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## ESSAY

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### POLICING THE POLICE: AN ANALYSIS OF THE CITIZENS POLICE OVERSIGHT COMMISSION

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#### INTRODUCTION

Philadelphia has a police accountability problem. Its past—and present—is replete with examples of police engaging in egregious behavior with

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impunity. Though this problem is not unique to Philadelphia, contemporary efforts to ensure accountability among officers in the city must be understood in the context of the city's specific history. Over the last two centuries, Philadelphia's history is riddled with instances of Philadelphia Police Department ("PPD") officers engaging in misconduct and abuses against Black residents who lack meaningful avenues for redress.<sup>1</sup>

On October 11, 1870—Election Day in Philadelphia and after the passage of the Fifteenth Amendment—police officers accosted Black men who waited hours to vote, arresting and beating those who complained.<sup>2</sup> Nearly a century later in 1958, Black residents in West and North Philadelphia testified before the City Council about several abusive police practices, including "illegal home raids, street frisks done on flimsy pretense, and explicitly racist verbal harassment."<sup>3</sup> The executive director of the National Association for the Advancement of Colored People stated that not a single police officer involved in these abusive practices was reprimanded, in part due to the police department's loyalty to its officers.<sup>4</sup> Furthermore, Black people often do not challenge these abuses because those who assert their rights against the police "do so . . . at the risk of arrest."<sup>5</sup> And, although these police abuses disproportionately affect Black people, white people<sup>6</sup> and other residents of the city are not immune from such misconduct.<sup>7</sup>

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<sup>1</sup> See Josh Rosenblat & Madeline Faber, *190 Years of Police Brutality Against Black People in Philly*, PHILA. INQUIRER (July 10, 2020), <https://www.inquirer.com/newsletters/morning/philadelphia-news-police-brutality-racism-black-lives-matter-pence-biden-pennsylvania-20200710.html> [perma.cc/MEH4-4TTB] (chronicling key events in the history of police violence against Black Philadelphians); *Board Set Up to Hear Beefs Against Police*, PHILA. INQUIRER (Oct. 1, 1958), <https://www.documentcloud.org/documents/6986034-Black-and-Blue-Articles.html> [perma.cc/574E-Y2MY] (announcing the creation of a Police Review Board); see also *infra* Section I.A (discussing the difficulties of successfully disciplining police).

<sup>2</sup> See Dain Saint, Craig R. McCoy, Tommy Rowan & Valerie Russ, *Black and Blue*, PHILA. INQUIRER (Oct. 27, 2020), <https://www.inquirer.com/news/inq/philadelphia-police-brutality-history-frank-rizzo-20200710.html> [perma.cc/MJF8-ADSG] (describing the way the police confronted Black people waiting to vote); see also *Election Day*, PHILA. INQUIRER (Oct. 12, 1870), <https://www.documentcloud.org/documents/6986034-Black-and-Blue-Articles.html> [perma.cc/4XHE-TEWA] (discussing the exclusion of Black men from the polls in 1870).

<sup>3</sup> Saint et al., *supra* note 2.

<sup>4</sup> *Id.*

<sup>5</sup> Note, *Philadelphia Police Practice and the Law of Arrest*, 100 U. PA. L. REV. 1182, 1202 (1952).

<sup>6</sup> See, e.g., *id.* (describing an incident where a white man was arrested for telling his wife to memorize the officer's badge number).

<sup>7</sup> E.g., Plaintiffs' Tenth Rep. to Ct. on Stop and Frisk Pracs.: Fourteenth Amend. Issues at 10, *Bailey v. City of Philadelphia*, No. 10-5952 (E.D. Pa. 2011) (describing Latinos as constituting 13% of the share of stops without reasonable suspicion and 31% of the frisks without reasonable suspicion conducted by Philadelphia police officers).

In response to public outrage, Mayor Richardson Dilworth established in 1958 the country's first civilian oversight board.<sup>8</sup> The board was later shut down due to a lawsuit initiated by the city's chapter of the Fraternal Order of the Police ("FOP"),<sup>9</sup> a prominent and powerful police union. A 2019 analysis of 170 police discipline and termination settlements and opinions demonstrates that the FOP continues to successfully stymie police oversight efforts.<sup>10</sup> The analysis highlights that the FOP has overturned or reduced outcomes in police discipline matters nearly seventy percent of the time.<sup>11</sup>

The city's history of police abuses runs deep, and efforts to curb them, including recent ones such as the creation of the Police Advisory Commission ("PAC"), have been inadequate.<sup>12</sup> Nonetheless, PAC's successor, the Citizens Police Oversight Commission ("CPOC"), has built on PAC's foundation to create a stronger, more meaningful avenue for police accountability in Philadelphia. Since its creation in 2021, CPOC has sought to position itself as a key partner to city officials and a resource for the public in addressing police misconduct.<sup>13</sup> There are, however, additional steps the city and CPOC can take to strengthen CPOC's oversight authority, although it is too soon to know whether CPOC will be an adequate avenue for police accountability.

This Essay proceeds in two parts. Part I outlines the ongoing struggle for meaningful accountability for police misconduct in Philadelphia, including an overview of PAC. Part II provides an overview of CPOC and its authority in addition to my evaluation of its effectiveness and potential.

## I. THE STRUGGLE FOR EXTERNAL ACCOUNTABILITY FOR POLICE ABUSES

### A. *The Problem of Police Abuses in Philadelphia*

On June 1, 2020, Evan Gorski, a student at Temple University, joined a demonstration on Benjamin Franklin Parkway to protest Minneapolis Officer Derek Chauvin's murder of George Floyd.<sup>14</sup> PPD Staff Inspector Joseph

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<sup>8</sup> Saint et al., *supra* note 2; see also *Board Set Up to Hear Beefs Against Police*, *supra* note 1 (describing the initial members appointed to the Police Review Board).

<sup>9</sup> Saint et al., *supra* note 2.

<sup>10</sup> See William Bender & David Gambacorta, *Fired, then Rehired*, PHILA. INQUIRER (Sept. 12, 2019), <https://www.inquirer.com/news/a/philadelphia-police-problem-union-misconduct-secret-20190912.html> [perma.cc/9YM5-7GRE] (studying cases from 2011 to 2019).

<sup>11</sup> *Id.*

<sup>12</sup> See *infra* Section I.B (discussing PAC and its inadequacies).

<sup>13</sup> See *infra* Section II.A (introducing CPOC and its goals).

<sup>14</sup> Jeremy Roebuck & William Bender, *Philly Police Inspector Joseph Bologna Applauded by Fellow Officers as He Surrenders on Charges of Assaulting a Protester*, PHILA. INQUIRER (June 8, 2020), <https://www.inquirer.com/news/joseph-bologna-charges-philly-police-assault-charges-bail-larry-krasner-john-mcnesby-20200608.html> [perma.cc/2NQA-XR5G].

Bologna, Jr., a high-ranking officer who served on the police force for over three decades, was among the officers who arrived at the scene in response to the demonstration.<sup>15</sup> Video footage shows a group of police officers, including Bologna, walking toward the group of protestors.<sup>16</sup> As the officers approached the protestors, an officer carrying a bike shoved it into one of the protestors.<sup>17</sup> It seems as if the protestor touched the bike in some manner before the officer shoved it, but it is unclear from the angle of the video.<sup>18</sup>

After the officer shoved his bike into the protestor, a confrontation among the two groups broke out.<sup>19</sup> At this point, multiple officers, including Bologna, charged toward the crowd of protestors.<sup>20</sup> Bologna proceeded to hit Gorski in the head with his baton.<sup>21</sup> Initially, police officers arrested Gorski, accusing him of assaulting an officer.<sup>22</sup> District Attorney Larry Krasner, however, dropped the charges against Gorski and instead charged Bologna with five separate offenses.<sup>23</sup> Police Commissioner Danielle Outlaw also suspended Bologna “with intent to dismiss,” effectively firing him.<sup>24</sup>

A municipal court judge subsequently dismissed the charges against Bologna, ruling that prosecutors had insufficient evidence that Bologna’s use of his baton was a crime.<sup>25</sup> Bologna’s lawyers and the local FOP chapter insisted that, consistent with his training, Bologna hit Gorski on the shoulder, not the head.<sup>26</sup> One month later—and pursuant to Pennsylvania criminal

<sup>15</sup> *Id.*

<sup>16</sup> @Peopledelphia, X (June 1, 2020, 6:49 PM), <https://twitter.com/Peopledelphia/status/1267588991655784448> [<https://perma.cc/2ZGU-5Q97>].

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Press Release, Phila. Dist. Att’y’s Off., Philadelphia Police Inspector to Face Charges Following Incident Involving Protester (June 5, 2020) [hereinafter Press Release, Phila. Dist. Att’y’s Off.], <https://medium.com/philadelphia-justice/philadelphia-police-inspector-to-face-charges-following-incident-involving-protester-7dao8f68a26a> [[perma.cc/KQ8A-ZTUX](https://perma.cc/KQ8A-ZTUX)].

<sup>21</sup> *Id.*

<sup>22</sup> William Bender, ‘Police Just Went Nuts’: Charges Dropped After Video Surfaces of Police Beating Student, Other Protesters with Batons, PHILA. INQUIRER (June 5, 2020), <https://www.inquirer.com/newsletters/morning/philadelphia-protest-coronavirus-reopening-police-brutality-20200605.html> [[perma.cc/W4YB-TA59](https://perma.cc/W4YB-TA59)].

<sup>23</sup> See Press Release, Phila. Dist. Att’y’s Off., *supra* note 20.

<sup>24</sup> Aubrey Whelan & Jeremy Roebuck, *Philly Police Say Inspector Joseph Bologna Is Suspended ‘with Intent to Dismiss,’ Hours After a New Accusation of Excessive Force*, PHILA. INQUIRER (June 9, 2020), <https://www.inquirer.com/news/philadelphia-police-inspector-joseph-bologna-assault-charges-new-accusations-20200609.html> [[perma.cc/9MTP-AN3R](https://perma.cc/9MTP-AN3R)].

<sup>25</sup> Chris Palmer & Julie Shaw, *A Fired Philly Cop Who Hit a Temple Student with His Baton During George Floyd Protests Was Cleared of Criminal Charges*, PHILA. INQUIRER (Jan. 15, 2021), <https://www.inquirer.com/news/joseph-bologna-philadelphia-police-beating-protester-george-floyd-20210115.html> [[perma.cc/EQ76-RTKJ](https://perma.cc/EQ76-RTKJ)].

<sup>26</sup> Roebuck & Bender, *supra* note 14.

procedure<sup>27</sup>—Krasner refiled those same charges in a new case,<sup>28</sup> which a Court of Common Pleas judge allowed to proceed.<sup>29</sup>

This saga exemplifies the back and forth that can occur within the criminal legal system when police officers are prosecuted for misconduct. Bologna's case of alleged police brutality at a demonstration against police brutality is an egregious example in a long history of police abuses in Philadelphia. Traditional avenues of accountability such as criminal prosecutions are often rife with legal and political considerations that can prevent an adequate and timely resolution of misconduct complaints.

Furthermore, Bologna could appeal his firing. Under the collective bargaining agreement between the city and the FOP, Bologna is entitled to appeal Outlaw's decision to terminate him through the grievance arbitration process.<sup>30</sup> Officers often file these appeals to the chagrin of PPD leadership and Internal Affairs trying to hold officers accountable through internal mechanisms that can be overturned and superseded by the grievance arbitration process.<sup>31</sup> The FOP has significant influence over the structure of the arbitration process given the contract it negotiates with the city every three years.<sup>32</sup> The current contract includes a binding provision that permits officers to appeal the commissioner's termination decision, effectively making the grievance arbitration process the final authority on firing and rehiring officers.<sup>33</sup> The grievance arbitration process has undermined the power of the

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<sup>27</sup> See PA. R. CRIM. P. 544 (stating that charges may be refiled after they are dismissed at a preliminary hearing).

<sup>28</sup> Chris Palmer, *Philly DA Refiles Charges Against Former Police Inspector Joe Bologna in Assault of Student at the George Floyd Protests*, PHILA. INQUIRER (Feb. 11, 2021), <https://www.inquirer.com/news/joseph-bologna-philly-police-beating-protester-george-floyd-krasner-charges-20210211.html> [perma.cc/D3EE-JSL2].

<sup>29</sup> Chris Palmer, *Ex-Philly Cop Joseph Bologna Will Face Assault Charges After All, a Judge Ruled*, PHILA. INQUIRER (Aug. 31, 2021), <https://www.inquirer.com/news/philly-police-joseph-bologna-assault-protests-20210831.html> [perma.cc/KS32-HCVC].

<sup>30</sup> See Sean Collins Walsh & Chris Palmer, *Philly Cops Will Get Raises in Their New Contract. It's a Mixed Bag for Kenney's Police Reform Hopes.*, PHILA. INQUIRER (Sept. 14, 2021), <https://www.inquirer.com/news/philadelphia/philadelphia-police-union-contract-raises-discipline-20210914.html> [perma.cc/P7FM-7VX9] (“The union said that, despite some changes to the disciplinary process, officers still have the same rights to contest penalties or firings through arbitration—a process that has helped overturn sanctions for dozens of officers over the years.”).

<sup>31</sup> See Samantha Melamed, *Arbitrator Sides with Fired Officer*, PHILA. INQUIRER (June 14, 2022), <https://www.inquirer.com/news/philadelphia-police-inspector-anthony-boyle-arbitration-rehired-20220614.html> [https://perma.cc/3AWK-QKSJ] (“Here, Internal Affairs clearly found he violated policy, and arbitration gave him his job back.”).

<sup>32</sup> See Walsh & Palmer, *supra* note 30; Max Marin, *New Philly Police Union Contract Falls Short on Disciplinary Reform*, CITY & STATE PA. (Aug. 15, 2017), <https://www.cityandstatepa.com/politics/2017/08/new-philly-police-union-contract-falls-short-disciplinary-reform/364955/> [perma.cc/JCV2-AVZR] (detailing the three-year terms for each of the last two contracts).

<sup>33</sup> See Walsh & Palmer, *supra* note 30.

mayor, police commissioner, and the public in the primary formal process for holding police accountable for their misconduct.<sup>34</sup>

Until May 20, 2021 that formal process occurred mostly in private.<sup>35</sup> The public gained greater insight into the process in 2020 when PPD and PAC—the external entity charged with providing oversight of PPD—formalized a collaboration.<sup>36</sup> They launched a longitudinal assessment of civilian complaints against police and the resolutions of those complaints via the discipline hearing process between 2015 and 2020.<sup>37</sup> The collaboration covered 9,000 allegations from more than 3,500 civilian complaints that PPD handled, in addition to over 130 Police Board of Inquiry (“PBI”) hearing transcripts.<sup>38</sup>

PPD and PAC’s assessment found that 86% of civilian allegations ended after a preliminary investigation conducted by Internal Affairs.<sup>39</sup> When Internal Affairs did discover evidence of misconduct, 76% of the allegations did not result in discipline, but instead only in training and counseling.<sup>40</sup> Moreover, when officers were found guilty, the penalties were negligible. Only 1.8% of the total allegations resulted in a guilty finding and 1.1% led to some form of discipline, which ranged from a reprimand to a thirty-day suspension.<sup>41</sup> Furthermore, 0.6% of the total allegations resulted in a reprimand and 0.5% led to a suspension, usually between one and six days.<sup>42</sup> The average suspension was 4.2 days.<sup>43</sup>

Moreover, the process for resolving complaints was prohibitively long. On average, the process took over a year—463 days—to conclude.<sup>44</sup> On the extreme end, it took almost two years—637 days—for Internal Affairs to resolve a complaint.<sup>45</sup> Overall, Internal Affairs took “9 days to assign an investigator” after receiving a complaint, another 181 days to complete the

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<sup>34</sup> See *infra* Section II.C (discussing how the grievance process undermines stakeholders’ ability to punish police misconduct).

<sup>35</sup> See CITY OF PHILA. POLICE ADVISORY COMM’N, COLLABORATIVE REVIEW AND REFORM OF THE PPD POLICE BOARD OF INQUIRY 2 (May 20, 2021) [hereinafter COLLABORATIVE REVIEW], <https://www.phila.gov/media/20210521150500/Collaborative-Review-and-Reform-of-the-PPD-Police-Board-of-Inquiry.pdf> [perma.cc/5EJV-DEEJ] (“Until this report, the Philadelphia Police Department’s (PPD) disciplinary process had been largely private.”).

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

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* PBI is the unit within the PPD that manages and executes the discipline hearing process. *Id.* at 4. Due to resource constraints, PAC limited its review in this report to the hearing process rather than also focusing on other aspects of the disciplinary process such as investigations and charging. *Id.*

<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.* Training and counseling are not considered discipline under PPD guidelines. *Id.*

<sup>41</sup> *Id.* at 67.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 66.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Id.*

investigation, seventy additional days to determine charges, and 197 days to hold a hearing.<sup>46</sup> To put this data into context, the following chart outlines the disciplinary process at the time of the assessment—adapted from a chart in PPD and PAC’s report.<sup>47</sup>



<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 2, 8, 66, 67.

As the chart illustrates, an accused officer can plead guilty or not guilty if the PBI files formal charges. If the officer pleads not guilty, the PBI forms a three-member panel to hear the complaint, render a verdict and, if the verdict is guilty, recommend disciplinary action.<sup>48</sup> During this initial process, however, the police commissioner has the final authority over all disciplinary actions.<sup>49</sup> Once the police commissioner makes a final determination, the penalty is assessed against the officer, the civilian is notified of the outcome, and the complaint process is complete.<sup>50</sup> The following chart puts into starker context the data on the outcomes of cases after Internal Affairs investigations.<sup>51</sup>

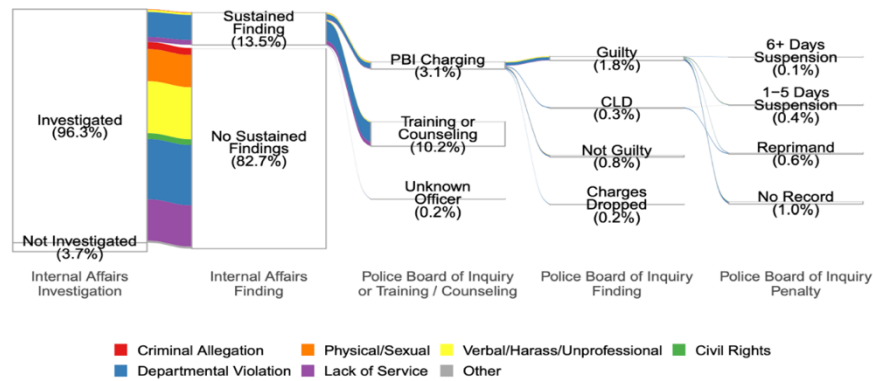


Figure 1: Civilian complaint investigatory process (2015–2020).

<sup>48</sup> *Id.* at 7. Although the evidentiary standard in PBI hearings is, per PBI training materials, a preponderance of the evidence, PBI panels do not consistently apply this standard. *Id.* at 72. There are instances of PBI panels diverging from this standard and instead applying more restrictive standards such as beyond a reasonable doubt and the ‘definitive showing’ standard. *Id.*

<sup>49</sup> *See id.* at 7 (“The Police Commissioner reviews the guilty/not guilty finding from the PBI board and discipline recommendation . . . to make the final decision.”). This refers to the disciplinary process before grievance arbitration, which an officer can pursue when the officer is suspended or terminated. CITY OF PHILA. POLICE ADVISORY COMM’N, PPD POL’Y TRANSLATION FOR PUB. REV. [hereinafter PPD POL’Y TRANSLATION], <https://www.phila.gov/media/20200630152609/PAC-Arbitration-explainer-with-flow-chart.pdf> [perma.cc/9WGS-YCAY].

<sup>50</sup> COLLABORATIVE REVIEW, *supra* note 35, at 67.

<sup>51</sup> *Id.* Of the six main categories of allegations listed (excluding “Other”), civil rights complaints—which included allegations of racial profiling and slurs—were the only category in which no allegation was sustained. *Id.* This is notable because since 2011, and at the time of the study, PPD has been operating under a consent decree resulting from previous allegations of racial bias in PPD traffic stops. *Id.* at 65–66; *see* Settlement Agreement, Class Certification, and Consent Decree at 5, *Bailey v. City of Philadelphia*, No. 10-5952 (E.D. Pa. 2011).



### B. *The Police Advisory Commission*

Mayor Ed Rendell first established PAC in 1993 via executive order to “prevent future incidents of police misconduct and abuses of civil rights.”<sup>52</sup> The order placed PAC in the Managing Director’s Office, which is a cabinet-level city government office, giving it control over PAC’s budget.<sup>53</sup> The 1993 executive order directed PAC to advise the city’s managing director and police commissioner on improving police officers’ relationship with the local community and officers’ ability to carry out their responsibilities.<sup>54</sup> More recently, Mayor Jim Kenney re-established PAC via executive order in 2017<sup>55</sup> to reaffirm “the city’s commitment to strengthening police-community relations through openness, responsibility and accountability.”<sup>56</sup> Under the 2017 executive order, PAC was still housed within the Managing Director’s Office and, as its name suggests, only functioned in an advisory capacity.<sup>57</sup>

When Anthony Erace, the interim executive director of CPOC and former deputy executive director of PAC, started at PAC in 2017, he and then-Executive Director Hans Menos primarily focused on policy issues related to PPD and police accountability.<sup>58</sup> They trained PAC’s sights on department-wide issues and systemic change, which they believed to be more effective than focusing on individual officers.<sup>59</sup> To do so, they hired the “Navy Seals version of policy people” to do a significant amount of work for a small, underfunded team that, in reality, “had little to no actual power” at the time.<sup>60</sup> Their approach to police accountability was not an adversarial one; instead, PAC focused on taking an academic, research-based approach to addressing police misconduct.<sup>61</sup>

Erace and Menos tripled their team from three people when they began to approximately nine in 2020.<sup>62</sup> According to Erace, he and Menos believed their empirical approach would persuade the leaders who had the final say on departmental policies.<sup>63</sup> This was the tactic they used over multiple years,

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<sup>52</sup> Phila. Exec. Order No. 8-93 (1993).

<sup>53</sup> *Id.* § 1.

<sup>54</sup> *Id.* § 4.

<sup>55</sup> See generally Phila. Exec. Order No. 2-17 (2017).

<sup>56</sup> Alicia Victoria Lozano, *Mayor Jim Kenney Reinstates Police Advisory Commission*, NBC PHILA. (Jan. 13, 2017), <https://www.nbcphiladelphia.com/news/local/kenney-police-advisory-commission/14630/> [perma.cc/DQ3R-LQB2].

<sup>57</sup> Phila. Exec. Order No. 2-17 § 1.

<sup>58</sup> Telephone Interview with Anthony Erace, Interim Exec. Dir., Citizens Police Oversight Comm’n (Nov. 21, 2022).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

building PAC's research arsenal which included reports on PPD's canine encounters, an explainer detailing the arbitration process, and stop-and-frisk recommendations.<sup>64</sup> Their ability to do this work, however, fundamentally changed in 2020.<sup>65</sup>

The onset of the COVID-19 pandemic in 2020 created an economic crisis in Philadelphia that led to city officials cutting PAC's budget by 40 percent, according to Erace.<sup>66</sup> Two weeks after these budget cuts, George Floyd was murdered by Derek Chauvin, which led to uprisings in cities nationwide, including Philadelphia.<sup>67</sup> While pandemic-induced budget cuts hindered PAC's work, George Floyd's murder simultaneously reignited the conversation about police accountability in Philadelphia and nationally.<sup>68</sup> As the summer of 2020 and the uprisings continued, Erace noted that city officials attempted to publicly address police reform while neglecting to dedicate adequate resources to PAC to bring police accountability to fruition.<sup>69</sup>

During this period, Menos departed from PAC for a new role, which led to Erace's promotion to acting executive director.<sup>70</sup> Erace sought to refocus PAC's efforts and establish it as the driving force for police accountability in Philadelphia.<sup>71</sup> He wanted the public to view PAC as a go-to resource, pivoting PAC's primary focus away from producing reports.<sup>72</sup> PAC's work in that moment and leading up to CPOC's establishment was about finding a "pathway to yes."<sup>73</sup> That is, Erace wanted PAC to give the police department and mayor's office a way to support the reforms PAC sought to implement.<sup>74</sup>

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64 CITY OF PHILA., *Police Advisory Commission Reports*, <https://www.phila.gov/documents/police-advisory-commission-reports/> [perma.cc/5RU3-TJGE] (last visited Mar. 24, 2024) (listing PAC's reports issued between 2019 and 2021).

65 See Telephone Interview with Anthony Erace, *supra* note 58.

66 *Id.*

67 Oona Goodin-Smith, Anna Orso & Raishad Hardnett, 'We're Not Going to Disappear', PHILA. INQUIRER (Oct. 21, 2020), <https://www.inquirer.com/news/philadelphia/a/philadelphia-defund-police-black-lives-matter-20201021.html> [perma.cc/B6KH-55UX].

68 See *id.*; Steve Eder, Michael H. Keller & Blacki Migliozi, *As New Police Reform Laws Sweep Across the U.S., Some Ask: Are They Enough?*, N.Y. TIMES (Oct. 10, 2021), <https://www.nytimes.com/2021/04/18/us/police-reform-bills.html> (describing police reform efforts in Philadelphia and nationally).

69 See Telephone Interview with Anthony Erace, *supra* note 58.

70 See Mensah M. Dean, *Police Advisory Commission Head to Step Down*, PHILA. INQUIRER (Oct. 6, 2020), <https://www.inquirer.com/news/hans-menos-police-accountability-commission-philadelphia-police-department-20201006.html> [perma.cc/P9WG-TDEU].

71 See Telephone Interview with Anthony Erace, *supra* note 58.

72 *Id.*

73 *Id.*

74 *Id.*

PAC was severely limited in implementing its desired reforms because it “lacked the powers and funding to effect lasting change.”<sup>75</sup> Because PAC did not have direct, independent authority over police misconduct matters, its metric for power and success was whether city leaders adopted its proposals. And, as long as PAC’s ability to exercise its limited oversight powers hinged on the political will of city leaders, its potential could not be fully realized.

For similar reasons, it was also problematic that PAC derived its authority via executive order. The mayor’s office could change the executive order at any time and could do so for political reasons that could undermine PAC’s work. Accordingly, the executive order mattered only insofar as the mayor was willing to support PAC’s efforts and the extent to which city leaders—whose political incentives were not necessarily aligned with PAC’s goals—were willing to heed its recommendations. By the very nature of their roles, the mayor and police commissioner are politically motivated to avoid public conflict with the officers they may seek to discipline and the department they may seek to reform in private. But PAC’s goal was, in part, to involve the public in police oversight efforts. These conflicting realities destined PAC to be an entity devoid of any real power.

## II. THE CITIZENS POLICE OVERSIGHT COMMISSION: A SIGNIFICANT ADDITION TO THE POLICE ACCOUNTABILITY LANDSCAPE

The city recognized that PAC could not fully achieve its goal. Therefore, in 2021, Councilmember Curtis Jones sponsored, and the full city council later passed, an ordinance<sup>76</sup> that made CPOC a permanent fixture in the city’s police accountability ecosystem and replaced PAC.<sup>77</sup> The city also gave CPOC additional authority that PAC lacked. The ordinance codified CPOC’s structure and powers and significantly enhanced CPOC’s ability to hold police officers accountable for their abuses.<sup>78</sup> This is a notable shift considering the shortcomings of its predecessor, which the ordinance sought to address. “The fact that a city ordinance exists in and of itself is transformative,” Erace said.<sup>79</sup>

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<sup>75</sup> Aaron Moselle, *New Independent Police Oversight Commission Will Have Power to Investigate Misconduct*, WHY (Feb. 4, 2021), <https://why.org/articles/new-independent-police-oversight-commission-will-have-power-to-investigate-misconduct/> [perma.cc/MS7F-H6AT].

<sup>76</sup> See generally PHILA. CODE ch. 21-1200 (2021).

<sup>77</sup> Aaron Moselle, *‘Monumental Leap’: Philly Council Passes Bill Establishing New Police Oversight Board*, WHY (May 27, 2021), <https://why.org/articles/monumental-leap-philly-council-passes-bill-establishing-new-police-oversight-board/> [perma.cc/4U63-RA6X].

<sup>78</sup> PHILA. CODE ch. 21-1200 (2021).

<sup>79</sup> See Telephone Interview with Anthony Erace, *supra* note 58.

### A. CPOC and Its Powers Under a New City Ordinance

CPOC began officially operating in April 2022 amid the convergence of the pandemic and racial justice uprisings after George Floyd's murder.<sup>80</sup> Accordingly, when the city council was drafting the ordinance that established CPOC, Erace and PAC officials positioned themselves as essential to the process.<sup>81</sup> They worked with Councilmember Jones, Mayor Kenney, and the PPD to ensure that the reforms in the ordinance were effective.<sup>82</sup>

Erace and PAC's goal in drafting this ordinance, Erace noted, was not about antagonizing the police, city council, or the mayor's office, but rather about proposing a "smarter" way to hold police accountable.<sup>83</sup> Erace and his team also participated in the city's contract negotiations with the FOP in which they secured key reforms to make the disciplinary process quicker and more transparent.<sup>84</sup> Proponents of the ordinance sought to ensure CPOC would not be subordinate to political leaders or PPD as CPOC exercised its oversight authority.<sup>85</sup>

The ordinance mandates that CPOC consists of nine compensated commissioners who are residents of Philadelphia, selected by a panel, and appointed by the mayor and city council.<sup>86</sup> The ordinance prohibits current officers of a political party and current and former members of PPD and the FOP from serving on the commission.<sup>87</sup> The commissioners are trained on PPD's practices regarding use of force, searches and seizures, Internal Affairs and disciplinary measures, and constitutional law.<sup>88</sup>

Moreover, the ordinance established CPOC as the sole conduit for every civilian complaint against PPD officers, explicitly directing it to receive and investigate all such complaints.<sup>89</sup> PPD and other city departments that receive complaints must send them to CPOC.<sup>90</sup> It is also within the discretion of CPOC's executive director to review lawsuits against PPD or its individual members, examine closed Internal Affairs investigations that fall within

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<sup>80</sup> See Mike D'Onofrio, *Philly's New Citizen Police Oversight Commission Takes Shape*, AXIOS (May 6, 2022), <https://www.axios.com/local/philadelphia/2022/05/06/philadelphia-citizen-police-oversight-commission-set-up> [perma.cc/5C8F-MP5M] ("The nine-member board made up of volunteers from across Philly met for the first executive session [in April] following their official appointment by City Council.")

<sup>81</sup> See Telephone Interview with Anthony Erace, *supra* note 58.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

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

<sup>85</sup> Moselle, *supra* note 77.

<sup>86</sup> PHILA. CODE § 21-1203(1)-(2).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* § 21-1203(8).

<sup>89</sup> *Id.* § 21-1205(1)(a).

<sup>90</sup> *Id.*

CPOC's jurisdiction, and either reopen a prior investigation or initiate a new one.<sup>91</sup> In addition to these functions, CPOC may make disciplinary recommendations to the police commissioner.<sup>92</sup>

The ordinance presents notable shifts in how CPOC operates compared to PAC. These shifts aim to make police accountability efforts more transparent by providing the public with relevant data and information.<sup>93</sup> Anjelica Hendricks, former senior policy analyst for PAC and current Quattrone Center Fellow at the University of Pennsylvania Carey Law School, emphasized that transparency in the complaint, investigation, and decision processes is key.<sup>94</sup> For example, PAC was planning to offer mediation services for officers and complainants.<sup>95</sup> A concern with such a program is that the mediation is conducted behind closed doors and therefore shuts the public out of the process, even when it is effective in resolving complaints.<sup>96</sup> Nonetheless, CPOC now offers these mediation services to eligible participants.<sup>97</sup>

In contrast, when CPOC issues a disciplinary recommendation, the police commissioner is required to respond in writing within thirty days of receipt.<sup>98</sup> This provides greater transparency in the disciplinary process. The commissioner must detail whether the commissioner will impose CPOC's recommendation, and, if not, whether the commissioner will impose a harsher or more lenient punishment.<sup>99</sup> If the commissioner decides not to implement CPOC's recommendation, he must explain why.<sup>100</sup> The commissioner is also prohibited from issuing a final disciplinary decision for a case under active investigation by CPOC until CPOC issues its final determinations.<sup>101</sup>

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<sup>91</sup> *Id.* § 21-1205(1)(b).

<sup>92</sup> *Id.* § 21-1205(2).

<sup>93</sup> *See id.* § 21-1207(1)(e) (emphasis added) ("It shall be the policy of the Commission to make all its work available to the public to promote accountability and *transparency*. The Commission shall keep the public informed of all investigations and their progress and the Commission shall ensure *transparency* throughout the entire investigative process.").

<sup>94</sup> Video Interview with Anjelica Hendricks, Quattrone Ctr. Rsch. Fellow, U. Pa. Carey L. Sch. (Nov. 15, 2022).

<sup>95</sup> *See* POLICE ADVISORY COMM'N, COMMUNITY-POLICE COMPLAINT MEDIATION 21 (2020), <https://www.phila.gov/media/20200826150734/PAC-Mediation-External-Report-12.28.19.pdf> [perma.cc/2RLH-59AM] (recommending the creation of a "community-police mediation work group").

<sup>96</sup> *See id.* at 4 (describing the importance of confidentiality in the mediation process).

<sup>97</sup> *See* CITY OF PHILA., COMMUNITY-POLICE COMPLAINT MEDIATION, <https://www.phila.gov/programs/community-police-complaint-mediation/> [perma.cc/3PS4-NG9C] (last visited Feb. 12, 2024).

<sup>98</sup> PHILA. CODE § 21-1205(2)(b)(ii).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* § 21-1205(2)(a)(iii).

CPOC's predecessor, PAC, did not have such authority in the disciplinary process.

### B. *Evaluating CPOC and Its Potential*

CPOC has six of its nine commissioner seats filled and sixteen staff members, which include multiple policy analysts and auditors.<sup>102</sup> This total of twenty-two people executing CPOC's mission is more than double the size of PAC's team in 2020. In addition, CPOC relies on the city's annual budgeting process for its funding. Mayor Kenney's 2022 budget allocated \$1.9 million to CPOC.<sup>103</sup> This is a sharp increase from PAC's 2020-2021 fiscal year budget of \$550,000, which was already an eighteen percent decrease from the 2019-2020 fiscal year.<sup>104</sup> While CPOC's current budget is more than PAC's previous budgets, it is still less than one percent of PPD's 2022 budget of \$727 million.<sup>105</sup>

CPOC's lack of funding, however, is not the only problem. Erace, like Hendricks, highlighted a key issue with police accountability: discipline often occurs in secret.<sup>106</sup> Accordingly, his goal in establishing CPOC was to make the discipline process more transparent and accessible to the public.<sup>107</sup> Shining a light on the process would, in Erace's view, make it more difficult for police to cover up misconduct.<sup>108</sup> To that end, CPOC now has the capacity to enlist civilians to help investigate and charge police officers, and the ordinance requires it to publish information about each investigation it conducts.<sup>109</sup>

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<sup>102</sup> Citizens Police Oversight Commission: Staff and Commissioners, CITY OF PHILA., <https://www.phila.gov/departments/citizens-police-oversight-commission/staff/> [perma.cc/K2VF-HVPZ] (Aug. 9, 2023). CPOC is supposed to have nine commissioners in total, but three commissioners resigned in May 2023 due to internal turmoil. See Rodrigo Torrejón & Max Marin, *Philly's Citizens Police Oversight Commission Faces 'Growing Pains' as a Third of Board Resigns*, PHILA. INQUIRER (May 30, 2023), <https://www.inquirer.com/news/philadelphia-citizens-police-oversight-commission-resignations-20230530.html> [perma.cc/4U9C-F58D].

<sup>103</sup> CITY OF PHILA., 5 YEAR FINANCIAL AND STRATEGIC PLAN FOR FISCAL YEARS 2022-2026 14 (Apr. 15, 2021), <https://www.phila.gov/media/20210414155959/FYP-FullLayout-2022-FINAL-PDF.pdf> [perma.cc/J9ND-QFFY]; CITY OF PHILA., THE MAYOR'S OPERATING BUDGET IN BRIEF FOR FISCAL YEAR 2022 4 (Apr. 2021), <https://www.phila.gov/media/20210414133527/FY22-Budget-in-Brief-Proposed-FINAL.pdf> [perma.cc/H5UG-BYA3].

<sup>104</sup> Laura McCrystal, *Unknown Finances for Police Oversight*, PHILA. INQUIRER (June 6, 2020), <https://www.inquirer.com/news/philadelphia-citizens-police-oversight-commission-20200706.html> [https://perma.cc/6F6E-6CE5].

<sup>105</sup> CITY OF PHILA., 5 YEAR FINANCIAL AND STRATEGIC PLAN FOR FISCAL YEARS 2022-2026, *supra* note 103, at 379.

<sup>106</sup> See Telephone Interview with Anthony Erace, *supra* note 58.

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

<sup>108</sup> *Id.*

<sup>109</sup> PHILA. CODE § 21-1207(1).

Furthermore, CPOC now serves an investigatory function that operates parallel to PPD's Internal Affairs process. The ordinance directs CPOC to conduct its own investigations after civilians file complaints,<sup>110</sup> and it permits CPOC to issue findings and make disciplinary and charging recommendations.<sup>111</sup> This investigatory function is a primary focus of Erace's as he continues to refine CPOC's operations.<sup>112</sup> He hopes to create a unit within CPOC that will function like the National Transportation Safety Board.<sup>113</sup> The board, he noted, investigates plane crashes by examining all parts of the incident in question.<sup>114</sup> The goal is not to find fault, but rather to determine objectively what happened and what needs to happen in the future to achieve a different outcome the next time.<sup>115</sup> This, to Erace, is an important next step in CPOC's new era: a non-adversarial way to inform the process of police accountability.<sup>116</sup>

A potential issue with this approach, however, is it arguably goes beyond what is outlined in the ordinance. Accordingly, the FOP could try to sue to limit CPOC's ability to carry out its investigatory powers in this manner. The city's contract with the FOP prohibits CPOC from enacting, absent the FOP's approval, changes not listed within the agreement "regarding *any matters* that involve a mandatory subject of bargaining" such as officer discipline.<sup>117</sup> This means that, because this specific approach is not listed in the ordinance or the contract or otherwise approved by the FOP, the FOP may argue that the contract restricts CPOC's ability to engage in this investigatory work.

The FOP's ability to initiate such a challenge, however, could be revisited in the next round of contract negotiations. Erace believes every negotiation is an opportunity to persuade all parties to adopt additional reforms.<sup>118</sup> In the meantime, Erace plans to continue building out this investigatory function within CPOC.<sup>119</sup> He noted the investigatory authority included in the ordinance is a "transformative" model for other cities to follow, but its impact will depend on how CPOC executes it.<sup>120</sup>

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.* § 21-1207(1)-(2).

<sup>112</sup> *See* Telephone Interview with Anthony Erace, *supra* note 58.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

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

<sup>117</sup> Fraternal Ord. of Police v. City of Philadelphia, # 0-21-0002-3120 AAA, 12 (2021) (emphasis added) (adopting an arbitral award against the city).

<sup>118</sup> *See* Telephone Interview with Anthony Erace, *supra* note 58.

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

<sup>120</sup> *Id.*

In the interim, CPOC is focused on hiring more well-trained prosecutors, ensuring the panel that adjudicates complaints is objective, making the charging system more accurate, and speeding up the resolution of complaints.<sup>121</sup> To the first point, CPOC now has administrative prosecutors working alongside advocates from PPD during the disciplinary process—another notable shift from PAC’s limited role.<sup>122</sup> This reform means that CPOC has greater capacity to enlist lawyers in proceedings against the FOP’s attorneys.<sup>123</sup> In addition, there are now more lawyers and non-lawyer civilian advocates who can work on these cases.<sup>124</sup> There are two or three civilian prosecutors working to resolve cases at a faster rate whereas before complaints filed with PPD used to take over a year for Internal Affairs to resolve.<sup>125</sup> Furthermore, civilians can participate in the charging process and sit on the adjudication panel, which is a significant change to the disciplinary process.<sup>126</sup>

Even if members of the public or specific complainants disagree with the findings, Erace maintains the process itself is critical because it can legitimate the entire system of police accountability.<sup>127</sup> Critics tend to focus on the arbitration system as a primary obstacle to meaningful accountability for police officers,<sup>128</sup> but Erace views this as the “wrong” focus.<sup>129</sup> He contends the proper goal is to charge officers more accurately and better investigate claims so the complainant can present the strongest case possible at every stage.<sup>130</sup>

In so doing, if the complaint reaches the arbitration process, Erace argues it would be harder for an arbitrator to deny or overturn disciplinary decisions that are predicated on strong complaints.<sup>131</sup> If an arbitrator does dismiss such verifiable claims, however, the public’s ability to access and scrutinize arbitrators’ decisions provides another avenue for accountability.<sup>132</sup> Accordingly, if those three key steps of the process—charging, investigating, and presenting the complaint—are transparent and adequately resourced, the

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

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

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

<sup>126</sup> *Id.*

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

<sup>128</sup> Editorial, *Police Misconduct Revelations Expose the Faceless Power Behind Law and Order in Philadelphia*, PHILA. INQUIRER (Sept. 18, 2019), <https://www.inquirer.com/opinion/editorials/police-arbitration-discipline-firing-editorial-20190918.html> [perma.cc/3LN3-BNDM].

<sup>129</sup> See Telephone Interview with Anthony Erace, *supra* note 58.

<sup>130</sup> *Id.*

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

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



process itself can still be legitimate even if the final disposition is unfavorable.<sup>133</sup> Thus, improving the process is itself a worthy goal.<sup>134</sup>

Furthermore, the legislation grants CPOC access to PPD's internal data,<sup>135</sup> and CPOC is required to publicly report the data it analyzes.<sup>136</sup> This serves two significant purposes: it gives the public insight into the state of the disciplinary system and legitimizes CPOC by not making it dependent on PPD to conduct its oversight work. The information asymmetry that existed before effectively made PAC subordinate to PPD and prevented the public from knowing what was taking place and on what scale. The following table compares PAC's authority and resources near the end of its existence to CPOC's authority and resources:

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

<sup>134</sup> *Id.*

<sup>135</sup> PHILA. CODE § 21-1205(1)(e).

<sup>136</sup> *Id.* § 21-1207(1)(c).

Table 1: PAC vs. CPOC at a Glance

	PAC	CPOC
BUDGET	\$550,000 <sup>137</sup>	\$1,900,000 <sup>138</sup>
SIZE	9 total <sup>139</sup>	22 total
ACCESS TO PPD FILES & DATA	Authority to review internal PPD files “subject to any necessary confidentiality arrangements requested by the Police Department.” <sup>140</sup>	Same access as PPD Internal Affairs to all PPD files and files of other city agencies. <sup>141</sup>
ROLE IN PROCESSING COMPLAINTS	Required to forward complaints to PPD Internal Affairs. <sup>142</sup>	Receives and registers all complaints. PPD and other city agencies must forward to CPOC complaints they receive. <sup>143</sup>
INVESTIGATION POWERS	None. <sup>144</sup>	Independently investigates allegations of police misconduct. <sup>145</sup>
CHARGING POWERS	None.	May recommend charges. Required to notify police commissioner if so. <sup>146</sup>
DISCIPLINARY POWERS	None.	May recommend disciplinary action. Police commissioner must respond within 30 days and explain their final decision if it differs from CPOC’s recommendation. <sup>147</sup>

<sup>137</sup> See McCrystal, *supra* note 104.

<sup>138</sup> See CITY OF PHILA., 5 YEAR FINANCIAL AND STRATEGIC PLAN FOR FISCAL YEARS 2022-2026, *supra* note 103.

<sup>139</sup> For PAC, the total refers to staff as indicated by Erace. It is unclear from public records how many commissioners PAC had in its final iteration. For CPOC, the twenty-two total includes six commissioners and sixteen staff members, all of which are listed on its website. See Citizens Police Oversight Commission: Staff and Commissioners, *supra* note 102.

<sup>140</sup> Phila. Exec. Order No. 2-17 § 5(A).

<sup>141</sup> PHILA. CODE § 21-1205(1)(e).

<sup>142</sup> See Telephone Interview with Anthony Erace, *supra* note 58.

<sup>143</sup> PHILA. CODE § 21-1205(1)(a).

<sup>144</sup> Although the 2017 executive order outlines limited investigatory powers for PAC, see Phila. Exec. Order No. 2-17 § 5(A), PAC did not, in reality, investigate police misconduct. Prior to CPOC’s creation, PPD Internal Affairs was the sole entity that investigated police misconduct. See Video Interview with Anjelica Hendricks, *supra* note 94.

<sup>145</sup> PHILA. CODE § 21-1205(1)(a).

<sup>146</sup> *Id.* § 21-1205(2).

<sup>147</sup> *Id.* § 21-1205(2)(b)(ii).

### C. Potential Roadblocks and Opportunities

As mentioned earlier, the FOP frequently uses the grievance arbitration process to overturn or reduce outcomes in police discipline matters. As of 2019, the FOP has successfully done so in seven out of ten cases it has appealed.<sup>148</sup> The city's contract with the FOP entitles the FOP to appeal the police commissioner's disciplinary decisions, giving the arbitrator that hears the case—not the department that hires and manages officers, nor the elected and appointed city officials who oversee the police force—the final word.<sup>149</sup>

Specifically, the arbitration process governs instances when the police commissioner terminates an officer for a disciplinary violation.<sup>150</sup> This often means the arbitration process can impede efforts to rectify misconduct among officers.<sup>151</sup> With the stroke of a pen, arbitrators can completely undermine PPD Internal Affairs, even when the police commissioner agrees and orders discipline accordingly.<sup>152</sup> The following chart outlines the grievance arbitration process:<sup>153</sup>

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<sup>148</sup> Bender & Gambacorta, *supra* note 10.

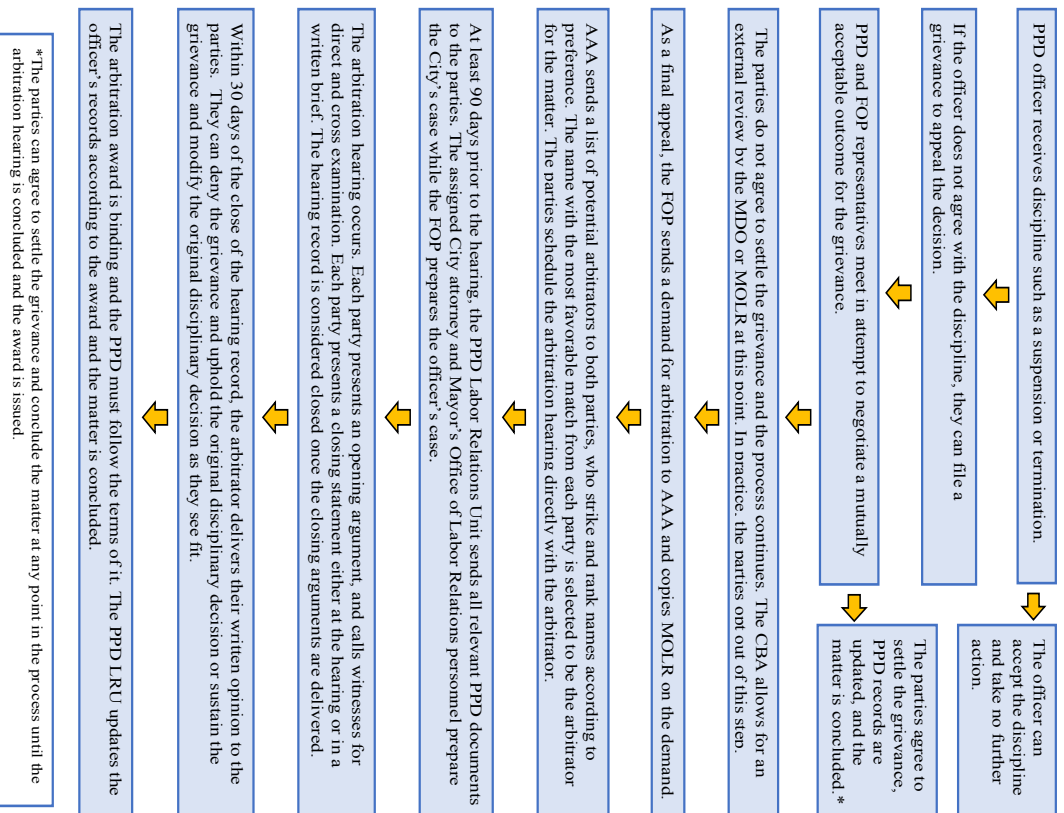
<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> PPD Pol'y Translation, *supra* note 49. "CBA" refers to the collective bargaining agreement, which is the contract itself. *Id.* "PPD LRU" refers to PPD's Labor Relations Unit. *Id.* "AAA" refers to the American Arbitration Association. *Id.* "MDO" refers to the Managing Director's Office. CITY OF PHILA. MANAGING DIR.'S OFF., *What We Do*, <https://www.phila.gov/departments/managing-directors-office/> [perma.cc/48CE-KGHV] (last visited May 3, 2024). "MOLR" refers to the Mayor's Office of Labor Relations. CITY OF PHILA. DEP'T OF LAB., *About*, <https://www.phila.gov/departments/department-of-labor/about/> [perma.cc/77CM-2ZSZ] (last visited May 3, 2024).



Most complaints, however, do not reach arbitration. As noted earlier, 86% of complaints against officers in recent years were dismissed after the initial Internal Affairs investigation.<sup>154</sup> For the minority of complaints that are sustained, 76% of them do not result in a decision that would be within an

<sup>154</sup> COLLABORATIVE REVIEW, *supra* note 35, at 2.

arbitrator's jurisdiction; instead, they result in training and counseling.<sup>155</sup> In addition, 99.5% of the complaints against officers that do reach the police commissioner's desk for a final decision result in a mere reprimand.<sup>156</sup>

The arbitration process is, without question, a frustrating aspect of the police disciplinary process for multiple stakeholders: city officials, CPOC, the police commissioner, Internal Affairs, and the district attorney.<sup>157</sup> Former Police Commissioner Charles H. Ramsey has derided the arbitration process, stating that it is an obstacle to PPD's ability to "realize its full potential."<sup>158</sup> The City has previously expressed that "build[ing] public confidence in the grievance and arbitration process" is among its priorities.<sup>159</sup> Mayor Kenney expressed his "belie[f] that the [arbitration] reforms in the [contract] will help improve the relationship between the police and community, ultimately helping keep Philadelphians safer."<sup>160</sup>

As Erace noted, however, the arbitration process is not his central concern.<sup>161</sup> He stated that primarily focusing on the arbitration process is the "low-hanging fruit" because it obscures the myriad systemic problems that exist before a complaint reaches the arbitration stage.<sup>162</sup> But, because some cases do reach the arbitration stage, it does play an important role in the overall disciplinary process.<sup>163</sup> Accordingly, Erace's focus and CPOC's efforts are centered on making each case that does go to arbitration a "slam dunk," thereby making complaints undeniable at every stage of the disciplinary process.<sup>164</sup>

For CPOC, building credible cases includes ensuring investigations are thorough and quick, witnesses are contacted for their testimony, and the attorneys and citizen prosecutors working with CPOC have adequate training.<sup>165</sup> These priorities—in addition to simplifying complaints, delivering accurate charges, and presenting stronger cases—will "objectively" make it harder to lose, including at the arbitration stage, according to Erace.<sup>166</sup>

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

<sup>156</sup> *Id.*

<sup>157</sup> See Bender & Gambacorta, *supra* note 10 ("To police officials, the fact that arbitrators have the final call on discipline is a maddening obstacle to cleaning up the department.").

<sup>158</sup> *Id.*

<sup>159</sup> Press Release, City of Phila., City Announces Reforms Included in Award for Fraternal Order of Police (FOP) Contract (Sept. 14, 2021), <https://www.phila.gov/2021-09-14-city-announces-reforms-included-in-award-for-fraternal-order-of-police-fop-contract/> [perma.cc/AG5C-8AMC].

<sup>160</sup> *Id.*

<sup>161</sup> See Telephone Interview with Anthony Erace, *supra* note 58.

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

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

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

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

Moreover, even when an arbitrator rules against a complainant, to Erace, the process is the point.<sup>167</sup> Because 99.5% of complaints do not result in discipline,<sup>168</sup> he is concerned that the lack of accountability has a chilling effect on civilians' desire to file complaints because the odds of winning in the end are not in civilians' favor and the process will take over a year to complete.<sup>169</sup> Accordingly, streamlining the process for civilians, providing support to civilians throughout, and making the process more transparent for the public are, to Erace, all worthwhile goals even if an officer is successful in appealing her termination.<sup>170</sup>

Erace and CPOC's focus on improving the complaint investigation and adjudication procedures, rather than the arbitration process itself, is the right move and adequately captures the scope of CPOC's authority. It would be remiss for CPOC to focus on the arbitration process any more than it does. There are many significant and determinative decision points that occur in the investigation and adjudication phases well before a complaint reaches arbitration.

It is, however, too soon to tell whether or how successful CPOC will be. Once more quantitative and qualitative data are available in the coming years, CPOC's success should be measured by whether it is able to investigate and resolve complaints more efficiently than Internal Affairs or influence the speed at which Internal Affairs operates. Furthermore, whether CPOC can expand its investigatory powers without (or despite) legal challenges from the FOP will foretell its success. And, while CPOC has more than twice the funding PAC did, it remains under-resourced. CPOC's ability to be effective will hinge on whether the city adequately funds its efforts.

#### CONCLUSION

In recent decades, Philadelphia has engaged in efforts to curb police abuses and hold officers accountable for their misconduct. The city's history—and contemporary instances—of police abuse is predicated on racial injustice. It is impossible to understand police accountability efforts without accounting for this history. Furthermore, efforts to hold police accountable must be understood in the context of the FOP's near-constant opposition across decades. CPOC faces ongoing challenges in its uphill battle to make the police disciplinary process more transparent and efficient, but it is in a strong position to do so due to the city ordinance that established its authority. And, although CPOC and city officials must navigate the thorny

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

<sup>168</sup> COLLABORATIVE REVIEW, *supra* note 35, at 2.

<sup>169</sup> See Telephone Interview with Anthony Erace, *supra* note 58.

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

politics of policing and CPOC's need for more resources, CPOC has significant potential to transform Philadelphia's police accountability landscape.