

## INVESTIGATIVE REPORT

***Confidential Attorney-Client Communication  
And Attorney Work Product***

**To:** Metropolitan Government of Nashville

**From:** Butler Snow LLP

**Date:** December 18, 2025

**Subject:** Investigation into Gareth Davidson's Complaint—Report and Findings

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## Preamble

On or about May 22, 2024, Garet Davidson (“Mr. Davidson”), a retired Metro Nashville Police Department (“MNPDP”) employee and former lieutenant in MNPDP’s Office of Professional Accountability (“OPA”), submitted a 61-page written complaint (the “Complaint”)<sup>1</sup> in which he alleged a general lack of transparency and accountability within the Metropolitan Nashville Police Department. Specifically, the Complaint alleges the following:

- Mismanagement of disciplinary investigations and outcomes;
- Failures in annual evaluations of MNPDP officers;
- Efforts to assist the amendment Tenn. Code Ann. § 38-8-312, which replaced the community oversight board with the police advisory and review committee;
- Reduction in training hours for MNPDP recruits leading to the detriment of these recruits;
- Inconsistencies in disciplinary actions against officers under the MNPDP Manual;<sup>2</sup>
- Misrepresentations regarding the implementation of the Force Investigation Team;
- Failure to implement a zero-tolerance policy on sexual harassment and discrimination; and
- Unwillingness to increase accountability and implement changes recommended by external sources.

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<sup>1</sup> The Complaint and Mr. Davidson’s May 22, 2024, email delivering the Complaint are attached to this Report as collective **Exhibit 1**.

<sup>2</sup> The MNPDP Department Manual published May 15, 2024, is attached to this Report as **Exhibit 2**. Butler Snow has also reviewed prior versions of the MNPDP Manual which were published on April 1, 2018, September 16, 2022, and June 8, 2023. Because the May 2024 version was the most updated version of the MNPDP Manual at the time this Report was written, Butler Snow cites primarily to that version here. The substantive differences between the Manual’s May 2024 version and its prior versions, if any, are noted throughout this Report. The prior versions of the MNPDP Manual, moreover, are included in Appendix B to this Report.

Subsequently, the Metropolitan Government of Nashville and Davidson County retained Butler Snow LLP (“Butler Snow”), led by Edward L. Stanton III, to conduct a comprehensive, independent investigation of the Complaint.<sup>3</sup> To aid in the investigation, Mayor Freddie O’Connell announced that Butler Snow would have access to resources from Metro Legal, MNPd, Human Resources, and the Civilian Review Board.<sup>4</sup>

This report contains Butler Snow’s investigative findings regarding the Complaint based upon the review of the Complaint, documents listed in the Index of Documents found on pages iv and v, and interviews of investigative witnesses listed in the Witness Interview List found on page vi.

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<sup>3</sup> In addition to Edward L. Stanton III, Butler Snow’s investigative team included S. Keenan Carter, Y. Larry Cheng, Katelyn Jackson Ruston, and Jennifer Svilar Tinker.

<sup>4</sup> The May 31, 2024 statement from Mayor Freddie O’Connell regarding the Complaint is attached to this Report as **Exhibit 3**.

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### EXHIBITS

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- 2     MNPD Departmental Manual, published May 15, 2024
- 3     May 31, 2024 Statement from Mayor Freddie O’Connell on Davidson Complaint
- 4     Collective Exhibit: Search Warrant and Amended Search Warrant
- 5     OPA Report on Investigation into Chief Stephens (File number: IA2023-00058)
- 6     November 15, 2023 email from Christopher Gilder to Garet Davidson
- 7     OPA Standard Operating Procedures Manual, revised January 1, 2022
- 8     OPA Report on Investigation into Chief Taylor (File number: IA2022-00003)
- 9     OPA Report on Investigation into Lt. Schmitz (File number: IA 2021-00046)
- 10    MNPD Investigation—Documentation Requests
- 11    Employee Disciplinary Hearings Spreadsheet
- 12    Report of Internal Incidents Assigned IA/Control Numbers
- 13    2020 Policing Policy Commission Report
- 14    Report of Covenant School Photo Leak Investigation (File number: IA2023-00094)
- 15    OPA Report on Investigation into Sgt. Tuberville (File number: IA2021-00064)
- 16    OPA Report on Investigation into Lt. Gooch (File number: IA2022-00040)
- 17    OPA Report on Investigation into Det. Thorowgood (File number: IA2022-00050)
- 18    OPA Report on Investigation into Dir. Hooper and Insp. Hunsicker (File number: IA2022-00004)
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- 21    Mediation Referral Form for Don Aaron’s Case
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- 23    MNPD Employee Payroll Status Change Spreadsheet
- 24    OPA Report on Investigation into Lt. Tennant (File number: IA2023-00043)
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- 36    Semi-Annual Evaluation: MNPD’s Implementation of COB Policy Recommendations in Advance of the COB’s Monthly Board Meeting on October 26th, 2022
- 37    Emails exchanged on November 14 and 15, and December 7 and 8, 2022, including the words “FIT meeting” in the subject

- 38 Human Resources Report on Investigation into Officer Herman (Case Number: HRI2022-0011)
- 39 Letter from John C. Drake, Chief of Police, to Mayor Karl Dean and Mr. Dwight Lewis, Policing Policy Commission Co-Chairs, MNPD Response to Recommendations, Item 59

## ADDITIONAL DOCUMENTS PROVIDED AND REVIEWED

See Appendix A.

## PRIOR VERSIONS OF MNPD MANUAL

See Appendix B.

## WITNESS INTERVIEW LIST

- 1     Garet Davidson—Complainant and Former MNPD Lieutenant
- 2     Zachary Maxa—Former MNPD Officer
- 3     Naya Abbey
- 4     Denita Davis
- 5     Deborah Russell
- 6     Brenda Snare
- 7     Michael Toone
- 8     Chief Mike Hager
- 9     Director Kathy Morante
- 10    Detective Ron Carter
- 11    Lieutenant James Williams
- 12    Chief Christopher Gilder
- 13    Commander Tiffany Gibson
- 14    Lieutenant Alfredo Arevalo
- 15    Chief John Drake

## ADDITIONAL MEETINGS CONDUCTED

- 1     Lieutenant Jerry Hertenstein
- 2     Jill Fitchard – CRB Executive Director
- 3     Alish Haddock – Former COB Chair

## EXECUTIVE SUMMARY

As independent investigators, Butler Snow conducted an impartial and comprehensive review of all relevant evidence concerning the Complaint. This report addresses all relevant MNPD policies or protocols, describes related investigative findings, and recommends specific steps to address the issues raised in the Complaint.

Based on the evidence obtained during this investigation: Butler Snow provides the following summary:

- Allegation 1: Assistant Chief of Police Mike Hagar has taken several actions that demonstrate poor decision making and judgment, have resulted in disparate treatment through his ineffective management of disciplinary matters, and decreased departmental efficiency and effectiveness by supporting a culture that allows misconduct.
  - Allegation 1(a): Chief Hagar interfered with OPA's investigation of Deputy Chief Keith Stephens when he tried to "clean the language and the record of the case."
    - There is no evidence that Chief Hagar violated MNPD policy by using a Form 311 to counsel Deputy Chief Stephens.
    - The evidence shows that the instruction to use a Form 312 to close the case and enter a finding as "Matter of Record" came from Deputy Chief Chris Gilder, not Chief Hagar.
  - Allegation 1(b): Chief Hagar was responsible for settling Deputy Chief Chris Taylor's case and getting him a "favorable outcome" following several sustained policy violations.
    - The evidence shows that Chief Hagar had the ability to settle Deputy Chief Taylor's case, as settlement is preferred under the MNPD Manual.
    - The evidence shows that Deputy Chief Taylor's sanction (ten days' suspension) was within the Disciplinary/Corrective Action Grid and, even if it was not proper, the Chief of Police has discretion to impose a sanction outside of the Grid.
  - Allegation 1(c): Chief Hagar did not demote Lieutenant Taylor Schmitz after OPA's investigation revealed a pattern of mistreatment towards female employees,



but rather allowed him to settle his case and reassigned him to a new role without supervisory duties.

- There is no evidence that Chief Hagar violated MNPDP policy or showed favoritism toward Lt. Schmitz. Chief Hagar's only involvement in the case was his approval of the final disciplinary action, which was within the Grid.
- Allegation 1(d): Chief Hagar was responsible for "dragging out" Lieutenant Michelle Hammond's case, leading to her being decommissioned for nearly two years.
  - Chief Hagar was not solely responsible for the duration of Lt. Hammond's disciplinary process. At the time of the Lt. Hammond investigation, there was no policy requiring a speedy disciplinary process.
  - Since Lt. Hammond's case, MNPDP has updated its policy to require that a disciplinary hearing be conducted within 45 calendar days after the employee receives written notification of the hearing.
- Allegation 1(e): Chief Hagar interfered with and mismanaged OPA's investigation into the Covenant School photo leak. Additionally, his decision to disband the Covenant School investigative team despite them not being responsible for the leak was a violation of policy.
  - No evidence showed that Chief Hagar inserted himself into the Covenant School photo leak investigation.
  - Due to the criminal investigation of Mr. Davidson in connection with the leak of Covenant School documents, Butler Snow was not permitted to question any MNPDP officers about this particular allegation.
- Allegation 1(f): Chief Hagar's pattern of settling disciplinary cases before departmental hearings undermines accountability and the disciplinary process.
  - The evidence shows that favoring settlement agreements is in line with MNPDP policy.
  - The settlement process is documented in MNPDP's Manual and is well known to the Department at large.

- The evidence shows that settlement benefits both lower and higher-ranking employees.
- Allegation 1(g): Chief Hagar attempts to hide his involvement in matters by tasking others to do things beyond the scope of their responsibilities or established policy.
  - The evidence does not support Mr. Davidson's allegations.
- Allegation 1(h): Chief Hagar ignores the chain of command and gives poor instructions.
  - The example provided—Chief Hagar's alleged instruction to Mr. Davidson to complete Form 312s for all Proposed Resolution Reports from the Community Oversight Board—was not a policy violation. At the time, there was no process in place to handle these Reports, but this has since changed, and a process for handling the Reports now exists.
- Allegation 2: The MNPDP has an unwritten policy of treating certain officers under investigation more favorably than or inconsistently from other officers under the same or similar circumstances.
  - Allegation 2(a): The MNPDP's unwritten policy of treating certain officers accused of misconduct more favorably than others is due to "rank bias."
    - There is no evidence that MNPDP's command staff disciplines higher-ranking officers accused of misconduct more favorably than lower-ranking officers accused of the same or similar misconduct.
  - Allegation 2(b): The MNPDP's "rank bias" can be seen in its documentation (or lack thereof) of higher-ranking officers under investigation for their alleged misconduct.
    - There is no evidence that the MNPDP's command staff violated internal policy as alleged in Allegation 2(b).
  - Allegation 2(c): The MNPDP's "rank bias" can also be seen in its efforts to cover up alleged misconduct between a long-time employee, Don Aaron, and a local reporter, Kenley Hargett.
    - The evidence does not indicate that mediation was inappropriate in Mr. Aaron's case or that the Department should have formally investigated the matter.

- Allegation 2(d): The MNPd often fails to hold its supervisors facing allegations of poor supervisory performance accountable, transferring them instead to other roles without formal investigation, documentation, or findings.
  - It is not a violation of internal policy to transfer an employee charged with misconduct in lieu of other types of discipline.
  - Butler Snow has not found any evidence that the Department has transferred an employee to avoid an otherwise warranted formal investigation.
- Allegation 2(e): Command staff's unwarranted involvement in the OPA's investigations are impermissibly influencing the ultimate outcomes of officers accused of misconduct.
  - The MNPd Manual encourages and even requires the involvement of command staff in the OPA's investigations.
- Allegation 2(f): The MNPd avoids scrutiny by prioritizing oral communication over written communication and by intentionally failing to document things.
  - The Department's internal policies do not appear to forbid command staff from opting for oral communication over written communication if the necessary documentation is completed as required. So even if Allegation 2(f) is true, Butler Snow cannot conclude it alleges a policy violation.
- Allegation 2(g): The Department is mishandling "matters of integrity."
  - The MNPd Manual allows command staff to use their discretion when misconduct arguably falls under multiple, different policy violations. Butler Snow therefore cannot conclude that charging an officer who has lied under the Department's "Conduct Unbecoming and Employee of the Department," instead of the Department's "Honesty and Truthfulness" policy, violates the MNPd Manual.
- Allegation 2(h): The Department's "disciplinary practice lacks proportionality, reasonableness, fairness, and consistency in sanctioning misconduct."
  - Internal policy gives command staff broad discretion when investigating, charging, and disciplining employees accused of misconduct. Allegation 2(h) therefore does not appear to raise a potential violation of internal policy.

- Allegation 2(i): Internal issues and disagreements amongst command staff has led to officers receiving sanctions different from those officers originally agreed on.
  - Given the discretion afforded command staff to determine the appropriate sanctions in a given matter and the Department's preference for settlements, command staff would not necessarily violate internal policy by changing their sanction-related decisions before the conclusion of a case.
- Allegation 3: MNPd's annual evaluation system is flawed because supervisors are discouraged from giving failing scores to poorly performing officers or are given instructions to change scores.
  - There appears to be some corroborating evidence to support the contention that some under-performing officers are not evaluated accurately.
- Allegation 4: Command staff has taken multiple steps to eliminate internal and external mechanisms of public accountability, including by supporting Senate Bill 0591/House Bill 0764.
  - Butler Snow did not find any evidence to corroborate the position that MNPd participated in the legislative process and/or lobbied in support of Senate Bill 0591/House Bill 0764.
- Allegation 5: The reduction in training academy duration from 23 weeks to 19 weeks, as well as the reduction in time new recruits spend riding along with a Field Training Officer, has a negative impact on recruits' ability to apply their knowledge, skills, and abilities on the job.
  - There is no evidence that training standards have been lowered as the training timelines were reduced.
- Allegation 6: Despite the Body Work Camera/In-Car Camera (BWC/ICC) Operations Division's monthly audits, MNPd supervisors have failed to properly address officer misconduct discovered during those audits.
  - Internal policy does not require supervisors to discipline an officer who is seen engaging in minor misconduct during a BWC/ICC audit.
- Allegation 7: MNPd misrepresented and falsely reported that the FIT existed before its implementation. Although OPA's Standard Operating Procedure ("SOP") contemplated the FIT, the team allegedly was not staffed with investigators until early 2024, despite repeated requests for personnel from Commander Starling and Director Morante.

- The evidence shows that OPA was arranging FIT meetings in 2022.
- Allegation 8: The Department has failed to properly implement its zero-tolerance policy against sexual harassment and discrimination.
  - Without evidence of an individual who did not follow the Manual's mandatory reporting or investigation procedures, Allegation 8 does not describe a violation of internal policy with respect to the Department's failure to enforce its sexual harassment and discrimination policy; and with respect to how the Department communicates with or helps its employee-victims.
- Allegation 9: MNPD disregarded problems noted by the 2020 Policing Policy Commission, including inconsistent disciplinary application, delays in completing officer investigations, and failure to hold disciplinary hearings within 45 days of completing investigations. MNPD also failed to have a zero-tolerance policy for discrimination and/or harassment.
  - Allegation 9 is vague. The Commission noted that there was a **perception** of inconsistent disciplinary application that needed to be corrected, not that there was inconsistent discipline.

## **I. METHODOLOGY AND SCOPE OF INDEPENDENT INVESTIGATION**

Butler Snow's review of the Complaint, as directed by Mayor O'Connell's May 31, 2024

press release, involved the following steps:

1. Coordinating with the OPA and others at the MNPDP to obtain relevant documents and identify various individuals with pertinent information.
2. Collecting, organizing, reviewing, and analyzing relevant documents and data obtained from the OPA and others at the MNPDP.
3. Identifying the provisions of the MNPDP Manual that are applicable to the Complaint and analyzing the allegations under those relevant provisions.
4. Meeting with Community Review Board representatives in order to gain a better understanding/context of any issues within the Complaint that fall under its purview.
5. Conducting interviews of individuals with pertinent information, including former and current MNPDP employees.

This report is organized into the following sections:

- Section II provides background history and information relating to the events that triggered the investigation.
- Section III provides an analysis of the nine allegations (and their various related sub-allegations) that are included in the Complaint.
- Section IV provides a summary of Butler Snow's investigative findings and recommendations to address potential internal policy violations and other concerns raised by the Complaint.

## II. RELEVANT FACTS AND BACKGROUND

This Section Provides an overview of the events triggering Butler Snow’s independent investigation and the factual allegations surrounding the Complaint. This Section is intended for background purposes only. An analysis of whether the factual allegations in the Complaint are substantiated will follow in the subsequent portions of this Report.

### A. **Events Triggering Independent Investigation**

On May 22, 2024, Mr. Davidson e-mailed a PDF copy of the Complaint to Mayor Freddie O’Connell, among other individuals.<sup>5</sup> Mr. Davidson’s May 22 e-mail, advised that he was a former lieutenant “over the Office of Professional Accountability” who retired “[d]ue to a growing number of concerns.” In the May 22 e-mail, Mr. Davidson stated that he desired to “improve accountability within policing, while at the same time educating and empowering both police and public.” On May 29, 2024, the Metropolitan Government for Nashville and Davidson County requested Butler Snow’s assistance with an investigation of the Complaint, and on May 31, officially retained Butler Snow to conduct a comprehensive investigation of the Complaint.

### B. **Allegations in the Complaint**

As part of the Complaint, Mr. Davidson included extensive details, examples, and information that he contends support his allegations. To avoid redundancies between this Report and the Complaint, the following is a summary of the nine (9) distinct allegations raised in the Complaint.

1. Chief Hagar disregarded the chain of command with respect to various investigations, interfered with disciplinary investigations, and engaged in a pattern of not

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<sup>5</sup> See Ex. 1.



following applicable policies and procedures regarding the disciplinary process, which led to inconsistent disciplinary outcomes.

2. MNPDP's application of its policies and procedures regarding disciplinary investigations results in inconsistent outcomes allegedly indicative of rank bias where higher ranking personnel are subject to less discipline than lower ranking personnel when the circumstances and allegations are similar.

3. MNPDP's practice, policy, and procedure regarding annual evaluations incentivize evaluators to inaccurately evaluate their subordinates based on factors such as compensation, time, and convenience.

4. MNPDP assisted legislators with the amendment of Tenn. Code Ann. § 38-8-312, effective July 1, 2023, which replaced community oversight boards with police advisory and review committees.

5. MNPDP reduced the number of training hours required for recruits, which has negatively impacted overall departmental operations and employee performance.

6. Supervisors within MNPDP are not properly addressing violations of MNPDP policy that are identified through monthly audits of body-worn cameras.

7. MNPDP misrepresented to the Community Oversight Board and the Mayor's Office that a Force Investigation Team had been implemented prior to its actual implementation.

8. MNPDP does not enforce its zero-tolerance policy on sexual harassment and discrimination, does not provide resources to assist its employees who have alleged sexual harassment and/or discrimination; and takes inadequate action to prevent violators from future misconduct.

9. MNPDP resists implementing initiatives intended to increase accountability.



## C. Search Warrant

Butler Snow was served with a search warrant on September 20, 2024, and an amended search warrant on October 2, 2024.<sup>6</sup> These search warrants essentially required Butler Snow to produce all documents/information provided by Mr. Davidson “or any other complainants and/or informants” to Butler Snow in connection with the instant investigation. Although the search warrants were served, they were not executed in an intrusive manner like most search warrants. Instead, the search warrants’ execution was more consistent with a subpoena. In other words, law enforcement officers never raided or invaded Butler Snow’s offices. Rather, law enforcement officers allowed the investigative team to simply deliver the requested information to them, and that’s precisely what Butler Snow did.

The search warrants impacted the investigation in two ways. First, the search warrants caused a delay of several months, because the investigative team was not permitted to conduct interviews of MNPD officers “for fear” that the investigative interviews would have a negative impact on or possibly compromise “an ongoing criminal investigation.”<sup>7</sup> Second, once investigators were permitted to resume interviews, questions regarding The Covenant School shooting were off limits.

## III. INVESTIGATIVE ANALYSIS

The Complaint includes nine, main allegations related to the MNPD’s internal operations and engagement with the public. For two of those allegations—Allegations 1 and 2—the Complaint includes an overarching allegation and various, related sub-allegations. Further,

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<sup>6</sup> The search warrant and amended search warrant are attached to this Report as collective **Exhibit 4**.

<sup>7</sup> On or about May 7, 2025, Mr. Davidson was arrested and charged in connection with alleged wrongful conduct relating to The Covenant School shooting. It’s worth noting that Mr. Davidson, who also had a search warrant executed at his home, was extremely cooperative and met with investigators on multiple occasions between the execution of any of the above-mentioned search warrants and his arrest.

Allegations 1 and 2 include significant overlap with respect to Mr. Davidson’s claims about how the MNPDP investigates and disciplines its employees. This Report therefore addresses the MNPDP Manual provisions applicable to both Allegations 1 and 2 before analyzing their various, related sub-allegations. Then, this Report addresses the remaining allegations—Allegations 3 through 9—in turn.

## **A. Allegations 1 and 2**

According to the MNPDP Manual, “[t]he effectiveness of a law enforcement agency and its members depends upon community respect and confidence.”<sup>8</sup> As such, “all members sworn and civilian must conduct themselves in a manner consistent with policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government.”<sup>9</sup> However, when it is suggested that a member has engaged in misconduct, the MNPDP’s policy is to investigate and impose disciplinary action if and when appropriate.<sup>10</sup>

When considering how the Department should typically conduct investigations, the MNPDP Manual states that the Department should “fairly and impartially” investigate its employees’ alleged misconduct.<sup>11</sup> For supervisor-initiated investigations, supervisory personnel must first conduct an “initial” or “preliminary” investigation once the Department learns of an employee’s alleged misconduct.<sup>12</sup> After an initial investigation, the investigating supervisor can recommend disciplinary action or request additional investigation by supervisory personnel or the OPA.<sup>13</sup> The OPA can also initiate an investigation into alleged employee misconduct, with or without a formal

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<sup>8</sup> Ex. 2 § 4.10(A).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *See id.* § 4.10(B), (E).

<sup>12</sup> *See id.* § 4.10.020(A).

<sup>13</sup> *See id.* §§ 4.10.020(C), 4.10.040(C)(3).

complaint, if the Chief of Police approves such an investigation.<sup>14</sup> What is more, the OPA can “assume concurrent or sole authority for” an investigation at any time.<sup>15</sup>

Initial investigations can turn into or warrant a formal investigation. “A formal investigation is generally described as one where the target of the investigation has been identified and disciplinary action is expected or pending.”<sup>16</sup> If the Department begins such a formal investigation, the MNPDP must notify the employee at issue that they have become the subject of a formal investigation.<sup>17</sup>

The Department should make “Investigative Finding[s]” at the end of its investigation into alleged misconduct.<sup>18</sup> The MNPDP Manual provides the criteria for the Department’s “Investigative Findings,” including a finding that the allegations are “[s]ustained,” “[n]ot sustained,” or “[u]nfounded.”<sup>19</sup> Such findings must be based on the preponderance of the evidence and reported “to the involved employee(s)” and through the subject-employee’s “chain of command to the Chief of Police.”<sup>20</sup> “Once such findings are approved, they shall also be reported to the complainant.”<sup>21</sup>

The MNPDP Manual also provides documentation and reporting requirements for the Department’s investigations. For example, supervisory personnel must “complete a MNPDP Form 312, Complaint Report upon receipt of a complaint.”<sup>22</sup> From there, both supervisory personnel and the OPA must document their investigation using the appropriate MNPDP Form.<sup>23</sup>

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<sup>14</sup> *See id.* § 4.10.040(C).

<sup>15</sup> *See id.* § 4.10.020(E).

<sup>16</sup> *See id.* § 4.10.060(A)(1).

<sup>17</sup> *See id.* § 4.10.060(A)(2).

<sup>18</sup> *See id.* § 4.10.070(A).

<sup>19</sup> *See id.* (providing a list of possible findings).

<sup>20</sup> *See id.*

<sup>21</sup> *See id.*

<sup>22</sup> *See id.* § 4.10.100(A).

<sup>23</sup> *See id.* § 4.10.100 (B)–(E) (providing the documentation requirements for supervisor-initiated investigations); *id.* § 4.10.040 (E) (providing the documentation requirements for OPA-initiated investigations).

The MNPDP relies on several standardized forms to track employee conduct. For instance, MNPDP Form 311 is the department's form used "to document remedial counseling of departmental personnel by authorized supervisory personnel."<sup>24</sup> While Form 311 is not considered corrective or disciplinary action, "it may be completed as part of any formal corrective or disciplinary action to document the counseling that occurred as part of such action."<sup>25</sup> MNPDP Form 312 is the department's form "used to document all complaints."<sup>26</sup> MNPDP Form 313A is the department's form used "to document formal counseling and/or corrective action taken to correct unsatisfactory employee performance or behavior."<sup>27</sup> Any action documented on the form is considered official corrective action and is put in the employee's personnel file.<sup>28</sup> MNPDP Form 313 is the department's form used "to document violations of the policies, rules or procedures of the department, when job performance may have adversely affected the personal and/or property rights of others, involvement in illegal activity is suggested, or otherwise requires further investigation."<sup>29</sup> MNPDP Form 309 is a Job Performance Improvement Plan ("JPIP"), which is used to address poor performance.<sup>30</sup>

An overview of how the MNPDP Manual instructs the Department to administer discipline is also helpful here. The MNPDP's policy is to consider "all applicable violations of rules and regulations" but to sanction employees "only on those charges that appropriately and adequately address the misconduct."<sup>31</sup> The MNPDP may take corrective action "to correct a situation that, if uncorrected, may require disciplinary action."<sup>32</sup> Disciplinary action "may be recommended against

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<sup>24</sup> *Id.* § 4.10.010(C).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* § 4.10.010(D).

<sup>27</sup> *Id.* § 4.10.010(E).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* § 4.10.010(F).

<sup>30</sup> *Id.* § 3.20.020; see *infra* for a discussion of JPIPs.

<sup>31</sup> *Id.* § 4.10(E).

<sup>32</sup> *Id.* § 4.10.010(I).

an employee when he/she fails to follow the policies, rules or procedures of the department.”<sup>33</sup>

Such action should be taken when “lesser remedial or corrective action is ineffective, inappropriate, or would appear futile under the circumstances.”<sup>34</sup>

The primary method the MNPD uses to determine disciplinary and corrective actions is the Disciplinary/Corrective Action Grid (the “Grid”), which is “used by supervisors and employees to identify the range of sanctions for a sustained investigation of a complaint.”<sup>35</sup> The Grid “provides a range of suggested sanctions for proven or admitted allegations.”<sup>36</sup> Each offense category is characterized with a letter (AA–F) and provides suggested sanctions for each offense category based on whether it is considered a first, second, or third offense.<sup>37</sup> The Grid is used regardless of whether an employee “elects to have a departmental hearing or agrees to a sanction.”<sup>38</sup> A disciplinary recommendation is finalized once the Chief of Police approves it.<sup>39</sup>

#### 4.10.310 Disciplinary/Corrective Action Grid Chart

Offense Category	Retention Period of Offense	1st Offense	2nd Offense	3rd Offense
AA		Dismissal		
Category A	60 Months	20 Day Suspension to Dismissal and /or Demotion	30 Working Day Suspension to Dismissal and/or Demotion	Demotion or Dismissal

<sup>33</sup> *Id.* § 4.10.010(K).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* § 4.10.010(L).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* § 4.10.310.

<sup>38</sup> *Id.* § 4.10.010(L).

<sup>39</sup> *Id.* § 4.10.010(L).

<b>Category B</b>	<b>60 Months</b>	<b>8-13 Day Suspension</b>	<b>14-19 Day Suspension and/or Demotion</b>	<b>20 Day Suspension and/or Demotion or Dismissal</b>
<b>Category C</b>	<b>48 Months</b>	<b>2-6 Day Suspension</b>	<b>5-10 Day Suspension</b>	<b>9-15 Day Suspension</b>
<b>Category D</b>	<b>36 Months</b>	<b>1-4 Day Suspension</b>	<b>3-7 Day Suspension</b>	<b>5-10 Day Suspension</b>
<b>Category E</b>	<b>24 Months</b>	<b>Written Reprimand to 2 Day Suspension</b>	<b>1 to 3 Day Suspension</b>	<b>2-5 Day Suspension</b>
<b>Category F</b>	<b>24 Months</b>	<b>Formal Counseling or Oral Reprimand</b>	<b>Written Reprimand to 2 Day Suspension</b>	<b>1-3 Day Suspension</b>

## 1. Allegation 1

Allegation 1 includes one broad allegation and several, related sub-allegations. Allegation 1 claims that Assistant Chief of Police Mike Hagar (“Chief Hagar”) has exhibited poor judgment, engaged in disparate treatment of employees through his ineffective management of disciplinary matters, and sustained a culture tolerant of certain misconduct.<sup>40</sup> The sub-allegations of Allegation 1 provide specific examples of Chief Hagar’s alleged conduct.

For context, it is helpful to understand the role of the Assistant Chief of Police. As Assistant Chief, Chief Hagar has certain objectives, which include “overseeing and coordinating the activities of the Departmental Bureau Chiefs including the development of large-scale projects and events”; serving as “day-to-day liaison among police department components to ensure consistency of [] community-based priorities to enhance Nashville’s safety”; “ensuring compliance with local, state and federal laws, departmental policies, and active operating

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<sup>40</sup> Ex. 1 at p. 1.

agreements”; and “preparing, as needed, multiple reports, briefings, presentations and responses on community issues.”<sup>41</sup> Under the MNPDP Manual, the “Assistant Chief of Police is an appointed assignment that oversees all facets of the daily operations for the Office of the Chief,” as well as any other duties the Chief of Police requires.<sup>42</sup>

With this background in mind, this Report next analyzes each sub-allegation to Allegation 1. For most sub-allegations, Mr. Davidson identifies Chief Hagar’s actions that Mr. Davidson believes were inappropriate. This Report summarizes those actions before noting the relevant MNPDP Manual provisions that the allegation potentially implicates. This Report then provides Butler Snow’s conclusion regarding whether, from the evidence received, the allegation violates any applicable MNPDP policies.

**a. Allegation 1(a)**

Mr. Davidson alleges that Chief Hagar interfered with OPA’s investigation of Deputy Chief Stephens by attempting to “clean the language and written record of the case.”<sup>43</sup> Chief Stephens allegedly failed to report and may have covered up a workplace domestic encounter between a civilian employee and Stephens’s subordinate, Commander Newbern.<sup>44</sup> Based on the information OPA collected through the course of its investigation, Deputy Chief Stephens had violated MNPDP policy regarding Personal Behavior, specifically § 1.10.030 (Unity of Command) and § 4.20.040(W) (Acting Impartially).<sup>45</sup> During the investigation, Chief Hagar allegedly advised OPA that Deputy Chief Stephens should only be interviewed as a witness because Chief Hagar was negotiating a pre-investigation settlement with Deputy Chief Stephens.<sup>46</sup> Deputy Chief

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<sup>41</sup> Ex. 2 § 1.90.040(A).

<sup>42</sup> *Id.* § 1.90.040(C).

<sup>43</sup> Ex. 1 at pp. 1, 6–10.

<sup>44</sup> See the OPA’s Investigative Report into Chief Stephens (File number: IA2023-00058), which is attached to this Report as **Exhibit 5**.

<sup>45</sup> Ex. 1 at p. 6.

<sup>46</sup> *Id.* at p. 7.



Stephens was interviewed as a witness, but it was Mr. Davidson's assessment<sup>47</sup> that Deputy Chief Stephens "did not want to acknowledge or admit the obvious regarding Newbern's lie because this information would be used in the investigation into Newbern," with whom Deputy Chief Stephens was close friends.<sup>48</sup> Mr. Davidson concluded that Deputy Chief Stephens may have violated policy by failing to disclose relevant information during his interview.<sup>49</sup>

Sometime after that interview, Mr. Davidson learned that Chief Hagar had completed a Form 311 Remedial Counseling Report instead of a pre-investigation settlement.<sup>50</sup> The Form 311 indicated that facts discovered during OPA's investigation suggested that Deputy Chief Stephens "created the perception or allowed the perception to exist that he may not have been acting impartially (as required by MNPD Manual 4.20.040, Personal Behavior, W. Acting Impartially)."<sup>51</sup> According to Mr. Davidson, this was inappropriate because Form 311 "does not document a sanctioned violation of policy; it does not exist within the grid chart as a possible option."<sup>52</sup> As a result, Chief Hagar's actions allegedly prevented Deputy Chief Stephens from being sanctioned.<sup>53</sup> Then, Chief Gilder instructed Mr. Davidson to complete a Form 312 and mark the finding as a "Matter of Record."<sup>54</sup> Accordingly, the case was "closed as a Matter of Record with the recommendation that Deputy Chief Stephens be counseled regarding supervisory expectations and how perceptions of friendships and favoritism can be construed as a failure to act impartially, even when no misconduct occurred."<sup>55</sup>

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<sup>47</sup> In his Complaint, Mr. Davidson says it was "*our* assessment that Stephens did not want to acknowledge or admit the obvious regarding Newbern's lie[.]" *Id.* (emphasis added). This is a reference to Mr. Davidson and Detective Carter, who was investigating Deputy Chief Stephens.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Ex. 5 at p. 176.

<sup>52</sup> Ex. 1 at p. 7.

<sup>53</sup> *Id.* at p. 8.

<sup>54</sup> *Id.*

<sup>55</sup> Email from Christopher Gilder to Mr. Davidson, dated November 15, 2023, attached hereto as **Exhibit 6**.



This too apparently was problematic. According to Mr. Davidson, a “Matter of Record” finding “is used to document that a complaint was filed but could not be fully investigated for some specific reason” such as the unavailability of witnesses.<sup>56</sup> Mr. Davidson alleges that Deputy Chief Stephens was in effect made unavailable because he was interviewed as a witness rather than as an accused employee based on instructions from Chief Hagar.<sup>57</sup> However, a “Matter of Record” finding may also be issued “when the investigation cannot conclusively disprove complaint allegations or establish that the alleged events occurred.”<sup>58</sup>

Based on then instant investigation, it is not clear that Chief Hagar violated policy in his handling of Chief Stephens’s case. If the events occurred as alleged in Mr. Davidson’s complaint, then Chief Hagar may have overstepped his role. OPA is charged with conducting “impartial investigation and review,”<sup>59</sup> so one example of overstepping would be if Chief Hagar became involved in OPA’s investigation and dictated how Stephens should be interviewed, which does not align with OPA’s procedures. However, Chief Hagar’s alleged involvement, for the most part, was based on hearsay.<sup>60</sup> According to the records reviewed by Butler Snow, Chief Hagar’s only documented involvement in Deputy Chief Stephens’s case was the issuance of the Form 311. But the fact that Chief Hagar issued a Form 311 for remedial counseling was not necessarily a policy violation if Stephens’s actions were viewed as a minor infraction.<sup>61</sup> If not, the issuance of the Form 311 was improper as it clearly states that it is not to be used for corrective or disciplinary action,<sup>62</sup> other than to correct a minor infraction.<sup>63</sup>

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<sup>56</sup> *Id.*; see Ex. 2 § 4.10.070(A).

<sup>57</sup> Ex. 2 § 4.10.070(A).

<sup>58</sup> *Id.*

<sup>59</sup> See the OPA’s Standard Operating Procedures Manual, revised March 2021, § 2.01, which is attached hereto as **Exhibit 7**.

<sup>60</sup> In this case, Mr. Davidson called it “water cooler talk.”

<sup>61</sup> See Ex. 2 § 4.10.080(A).

<sup>62</sup> Ex. 5 at p. 176.

<sup>63</sup> Ex. 2 § 4.10.080(A).

There is no indication that Chief Hagar recommended or was involved in the issuance of a Form 312 as a “Matter of Record,” indicating that Deputy Chief Stephens’s behavior could be seen as “a failure to act impartially, even when no misconduct occurred.”<sup>64</sup> This appears to misstate the OPA’s findings, which recommended that the two policy violations be sustained.<sup>65</sup> Chief Gilder was the individual who communicated with Mr. Davidson regarding the “Matter of Record,”<sup>66</sup> so even if this was a policy violation, it was not perpetrated by Chief Hagar.

## b. Allegation 1(b)

Mr. Davidson alleges that Chief Hagar was responsible for Deputy Chief Taylor receiving a favorable resolution to his misconduct case. Specifically, Deputy Chief Taylor received a 10-day suspension following several sustained policy violations.<sup>67</sup>

According to Mr. Davidson, Deputy Chief Taylor was investigated due to his alleged treatment of officers at MNPd’s Training Academy.<sup>68</sup> During one incident, Deputy Chief Taylor confronted a training instructor in front of others who believed Deputy Chief Taylor meant to assault the instructor.<sup>69</sup> Additionally, Deputy Chief Taylor approved the transfer of officers out of the Training Academy with less notice than required under policy.<sup>70</sup> According to Mr. Davidson, Deputy Chief Taylor’s justification for the transfers “was without merit.”<sup>71</sup> Deputy Chief Taylor was also investigated for appearing on talk shows and campaigning to be mayor while in uniform

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<sup>64</sup> Ex. 6.

<sup>65</sup> Ex. 5 at p. 34.

<sup>66</sup> Ex. 6.

<sup>67</sup> Ex. 1 at p. 10.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

and possibly on duty.<sup>72</sup> Lastly, Deputy Chief Taylor was investigated for allegedly passing failing recruits at the Training Academy.<sup>73</sup>

Deputy Chief Taylor's actions implicate several MNPD Manual policy provisions. Under § 4.20.040(A), "[e]mployees shall adhere to all policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government." Specific policies implicated under § 4.20.040(A) in Deputy Chief Taylor's case included:

- Section 4.70.010: "Employees of the Metropolitan Government should not be exposed or subjected to abusive behavior from other employees. Employees found to be engaging in such conduct shall be subject to corrective and/or disciplinary action."
- Section 3.30.020(A): "Rebid procedures and employee assignments notwithstanding, administrative changes may be made in an employee's assignment by the Chief of Police or with the approval of the Chief of Police to enhance the efficient and effective operation of the department."
- Section 3.40.080: "Whenever possible, all personnel being transferred, whether at their own request or involuntarily, will be notified of the transfer at least five (5) calendar days prior to the transfer becoming effective. Though such notification is the preferred procedure, the Chief of Police or his/her designee shall reserve the right to make transfers without such notification when required for the good of the department, or with the consent of the affected employee(s)."
- Section 17.10.050: "The Training Division will provide an approved program of instruction for newly hired police officer candidates comprising fundamental law enforcement skills and knowledge, which shall be designated as the Basic Police Course. The course will meet or exceed all applicable State of Tennessee Peace Officer Standards and Training Commission requirements."

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<sup>72</sup> *Id.*

<sup>73</sup> See the OPA Report on its investigation into Chief Taylor (File number: IA2022-00003) at p. 30, which is attached hereto as **Exhibit 8**.

Under § 4.20.040(EE),<sup>74</sup> “[a]n employee shall not engage in any political activity when acting as an agent of the department, attired in the uniform of the department or displaying any credential or insignia of the department.” Additionally,

[w]hen on duty or acting as an agent of the department, attired in the uniform of the department or displaying any credential or insignia of the department, employees:

- (b) shall not make endorsements of political candidates, political party, organization, association or society;
- (c) shall not prepare or participate in soliciting, collecting or receiving directly, or indirectly, any money for any political fund from any source[.]<sup>75</sup>

Following its investigation, OPA recommended that MNPd sustain four of the allegations and exonerate Deputy Chief Taylor on the one regarding training deficiencies (§ 17.10.050).<sup>76</sup> Although the category for a violation of § 4.20.040(A) varies by corresponding violation, it is generally classified as Category D on the Grid.<sup>77</sup> None of the corresponding violations reference a category, and § 4.20.040(EE) is not assigned a category. Under Category D on the Grid, the sanction ranges are 1 to 4 days’ suspension (first offense); 3 to 7 days’ suspension (second offense); and 5 to 10 days’ suspension (third offense).<sup>78</sup>

Deputy Chief Taylor was suspended for 10 days based on his political campaigning in uniform and violation of the transfer selection process rules.<sup>79</sup> According to his Form 313, these were classified as Category C offenses, and Deputy Chief Taylor received 5 days’ suspension for each. Regardless of how the violations were categorized, Deputy Chief Taylor received 10 days’

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<sup>74</sup> This provision was § 4.20.040(FF) in the April 1, 2018, version of the MNPd Manual. It is now § 4.20.040(EE) in the May 15, 2024, version of the MNPd Manual. Substantively, the provisions are the same. A copy of the April 2018 MNPd Manual is attached hereto as part of Appendix B.

<sup>75</sup> Ex. 2 § 4.20.040(EE)(2); *see also supra* note 52 and accompanying text.

<sup>76</sup> *See* Ex. 8 at pp. 13–15. Under the MNPd Manual, “exonerated” means “[a]n incident did occur, but the action was consistent with established policy, rules, or procedure.” Ex. 2 § 4.10.070(A).

<sup>77</sup> *Id.* § 4.20.040(A).

<sup>78</sup> *Id.* § 4.10.310.

<sup>79</sup> Ex. 8 at pp. 2–4.

suspension, which is the top of the range for a Category D offense. Therefore, the sanctions he received were proper.

In any event, Mr. Davidson appears to take issue with the fact that Deputy Chief Taylor's case was settled when leadership had the "ability to direct the case to a full hearing where the case facts would have been sustained, and a finding of dismissal could have been offered rather than let [Taylor] resign with only a minimal disciplinary finding in his case file."<sup>80</sup> This argument ignores its own implications: if Chief Hagar (and Chief Drake) had the ability to hold a full hearing on the matter, they also had the ability to settle the case. Indeed, "[t]he preference is for as many cases as possible to be resolved . . . without a formal hearing."<sup>81</sup> Moreover, the Chief of Police has sole discretion to impose a sanction outside of the Grid.<sup>82</sup> Here, Deputy Chief Taylor's sanction was within the Grid, and his case was settled without a hearing as preferred. Therefore, Chief Hagar did not violate MNPD policy in resolving Deputy Chief Taylor's case.

### c. Allegation 1(c)

Mr. Davidson alleges that "rank bias and/or poor decision making by command staff" was apparent in the case of Lieutenant Schmitz.<sup>83</sup> According to Mr. Davidson, Lt. Schmitz should have been demoted after OPA's investigation revealed that he had engaged in conduct where he treated female employees differently than others.<sup>84</sup> Instead, Lt. Schmitz settled his case, received a 30-day suspension, and was assigned to a new role in which he did not supervise anyone.<sup>85</sup>

Lt. Schmitz's actions implicated several MNPD Manual provisions. Specific policies implicated under § 4.20.040(A) in Lt. Schmitz's case included:

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<sup>80</sup> Ex. 1 at p. 11.

<sup>81</sup> Ex. 2 § 4.10.160(E)(1).

<sup>82</sup> *See id.* § 4.10.280(B).

<sup>83</sup> Ex. 1 at p. 11.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at p. 12.

- Section 4.70.020(A): Abusive conduct is defined as “[b]ehavior that creates an intimidating environment likely to interfere with an individual’s work. This conduct can be verbal, visual, physical, or communicated in writing or electronically. Such conduct is typically directed against a particular individual or individuals.” According to the OPA investigation file, the relevant abusive conduct included “1. [s]ituations in which one person has authority over another and engages in conduct that unfairly exploits the power inherent in a supervisor’s position,” and “2. [e]ndangering the safety of an individual or individuals.”<sup>86</sup>
- Section 4.50.030(A): Discrimination is defined as “[a]ny action that unlawfully or unjustly results in unequal treatment of persons based on race, color, gender, religion, age, disability, sexual orientation, or national origin.”
- Section 4.20.090(A): “When at work, all employees will present a positive and professional appearance consistent with generally accepted professional business standards and representative of the [MNPd]. . . . When reporting for duty or acting in an official capacity, employees shall present himself/herself in a professional manner. Employees and their attire shall be free of any dirt, impurities, or extraneous matter so as to not be offensive to others.”
- Section 4.50.030(C): Sexual harassment is defined as “[u]nwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature” when:
  - “Such conduct has the purpose or effect of unreasonably interfering with an employee’s work performance or creating an intimidating, hostile, or offensive work environment.”
  - “Sexual harassment may be in the form of comments, acts, or gestures. It is not limited to overt physical acts. Suggestive comments, jokes of a sexual nature, sexually suggestive objects or pictures, obscene gestures, sexually graphic stories, as well as unwanted touching, can all constitute sexual harassment. Conducting, encouraging or condoning any of the above activities toward or about a person of the same gender, can also constitute sexual harassment.”

Following its investigation, OPA sustained violations of §§ 4.70.020(A) (abusive conduct), 4.50.030(A) (discrimination), and 4.50.030(C) (sexual harassment).<sup>87</sup> Mr. Davidson claims, “[i]t is my understand [sic] that Chief Hagar handled the disciplinary process after Lt. Schmitz disagreed with the sustained findings and sanctions and requested a hearing[.]”<sup>88</sup> Furthermore,

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<sup>86</sup> See the OPA’s report on its investigation into Lt. Schmitz (File number: IA2021-00046) at p. 80, which is attached to this Report as **Exhibit 9**. See also Ex. 2 § 4.70.020(A).

<sup>87</sup> *Id.* at pp. 80–84.

<sup>88</sup> Ex. 1 at p. 12.



Mr. Davidson claims “it is my understanding that Hagar settled the case outside of a hearing, and Lt. Schmitz was not even demoted at all—not even a single time. I believe his total suspension time was reduced too, and he was soon given an assignment which did not require him to supervise anyone.”<sup>89</sup>

There is no indication that Chief Hagar violated policy or showed favoritism toward Lt. Schmitz. Nothing in the documents provided to Butler Snow indicate that Chief Hagar was involved in Lt. Schmitz’s case other than approving the final disciplinary action. Lt. Schmitz was scheduled for a hearing but entered into a “Last Chance Agreement” wherein he was suspended for 30 days,<sup>90</sup> which the Chief of Police had to approve.<sup>91</sup>

He was also demoted in accordance with § 4.10.230(A).<sup>92</sup> A demotion “is defined as a regular or temporary change of classification and/or compensation of an employee as a result of disciplinary action from a position in one class to a position in another class having less responsibility and a lower level of compensation or a reduction in salary to a lower step in the same classification.”<sup>93</sup> By definition, Lt. Schmitz was demoted because he had less responsibility when he was moved to a position where he was no longer supervising people.<sup>94</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> Butler Snow requested from the MNPd, “Settlement Statistics for 2021 to Present and a list of all cases settled during this time frame.” See MNPd Investigation—Document Requests at ¶ 12, which is attached to this report as **Exhibit 10**. Butler Snow received two things in response. First, Butler Snow received a spreadsheet providing information about employees who were accused of misconduct and received discipline because of a settlement or of a hearing, which is attached to this report as **Exhibit 11**. Second, Butler Snow received a report of internal incidents that were assigned IA/Control numbers during the relevant period, which is attached to this report as **Exhibit 12**. The 2022 tab in Exhibit 10 provides the discipline Lt. Schmitz received.

<sup>91</sup> See Ex. 2 § 4.10.220(B); see also *id.* § 4.10.280(A)(2) (stating that “[t]he terms of a Last Chance Agreement shall include a suspension of up to thirty (30) working days”).

<sup>92</sup> See Ex. 12.

<sup>93</sup> Ex. 2 § 4.10.230(A).

<sup>94</sup> OPA apparently recommended a double demotion for Schmitz. According to Mr. Davidson, “there was apparently a belief that a Civil Service hearing would overturn a double demotion in light of another past case involving Vivienne Lee.” Ex. 1 at p. 12. As Mr. Davidson points out, however, her case was different because it “did not involve a prolonged pattern of supervisory [mis]conduct” like Schmitz’s. *Id.*

## d. Allegation 1(d)

According to Mr. Davidson, Chief Hagar's involvement in the disciplinary process for Lieutenant Hammond<sup>95</sup> "resulted in her being decommissioned for nearly two years and a lawsuit in which [OPA employees] were named, despite them not being the decision makers[.]"<sup>96</sup> Mr. Davidson alleges that Chief Hagar was responsible for "dragging out" Lt. Hammond's investigation.<sup>97</sup> According to Mr. Davidson, "OPA had concluded Lt. Hammond's case much earlier than the total time she was decommissioned."<sup>98</sup> Mr. Davidson claims that Lt. Hammond's case is part of the MNPd's "practice of delaying investigations and dragging them out in order to force a resignation[.]"<sup>99</sup> Specifically, Mr. Davidson cited practices known as "the green mile"<sup>100</sup> and "the bubble,"<sup>101</sup> which were specific locations where officers would be assigned to await disciplinary action.<sup>102</sup>

OPA investigated Lt. Hammond and sustained two policy violations under §§ 4.20.040(B) and (H), the latter of which required the sanction of dismissal.<sup>103</sup> According to Mr. Davidson, however, "how [the investigation's] conclusions were subsequently used against Lt. Hammond is historically a process driven by command staff outside of OPA."<sup>104</sup> Mr. Davidson claims this is where Chief Hagar became involved: "[i]t is my understanding that Assistant Chief Hagar was one of the principal decision makers with regard to how Lt. Hammond's case [] was handled

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<sup>95</sup> Lt. Hammond was a sergeant at the time of her investigation.

<sup>96</sup> *Id.* at p. 13.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at p. 14.

<sup>99</sup> *Id.* at p. 13.

<sup>100</sup> According to Mr. Davidson, "the green mile" . . . involved decommissioned officers having to remain in plain clothes in the lobby of 200 James Robertson Parkway alongside sex offenders who would come register and check-in. This was a tactic designed to crush the spirit of the accused in hopes of them settling cases or resigning all-together [sic]." *Id.*

<sup>101</sup> Mr. Davidson alleges that "North Precinct's public lobby was often perceived to be the 'bubble' where officers who were expected to be terminated would be temporarily assigned during their investigations." *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> See Ex. 2 §§ 4.20.040(H), 4.10.310.

<sup>104</sup> Ex. 1 at p. 13.



administratively”;<sup>105</sup> “it is likely that Director Morante primarily communicated investigative facts to Chief Hagar”;<sup>106</sup> “[i]t is my understanding that Chief Hagar is the primary one responsible for the significant length of time that Lt. Hammond remained decommissioned”;<sup>107</sup> and “I believe that assistant Chief Hagar is primarily responsible for Lt. Hammond’s mistreatment[.]”<sup>108</sup>

Confidential documents reviewed did not show any involvement by Chief Hagar in Lt. Hammond’s case. Although Mr. Davidson has experience in OPA and knows how investigations are run, his claims as to Lt. Hammond’s case are based on conjecture, and Butler Snow was unable to determine the accuracy.

Moreover, the process Mr. Davidson complains of is not as much of a concern following Mayor Cooper’s 2020 Policing Policy Commission (the “Commission”). One of the goals of the Commission was to “[e]stablish a transparent and timely process for complaints and disciplinary action.”<sup>109</sup> As such, the Commission recommended that MNPD hold disciplinary hearings within 45 days of an officer’s request, to mirror OPA’s investigation timeline, which may be extended with justifiable cause.<sup>110</sup> According to Mr. Davidson, MNPD accepted this recommendation, “though not all cases are heard within the 45 days.”<sup>111</sup>

Even if the events occurred as Mr. Davidson alleges, there was no policy violation because there was no policy in place at the time regarding the speediness of a hearing.

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at p. 14.

<sup>109</sup> See the 2020 Policing Policy Commission Report, which is attached hereto as **Exhibit 13**.

<sup>110</sup> *Id.* at p. 36.

<sup>111</sup> Ex. 1 at p. 13; *see also* Ex. 2 § 4.10.250(C) (“Absent justifiable cause, a disciplinary hearing shall be conducted within 45 calendar days from the date the employee receives written notification of the hearing.”).

e. Allegation 1(e)

Mr. Davidson alleges that Chief Hagar “interfered with and mismanaged” the Covenant School photo leak investigation, as well as the “decision to disband the entire investigative team despite them not being responsible for the leak.”<sup>112</sup> According to the Form 312 Complaint, the Professional Services Division learned on November 6, 2023, that MNPD detectives took three photographs that were later released by an unknown person to a media personality.<sup>113</sup> Such a release would be a violation of § 4.20.050(R): “Employees shall not reveal or release to any unauthorized person property that may be used as evidence in the prosecution of a criminal charge until it has been formally introduced into evidence or until final disposition of the case except when otherwise directed by an authoritative source.”<sup>114</sup>

Mr. Davidson claims that soon after OPA began investigating the photo leak, Chief Hagar directed Lieutenant Arevalo to gather OPA detectives and come to headquarters to conduct interviews.<sup>115</sup> According to Mr. Davidson, Chief Hagar had several officers on standby at headquarters, ready to be interviewed.<sup>116</sup> Mr. Davidson alleges that at this point, the officers had so little notice that they “did not even have attorneys or representatives yet.”<sup>117</sup> This effort did not fall in line with OPA’s established investigatory practices and, according to Mr. Davidson, Chief Hagar’s actions “jeopardized the whole investigation.”<sup>118</sup> Mr. Davidson claims that Chief Hagar was demanding in what he expected Lt. Arevalo (and OPA) to do in the investigation and that Lt. Arevalo expressed concerns to Assistant Chief Dwayne Greene, who allegedly shared those

<sup>112</sup> Ex. 1 at p. 15.

<sup>113</sup> The OPA’s report in the Covenant School photo leak case (File number: IA2023-00094) is attached to this Report as **Exhibit 14**.

<sup>114</sup> Ex. 2 § 4.20.050(R).

<sup>115</sup> Ex. 1 at p. 15.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

concerns.<sup>119</sup> After speaking with Chief Greene, Chief Hagar advised they would wait to conduct the interviews.<sup>120</sup> Even so, Lt. Arevalo reportedly was “required to provide Hagar [] direct, play by play communication” throughout the investigation.<sup>121</sup>

OPA investigated but was unable to determine who was responsible for the release of the photos.<sup>122</sup> Therefore, OPA recommended entry of a Matter of Record stating: “At this time, this investigation was unable to definitively prove who was responsible for the release of the three photos. This case will be revisited in the event new information becomes available.”<sup>123</sup> Still, a decision was made to remove individuals from the team following the investigation.<sup>124</sup> According to Mr. Davidson, this was “a direct and flagrant upending of the integrity of departmental investigations and their outcomes . . . driven by personal perception and poor leadership, not fact-finding.”<sup>125</sup> No policy violations were sustained, yet the team was disbanded, and members were reassigned seemingly without reason.<sup>126</sup> According to Mr. Davidson, the reassignments “create[d] a cloud of doubt about the character, dependability, and trustworthiness of those transferred team members going forward.”<sup>127</sup> Even if transfers are not disciplinary in nature, Mr. Davidson alleges that the way “the department sometimes uses them makes them so in practice, and they are often conducted without formal documentation, further obscuring the basis and the ability of officers to contest the basis for the transfers.”<sup>128</sup>

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at p. 16.

<sup>121</sup> *Id.*

<sup>122</sup> Ex. 13 at p. 2.

<sup>123</sup> *Id.* at p. 18.

<sup>124</sup> Ex. 1 at p. 16.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at p. 17.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

Based on the Complaint, Mr. Davidson’s major concerns were that (1) Chief Hagar inserted himself into the investigation, and (2) members of the team were removed and transferred to other positions even though OPA could not determine the source of the leak. Documents provided to Butler Snow regarding the Covenant School photo leak were limited. Regarding Chief Hagar’s alleged involvement, no documents showed that Chief Hagar inserted himself into the Covenant School photo leak investigation, and Butler Snow was not permitted to question any MNPD employees regarding anything related to the Covenant School photo leak.<sup>129</sup>

**f. Allegation 1(f)**

Mr. Davidson alleges that “Chief Hagar engages in a pattern of settling disciplinary cases prior to departmental hearings, resulting in better outcomes for the accused, . . . [which] subverts the department’s mission by undermining accountability of those who engage in misconduct.”<sup>130</sup> According to Mr. Davidson, early settlement undermines the disciplinary process.<sup>131</sup> Mr. Davidson recognizes that pre-hearing settlements are “a common practice,” but he maintains that they have not been used appropriately.<sup>132</sup> In Chief Hagar’s case specifically, Mr. Davidson claims that early settlements are used for “[c]onvenience and expediency” and have a tendency to primarily benefit high-ranking officers.<sup>133</sup> Mr. Davidson’s claim in 1(f) relates to MNPD’s settlement practices in general, but he also points to specific cases in which Chief Hagar was involved: Lt. Schmitz,<sup>134</sup>

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<sup>129</sup> On or about May 6, 2025, Mr. Davidson was arrested in connection with the Covenant School photo leak. As a result of the investigation and arrest, Butler Snow’s investigation was stayed for several months. Prior to resuming its investigation, Butler Snow was informed that no questions would be permitted or answered regarding the Covenant School photo leak due to the potential that it would compromise the case against Mr. Davidson.

<sup>130</sup> *Id.* at p. 18.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> See *supra* 1(c) for discussion of Lt. Schmitz’s case.

Lieutenant Gooch,<sup>135</sup> Captain Hunsicker and Director Hooper,<sup>136</sup> Lt. Taylor,<sup>137</sup> and Sergeant Tuberville.<sup>138</sup> Beyond these, Mr. Davidson argues that departmental practices and policies covering the reasons for settling cases warrant review.<sup>139</sup> Mr. Davidson claims that the settlement process allows employees to “routinely obtain a better outcome in their case by seeking a hearing and then settling their case before that hearing, for *less* sanctions than initially issued for their conduct.”<sup>140</sup> Furthermore, individuals who understand the process can take advantage of this system, but “it is not a widespread, common-knowledge process equally available to all officers.”<sup>141</sup> Mr. Davidson also claims that “[i]t is not certain whether the chiefs actually document the basis for settling cases prior to a hearing, as these are believed to be primarily just conversations which result in the final, approved paperwork.”<sup>142</sup> If true, “[t]he actual reasoning or justification for lowering or altering sanctions without going to a hearing are not documented.”<sup>143</sup>

It is MNPD’s policy that “while all applicable violations of rules and regulations shall be considered, employees should be sanctioned only on those charges that appropriately and adequately address the misconduct.”<sup>144</sup> Once an investigation is complete, the investigating supervisor (and his/her chain of command) “determine the appropriate level of severity for the offense.”<sup>145</sup> Then, the Precinct/Division Commander or Director makes a final recommendation

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<sup>135</sup> See *infra* 2(a) for discussion of Lt. Gooch’s case.

<sup>136</sup> See *infra* 2(a) for discussion of Capt. Hunsicker and Dir. Hooper’s case.

<sup>137</sup> See *supra* 1(b) for discussion of Lt. Taylor’s case.

<sup>138</sup> Mr. Davidson expressed uncertainty as to whether Sgt. Tuberville’s case was handled by Chief Hagar. See Ex. 1 at p. 18. In any event, Sgt. Tuberville’s case was settled prior to hearing, and he was suspended six days. See Ex. 10 at tab 2022. Sgt. Tuberville was exonerated under MNPD Manual § 4.20.040(B) (Personal Behavior, Adherence to Law), but violations of §§ 4.20.040(W) (Personal Behavior, Acting Impartially (formerly § 4.20.040(X) in the Apr. 1, 2018 Manual)) and 8.30.080 (Employees Will Record Police Activity) were sustained. See the OPA’s report on its investigation into Sgt. Tuberville (File number: IA2021-00064), which is attached to this Report as **Exhibit 15**.

<sup>139</sup> Ex. 1 at p. 18.

<sup>140</sup> *Id.* at p. 19.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at p. 18.

<sup>143</sup> *Id.*

<sup>144</sup> Ex. 2 § 4.10(E).

<sup>145</sup> *Id.* § 4.10.150(A)(1).

for where the alleged conduct falls on the Grid and the recommended sanction, which is “subject to the review of the Deputy Chief or Director of the employee’s chain of command.”<sup>146</sup> The employee may request a departmental hearing, which serves as “both an administrative and a name clearing hearing.”<sup>147</sup> However, “[t]he preference is for as many cases as possible to be resolved at the Presentation Meeting<sup>148</sup> or Settlement Meeting<sup>149</sup> without a formal hearing. It is clearly beneficial to all parties involved to resolve these complaints as quickly as possible, without sacrificing the goals of the corrective action or disciplinary process or a fair process for the employee.”<sup>150</sup> Additionally, pre-investigation settlement agreements are also possible.<sup>151</sup> In fact, “[a] Settlement Agreement and/or Complaint Resolution can occur at any point between the receipt of the complaint and before the conclusion of a Disciplinary Hearing Advisory panel.”<sup>152</sup>

There is no indication that any MNPDP policies were violated when the above-mentioned cases were settled. Settlement is clearly MNPDP’s preferred method of handling officer misconduct.<sup>153</sup> MNPDP also has processes in place “to ensure consistency and fairness in the settlement process.”<sup>154</sup> For instance, the Director of OPA is notified of all settlement negotiations and is required to participate in such negotiations when there is no agreement on the proposed

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<sup>146</sup> *Id.* § 4.10.150(A)(2).

<sup>147</sup> *Id.* § 4.10.190(D).

<sup>148</sup> This is the initial meeting, which “shall be held as soon as practical but no more than five (5) calendar days from the completion of” MNPDP’s disciplinary forms. *Id.* § 4.10.160(A)(2). During this meeting, “the recommended charges, if any, and the recommended corrective/disciplinary action will be presented to the employee in the form of an appropriate MNPDP form.” *Id.* § 4.10.160(A)(4). The employee is also presented with copies of documentation used to determine the appropriate corrective/disciplinary action. *Id.* § 4.10.160(A)(7).

<sup>149</sup> This meeting occurs on or before the 10th day from the Presentation Meeting. *Id.* § 4.10.160(E)(4). During this meeting, “the accused employee and/or their representative can negotiate the recommended settlement.” *Id.* § 4.10.160(E)(4)(a). The Settlement Meeting is the final meeting. *Id.* § 4.10.160(E)(5).

<sup>150</sup> *Id.* § 4.10.160(E)(1).

<sup>151</sup> Under § 4.10.170(B), “[o]nce an employee is notified of an allegation of misconduct, that if proven true would be a violation of policies, procedures, or rules of the Metropolitan Government subjecting that employee to disciplinary or corrective action, and the employee wishes to fully and completely acknowledge that behavior, the Settlement Agreement process can be utilized to settle the matter without an investigation.”

<sup>152</sup> *Id.* § 4.10.170(B)(12).

<sup>153</sup> *See, e.g., id.* § 4.10.160(E)(1).

<sup>154</sup> *Id.* § 4.10.170(B)(4).



sanction or one or more of the parties believe OPA could help with reaching an agreement.<sup>155</sup>

Additionally, “[a]n employee’s admission concerning the complaint will not preclude a complete investigation and/or additional discipline, where indicated by previously undisclosed circumstances or circumstances unknown at the time of settlement.”<sup>156</sup> As to Mr. Davidson’s allegation that the settlement process is not widely known, MNPDP’s Manual suggests otherwise. The Manual covers the settlement process in detail, so any officer who reviews the Manual knows as much as the next officer about the process. Moreover, Mr. Davidson’s allegation that the process primarily benefits higher-ranking officers is not evident in the data. Butler Snow reviewed a spreadsheet provided by MNPDP that depicts the outcomes and conclusions for several investigations between 2021 and 2024 and created the following table:<sup>157</sup>

<b>Year</b>	<b>Total Cases</b>	<b>Total Cases Settled Prior</b>	<b>Settled Cases Ranks (Sergeant or Below)</b>	<b>Cases with No Noted Resolution</b>
2021	16	9	7	N/A
2022	18	15	9	N/A
2023	14	7	6	2
2024	23	15	6	6

The table clearly shows that at least for 2021, 2022, and 2023, most of the settled cases included in the spreadsheet involved ranks of Sergeant or below. Even if this spreadsheet does not include the entire universe of cases for those years, it shows that lower-ranking officers had just as much a chance at settlement as the higher-ranking ones.

Butler Snow agrees that MNPDP policy should be clarified to resolve the conflict between §§ 4.10.160(E)(5) and 4.10.170(B)(12) regarding when settlement may be reached. Section §

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* § 4.10.170(B)(13).

<sup>157</sup> *See* Ex. 11. Of note, the spreadsheet also includes data for years 1983, 2010, and 2011. For purposes of this Report, Butler Snow focuses only on the tabs for years 2021 through 2024.

4.10.160(E)(5) indicates that an employee’s last opportunity to consider sustained allegations is the Settlement Meeting, but § 4.10.170(B)(12) indicates that a settlement agreement may occur at any point between receipt of a complaint and before conclusion of a Disciplinary Hearing Advisory panel. As currently written, these sections provide different timeframes for settlement and are likely confusing to officers.

**g. Allegation 1(g)**

Mr. Davidson alleges that Chief Hagar attempts to obfuscate his involvement in many matters by tasking others to do things that “fall outside of their responsibility or established policy.”<sup>158</sup> Mr. Davidson cites four incidents: (1) Lt. Arevalo’s difficulty obtaining sanctions for Lt. Gooch’s case from Chief Hagar; (2) Chief Hagar’s instruction to Mr. Davidson to ensure a Form 312 was completed for each case when there was no such requirement; (3) Chief Hagar’s reliance on others to complete the Form 312 in Deputy Chief Stephens’s case; and (4) Chief Hagar’s minimization of his role in Lt. Hammond’s case.<sup>159</sup>

First, Mr. Davidson claims that “[i]t took Lt. Arevalo multiple attempts to obtain the sanction recommendation for [Lt. Gooch’s] case, and still he was not successful” because Chief Hagar “repeatedly waffled, was unclear, and seemed to turn the decision over to Lt. Arevalo, even though it had never been the practice of OPA [to] determine[e] sanctions.”<sup>160</sup> Commander Jason Starling ended up having to get the recommendation from Chief Hagar.<sup>161</sup> Mr. Davidson claims that this was all documented in an email chain from around March 23, 2023.<sup>162</sup> Butler Snow reviewed the emails, and they do not show that Lt. Arevalo had any problems getting the

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<sup>158</sup> Ex. 1 at p. 20.

<sup>159</sup> *Id.* at pp. 20–21.

<sup>160</sup> *Id.* at p. 20.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*



information from Chief Hagar.<sup>163</sup> There were only two emails in the chain: one from Commander Starling on March 21, 2023, sharing the sustained violations and requesting the recommended disciplinary/corrective action; and one from Chief Hagar on March 23, 2023, indicating that Lt. Gooch would receive 30 days' suspension and enter into a Last Chance Agreement.<sup>164</sup> Neither email suggests that there was any problem with getting disciplinary recommendations from Chief Hagar, but even if there was, such problems or delays are not necessarily policy violations.

Next, Mr. Davidson claims that at a time when there was no commander in OPA, Chief Hagar instructed him to ensure a Form 312 was completed for each Community Oversight Board ("COB") case.<sup>165</sup> Mr. Davidson admits that he acknowledged Chief Hagar's instruction but did not follow it "because departmental policy did not address" the use of another entity's investigation as the basis for OPA's investigative finding.<sup>166</sup> Moreover, Mr. Davidson claims the proper steps are not discussed in the MNPDP Manual or the OPA SOP, and Chief Hagar was not in Mr. Davidson's chain of command.<sup>167</sup> As such, Mr. Davidson did not follow Chief Hagar's instructions. It is not clear what basis Mr. Davidson had for ignoring the instructions of the Assistant Chief of Police. OPA falls under the Professional Standards Division, and the Director of the Professional Standards Division answers directly to the Chief of Police.<sup>168</sup> Nothing Mr. Davidson cites in allegation 1(g) appears to be a violation of policy, and he does not offer proof of any of the events referenced. It makes sense that Chief Hagar might provide guidance when OPA had no Director. The fact that Chief Hagar's guidance did not appear in the MNPDP Manual or OPA SOP is of no consequence, especially because Chief Hagar did not ask Mr. Davidson to do some illegal act. He

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<sup>163</sup> See the OPA's report on its investigation into Lt. Gooch (File number: IA2022-00040) at p. 4, which is attached to this Report as **Exhibit 16**.

<sup>164</sup> Ex. 16 at p. 4.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Ex. 7, § 1.01.

simply requested that Mr. Davidson ensure there was an official MNPB Complaint Form 312 in every file, which was well within his rights as Assistant Chief of Police.

Lastly, as already discussed above, Chief Hagar did not violate policy in Stephens's or Hammond's cases.

## h. Allegation 1(h)

Mr. Davidson alleges that Chief Hagar "superseded[es] or ignore[es] chains of command" and gives "deficient or poor instructions."<sup>169</sup> Not long after Mr. Davidson started at OPA, the COB began sending Proposed Resolution Reports ("PRR").<sup>170</sup> According to Mr. Davidson, it was "apparent . . . very early on that the quality of the Metro Nashville Community Oversight (MNCO) investigators was lacking."<sup>171</sup> Specifically, they provided substantiated and unsubstantiated findings under incorrect policies, failed to document key facts, cited policies no longer in place, and they did not consistently provide case file materials.<sup>172</sup> At the time, however, OPA had not established procedures for receiving, reviewing, and responding to the PRRs.<sup>173</sup> Even so, Chief Hagar instructed Mr. Davidson to complete Form 312s "for all COB issued PRR's."<sup>174</sup> Mr. Davidson, however, was worried that because the PRRs involved allegations that had not been or were not under investigation by MNPB, the investigation would rest upon an MNCO investigation that may not have been trustworthy.<sup>175</sup>

Mr. Davidson again chose not to obey Chief Hagar's orders. He did not "feel it was right" to follow orders because "[m]ore needed to be done to ensure accused officers' rights were

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<sup>169</sup> Ex. 1 at p. 21.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at p. 22.

<sup>175</sup> *Id.*

safeguarded.”<sup>176</sup> Mr. Davidson also reiterated that Chief Hagar was not in his chain of command and did not communicate instructions for Mr. Davidson to Director Morante.<sup>177</sup>

There is no indication that Chief Hagar violated policy by directing Mr. Davidson to complete Form 312s for PRRs from the COB. But even if this was a policy violation, a process was later put in place to handle PRRs in a way that protected accused officers’ rights.<sup>178</sup> Therefore, the issue is moot.

## **2. Allegation 2**

Like Allegation 1, the Complaint includes an overarching Allegation 2 and various, related sub-allegations. The overarching Allegation 2, in sum, claims that the MNPDP has an unwritten policy of treating certain officers under investigation more favorably than or inconsistently from other officers under the same or similar circumstances.<sup>179</sup> The various, related sub-allegations all provide specific ways in which the MNPDP is apparently investigating alleged misconduct unfairly.

Accordingly, this Report next analyzes each sub-allegation to Allegation 2. For most sub-allegations, Mr. Davidson identifies the MNPDP’s investigation into specific employees that, as he sees it, were done improperly. And so, this Report summarizes the alleged inadequacies related to those investigations before noting the relevant MNPDP Manual provisions that the allegation potentially implicates. This Report then provides Butler Snow’s conclusion regarding whether, from the information received thus far, the allegation violates applicable MNPDP policy.

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *See, e.g.*, Ex. 7 § 11.01.

<sup>179</sup> Ex. 1 at p. 2.

## a. Allegation 2(a)

According to the Complaint’s Allegation 2(a), the MNPDP’s unwritten policy of treating certain officers accused of misconduct more favorably than others is due to “rank bias.”<sup>180</sup> That is, the Complaint alleges that higher-ranking officers receive more favorable outcomes than lower-ranking officers due to the structured hierarchy within the Department.<sup>181</sup> The Complaint points to three specific cases to support its “rank bias” allegation: (1) Lieutenant Gooch’s Case; (2) Detective Thorowgood’s Case; (3) Captain Hunsicker and Director Hooper’s Case. The Complaint also points to the MNPDP’s demotion of two lower-ranking officers—Sergeant Eubanks and Sergeant Kenney—that further demonstrate alleged “rank bias” in the Department. This Report considers each case in turn.

### i. Lieutenant Gooch’s Case

Mr. Davidson provides Lieutenant Gooch (“Lt. Gooch”) as an example of a higher-ranking officer who benefitted from the MNPDP’s “rank bias.”<sup>182</sup> The OPA began investigating Lt. Gooch after he started a bar fight and then drove away visibly intoxicated before getting stopped by officers with the Lavergne Police Department.<sup>183</sup> The investigation was paused while Lt. Gooch “took an extended work leave” to receive substance-abuse treatment through an employee assistance program.<sup>184</sup> Following its investigation, the OPA sustained two policy violations against Lt. Gooch: (1) a “Personal Behavior” violation for “Conduct Unbecoming an Employee of the Department”; and (2) an “Official Obligations” violation for “Use of Alcohol, Drugs, or other Intoxicants.”<sup>185</sup> In the end, Assistant Chief Hagar only approved the “Personal Behavior”

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<sup>180</sup> See Ex. 1 at p. 2.

<sup>181</sup> See *id.*

<sup>182</sup> See *id.* at pp. 23–24.

<sup>183</sup> See Ex. 15.

<sup>184</sup> See *id.* at p. 37.

<sup>185</sup> *Id.* at pp. 4–5.

violation.<sup>186</sup> Assistant Chief Hagar also initially recommended that Lt. Gooch receive a 30-day suspension and last chance agreement as sanctions for his policy violation.<sup>187</sup> Although it is not entirely clear why, Assistant Chief Hagar eventually recommended, and Lt. Gooch agreed to accept, a 20-day suspension and last chance agreement for his “Personal Behavior” violation.<sup>188</sup> Lt. Gooch then signed a settlement agreement to that effect in early April 2023 for violating “MNPD Manual [§] 4.20.040(D) Conduct Unbecoming an Employee of the Department—***Sustained—Category A, 1st Offense.***”<sup>189</sup>

Mr. Davidson describes three main ways in which the MNPD inappropriately investigated and disciplined Lt. Gooch. First, Mr. Davidson alleges that the Department allowed Lt. Gooch to enter an employee assistance program to lessen his sanctions even though MNPD “policy [did] not provide for employee assistance or a rehabilitation program to be used as a means to mitigate non-substance abuse misconduct.”<sup>190</sup> Second, Mr. Davidson alleges that Assistant Chief Hagar showed Lt. Gooch favoritism by only approving the “Personal Behavior” violation.<sup>191</sup> And third, Assistant Chief Hagar also allegedly showed Lt. Gooch favoritism by decreasing his sanctions to a 20-day suspension and last chance agreement.<sup>192</sup>

**Employee assistance program as mitigation.** True enough, off-duty MNPD officers “shall not, at any time, present himself or herself to public view under the influence of any intoxicant to any discernable degree.”<sup>193</sup> For violations of this and other policies, the MNPD Manual suggests offense categories ranging from “Category F” for lesser offenses to “Category

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<sup>186</sup> *See id.* at pp. 2–3.

<sup>187</sup> *See id.*

<sup>188</sup> *See id.* at pp. 4–9.

<sup>189</sup> *Id.* at pp. 6–11.

<sup>190</sup> Ex. 1 at p. 23.

<sup>191</sup> *See id.* at p. 24.

<sup>192</sup> *See id.*

<sup>193</sup> Ex. 2 § 4.20.050(K)(7).

AA” for the most serious.<sup>194</sup> “Off duty intoxication in public view will generally be classified as a Category E violation, subject to any mitigating or aggravating circumstances,”<sup>195</sup> while the offense category for violations of the “Personal Behavior” policy for “Conduct Unbecoming an Employee of an Employee of the Department” varies based on the severity of the violation.<sup>196</sup>

The MNPD Manual further provides a “Disciplinary/Corrective Action Grid Chart” that suggests sanctions based on both offense category and the number of times an employee has committed such an offense.<sup>197</sup> The disciplinary grid does not include specific mitigating circumstances, but they can be considered.<sup>198</sup> “In determining mitigating factors, such conduct may be the necessity for immediate appropriate action, a sudden or unforeseen occurrence or condition, existence of exigent circumstances, voluntary disclosure and correction, genuine mistake of law or fact, or similar factors.”<sup>199</sup> That said, if a reporting supervisor relies on mitigating circumstances to determine sanctions, he or she must document that “on the MNPD Form 313”—the Internal Disciplinary Resolution Report that must be completed whenever the Department determines an employee has violated MNPD policy—“and specifically describe” those circumstances “in an attached document.”<sup>200</sup>

It is therefore incorrect to say that supervisors cannot consider an officer’s voluntary participation in an employee assistance program as a mitigating factor under applicable policy. In Lt. Gooch’s case, however, the records Butler Snow received do not indicate that his supervisors found his participation in such a program a mitigating circumstance.<sup>201</sup> Lt. Gooch’s Form 313

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<sup>194</sup> See *id.* § 4.10.310.

<sup>195</sup> *Id.* § 4.20.050(K)(7).

<sup>196</sup> *Id.* § 4.20.040(D).

<sup>197</sup> See *id.* § 4.10.310.

<sup>198</sup> See *id.* § 4.10.150(C)(1).

<sup>199</sup> *Id.* § 4.10.150(C)(2)(b).

<sup>200</sup> See *id.* § 4.10.150(C)(1).

<sup>201</sup> See *generally* Ex. 16.

does not report any mitigating circumstances.<sup>202</sup> Nor is there any reference to Lt. Gooch's participation in an employee assistance program in the documentation surrounding the investigation's conclusion and ultimate sanctions.<sup>203</sup> Without evidence that the Department considered but failed to report mitigating circumstances in Lt. Gooch's case, Butler Snow cannot conclude a policy violation occurred.

**Assistant Chief Hagar only approving one policy violation.** No doubt, the MNPD Manual requires fair and impartial investigations into alleged employee misconduct.<sup>204</sup> But even though "all applicable violations of rules and regulations shall be considered," the MNPD Manual further provides that "employees should be sanctioned only on those charges that appropriately and adequately address the misconduct."<sup>205</sup> What is more, when alleged misconduct falls under "multiple policies, rules, or procedures" or when it "may be charged under multiple categories," the deciding supervisor may seek guidance "by reviewing . . . records of similar occurrences, from the chain of command" or by consulting with "authoritative sources (e.g., OPA or Department Advocates) prior to creating a formal charging instrument."<sup>206</sup> "The Precinct/Division Commander or Director will make a final Precinct or Division level recommendation regarding the appropriate charge" subject to "the review of the Deputy Chief or Director of the employee's chain of command."<sup>207</sup>

Assistant Chief Hagar approving only one of OPA's two recommended policy violations in Lt. Gooch's case, therefore, does not appear to violate MNPD policy. The OPA sustained both a "Personal Behavior" and a "Official Obligations" violation against Lt. Gooch.<sup>208</sup> Assistant Chief

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<sup>202</sup> See *id.* at pp. 10–12.

<sup>203</sup> See generally *id.*

<sup>204</sup> Ex. 2 § 4.10(B).

<sup>205</sup> *Id.* § 4.10(E).

<sup>206</sup> *Id.* § 4.10.140(B).

<sup>207</sup> *Id.* § 4.10.140(C).

<sup>208</sup> See Ex. 16. at pp. 4–5.



Hagar then approved only one violation, explaining that the “conduct described” under the “Official Obligations” violation could “blend into . . . and be settled comprehensively under” the “Personal Behavior” violation.<sup>209</sup> The plain language of the policies at issue supports that interpretation.<sup>210</sup>

**Decreasing Lt. Gooch’s sanctions.** Once an investigation is completed, “the investigating supervisor, along with his [or] her chain of command (up to and including Precinct/Division Commander or Director), will determine the appropriate level of Severity for the offense.”<sup>211</sup> From there, “[t]he Precinct/Division Commander or Director will make a final Precinct or Division level recommendation regarding where the alleged conduct falls on the Disciplinary/Corrective Action Grid and the recommended sanction.”<sup>212</sup> This recommendation is “subject to the review of the Deputy Chief or Director of the employee’s chain of command.”<sup>213</sup> And if there is a disagreement “as to the proposed sanctions, supervisors at any level may document their rationale in a correspondence to be attached to the recommendation.”<sup>214</sup>

The MNPDP Manual also provides a timeline for what should happen following the conclusion of an investigation. First, the appropriate MNPDP Form documenting the Department’s proposed resolution (e.g., proposed sanctions recorded on Form 313) should be completed “without undue delay” following the investigation.<sup>215</sup> Within five calendar days after that, “[t]he Precinct/Division Commander . . . shall be responsible for conducting a meeting with the employee,” known as the “Presentation Meeting,” where the Department must inform the employee of its findings and proposed resolution. “When MNPDP Form 313 is presented to the

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<sup>209</sup> *See id.*

<sup>210</sup> *See* Ex. 2 §§ 4.20.040(D), 4.20.050(K)(7).

<sup>211</sup> *Id.* § 4.10.150(A)(1).

<sup>212</sup> *Id.* § 4.10.150(A)(2).

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.* § 4.10.160(B).

employee during this Presentation Meeting” the employee “may elect to immediately accept responsibility for the sustained allegations and accept the recommended sanction based [on] a proper application of the grid.”<sup>216</sup>

Here, an email between Commander Starling of the OPA and Assistant Chief Hagar suggests that the OPA’s investigation into Lt. Gooch concluded on March 21, 2023. In that email, Commander Starling requested that Assistant Chief Hagar recommend sanctions for the sustained charges after discussing with Lt. Gooch’s chain of command. On March 23, 2023, Assistant Chief Hagar responded with a recommendation that Lt. Gooch receive a 30-day suspension and a last chance agreement for violating the MNDP’s “Personal Behavior” policy for “Conduct Unbecoming an Employee of the Department.” Sometime after that, Assistant Chief Hagar seemed to determine that lesser sanctions were warranted, but it is not clear why. This is because the OPA’s investigative report on Lt. Gooch includes a screenshot of an undated text message sent by Assistant Chief Hagar to two unidentified individuals. The text states: “Gooch. 20 days and last chance. Lawyer is aware.” In his “Presentation/Settlement Agreement” dated April 13, 2023, Lt. Gooch appears to have accepted responsibility for “the allegations contained in the MNPD Form 313, dated 04/12/2023” during his Presentation Meeting. With that, he agreed “to receive 20 days suspension and a Last Chance Agreement as the disciplinary action” for his actions.

From this, Butler Snow cannot conclude any MNPD policy was violated by Assistant Chief Hagar’s decision to reduce Lt. Gooch’s sanctions. First, Lt. Gooch was charged with only a “Personal Behavior” violation for “Conduct Unbecoming an Employee of the Department.” The offense category and ultimate discipline associated with this violation “varies by” the “severity”

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<sup>216</sup> *Id.* § 4.10.160(E)(3)(a).

of the violation. And so, Assistant Chief Hagar could have sanctioned Lt. Gooch with either a 30-day or a 20-day suspension and last chance agreement.

Second, the MNPB Manual does not prohibit supervisors from changing their recommended sanctions prior to an employee's Presentation Meeting. In fact, "[s]ettlement meetings and negotiations may be conducted on initiated investigations," and "[a] Settlement Agreement" can be executed "at any point between the receipt of the complaint and before the conclusion of a Disciplinary Hearing Advisory panel."<sup>217</sup> Assistant Chief Hagar therefore does not appear to have violated any policy by decreasing Lt. Gooch's sanctions on his own accord or as a result of negotiations between him and Lt. Gooch.

And third, the MNPB Manual provides that "supervisors at any level may document" their disagreement with respect to proposed sanctions "in a correspondence to be attached to the recommendation." There is no such disagreement documented in Lt. Gooch's case.

Butler Snow did not identify any violation of MNPB policy in the Department's handling of Lt. Gooch's case.

## ii. Detective Thorowgood's Case

Mr. Davidson points to Detective Thorowgood ("Det. Thorowgood") as a counterexample to the MNPB's handling of Lt. Gooch.<sup>218</sup> The OPA began investigating Det. Thorowgood after an off-duty, physical altercation between him and a civilian was caught on camera and posted to YouTube.<sup>219</sup> According to the Complaint, Det. Thorowgood was, unlike Lt. Gooch, sober during the altercation.<sup>220</sup> But like Lt. Gooch, police officers with the Springfield Police Department

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<sup>217</sup> *Id.* § 4.10.170(A), (B)(12).

<sup>218</sup> *See* Ex. 1 at p. 24.

<sup>219</sup> *See* the OPA's Investigative Report into Det. Thorowgood (File number: IA2022-00050) at p. 5, which is attached to this Report as **Exhibit 17**.

<sup>220</sup> *See* Ex. 1 at p. 24.

responded to the incident and completed an incident report.<sup>221</sup> Although a Robertson County grand jury considered Det. Thorowgood’s alleged assault, that grand jury decided not to indict him.<sup>222</sup>

Represented by Sergeant James Smallwood, Det. Thorowgood made a pre-investigation settlement offer to the Department.<sup>223</sup> With that proposal, Det. Thorowgood offered to admit responsibility for two “Personal Behavior” violations—one for his failure to act impartially and the other for his loss of self-control.<sup>224</sup> He further offered to accept a 15-day suspension and provide his irrevocable resignation from the MNPd.<sup>225</sup> Assistant Chief Dwane Greene accepted Det. Thorowgood’s offer and directed OPA Commander Starling to proceed with the settlement agreement process.<sup>226</sup> According to the Complaint, moreover, Det. Thorowgood “requested a pre-investigation settlement to save himself and the [D]epartment the trouble of a prolonged process,” as he was “already preparing to leave the MNPd and had a position secured with another agency.”<sup>227</sup>

Mr. Davidson points to Det. Thorowgood’s case for two main reasons. First, Mr. Davidson offers Det. Thorowgood’s case to show how the Department treated lower-ranked officers less favorably than higher-ranked officers like Lt. Gooch. Second, Mr. Davidson alleges that because the Department “leadership appeared out for blood,” they pressured Det. Thorowgood to accept a 15-day suspension and to resign.

**The Department treated Det. Thorowgood worse than Lt. Gooch.** Any difference between the MNPd’s handling of Det. Thorowgood’s case and that of Lt. Gooch’s case does not appear to have violated internal policy. First, there is no policy that requires the MNPd to resolve

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<sup>221</sup> See Ex. 17 at p. 5.

<sup>222</sup> See *id.*

<sup>223</sup> *Id.* at p. 6.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* at pp. 7–11.

<sup>226</sup> *Id.* at p. 10.

<sup>227</sup> Ex. 1 at p. 24.

a case in line with its resolution of similar cases. If investigations and discipline are handled fairly, then the MNPDP Manual gives command staff broad discretion to determine the ultimate charges and sanctions imposed on an employee.<sup>228</sup> What is more, there are many differences between Det. Thorowgood’s case and Lt. Gooch’s case. For example, Det. Thorowgood admitted to violating Department policy before an investigation into his misconduct began, while Lt. Gooch agreed to enter a settlement agreement only after his investigation concluded. Butler Snow therefore cannot say that the MNPDP treated Lt. Gooch more favorably than Det. Thorowgood when Det. Thorowgood admitted responsibility before his investigation began—we can only speculate about what might have happened had the Department investigated Det. Thorowgood’s case.

**The Department pressured Det. Thorowgood to accept certain sanctions.** This allegation is not supported by the available record. The record indicates that Sergeant James Smallwood represented Det. Thorowgood during his pre-investigation settlement process.<sup>229</sup> Emails between Sergeant Smallwood and OPA Commander Jason Starling indicate that Det. Thorowgood proposed the sanctions that he ultimately agreed to receive.<sup>230</sup> And even the Complaint alleges that Det. Thorowgood chose to utilize the pre-investigation settlement process because “[h]e wanted to admit to his conduct and move forward.”<sup>231</sup> Accordingly, Butler Snow cannot conclude that the MNPDP (1) violated policy in its handling of Det. Thorowgood’s case or (2) treated Det. Thorowgood differently than Lt. Gooch.

### iii. Captain Hunsicker and Director Hooper’s Case

Mr. Davidson further alleges that the OPA’s joint preliminary investigation into Director Julia Hooper (“Dir. Hooper”) and Inspector Harmon Hunsicker (“Insp. Hunsicker”) further

<sup>228</sup> See Ex. 2 §§ 4.10(B), 4.10.140(B)–(C), 4.10.150(A)(1)–(2).

<sup>229</sup> See Ex. 17 at pp. 10–11.

<sup>230</sup> *Id.*

<sup>231</sup> See Ex. 1 at p. 24.

demonstrates the MNPd’s “rank bias.”<sup>232</sup> The OPA began investigating Dir. Hooper and Insp. Hunsicker after receiving allegations that these individuals created a “difficult work environment” for Crime Lab employees, especially Black employees.<sup>233</sup> This was apparently leading to high employee turnover and negatively affecting the Crime Lab’s ability to process evidence.<sup>234</sup> Both Dir. Hooper and Insp. Hunsicker entered pre-investigation settlement agreements as the OPA was conducting its preliminary investigation.<sup>235</sup> Dir. Hooper agreed to receive a 10-day suspension for violating the MNPd’s “Workplace Conduct” policy, and Insp. Hunsicker agreed to receive a 12-day suspension for the same offense.<sup>236</sup> And it appears that Assistant Chief Drake approved their pre-investigation settlement agreements.<sup>237</sup>

According to the Complaint, both Dir. Hooper and Insp. Hunsicker also agreed to retire as part of their pre-investigation settlement agreement.<sup>238</sup> Specifically, the Complaint alleges that Insp. Hunsicker planned to retire “while the investigation was open, thus leaving in bad standing,” but “command staff convinced him to enter into a pre-investigation settlement and then retire.”<sup>239</sup> But Dir. Hooper, according to the Complaint, “did not want such a deal initially.”<sup>240</sup> Allegedly, it was not until the OPA interviewed Dir. Hooper for eight hours and completed its investigation that Dir. Hooper “sought to retire” such that command staff allowed her to enter a “pre-investigation settlement” agreement.<sup>241</sup>

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<sup>232</sup> *Id.* at pp. 24–25.

<sup>233</sup> See the OPA’s Investigative Report into Dir. Hooper and Insp. Hunsicker (File number: IA2022-00004) at pp. 5, 44–50, which is attached to this Report as **Exhibit 18**.

<sup>234</sup> Ex. 18 at p. 5.

<sup>235</sup> *Id.* at p. 30.

<sup>236</sup> See *id.* at pp. 30, 240.

<sup>237</sup> See *id.* at p. 252.

<sup>238</sup> See Ex. 1 at p. 25.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

Considering this, the Complaint alleges that the Department violated internal policy in two ways. First, the Complaint alleges that it was improper for command staff to encourage Insp. Hunsicker to enter a pre-investigation settlement agreement and then retire when he initially wanted to retire and leave in “bad standing.”<sup>242</sup> Second, the Complaint alleges that the Department should not have allowed Dir. Hooper to enter a pre-investigation settlement when the OPA had already concluded its investigation.<sup>243</sup>

**Encouraging Insp. Hunsicker to enter pre-investigation settlement.** Even if this allegation is true, it does not appear to be a violation of internal policy for MNPd command staff to encourage settlements. In the MNPd Manual’s discussion of pre-investigation settlement agreements, “[s]ettlement meetings and negotiations may be conducted on initiated investigations.”<sup>244</sup> The process “combines an agreement between an employee, an employee’s representative (if requested), and the employer. No single entity can drive this process—it requires the cooperation of all parties.”<sup>245</sup> “A Settlement Agreement and/or Complaint Resolution can occur at any point between the receipt of the complaint and before the conclusion of a Disciplinary Hearing Advisory panel.”<sup>246</sup> And in the context of post-investigation proceedings, the MNPd Manual provides that the Department prefers to resolve “as many cases as possible . . . without a formal hearing” because “[i]t is clearly beneficial to all parties involved to resolve these complaints as quickly as possible, without sacrificing the goals of the corrective action or disciplinary process or a fair process for the employee.”<sup>247</sup> Butler Snow therefore cannot conclude that the Department

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<sup>242</sup> *See id.*

<sup>243</sup> *See id.*

<sup>244</sup> Ex. 2 § 4.10.170(A).

<sup>245</sup> *Id.* § 4.10.170(B)(3).

<sup>246</sup> *Id.* § 4.10.170(B)(12).

<sup>247</sup> *Id.* § 4.10.160(E)(1).



violated internal policy even if it encouraged Insp. Hunsicker to enter a pre-investigation settlement agreement.

**Allowing Dir. Hooper to enter pre-investigation settlement.** The documents Butler Snow reviewed do not support the Complaint’s allegations with respect to the Department’s handling of Dir. Hooper’s case. First, the OPA’s records reflect that, at most, only a preliminary investigation had concluded by the time Dir. Hooper entered her settlement agreement.<sup>248</sup> Contrary to the Complaint’s allegations, then, Dir. Hooper was not allowed to settle her case after the OPA had concluded its investigation into her alleged misconduct.<sup>249</sup>

Second, the records Butler Snow reviewed do not suggest that Dir. Hooper sought to settle her case only after OPA interviewed her. Instead, the OPA’s records indicate that an attorney represented Dir. Hooper during the OPA’s preliminary investigation.<sup>250</sup> Dir. Hooper’s attorney reached out to OPA investigators prior to her interview to “try and discuss a possible resolution” of her case.<sup>251</sup> And so, it appears that MNPd command staff were negotiating a settlement with Dir. Hooper and her attorney some time before the OPA interviewed Dir. Hooper.

As mentioned above, the MNPd’s policies encourage settlements. Employees like Dir. Hooper who are under investigation can enter settlement agreements at any point during the investigation process.<sup>252</sup> Accordingly, the Department did not violate internal policy by allowing Dir. Hooper to enter a settlement agreement before conducting a full investigation into her alleged misconduct.

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<sup>248</sup> See Ex. 18 at p. 5 (providing the OPA’s “PRELIMINARY INVESTIGATIVE SUMMARY”).

<sup>249</sup> See Ex. 2 § 4.10.050(C) (distinguishing between the OPA’s preliminary and formal investigations).

<sup>250</sup> See Ex. 18 at pp. 245, 251.

<sup>251</sup> See *id.*

<sup>252</sup> See Ex. 2 § 4.10.120(B)(12).

## iv. Sergeant Eubanks's and Sergeant Kenney's Cases

The Complaint also points to Sergeant Eubanks (“Sgt. Eubanks”) and Sergeant Kenney (“Sgt. Kenney”) as examples of lower-ranking officer who were disciplined unfairly. The allegations against Sgt. Eubanks involved his negligent management of a subordinate officer who failed to adequately care for an arrestee who went into ventricular fibrillation in MNPd custody.<sup>253</sup> Additionally, the OPA concluded that “there was a very real possibility of” the arrestee dying while in MNPd custody “if any further delay in medical care” had occurred.<sup>254</sup> The allegations against Sgt. Kenney involved him stopping and detaining minors without any law enforcement-related justification to do so.<sup>255</sup> During this encounter, moreover, Sgt. Kenney exhibited aggressive behavior that rose to the level of assault. The MNPd ultimately decided to demote these officers.

According to the Complaint, the Department unfairly demoted Sgt. Eubanks and Sgt. Kenney.<sup>256</sup> This is because the Department chose not to demote other, higher-ranking officers (e.g., Lt. Gooch) who committed similar violations.<sup>257</sup> Under the policy provisions discussed above, however, MNPd command staff has broad discretion in how they charge and sanction employee misconduct.<sup>258</sup> The MNPd Manual does not require command staff to follow precedent or to discipline a particular instance of misconduct in a predictable way. Thus, it does not appear to be a per se violation of MNPd policy to demote an officer in one instance and then choose not

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<sup>253</sup> See the OPA’s Interactive Case Summary for Sgt. Eubanks (File number: IA2022-00021) at pp. 12–13, which is attached to this Report as **Exhibit 19**.

<sup>254</sup> Ex. 19 at pp. 12–13.

<sup>255</sup> Butler Snow reviewed the OPA’s Investigative Report into Sgt. Kenney (File number: IA2023-00045) as part of this investigation. But because Sgt. Kenney’s case involved sensitive information about juveniles, it is not included with this Report.

<sup>256</sup> Ex. 1 at p. 25.

<sup>257</sup> See *id.*

<sup>258</sup> See, e.g., Ex. 2 §§ 4.10.140, 4.10.150.

to demote an officer in another. Butler Snow cannot conclude that the Department violated internal policy by demoting Sgt. Eubanks or Sgt. Kenney.

**b. Allegation 2(b)**

According to the Complaint's Allegation 2(b), the MNPB's "rank bias" is further exemplified in the Department's investigative documentation (or lack thereof) of higher-ranking officers accused of misconduct. More to the point, the Complaint alleges that, in several instances, command staff has "strictly tailored" the language used to document investigations into higher-ranking officers to intentionally downplay or soften the details of those matters in their reporting.

As mentioned above, the Department must conduct fair and impartial investigations into "all complaints about employee misconduct to determine the validity of allegations."<sup>259</sup> This requires, among other things, "[c]omplete candor and fully truthful responses . . . when employees are providing information or responding to inquir[ies] related to any official duty."<sup>260</sup> All employees, moreover, must be "honest and truthful."<sup>261</sup> And the MNPB Manual further provides that an employee violates the Department's honesty and truthfulness policy when they "knowingly or intentionally make[] a materially false statement."<sup>262</sup> And so, command staff who are intentionally downplaying or softening the details of investigations into higher-ranking officers may be violating MNPB policy.

The Complaint further points to Insp. Hunsicker and Dir. Hooper's case as an example of such policy violations. The Complaint characterizes the language used in the Form 312 and the "final case summary" in Insp. Hunsicker and Dir. Hooper's case as insufficient.<sup>263</sup> Specifically,

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<sup>259</sup> Ex. 2 § 4.10(B).

<sup>260</sup> *Id.* § 4.10(A).

<sup>261</sup> *Id.* § 4.20.040(H).

<sup>262</sup> *Id.*

<sup>263</sup> Ex. 1 at p. 26.

the Complaint alleges that the Department “catered to the accused employees and crafted very specific language to go onto the Form 312 and case summary which would give the public zero idea as to the gravity of the allegations made against them.”<sup>264</sup> The OPA’s case file for this matter, however, does not include a Form 312.<sup>265</sup> Butler Snow has only received this case file which includes the OPA’s summary of its preliminary investigation into Insp. Hunsicker and Dir. Hooper. The investigative summary, moreover, is consistent with the Complaint’s allegations about Insp. Hunsicker and Dir. Hooper’s misconduct and otherwise appears to be a thorough review of the OPA’s preliminary investigation in this matter.<sup>266</sup>

Allegation 2(b) also takes issue with the language used to document Chief Stephens’s alleged misconduct, while including many of the same issues with Chief Stephens’s case as those raised in Allegation 1.<sup>267</sup> Focusing on the purportedly inadequate language of Chief Stephens’s Form 311, Allegation 2(b) states that it “reads as a document which is designed to exonerate and protect Stephens while putting all of the blame on Commander Newbern.”<sup>268</sup>

Even so, the MNPD Manual does not mandate the Department use a particular level of detail when completing documents like the Form 311 or Form 312. It requires, instead, fair investigations and honesty.<sup>269</sup> And under the policy provisions discussed above, the Department has broad discretion in how it chooses to discipline alleged misconduct. There is no policy that prevents command staff from using a Form 311 to address employee misconduct and avoid further disciplinary action. In fact, it explicitly allows the Form 311 to be used to correct “minor

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<sup>264</sup> *Id.* at p. 27.

<sup>265</sup> *See generally* Ex. 18.

<sup>266</sup> *See generally id.*

<sup>267</sup> *See* Ex. 1 at pp. 27–28.

<sup>268</sup> *Id.*

<sup>269</sup> Ex. 2 §§ 4.10(B), 4.20.040(H).

infractions, or to put an employee on notice of a possible problem.”<sup>270</sup> Without evidence that the Department deviated from the MNPD Manual’s requirements, Butler Snow cannot conclude a violation of internal policy occurred in the cases described in Allegation 2(b).<sup>271</sup>

## c. Allegation 2(c)

The Complaint provides the investigation into Don Aaron, a civilian employee who was allegedly considered to have a high rank, as another example of the Department’s “rank bias.” According to the Complaint, that investigation began after a news reporter, Kenley Hargett, claimed that Mr. Aaron mistreated and possibly assaulted the reporter.<sup>272</sup> The Complaint also states that OPA investigator, Detective Ron Carter (“Det. Carter”), conducted a preliminary investigation and determined that, although Mr. Aaron did not assault Mr. Hargett, “there was a confrontation which could have been a violation of policy related to Courtesy or Self-Control.”<sup>273</sup> Mr. Davidson, in Allegation 2(c), claims Det. Carter shared this information with him just before Mr. Davidson temporarily left the Department to attend the Northwestern School of Police Staff and Command in May 2023.<sup>274</sup> OPA Director Kathy Morante (“Dir. Morante”) then allegedly

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<sup>270</sup> *Id.* § 4.10.080(A). Although the MNPD Manual does not define “minor infractions,” it defines “simple infractions” as violations “of established standards of conduct or job performance that does not adversely affect the personal and/or property rights of others, suggest illegal involvement, or otherwise require formal investigation.” *See id.* § 4.10.100(E).

<sup>271</sup> The Complaint also mentions Chief Taylor’s case as an example under Allegation 2(b). But the Complaint fails to identify any alleged shortcomings in MNPD command staffs’ documentation in that case. Instead, Allegation 2(b) only claims that Assistant Chief Hagar unfairly sanctioned Chief Taylor by dropping one of his charges and by “pursuing a mutually beneficial” settlement agreement to avoid the matter “going to a hearing.” Under the policy provisions discussed above, however, MNPD command staff has broad discretion in how they charge and sanction employee misconduct. *See Ex. 2* §§ 4.10.140, 4.10.150. The MNPD Manual also encourages the Department to settle matters without hearings. *Id.* § 4.10.160(E)(1). And so, Butler Snow cannot conclude that any internal policy violation with respect to Chief Taylor occurred as described in Allegation 2(b).

<sup>272</sup> *See Ex. 1* at pp. 28–30. *See also* Garett Davidson’s email to Stephanie Mitchell referring Mr. Aaron’s case for mediation, which is attached to this report as **Exhibit 20**, the Mediation Referral form attached to Mr. Davidson’s email to Ms. Mitchell, which is attached to this Report as **Exhibit 21**, and the Matter of Record for IA/Control No. MR2023-00047, which is attached to this report as **Exhibit 22**.

<sup>273</sup> *Ex. 1* at pp. 28–29.

<sup>274</sup> *Id.*

asked Mr. Davidson, before taking leave, to encourage Mr. Aaron and Mr. Harget to mediate the matter.<sup>275</sup>

According to the Complaint, both parties seemed open to mediation.<sup>276</sup> So Mr. Davidson then completed a Nashville Conflict Resolution Center (“NCRC”) Mediation Referral form, as required by the MNPD Manual, and emailed that form to the appropriate NCRC representative.<sup>277</sup> Purportedly, it was also common for OPA “investigations to take place for a while before” making “any formal, written record” of that process.<sup>278</sup> Because Mr. Davidson allegedly “wanted to ensure something was in the system before” taking leave, he also created a “Matter of Record” using the OPA’s IAPro NextGen software.<sup>279</sup>

Mr. Davidson claims that the parties unsuccessfully mediated their issues while he was away.<sup>280</sup> When he returned, Mr. Davidson allegedly asked Det. Carter about the results of the investigation into Mr. Aaron.<sup>281</sup> In response, Det. Carter, according to the Complaint, said that someone told him “Chief Drake had just had a conversation with Don Aaron about the matter and that was it. Nothing else happened.”<sup>282</sup>

As stated in Allegation 2(c), this demonstrates the Department’s efforts to cover-up alleged misconduct of higher-ranking employees like Mr. Aaron.<sup>283</sup> Specifically, Allegation 2(c) states that the Department should have formally investigated Mr. Aaron’s alleged misconduct because

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<sup>275</sup> *Id.* at p. 29.

<sup>276</sup> *Id.*

<sup>277</sup> *See id.*; Ex. 9.

<sup>278</sup> Ex. 1 at p. 29.

<sup>279</sup> *See id.*; Ex. 11.

<sup>280</sup> *See* Ex. 1 at p. 29.

<sup>281</sup> *Id.*

<sup>282</sup> *See id.*

<sup>283</sup> *See id.* at pp. 29–30.

the case was not suitable for mediation.<sup>284</sup> And Allegation 2(c) further provides that Mr. Aaron's case is another example of the Department's deficient documentation practices.<sup>285</sup>

**Mr. Aaron's case was inappropriate for mediation and should have been formally investigated.** As mentioned above, the MNPDP Manual distinguishes between preliminary and formal investigations. Unless "the target of the investigation has been identified and disciplinary action is expected or pending," the Manual suggests that the Department does not have to open a formal investigation into the alleged misconduct.<sup>286</sup> "Only minor complaints, as determined by the Director of OPA," moreover "should be considered for referral to mediation."<sup>287</sup> And although the MNPDP Manual does not define "minor complaint[s]," it provides that "[c]omplaints involving attempted or actual use of force or alleging criminal conduct of an officer are **NOT** appropriate for mediation."<sup>288</sup>

The evidence does not indicate that a formal investigation into Mr. Aaron was required. Although the Complaint claims that Det. Carter's preliminary investigation allegedly led him to believe that Mr. Aaron "could have" violated MNPDP policy, the records Butler Snow reviewed do not indicate that disciplinary action against Mr. Aaron was expected or pending.<sup>289</sup> Further, there is no evidence that Mr. Aaron's alleged misconduct involved an attempted or actual use of force—the evidence instead indicates that "there was a heated disagreement" between Mr. Aaron and Mr. Hargett.<sup>290</sup> The Director of OPA, Dir. Morante, moreover, seems to have determined the complaint against Mr. Aaron was minor and thus appropriate for mediation.<sup>291</sup> Butler Snow therefore cannot

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<sup>284</sup> *See id.*

<sup>285</sup> *See id.*

<sup>286</sup> Ex. 2 § 4.10.060(A)(1).

<sup>287</sup> *Id.* § 4.10.030(B).

<sup>288</sup> *Id.* § 4.10.030(C).

<sup>289</sup> *See* Ex. 20; Ex. 21; Ex. 22.

<sup>290</sup> *See* Ex. 21.

<sup>291</sup> *See id.*; Ex. 22; Ex. 1 at pp. 28–29.



conclude that the Department violated internal policy by referring Mr. Aaron's case to mediation and by failing to formally investigate the matter.

**Mr. Aaron's case demonstrates the Department's deficient documentation practices.**

The MNPD Manual also distinguishes between supervisor-initiated investigations and OPA-initiated investigations. The Manual requires supervisors to "document [all] complaints and conduct a proper investigation."<sup>292</sup> For OPA-initiated investigations, the OPA must "[m]aintain a complaint log."<sup>293</sup> But the Manual instructs that the OPA need only "complete an appropriate MNPD form" when the OPA makes "*an investigative finding* that an employee has violated any policy, procedure, rule or regulation of the" MNPD.<sup>294</sup>

Here, it seems the OPA initiated the preliminary investigation into Mr. Aaron. Mr. Davidson created a Matter of Record regarding the "concern . . . expressed to the MNPD" about Mr. Aaron's interaction with Mr. Hargett.<sup>295</sup> Assuming this satisfies the MNPD Manual's requirement for the OPA to maintain a complaint log and because there is no evidence that the OPA made an investigative finding in Mr. Aaron's case, Butler Snow cannot conclude that the Department failed to document the matter under the policies applicable to OPA-initiated investigations.<sup>296</sup>

It is less clear whether the same is true under the policies applicable to mediation referrals. The MNPD Manual provides that "[o]nce mediation has been completed, a mediation outcome form will be emailed to the referring supervisor within 14 days of the completion date."<sup>297</sup> The supervisor must then complete "MNPD Form 312, Complaint Report . . . with a finding of Matter

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<sup>292</sup> Ex. 2 § 4.10.020(G).

<sup>293</sup> *Id.* § 4.10.040(F)(1).

<sup>294</sup> *Id.* § 4.10.040(E).

<sup>295</sup> Ex. 22.

<sup>296</sup> *See* Ex. 2 § 4.10.040(E), (F)(1).

<sup>297</sup> *Id.* § 4.10.030(E)(7).

of Record given to the policy provision.”<sup>298</sup> For successful mediations, documentation of that outcome, in other words “documentation of the complaint, mediation referral form, mediation outcome form, etc. . . . shall be attached to the MNPDP [F]orm 312.”<sup>299</sup> The MNPDP Manual does not provide how to correctly document unsuccessful mediations.

The Complaint alleges that Mr. Hargett declined to mediate this matter.<sup>300</sup> Mr. Davidson allegedly learned about this via an email from the NCRC, which he claims he forwarded to Commander Starling and Dir. Morante while he was temporarily on leave.<sup>301</sup> The MNPDP Manual does not seem to account for this exact scenario. But it suggests that, at a minimum, someone at the Department should have completed a Form 312 “with a finding of Matter of Record” in Mr. Aaron’s case.<sup>302</sup> Butler Snow requested but did not receive a Form 312 in Mr. Aaron’s case.<sup>303</sup> If none exists, then the MNPDP Manual therefore indicates that the Department’s documentation practices in Mr. Aaron’s case may have been deficient.

#### **d. Allegation 2(d)**

Allegation 2(d) raises issues related to how the Department disciplines supervisors accused of poor supervisory performance. According to the Complaint, a violation of the MNPDP Manual’s “Failure to Supervise” provision is seen as “a ‘black-eye’ on a supervisor’s career.”<sup>304</sup> And so, the MNPDP’s alleged “good ole boy” system has led the Department to avoid charging supervisors under this provision.<sup>305</sup> Instead, the Department will often do one of two things: “resolve these

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<sup>298</sup> *Id.* § 4.10.030(E)(8).

<sup>299</sup> *Id.* § 4.10.030(E)(9).

<sup>300</sup> Ex. 1 at p. 29.

<sup>301</sup> *See id.*

<sup>302</sup> *See* Ex. 2 § 4.10.030(E)(8); *see also id.* § 4.10.030(E); *id.* § 4.10.100(C) (simple infractions (i.e., violations of “established standards of conduct or job performance that does not adversely affect the person and/or property rights of others, suggest illegal involvement, or otherwise require formal investigation) can be resolved with a Form 312).

<sup>303</sup> *See* Ex. 10 at ¶ 22.

<sup>304</sup> Ex. 1 at pp. 31–32.

<sup>305</sup> *See id.*

complaints under alternative policy provisions,” or “transfer a high-ranking supervisor to another position or role in the department without actually opening a formal investigation into the conduct believed to warrant the transfer.”<sup>306</sup>

Under the policy provisions discussed above, if the alleged “good ole boy” system is leading to unfair documentation, investigations, and discipline within the Department, then this would violate internal policy.<sup>307</sup> But without more, the Department’s choice to charge an officer under one provision instead of another is not a violation of internal policy.<sup>308</sup> The Department has broad discretion to choose both the appropriate charge and the sanction when the alleged misconduct arguably fits under multiple MNPD Manual provisions.<sup>309</sup>

The MNPD Manual also indicates that the Department may transfer an employee in lieu of other types of discipline. “[T]he Chief of Police or his/her designee shall reserve the right to make transfers without . . . notification when required for the good of the department, or with consent of the affected employee(s).”<sup>310</sup> Following a formal investigation, “[t]he investigating authority may make such additional recommendations it deems necessary to include but not limited to . . . any other recommendation the investigating authority deems relevant[.]”<sup>311</sup> And “[b]ecause no policy can anticipate all possible circumstances, instances may arise where the Chief of Police may find it necessary and appropriate to impose a sanction not recommended by the Disciplinary/Corrective Action Grid.”<sup>312</sup> Under these provisions and those discussed above, it appears the Chief of Police may transfer an employee at any time, including in response to misconduct.

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<sup>306</sup> *Id.*

<sup>307</sup> *See, e.g.*, Ex. 2 § 4.10(B).

<sup>308</sup> *See id.* §§ 4.10(E), 4.10.140(B), (C), 4.10.150(A).

<sup>309</sup> *See id.*

<sup>310</sup> *Id.* § 3.40.080.

<sup>311</sup> *Id.* § 4.10.070(B)(3).

<sup>312</sup> *Id.* § 4.10.280.

That said, internal policy would not allow the Department to transfer an employee to avoid conducting a formal investigation when such an investigation is required under the circumstances.<sup>313</sup> Allegation 2(d) states that “[t]his tactic is,” nevertheless “often used for moving captains, commanders, and above” to avoid “creating a formal, written record.”<sup>314</sup> If this allegation is true, then it would be a violation of internal policy.

Butler Snow has reviewed some information that corroborates this allegation. One interviewee mentioned that there was a “good ole boy” system within the Department when asked about potential bias among the MNPd’s leadership. That interviewee mentioned the Department’s handling of Lt. Tennant, an officer who this interviewee seemed to believe command staff promoted in lieu of discipline. As explained below with respect to Allegation 2(e), however, Lt. Tennant received a three-day suspension for his alleged misconduct. And so, his subsequent promotion does not appear to have been a proxy for discipline.

Butler Snow also requested from the MNPd, “[t]ransfer data for ranks captain and above for 2021 to Present—names of transferees, prior department/position, and new department/position.”<sup>315</sup> In response, Butler Snow received a spreadsheet providing the employees who received a payroll status change between 2021 and 2024.<sup>316</sup> This data included employees who were transferred to new departments in connection with a promotion. For at least Lt. Tennant, the evidence does not suggest that the MNPd promoted and transferred him in lieu of other discipline. And the Complaint does not otherwise provide specific examples of supervisors who avoided a formal investigation by way of a transfer, nor has Butler Snow received any evidence of

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<sup>313</sup> See *id.* § 4.10.100(C) (“Whenever the complaint alleges a simple infraction of established standards of conduct or job performance that does not adversely affect the personal and/or property rights of others, suggest illegal involvement, or otherwise require formal investigation, the supervisor shall report an appropriate conclusion of fact, and the resolution on the MNPd Form 312, Complaint Form.”).

<sup>314</sup> Ex. 1 at p. 32.

<sup>315</sup> See Ex. 10, ¶ 25.

<sup>316</sup> This spreadsheet is attached to this report as **Exhibit 23**.

the same. The investigative team therefore cannot conclude the Department has transferred an employee to avoid an otherwise warranted formal investigation.

**e. Allegation 2(e)**

Allegation 2(e) claims that MNPd command staff outside of the OPA are “overly involved” in OPA’s otherwise independent investigations.<sup>317</sup> This is done, according to Allegation 2(e), to affect the ultimate outcomes of OPA’s investigations.<sup>318</sup> And although the Complaint identifies several investigations that demonstrate command staff’s undue influence in OPA’s investigations, Allegation 2(e) focuses on Lt. Tennant.<sup>319</sup>

Consider first Allegation 2(e)’s general contention that command staff are overly involved in OPA’s investigations. Maybe so, but this seems to be a feature of the MNPd Manual and not a bug. For example, the OPA Director “shall be directly accountable to the Chief of Police and the Mayor for the proper administration, general management, and control of all matters related to the operation of that division.”<sup>320</sup> The Manual also requires that the Chief of Police “be informed through the chain of command about major complaints as soon as possible, and no later than start of the next business day.”<sup>321</sup> OPA, moreover, can “assume concurrent or sole authority for” an investigation, suggesting that command staff could investigate a matter alongside the OPA.<sup>322</sup> And the MNPd Manual requires the involvement of “the Deputy Chief or Director of the employee’s chain of command” when determining the appropriate charge for and ultimate sanctions of alleged misconduct.<sup>323</sup>

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<sup>317</sup> Ex. 1 at p. 34.

<sup>318</sup> *See id.*

<sup>319</sup> *See id.* at pp. 34–36. Those other examples allegedly include Chief Stephens’s case, Commander Newbern’s case, The Covenant School leak case, Insp. Hunsicker, and Dir. Hooper’s case, and Chief Taylor’s case. *See id.* at p. 34.

<sup>320</sup> Ex. 2 § 4.10.040(B).

<sup>321</sup> *Id.* § 4.10.040(C)(4).

<sup>322</sup> *See id.* § 4.10.020(C).

<sup>323</sup> *Id.* §§ 4.10.140(C), 4.10.150(A).

Despite these provisions, the Complaint alleges that the command staff impermissibly influenced the OPA’s investigation into Lt. Tennant. According to Allegation 2(e), Chief Greene wanted to consider Lt. Tennant’s case under the MNPD Manual’s “Responsibility” provision instead of its “Failure to Supervise” provision.<sup>324</sup> Chief Greene allegedly desired this outcome because, based on his personal relationship with Lt. Tennant, he “felt some responsibility” for Lt. Tennant’s “failure to supervise” and did not want such a finding on Lt. Tennant’s record.<sup>325</sup> Accordingly, Chief Greene’s bias in favor of Lt. Tennant purportedly influenced the OPA’s entire investigation and further demonstrates command staff’s unfair treatment of certain employees.<sup>326</sup>

The evidence Butler Snow analyzed does not indicate Chief Greene violated internal policy in Lt. Tennant’s case. First, the OPA sent Lt. Tennant notice of the complaint against him in July 2023 as required by internal policy.<sup>327</sup> This notified Lt. Tennant that the allegations against him could constitute a violation of the MNPD Manual’s “Responsibility” provision.<sup>328</sup> The OPA’s letter made no mention of a possible “Failure to Supervise” violation.<sup>329</sup> After this, the OPA began its investigation. During that investigation, Lt. Tennant proposed a settlement agreement, offering to accept a two-day suspension for violating the MNPD’s “Responsibility” policy in late October 2023.<sup>330</sup> By November 2023, the OPA concluded that Lt. Tennant violated the MNPD’s “Failure to Supervise” policy.<sup>331</sup> Commander Starling then sent the OPA’s conclusions to Chief Greene for approval, along with Lt. Tennant’s settlement offer.<sup>332</sup> The next day, Chief Green amended

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<sup>324</sup> Ex. 1 at p. 34.

<sup>325</sup> *Id.*

<sup>326</sup> *See id.* at pp. 34–35.

<sup>327</sup> See OPA’s Investigative Report into Lt. Tennant (File number: IA2023-00043) at p. 75, which is attached to this report as **Exhibit 24**. *See also* Ex. 2 § 4.10.020(J) (requiring the OPA notify the accused of complaints against them within 10 days of receipt of the complaint).

<sup>328</sup> Ex. 24 at p. 75.

<sup>329</sup> *Id.*

<sup>330</sup> *See id.* at p. 32.

<sup>331</sup> *Id.* at p. 30.

<sup>332</sup> *See id.*

the OPA’s recommended charge against Lt. Tennant to a violation of the MNPDP’s “Responsibility” policy with a three-day suspension.<sup>333</sup> Lt. Tennant signed a settlement agreement to that effect a few days later.<sup>334</sup>

Considering this timeline and the MNPDP Manual’s relevant provision, Butler Snow cannot conclude the Department violated internal policy in Lt. Tennant’s case. The Department has broad discretion to choose an employee’s ultimate charge and discipline “[w]hen conduct is determined to fall within multiple policies, rules, or procedures, and/or may be charged under multiple categories.”<sup>335</sup> So even if Lt. Tennant could have been charged under the “Failure to Supervise” provision, internal policy did not forbid his charge under the “Responsibility” provision instead. What is more, the MNPDP Manual encourages the Department to settle “as many cases as possible . . . without a formal hearing.”<sup>336</sup> Chief Greene’s conduct could therefore be seen as furthering that policy, considering Lt. Tennant’s settlement offer. At bottom, the evidence does not indicate that Chief Greene only amended the OPA’s recommended charge in Lt. Tennant’s case for an impermissible purpose.

## f. Allegation 2(f)

The Complaint next alleges that the MNPDP avoids scrutiny by prioritizing oral communication over written communication and by failing to document supervisor misconduct.<sup>337</sup> Allegation 2(f) further states that this is a department-wide issue and points to Chief Gilder’s management of Chief Stephens’s case as an example.<sup>338</sup> According to Mr. Davidson, Chief Gilder allegedly stated that he “didn’t want to create more of an email trail because I’m 99% sure that

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<sup>333</sup> *Id.* at p. 29.

<sup>334</sup> *Id.* at pp. 21–23.

<sup>335</sup> *See* Ex. 2 § 4.10.140(B).

<sup>336</sup> *Id.* § 4.10.160(E)(1).

<sup>337</sup> Ex. 1 at pp. 36–37.

<sup>338</sup> *See id.* at p. 37.



we'll end up on a lawsuit with Newbern" and that "the phone is our friend" during a phone conversation about Chief Stephens's case.<sup>339</sup>

As explained above, the MNPB Manual requires formal documentation of things like complaints, investigations that result in discipline, and corrective actions.<sup>340</sup> The relevant provisions, however, do not describe how that documentation must be done or what it must include. The Department's internal policies therefore do not appear to forbid investigating personnel from opting for oral communication over written communication if the necessary documentation is completed as required. So even if Allegation 2(f) is true, Butler Snow cannot conclude it alleges a policy violation.

## g. Allegation 2(g)

Allegation 2(g) states simply that the Department mishandles "matters of integrity."<sup>341</sup> In other words, the Department is allegedly not charging certain officers under the MNPB's "Honesty and Truthfulness" policy even when circumstances warrant such a violation.<sup>342</sup> And Allegation 2(g) offers several examples of officers who lied about damaging or misusing their department-issued vehicles.<sup>343</sup>

There is no doubt that the examples Allegation 2(g) points to involve misconduct that could be considered a violation of the MNPB's "Honesty and Truthfulness" policy.<sup>344</sup> But as mentioned above, the MNPB Manual allows command staff to use their discretion when misconduct arguably falls under multiple, different policy violations.<sup>345</sup> Lying by an officer could be considered a

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<sup>339</sup> *Id.*

<sup>340</sup> *See, e.g.,* Ex. 2 §§ 4.10.020(C),(G), 4.10.040(E), 4.10.180(B).

<sup>341</sup> Ex. 1 at pp. 38–41.

<sup>342</sup> *See id.*

<sup>343</sup> Specifically, the Complaint points to the MNPB's investigation into and charging of Officer Bryan Myatt, Officer Rico Hunt, and Officer George Poulos. *See id.*

<sup>344</sup> *See* Ex. 2 § 4.20.040(H) ("Truthfulness shall apply when an employee knowingly or intentionally makes a materially false statement.").

<sup>345</sup> *See id.* §§ 4.10(E), 4.10.140(B).

violation of the “Honesty and Truthfulness” policy. It could also be seen as conduct unbecoming of a member of the Department, which is a separate policy violation.<sup>346</sup> Butler Snow therefore cannot conclude that Allegation 2(g) states a violation of internal policy.

## h. Allegation 2(h)

Allegation 2(h) reiterates issues with the Department’s purported inconsistent sanctioning of employee misconduct. Specifically, this allegation states that “[c]urrent departmental disciplinary practice lacks proportionality, reasonableness, fairness, and consistency in sanctioning misconduct.”<sup>347</sup> And Allegation 2(h) offers several examples of MNPd investigations that, according to the Complaint, demonstrate the inconsistencies across the Department.<sup>348</sup>

In this allegation, Mr. Davidson seems to concede that the MNPd Manual affords command staff discretion in how they investigate and sanction employees accused of misconduct. He offers many ideas on the flaws of the system in its current form, and he argues that the discretion afforded to command staff that has allowed inconsistent application of the Department’s discipline policies should be curtailed. But Mr. Davidson is correct—as described above, internal policy gives command staff broad discretion when investigating, charging, and disciplining their employees. Allegation 2(h), therefore, does not raise a potential violation of internal policy.

## i. Allegation 2(i)

According to Allegation 2(i), internal issues and disagreements amongst command staff has led to officers receiving sanctions different from those on which the officers initially agreed. Put differently, this allegation claims that command staffs’ internal disputes have led to “several

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<sup>346</sup> *See id.* § 4.20.040(D) (“Employees shall at all times conduct themselves in a manner which does not bring discredit to themselves, the Department or the City.”).

<sup>347</sup> Ex. 1 at pp. 41–43.

<sup>348</sup> Specifically, the Complaint points to the MNPd’s investigation into and charging of Detective Richard Hyatt, Officer Bryan Myatt, Officer Rico Hunt, Officer George Poulos, and Lt. Tennant. *See id.*

instances of officers agreeing with and signing for sanctions, only to have those sanctions overturned and increased later.” Allegation 2(i) then provides the following individuals as examples of officers who were allegedly told they would receive certain sanctions only to receive heightened sanctions at the conclusion of their case: Sergeant Brett Kenney, Lieutenant Robert Durbin, Officer Sean Herman, and Officer Johnathan Carlisle.

The MNPD Manual describes when the Department’s investigations are considered complete. For corrective or disciplinary actions, resolution of those matters “will not be complete and final until the Chief of Police has approved the MNPD Form 313.”<sup>349</sup> Settlements, moreover, “can occur at any point between the receipt of the complaint and before the conclusion of a Disciplinary Hearing Advisory panel.”<sup>350</sup> Given the discretion afforded command staff to determine the appropriate sanctions in a given matter and the Department’s preference for settlements, command staff would not necessarily violate internal policy by changing their sanction-related decisions before the conclusion of a case.

Allegation 2(i) does not point to any instance of command staff increasing an officer’s sanction after the Chief of Police approved their Form 313. If that happened, then that would appear to violate the policy described above. Allegation 2(i) instead provides examples of officers who command staff allegedly told would receive a particular sanction only to later receive a different sanction before their case concluded. Even if this were true, it does not appear to violate internal policy. What is more, none of the documents Butler Snow reviewed related to the examples provided above support this allegation except for those in Officer Carlisle’s case.

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<sup>349</sup> Ex. 2 § 4.10.190(B).

<sup>350</sup> *Id.* § 4.10.170(B)(13).

The OPA began investigating Officer Carlisle after receiving allegations that he failed to properly investigate an incident involving a stabbing victim.<sup>351</sup> The OPA concluded that Officer Carlisle violated the MNPDP Manual’s “Official Obligations” policy for his deficient or inefficient performance of his duties.<sup>352</sup> Emails from August 2022 between Commander Rickey Bearden, Captain Lee Kendall, and Chief Greene indicate that they all agreed Officer Carlisle should receive a 10-day suspension with a 48-month retention period.<sup>353</sup> By April 2023, however, Officer Carlisle agreed to a 30-day suspension and an irrevocable resignation by signing a settlement agreement and a Form 313 to that effect.<sup>354</sup> Although the records in Officer Carlisle’s case do not explain what changed between August 2022 and April 2023, accused employees may always voluntarily enter such settlement agreements.<sup>355</sup> Assuming Officer Carlisle was not under any undue influence when he signed his settlement agreement and Form 313, there is no evidence of a policy violation in Allegation 2(i).

## **B. Allegation 3**

Mr. Davidson claims that MNPDP’s annual evaluation system is flawed. According to Mr. Davidson, supervisors are discouraged from giving poorly performing officers failing scores or are instructed to change scores.<sup>356</sup> Mr. Davidson alleges that because of “internal departmental pressures,” poor performers are “‘marked down the middle’ as ‘2’s’ rather than giving specific, meaningful scores which reflect actual performance[.]”<sup>357</sup> This allows such evaluations to be used as proof that an officer has met the standards in arguments for sanctions or other actions.<sup>358</sup>

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<sup>351</sup> See OPA’s Investigative Report into Officer Carlisle (File number: IA2022-00014) at p. 22, which is attached to this report as **Exhibit 25**.

<sup>352</sup> Ex. 25 at p. 29.

<sup>353</sup> *Id.* at pp. 31–33.

<sup>354</sup> *Id.* at pp. 4–9.

<sup>355</sup> See Ex. 2 § 4.10.170(B)(13).

<sup>356</sup> Ex. 1 at p. 45.

<sup>357</sup> *Id.* at p. 46.

<sup>358</sup> *Id.*

Additionally, Mr. Davidson claims that lower-ranking supervisors are hesitant to give low scores for fear they will affect an officer's pay.<sup>359</sup> Mr. Davidson cites two "notable cases": Officer Brian Woodard, who Mr. Davidson evaluated, and Officer Frederick Ware, who was evaluated by Lieutenant James Williams.<sup>360</sup> Mr. Davidson claims the following cases "may serve as examples of how the annual evaluation process fails": Monica Blake, Eric Harvey, Robert Fondren, Johnny Cantrell, civilian Lawanna Coleman, and Citaly Gomez.<sup>361</sup> Before discussing these cases, this Report explains and summarizes MNPd's annual evaluation process, as well as MNPd's use of Job Performance Improvement Plans.

## **1. Annual Evaluation Process**

MNPd employees are evaluated at least annually.<sup>362</sup> Employees are rated on how efficiently they meet the standards of performance, which are based on the requirements of the position and serve as "the minimum level of performance expected after a reasonable period of training for a fully qualified, competent and acceptable employee."<sup>363</sup> All evaluations must also include a nationwide criminal history (Triple I) check.<sup>364</sup> Evaluations provide employees with feedback on job performance, help them improve future performance, and document performance for several purposes:

- Complete probation or work test;
- Determine whether an employee's performance meets the required standard to proceed to the next pay increment;
- Determine eligibility for promotions and advancement;

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<sup>359</sup> *Id.*

<sup>360</sup> *Id.* at p. 45.

<sup>361</sup> *Id.*

<sup>362</sup> Ex. 2 § 3.10.020.

<sup>363</sup> *Id.*

<sup>364</sup> *Id.* § 3.10.050(F).

- Assist in layoff actions;
- Determine reemployment eligibility; and
- Facilitate Human Resources decisions guided by employee performance.<sup>365</sup>

The evaluation process consists primarily of the rater, reviewer, and employee. The rater, as an employee's immediate supervisor, communicates work expectations to an employee and discusses the employee's performance on an ongoing basis.<sup>366</sup> The rater is responsible for counseling an employee on areas of improvement when needed, which ensures that the first time an employee learns of unsatisfactory performance is not during the annual evaluation.<sup>367</sup> The reviewer is generally the rater's immediate supervisor and is responsible for reviewing evaluations for compliance with the standards set out in applicable guidelines and consistency in application of those guidelines.<sup>368</sup> The reviewer should also discuss job expectations and employee performance with the rater on an ongoing basis.<sup>369</sup> The reviewer does not change the rater's evaluation unless objective documentation supports the change, but the reviewer must confer with the rater prior to any change.<sup>370</sup> Once an evaluation is complete, the employee and rater review the evaluation and the employee signs.<sup>371</sup> A signature does not mean that the employee agrees or disagrees with the evaluation, but refusal to sign may lead to direct instruction from an authoritative source to comply, and subsequent refusal may lead to corrective or disciplinary action.<sup>372</sup> To ensure the evaluation process runs smoothly, all supervisors must attend performance

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<sup>365</sup> *Id.* § 3.10.040(A).

<sup>366</sup> *Id.* § 3.10.040(B)(1).

<sup>367</sup> *Id.*

<sup>368</sup> *Id.* § 3.10.040(B)(2).

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> *Id.* § 3.10.040(B)(3).

<sup>372</sup> *Id.*

evaluation training, and civilian supervisors receive ongoing performance evaluation training.<sup>373</sup>

Employees are rated on the following scale:

- 1 – Needs improvement. “Performance does not meet minimum acceptable standards, expectations, and requirements of the job, or is below what can be expected of average performance. Employee requires a high level of supervision or assistance to accomplish work results. Improvement is necessary to meet desired level of performance results.”<sup>374</sup>
- 2 – Successful. “Performance meets acceptable standards, expectations, and requirements. Performance contributes what is expected of a qualified, experienced employee performing in this position.”<sup>375</sup>
- 3 – Exceptional. “Consistently meets standards and expectations, regularly exceeds them, and shows initiative in additional assignments. Successfully completes all responsibilities, even for projects that require versatile skills. Employee strives to grow professionally through development activities.”<sup>376</sup>

For a rating of “needs improvement” or “exceptional,” the rater must include a written explanation of the deficiency and suggestions for improvement or explanation of exemplary performance.<sup>377</sup>

Employees must also be informed of “any incidents of marginal or unsatisfactory performance,” and such incidents must be documented on the evaluation form.<sup>378</sup>

When an employee’s performance is rated less than acceptable on his or her annual performance evaluation, the supervisor must complete a JPIP.<sup>379</sup> A JPIP is a “written plan designed to address unsatisfactory and/or below standard employee performance and/or behavior with clearly defined performance objectives and established timelines for improvement to assist the employee in obtaining an acceptable standard of performance.”<sup>380</sup> A JPIP may also be used any

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<sup>373</sup> *Id.* § 3.10.040(D).

<sup>374</sup> *Id.* § 3.10.050(E)(2)(a).

<sup>375</sup> *Id.* § 3.10.050(E)(2)(b).

<sup>376</sup> *Id.* § 3.10.050(E)(2)(c).

<sup>377</sup> *Id.* § 3.10.050(E)(3).

<sup>378</sup> *Id.* § 3.10.050(E)(5).

<sup>379</sup> *Id.* §§ 3.10.050(H)(1), 3.20.010.

<sup>380</sup> *Id.* § 3.20.020.



time an employee's performance falls below an acceptable standard,<sup>381</sup> and written notice<sup>382</sup> of unsatisfactory performance must be provided to an employee at least 90 days before the end of the annual rating period.<sup>383</sup> Although a JPIP is generally used before disciplinary or corrective action is required, an employee may be required to participate in a JPIP in addition to sanctions from a disciplinary or corrective action.<sup>384</sup> An employee's failure to complete the terms and conditions of a JPIP is grounds for corrective and/or disciplinary action plus sanctions up to and including termination.<sup>385</sup> Several items are included in a JPIP:

- All methods, discussions, etc. to be used in meeting objectives and observations of performance that led to the JPIP.
- Identification of each area in which the employee does not meet acceptable performance and the nature of the employee's deficiencies.
- Discussion of each area in which improvement is needed and attempt to reach mutual agreement on nature and severity of any deficiency.
- Determination of mutually agreed course of action to increase and improve performance.
- Controls by which progress will be measured.
- Time frames for follow up, but a JPIP should not exceed six months under any circumstances.<sup>386</sup>

If an employee changes assignments before completing a JPIP, the JPIP follows the employee to the new assignment.<sup>387</sup> The originating supervisor is responsible for informing the

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<sup>381</sup> It is up to supervisors to determine when it is "appropriate to move from the verbal to written level in working to improve the employee's performance in situations that are not related to corrective or disciplinary action." *Id.* § 3.20.050.

<sup>382</sup> According to the MNP Manual, "[i]t is important that any conversations and/or actions related to an employee's performance be documented by the supervisor." *Id.*

<sup>383</sup> *Id.* §§ 3.10.050(H)(1)–(2), 3.20.010.

<sup>384</sup> *Id.* § 3.20.010.

<sup>385</sup> *Id.*

<sup>386</sup> *Id.* § 3.20.040(A)–(G).

<sup>387</sup> *Id.* § 3.20.040(K).

new supervisor of the JPIP, but if the new assignment does not require the same responsibilities that led to the JPIP, the old and new supervisors may together determine whether the JPIP should be continued.<sup>388</sup> If an employee's unsatisfactory performance continues after completing all the provisions outlined in the JPIP, the formal disciplinary process begins.<sup>389</sup>

## 2. Exemplar Cases Provided by Mr. Davidson

### a. Officer Brian Woodard

Butler Snow reviewed evaluations for Officer Woodard covering December 2016 to December 2018. While a few of the evaluations included 2s and were “marked down the middle,” others had a mix of 2s and 3s, with one evaluation featuring 1s.<sup>390</sup> Officer Woodard had several issues, including an at-fault traffic incident while on duty, failure to submit overtime and notify his supervisor of same, and performance of an improper felony traffic stop.<sup>391</sup> Mr. Davidson himself put Officer Woodard on a JPIP, and his subsequent supervisor determined that Officer Woodard fulfilled the JPIP requirements.<sup>392</sup>

Mr. Davidson alleges that Human Resources had issues processing Officer Woodard's failed evaluation, resulting in a failure to “retain[] or institute[]” Officer Woodard's failing score.<sup>393</sup> Mr. Davidson also claims that Woodard's JPIP was not “fully supervised or implemented by [Woodard's] new chain of command.”<sup>394</sup> Such failures allowed Officer Woodard to stay with MNPd, though he was later arrested on sexual battery charges.<sup>395</sup>

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<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

<sup>390</sup> The MNPd's Employee Performance Evaluation of Brian Woodard is attached to this Report as **Exhibit 26**.

<sup>391</sup> Ex. 26 at pp. 15, 34–35.

<sup>392</sup> *Id.* at pp. 61–62.

<sup>393</sup> Ex. 1 at p. 46.

<sup>394</sup> *Id.*

<sup>395</sup> *Id.* The MNPd's February 2022 press release on Officer Woodard is attached to this Report as **Exhibit 27**.

The fact that Officer Woodard was later criminally convicted of a crime that had nothing to do with his performance as noted on his evaluations is irrelevant and has nothing to do with the fact that he continued working for MNPD even after receiving poor evaluations. There is no documentation of any issues with processing any of Officer Woodard's evaluations, nor is there any documentation that Officer Woodard's JPIP was not applied and followed. To the contrary, documents provided by MNPD show that Officer Woodard completed the requirements of his JPIP.<sup>396</sup> Even if what Mr. Davidson alleges was true, it is not a policy violation to give someone straight 2s on their evaluation. This is especially true when other evaluations for the same employee show a variety of scores. If anything, the use of straight 2s may mean that a specific supervisor does not understand the rating process. Resolution of any issues with understanding the process can be resolved through the evaluation training that all supervisors are required to attend.

## b. Officer Frederick Ware

Butler Snow reviewed evaluations for Officer Ware covering December 2016 to December 2022. While a few of the evaluations included 2s and were "marked down the middle," others had a mix of 1s, 2s, and 3s.<sup>397</sup> Officer Ware's evaluations cited "issues with completing paperwork in a timely manner" and "low productivity."<sup>398</sup> Officer Ware was put on a JPIP, and in the final JPIP evaluation, Officer Ware's supervisor noted that he continued to struggle with timely paperwork, but he had increased his productivity.<sup>399</sup> Officer Ware's supervisor therefore recommended that he be put in a position that required more supervision.<sup>400</sup> It is not clear whether, as Mr. Davidson alleges, the JPIP was unsuccessful.<sup>401</sup>

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<sup>396</sup> Ex. 26 at pp. 61–62.

<sup>397</sup> The MNPD's Employee Performance Evaluation of Frederick Ware is attached hereto as **Exhibit 28**.

<sup>398</sup> Ex. 28 at pp. 5–6.

<sup>399</sup> *Id.* at p. 9.

<sup>400</sup> *Id.* at p. 10.

<sup>401</sup> *See* Ex. 1 at p. 46.

There is no indication in the documents reviewed that MNPd did not follow its policy when it comes to Officer Ware. He was evaluated, and when his performance was substandard, he was put on a JPIP to improve his performance. The JPIP may well have failed. MNPd policy states that when an employee's unsatisfactory performance continues after completing all provisions outlined in the JPIP, the formal disciplinary process will begin.<sup>402</sup> Officer Ware's supervisor recommended moving him to a different position, but it is unclear if that happened, or if any sort of disciplinary process was started. Regarding Mr. Davidson's allegations that Lt. Williams was pressured into changing Officer Ware's scores so that he would pass the evaluation, the evidence does not reflect this. Even if Mr. Davidson's allegations are true, it is not clear that changing Officer Ware's score would be a violation of MNPd's policies on evaluations, but it could be viewed as a violation of § 4.20.040(H) (Honesty and Truthfulness).<sup>403</sup>

### c. Other Named Officers and Civilians

Butler Snow reviewed several evaluations for Officer Blake, Officer Harvey, Officer Fondren, Officer Cantrell, Coleman, and Officer Gomez. Mr. Davidson's allegations regarding all of these individuals are generic—he merely states that the officers are examples of “how the annual evaluation process fails.”<sup>404</sup> But Mr. Davidson does not explain how the annual evaluation process failed in any of these cases, and there is nothing to suggest MNPd did not follow its policy in each officer's case. The fact that officers received varied marks and some straight 2s does not mean that their supervisors were being pressured to give certain scores or that the scores do not match the employees' performance.

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<sup>402</sup> Ex. 2 § 3.20.040(K).

<sup>403</sup> See *id.* § 4.20.040(H) (“Employees shall be honest and truthful. Truthfulness shall apply when an employee knowingly or intentionally makes a materially false statement. A statement is material when, irrespective of its admissibility under the rules of evidence, it could have affected the course or outcome of an investigation, an official proceeding, or any inquiry regarding employment or job-related duties or responsibilities.”).

<sup>404</sup> Ex. 1 at p. 45.

In his complaint, Mr. Davidson says, “I believe it is sufficient that successful employees are retained and coached on additional steps they can take to further improve their performance. Similarly, it is sufficient that poor performing (failing/unsuccessful) employees are placed on a [JPIP] which must be successfully passed or be terminated.”<sup>405</sup> Although the examples cited by Mr. Davidson may not have supported his contention, Butler Snow’s interviews did yield evidence supporting Mr. Davidson’s position here. At least one interviewee told the investigative team that it is easier to avoid evaluating employees harshly. This interviewee also expressed that many supervisors have concerns regarding evaluating employees in a matter that might negatively impact their compensation.

## **C. Allegation 4**

Allegation 4 discusses the MNPDP’s purported involvement in the drafting of Tennessee’s Senate Bill 0591/House Bill 0764 (the “Legislation”).<sup>406</sup> Because the Legislation was meant to “reduce the Metro Nashville Community Oversight and Community Oversight Board’s ability to operate and hold the MNPDP accountable,” Allegation 4 claims that the Department’s involvement “is further proof of a greater trending problem with MNPDP leadership’s disciplinary practices.”<sup>407</sup>

Mr. Davidson’s allegations related to the Legislation fall into three main categories. First, he alleges that, although their efforts were supported by MNPDP leadership, Chief Gilder and Chief Hagar primarily violated the public’s trust by secretly assisting the lawmakers who drafted the Legislation.<sup>408</sup> Second, he alleges that the Department’s efforts to avoid public accountability is further evidenced by internal plans not to replace OPA Director Morante with another civilian

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<sup>405</sup> *Id.* at p. 47.

<sup>406</sup> *Id.* at pp. 50–52.

<sup>407</sup> *Id.* at p. 50.

<sup>408</sup> *Id.*

director once she retires.<sup>409</sup> According to Mr. Davidson, Director Morante is a civilian prosecutor who the MNPd hired to introduce an “outside, non-police mindset” at handling officer misconduct.<sup>410</sup> Third, he essentially alleges that the MNPd’s leadership has conspired to eliminate both external and internal mechanisms of addressing and providing public accountability for police misconduct.<sup>411</sup> Each allegation is considered in more detail below.

## 1. Chief Gilder’s and Chief Hagar’s Involvement with the Legislation

According to the Complaint, both Chief Gilder and Chief Hagar have historically led the Department’s response to inquiries from the Nashville Community Oversight Board (“COB”).<sup>412</sup> So it was an “unethical conflict of interest” and a “betrayal of public trust” for Chief Gilder and Chief Hagar to secretly assist with legislation meant to both “curb oversight” of the Department and to “reduce accountability to its stakeholders.”<sup>413</sup>

The MNPd Manual limits when and how its employees may engage in political activity. According to the Manual, MNPd employees “shall not engage in any political activity when acting as an agent of the department, attired in the uniform of the department or displaying any credential or insignia of the department.”<sup>414</sup> But the MNPd Manual also states that none of its rules “shall prevent employees from engaging in the free expression of political speech in their capacities as private citizens, or the rights of fraternal or employee organizations to endorse political candidates or express views on political issues or other matters of public concern.”<sup>415</sup>

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<sup>409</sup> *Id.* at p. 51.

<sup>410</sup> *Id.*

<sup>411</sup> *See id.* at pp. 50–52.

<sup>412</sup> *See id.* at p. 50.

<sup>413</sup> *See id.*

<sup>414</sup> Ex. 2 § 4.20.040(EE)(1).

<sup>415</sup> *Id.* § 4.20.040(EE)(3).

At the same time, the Department's first goal is this: "provide fair, efficient service to all our citizens."<sup>416</sup> The first paragraph of the MNPD Manual's section on employee discipline and corrective action is helpful here:

The effectiveness of a law enforcement agency and its members depends upon community respect and confidence. The first goal of our department is to provide fair, efficient service to all our citizens consistent with our established mission statement, policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government. To advance the mission, it is vitally important that all departmental employees conduct themselves in a manner demonstrating unquestionable integrity, reliability, and honesty. Whether interacting with citizens, testifying in any court or legal proceeding, or providing information in any official setting, the success of a law enforcement agency rests upon the reliability of the member representing that agency. Therefore, all members sworn and civilian must conduct themselves in a manner consistent with policies, procedures, rules, regulations, ethical codes, and administrative or executive orders as established by the department or Metropolitan Government. Complete candor and fully truthful responses are required when employees are providing information or responding to inquiry related to any official duty. Employees must further demonstrate the professional integrity expected of them by the public in their behavior. Recognizing that a fundamental and unequivocal duty of all employees is to promote the efficient and effective operation of department and government operation through the pursuit of lawful objectives, any conduct which detracts from this respect and confidence is detrimental to the public interest. It is equally detrimental to the effectiveness of the department, the efficiency of department operations and the morale of all members. Such behavior is, therefore, prohibited under applicable departmental policy. When circumstances suggest that a member has engaged in prohibited conduct, it is the policy of the department to investigate and impose disciplinary action when appropriate.<sup>417</sup>

Additionally, MNPD employees must "at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City. Conduct that is inconsistent with the provisions within this policy shall be considered a violation."<sup>418</sup>

This allegation presents a conflict between the Department's policies outlined above. On the one hand, the Department's political activity policy allows officers to freely engage in political

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<sup>416</sup> *Id.* § 4.10(A).

<sup>417</sup> *Id.*

<sup>418</sup> *Id.* § 4.20.040(D)(3).



speech and expression in their capacity as private citizens.<sup>419</sup> This would include an officer's ability to do so through organizations like the Fraternal Order of Police. Accordingly, Butler Snow cannot conclude that Chief Gilder or Chief Hagar violated the MNPd's policy on political activities unless they engaged in such activities while "acting as an agent of the department, wearing a Department uniform, or "displaying any credential or insignia of the department." On the other hand, the Department aims "to provide fair, efficient service to all [its] citizens" and "to promote the efficient and effective operation of department and government operation." One way the MNPd aims to do this is by "fairly and impartially" investigating "all complaints about employee misconduct to determine the validity of allegations," through various mechanisms.

Butler Snow's investigation did not uncover any evidence that Chief Gilder or Chief Hagar participated in drafting and/or supporting the subject legislation. In fact, both Chief Gilder and Chief Hagar categorically denied any involvement/participation in the legislative process. It is widely known that Chief Gilder's and Chief Hagar's duties include researching new legislation and providing an annual update to the Department to the extent that any new legislation has the potential of impacting MNPd's operations.

When Butler Snow conducted the individual interviews of Chief Gilder and Chief Hagar, each stated that any work/update provided regarding the 2023 COB legislation would have been in conjunction with performing their duties to inform and educate the MNPd regarding legislation that will impact the Department's duties and/or operations. Accordingly, Butler Snow obtained copies of the internal legislative updates prepared in 2023, 2024, and 2025.<sup>420</sup> The investigators

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<sup>419</sup> This also aligns with federal law, as the First Amendment typically prevents government employers from unnecessarily restricting their employees who speak on matters of public concern as private citizens. *See Garcetti v. Ceballos*, 547 U.S. 410, 418–19 (2006) ("So long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively.").

<sup>420</sup> The annual legislative updates for 2023, 2024, and 2025 are attached to this Report as collective **Exhibit 29**.

reviewed and analyzed the 2023 legislative update and did not find any reference to the subject legislation. Accordingly, the investigative team followed up with Chief Gilder to learn more about the COB legislation's omission from the Department's 2023 legislative update.

During this second meeting, Chief Gilder told investigators that he was not surprised that the 2023 legislative update did not mention the COB legislation. When asked why, he stated that the update is intended to educate MNPd patrol officers on new laws that may impact their day-to-day policing. And, since the COB legislation would have impacted OPA officers, not patrol officers, there would have been no need to include any reference to it in the 2023 legislative update.

## **2. The Department's Plan Not to Hire Another Civilian OPA Director**

Mr. Davidson also describes the alleged motivations behind the Department's hiring and decision not to retain a civilian OPA director. According to the Complaint, the MNPd appointed Director Morante, a civilian prosecutor, to lead the OPA "as a compromise and effort to ward off Nashville getting a" COB and "avoid greater external accountability." But because such a deterrent "is no longer necessary," Mr. Davidson alleges his belief that "the plan is to not re-staff her position."

Neither the MNPd Manual nor the OPA Manual require the director of the OPA to be a civilian. The OPA Manual simply states that the Chief of Police must appoint the OPA director, and it describes the director's duties. The mere fact that MNPd leadership planned not to replace Director Morante with another civilian leader after she retires or otherwise left the OPA does not appear to violate internal policy. For the record, Director Morante was transferred out of OPA to another MNPd area in 2024 and was not replaced by a civilian.

### **3. The MNPB Leadership's Conspiracy to Avoid Public Scrutiny**

In sum, Allegation 4 claims that the MNPB's leadership conspired to eliminate both external and internal mechanisms of addressing police misconduct to avoid public accountability. Specifically, Mr. Davidson alleges that leadership did so by: (1) eliminating the Nashville COB through assisting the drafting and passing of the Legislation; (2) interfering with internal investigations and their outcomes for unjustified, non-factual and non-policy reasons; (3) failing to keep records; (4) appointing a favorable ranking OPA officer (i.e., Commander Starling) to facilitate command staff's reach into OPA's operations; and (5) intending to eliminate the civilian OPA director position once Director Morante left that role.

Such conduct, if true, would violate internal policy. Under the provisions discussed above, the Department's "first goal" is to provide "fair" and "efficient service to" Nashvillians. This is done in part through fair and impartial investigations of MNPB employees who are accused of misconduct. "Any department employee who observes or becomes aware of any act of misconduct by another member of the government shall immediately report the incident to their immediate supervisor or the most appropriate" person. "Failure to report such activity is considered misconduct and" is "subject to administrative investigation and sanctions."

If MNPB leadership did, in fact, conspire to eliminate both internal and external means of holding its police officers accountable, then those in the conspiracy likely violated Department policy. That said, such conspiracies are difficult to prove. And the information Butler Snow reviewed during this investigation did not include any explicit indications that MNPB leadership took the actions described in the Complaint for the purpose of avoiding public accountability. Without corroborating evidence, Mr. Davidson's Allegation 4 contentions are merely conjecture.

**D. Allegation 5**

Mr. Davidson alleges that “a detrimental reduction in training hours for recruits in the training academy and in the field training program [] jeopardizes the training new officers receives [sic], as well as overall departmental operations and employee performance[.]”<sup>421</sup> According to Mr. Davidson, the training academy used to be 23 weeks long, but it has been reduced to 19 weeks.<sup>422</sup> Additionally, the field training program has reduced the time new recruits spend riding along with a Field Training Officer (“FTO”), which limits the amount of time recruits spend learning how to apply their knowledge, skills, and abilities (“KSAs”) on the job.<sup>423</sup> Lateral officers receive about 4 weeks of field training.<sup>424</sup>

According to Mr. Davidson, MNPDP maintains that even though training timelines have been reduced, training standards have not been lowered.<sup>425</sup> Mr. Davidson concedes that MNPDP meets Tennessee Post Commission<sup>426</sup> requirements<sup>427</sup> but argues that non-critical items removed from the training curriculum could be replaced with “additional training in core skills, such as: de-escalation, use of force, vehicle operation, body-worn camera practices and procedures, role-playing scenarios, firearms instruction, traffic stops, and routine but complex incident types, such as domestic violence or DUI investigation.”<sup>428</sup> According to Mr. Davidson, changes in MNPDP training have had “a direct impact on officers’ ability to learn, retain, and apply policy, procedures, and training” such that “it should come as no surprise that officers will commit violations of procedures and training, especially on tasks requiring more complex KSA’s.”<sup>429</sup> For this reason,

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<sup>421</sup> Ex. 1 at p. 52.

<sup>422</sup> *Id.* at p. 53.

<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

<sup>425</sup> *Id.*

<sup>426</sup> The full name is the Peace Officer Standards and Training Commission.

<sup>427</sup> See *infra* for a discussion of the Post Commission requirements.

<sup>428</sup> *Id.*

<sup>429</sup> Ex. 1 at p. 54.

Mr. Davidson proposes that MNPDP update its disciplinary policy to include a “training required” investigative finding and add “remedial training” to the Grid as a possible sanction.<sup>430</sup> Still, Mr. Davidson recognizes that some officers will struggle regardless of their training, which speaks to one advantage of the training academy and field training program: they offer opportunities to evaluate new employees and identify any indication that a trainee will be a problematic employee in the future.<sup>431</sup> Mr. Davidson also encourages MNPDP to “do more to ensure that FTO’s who are not fulfilling their roles be removed from their role quickly”<sup>432</sup> because the failure to properly train new officers<sup>433</sup> can lead to them developing bad behaviors that may surface later in their careers.

Under § 17.10.010 of the MNPDP Manual, a training committee is appointed to assist the Training Division Academy staff in developing and evaluating training needs. The Training Division provides an instruction program for newly hired officer candidates, which should include fundamental law enforcement skills and knowledge and is known as the “Basic Police Course.”<sup>434</sup> The Course must meet or exceed Tennessee Post Commission requirements. Under the Post Commission requirements, a “Basic Law Enforcement Course” (hereinafter the “Basic Police Course”) is defined as “the minimum course of study and instruction required for certification of a law enforcement officer.”<sup>435</sup> The Basic Police Course includes instruction on fundamental law enforcement skills and knowledge.<sup>436</sup> It must include a minimum of 488 hours of instruction and study, and the curriculum must include the following elements:

- Each topic of instruction “shall have specifically defined training objectives.”
- Each topic of instruction “shall be defined in a scope” that “shall broadly describe the key teaching points that are to be covered.”

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<sup>430</sup> *Id.*

<sup>431</sup> *Id.* at p. 53.

<sup>432</sup> *Id.*

<sup>433</sup> *Id.* at p. 54.

<sup>434</sup> Ex. 2 § 17.10.050.

<sup>435</sup> Tenn. Comp. R. & Regs. 1110-01-.01(3).

<sup>436</sup> *Id.* 1110-03-.01(1).

- Each topic of instruction “shall be assigned a minimum amount of time.”<sup>437</sup>

Instructional methods must “help ensure successful achievement of the established training objectives,”<sup>438</sup> and each academy must develop a testing system.<sup>439</sup> Out of the 488 hours of instruction and study, 20% of the total class hours can be taught in a seminar setting.<sup>440</sup> A minimum score of 75% is required to successfully complete each component.<sup>441</sup>

The required components and minimum hours are as follows:<sup>442</sup>

Topic	Hours
Firearms	48
Emergency Medical Training	10
Patrol Procedures	120
Interpersonal Communications	25
Professional and Ethical Conduct	3
Physical Defense Tactics	48
Criminal and Constitutional Law and Procedures	50
Written Communications	10
Human Relations	30
Law Enforcement Stress	9
Administration	6
Emergency Vehicle Operations	48

<sup>437</sup> *Id.* 1110-03-.01(1)(a)–(b).

<sup>438</sup> *Id.* 1110-03-.01(1)(c).

<sup>439</sup> *Id.* 1110-03-.01(1)(f).

<sup>440</sup> *Id.* 1110-07-.01(1)(a).

<sup>441</sup> *Id.* 1110-07-.01(1)(b).

<sup>442</sup> *Id.* 1110-07-.01(1)(b). Rule 1110-07-.01 further breaks down the specific topics that must be taught within each training component.

National Safety Council Defensive Driving Course or comparable safety-related course	None Listed
Community Policing	16

Newly hired candidates must complete the program prior to routine assignment “in which the candidate is allowed to carry a weapon or is in a position to make an arrest, except as part of a formal field training program.”<sup>443</sup> Specialized training, which “exceeds or is required to fulfill the training needs of personnel beyond the general in-service level, may also be provided as needed.”<sup>444</sup> The Training Director and FTO are to “conduct periodic review to determine if the number of FTOs is sufficient to appropriately train the number of officers graduating from the Training Academy.”<sup>445</sup> Even though an FTO is responsible for training and oversight of the officers assigned to them, they are not considered a “supervisor” as referenced in the Manual.<sup>446</sup>

The Basic Police Course focuses on achieving “the highest level of professional law enforcement performance” through training in law, ethics, fitness, and community service.<sup>447</sup> The course “is guided by minimum requirements” of the Post Commission.<sup>448</sup>

In its analysis, Butler Snow compared the 19-week course (“Session 106” and “Session 110”) with the 23-week course (“Session 95”). Of note, Commander Tiffany Gibson, who is the current Director of Training, explained that “the curriculum is based off training hours for each course which approximates out to a number of weeks. Each training session will have a different number of weeks when you put it on a calendar due to holidays being observed even though they

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<sup>443</sup> *Id.*

<sup>444</sup> Ex. 2 § 17.10.060.

<sup>445</sup> *Id.* § 17.10.070.

<sup>446</sup> *Id.* This section also covers FTO applications, qualifications, and courses required for FTO candidates. The MNPD Manual does not identify the makeup of the field training program.

<sup>447</sup> See the MNPD Training Academy, Basic Police Curriculum: Session 106 at p. 2, which is attached hereto as **Exhibit 30**.

<sup>448</sup> Ex. 30 at p. 2.



had the same training courses.”<sup>449</sup> With that in mind, Session 106 was about 22 weeks long, and Session 110 was about 23 weeks long.<sup>450</sup> Additionally, there were differences in 2023 (Session 106) and 2024 (Session 110) because in 2023, some training hours were completed during FTO time, rather than academy time.<sup>451</sup> Classes completed while in the Field Training program were Mobile Field Force (16 hours), Active Killer/Room Clearing (20 hours), and Water Survival (4 hours), for a total of 40 hours.<sup>452</sup> The following table includes a comparison of Session 95, Session 106, Session 110, and the Post Commission’s required hours.

Topic	Post Commission Required Hours	Session 95 Hours	Session 106 Hours	Session 110 Hours
Firearms	48	99	97	97
Emergency Medical Training	10	26	22	25.5
Patrol Procedures	120	208.5	171.5	216
Interpersonal Communications	25	42	25	25
Professional and Ethical Conduct	3	8	4	4
Physical Defense Tactics	48	197	177	185
Criminal and Constitutional Law and Procedures	50	97	98	103
Written Communications	10	13	10	18
Human Relations	30	47	36	36
Criminal Justice System	11	20	12	12
Law Enforcement Stress	9	25	12	12
Administration	6	126.5	96	101

<sup>449</sup> July 2024 Emails between Tiffany Gibson, Jeffrey Gibson, and Jerry Hertenstein, attached hereto as **Exhibit 31**.

<sup>450</sup> See Ex. 30. See also MNPD Training Academy, Basic Police Curriculum: Session 110, which is attached hereto as **Exhibit 31**.

<sup>451</sup> See *ibid*.

<sup>452</sup> Ex. 30 at p. 2.

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Topic	Post Commission Required Hours	Session 95 Hours	Session 106 Hours	Session 110 Hours
Emergency Vehicle Operations	48	56.5	56.5	48.5
Community Policing	16	40	16	18
<b>Total Hours</b>	<b>480<sup>453</sup></b>	<b>1005.5</b>	<b>833</b>	<b>901</b>

As demonstrated in the table, MNPB actually trains its new officers well above the Post Commission's requirements. When comparing the Post Commission's minimum standards with the 2024 Basic Curriculum, all requirements are met and exceeded. It is not clear exactly what training was cut from the curriculum to shorten it to nineteen weeks. Additionally, Commander Gibson indicated that she was "directed to change the curriculum to approx. 19 weeks during the academy with the rest of the training for trainees to return during the FTO phase."<sup>454</sup> However, once she became the Director of Training, she "recommended to have the week of training put back in during the academy time."<sup>455</sup> Separately, although Butler Snow received information about the shortening of *lateral* training,<sup>456</sup> it was not addressed as part of this investigation because Mr. Davidson did not raise any issues with the length of lateral training, appearing instead to be more concerned about new recruit training.

Regarding claims about potential issues from shortened training, Mr. Davidson has not pointed to any specific complaints about the length of training, other than his own. Commander Gibson indicated that she was unaware of "any formal violations or complaints of misconduct

<sup>453</sup> Tenn. Comp. R. & Regs. 1110-07-.01 requires 488 hours, and it is unclear where the remaining 8 hours go. When adding up the topics from the Rule, it comes up to 434 hours, not including the NSC Defensive Driving Course.

<sup>454</sup> Ex. 31.

<sup>455</sup> *Id.*

<sup>456</sup> See an email from Scott Byrd regarding "classes cut from lateral program," which is attached to this Report as **Exhibit 33**.

besides the complaint from [] Mr. Davidson.”<sup>457</sup> However, she noted that the Division requests feedback on training through the use of trainee surveys at the end of training.<sup>458</sup> In viewing the Session 106, 80-question end-of-course survey provided, the trainees<sup>459</sup> suggested more time could be spent on certain aspects, such as patrol tactics, legal training, traffic stop training, and defensive tactics training.<sup>460</sup> However, the trainees also noted that less time could be spent on foot pursuits and the “first couple stress weeks could be cut to do something more productive.”<sup>461</sup> Despite the notes on timing, the trainees indicated that nearly all areas of training were relevant and effective. In response to question 77 (“The MNPDP Training Academy program prepared me to become a police officer in my next phase of training with a Field Training Officer.”), one trainee answered “disagree.”<sup>462</sup> Question 78 asked what could be improved, and trainees answered, “[b]eing more familiar with all the different forms and paperwork would help better prepare you for FTO,” “more time implementing practical applications,” and “more computer work and ticket writing.”<sup>463</sup> While trainees and Mr. Davidson have opinions about what should be included in MNPDP’s training, the fact is that the training exceeds Tennessee’s Post Commission requirements, and the shortening of the training was not a policy violation.

## E. Allegation 6

Allegation 6 raises issues with the MNPDP’s review process of Body Worn Camera/In-Car Camera (BWC/ICC) footage. According to the Complaint, the Department has a BWC/ICC Operations Division (the “Division”) that audits officers’ BWC/ICC footage each month to identify possible violations of Department policy. Despite the Division’s proper documentation

<sup>457</sup> The survey question results for the Session 106 end of course survey are attached to this Report as **Exhibit 34**.

<sup>458</sup> Ex. 34.

<sup>459</sup> It appears this survey was completed by six trainees.

<sup>460</sup> *Id.* at pp. 1, 2, 5.

<sup>461</sup> *Id.* at pp. 1, 5.

<sup>462</sup> *Id.* at p. 20.

<sup>463</sup> *Id.*

and reporting of such violations, Mr. Davidson alleges that command staff responsible for addressing BWC/ICC violations have failed to use progressive discipline to do so. Instead, these supervisors are allegedly “doing nothing more than having a quick conversation with officers” who were “flagged during an audit” due to their potential misconduct.

The alleged failure to address officers who were flagged during the Division’s BWC/ICC audits has purportedly led to two things. First, those within the Division have apparently raised concerns about the “prevalence and frequency of supervisors not properly addressing” officer misconduct observed during the audits. Second, the supervisor’s alleged failure to discipline has, moreover, led to a Department-wide belief “that the audits lack meaning and do not require serious attention by officers or supervisors.”

Consider first the MNPDP Manual’s policy regarding when officers must use of their BWCs or ICCs. “[W]here practical and safe, employees shall activate their BWC/ICC devices prior to initiating any investigative or law enforcement activity involving a member of the public.”<sup>464</sup> There are limited exceptions to this requirement.<sup>465</sup> For example, the Manual states that it may be appropriate for an officer not to use their BWC/ICC when a witness is hesitant to give information on camera or when individual privacy rights outweigh the need to record an event.<sup>466</sup> Officers must also document the existence of footage, lack of footage, or the delay of the start of recording footage as described by internal policy.<sup>467</sup>

Still, the MNPDP Manual does not typically require command staff to discipline “minor acts of misconduct” seen during an audit:

If, in the course of viewing BWC/ICC video, minor acts of misconduct unrelated to the original reason for viewing the video are discovered, such acts will not

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<sup>464</sup> Ex. 2 § 8.30.080(B).

<sup>465</sup> See *id.* §§ 8.30.080, 8.30.090, 8.30.100.

<sup>466</sup> See *id.*

<sup>467</sup> See *id.* § 8.30.140.

generally result in a sustained investigative finding or departmental discipline. However, such acts may result in a training referral, counseling, or corrective action through the employee's chain of command and may be included in an employee's performance evaluation.<sup>468</sup>

Still, “[c]omments, remarks or behavior that disparage a protected class under city, state, or federal law are not considered minor misconduct.”<sup>469</sup>

The behavior complained of in Allegation 6, even if true, does not necessarily violate Department policy. The MNPDP Manual explicitly states that minor acts of officer misconduct viewed during audits “will not generally result in a sustained investigative finding or departmental discipline.” Such minor misconduct may, but is not required to, “result in a training referral, counseling, or corrective action.” And so, internal policy does not require supervisors to discipline an officer who is seen engaging in minor misconduct during a BWC/ICC audit.

Still, an exception applies to officers who are seen making remarks or engaging in “behavior that disparage” persons in “a protected class.” The Manual provides that such disparagement is not “minor misconduct,” but it does not otherwise distinguish what is considered more egregious misconduct. Nor does the MNPDP Manual provide what must happen if auditors observe an officer misbehaving in a way that is not considered minor.

Clarity around these open questions or a change to the MNPDP Manual's policy regarding instances of minor misconduct viewed during an audit could resolve the Division's alleged concerns. Such clarity or policy change may also address any purported belief across the Department that the BWC/ICC audits are meaningless. But according to the MNPDP Manual's current form, Allegation 6 does not appear to state a violation of internal policy.

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<sup>468</sup> *Id.* § 8.30.210.

<sup>469</sup> *Id.*

**F. Allegation 7**

Mr. Davidson’s seventh allegation is simple: he claims MNPB “misrepresented and falsely reported to the COB and Mayor’s office that it had a functional Force Investigation Team (FIT) prior to its actual implementation.”<sup>470</sup> Although OPA’s SOP contemplated a FIT, Mr. Davidson claims the team was not staffed with investigators until early 2024.<sup>471</sup> According to Mr. Davidson, when he was appointed to OPA as lieutenant on October 1, 2021, there was no FIT.<sup>472</sup> Director Morante requested personnel and resources for the FIT, but Mr. Davidson claims she was ignored.<sup>473</sup> Sergeant Arevalo was promoted to lieutenant in Spring 2023, and he was tasked with creating the FIT.<sup>474</sup> Mr. Davidson claims that “Commander Starling and Director Morante made repeated attempts to request personnel, and these requests primarily went through Assistant Chief Greene and Chief Drake.”<sup>475</sup> But personnel were not reassigned to a FIT until early 2024.<sup>476</sup> While Mr. Davidson was at OPA, OPA investigated officer-involved shootings with its own detectives—who he claims were not specifically trained to conduct use-of-force investigations—and was “heavily dependent upon the TBI investigation[s]” of such incidents.<sup>477</sup> At bottom, Mr. Davidson claims that MNPB should have been transparent about its FIT progress instead of “misrepresent[ing] the FIT to the MNCO, the mayor’s office, the public, and even its own officers.”<sup>478</sup>

According to the 2024 MNPB Manual, MNPB’s Professional Standards Division is organized to include the following: (1) OPA Section; (2) Legal Resources Section; (3) District

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<sup>470</sup> Ex. 1 at p. 57.

<sup>471</sup> *Id.* at pp. 57–58.

<sup>472</sup> *Id.* at p. 57.

<sup>473</sup> *Id.* at p. 58.

<sup>474</sup> *Id.*

<sup>475</sup> *Id.*

<sup>476</sup> *Id.*

<sup>477</sup> *Id.* at pp. 57–58.

<sup>478</sup> *Id.* at p. 58.

Attorney Liaison Unit; and “[o]ther personnel required for efficient operation.”<sup>479</sup> The OPA Section is further broken down into (1) OPA Unit; (2) Human Resources Investigation (HRI) Unit; (3) FIT; (4) Legal Resource Section; and (5) District Attorney Liaison Unit.<sup>480</sup>

The FIT’s primary objective is “to conduct an internal administrative investigation on any application of use of force that results in serious bodily injury or death, other firearm discharges or serious use of force as directed by the Director/Commander of the Professional Standards Division. The goal is to ensure policy compliance and to improv[e] both the individual officer(s) and the overall department’s future performance.”<sup>481</sup> Chapter 5 of OPA’s SOP<sup>482</sup> covers force investigations, including investigations of officer-involved shootings, and reiterates the above objectives of the FIT. Additionally, OPA’s SOP requires FIT members to undergo training related to force investigations.<sup>483</sup> The FIT is responsible for reviewing “any use of force by an employee of the [D]epartment resulting in death or serious bodily injury of any person.”<sup>484</sup> The FIT may also review “any firearm discharge, misapplication of force, or other serious use of force by a member of the Department.”<sup>485</sup> It is up to the OPA Director or Lieutenant to ensure notification and response of FIT investigators once he/she learns of such a use of force.<sup>486</sup> FIT investigators were responsible for promptly responding to the scene, becoming involved in the situation while avoiding direct contact with the involved officers, obtaining information from on-scene supervisory personnel, electronically monitoring criminal interviews conducted by the Cold Case

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<sup>479</sup> Ex. 2 § 1.130.010(B).

<sup>480</sup> *Id.*; *see id.* § 1.130.020(B).

<sup>481</sup> *Id.* § 1.130.050(A).

<sup>482</sup> See Ex. 7, which was updated in January 2022.

<sup>483</sup> Ex.7 at p. 21.

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

<sup>486</sup> *Id.*



Unit or TBI, obtaining relevant body camera footage, updating the OPA lieutenant and director on the investigation status, and preparing a summary report for the director.<sup>487</sup>

The gravamen of Mr. Davidson’s complaint is that MNPDP misrepresented that it had a FIT and had adopted the MNCO recommendation when it in fact had not done so.<sup>488</sup> Butler Snow reviewed MNCO’s recommendations.<sup>489</sup> In 2021, MNCO recommended:

A Force Investigation Team should be created as a branch of OPA to investigate criminal and administrative aspects of uses of force resulting in serious injury, all firearm discharges, misapplications of force, and other serious uses of force as defined by the department. They should also investigate fatal uses of force for violations of administrative standards parallel to the TBI criminal investigation. The unit should receive specialized training in conducting use of force investigations into serious uses of force.<sup>490</sup>

MNPDP accepted this recommendation and partially incorporated it into MNPDP’s revised use of force policy, specifically Chapter 5 of OPA’s SOP.<sup>491</sup> MNCO followed up in 2022 and determined that MNPDP had implemented and accepted its recommendation by including information related to the FIT in the next MNPDP Manual and by revising OPA’s SOP to include more specific information about the FIT’s responsibilities and individual member responsibilities.<sup>492</sup>

Although Mr. Davidson claims that the FIT was not assigned actual investigators until early 2024, it appears that OPA members were engaging in FIT responsibilities and duties before then. For instance, emails exchanged on November 14 and 15, and December 7 and 8, 2022, included the words “FIT meeting” in the subject and were sent to arrange a meeting to address officer-

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<sup>487</sup> *Id.* § 5.01.02(A).

<sup>488</sup> Ex. 1 at pp. 57–58.

<sup>489</sup> See the Metro Nashville COB’s Evaluation of MNPDP’s Use of Force Policy Revision for Consistency with Policy Recommendations, which is attached to this Report as **Exhibit 35**.

<sup>490</sup> Ex. 35.

<sup>491</sup> *Id.*

<sup>492</sup> See the Semi-Annual Evaluation: MNPDP’s Implementation of COB Policy Recommendations in Advance of the COB’s Monthly Board Meeting on October 26th, 2022, MNCO, which is attached hereto as **Exhibit 36**.

involved shootings.<sup>493</sup> Mr. Davidson also indicates that OPA detectives responded to a January 2022 incident involving Landon Eastep, but claims “there was no FIT.”<sup>494</sup> Based on the documents reviewed, it appears as though some form of FIT existed prior to 2024.

Even if Mr. Davidson’s statements are true, efforts were underway to staff the FIT in at least 2022. Butler Snow did not come across any evidence to the contrary,<sup>495</sup> other than Mr. Davidson’s allegations. That said, MNPd probably could have been more precise in its communications regarding the status of the FIT, but the failure to do so does not necessarily rise to a policy violation, particularly when it appears that individuals in OPA were carrying out FIT duties.

#### **G. Allegation 8**

Allegation 8 raises three main issues with how the Department has handled purported instances of sexual harassment and discrimination. First, the Department allegedly does not enforce a zero-tolerance policy against sexual harassment and discrimination despite a provision of the MNPd Manual that says the Department “will not tolerate, condone, or allow harassment or discrimination by employees or of employees.”<sup>496</sup> Second, the Complaint further alleges that the Department does not adequately communicate with or help its employee-victims who have been sexually harassed or discriminated against by other employees.<sup>497</sup> And Mr. Davidson alleges that Lieutenant Taylor Schmitz’s (“Lt. Schmitz’s”) case provides an example of these first two failures.<sup>498</sup> Third, Allegation 8 claims that the Department’s failure to adequately punish instances

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<sup>493</sup> A copy of these emails is attached hereto as collective **Exhibit 37**.

<sup>494</sup> Ex. 1 at p. 58.

<sup>495</sup> It is not clear what information MNPd provided to the Mayor or the COB. Butler Snow requested such communications, and no documents were provided.

<sup>496</sup> Ex. 1 at p. 59 (quoting Ex. 2 § 4.50.020).

<sup>497</sup> *Id.*

<sup>498</sup> *Id.*

of sexual harassment and discrimination has led to past offenders repeating their misconduct.<sup>499</sup>

Office Sean Herman’s case, according to the Complaint, exemplifies this point. Each allegation and example is considered in turn below.

## 1. The Department’s Zero-Tolerance Policy and Lt. Schmitz’s Case

Consider first the MNPDP Manual’s policy against harassment and discrimination:

It is the policy of the Metropolitan Nashville Police Department that all employees have the right to work in an environment free of all forms of harassment and discrimination. The Metropolitan Nashville Police Department **will not** tolerate, condone, or allow harassment or discrimination by employees or of employees. The Metropolitan Nashville Police Department considers the harassment and discrimination as a form of serious employee misconduct. Therefore, this department shall take direct and immediate action to prevent such behavior, and to remedy all reported instances of harassment and discrimination. A violation of this order can lead to discipline, up to and including termination. Repeated violations, even if “minor”, will result in greater levels of discipline as appropriate.<sup>500</sup>

Considering this, internal policy provides a mandatory investigation procedure for the following people who receive a complaint of harassment or discrimination: all supervisors, the director of the Human Resources Division, the OPA, the Chief of Police, and the Metropolitan Government’s Equal Employment Opportunity Coordinator.<sup>501</sup>

The Manual further provides the role MNPDP supervisors and employees play in preventing harassment and discrimination. According to the MNPDP Manual, “[e]ach supervisor shall be responsible for preventing acts of harassment and/or discrimination,” through daily monitoring, counseling all employees on prohibited behavior and how to report such misconduct, stopping any observed acts of such misconduct, and taking immediate action to prevent retaliation.”<sup>502</sup> “Once a supervisor has been advised, formally or informally, of an incident or incidents involving

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<sup>499</sup> *Id.*

<sup>500</sup> Ex. 2 § 4.50.020.

<sup>501</sup> *Id.* § 4.50.050(A)–(E).

<sup>502</sup> *Id.* § 4.50.040(B)(1).

possible harassment and/or discrimination, that supervisor is responsible to, and shall, initiate an investigation as described” under the Manual.<sup>503</sup> In addition to supervisors, all MNPd employees must assist “in the prevention of harassment and/or discrimination” by not participating in or encouraging such misconduct, reporting such misconduct, and encouraging other victims of such misconduct to report it.<sup>504</sup>

Mr. Davidson does not allege here that the MNPd’s supervisors, employees, and others are not following these provisions. Instead, the Complaint simply claims that unknown persons have expressed “repeated concerns” about “how the MNPd investigates” allegations of sexual harassment and discrimination. Without evidence of an individual who did not follow the Manual’s mandatory reporting or investigation procedures, Allegation 8 does not describe a violation of internal policy.

Nor does there appear to be a policy violation alleged with respect to Lt. Schmitz’s case. In that case, the OPA investigated and sustained, among other things, allegations of sexual harassment and sex-based discrimination against Lt. Schmitz.<sup>505</sup> From the records the investigative team reviewed in that case, it appears that Lt. Schmitz initially denied the OPA’s findings against him and opted for a disciplinary hearing.<sup>506</sup> But Lt. Schmitz apparently settled with the Department prior to his hearing set for April 14, 2022, whereby it seems he agreed to accept a 30-day suspension, demotion, and a last chance agreement.<sup>507</sup> These actions are in line with internal policy. To the extent Mr. Davidson’s allegations take issue with the severity of Lt. Schmitz’s discipline, the MNPd Manual affords command staff broad discretion when

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<sup>503</sup> *Id.* § 4.50.040(B)(2).

<sup>504</sup> *Id.* § 4.50.040(B)(3).

<sup>505</sup> See Ex. 9 at pp. 79–88.

<sup>506</sup> See generally Ex. 9; Ex. 11; Ex. 12.

<sup>507</sup> See Ex. 11 (providing the details of Lt. Schmitz’s case in the 2022 tab, including that he settled and agreed to accept a 30-day suspension and enter a last chance agreement); Ex. 12 (providing that Lt. Schmitz was also demoted).

investigating, charging, and disciplining officer misconduct. This discretion extends to alleged sexual harassment.

Butler Snow therefore cannot conclude that Mr. Davidson has alleged a violation of policy, generally, or with respect to Lt. Schmitz's case.

## **2. The Department's Communication with Employee-Victims**

As mentioned above, the MNPDP Manual provides a mandatory investigation procedure for certain individuals who receive a complaint of harassment or discrimination. This procedure also requires these mandatory investigators to inform the complainant, in writing, of the MNPDP's investigation and of any actions it takes within 7 to 14 days, depending on the investigator.<sup>508</sup> And for investigations by supervisors, the Director of the MNPDP Human Resources Division, the OPA or the Chief of Police, the Manual states that complainants who are "dissatisfied with the results of [an] investigation" can file a complaint with the Metropolitan Government Equal Employment Opportunity Coordinator, within 10 calendar days of the final disposition of the investigator.<sup>509</sup>

According to Mr. Davidson, the Department "fails to properly communicate with or help employees affected by" sexual harassment and discrimination. If certain investigators have failed to notify sexual harassment and discrimination complainants, in writing, of the results of their investigations and any pending disciplinary charges within the time required by the MNPDP Manual, then they have likely violated internal policy. True enough, Mr. Davidson alleges that some have voiced "repeated concerns" about how the MNPDP "treats those harmed" by harassment or discrimination. But other than pointing to an alleged "noted lack of communication" in Lt. Schmitz's case, Allegation 8 does not describe any specific failure on the part of the MNPDP.

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<sup>508</sup> Ex. 2 § 4.50.050(A)–(E).

<sup>509</sup> *Id.* § 4.45.050(A)(7), (B)(7), (C)(7), (D)(5).

The records Butler Snow reviewed in Lt. Schmitz’s case document the MNPDP’s efforts to communicate with the complainant, Officer Laura Wall. In that case, a joint investigation between Human Resources and the OPA began after Officer Wall filed a complaint against Lt. Schmitz with Human Resources.<sup>510</sup> Under the policy applicable to OPA investigations, “[t]he Chief of Police” had to “send a written notice of the results and/or action(s) taken to date within fourteen (14) working days of the conclusion of the investigation.”<sup>511</sup> The OPA’s records indicate that someone at the MNPDP contacted the complainant at least three times through the investigation.<sup>512</sup> And although the records are unclear about when the investigation concluded, they indicate that someone notified the “complainant of results.”<sup>513</sup> If the Chief of Police sent Officer Wall written notice of the final result or actions taken in Lt. Schmitz’s case within 14 days of the OPA and Human Resources concluding their joint investigation, then the MNPDP did not fail to communicate with employee-victims as required by internal policy in this instance.

### **3. Recidivism of Sexual Harassment and Discrimination**

Allegation 8 also claims that the MNPDP “does not punish” instances of sexual harassment and discrimination “severely enough to create a culture of zero-tolerance” within the Department. And according to the Complaint, Officer Sean Herman’s case is an example of this failure. This is because Officer Herman allegedly “received too little disciplinary sanctions for his conduct” such that he “went on to engage in other inappropriate conduct through being recorded on an Only Fans video groping a woman during a simulated traffic stop” before being terminated.

The records Butler Snow received did not confirm the details of these allegations. The records indicate that Human Resources began investigating Officer Alexandra Wall’s allegations

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<sup>510</sup> See Ex. 9 at pp. 90–95.

<sup>511</sup> Ex. 2 § 4.45.050(C)(6).

<sup>512</sup> See Ex. 9 at pp. 90–95.

<sup>513</sup> See *id.*

of sexual harassment against Officer Herman in December 2022.<sup>514</sup> The investigation into Officer Herman appears to have resulted in Officer Herman settling with the Department prior to a July 2023 hearing, whereby he agreed to receive a nine-day suspension and a last chance agreement.<sup>515</sup> In May 2024, the records also indicate that the OPA investigated and sustained allegations of conduct unbecoming an employee of the Department against Officer Herman.<sup>516</sup> This apparently resulted in the MNPd terminating Officer Herman sometime after that.<sup>517</sup> Butler Snow did not receive the OPA's case file that details the May 2024 allegations and its investigation into Officer Herman.

Even so, the policy provisions discussed throughout this Report demonstrate that command staff has broad discretion in how they charge and sanction their employees. Butler Snow therefore cannot conclude command staff violates policy by leniently disciplining an employee for his or her sexual harassment or discrimination. This would also be true in Officer Herman's case. The only thing the Department must do when it receives a complaint of sexual harassment or discrimination is investigate that complaint. It appears that the MNPd did so for both complaints it received against Officer Herman. Because the discretion the MNPd Manual affords command staff in disciplining officer misconduct, the Complaint does not seem to allege a policy violation for the MNPd's discipline (or lack thereof) in any case, including that of Officer Herman.

## H. Allegation 9

Mr. Davidson claims that MNPd disregards "attempts by external groups or persons to increase accountability and implement needed changes, and even agreed upon changes are slow to

<sup>514</sup> See Human Resources' Investigative Report into Officer Herman (Case Number: HRI2022-0011) at pp. 19–20, which is attached to this report as **Exhibit 38**.

<sup>515</sup> See Ex. 11 (providing the details of Officer Herman's case in the 2023 tab).

<sup>516</sup> See Ex. 12 (providing the results of the OPA's investigation into Officer Herman in case number IA2024-00030).

<sup>517</sup> See *id.*



be implemented or ultimately not implemented at all.”<sup>518</sup> According to Mr. Davidson, the MNPD did not implement recommendations regarding “zero tolerance of harassment/discrimination” and was incredibly slow to implement the FIT.<sup>519</sup> He also claims that the MNPD “discarded altogether” problems “noted” by the 2020 Policing Policy Commission, such as “MNPD’s inconsistent disciplinary application, completing decommissioned officer investigations expediently, and holding disciplinary hearings within 45 days of completing investigations.”<sup>520</sup> Mr. Davidson also points to Sergeant Kenney’s case as one in which the departmental hearing was delayed, allegedly violating his due process rights.<sup>521</sup>

The 2020 Policing Policy Commission (the “Commission”) came from the Office of Mayor John Cooper. The Commission identified the relevant problem as: “The morale within the MNPD suffers because of a perception of inconsistent disciplinary application.”<sup>522</sup> The Commission did not explain the apparent “inconsistent disciplinary application” further, instead offering the solution of “[e]stablish[ing] a transparent and timely process for complaints and disciplinary action.”<sup>523</sup> Within this solution were several suggested actions:

- Publish a standard operating procedure that is readily accessible to sworn personnel and the public;
- Complete all investigations of decommissioned officers within 30 days;
- Assemble a multi-disciplinary team to review and revise standard operating procedures on discipline and disciplinary investigations;
- Explain the investigative process to all parties involved;

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<sup>518</sup> Ex. 1 at p. 60.

<sup>519</sup> *Id.* at p. 61.

<sup>520</sup> *Id.*

<sup>521</sup> *Id.*

<sup>522</sup> Ex. 13 at p. 35.

<sup>523</sup> *Id.*

- Institute a 45-day limit from the time an employee requests a hearing until it is conducted, to mirror the time limit OPA has for investigations, extendable based on justifiable cause; and
- Establish a procedure for reviewing exceptions to the time deadline and limit such exceptions to only those that fit in the acceptable category.<sup>524</sup>

MNPD was to complete these actions within six to twelve months from the date of the report (November 20, 2020).<sup>525</sup>

Mr. Davidson’s Allegation 9 is vague and speculative. As far as MNPD taking too long to adopt recommendations or its failure to do so, Mr. Davidson does not present a basis for this conclusion, beyond his reference to other claims in his Complaint. For instance, MNPD responded to the Commission’s recommendation for a zero-tolerance policy for harassment and/or discrimination, stating that Chief Drake communicated such a policy to the workforce in October 2020, and that the department created the “Not on my Watch” initiative, which gives employees additional ways to report misconduct.<sup>526</sup> Recently, however, MNPD approved a zero-tolerance sexual harassment and misconduct policy.<sup>527</sup> Additionally, the implementation of FIT was discussed *supra* in the summary of Allegation 7.

It does not appear that MNPD “discarded altogether” issues noted by the Commission or its recommendations. First and foremost, the Commission did not explicitly say that MNPD was inconsistent in disciplinary application. It said that there was a *perception* of inconsistent disciplinary application. This is not necessarily the same as a finding that such inconsistencies existed, but rather an identification of a potential problem and solutions to remedy it.

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<sup>524</sup> *Id.* at pp. 35–36.

<sup>525</sup> *Id.* at p. 36.

<sup>526</sup> Letter from John C. Drake, Chief of Police, to Mayor Karl Dean and Mr. Dwight Lewis, Policing Policy Commission Co-Chairs, MNPD Response to Recommendations, Item 59 (Feb. 8, 2022), attached hereto as **Exhibit 39**.

<sup>527</sup> Paige Pfleger, *Nashville Police Department Updates Sexual Misconduct Policy After Years of Pressure from Former Officers*, WPLN (Mar. 6, 2025), <https://wpln.org/post/nashville-police-department-updates-sexual-misconduct-policy-after-years-of-pressure-from-former-officers/>.

Second, regarding the recommendation that investigations of decommissioned officers be completed within 30 days, Mr. Davidson claims that such investigations should be completed “expediently” and that MNPD has not adopted this recommendation.<sup>528</sup> This recommendation applies a different timeline to a specific type of cases—vice 45 days for virtually all others—without any explanation as to why these investigations should be completed more quickly. Moreover, MNPD responded to the request, stating: “Investigations into decommissioned officers can be the most complex investigations and, in many cases, involve outside or external agencies or the potential for criminal charges. To the extent practical, within the limitations of the investigative requirements, MNPD policy remains committed to accurate and timely completion of all investigations.”<sup>529</sup>

Third, regarding the recommendation to hold disciplinary hearings within 45 days of an employee’s request, MNPD responded, stating: “This remains the preferred procedure. However, to ensure due process, timelines may be adjusted to accommodate access to attorneys, other representation, and to accommodate reasonable requests.”<sup>530</sup>

MNPD also responded to other recommendations that Mr. Davidson did not explicitly reference. For instance, as to the recommendations to “[a]ssemble a multi-disciplinary team to review and revise standard operating procedures on discipline and disciplinary investigations” and to “[c]ommunicate the process to all parties involved in the investigative process,” MNPD responded: “This has and continues to occur. Process improvement and policy refinement remain ongoing processes. MNPD policies and procedures are posted and are available both internally and externally on the MNPD website.”<sup>531</sup>

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<sup>528</sup> Ex. 1 at p. 61; Ex. 13 at p. 35.

<sup>529</sup> Ex. 389

<sup>530</sup> *Id.*, Items 71 and 71a.

<sup>531</sup> *Id.*, Items 70 and 70a.

## IV. INVESTIGATIVE FINDINGS AND RECOMMENDATIONS

As independent investigators, Butler Snow conducted an impartial and comprehensive review of all relevant evidence concerning the Complaint. This Report addresses all relevant MNPd policies or protocols, describes related investigative findings, and recommends specific steps to address the issues raised in the Complaint. The investigative findings are premised on the following: witness interviews; an extensive and thorough review of thousands of pages of relevant documents; and an in-depth analysis of applicable internal policies and procedures.

Based on the evidence obtained during this investigation: Butler Snow makes the following findings:

- Allegation 1: Assistant Chief of Police Mike Hagar has taken several actions that demonstrate poor decision making and judgment, have resulted in disparate treatment through his ineffective management of disciplinary matters, and decreased departmental efficiency and effectiveness by supporting a culture that allows misconduct.
  - Allegation 1(a): Chief Hagar interfered with OPA's investigation of Deputy Chief Keith Stephens when he tried to "clean the language and the record of the case."
    - There is no evidence that Chief Hagar violated MNPd policy by using a Form 311 to counsel Deputy Chief Stephens.
    - The evidence shows that the instruction to use a Form 312 to close the case and enter a finding as "Matter of Record" came from Deputy Chief Chris Gilder, not Chief Hagar.
  - Allegation 1(b): Chief Hagar was responsible for settling Deputy Chief Chris Taylor's case and getting him a "favorable outcome" following several sustained policy violations.
    - The evidence shows that Chief Hagar had the ability to settle Deputy Chief Taylor's case, as settlement is preferred under the MNPd Manual.
    - The evidence shows that Deputy Chief Taylor's sanction (ten days' suspension) was within the Disciplinary/Corrective Action Grid and, even

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if it was not proper, the Chief of Police has discretion to impose a sanction outside of the Grid.

- Allegation 1(c): Chief Hagar did not demote Lieutenant Taylor Schmitz after OPA's investigation revealed a pattern of mistreatment towards female employees, but rather allowed him to settle his case and reassigned him to a new role without supervisory duties.
  - There is no evidence that Chief Hagar violated MNPD policy or showed favoritism toward Lt. Schmitz. Chief Hagar's only involvement in the case was his approval of the final disciplinary action, which was within the Grid.
- Allegation 1(d): Chief Hagar was responsible for "dragging out" Lieutenant Michelle Hammond's case, leading to her being decommissioned for nearly two years.
  - Chief Hagar was not solely responsible for the duration of Lt. Hammond's disciplinary process. At the time of the Lt. Hammond investigation, there was no policy requiring a speedy disciplinary process.
  - Since Lt. Hammond's case, MNPD has updated its policy to require that a disciplinary hearing be conducted within forty-five calendar days after the employee receives written notification of the hearing.
- Allegation 1(e): Chief Hagar interfered with and mismanaged OPA's investigation into the Covenant School photo leak. Additionally, his decision to disband the Covenant School investigative team despite them not being responsible for the leak was a violation of policy.
  - No evidence corroborated that Chief Hagar inserted himself into the Covenant School photo leak investigation.
  - Due to the criminal investigation of Mr. Davidson in connection with the leak of Covenant School documents, Butler Snow was not permitted to question any MNPD officers about this particular allegation.
- Allegation 1(f): Chief Hagar's pattern of settling disciplinary cases before departmental hearings undermines accountability and the disciplinary process.

- Examples provided in Allegation 1(f) include Lt. Schmitz's case, Lieutenant Michael Gooch's case, Captain Hunsicker and Director Hooper's case, Lt. Taylor's case, and Sergeant Tuberville's case. There is no evidence that these individuals were able to obtain a better outcome than others would have through settlement.
- The evidence shows that favoring settlement agreements is in line with MNPDP policy.
- The settlement process is documented in MNPDP's Manual and is well known to the Department at large.
- The evidence shows that settlement benefits both lower and higher-ranking employees.
- Butler Snow recommends that MNPDP improve its recordkeeping practices regarding settlement. This can help aid and inform the disciplinary process.
- Allegation 1(g): Chief Hagar attempts to hide his involvement in matters by tasking others to do things beyond the scope of their responsibilities or established policy.
  - Examples provided in Allegation 1(g) include difficulty obtaining sanctions for Lt. Gooch's case; Chief Hagar's instruction to complete a Form 312 for all OPA cases; Chief Hagar's reliance on others to complete a Form 312 in Deputy Chief Stephens's case; and Chief Hagar's minimization of his role in Lt. Hammond's case. None of these incidents are policy violations, but even if they were, the evidence does not support Mr. Davidson's allegations.
- Allegation 1(h): Chief Hagar ignores the chain of command and gives poor instructions.
  - The example provided—Chief Hagar's alleged instruction to Mr. Davidson to complete Form 312s for all Proposed Resolution Reports from the Community Oversight Board—was not a policy violation. At the time, there was no process in place to handle these Reports, but this has since changed, and a process for handling the Reports now exists.
- Allegation 2: The MNPDP has an unwritten policy of treating certain officers under investigation more favorably than or inconsistently from other officers under the same or similar circumstances.

- Allegation 2(a): The MNPDP's unwritten policy of treating certain officers accused of misconduct more favorably than others is due to "rank bias."
  - Among the examples provided in the Allegation 2(a)—Lt. Gooch's case, Det. Thorowgood's case, Insp. Hunsicker and Dir. Hooper's case, Sgt. Eubanks's case, and Sgt. Kenney's case—there is no evidence that MNPDP's command staff disciplines higher-ranking officers accused of misconduct more favorably than lower-ranking officers accused of the same or similar misconduct.
  - The evidence shows that encouraging settlement agreements is in line with MNPDP policy.
  - The evidence shows that the MNPDP command staff disciplines employee misconduct in accordance with the broad discretion the MNPDP Manual affords them.
- Allegation 2(b): The MNPDP's "rank bias" can be seen in its documentation (or lack thereof) of higher-ranking officers under investigation for their alleged misconduct.
  - Among the examples provided in Allegation 2(b)—Insp. Hunsicker and Dir. Hooper's case and Chief Stephens's case—there is no evidence that the MNPDP's command staff violated internal policy as alleged in these instances.
- Allegation 2(c): The MNPDP's "rank bias" can also be seen in its efforts to cover up alleged misconduct between a long-time employee, Don Aaron, and a local reporter, Kenley Hargett.
  - The evidence does not indicate that mediation was inappropriate in Mr. Aaron's case or that the Department should have formally investigated the matter.
- Allegation 2(d): The MNPDP often fails to hold its supervisors facing allegations of poor supervisory performance accountable, transferring them instead to other roles without formal investigation, documentation, or findings.
  - When multiple policy provisions arguably apply to an instance of misconduct, the Department's choice to charge an employee under one provision over another is not a violation of internal policy.
  - It is not a violation of internal policy to transfer an employee charged with misconduct in lieu of other types of discipline.



- Butler Snow has not found any evidence that the Department has transferred an employee to avoid an otherwise warranted formal investigation.
- Allegation 2(e): Command staff's unwarranted involvement in the OPA's investigations are impermissibly influencing the ultimate outcomes of officers accused of misconduct.
  - The MNPD Manual encourages and even requires the involvement of command staff in the OPA's investigations.
  - The evidence does not suggest that command staff, including Chief Greene, was impermissibly involved with or unduly influenced the OPA's investigation into Lt. Tennant.
  - The evidence in Lt. Tennant's case instead suggests that Chief Greene wanted to, in line with internal policy, settle that matter without a disciplinary hearing.
- Allegation 2(f): The MNPD avoids scrutiny by prioritizing oral communication over written communication and by intentionally failing to document things.
  - The Department's internal policies do not appear to forbid command staff from opting for oral communication over written communication if the necessary documentation is completed as required. So even if Allegation 2(f) is true, Butler Snow cannot conclude it is a policy violation.
- Allegation 2(g): The Department is mishandling "matters of integrity."
  - The MNPD Manual allows command staff to use their discretion when misconduct arguably falls under multiple, different policy violations. Butler Snow therefore cannot conclude that charging an officer who has lied under the Department's "Conduct Unbecoming and Employee of the Department," instead of the Department's "Honesty and Truthfulness" policy, violates the MNPD Manual.
- Allegation 2(h): The Department's "disciplinary practice lacks proportionality, reasonableness, fairness, and consistency in sanctioning misconduct."
  - Again, internal policy gives command staff broad discretion when investigating, charging, and disciplining employees accused of misconduct. Allegation 2(h) therefore does not appear to raise a potential violation of internal policy.

- Allegation 2(i): Internal issues and disagreements amongst command staff has led to officers receiving sanctions different from those officers originally agreed on.
  - Given the discretion afforded command staff to determine the appropriate sanctions in a given matter and the Department's preference for settlements, command staff would not necessarily violate internal policy by changing their sanction-related decisions before the conclusion of a case.
  - None of the evidence Butler Snow reviewed related to the examples provided in Allegation 2(i) support this allegation except for those in Officer Johnathan Carlisle's case.
  - Assuming Officer Carlisle was not under any undue influence when he signed his settlement agreement and Form 313, there is no evidence of a policy violation in his case.
- Allegation 3: MNPD's annual evaluation system is flawed because supervisors are discouraged from giving failing scores to poorly performing officers or are given instructions to change scores.
  - Because of "internal department pressures," poor performers are "marked down the middle" with straight "2s" rather than with specific scores that reflect actual performance. Additionally, lower-ranking supervisors are hesitant to give low scores that may affect an officer's pay.
    - Examples provided include Officer Brian Woodard, Officer Frederick Ware, Monica Blake, Eric Harvey, Robert Fondren, Johnny Cantrell, civilian Lawanna Coleman, and Citaly Gomez. Other than the first two, Mr. Davidson's allegations are generic, vague and could not be substantiated.
  - The evidence shows that there were no policy violations in any of the cases because all of the officers had evaluations with a variety of scores, and MNPD policy does not prohibit giving straight 2s to an employee. Even if it was a violation, this may be an issue with specific supervisors' understanding of the process, which can be remedied through the required evaluation training.
  - There appears to be some corroborating evidence to support the contention that some under-performing officers are not evaluated accurately.

- Allegation 4: Command staff has taken multiple steps to eliminate internal and external mechanisms of public accountability, including by supporting Senate Bill 0591/House Bill 0764.
  - The allegations regarding Chief Gilder's and Chief Hagar's involvement with the drafting and eventual passing of legislation to eliminate community oversight boards presents a conflict between provisions of internal policy. On the one hand, the Department's political activity policy allows officers to freely engage in political speech and expression in their capacity as private citizens. On the other hand, the Department aims "to provide fair, efficient service to all [its] citizens" and "to promote the efficient and effective operation of department and government operation."
  - Neither the MNPDP Manual nor the OPA Manual require the director of the OPA to be a civilian. The mere fact that MNPDP leadership planned not to replace Director Morante with another civilian leader after she retires or otherwise left the OPA does not appear to violate internal policy.
  - Butler Snow did not find any evidence to support the position that MNPDP participated in the legislative process and/or lobbied in support of Senate Bill 0591/House Bill 0764.
- Allegation 5: The reduction in training academy duration from 23 weeks to 19 weeks, as well as the reduction in time new recruits spend riding along with a Field Training Officer, has a negative impact on recruits' ability to apply their knowledge, skills, and abilities on the job.
  - There is no evidence that training standards have been lowered as the training timelines were reduced.
  - Because MNPDP training meets and exceeds Tennessee's Post Commission requirements, there was no policy violation when training duration was shortened.
- Allegation 6: Despite the Body Work Camera/In-Car Camera (BWC/ICC) Operations Division's monthly audits, MNPDP supervisors have failed to properly address officer misconduct discovered during those audits.
  - Internal policy does not require supervisors to discipline an officer who is seen engaging in minor misconduct during a BWC/ICC audit.
  - An exception applies to officers who are seen making remarks or engaging in behavior that disparages a person in a protected class. While the Manual provides

that such disparagement is not minor misconduct, it does not otherwise distinguish what is considered more egregious misconduct. Nor does the MNPDP Manual provide what must happen if auditors observe an officer misbehaving in a way that is not considered minor.

- Clarity around these open questions or a change to the MNPDP Manual's policy regarding instances of minor misconduct viewed during an audit could resolve the Division's alleged concerns and address the purported belief across the Department that the BWC/ICC audits are meaningless.
- Allegation 7: MNPDP misrepresented and falsely reported that the FIT existed before its implementation. Although OPA's SOP contemplated the FIT, the team allegedly was not staffed with investigators until early 2024, despite repeated requests for personnel from Commander Starling and Director Morante.
  - OPA investigators engaged in FIT responsibilities by investigating officer-involved shootings, though OPA investigators were not designated as part of the FIT and had no specialized training for use-of-force investigations.
  - The evidence shows that OPA was arranging FIT meetings in 2022.
  - There was no evidence of communications between MNPDP and the Mayor or COB regarding implementation of the FIT.
- Allegation 8: The Department has failed to properly implement its zero-tolerance policy against sexual harassment and discrimination.
  - Without evidence of any individual who did not follow the Manual's mandatory reporting or investigation procedures, Allegation 8 does not describe a violation of internal policy with respect to the Department's failure to enforce its sexual harassment and discrimination policy and with respect to how the Department communicates with or helps its employee-victims.
  - Nor does there appear to be a policy violation alleged with respect to Lt. Schmitz's case. To the extent Mr. Davidson's allegations take issue with the severity of Lt. Schmitz's discipline, the MNPDP Manual affords command staff broad discretion when investigating, charging, and disciplining officer misconduct. This discretion extends to alleged sexual harassment. If the Chief of Police sent Officer Wall written notice of the final result or actions taken in Lt. Schmitz's case within 14 days of the OPA and Human Resources concluding their joint investigation, then the MNPDP did not fail to communicate with employee-victims as required by internal policy in this instance.

- With respect to the recidivism-related allegations, the policy provisions discussed throughout this Report demonstrate that command staff has broad discretion in how they charge and sanction their employees. Butler Snow therefore cannot conclude command staff violates policy by leniently disciplining an employee for his or her sexual harassment or discrimination. This would also be true in Officer Herman's case.
- Allegation 9: MNPD disregarded problems noted by the 2020 Policing Policy Commission, including inconsistent disciplinary application, delays in completing officer investigations, and failure to hold disciplinary hearings within 45 days of completing investigations. MNPD also failed to have a zero-tolerance policy for discrimination and/or harassment.
  - Allegation 9 is vague. The Commission noted that there was a perception of inconsistent disciplinary application that needed to be corrected.
  - The recommendation to complete investigations of decommissioned officers within 30 days applies a timeline different from all other timelines without any explanation. The evidence does not provide a reason to do so, and even if there were delays, MNPD policy now requires completion of all investigations within 45 days (unless justification provided and approved by the Chief of Police) and disciplinary hearings within 45 days of notice of investigative finding. There was no evidence that MNPD continues to drag out decommissioned officers' investigations.
  - MNPD communicated a zero-tolerance policy to the workforce in October 2020, and MNPD recently approved a zero-tolerance sexual harassment and misconduct policy.

## APPENDIX A—ADDITIONAL DOCUMENTS RECEIVED AND REVIEWED

### DOCUMENTS FROM OPA

- 1 5/11/2023 Email, Subject FW: Text
- 2 OPA Case Summary for Deputy Chief Keith Stephens
- 3 Emails dated 10/13/2023 – 10/18/2023, Subject Incident from March
- 4 Domestic Violence Incident, No. 2023-0609790 (involving Commander Daniel Newbern)
- 5 Emails dated 10/12/2023 – 10/26/2023, Subject DV Interview
- 6 MNPD Form 100 Incident Report for Cmdr. Newbern
- 7 MNPD Form 117 Domestic Violence Supplemental Form for Cmdr. Newbern
- 8 MNPD Form 117L MNPD Domestic Violence Lethality Screen for First Responders for Cmdr. Newbern
- 9 MNPD Form 104E (Exceptional Clearance) for Cmdr. Newbern and Instructions for Completing Same
- 10 Untitled Redacted Statement Dated 11/1/2023
- 11 OPA Case File for Cmdr. Newbern (IA2023-00067)
- 12 MNPD Form 311 Remedial Counseling Report for Deputy Chief Stephens
- 13 Recording of Conversation Between Detective Carter and Deputy Chief Stephens
- 14 OPA Case File for Lt. Vivyonne Lee (OS2018-00006)
- 15 10/28/2019 Email, Subject Suspension/Demotion – Lt. Vivyonne Lee (OS2018-00006)
- 16 MNPD Form 313 Internal Disciplinary Resolution regarding Lt. Lee
- 17 10/23/2019 Letter from Deputy Chief Mike Hagar RE: Disciplinary Action – Demotion to Police Officer II and Twenty (20) Day Suspension
- 18 Attachment to MNPD Form 313 regarding Lt. Lee
- 19 Presentation / Settlement Agreement between Lt. Lee and Lt. Jason Sharpe
- 20 9/27/2019 Letter from Chief Steve Anderson RE: Control Number #OS2018-00006
- 21 MNPD Form 312 Complaint Report for Lt. Lee
- 22 10/5/2018 OPA Investigative Summary
- 23 OPA Case File for Lt. Michelle Hammond (IA2018-00008)
- 24 OPA Case File for Sgt. Kenney (IA2023-00045)
- 25 Interactive Case Summary for Sgt. Kenney
- 26 Photograph titled “Kill those kids”
- 27 Photograph titled “Death Day”
- 28 Photograph titled “Death day – Gun”
- 29 PowerPoint presentation titled “Flow Chart”
- 30 Data Report of All Investigations from 1/4/2021 to 8/13/2024, as of 9/9/2024
- 31 Data Report on Employee Disciplinary Hearings from 1983 to 2024
- 32 Interactive Case Summary for Lt. Gooch
- 33 Document titled Brief Investigative Summary of Lt. Gooch
- 34 Document titled Gooch’s Policy Violations
- 35 Document titled Gooch’s Departmental Policy Violations
- 36 Document titled Audio Clip for Gooch Interactive Case Summary



- 37 Photograph titled “Close up of Gooch holding bottle”
- 38 Photograph of Lt. Gooch’s injured facial area
- 39 Preliminary Investigative Report (Hooper & Hunsicker)
- 40 Preliminary Investigative Report (Julia Hooper)
- 41 3/23/2023 Email, Subject RE: IA2022-00040 Michael Gooch Sanction Recommendation Request
- 42 4/13/2023 Presentation/Settlement Agreement for Lt. Gooch
- 43 10/2/2022 Form 313 Internal Disciplinary Resolution for Lt. Gooch and attachment
- 44 4/13/2023 Last Chance Agreement for Lt. Gooch
- 45 Emails Dated 1/13/2022 – 1/14/2022, Subject RE: MNCO MNPD Reconciliation
- 46 Emails Dated 11/29/2021, 1/13/2022 – 1/14/2022, Subject FW: COB Proposed Resolution Reports
- 47 MNPD Manual, Effective 4/1/2018
- 48 MNPD Manual, Effective 9/16/2022
- 49 MNPD Manual, Effective 6/8/2023
- 50 5/10/23 Email, Subject MNPD Mediation Referral – May 10, 2023
- 51 9/13/2023 Email, Subject Case Returned for Corrections
- 52 OPA Case File for Officer Rico Hunt (Control No. DF22-7-241)
- 53 OPA Case File for Officer Poulos (IA2023-00057)
- 54 Matter of Record for Officer Brian W. Myatt (MR2022-00111)
- 55 OPA Case File for Officer Richard Hyatt (IA2021-00057)
- 56 Disciplinary Action for Officer Richard Hyatt (Control No. DF21-9-387)
- 57 OPA Case File on Lt. Robert Durbin (IA2022-00024)
- 58 Excel Spreadsheet, Data Regarding Discipline and Disposition of Cases Involving Violations of 4.20.040 Personal Behavior for 1/12/2021 – 7/15/2024
- 59 Excel Spreadsheet, Data Regarding Discipline and Disposition of Cases Involving Violations of 4.20.040 Personal Behavior/Conduct Unbecoming an Employee of the Department for 2/1/2021 – 7/15/2024
- 60 Excel Spreadsheet, Data Regarding Discipline and Disposition of Cases Involving Violations of 4.20.050 Official Obligations/Use of Alcohol, Drugs, or Other Intoxicants for 2/1/2021 – 6/18/2024
- 61 Annual Employee Performance Evaluations for Monica Blake (2015 – 2023)
- 62 Annual Employee Performance Evaluations for Eric Harvey (2015 – 2023)
- 63 Annual Employee Performance Evaluations for Robert Fondren (2015 – 2023)
- 64 Annual Employee Performance Evaluations for Johnny Cantrell (2015 – 2023)
- 65 Annual Employee Performance Evaluations for Lawanna Coleman (2015 – 2023)
- 66 Annual Employee Performance Evaluations for Citlaly Gomez (2015 – 2023)
- 67 MNPD Training Academy, Basic Police Curriculum: Session 106 Calendar
- 68 Excel Spreadsheet, Session 106 Basic POST Running Totals
- 69 MNPD Training Academy, Basic Police Curriculum: Session 110 Calendar
- 70 Excel Spreadsheet, Session 110 Basic POST Running Totals
- 71 2024 Lateral Curriculum
- 72 2024 Basic Curriculum



- 73 MNPD Training Academy, Basic Police Curriculum: Session 95
- 74 MNPD Training Academy, Basic Police Curriculum: Session 95 Calendar
- 75 Excel Spreadsheet, Session 95 Basic POST Running Totals
- 76 MNPD BWC/ICC Audit Follow-Up Notifications for 2/17/2022 – 6/30/2024<sup>532</sup>
- 77 5/26/2021 Metro Nashville COB's Policy Advisory Report on MNPD's Hiring Procedures
- 78 Excel Spreadsheet, Data Regarding Allegations of Harassment and Discrimination for 5/17/2021 – 2/26/2024
- 79 2021 OPA Assessment
- 80 2023 OPA Workload Assessment
- 81 2021 OPA Annual Report
- 82 2022 OPA Annual Report
- 83 OPA Semi-Annual Report, 1/1/2024 – 6/30/2024
- 84 OPA Semi-Annual Report, 7/1/2023 – 12/31/2023
- 85 OPA Semi-Annual Report, 7/1/2022 – 12/31/2022
- 86 OPA Semi-Annual Report, 7/1/2021 – 12/31/2021
- 87 OPA Standard Operating Procedures, effective 10/5/2021
- 88 OPA Standard Operating Procedures, effective 3/19/2021

## DOCUMENTS FROM METROPOLITAN GOVERNMENT FOR NASHVILLE AND DAVIDSON COUNTY

- 89 Excel Spreadsheet, List of Employees
- 90 Responses to Requests from Inspector Dayton Wheeler
- 91 2/5/2021 Letter Regarding Recommendations of Policy Advisory on Use of Force Consent Decrees
- 92 Excel Spreadsheet Regarding Instances of Deficiencies and Misconduct
- 93 Professional Standards Division Organizational Chart

## DOCUMENTS FROM GARET DAVIDSON

- 94 Draft Professional Standards Division Organizational Chart
- 95 Emails Dated 10/28/2021, Subject DRAFT Response to PRR CC2020-30
- 96 Emails Dated 5/10/2023 – 5/31/2023, Subject MNPD Mediation Referral – May 10, 2023
- 97 Emails Dated 3/21/2023 – 3/23/2023, Subject IA2022-00040 Michael Gooch Sanction Recommendation Request
- 98 9/7/2023 Email, Subject D/C Stephens Matter
- 99 Emails Dated 1/12/2022, Subject OPA's PRR Data / Reviews
- 100 Performance Evaluation for Gareth Davidson for 7/1/2022 – 7/1/2023
- 101 OPA Timeline of Events for OS2022-00001
- 102 9/27/2023 Employee Grievance / Complaint from Cmdr. Newbern
- 103 3/4/2022 Letter from Cmdr. Newbern to Chief Drake
- 104 Interview Questions for Deputy Chief Stephens

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<sup>532</sup> OPA began conducting preliminary reviews of all BWC audits in April 2023.

- 105 Excel Spreadsheet, 2022 Master Case Status for 5/25/2021 – 9/21/2022
- 106 Excel Spreadsheet, 2023 Master Case Status for 6/15/2022 – 6/10/2023
- 107 Excel Spreadsheet, Old OPA Master Case Status for 2016 – 2021
- 108 6/18/2024 Document, Subject Complaint Investigation – June 18, 2024 Meeting  
(authored by Davidson)
- 109 11/20/2020 Policing Policy Commission Report
- 110 10/12/2017 Opinion of the Tennessee Court of Appeals, *Jetmore*  
*v. Metro. Gov't of Nashville & Davidson Cnty.*
- 111 3/29/2022 Opinion of the United States Court of Appeals for the Sixth Circuit, *Michelle*  
*Hammond-Beville v. Jeff Landis et al.*
- 112 Screenshots of Text Messages Between Chief Drake and Cmdr. Newbern, 3/4/2022 –  
3/5/2022, 3/22/2022 – 3/23/2022
- 113 Screenshots of Text Messages Between Deputy Chief Hagar and Cmdr. Newbern,  
9/2/2021, 9/28/2021
- 114 Screenshots of Text Messages Between Deputy Chief Stephens and Cmdr. Newbern,  
5/2/2023, 5/3/2023, 5/19/2023, 7/7/2023, 7/15/2023, 8/28/2023, 8/29/2023, 8/31/2023,  
9/22/2023, 10/18/2023
- 115 Emails Dated 12/6/2022, 12/8/2022, Subject FW: Weekly Crime Meeting Seating
- 116 11/2/2022 Email, Subject Drake Meeting with Vaughn and Richter
- 117 7/19/2022 Email, Subject Communication
- 118 Emails<sup>533</sup> Dated 2/13/2022, Subject FW: ERU Investigations
- 119 Emails Dated 4/27/2022, Subject Changes
- 120 Emails Dated 8/18/2021, 8/26/2021, Subject Job Descriptions
- 121 Emails Dated 9/15/2021, Subject SID/ Administrative Assistant
- 122 Emails Dated 9/22/2021, Subject RE: Requests
- 123 Emails Dated 12/10/2021, 12/12/2021, Subject FW: Reclassification Request
- 124 Emails Dated 2/16/2022, Subject FW: Violent Crimes Posting Results
- 125 Emails Dated 3/4/2022, 3/6/2022, Subject FW: Angela Herrera Reclassification
- 126 3/10/2022 Email, Subject Personnel Requests
- 127 Emails Dated 1/21/2022, 3/15/2022, Subject FW: Urgently Needed Job  
Reclassifications for Fleet
- 128 Emails Dated 2/4/2022, 3/15/2022, Subject FW: Upgrades
- 129 Emails Dated 3/1/2022, 3/9/2022, 3/18/2022, 3/19/2022, Subject RE: OCOP  
Reclassification and POCI Upgrade
- 130 Emails Dated 2/9/2022, 4/5/2022, Subject FWD:
- 131 4/11/2022 Email, Subject SDD Upgrade Drafts
- 132 Emails Dated 4/18/2022 – 4/19/2022, Subject RE: Reclassification-Status
- 133 Emails Dated 4/20/2022 – 4/21/2022, Subject RE: RCT Form 183 – Civilian Position  
Request Form
- 134 Emails Dated 8/17/2021, Subject RE: Jackie Hoffman

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<sup>533</sup> Cmdr. Newbern forwarded the emails referenced in lines 149 through 177 to his personal Gmail account on 6/12/2022.

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- 135 Emails Dated 8/6/2021, 8/9/2021, 8/18/2021, Subject RE: Hoffman
- 136 Emails Dated 4/25/2022, Subject RE: Taylor Schmitz
- 137 Emails Dated 1/26/2022 – 1/27/2022, Subject RE: Keeping Everyone in the Loop
- 138 Emails Dated 1/31/2022, Subject RE: Proposal for OPA FTO
- 139 Emails Dated 1/17/2022 – 1/18/2022, 1/20/2022, 2/16/2022, Subject FW: Annual Grievance Report
- 140 Emails Dated 2/17/2022, Subject FW: Ron Carter
- 141 3/3/2022 Email, Subject Meeting Thursday 3/10
- 142 3/9/2022 Email, Subject Letter to Chief Drake
- 143 Emails Dated 3/10/2022, Subject RE: HR Investigations Proposed Changes
- 144 Emails Dated 3/10/2022, Subject RE: ERU Recommendations
- 145 Emails Dated 2/11/2022, 3/11/2022, Subject RE: Kenzie Bunker – MNPD Intern Applicant
- 146 Emails Dated 3/21/2022, Subject RE: Intern Applicant

## DOCUMENT FROM JILL FITCHEARD

- 147 Picture of Email Dated 6/19/2024, Subject Former Metro Park Police Officer – Recent OPA Investigation

*Additionally, Butler Snow received multiple audio and video recordings. A separate list of these items is available upon request.*

## APPENDIX B—PRIOR VERSIONS OF MNPD MANUAL

- 1 MNPD Manual, Effective 4\_1\_2018
- 2 MNPD Manual, Effective 9\_16\_2022
- 3 MNPD Manual, Effective 6\_8\_2023

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