28. Consecutive/concurrent discipline: a stop, a failure to file a stop report, a frisk, or a search are all separate and distinct acts. Each act should be examined individually and, if substantiated, the penalties assigned in the Disciplinary Guidelines should be applied consecutively, absent extraordinary circumstances detailed in writing by CCRB or the Police Commissioner, as the case may be.</p>	
<p><b><u>Bias-based Policing and Racial Profiling</u></b></p>	
<p>29. In establishing a protocol for examination of bias-based policing, CCRB should, at a minimum, include the protocol approved by the court in IAB Guide 620-58.</p>	
<p>30. CCRB must affirmatively investigate and document whether slurs or profiling allegations are part of a pattern, either by the subject officer or within a squad or group of officers working together. When investigating a complaint with regard to one officer, CCRB should include a review of past discourtesy, slur, and profiling complaints, whether or not substantiated, by all officers involved in the encounter.</p>	
<p>31. CCRB should review a past history of allegations, even if unsubstantiated, to assess whether there exist any patterns of discrimination, as well to assess potential motivation. All profiling investigations should state the results of the investigation for a pattern in its closing report.</p>	<p>To the extent this goes beyond what CCRB already considers—this recommendation would violate the principles of due process owed to subject officers, and run afoul of the sealing laws.</p>

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<p>32. If IAB decides to separately investigate a profiling complaint (either concurrently with CCRB or after the Police Commissioner receives a substantiated profiling complaint from CCRB), the results of the investigation should be shared with CCRB. If there is a material difference in the findings, the full investigative IAB file should be sent to CCRB for reconsideration.</p>	
<p><b><u>Accountability</u></b></p>	
<p>33. In cases where CCRB has substantiated an improper stop, frisk, or search, CCRB should review, as a potential abuse of authority, <b>any supervisor who was present and in a position to observe the stop, question, frisk, or search for an abuse of authority (failure to supervise), regardless of whether the failure was active or passive.</b> In cases where the supervisor did not actively participate, CCRB panels should have the option to refer the matter to NYPD as Other Misconduct Noted.</p>	<p>What is the standard to be used here as to “in a position to observe”? This is inherently arbitrary and creates strict liability for supervisors. In essence, if a supervisor is merely present, she is subject to an abuse of authority charge.</p>
<p>34. Any disposition by NYPD of a substantiated CCRB finding of SQFS misconduct should be recorded in the subject officer’s Central Personnel Index (CPI). This should include cases that result in a DUP, NDA, guidance or penalties.</p>	
<p>35. In cases of training, the record maintained by DAO should specify the training or training module mandated along with confirmation of where and when the training took place.</p>	
<p>36. When an audit (RAND, PIE, QAD, Monitor) finds a deficiency in a stop report or a failure to file a stop report, it is not enough to correct the report. A review or investigation, as outlined in Admin. Guide § 318-02, by the Command - CO, Integrity Control Officer (ICO) or Executive Officer (XO) - of the circumstances of the SQFS should be made with findings recorded and maintained or forwarded as required by § 318-02. Paragraph 33 of § 318-02 should be amended to require recording in the CPI of all command disciplines for SQFS misconduct (not just B-CDs). If the SQFS was found to be improper, the CO should impose appropriate discipline or take appropriate action, applying the Disciplinary Guidelines when applicable.</p>	

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<p>37. In all cases where a stop report has been or should have been completed and where a use of force was indicated in a TRI, the CO or XO should review the propriety of the stop/frisk/search independent of the force investigation and report the findings to DAO. If the investigation is done by IAB or FID, there should be a review of the propriety of any accompanying SQFS behavior with a separate recommendation, even if there is no civilian complainant. DAO should review and assess for further investigation or discipline if misconduct is indicated.</p>	<p>Commanding Officers are responsible to review all TRI worksheets and conduct a monthly recap for the over-head boro/bureau. Under this recommendation Commanders are now reviewing the propriety of SQFS encounters in addition to IAB, FID as an added responsibility. Additionally, this imposes an additional work task upon Commanding Officers and as such is subject to collective bargaining.</p>
<p>38. In any force investigation, whether done by the CO, IAB, or FID, there should be an inquiry by the Department into whether there is an SQFS complaint being investigated by CCRB for the same or a related encounter. In any SQFS investigation by CCRB where the complainant alleges use of force, there should be an inquiry by CCRB into whether there is a force investigation by the local command, IAB, or FID. In either instance, the two investigations should be coordinated with information and interviews being shared. If there are parallel investigations of racial profiling or bias-based policing, they should be disclosed and coordinated as well.</p>	
<p>39. Patrol Guide § 207-21 should be amended to make it clear that the duty to intervene or report fellow officer misconduct includes a supervisor's duty to report intentionally wrongful SQFS encounters, bias-based policing, and racial profiling (as recommended by OIG-NYPD).</p>	
<p>40. As recommended by the Independent Panel, <i>ex parte</i> communications with the Police Commissioner and staff reporting directly to the Police Commissioner regarding pending disciplinary decisions should be documented.</p>	
<p>41. 38-A RCNY should be amended to make it clear that a failure to supervise SQFS misconduct may be considered as an abuse of authority and investigated by CCRB, whether or not the supervisor was actively involved or passively neglected proper supervision.</p>	

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<p>42. The Department Manual should be amended to make it explicit that it is a Commanding Officer's obligation to monitor, investigate, and discipline SQFS misconduct even in the absence of a civilian complaint to CCRB. Admin. Guide § 318-01 needs to be amended accordingly. As well, the Disciplinary Guidelines, in its list of "Violations of Department Rules and Regulations" (offenses for which command discipline can be imposed at the precinct level), should specify that SQFS misconduct is included therein and should explicitly mandate discipline (at levels directed in the Abuse of Authority section of the Guidelines).</p>	<p>This imposes an additional work task upon Commanding Officers and as such is subject to collective bargaining.</p>
<p>43. QAD should audit samples of TRI reports to determine if a stop/frisk occurred, and if so, to ensure that a stop report was filed if required.</p>	
<p>44. Commanding Officers should be required to file an annual report demonstrating compliance with the provision in Admin. Guide § 318-01 whereby multiple command disciplines within a six-month period are referred to the borough/bureau adjutant for consideration of whether Charges and Specifications should be filed. The result should be sent to DAO. A copy of the report should be sent to the Professional Standards Bureau for consideration.</p>	<p>As stated in response to Recommendation No. 37, Commanding Officers are responsible to review all TRI worksheets and conduct a monthly recap for the overhead boro/bureau. Under this recommendation Commanders are now compiling an additional report on discipline related to SQFS. This imposes an additional work task upon Commanding Officers and as such is subject to collective bargaining.</p>
<p>45. Admin. Guide § 329-15 should be amended to make it clear that the Career Advancement Review Board will take substantiated SQFS allegations into account.</p>	
<p>46. Notwithstanding the Administrative Guide mandate that A-CDs be expunged after one year and B-CDs be sealed after three years, records of SQFS misconduct should be kept by DAO and considered during the Disciplinary Guidelines prescribed look-back period (three years for A-CDs and for five years for B-CDs) in order to determine whether to apply progressive discipline. Similarly, such records should be made available to DAO for the purpose of assessing whether there is misconduct "demonstrating a pattern of behavior that indicates an inability to adhere to Department rules and standards," as required by the Guidelines.</p>	

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<p>47. Admin. Guide § 318-12 should be amended such that substantiated SQFS misconduct occurring during the three-year pause period (for B-CDs), and the one-year pause period (for A-CDs), if applicable, would toll the pause-period and delay expungement or sealing, as the case may be, from the time of the alleged misconduct through and until the time of final disposition of the most recent SQFS allegation(s).</p>	
<p>48. "Progressive Discipline" as defined in the Guidelines for repeated SQFS misconduct is too narrow.</p>	
<p>a. The Guidelines calculate a "prior" from the date of final approval by the Police Commissioner of the substantiated allegation. <b>If a complaint is pending, following substantiation by CCRB, but has not yet been finally adjudicated by the Police Commissioner, it should be considered as a prior offense for purposes of progressive discipline</b> even if the Commissioner's final approval occurred after the date of the new wrongful act.</p>	<p>This violates due process and department policy.</p>
<p>b. Prior substantiated allegations, for purposes of enhancing discipline, should not be limited to the "same misconduct." A prior violation of any of the provisions of PG § 212-11 (investigative encounters) should count as prior misconduct upon a finding of a similar 212-11 violation. E.g., a prior finding of wrongful frisks, should count as a prior offense for a new finding of an illegal stop and questioning of a person, for purposes of progressive discipline.</p>	
<p>c. Repeated acts of similar misconduct should call for enhanced discipline, even if the later acts do not otherwise call for greater penalties than the earlier findings. E.g., a prior slur should count as a prior upon a finding of discourtesy.</p>	
<p><b><u>Timeliness</u></b></p>	
<p>49. All SQFS investigations should be completed by CCRB within 120 days and, if not, the reasons for the delay shall be explained in writing to the subject officer and the complainant.</p>	



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<p>50. Where CCRB has recommended Charges and Specifications and APU has submitted them to DAO, the subject officer should be notified immediately. The Police Commissioner may delay formal service of the Charges while he considers further action, but for purposes of the Statute of Limitations, the Department should define "commencement" of the action to be upon written notice received by the subject officer of the specifications requested by CCRB rather than delaying "commencement" while waiting for later approval by DAO and formal service.</p>	<p>This is vague and indiscernible, but seemingly is an attempt to redefine existing New York City Law (specifically the NYC Administrative code) as it relates to the Statute of Limitations applicable in disciplinary matters.</p>
<p>51. Where CCRB has recommended command discipline rather than Charges, for purposes of the Statute of Limitations, "commencement" should be determined as of the time CCRB notified DAO and the officer of the recommendation.</p>	