

**Police Oversight Commission**  
**Rules and Regulations 2012**  
(amended 9/14/06, 3/8/07, 3/5/09, 11/8/12, and 12/13/12)

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# **Police Oversight Commission For the City of Albuquerque**

## **Rules and Regulations Governing the Police Oversight Commission**

### **Article I-Meetings**

#### **Section 1. Regular Meetings.**

- A. The regular meetings of the Police Oversight Commission (POC) for the City of Albuquerque shall be held at 4:00 p.m. on the second Thursday of every month and at times consistent with resolutions adopted by the POC. Meetings are normally held in the City Council/Commission Chambers, Albuquerque/Bernalillo County Government Center.
- B. In December or as early as possible each calendar year, the Chair of the POC shall introduce a resolution in compliance with the Open Meetings Law, specifying the date and time for the regular meetings of the POC. If these meetings need to be changed, such action should be taken as soon as it becomes clear that a change is appropriate.
- C. Regularly scheduled public meetings will be conducted with a prepared agenda that is distributed in advance to the Mayor, City Council, Police Chief, and City Attorney and will comply with the New Mexico Open Meetings Law.
- D. Each POC meeting will begin with public comment.
- E. Regularly scheduled meetings will be televised live on the appropriate government access channel, if it is operating.
- F. If the POC needs to consult with their attorney on an issue during the public meetings, The POC will comply with the State Open Meetings Law, but may properly have privileged communications with their attorney. These closed consultations will be kept to a minimum.

#### **Section 2. Special Meetings.**

- A. Special meetings may be called by the Chair or by three Commissioners, provided that written notice of such meetings shall be given to each commissioner at least 24 hours before the time set for the meeting.
- B. These meetings must comply with the Open Meetings Law and shall be videotaped and aired on the appropriate government access channel; however there is no requirement for providing live television coverage.
- C. Special meetings may also be required in accordance with §94112 Revised Ordinances of Albuquerque 1994 (ROA 1994) upon petition of 1000 or more citizens in the City of Albuquerque and filed in the Office of the City Clerk.
- D. Notice of these meetings shall be given in the same manner and shall comply with the State Open Meetings Law. These meetings will be televised live on the appropriate government access channel, if operating.

- E. The POC may have closed meetings for training purposes or any other purpose allowed by law. No business or other POC issues may be discussed during these closed meetings unless otherwise allowed by law.
- F. Closed meetings must be announced in advance and explained in public as to the reasons for a closed meeting (only for training). After the closed meeting and at the next regularly scheduled meeting, the Chair will announce what occurred at the closed meeting, if it is appropriate to do so.
- G. The New Mexico Open Meetings Act, §10151, et seq., NMSA will be complied with for closed meetings. Nothing in this rule is meant to forbid Commissioners from receiving training individually or in groups constituting less than a quorum.

### **Section 3. Emergency Meetings.**

- A. Notwithstanding any provision contained herein, the Chair of the POC, may in the event of an emergency, call with whatever notice is possible under the circumstances, a meeting of the POC to consider any matter. "Emergency" for the purpose of this section includes an unexpected occurrence or condition, or the state resulting there from, which may require immediate consideration or action by the POC.
- B. These meetings will comply with the New Mexico Open Meetings Act and shall be videotaped and aired on the appropriate government access channel. There is no requirement for providing live television coverage.

### **Section 4. Notice of Public Meetings.**

- A. Notice to the public shall be given at least 24 hours in advance of any regular meeting of a quorum of the members of the POC. Such notice may be given:
  - 1. By posting a written notice in the lobby on the first floor of the Albuquerque/Bernalillo County Government Center, Albuquerque, New Mexico; or,
  - 2. By written notice published in a newspaper of general circulation in the City of Albuquerque.
- B. Notice to the public shall be given at least 24 hours in advance of any special meeting of a quorum of the members of the POC. Such notice may be given in the same manner as set forth above.
- C. The foregoing notice is sufficient, as long as the date, time and place of such meeting is given; but as to special matters, the POC, in its sole discretion, additionally may include in such notice a brief description as to an item or items to be considered at such meeting, by reference to the general topic or by reference to all or a portion of the agenda.
- D. Except for emergency matters, the POC shall take action only on items appearing on the agenda. For the purpose of this subsection, an "emergency matter" refers to unforeseen circumstances that, if not addressed immediately by the POC, will likely result in injury or damage to persons or property or substantial financial loss to the City.

### **Section 5. Compliance with City Ordinances and State Statutes.**

- A. Substantial compliance with any one of the foregoing methods of giving notice shall constitute compliance with Ordinance No. 401974 and with Chapter 10, Article 15.NMSA, 1978, as amended.
- B. Nothing herein shall prevent the use of additional means or methods of giving notice of regular or special meetings; nothing herein shall require new notice for any public meeting for which notice has been given pursuant to these rules and which is recessed

or adjourned, except an oral announcement of the date, time, and place shall be made by the Chair before such meeting is recessed or adjourned.

- C. The Chair of the POC or anyone designated by the Chair is hereby authorized to give any such foregoing notice and the Chair of the POC may establish additional means or methods of making known to the public the date, time, and place of any regular meeting of the POC.

### **Section 6. Quorum.**

- A. A majority of the commissioners of the POC shall constitute a quorum thereof. The majority of commissioners shall be of those commissioners who have been appointed and approved and have not resigned.
- B. For example, the current number of approved and serving commissioners is eight, but the amended ordinance provided for a total of nine commissioners. A quorum is five commissioners, since only eight commissioners are currently serving. If one commissioner resigned before additional commissioners were appointed, the quorum would be four of the seven commissioners.

### **Section 7. Addressing Meetings.**

- A. Public Comment. Members of the public may sign up for public comment before the meeting begins. Pursuant to §9415H, each POC meeting will begin with public comments. Members of the public are limited to two minutes unless modified at the discretion of the Chair.
- B. Persons may be invited by the POC to address it on a particular agenda item or for the purpose of a general address. These invitees may be given a time to be established by the Chair, but normally will be 10 minutes.
- C. The Mayor or the Mayor's designated representative may be invited to address the POC or may request to speak before the POC.
- D. The City Councilors or their designated representative may be invited to address the POC or may request to speak before the POC.
- E. The City Attorney or his/her designated representative may be invited to address the POC or may request to speak before the POC.
- F. The Chief of Police or his/her designated representative may be invited to address the POC or may request to speak before the POC.
- G. The Independent Review Officer or his/her designated representative may be invited to address the POC or may request to speak before the POC.

### **Section 8. Records.**

Unless otherwise provided, the staff of the IRO shall serve as the clerk for the POC. The clerk shall keep the minutes and records of all POC proceedings. The proceedings are videotaped by Media Services.

### **Section 9. Attendance.**

Commissioners shall attend all meetings of the POC unless excused by the Chair. The appointment of any member of the POC who has been absent and not excused from three consecutive regular or special meetings shall automatically expire effective on the date the fact of such absence is reported by the POC to the City Clerk.

**Section 10. Disturbing Meetings.**

- A. It shall be unlawful to disturb any meeting of the POC or any of its committees, or to behave in a disorderly manner at any such meeting.
- B. Any person who disturbs meetings may be removed immediately at the request of any Commissioner for the remainder of that meeting.

**Section 11. Open Meetings.**

All meetings of the POC and its Committees shall be open to the public. The POC may close such meetings upon proper notice and recording to the public or as otherwise allowed by law.

## **Article II-Organization of the Police Oversight Commission**

### **Section 1. Election of Chair and Vice Chair.**

- A. At the first meeting of the POC in the month of March of each year, the POC shall elect one of its members to act as Chair and another member to act as Vice Chair of the POC. The Chair and Vice Chair shall serve at the pleasure of the POC until March of the next year and until their successors are elected.
- B. No officers shall be eligible to succeed themselves in the same office.
- C. The POC shall be the judge of the election and qualification of its members.

### **Section 2. Powers and Duties of the Chair and Vice Chair.**

- A. The Chair shall call the commissioners to order, and upon a quorum being present, shall proceed to business.
- B. The Chair shall possess the powers and perform the duties herein described, to wit the Chair:
  - 1. Shall preserve order and decorum and have general direction of the commission/chambers or any location where the POC holds its meetings.
  - 2. Shall assign agenda items and have the responsibility for preparation of the agenda and dissemination of the agenda with the public notice for the meeting.
  - 3. Shall decide all questions of order, subject to a Commissioners right to appeal to the POC as a whole.
  - 4. Shall speak to points of order in preference to other Commissioners.
  - 5. May speak, as other Commissioners, on general questions.
  - 6. Shall vote upon all questions in the same manner as other Commissioners.
  - 7. Shall announce the result promptly on the completion of every vote.
  - 8. Shall appoint all Committees whether standing, joint, or special, subject to the approval of the POC. Committees shall consist of any number of Commissioners less than a quorum. The Chair shall designate the Chair for each committee, subject to the approval of the POC.
  - 9. Shall sign all letters in conjunction with the business of the POC.
  - 10. Shall receive all formal messages and communications from the Mayor, City Council, and others.
  - 11. Shall hold over or refer to the appropriate Committee any issues of interest to the POC.
- C. In the absence of the Chair, upon the Chair's inability to act, or upon request of the chair, the Vice Chair shall preside and shall have all the powers and authority of the Chair.

### **Section 3. LTPC and Other Committees.**

- A. The IRO/POC budget shall be considered by the Long Term Planning Committee. In addition, the POC Chair, or the Chair's designee, may meet with the Mayor and City Council to review and make recommendations on the IRO/POC budget.
- B. Membership on any committee shall be limited to POC members.
- C. No Committee shall hold a hearing without a quorum of the Committee present. Any Commissioner who is not a member of the Committee may be designated as an



- alternate for any Committee member who cannot be present at the meeting. The alternate shall be selected by the Commissioner for whom the alternate is serving.
- D. The Chair of a Committee shall vote on all matters before the Committee as other members of the Committee, The chair may make motions and second motions.
  - E. Every report of a Committee, upon matters referred to the Committee, shall be in writing and addressed to the Chair of the POC. Reports of a minority of a Committee may be submitted and included in the Committee report.
  - F. The Committees shall report on all matters referred to them without unnecessary delay. If a Committee refuses or neglects to report on any matter referred to it, the Chair may take the matter from the Committee.
  - G. The rules and orders of the POC shall apply to all committees, except as otherwise provided and except that committees may establish their own time limitations for witnesses addressing the committee and for debate by members of the Committee, and except that notice to the public, including an agenda, shall be given of any regular or special meeting of a quorum of the members of any Committee.

## **Article III- Procedures**

### **Section 1. General Rules.**

Any matter not covered by these rules shall be governed by Roberts' Rules of Order (latest edition), or by a decision of the Chair, subject to the right of appeal.

### **Section 2. Motions by the Chair.**

The Chair may make motions or second motions at the Chair's discretion.

### **Section 3. Amendment of Rules.**

These rules, or any part thereof, may be amended, repealed, altered or rescinded by a vote of a majority of all Commissioners and after one week's notice of an intended motion. Such notice shall be presented in writing at a regular meeting of the POC. This rule shall not be used to change the clear meaning of the Police Oversight Ordinance.

### **Section 4. Suspension of the Rules.**

Except for charter, statutory, or ordinance provisions, these rules, or any part thereof, may be temporarily suspended by a vote of two-thirds of the Commissioners present. When the suspension of a rule is requested and no objection is offered, the Chair shall announce the rule is suspended and the POC may proceed accordingly.

### **Section 5. Order of Business.**

A. The POC shall consider business in the following order:

1. Welcome and Call to Order
2. Pledge of Allegiance
3. Public Comment
4. Review/Approval of Minutes
5. Citizen Appeals
6. Findings by POC
7. Non-concurrences
8. Issues from LTTPC
9. Reports from City Staff, including the IRO, Mayor, City Council, City Attorney, and Albuquerque Police Department.
10. Reports from Committees
11. Other Business
12. Civil Rights Training (when scheduled)

B. The POC may, upon the affirmative vote of a majority of the Commissioners present, proceed out of order to any order of business or return to any prior order of business.

C. During the business for Findings by the POC, if any Commissioner wishes to discuss a particular Finding (CPC or Police Shooting), the Commissioner may have that Finding placed separately in that portion of the agenda. Those Findings will be handled individually from the remaining monthly IRO Findings.

D. The public record letter will not be sent to the citizen until approved by the POC. This

approval may be delegated to the Long Term Planning Committee or other POC committee.

- E. The public record letter will be mailed to the complainant the next business day after approval by the POC. While the public record letter may be provided to the complainant immediately, the public record letter will not be provided to the public or the media until five days after approval by the POC or upon receipt by the complainant. The delay is to provide the complainants a reasonable opportunity to receive the information before another member of the public or the media. This is an effort to notify the complainant about the decisions of the POC before the citizen might be informed of them from another person or in the media. (Section E amended 9/14/06)
- F. If the POC and Chief do not agree on their findings, the POC will wait until after the citizen has decided whether or not to appeal. If the citizen does not exercise the right to appeal, then the POC will decide whether to appeal their disagreement with the Chief to the CAO. Not all disagreements must be appealed. The POC may exercise its discretion and appeal or not as the POC decides. If the POC appeals to the CAO, upon completion of his/her review, the CAO shall take any action necessary, including overriding the decision of the Chief of Police regarding disciplinary action, to complete the disposition of the complaint. The CAO shall notify in writing and by certified mail, the complainant, the individual against whom the complaint was filed, the chief of Police, and the IRO of the results of his/her review and any action he/she has taken.

## **Section 6. Appeals to the POC.**

- A. Any person who has filed a citizen complaint and who is dissatisfied with the findings of the IRO or the Chief of Police may appeal that decision to the POC. Such persons must appeal in writing within ten business days of the receipt by the complainant of the public record letter from the IRO. If the US Postal Service is unable to deliver the public letter for reasons outside the IRO's control, the ten business days shall commence after the last attempted delivery date.
- B. Notice for any appeal hearing shall be given in the agenda for the POC. The appellant shall also be notified by certified mail of the date of their appeal hearing. Appellants may request a delay in writing to a hearing date within the next two months. Failure to appear at the hearing or to request a delay in writing may result in the POC acting on the appeal without further input from the appellant.
- C. Time allowed for appeals shall be as follows:
  - 1. The preferred sequence and normal maximum times allowed shall be as follows:
    - a. 15 minutes for the appellant
    - b. 5 minutes for the police officer, if present
    - c. 10 minutes for APD
    - d. 10 minutes for the IRO
    - e. 5 minutes for appellant rebuttal
  - 2. The POC may combine separate appeals of the same action, in which case each appeal will receive an equal share of the appellant's time. The Chair shall indicate in advance the division of time. The parties shall decide on the speakers to use the time. This decision is not subject to further appeal.

- D. Evidence:
1. The POC will make its decision and findings exclusively on the record of the decision appealed supplemented by any evidence allowed to be presented and matters officially noted during the appeal hearing.
  2. New evidence may be accepted by the POC at the appeal hearing. Acceptance of new evidence is discretionary and the POC may rely on the evidence on the record.
  3. If the POC decides that certain additional evidence is necessary and appropriate for the proper disposition of the appeal, it may accept the evidence offered during the hearing or require the IRO to obtain such evidence for them.
  4. New evidence, which could have been put in the record during previous investigations or hearings, is not favored for introduction at POC appeal hearings. New evidence, which clarifies evidence already in the record, may be allowed. New evidence, which is offered to contradict evidence in the record, may be allowed if such evidence appears convincing and is on an important matter.
  5. Commissioners may ask questions at any time of the appellants, the IRO, APD, witnesses, and/or, if present, the police officer. When a Commissioner asks questions, the time limit is stayed until questioning is completed. (Amended 03/05/09)
- E. With regard to any appeal that has been filed with and is pending before the POC:
1. No Commissioner shall communicate outside a hearing with the appellant or the appellant's representative.
  2. No Commissioner shall knowingly communicate with a member of the public or an organization about the subject of the appeal. Information and correspondence that is not in the record at the time the appeal is filed is not evidence and should not be considered in making a decision unless accepted as new evidence.
  3. No commissioner shall conduct their own investigations or add their own evidence to the record regarding any appeals.
  4. Any correspondence regarding the subject of an appeal that is an *ex parte* communication and is inadvertently received by a Commissioner shall be delivered to the IRO and be available for review by the appellant.
  5. Notwithstanding the above, the IRO and IRO's staff may, upon the request of a Commissioner, communicate with that Commissioner at any time and by any means. Copies of any written materials from the IRO shall be distributed to all parties.
- F. A Commissioner shall withdraw from any proceeding in which he or she has a direct or indirect conflict of interest or the commissioner does not believe he or she can provide a fair and impartial hearing.
1. Commissioners should err on the side of caution and withdraw from any proceeding in which there is an appearance of a conflict of interest.
  2. If the number of commissioners drops below a quorum, appellants may waive the quorum and the remaining commissioners may hear and vote on the appeal.
  3. If the number of commissioners drops below a quorum, the hearing may still be heard by the POC without a vote and the entire appeal forwarded to the CAO for final decision.
- G. The POC may modify or change the findings of the IRO.
- H. The POC may make further recommendations to the Chief regarding the findings and any discipline imposed or proposed by the Chief.

- I. The Chief must notify the POC, the appellant, the individual against whom the complaint was filed, the IRO, and the original citizen complainant of his/her decision or response to the POC by certified mail within 20 calendar days of receipt of the POC decision.
- J. Decisions on appeals shall be made by a majority of the Commissioners present. If the POC vote on the appeal ends in a tie, the findings of the IRO remain the final findings.

### **Section 7. Appeals to the CAO.**

- A. Any person who has filed a citizen complaint in accordance with the Police Oversight Ordinance and is not satisfied with the final decision of the Chief of Police or the POC on any matter relating to his/her complaint, may request that the CAO review the complaint, the findings of the IRO and POC, and the action of the Chief of Police by requesting such review in writing within ten business days of receipt of the Chief's letter pursuant to §9419 (A).
- B. The POC may appeal the findings of the Chief of Police to the CAO as soon as possible. As a general rule, the POC should wait until the citizen has failed to appeal before the POC appeals to the CAO.
- C. The CAO shall take any action necessary, including overriding the decision of the Chief of Police regarding disciplinary action.
- D. The CAO shall notify in writing, by certified mail, the complainant, the individual against whom the complaint was filed, the Chief of Police, the POC, and the IRO of the results of his/her review and any action he has taken. This completes the disposition of the complaint.

### **Section 8. Final Findings.**

- A. The final findings of the POC shall be placed with the Chief's findings in the Internal Affairs Unit Discipline Status Sheet in the officer's Retention File.
- B. If the case is appealed to the CAO, then the CAO's findings shall be the final findings. The Chief's findings and the POC's findings in APD's records shall be retained.

### **Section 9. Motions.**

No motions shall be entertained or debated until announced by the Chair, and every motion shall be seconded. The Chair may make motions or second motions.

### **Section 10. Debate.**

- A. Any Commissioner wishing to speak, debate, make a motion, submit a report, or conduct other business shall address the Chair and shall not proceed further until recognized by the Chair.
- B. If two or more Commissioners seek recognition at the same time, the Chair shall name the one who shall speak first.
- C. The Commissioner who sponsors a motion shall have the privilege of opening and closing debate. A Commissioner may direct an inquiry and receive a response without yielding the floor.
- D. No Commissioner shall be permitted to speak more than once on any motion until every Commissioner desiring to be heard has been allowed to speak. Nor shall any

Commissioner, except the sponsor of the motion, speak more than a total of five minutes on any motion.

- E. No Commissioner shall be interrupted when speaking, nor shall any motion be in order until the Commissioner has concluded.
- F. No question shall be asked of the Commissioner except those directed through the Chair with the consent of the Commissioner.

### **Section 11. Voting.**

- A. Voting shall be in the form of “Yes” or “No”. Any action on a question is lost by a tie vote. Every Commissioner who is within the room shall vote upon each question, except those who have disqualified themselves due to a conflict of interest.
- B. A Commissioner shall be allowed to change his/her or her vote, but only before the result has been announced.
- C. A Commissioner may request to vote by telephone or other similar device when a medical or emergency situation exists. Such voting can only take place upon the approval of the Chair and provided that the Commissioner can be heard on a speaker to enable the POC and the public to determine when the Commissioner is speaking and casting a vote.
- D. Reconsideration. Any Commissioner who voted with the prevailing side on any question may move at the same meeting to reconsider the question. A motion to reconsider shall require the affirmative vote of a majority of Commissioners present.
- E. An appeal may be made on any decision of the Chair. The Commissioner appealing the Chair’s decision will speak and the Chair may respond. Such appeals shall be acted upon immediately and no other motions shall be entertained until the question has been decided. A vote of the majority of the Commissioners present shall be required to sustain an appeal.
- F. Any commissioner may move to end debate. A majority of the commissioners present must agree to end the debate or it may continue.

### **Section 12. Decorum.**

Commissioners or other speakers shall confine their remarks to the question under discussion or debate, avoiding personal attacks. No Commissioner shall engage in private discourse or commit any other act tending to distract the attention of the POC from the business before it.

### **Section 13. Early Departure.**

Any commissioner leaving a POC meeting early shall make the Chair aware of such departure as early as possible, so that allowances in scheduling business can be made. Any Commissioner leaving a Committee meeting when the departure will cause a loss of quorum shall make every effort to secure and alternate Commissioner to sit on the Committee.

### **Section 14. Selection of the Independent Review Officer.**

- A. When the IRO position becomes vacant or will become vacant in the near future, the POC will undertake a candidate search. The POC will screen, interview, and select

three candidates to be considered by the Mayor. The interviews and selection of the three candidates will occur during regularly scheduled meetings and be televised to the public.

- B. The IRO staff will assist the POC in the placement of the advertisements and any work with the Human Relations staff as required.
- C. The qualifications for the IRO position will minimally include the requirement of a law degree and five years experience in criminal investigations. The position of IRO will be a fulltime contractual city employee.
- D. The Mayor will select one of the three candidates and forward the nomination to the City Council.
- E. In the event the City Council rejects the nominee, the Mayor shall submit his/her second recommendation from the remaining two names submitted by the POC.
- F. If the City Council rejects the second nominee, the process shall begin with a second candidate search by the POC.

### **Section 15. Time Computation.**

In computing any period of time prescribed or allowed by these rules, by the Police Oversight Ordinance, or by any applicable statute or ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included. The requirement to file a complaint within 90 days of the incident is to be counted by calendar days, including weekends and holidays. If a complaint is filed on the 91st day, regardless of whether it is a weekend or holiday, the POC has no authority to investigate that complaint.

## **Article IV-Powers and Duties of the Commission**

### **Section 1. Source of Authority.**

A. The Police Oversight Commission and the Independent Review Office were established in 1998 by the City Council for the City of Albuquerque in the Police Oversight Ordinance, 3 11998, subsequently codified as Chapter 9 of the Albuquerque Code of Ordinances, §9411 et seq. ROA 1994.

B. The Commission is the governing authority of the Independent Review Office and has the power to promulgate rules implementing the provisions of the law upon City Council approval of these rules and regulations.

### **Section 2. Purpose.**

A. A properly conceived and functioning police oversight system is necessary to promote accountability of the police officers and protect the rights of civilians.

B. The commission is to provide a means for prompt, impartial, and fair investigation of all citizen complaints brought by individuals against the Albuquerque Police Department.

C. The commission is to provide for community participation in recommending and reviewing police department policies, practices and procedures.

D. The commission is to promote a spirit of accountability and communication between the citizens and APD while improving community relations and enhancing public confidence.

E. The commission will oversee the full investigation and/or mediation of all citizen complaints.

F. The commission will audit and monitor all investigations and/or police shootings under investigation by APD's Internal Affairs.

G. The commission will gain the cooperation of APD and solicit public input by holding regularly scheduled meetings.

H. The commission will engage in a long term planning process through which it identifies major problems and establishes a program of policy suggestions and studies each year.

I. The commission will recommend to the Mayor and City Council during the City's budget process, their proposed budget for provision of such staff as is necessary to carry out the powers and duties of the Police Oversight Ordinance, including the funding for the Independent Review Office, staff, and all necessary operating expenses.

### **Section 3. Subpoenas.**

A. The Police Oversight Commission may issue subpoenas on its own initiative, in which case a showing of relevance is not required and an appeal need not be pending.

B. The subpoena shall be issued by the City Clerk's Office and signed by the Chair of the Police Oversight Commission or his/her designee.

C. Any applicable witness and travel fees and costs associated with service of process shall be the responsibility of the Police Oversight Commission.



- D. Subpoenas will not be issued for Albuquerque Police Department officers to appear before the Police Oversight Commission or any of its committees.

#### **Section 4. Burden of Proof.**

- A. All findings will be made based on a preponderance of the evidence.
- B. The burden of proof is not on any particular party to the complaint.

#### **Section 5. Inactivation/Dismissal of Citizen Police Complaints.**

- A. The IRO, with the approval of the POC, may inactivate or dismiss CPCs.
- B. Complaints may be inactivated for any one of the following reasons:
  - 1. The complaint was not filed within 90 days of the incident. In counting the number of days, the day of the incident is not counted, regardless of the time of day. The day after the incident is the first day.
  - 2. The officers complained about are not APD officers.
  - 3. The officer is deployed for military duty for an extended period of time.
  - 4. If, after thorough investigation, the officer involved in the alleged conduct cannot be identified.
  - 5. The complaint was successfully mediated.
  - 6. The citizen withdrew the complaint. If the IRO determines the complaint is too serious to ignore, the complaint may be investigated even if the citizen attempts to withdraw it.
  - 7. The complaint contains no allegations of violations of Standard Operating Procedures.
  - 8. Allegations concern the perjury of officers during testimony in court. These are determinations to be made by the court or District Attorney.
  - 9. Complaints of criminal action by the officers. Criminal cases may be investigated first as a criminal matter and after the criminal investigation is completed, the CPC may be reopened.
  - 10. The IRO/POC determines the complaint is frivolous on its face or is being brought for the purpose of harassment.
  - 11. The IRO/POC determines that the complainant has mental health issues and is unable to comprehend the situation. In this case, CIT may be asked to evaluate the complainant prior to the complaint being fully investigated.
- C. The IRO/POC may require the full investigation of a complaint before inactivating it. The complaint may also be referred to the Internal Affairs for them to conduct an Internal investigation. (Last sentence added and amended 9/14/06)
- D. Dual CPC and Internal Administrative Investigations
  - 1. If a citizen complaint is timely filed and directly related to an incident that is the subject of an Internal affairs administrative investigation that has not been completed, the investigation shall become a CPC.
  - 2. If a citizen complaint is timely filed and directly related to an incident that is the subject of an Internal Affairs administrative investigation that has been completed, the investigation shall remain an internal administrative investigation except that the citizen shall have all the rights of appeal just as if it were a CPC.
  - 3. Regardless of whether there have been dual CPC and Internal Affairs administrative investigations, only one entry shall be made into the officers' files.

## **Section 6. Attendance at the National Association of Civilian Oversight of Law Enforcement annual conferences.**

- A. Attendance by all commissioners is highly encouraged. The City of Albuquerque will pay the travel and attendance expenses of as many commissioners each year as fiscally responsible. Commissioners are also encouraged to attend at their own expense.
- B. The Chair shall select which commissioners may attend and in which priority order for funding. The Chair shall consider such factors as whether the commissioner has attended previously and when the term of the commissioner ends. The decision of the Chair is final.
- C. The IRO and IRO staff should attend whenever financially feasible.

## **Section 7. Complaints about POC Commissioners.**

- A. The Police Oversight Commission will not address complaints against another commissioner. All Complaints of this nature will be forwarded to the Mayor's liaison to the POC.
- B. If the complaint relates to a possible conflict of interest, commissioners will consider the complaint and decide whether an appearance of a conflict of interest exists and act accordingly.

## **Section 8. Complaints about the IRO.**

- A. The POC acts like the supervisor over the IRO. See §9415(B), 9416(H), and 9417(D).
- B. The IRO is a fulltime contractual city employee governed by the contract with the City and the Police Oversight Ordinance.
- C. The Police Oversight Commission reviews all complaints against the IRO and may take some actions or may recommend to the Mayor that certain supervisory actions be taken, including dismissing the complaint, conducting their own informal investigation into the complaint, recommending specific administrative action, requesting additional formal investigation, etc.
- D. To the fullest extent possible and in accordance with the Police Oversight Ordinance, this process will be made public.

## **Section 9. Complaints by the IRO/POC against APD officers.**

- A. This section applies to complaints that the IRO or POC commissioners may file as individuals based on incident they may have personally witnessed or where they are claiming to be aggrieved by actions of the Police.
- B. Complaint filed by a commissioner.
  - 1. The Commissioner will be excused from participating on any findings, votes, or recommendations concerning the complaint.
  - 2. POC commissioners will decide individually whether or not they have an appearance of a conflict of interest. Any POC commissioner may raise the possibility of a conflict of interest by another POC commissioner.
  - 3. If there is not a quorum of commissioners available to make decisions, then the appeal may be heard by the POC, but no findings or recommendations will be made

- on the complaint and the appeal will be forwarded to the CAO for final decision.
- C. Complaints filed by the IRO staff.
    - 1. The IRO staff will not investigate this complaint. It may be investigated by IA at the discretion of the IRO.
    - 2. If the IRO decides it would be inappropriate for IA to investigate the complaint, the IRO may hire an independent investigator to investigate the complaint.
    - 3. The IRO will make findings unless there is a conflict of interest. These findings will be reviewed by the Chief of Police and finalized by the POC in the same manner as other citizen complaints. (Amended and Section added 9/14/06)
  - D. Complaint filed by the IRO.
    - 1. The IRO will be excused from participating on any findings or recommendations as the IRO concerning the complaint, but may act and is entitled to the same rights as any person who filed a complaint.
    - 2. The IRO will hire an independent investigator to investigate the complaint, make findings, and write the public record letter.
    - 3. The independent investigator will act as the IRO.
      - a. Ensure the investigation is thorough, impartial, and free of political influences.
      - b. Write the public record letter, including therein the summary and conclusions from the officers' compelled statements.
      - c. Ensure the public record letter is mailed to the IRO, who may appeal the findings to the POC.
      - d. The POC will not make findings or recommendations on the IRO's complaint, but may hear the appeal.
      - e. The appeal will be sent to the CAO for final decision.

### **Section 10. POC and IRO right to counsel.**

- A. The City Attorney has assigned the Assistant City Attorney for the Police Oversight Commission to be the Commissions and IRO's attorney with full rights to attorney client privileges and attorney confidences. This privilege extends to the administrative staff for the Assistant City Attorney.
- B. Should the Assistant City Attorney believe there is or may be a conflict among the Commissioners and IRO, then he/she will advise the commission and IRO of the possible conflict at the earliest opportunity. The commissioners and IRO may attempt to resolve the possible conflict. If it cannot be resolved, then the Assistant City Attorney will advise the City Attorney, who will make efforts to provide legal advice to all parties at no cost to the commissioners or IRO.

### **Section 11. Indemnification of IRO and POC.**

- A. In the event the IRO is named as defendant in any lawsuit in connection with advice given or actions properly taken under the terms of the IRO's contract, the City will indemnify, provide representation, including outside counsel, if appropriate, and hold the IRO and/or staff harmless for any liability or claim which is or may be asserted in the capacity of IRO arising out of the IRO's agreement with the City and while acting on behalf of and in service to the city in an official capacity.

- B. The City shall provide POC commissioners with legal representation including, if appropriate, outside counsel. The City will hold the POC Commissioners harmless for any liability or claim which is or may be asserted while the Commissioners act on behalf of and in service to the city in their capacity of POC Commissioners.

# **Article V-Procedures When the IRO Is Absent or There Is No IRO**

(This article was added and amended on 3/8/07)

## **Section 1. The Independent Review Officer Is Critical.**

The Independent Review Officer is critical to successful civilian oversight of the police department. This is recognized by Section 9417 ROA 1994 of the Police Oversight Ordinance,

which provides for the IRO's contract to continue until a new IRO is selected and approved by the City Council. It also provides for the temporary appointment of an IRO to serve no more than six months until a new IRO is appointed.

## **Section 2. Prolonged or Temporary Absence of IRO.**

In the event of prolonged, temporary absence of the Independent Review Officer or during a period after an IRO has ended contractual obligations with the City and a temporary appointment has not yet been completed, the following procedures will be used to process Citizen Police Complaints (CPCs).

- A. All Citizen Police Complaints will be assigned to the investigators in the Independent Review Office until the Chair of the Police Oversight Commission or his/her commissioner designee determines that the investigators workload is too large and some complaints should be assigned to the APD's Internal Affairs Office for investigation.
- B. The IRO Office investigators will continue recommending findings on allegations of violations of Standard Operating Procedures.
- C. If the Chief of Police non-concurs with an IRO investigator's findings, the Chief or his/her designee will contact the IRO investigator and discuss the disagreement. The IRO investigator will consult with the other IRO investigators.
- D. If the investigators agree with the Chief, then the investigator will change the recommended findings to concur with the Chiefs findings in that investigation. Those findings will be entered into the Officers' Retention File and on the Internal Affairs Unit Disciplinary Status Sheet.
- E. If the investigators still disagree with the Chief, then the Chief or his/her designee will address the Police Oversight Commission to support his/her findings. The POC will vote on the findings for which there are non-concurrences. The findings of the POC will be entered into the officers' records as required above.
- F. There will be no public record letter containing the IRO summary of the investigation and findings, since there is no person serving as IRO. Therefore, the Chief will submit his/her complainant letters to the Police Oversight Commission at its monthly meetings.
  1. If the POC approves the findings concurrently agreed by the Chief and the IRO investigators, then the Chair or his/her designee will send a letter to the citizen complainant indicating the POC's approval.
  2. If the POC has a non-concurrence with the Chief, then the Chair or his/her designee will send a letter to the citizen complainant indicating both the POC's and the Chiefs findings.
- G. All investigations into the citizen police complaints conducted by the Internal Affairs during this time period will be reviewed by the Independent Review Officer as soon as

practicable upon return or appointment. The IRO will advise the POC of his/her conclusions.

**HISTORY: On November 8, 2012, the POC deleted former Article II, Sections 3(H) and 3(I), of the Police Oversight Commission Rules and Regulations 2009, which stated:**

**3(H). Complaints in which the IRO and Chief of Police disagree or non-concur will be reviewed by the Long Term Planning Committee. Their recommendations will be addressed by the Police Oversight Commission; and**

**3(I). The IRO's findings of police shootings will be reviewed by the LTTPC and presented to the POC at the next regular meeting.**

**On December 13, 2012, the POC deleted former Article III, Section 5(F), which stated:**

**If the Chief and the IRO disagree on the findings of any citizen police complaint or police shooting, the LTTPC will review the findings and make recommendations to the POC. All proposed recommendations will be presented to the POC for its consideration at the next regular meeting.**