

**21CP SOLUTIONS, LLC
- 21ST CENTURY POLICING, LLC -**

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Seattle, WA Police Dept. – Proposed - Methodology

August 15, 2019

Background

The Court’s May 21, 2019 Order directs “the City and the United States, with the assistance of the Monitor and the CPC, to formulate a methodology (1) for assessing the present accountability regime, and (2) for how the City proposes to achieve compliance.” The methodology is due to the Court by August 15, 2019.

As indicated in the City of Seattle’s motion seeking an extension of time, the parties retained 21CP to help design a methodology and conduct the assessment. As ordered by the Court, this was done with the assistance and input of the CPC and the Monitor, as well as community, the OPA, OIG and other stakeholders. At the end of June, 21CP conducted an initial two-day site visit to Seattle and met with representatives of SPD, CPC, Monitor, OPA, OIG, and DOJ. Subsequently, in July, 21CP conducted a second two-day site visit and met with the full CPC commission, monitoring team, and other community organizations. A half-day work session with CPC Monitor, OPA, OIG, and DOJ also occurred during the second site visit. A third site visit was made by 21CP to conduct more community meetings and receive feedback on the draft proposed methodology. This proposed methodology is intended to capture the feedback from the engagement over the last two and half months with Seattle stakeholders.

21CP recognizes that community and a broad range of stakeholders have been and continue to be heavily invested in building a police accountability system that is effective, fair and transparent. This assessment is not an attempt to undo the hard work and countless hours that have been dedicated to this effort over many years. 21CP also recognizes that while this proposed methodology incorporates concerns and suggestions by the community and accountability entities, there remain areas of disagreement regarding the need, scope and purpose of the assessment. 21CP is committed to doing an assessment as finally approved by the Court.

Overview

21CP recommends that this assessment be conducted in two parts to assist the parties and the Court in evaluating the accountability regime.

First, is a focused evaluation of issues particularly noted by the Court. The scope of the evaluation is the attributes contributing to the outcome of the Adley Shepherd arbitration case, whether those attributes were altered by the recently enacted CBA, and whether those identified issues have or could potentially be addressed through changes in the disciplinary appeals process. In addition to these issues, this assessment will examine specific elements that, based on our early observations and stakeholder

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feedback, items could implicate the effectiveness and legitimacy of the work of important elements of the accountability system.

Second, there will be an assessment of specific features of Seattle’s accountability and disciplinary regime in comparison to practices and systems in other comparable jurisdictions. This review, described more fully below, includes many factors suggested through the engagement process, including the factors identified in part 1, above. This assessment will be conducted through a survey of comparably sized jurisdictions and site visits, where appropriate, review of relevant provisions in current state and local laws and collective bargaining agreements, and other relevant materials to provide objective, evidence-based observations.

Assessment Methodology

Part 1 – Assessment of the Accountability System, Including Factors Contributing to the Adley Shepherd Case Outcome and Particular elements of Accountability Ordinance not Implemented in the Current CBA

Purpose: Conduct an evaluation of the current accountability system, with a specific focus on attributes that contributed to the outcome in Officer Adley Shepherd’s case, including: 1) whether those attributes implicate systemic issues and changes that should be made to the disciplinary appeals process; 2) whether subsequent revisions to the disciplinary appeals process, if any, have addressed the identified attributes; and 3) to the extent the attributes implicate systemic issues and have not been addressed, options for addressing them. In addition, the assessment will address specific areas where the current CBA deviates from the provisions of the accountability legislation in a manner which could have significant impact on the work of the OPA and OIG within the accountability system, namely: 1) the calculation of the 180-day timeline for disciplinary investigations; 2) the quantum of proof and standard of review in disciplinary appeals; and 3) the lack of subpoena authority of OPA and OIG.

Approach: The proposed focused analysis will include:

1. Effectiveness of Accountability Regime -- The analysis will focus on the following:
 - a. Using documents, such as SPD and independent oversight entities policies and the Inspector General’s Discipline, Grievance, and Arbitration Process Map, as a starting point, map all elements of the discipline grievance and arbitration processes to applicable laws, rules, policies and collective bargaining agreements.
 - b. Whether the current disciplinary system results in levels of accountability that ensure fair and proportional discipline for force-related misconduct?

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- c. Does the system conflict with public and officer safety?
 - d. Does the system appear to achieve the legitimacy necessary to promote public confidence and achieve its goals (in terms of objectivity, certainty, perceived fairness, and transparency) as opposed to viable, alternative solutions?
 - e. Do the oversight entities of the accountability system effectively work together, so that each component of the system can adequately fulfill their respective missions?
2. Shepherd case review – 21CP will first assess the systemic attributes of the discipline appeals process that contributed to the outcome of the case -- such as the admission of testimony during the arbitration hearing regarding training; 21CP will assess the impact of these attributes on accountability and whether the City has subsequently addressed the identified issues. To the extent the systemic attributes have not been addressed, the assessment will identify options for addressing them.
 3. Disciplinary Appeals Process – 21CP will conduct a comparative analysis between the former (existing at time of Shepherd) and the current discipline, grievance and arbitration structures, procedures. This analysis will include City of Seattle data, document reviews, stakeholder interviews, and best practices from other jurisdictions.
 4. Specific Accountability Regime Elements – 21CP will assess specific elements that, based on our early observations and stakeholder feedback, items could implicate the effectiveness and legitimacy of the work of important elements of the accountability system, namely OPA and OIG and whichever body hears disciplinary appeals: 1) the calculation of the 180-day timeline for disciplinary investigations; 2) the quantum of proof and standard of review in disciplinary appeals; and 3) the lack of subpoena authority of OPA and OIG. This assessment will be based on review of City policies and procedures, records and data of completed investigations and interviews of stakeholders.

Part II: Accountability & Disciplinary Appeal Assessment Survey

The purpose of this project part is to conduct research on best practices, and evaluate the City of Seattle’s accountability system, related to discipline appeals, and arbitration. This part will include identifying comparable jurisdictions, developing a survey instrument, administering the survey to comparable agencies, reviewing developing trends, analyzing best practices around arbitrator vetting/credentialing, and other efforts required for a comprehensive review of the topic.

Based on the Court’s rulings as well as feedback from accountability partners, this part will focus on data gathering and analysis to objectively benchmark features of accountability related to officer discipline and appeals process.

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1. 21CP will develop a survey instrument designed to capture information about comparable agency disciplinary appeal processes. The primary focus of the survey will be on the elements and processes of discipline appeal systems in comparably sized jurisdictions in the United States. 21CP is developing survey questions based on input from CPC, Monitor and other Seattle stakeholders in meetings and work session. The survey questions also represent topics based on a thorough review of documents, including the Court's May 15 and May 21, 2019 rulings, the Accountability Ordinance, relevant collective bargaining agreements, and the November 13, 2018 City Council resolution. At the outset, 21CP projects that the discipline appeals process survey will be seeking a range of information from respondents. The anticipated questions are designed to elicit insight into the elements of systems that are a reflection of state and local laws of surveyed cities including:
 - a. Whether jurisdiction of agency allows for peace officer collective bargaining.
 - b. Type of process (e.g. arbitration, civil service board, circuit or similar court review) – including any limitations on reviewable classes of discipline (suspension, demotion, termination).
 - c. Adjudicator selection process.
 - d. Term limits, if any, of adjudicator.
 - e. Qualifications/requirements of adjudicator(s).
 - f. Selection process of any hearing officers (who, in turn, submit factual findings or recommendations to final adjudicators).
 - g. Quantum of proof necessary for initial disciplinary decision and whether it elevates with the seriousness of the allegation or discipline.
 - h. Standard of appellate review.
 - i. Quantum of proof necessary to uphold Chief's decision and the applicability of national arbitration rules for jurisdictions that rely on arbitration (specifically insofar as the standard elevates with the seriousness of allegation or potential discipline).
 - j. If arbitration is used as appeals process, whether American Arbitration Association rules are used.
 - k. Whether appellant is prohibited from presenting new evidence during appeals process (in other words, is the subject of investigation required to disclose defenses to the charge during the pendency of the investigation rather than raising it during the appeal?)
 - l. Transparency of appeals process
 - i. Are hearings open to the public?
 - ii. Are transcripts or recordings of hearings made available to the public?
 - iii. Length of time record of appeals are retained
 - m. Data of three years of discipline appeal results
 2. An additional portion of the survey will ask questions that are not directly related to the appeals process but are focused on other areas of respective accountability systems:

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- a. Retention time of disciplinary files
 - b. Calculation, extension and/or recalculation of investigatory timelines based on circumstances of notice and other factors (including operational tolling of administrative investigation time during a pending criminal investigation).
 - c. Subpoena power of external accountability agencies or internal affairs / disciplinary investigators
 - d. The extent of the use of civilian investigators of alleged officer misconduct
 - e. Whether accountability system rules are applied consistently to all ranks.
 - f. Transparency of the overall disciplinary process, including whether disciplinary outcomes are tracked and made publicly available (for example, the availability of data on the nature of the misconduct, the discipline imposed, and the outcome of any disciplinary appeal).
 - g. Data for three years of initiated complaints and outcomes of such investigations

21CP anticipates distributing the survey to the jurisdictions that rank in population ten above and ten below Seattle. Choosing comparably-sized cities for administration of surveys of other jurisdictions is an objective selection method and industry practice. Those cities are:

San Diego	San Francisco	Denver	Nashville
Dallas	Columbus	Washington, D.C.	Memphis
San Jose	Fort Worth	Boston	Portland
Austin	Indianapolis	El Paso	Oklahoma City
Jacksonville	Charlotte	Detroit	Las Vegas

In addition, 21CP proposes surveying the additional cities either because of its multi-layered accountability system, current or recent involvement in a consent decree, or West Coast location:

New York	Long Beach
Los Angeles	Oakland
Chicago	Sacramento

21CP will analyze the survey results and then identify sites that utilize successful or promising accountability practices related to discipline appeals processes. 21CP will then conduct two to three site visits (3 day duration) at those identified sites. The purpose is to gain a deeper understanding of the characteristics of the appeals process in establishing benchmarks for the subsequent analysis.

Deliverables

21CP will generate a report and recommendations providing the team's findings. The report will describe the types of disciplinary review processes utilized by Seattle and comparable city law enforcement agencies. The report will include a compilation of survey data and analysis of that data to identify both common and promising disciplinary review/appeal practices. Based on the analysis, 21CP will include objective, evidence-based observations about the strengths and weaknesses of the City's accountability

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system, including presenting alternatives and approaches for policy, procedure, training, and agency protocols. 21CP believes that it would be inappropriate to endorse a set of recommendations, since any acceptable path forward for the City will require a strong consensus among key accountability partners and stakeholders at the City, based on further engagement with the Seattle community.