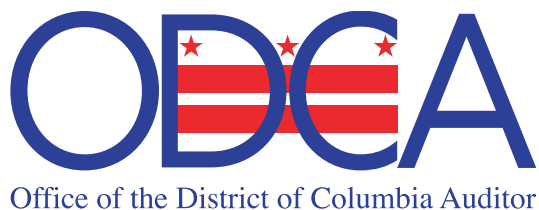


# 36 Fired MPD Officers Reinstated; Receive \$14 Million in Back Pay

October 6, 2022

A report by the Office of the District of Columbia Auditor



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# Executive Summary

## Why ODCA Did This Audit

This audit was prompted by an earlier audit of settlements paid by the District government. The purpose of this audit was to find out why Metropolitan Police Department (MPD) officers who were terminated were then reinstated, how long the reinstatement process lasted, and the financial cost to the government of returning officers to their jobs.

## What ODCA Found

- The most common reason an MPD termination was overturned was because a third-party reviewer (an arbitrator) thought termination was an excessive punishment for the officer's misconduct. MPD failure to meet deadlines, follow procedures, and provide adequate evidence were also factors.
- On average the reinstatement cases reviewed by ODCA lasted almost eight years. Most of these terminations were overturned by a process described in the collective bargaining agreement with the Fraternal Order of Police (FOP). MPD and the FOP had no time limit to move forward on cases, and for most cases, it took an average of 5.8 years just to complete the first step of an appeal.
- Some 36 MPD officers who were fired and got their job back within 5.5 years were awarded a total of \$20.6 million. The District paid out \$14.3 million of that total after wages they earned while terminated were subtracted from the award total.
- As of September 2022, 15 of the 37 reinstated officers reviewed by ODCA were employed at MPD including three who were terminated for misconduct that ODCA has classified as a Threat to Safety.

## What ODCA Recommends

1. When enacting a permanent version of the 2020 police reform legislation Councilmembers should make clear in D.C. Code or report language that they are eliminating arbitration and assigning additional responsibilities to the OEA.
2. D.C. Council should codify the MPD table of penalties with due consideration given to recommendations from the Chief of Police.
3. The Mayor and Council should direct the review and amendment of laws and regulations to address the inconsistency between General Orders and D.C. Code that has resulted in overturned terminations.
4. MPD should comply with statutory requirements on timely action in discipline matters, provide evidence sufficient to support any MPD appeals, and recommend clarification to the requirements to the extent needed.
5. While arbitration remains an option, the Council should enact time limits on referring new cases for arbitration applicable both to MPD and sworn members of the department and their collective bargaining unit consistent with limits now in place in OEA cases.
6. MPD should work with the OAG to develop written criteria for whether to appeal termination cases.
7. MPD should stop ignoring court orders and reinstate terminated employees in a timely fashion.
8. MPD should analyze the disciplinary data from the prior year to assess trends in misconduct and guide initiatives that reduce misconduct.

# Background

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In December 2020, the Office of the District of Columbia Auditor (ODCA) issued [a report on settlements](#) outside of court and court-ordered judgments paid by the District of Columbia. Data analyzed by ODCA showed that in an 18-month period, \$5.6 million in backpay was awarded to 10 Metropolitan Police Department (MPD) officers who were fired and then got their jobs back by appealing the termination.

The reinstatement of terminated police officers has been the subject of analysis by media and other researchers at the local and national levels. A 2017 investigation by *The Washington Post* found that 45% of terminated MPD officers appealed their termination and got their job back between 2006 and 2017.<sup>1</sup> An analysis of 624 police terminations around the nation from 2006 to 2020 by Loyola University Chicago professor Stephen Rushin found that 46% resulted in a reinstatement.<sup>2</sup>

This report is issued following a period of heightened concern about police accountability. The 2020 murder of George Floyd by Minneapolis police officer Derek Chauvin resulted in dozens of Black Lives Matter protests, including events in the District. D.C. Mayor Muriel Bowser renamed a section of 16<sup>th</sup> Street N.W. Black Lives Matter Plaza after several days of racial justice protests in June 2020. D.C. Councilmember Charles Allen, chairperson of the Council's Committee on the Judiciary and Public Safety, introduced legislation which became the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020.<sup>3</sup> As enacted, the package established the Police Reform Commission to examine policing practices in the District and provide evidence-based recommendations for improvement. A permanent version of the legislation is anticipated in fall 2022 but as of publication of this report the Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2022 is in effect.<sup>4</sup>

## **MPD terminations can be overturned through arbitration or the Office of Employee Appeals**

The Metropolitan Police Department's discipline process is complicated and confusing. It is made up of provisions in D.C. Code, District of Columbia Municipal Regulations (DCMR), District Personnel Manual (DPM), MPD General Orders (GOs), the current collective bargaining agreement between MPD and the Fraternal Order of Police, and precedent set by a history of administrative and trial court decisions, including by the District's Office of Employee Appeals and Public Employee Relations Board (PERB), the D.C. Superior Court, D.C. Court of Appeals, and U.S. District courts. Today, once MPD management becomes aware of an incident of misconduct, either internally or from the Office of Police Complaints (OPC),<sup>5</sup> they generate a case file for the incident. On average between 2012 and 2021, MPD generated 3,418 case files each year. Figure 1 illustrates the steps that occur after a case file has been generated and how many different entities are involved.

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1 Kelly, Lowery, and Rich. "Fired/Rehired." *The Washington Post*, Aug. 3, 2017, see: <https://www.washingtonpost.com/graphics/2017/investigations/police-fired-rehired/>

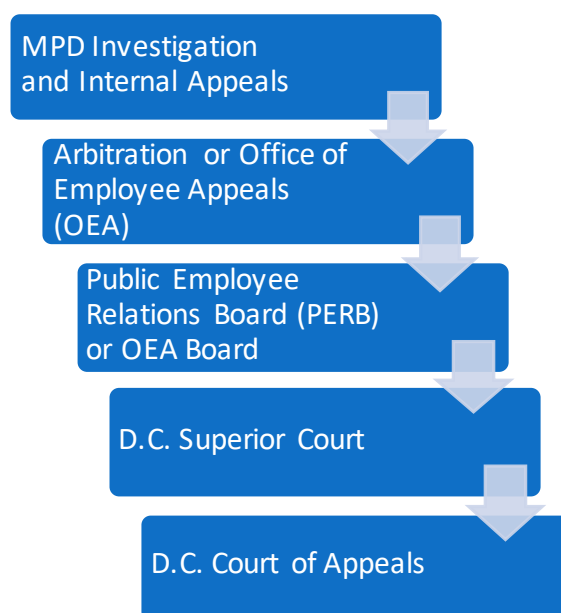
2 Rushin, Stephen. "Police Arbitration." *Vanderbilt Law Review*, *Forthcoming*, see: <https://ssrn.com/abstract=3654483>

3 Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020 (Act A23-336; expired on October 19, 2020). See: <https://lims.dccouncil.us/Legislation/B23-0907>

4 The Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2022 (Act A24-454; expires September 26, 2022). See: <https://lims.dccouncil.us/Legislation/B24-0843>

5 More information on the Office of Police Complaints is available on their website, see: <https://policecomplaints.dc.gov/>

**Figure 1: Disciplinary Process**



**Source: ODCA**

There are multiple entities involved in discipline, both inside MPD and D.C. government, and outside. In differing circumstances, incidents can be investigated by the Office of Police Complaints, the U.S. Attorney’s Office (USAO), MPD’s Use of Force Review Board, MPD’s Chain of Command, and/or MPD’s Internal Affairs Division (IAD). If the misconduct is sustained, discipline is recommended by MPD’s Disciplinary Review Division (DRD). In cases where termination is proposed, a hearing tribunal is held, also known as trial board or an Adverse Action Panel (which is how it will be referred to in this report). The Panel is made up of MPD commanders, inspectors, and captains to hear witnesses and review evidence against the officer. From this point forward, MPD is represented by a lawyer from the D.C. Office of the Attorney General (OAG). The tribunal is empowered to recommend discipline and then an assistant chief will assign discipline to the officer. Officers recommended for termination can then appeal to the Chief of Police. If the appeal is denied by the Chief of Police, the officer’s employment is terminated.

The officer has options to appeal the termination. The collective bargaining agreements<sup>6</sup> effective during the audit scope between MPD and the FOP have empowered the FOP to challenge MPD terminations through arbitration. Arbitrators are independent third parties who are selected by MPD and the FOP from lists submitted by the Federal Mediation and Conciliation Service. If the FOP decides not to appeal on behalf of an officer, the individual officer can choose to appeal termination independent of the union by filing with the District of Columbia Office of Employee Appeals (OEA).<sup>7</sup>

<sup>6</sup> Two Collective Bargaining Agreements were in effect during the scope of the audit, one from 2013 to 2017 and another from 2017 to 2020. The 2017-2020 CBA is available online, see: <https://lims.dccouncil.us/Legislation/PR22-1048>

<sup>7</sup> D.C. Code § 1-606.03(a), see: <https://code.dccouncil.us/us/dc/council/code/sections/1-606.03.html>

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Figure 2: Title Page of the MPD Collective Bargaining Agreement

**COLLECTIVE BARGAINING AGREEMENT**  
**BETWEEN**  
**THE DISTRICT OF COLUMBIA GOVERNMENT**  
**METROPOLITAN POLICE DEPARTMENT**  
**AND THE**  
**D.C. POLICE UNION**  
**(FRATERNAL ORDER OF POLICE/**  
**METROPOLITAN POLICE DEPARTMENT (FOP/MPD) LABOR COMMITTEE)**  
**(COMPENSATION UNIT 3)**

Source: MPD

Decisions made by an arbitrator following the process set out in the collective bargaining agreement can be appealed to PERB. Initial decisions made by an OEA administrative law judge can be appealed to the OEA Board.<sup>8</sup> Then, those decisions can be appealed to D.C. Superior Court.<sup>9,10</sup> The last opportunity to appeal is through the D.C. Court of Appeals.<sup>11</sup> At the conclusion of the appeals process, if officers are successful in the appeal, they receive backpay dating back to the date they were terminated.<sup>12</sup>

**Public and police express concern that current policy and practice allow dangerous officers back on the force.**

The D.C. Police Reform Commission established by the D.C. Council to reform policing and criminal justice in the District published its report in 2021 titled “Decentering Police to Improve Public Safety.” The Commission, made up of community stakeholders, wrote, “the District’s arbitration process poses the most significant challenge to [MPD’s] accountability system.”<sup>13</sup> The report quotes former MPD Chief Peter Newsham who stated the arbitration decisions allowed “very bad police officers back onto our department”<sup>14</sup> and the report also identified that arbitration is not open to the public.

Former MPD Chiefs Charles Ramsey and Cathy Lanier also expressed the need for greater MPD control over terminating officers deemed unfit for service. In meetings with ODCA, current MPD management expressed frustration over the reinstatement of “bad cops” and concern that MPD officers are demoralized when their colleagues are reinstated despite breaking the rules. They suggested that officers may be more likely to engage in misconduct when they believe they have a good chance of overturning any resulting discipline.

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8 D.C. Code § 1-606.03(c). See also Office of Employee Appeals’ web page “Petitions for Review,” see: <https://oea.dc.gov/service/petitions-review>.

9 D.C. Code § 1-617.13(c), see: <https://code.dccouncil.us/us/dc/council/code/sections/1-617.01.html>

10 D.C. Code § 1-606.03(d), see: <https://code.dccouncil.us/us/dc/council/code/sections/1-606.03.html>

11 D.C. Code § 11-721(a), see: <https://code.dccouncil.us/us/dc/council/code/sections/11-721>.

12 6-B DCMR § 1149.2, see: <https://www.dcregs.dc.gov/Common/DCMR/RuleList.aspx?ChapterNum=6-B11&ChapterId=537>.

13 “Decentering Police to Improve Public Safety: A Report of the D.C. Police Reform Commission,” April 2021, page 174, see: <https://dcpolicereform.com>.

14 D.C. Police Reform Commission report, page 173.

FOP leadership told ODCA they are sensitive to this topic as there are issues when there is a preponderance of evidence that an officer engaged in serious misconduct and gets their job back. As a result, the FOP leadership stated that it has implemented additional guidance and training for their arbitration committee that selects which cases the union is willing to fight for.

The DPM includes regulations stating that a potential MPD hire cannot become a police officer if they have committed a felony, been convicted of certain misdemeanors, been dishonorably discharged from the military, or have been terminated or forced to resign from a law enforcement agency, among other factors.<sup>15</sup> The D.C. Police Reform Commission also stated in its 2021 report that, “Neither MPD nor any agency overseeing MPD de-certifies rogue officers, publishes a list of them, or puts other [law enforcement] agencies on notice by informing the International Association of Directors of Law Enforcement Standards and Training, which maintains a list of officers whose licenses have been revoked.”<sup>16</sup>

### **Other concerns: MPD is improperly firing employees and wasting time and money defending poorly executed terminations.**

In *The Washington Post*’s 2017 investigative report on reinstated MPD officers, the authors wrote that “more than half of [the reinstatements occurred] because arbitrators concluded that [MPD] missed deadlines to complete its internal investigations.”

During the confirmation hearing of MPD Police Chief Robert Contee in March 2021, At-Large D.C. Councilmember Elissa Silverman stated that if MPD didn’t want to be forced to bring back unfit officers “then MPD should pay attention to the rules” and ensure terminations are properly conducted. The D.C. Council Committee on Labor and Workforce, chaired by Councilmember Silverman, recommended in its FY 2022 budget report that the Office of Labor Relations and Collective Bargaining (OLRCB) work with MPD to minimize wasted resources on “appealing cases that cannot be won” and that PERB track the cost of litigating arbitration review requests (ARRs).

For its part, the FOP alleges that MPD “misuses” and “causes a major strain” on PERB by dragging the appeal cases through every possible level of appeal and refusing to reinstate officers after being legally ordered to do so, which they contend wastes time and money.

### **D.C. Council legislation eliminates arbitration.**

The District of Columbia personnel policy, reflected in D.C. Code, emphasizes management responsibility for employee performance including discipline while also providing employees protection from arbitrary actions. D.C. Code § 1-617.08 states that “respective personnel authorities (management) shall retain the sole right... to suspend, demote, discharge, or take other disciplinary action against employees for cause.” As noted, the collective bargaining agreements effective during the scope of this audit provided for

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15 District Personnel Manual Chapter 8, Section 873.11, see: <https://edpm.dc.gov/chapter/8/>.

16 “Decentering Police to Improve Public Safety: A Report of the D.C. Police Reform Commission,” April 2021, page 152, see: <https://dcpo-licereform.com/>.

arbitration in cases of MPD officer terminations.<sup>17,18</sup> One of the provisions in the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, is a subsection that states “[a]ll matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable.”<sup>19</sup> The provision is in place and expected to be made permanent before the end of the Council period in December 2022 which would effectively end the arbitration process as part of collective bargaining. The FOP challenged the provision in a court case and the court upheld the legality of the provision.

While the permanent version of the discipline provision is pending, the District and FOP completed negotiation on a new collective bargaining agreement (CBA), which is also pending approval by the D.C. Council. The new CBA deletes the prior version of Article 12 on Discipline. What appears most likely is that the Council will approve the discipline provision, effectively eliminating the arbitration process and going forward police officers would have recourse only to the Office of Employee Appeals in termination cases.

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17 D.C. Code § 1-617.08, see: <https://code.dccouncil.us/us/dc/council/code/sections/1-617.08.html>.

18 There are two Collective Bargaining Agreements (CBAs) that were effective during the scope of the audit. The first CBA was effective from 2013 to 2017. The second CBA was effective 2017 to 2020 and is available online at: <https://lims.dccouncil.us/Legislation/PR22-1048>.

19 Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020 (Act A23-825; expired on October 19, 2020). See: <https://lims.dccouncil.us/Legislation/B23-0907>.



# Objective, Scope, and Methodology

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## Objective

The objective of this audit was to analyze the root causes and the resources consumed by reinstatements and personnel settlements paid to terminated Metropolitan Police Department (MPD) officers.

This audit reviewed case information solely on officers who had been fired from and reinstated to MPD. We did not review cases of officers whose misconduct did not result in termination, and any previous steps leading up to discipline were not reviewed. We did not review cases of officers who were terminated and appealed but then lost their appeal of the termination or those who did not appeal their termination.

## Scope

The audit reviewed the period of October 1, 2015 to March 31, 2021, or Fiscal Year 2016 through the first half of Fiscal Year 2021. The employment status of officers is as of September 12, 2022.

## Methodology

In order to narrow the focus of this topic, we:

- Conducted background research, including listening to public and government testimony during MPD and PERB oversight hearings, reading relevant local news articles, reviewing current and temporary legislation, analyzing annual reports from MPD and the Office of Police Complaints, and meeting with Dr. Stephen Rushin, a criminal law professor at Loyola University Chicago who has published research on the reinstatement of terminated police officers.
- Interviewed staff from the MPD, PERB, OEA, OAG, OPC, and OLRCB.
- Interviewed representatives of the FOP, American Civil Liberties Union (ACLU), and the Partnership for Civil Justice Fund (PCJF).

In order to analyze why officers are reinstated and what it costs, we:

- Requested from MPD a list of sworn, non-civilian MPD officers whose appeal of their termination from MPD ended between October 1, 2015, and March 31, 2021. The end of a case was defined as the point where MPD was required to reinstate the officer and MPD has not planned or does not plan to appeal.
- Reviewed and analyzed case files of 37 officers, including all arbitration awards, OEA decisions, PERB decisions, D.C. Superior Court decisions, Court of Appeals decisions, and enforcement orders. Trends were used to generate tables, charts, and findings. Case files were coded to compare cases. More information on how cases were coded can be found in Appendix A.
- Reviewed and analyzed financial payments from the District government to officers in the sample and/or their legal representation, including backpay calculations, backpay checks, interest calculations, interest checks, and attorney fees.
- Reviewed and analyzed demographic data on the 37 officers provided by MPD and compared it to the demographics of 45 terminated officers provided by MPD and 1,717 separated officers provided by DCHR.

- Reviewed and analyzed the current employment of the 37 officers in the sample, including misconduct MPD had recorded in their database since they were reinstated, and Office of Police Complaints received on that officer before and after the officer's reinstatement.
- Estimated the cost of staff time spent by MPD, OEA, PERB, and OAG to go through several rounds of legal appeals.
- Charted MPD's disciplinary process for sworn officers and compared it to the disciplinary process that civilian employees from District agencies go through.
- Analyzed MPD's internal controls related to the management of terminations and reinstatements.

In order to ensure the data we used was reliable, we:

- Compared the list of reinstated officers provided by MPD against oversight responses from MPD, PERB, and OEA; MPD internal reports to agency leadership; and numbers reported in local news articles.
- Compared the money paid to the officers in the sample against ODCA's previous audit on settlements and judgements paid by the District, which included some instances of backpay from MPD to reinstated officers.
- Conducted searches on publicly available databases for court decisions and awards that may have been left out.
- Crosschecked MPD's data and descriptions of processes against data and descriptions from OAG, including randomly selecting cases that were not on the list and asking MPD to justify their exclusion from the sample, which MPD was able to do.

Ultimately, the audit team cannot confirm that the list of 37 officers was an exhaustive list of all MPD officers who were reinstated between October 1, 2015 and March 31, 2021, because information on disciplinary appeals was tracked by individuals at MPD and OAG in spreadsheets and therefore may contain an error. However, the data reliability testing gave the team confidence that the error rate was likely low. The recommendations in this report were only formulated on trends that are sufficiently large and were unlikely to be negated even if there were a sizeable error rate.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Audit Results

A high proportion of MPD officers who are fired have been able to secure reinstatement by appealing the termination. Between October 1, 2015, and March 31, 2021, 49 sworn officers were terminated (see Figure 3). In that same time period, there were 37 reinstatements. On average, 9 officers are terminated every year and 6 are reinstated.

**Figure 3: Annual Terminations and Reinstatements of MPD Officers**

	Terminations	Reinstatements
FY16	12	5
FY17	5	3
FY18	9	12
FY19	16	5
FY20	3	6
FY21 (first half)	4	6
<b>Total</b>	<b>49</b>	<b>37</b>

Source: ODCA analysis of MPD data

There is a large and variable gap in time between an officer being fired and getting their job back, as low as 3.3 years (see Appendices B.14 and B.15) and as high as 12.8 years (see Appendix B.10). As a result, we cannot state that out of the 49 terminations, 37 officers were reinstated (76%) because terminations and reinstatements are two different groups based on the date of an officer's termination or their reinstatement. For example, if Officer A was fired in 2016, she might not be reinstated until 2024 based on the average lag time of almost eight years. If Officer B was reinstated in 2016, he may have been fired back in 2008. So, Officer A will be counted in the 49 terminations and Officer B will be in the 37 reinstatements, but neither will be in both.

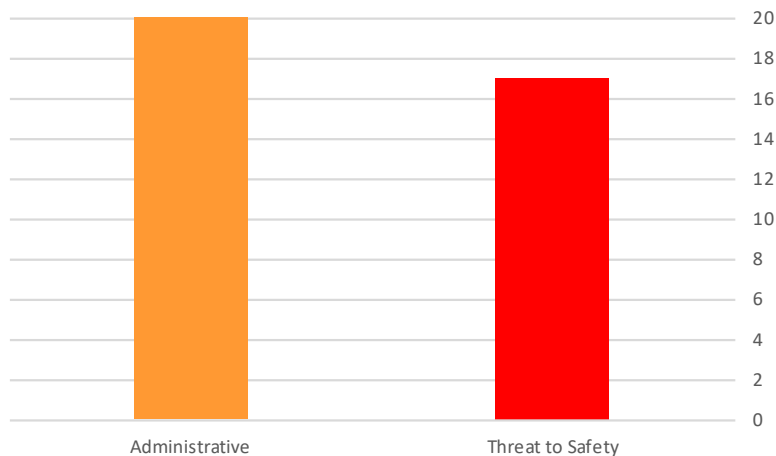
The reinstated officers were primarily reinstated because third-party reviewers determined that termination was an excessive punishment for the misconduct committed. Some 32 of the officers in the audit sample were reinstated through arbitration (86%) compared to five who were reinstated through decisions made by the OEA (14%).

On average, it took approximately eight years to terminate and reinstate an MPD officer. The average amount of backpay the District was required to pay the officer was \$374,000. The labor from several D.C. government agencies to support the arbitration and appeals function cost an estimated \$895,000 annually.

The arbitration or OEA award for each case describes the misconduct the officer committed as stated by MPD. In these descriptions, half of all misconduct reviewed by the audit occurred while the officer was

working on-duty. Some 17 officers (46%) were terminated because of misconduct that ODCA classified as a “Threat to Safety.” Threat to Safety cases include risk of harm to persons through action or inaction, such as physical and sexual violence, mishandling firearms, or compromising evidence related to an arrest. The other 20 officers (54%) were terminated for reasons ODCA classified as “Administrative” (Misrepresentation, Misuse of Resources, etc.), which include misrepresentation of injuries, time theft, fraud, and other misconduct not categorized as a risk of harm to persons. ODCA generated this classification system which is a subjective assessment of what constitutes harm to persons. These classifications are shown in Figure 4 where the orange bar represents cases designated as Administrative (Misrepresentation, Misuse of Resources, etc.) and the red bar represents cases designated as a Threat to Safety.

**Figure 4: Type of Misconduct in Reinstatement Cases**



**Source: ODCA analysis of MPD data**

A summary table of all cases reviewed by the audit is available in Appendix A. A narrative summary of what happened in each case, how the officer was reinstated, and if they were still working at MPD during the audit is in Appendix B. Finally, ODCA conducted an analysis of the demographics of reinstated officers including race, gender, age, and residency. ODCA identified no significant trends because there were so few officers in the reinstatement sample and, for what was in the sample, none of the variation between MPD’s population and the reinstatement sample exceeded 20%. This analysis is available in Appendix C.

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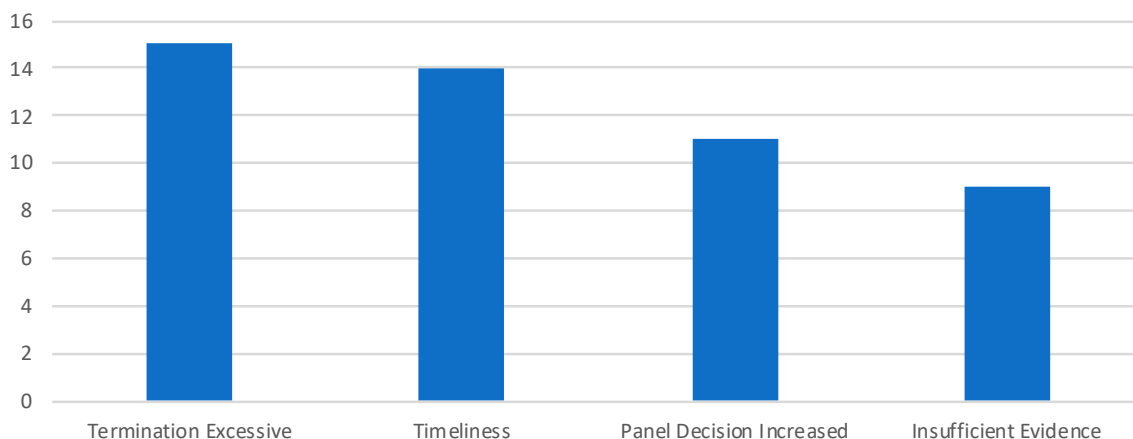
## The primary reason officers were reinstated was that arbitrators or OEA determined termination was an excessive punishment for the misconduct committed.

It is the mission of the MPD to safeguard the District of Columbia and protect its residents and visitors.<sup>20</sup> The reinstatement of officers terminated for misconduct increases the risk that MPD will not fully achieve its mission. Finally, MPD's own policies and procedures (i.e., General Orders) state that "discipline shall be prompt, consistent, fair, and equitable."<sup>21</sup>

The terminations in the audit sample were overturned for these reasons: disproportionate discipline, timeliness, increasing discipline during the disciplinary process, or insufficient evidence. For each case, the arbitrator or OEA may have cited one, two, or all four of these reasons for overturning the termination. The audit team found that the most common issue cited when overturning a termination was that termination was considered disproportionate to the misconduct committed. One case is excluded from the following analyses because the arbitrator determined the case could not be arbitrated (see Appendix B.2). The reasons terminations were overturned is summarized below in Figure 5.

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Figure 5: Reasons for Reinstatement



Source: ODCA analysis of arbitration awards provided by MPD

Below, we delve deeper into the specific factors that contributed to the reasons terminations were overturned. Percentages below exceed 100% because there are multiple reinstatement reasons for some cases.

### Disproportionate discipline was an issue for 15 out of 36 cases (42%).

In 14 of those cases, the arbitrator provided a detailed explanation of why they found the discipline disproportionate using a Douglas Factors analysis. The Douglas Factors are 12 criteria that are considered

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20 MPD's Mission Statement is on its website: <https://mpdc.dc.gov/page/mpdc-mission-and-value-statement>.

21 MPD General Order 120.21, see: <https://mpdc.dc.gov/page/written-directives-general-orders>.

relevant in determining an appropriate penalty to impose for an act of employee misconduct. They are listed in a landmark 1981 federal Merit Systems Protection Board decision<sup>22</sup> that found that the Board could mitigate penalties previously determined by a federal agency if the Board determined that the agency-imposed penalty “is clearly excessive, disproportionate to the sustained charges, or arbitrary, capricious or unreasonable.” In the MPD cases the most common explanation was that a penalty other than termination was sufficient to deter the misconduct at hand (11 out of 14 cases) or that MPD did not give enough weight to the member’s positive work history (10 out of 14 cases). Each represents one of the 12 Douglas factors.

There were four instances of conduct ODCA identified as a Threat to Safety in which the arbitrator determined there was sufficient evidence the misconduct had occurred, but the arbitrator felt termination was an excessive penalty.

In one assault case (Appendix B.13), the arbitrator “concluded that there is substantial evidence in the administrative record to support... that the charges made against the grievant have been proven.” The arbitrator goes on to criticize MPD’s use of the Douglas Factors, specifically two criteria that require MPD to assess the officer’s previous work history and to apply discipline to this case that is comparable to discipline assigned to similar cases. The arbitrator writes “that an appropriate penalty in this case is a forty (40) working day suspension. Such a penalty is proportionate to the offenses committed and reflects both the assault and the alcohol-related aspects of the grievant’s misconduct. The penalty of termination was much too severe.”

### **MPD’s failure to meet statutory deadlines was an issue for 14 out of 36 cases (39%).**

D.C. law establishes that MPD has 90 business days from the day MPD formally opens an investigation of an officer to provide that officer a notice of proposed discipline.<sup>23</sup> Twelve cases were overturned because of the 90-day rule. Also, the collective bargaining agreements (CBA) effective during the scope of the audit between MPD and the FOP establish clear timelines for several steps of the grievance procedure, including a time limit of 55 days between an officer requesting a panel hearing and receiving a final notice of discipline.<sup>24</sup> Two cases were overturned because of the 55-day rule.

Timeliness was primarily an issue for cases classified by ODCA as “Administrative,” although three “Threat to Safety” cases did have an issue with timeliness.

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<sup>22</sup> Douglas vs. Veterans Administration, 5 M.S.P.R. 280 (1981).

<sup>23</sup> The 90-day limit was increased to 180 days “if the act or occurrence allegedly constituting cause involves the serious use of force or indicates potential criminal conduct” by the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020. D.C. Code § 5-1031, see: [https://code.dccouncil.us/us/dc/council/code/sections/5-1031\(Perm\).html](https://code.dccouncil.us/us/dc/council/code/sections/5-1031(Perm).html) This provision is set to expire on September 26, 2022 absent a temporary or permanent bill going into effect prior to that date.

<sup>24</sup> Two Collective Bargaining Agreements were in effect during the scope of the audit, one from 2013 to 2017 and another from 2017 to 2020. The 2017-2020 CBA is available online, see: <https://lims.dccouncil.us/Legislation/PR22-1048>

## **Increasing discipline during the disciplinary process was an issue for 11 out of 36 cases (31%).**

In 11 cases, MPD increased the recommended penalty from suspension to termination during the disciplinary process, which arbitrators found was grounds for reversing the termination. The 11 instances where MPD HR increased the penalty over the penalty determined by the Adverse Action Panel include five Administrative cases and six Threat to Safety cases. When an employee is going to be disciplined, the employee receives a Notice of Proposed Adverse Action stating and describing the charges, the proposed discipline, and a copy of a report on the incident. MPD's General Order GO-120.21 (April 13, 2006 version) states that MPD may issue a final notice to the employee affirming, reducing, or setting aside the discipline the employee was initially notified of.<sup>25</sup> This is contrary to 6 DCMR § A1001.5 which states MPD's final notice can sustain, decrease, or void the discipline determined by a panel of MPD employees or refer the case to another regularly appointed trial board.<sup>26</sup> In other words, the Adverse Action Panel's decision trumps whatever discipline MPD initially wanted to pursue and MPD cannot increase it. The section of DCMR implements D.C. Code § 5-133.06 which states that the decision made by the panel of employees is final, though it can be appealed. The Mayor has the authority to propose regulations concerning the creation of trial boards and the Council retains authority to amend this process.<sup>27</sup>

MPD officials believed they had authority to increase a panel's disciplinary recommendation based on language in the Comprehensive Merit Personnel Act<sup>28</sup> that they believed made Adverse Action Panels inapplicable to MPD officers,<sup>29</sup> which were established in 1906 by an Act of Congress.<sup>30</sup> However, the interpretation of the laws and regulations by the courts in the course of termination appeals has clarified that—in the courts' view—MPD did not have this authority. PERB has reasoned that regulations keep Adverse Action Panels in effect.<sup>31</sup> PERB's interpretation was upheld by the D.C. Superior Court and the D.C. Court of Appeals in the 2016 Dunkins case.<sup>32</sup> MPD officials told ODCA that they ended their practice of increasing the panel's penalty after receiving that decision. In the sample, the most recent cases where MPD increased the penalty to termination during the disciplinary process were officers terminated in 2011 (see Appendix B.11, B.34 and B.36).

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25 GO-120.21 (April 13, 2006 version) Section VI. Procedural Guidelines K.8 on page 16 states, "After reviewing the Hearing Tribunal's proposed decision, the Assistant Chief, OHS, may remand the case to the same, or a different tribunal, or issue a decision (Final Notice of Adverse Action) affirming, reducing, or setting aside the action, as originally proposed in the Notice of Proposed Adverse Action." MPD General Orders are available on their website: <https://mpdc.dc.gov/page/written-directives-general-orders>.

26 6-A DCMR § 1001.5 states, "Upon receipt of the trial board's finding and recommendations, and no appeal to the Mayor has been made, the Chief of Police may either confirm the finding and impose the penalty recommended, reduce the penalty, or may declare the board's proceedings void and refer the case to another regularly appointed trial board." See: <https://www.dcregs.dc.gov/Common/DCMR/Rule-List.aspx?ChapterNum=6-A10&ChapterId=456>.

27 D.C. Code § 5-133.06, see: <https://code.dccouncil.us/us/dc/council/code/sections/5-133.06>.

28 The Comprehensive Merit Personnel Act of 1978. D.C. Law 2-139; effective March 3, 1979.

29 D.C. Code § 1-632.03 states, "The following provisions shall not apply to police officers and fire fighters appointed after the date that this chapter becomes effective," and specifically § 1-632.03(a)(1)(Z) lists § 5-133.06, the section on trial boards. See: <https://code.dccouncil.us/us/dc/council/code/sections/1-632.03>.

30 An Act Relating to the Metropolitan police of the District of Columbia, 31 Stat 819 (1901) amended by 34 Stat 221 (1906).

31 District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Crystal Dunkins), PERB Case No. 12-A-05, see legal analysis on pages 4 to 6: <https://casesearch.perb.dc.gov/home/getfile?fileid={11D0F5E4-ED5F-46A6-BC57-20A452F31D0F}> District of Columbia Metropolitan Police Department v. District of Columbia Public Employee Relations Board and D.C. Police Union, 2012 CA 009192, decided in the D.C. Superior Court 6/16/14; District of Columbia Metropolitan Police Department v. District of Columbia Public Employee Relations Board and Fraternal order of Police Metropolitan Police Department Labor Committee, No. 14-CV-846, decided in the District of Columbia Court of Appeals August 14, 2016.

32 Ibid.

### **MPD's failure to provide sufficient evidence was an issue for 9 out of 36 cases (25%).**

Sufficiency of evidence was primarily an issue for Threat to Safety cases. Of the 17 Threat to Safety cases in the audit sample, eight had insufficient evidence. In one case that was overturned for insufficient evidence, an officer was terminated for assaulting her romantic partner, but an arbitrator determined that not only was there a lack of substantial evidence supporting the assault charge, but the partner who made the call to arrest the officer for assault had a record of assaults against the officer (see Appendix B.8).

ODCA did not independently analyze the evidence used by the MPD Internal Affairs Bureau or Disciplinary Review Division and therefore cannot provide further insights into the sufficiency of evidence. We note only the extent to which it was cited as a reason by arbitrators when overturning a termination.

### **ODCA did not find any evidence of a particular pattern in decisions by individual arbitrators or judges.**

There were 23 arbitrators in the 32 cases where a termination was overturned through arbitration. The most cases any individual arbitrator had was three of the 32, so there were so few cases per arbitrator that it was nearly impossible to assess trends in the reasons an individual arbitrator overturned a termination. Likewise, there were a total of three OEA administrative judges in the five OEA termination cases, so no trends could be assessed. The D.C. Superior Court had 10 judges spread across 14 cases, and the D.C. Court of Appeals only had one case in our sample. PERB is a decision-making board of five individuals.

### **Of the 15 reinstated members currently employed by MPD as of September 12, 2022, three had been terminated for misconduct ODCA identified as a Threat to Safety and six have been the subject of reports of misconduct since reinstatement.**

Eleven of the 15 who were still employed by MPD as of September 12, 2022 were officers, three were sergeants, and one was an investigator; 14 were reinstated but have since left MPD, five left after working less than a year, and eight did not return to working at MPD despite winning their case. This information is presented in below in Figure 6.

**Figure 6: Status of Reinstated Officers from the Audit Sample**

<b>Reinstated and still work at MPD</b>	<b>15</b>	<b>41%</b>
<b>Reinstated and have since retired/resigned</b>	<b>14</b>	<b>38%</b>
Worked less than a year	5	
Worked a year or more	9	
<b>Never returned to work</b>	<b>8</b>	<b>22%</b>
Immediately retired or resigned	7	
Passed away before reinstatement	1	
<b>Total Cases</b>	<b>37</b>	<b>100%</b>

Source: ODCA analysis of MPD data

Of the sample, 14 officers were the subject of at least one complaint to OPC prior to being terminated. Nine officers were either the subject of an OPC complaint or had some kind of misconduct on their record

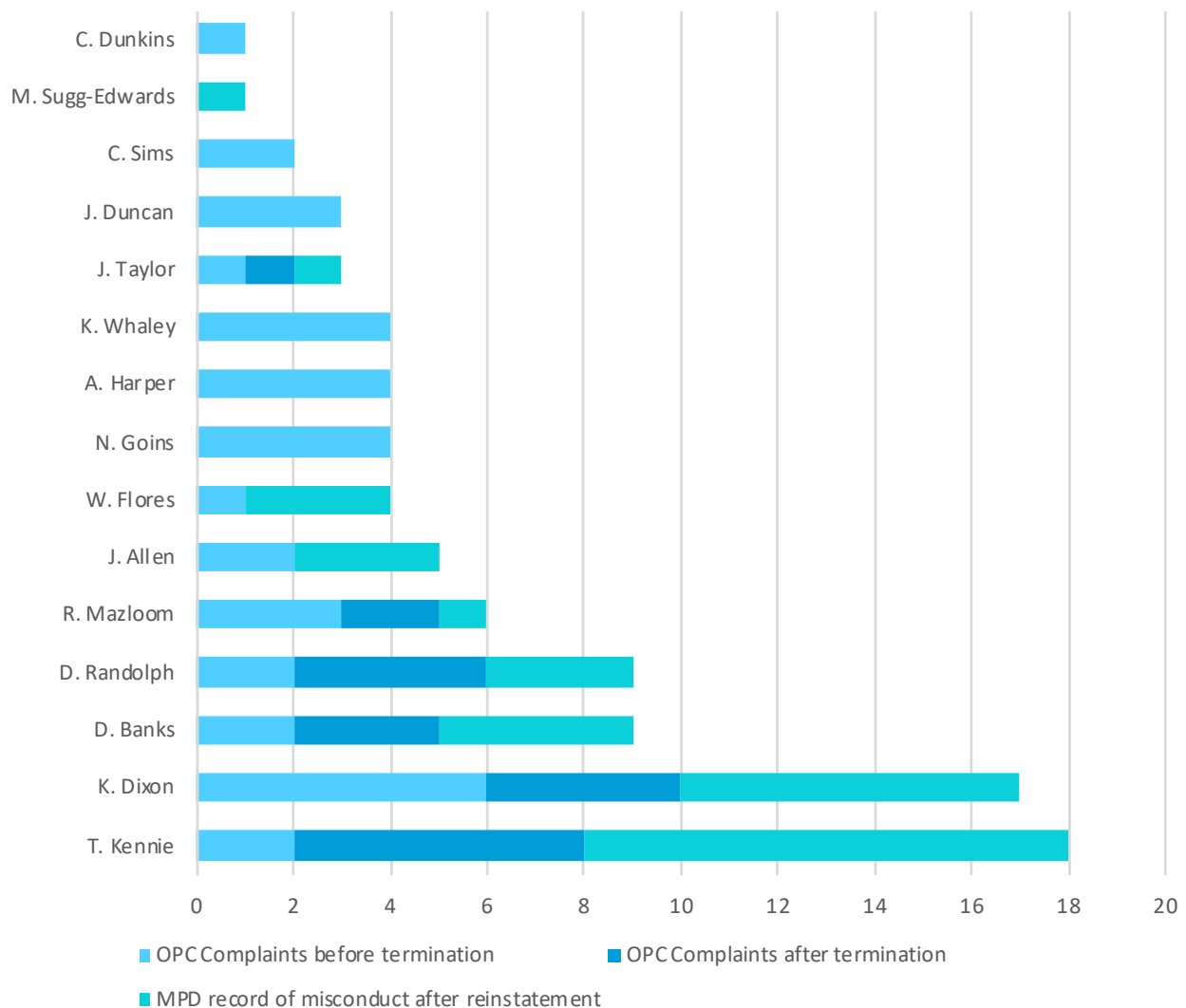


with MPD after being reinstated. Of those nine, six were working at MPD during the audit.

OPC reported 57 complaints against the 37 officers in the sample between 2001 and 2021. For the data provided by OPC, 34 out of the 57 OPC complaints (60%) were dismissed or closed. Another three (5%) were withdrawn by the complainant. The remaining 20 cases were either referred to MPD (10), went through mediation or rapid resolution (5), or the officer was referred to training (5).

MPD reported 33 post-reinstatement instances of misconduct by the 37 officers in the sample. The instances of misconduct reported by MPD had dispositions and none were identified as dismissed. One instance of misconduct was a takedown of an arrested person, and another was a physical fight between two officers. The names and frequency of misconduct of officers is displayed in Figure 7.

**Figure 7: Fifteen Officers had an OPC Complaint or Misconduct on Their Record with MPD**



**Source: ODCA analysis of OPC and MPD data.**

The outcome of 21 out of 33 misconduct instances (64%) was some version of a note in the officer's file (known as a PD 750/Dereliction Report, Letter of Prejudice, or an Official Reprimand).

### **The role of arbitration is to determine the appropriate course when MPD and the D.C. Police Union disagree.**

MPD police officers are a unionized workforce. MPD agreed through collective bargaining that the judgment of arbitrators would supersede their own for any termination the FOP chooses to contest. The Collective Bargaining Agreements in force during the audit between MPD and the FOP stated: "the parties agree that arbitration is the method of resolving grievances which have not been satisfactorily resolved... and is the agreed to method of appealing any... removal from service..." and "the decision of the arbitrator shall be binding upon both parties and all employees..."<sup>33</sup>

If the D.C. Council moves forward on a permanent version of the current police reform emergency legislation which removes police discipline from the collective bargaining process, appealing terminations through arbitration will no longer be an option. However, any MPD employee can appeal their termination by bringing a case to the Office of Employee Appeals (OEA), an avenue also available to other District employees.

Though arbitration and OEA serve similar functions, there are some legal differences based in part on case law in District cases. In *Stokes v. District of Columbia*,<sup>34</sup> OEA overturned a termination because OEA determined the severity of the misconduct did not merit termination. The D.C. Superior Court overturned that action by OEA and the decision was affirmed by the D.C. Court of Appeals. In their response, the D.C. Court of Appeals quoted *Douglas v. Veteran's Administration*, stating, "The [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce." In other words, the D.C. court agreed with the MSPB in *Douglas* that some degree of deference should be given to the programmatic agency. On the other hand, under current District law in these cases, an arbitration award can only be overturned by PERB on narrow parameters: if an arbitrator exceeded their jurisdiction, the award is contrary to law and public policy, or the award was procured by fraud or other unlawful means as defined in D.C. Code.<sup>35</sup> If an arbitrator determines the agency's decision was excessive, the arbitrator may overturn that decision and PERB has no recourse other than these three narrow criteria.

Today both arbitrators and OEA judges make use of a Douglas Factors analysis to determine the appropriate severity of discipline, including Douglas Factor six, "consistency of the penalty with those imposed upon other employees for the same or similar offenses."<sup>36</sup> This reliance on past practice from earlier discipline cases has been sufficiently pervasive in the District that a recent revision of the discipline section in the District Personnel Manual instructs managers to utilize the 12 Douglas Factors to assess

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33 2017-2020 Collective Bargaining Agreement, page 28, see: <https://lims.dccouncil.us/Legislation/PR22-1048>

34 *Stokes vs. Dist. of Columbia*, 502 A.2d 1006 (1985).

35 D.C. Code § 1.605.02(6), see: <https://code.dccouncil.us/us/dc/council/code/sections/1-605.02>

36 The Federal Merit Systems Protection Board established the twelve Douglas Factors in a 1981 court case, see: <https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/douglas-factors.pdf>

severity of discipline, though sworn members of MPD are explicitly excluded from that chapter of the Manual.<sup>37</sup>

## Recommendations

1. When the D.C. Council acts on permanent legislation to codify the removal of discipline from collective bargaining as approved in the Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2022,<sup>38</sup> legislators should make clear in D.C. Code or report language that they are eliminating arbitration and assigning additional responsibilities to the Office of Employee Appeals. This action will help reduce the risk of returning poor performers to the force while protecting the due process rights of District employees.
2. To minimize subjectivity over the severity of discipline for misconduct and ensure discipline decisions reflect current policy, the D.C. Council should codify the MPD table of penalties with due consideration given to recommendations from the Chief of Police.
3. The Mayor and Council should direct the review and amendment of MPD General Order GO-120, 6 DCMR § 1001.5, and/or D.C. Code § 5-133.06 to address the inconsistency between General Orders and D.C. Code that has resulted in overturned terminations.
4. MPD should comply with statutory requirements on timely action in discipline matters, provide evidence sufficient to support any MPD appeals, and recommend clarification to the requirements to the extent needed.

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**On average, it took almost eight years to terminate and reinstate a MPD officer and required the District to pay the officer \$374,000. The labor from several D.C. government agencies to support the arbitration and appeals function cost an estimated \$895,000 annually.**

MPD General Order 120.21 states that “[d]iscipline shall be prompt, consistent, fair, and equitable...” The U.S. Government Accountability Office’s Standards for Internal Control in the Federal Government state, “Effective operations produce the intended results from operational processes, while efficient operations do so in a manner that minimizes the waste of resources.”<sup>39</sup>

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37 DPM 1606.2 and DPM 1600.2, see: <https://edpm.dc.gov/chapter/16/#section-1606>

38 Act A24-454; expires September 26, 2022. See Subtitle L: <https://lims.dccouncil.us/Legislation/B24-0843>

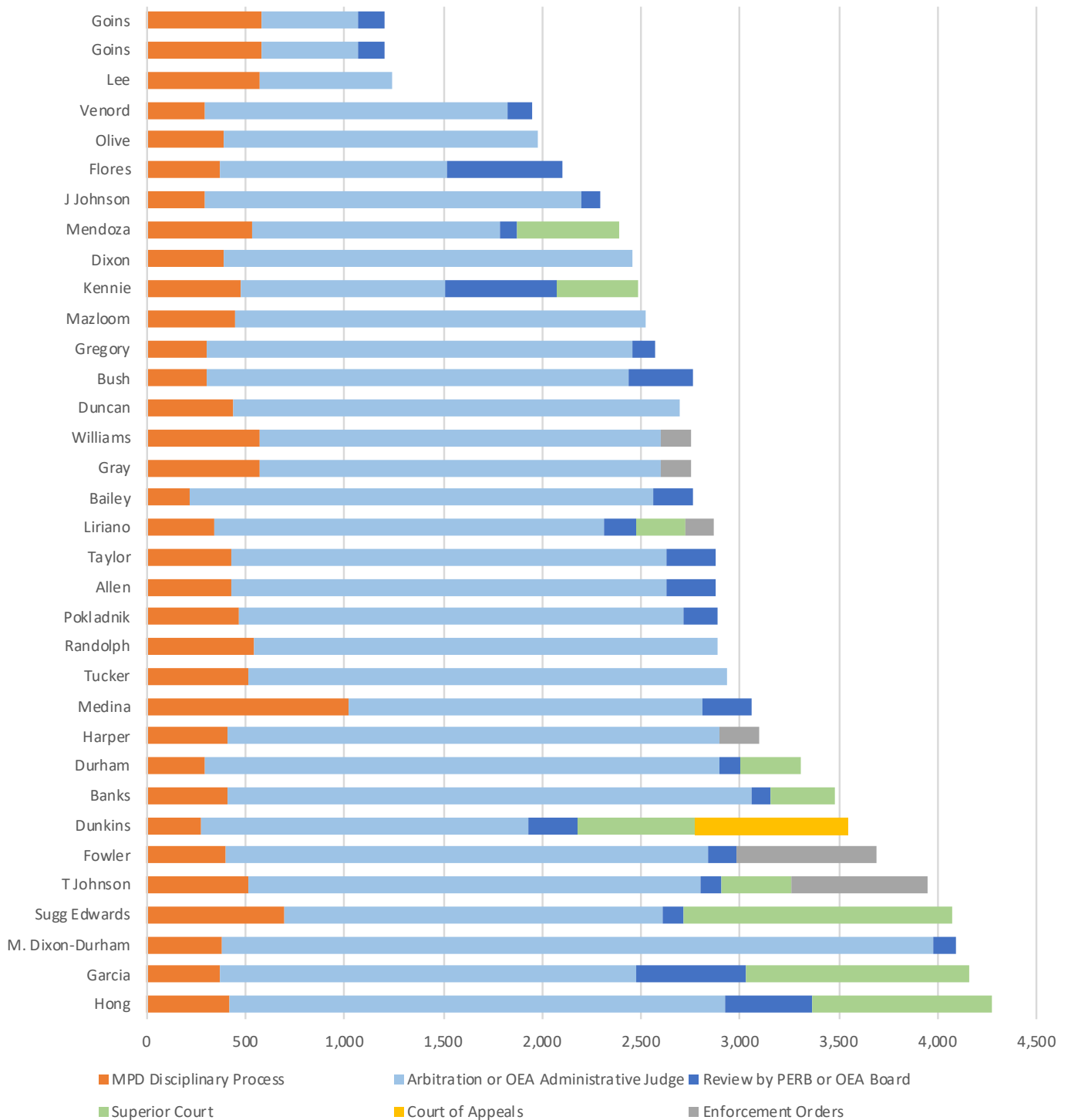
39 U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government*. OV2.19, page 13. See: <https://www.gao.gov/assets/gao-14-704g.pdf>

Contrary to the goals for timeliness, the average reinstatement case lasted almost eight years.<sup>40</sup> Figure 8 below shows the progression of cases from the date of misconduct to the date the appeal ended. The orange bar is the termination process within MPD, light blue is the first round of appeals through arbitration or OEA, dark blue is a review of that decision by PERB or the OEA Board, green is D.C. Superior Court, gold is the D.C. Court of Appeals, and grey is extra time added when MPD was ordered to reinstate an officer but refused to do so and thus received enforcement orders from the courts. The bulk of the eight years occurred when an officer was terminated by MPD and appealed to the FOP to take their case to arbitration (light blue). The time it takes for the FOP to take the case to arbitration and then get an award lasts an average of 5.8 years.

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<sup>40</sup> Case length was calculated by identifying the last date of a case, defined as the last official decision by an arbitrator, OEA, or the courts where MPD was required to reinstate the officer and MPD has not or does not plan to appeal. The last date of a case was subtracted by the later between the date the incident occurred, the end range of the incident in cases where the incident spanned years, and the date MPD knew or should have known about the misconduct in cases where the arbitrator explicitly defined the date MPD knew or should have known.

**Figure 8: Timeline for Different Phases of the Reinstatement Process for Audit Sample, Shortest to Longest**



**Source: ODCA analysis of legal decisions and opinions provided by MPD**

The first step of a termination appeal is either a decision by the union to request arbitration or for the individual to appeal to the Office of Employee Appeals (OEA). Arbitration takes an average of 5.8 years compared to 1.9 years through OEA as shown in Figure 9.

**Figure 9: Average Time Elapsed in Arbitration or OEA for Sample Cases**

	Years	Count of Cases
Arbitration Cases	5.8	32
OEA Cases	1.9	5

Source: ODCA analysis of legal decisions and opinions provided by MPD

The sample included seven cases where MPD received enforcement orders for refusing to reinstate an officer after being ordered to do so by the court. On average, nearly a year passed between the last decision made on a case and the final enforcement order issued.<sup>41</sup>

### **Lengthy reinstatement processes lead to significant payouts.**

Some 36 MPD officers who were fired and got their job back between October 1, 2015 and March 31, 2021, were awarded \$20.6 million though the District only paid out \$14.3 million, as displayed in Figure 10 below. One officer in the sample won her reinstatement but was not awarded backpay. The difference between the \$20.6 million awarded and the \$14.3 million paid is that officers often find alternative employment during the duration of their cases and any amount earned during the period of the termination or demotion is subtracted from what D.C. government ultimately pays them.<sup>42</sup>

**Figure 10: Costs to Reinstatement an Officer**

	Total Eligible Amount	Amount Received Less Earnings
Total Cost of Backpay	\$20.6 M	\$14.3 M
Average Cost per Reinstatement—Backpay Only	\$551,000	\$374,000
Average Cost per Reinstatement—Backpay and Fees	\$697,000	\$520,000
<i>Data for 36 out of the 37 officers in the sample. One officer was not awarded backpay.</i>		

Source: ODCA analysis of data provided by MPD

<sup>41</sup> This analysis includes cases where the last in the event was an enforcement order (D. Fowler, A. Gray, A. Harper, T. Johnson, W. Liriano, C. Williams). One case (J. Hong) was granted an enforcement petition from the D.C. Superior Court on August 12, 2020, then received a ruling on attorney's fees from the D.C. Superior Court on September 29, 2020. Therefore, the last event in the case was not an enforcement order and this case was excluded from the calculation.

<sup>42</sup> 6DCMR § B1149.12 states "...[a]ny amounts earned by the employee from other employment during the period covered by the personnel action being corrected..." are to be deducted from the computation of backpay, see: <https://www.dcregs.dc.gov/Common/DCMR/Rule-List.aspx?ChapterNum=6-B11&ChapterId=537>.

Backpay is not the only financial cost of these reinstatements, as arbitration fees, attorney fees, and interest increase the cost per case from an average of \$374,000 to an average of \$520,000. Our analysis found:

- There were 25 cases in which MPD paid the majority, if not all, of the cost of the arbitrator's time and review which, based on the seven cases we have arbitration cost information for, costs MPD almost \$11,000 per case on average.
- There were nine cases where the FOP was awarded attorney fees. Each award of attorney fees, based on the seven cases for which we have attorney fee information, costs \$59,000 per case on average.
- There were six cases where the officer was awarded interest by an arbitrator or D.C. Superior Court. Each instance of awarded interest, based on the four cases we have interest award cost information for, were \$77,000 per case on average.

There are four government agencies participating in processes that result in the reinstatement of terminated officers: MPD, OAG, OEA, and PERB.<sup>43</sup> Figure 11 contains ODCA estimates that the cost for all of these agencies to support the reinstatement of terminated officers was \$895,000 annually.

**Figure 11: Annual Cost of MPD Reinstatement Process by Agency**

Agency	Estimated Annual Cost <sup>44</sup>	Percent of Total Cost
MPD	\$121,000	14%
OAG	\$612,000	68%
PERB	\$96,000	11%
OEA	\$67,000	7%
Total	\$895,000	100%

Source: ODCA analysis

### **There is no time limit to take a case to arbitration.**

After the Chief of Police has made a final decision to terminate an employee, the FOP has 15 business days to request arbitration.<sup>45</sup> After this, the parties agree to meet at least one more time in a last attempt at reconciliation, though there is no deadline to hold this meeting. After the last attempt at reconciliation,

43 In addition, the Office of the Chief Financial Officer (OCFO) calculates and processes backpay, but we did not include those costs in our calculation.

44 In order to calculate estimated annual cost, the ODCA team multiplied the number of staff who work on reinstatements at a given agency by their salary by the estimated percentage of their total time at work spent on reinstatements. These costs are an estimate and therefore should be used solely for informational purposes.

45 Per the 2017-2020 CBA, the Union, on behalf of an employee, may advise the Chief of Police of its demand for arbitration within 15 days (See Article 19, Section E).

submissions to arbitration must be made within 10 business days. In other words, of this three-step process, the middle step has no time limit and therefore years can pass before a case goes to arbitration. MPD told ODCA that MPD had tried to negotiate a time limit with the FOP, but those efforts were unsuccessful.

For cases that go to OEA instead of arbitration, D.C. Code sets a 30-day time limit to appeal a case to OEA, which is echoed in MPD General Order 120.21.<sup>46,47</sup>

### **The Chief of Police makes a case-by-case decision on whether to appeal a case.**

After an arbitrator rules against MPD, the decision to continue down the path of appeals is made by the Chief of Police, though MPD is represented by OAG throughout the process. This decision is made on a case-by-case basis and there are no written criteria for MPD leadership to determine when to proceed with further appeal.

Many of the longest cases in the sample were those categorized by ODCA to be a Threat to Safety, including a sexual assault case that took 11.7 years and an assault case that took 11.4 years (see Appendices B.19 and B.13). However, there are also cases of off-duty, Administrative misconduct that resulted in significant effort expended appealing cases. For example, one officer rode Amtrak without a ticket while off duty (see Appendix B.27). The case went all the way to D.C. Superior Court and lasted 6.5 years. Ultimately, the officer was paid \$168,623 in backpay after subtracting outside earnings and MPD was responsible for 100% of the cost of arbitration (estimated at \$12,000).

## **Recommendations**

5. While arbitration remains an option, the Council should enact time limits on referring new cases for arbitration applicable both to MPD and sworn members of the department and their collective bargaining unit consistent with the 30-day limit now in place for cases referred to the Office of Employee Appeals.
6. To reduce the cost to the D.C. government of lengthy appeals, MPD should work with the Office of the Attorney General (OAG) to develop written criteria for whether to appeal termination cases including a financial risk assessment.
7. MPD should stop ignoring court orders and reinstate terminated employees in a timely fashion when so ordered.

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<sup>46</sup> D.C. Code § 1-606.03(a), see: <https://code.dccouncil.us/us/dc/council/code/sections/1-606.03.html>

<sup>47</sup> MPD General Orders are available on its website: <https://mpdc.dc.gov/page/written-directives-general-orders>



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## MPD public reporting on officer misconduct can be improved.

MPD is required by D.C. Code § 5-1032 to annually submit a report to the D.C. Council and Mayor “concerning misconduct and grievances filed by or against” their employees.<sup>48</sup> MPD did not submit the annual report on misconduct and grievances required by D.C. Code § 5-1032 for years 2016 to 2020 to the D.C. Council or the Mayor until September 16, 2021, after this audit began.<sup>49</sup> The submitted report was a PDF list of instances of misconduct, which, while responsive to the requirements of the legislation, falls short in providing meaningful transparency to the public regarding officer misconduct. The report did not say how prevalent officer misconduct is, what the most common type of misconduct is, or what the most common outcome is for misconduct. MPD published an annual report in 2019 that included data on citizen complaints, including what the allegations of misconduct were, but there is no information on internal misconduct allegations.

Internally, MPD uses a data system called the Supervisory Support Program (SSP) to alert managers if their employees exceed a threshold of misconduct within an 18-month period. This alert system is valuable, though a [2016 ODCA report](#)<sup>50</sup> found several shortcomings.

In interviews, ODCA confirmed MPD has data on officer misconduct and a report of trends can be compiled, but MPD did not provide an example of this report or evidence that it had been generated internally.

## Recommendation

8. As part of the required annual report on misconduct and grievances, MPD should analyze the disciplinary data from the prior year to assess trends in misconduct and guide initiatives that reduce misconduct.

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48 D.C. Code § 5-1032 see: <https://code.dccouncil.us/us/dc/council/code/sections/5-1032.html>

49 MPD’s Report on Misconduct and Grievances, 2016 to 2020, is available at <https://lims.dccouncil.us/Legislation/RC24-0075>

50 “The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015” (January 2016), see: <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/>

# Conclusion

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ODCA's analyses of District of Columbia police terminations and reinstatements were consistent with national trends. Loyola University Chicago professor Stephen Rushin's nationwide analysis of arbitration awards between 2006 and 2020 found that in the cases where an arbitrator reversed or revised the police department's discipline, the most common reason (211 out of 327 cases, or 64.5%) was that the arbitrator felt that the discipline the Department selected was disproportionate to the offense. The second most common reason was that the evidence against the officer was insufficient (126 out of 327 cases, or 38.5%) and the third common reason was procedural errors (97 out of 327 cases, or 29.7%).

Professor Rushin writes, "This study cannot answer one of the most challenging questions facing critics of police arbitration: how often *should* arbitrators overturn or reduce discipline on appeal? As prior research has observed, '[t]here is no easy answer to this question...'"<sup>51</sup> If the emergency legislation in the D.C. Council becomes permanent, it will transfer review of police terminations to the Office of Employee Appeals. Other cities and states have transferred the need for third-party review to a city manager,<sup>52</sup> kept arbitration but made the arbitrator's decision advisory and non-binding,<sup>53</sup> or defined the arbitrator's standard of review by establishing a table of penalties.<sup>54</sup>

Finally, there is legislation pending<sup>55</sup> to establish a Deputy Auditor for Public Safety at ODCA. This audit narrowly and specifically addressed reinstatements of terminated MPD officers, but there will remain a need to continue to review the policy and process of discipline and the outcomes in terms of effective policing.

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51 Rushin, Stephen. "Police Arbitration." Vanderbilt Law Review, Forthcoming, see: <https://ssrn.com/abstract=3654483>.

52 In Murrieta, California, final disciplinary appeals are reviewed by the city manager. For more info, see: <https://www.bostonglobe.com/2020/07/02/opinion/other-cities-can-fire-police-officers-misconduct-why-not-boston/>.

53 Rushin reviewed agreements between police departments and Unions in Buena Park, CA; Cathedral City, CA; Oxnard, CA; and Peoria, AZ, all of which leverage non-binding arbitration. For more information, see footnote 51.

54 For more information on the effort to establish a new table of penalties in Oregon, see: <https://www.portlandmercury.com/blog-town/2021/08/06/35714950/a-peek-at-the-citys-proposed-police-discipline-guide>.

55 B24-0356, see: <https://lims.dccouncil.us/Legislation/B24-0356>.

# Summary of Report Recommendations

Most of the recommendations in this report can be implemented without any additional costs to the Metropolitan Police Department and the D.C. Council and can help to advance the goals of MPD and the D.C. Council, as seen below.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
1. When the D.C. Council acts on permanent legislation to codify the removal of discipline from collective bargaining as approved in the Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2022, legislators should make clear in D.C. Code or report language that they are eliminating arbitration and assigning additional responsibilities to the Office of Employee Appeals. This action will help reduce the risk of returning poor performers to the force while protecting the due process rights of District employees.	No	Yes	All 13 Councilmembers voted “Yes” to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to provide that “all matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable” on an emergency basis. <sup>56</sup>
2. To minimize subjectivity over the severity of discipline for misconduct and ensure discipline decisions reflect current policy, the D.C. Council should codify the MPD table of penalties with due consideration given to recommendations from the Chief of Police.	No	Yes	MPD Website, Mission and Value Statement: “It is the mission of the Metropolitan Police Department to safeguard the District of Columbia and protect its residents and visitors.” MPD also has a goal to “Support our employees as they work to serve the City.” <sup>57</sup>

<sup>56</sup> Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2021 (Act 24-128); which expired on October 27, 2021. See: <https://code.dccouncil.us/us/dc/council/acts/24-128>

<sup>57</sup> MPD’s Mission Statement is on their website: <https://mpdc.dc.gov/page/mpdc-mission-and-value-statement>

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
3. The Mayor and Council should direct the review and amendment of MPD General Order GO-120, 6 DCMR § 1001.5, and/or D.C. Code § 5-133.06 to address the inconsistency between General Orders and D.C. Code that has resulted in overturned terminations.	No	Yes	MPD's FY21 Strategic Objectives: "Create and maintain a highly efficient, transparent, and responsive District government." <sup>58</sup> D.C. Council Website, About D.C. Council: "...the Council's mission is to provide strong, innovative, and effective leadership for the benefit of residents across the city." <sup>59</sup>
4. MPD should comply with statutory requirements on timely action in discipline matters, provide evidence sufficient to support any MPD appeals, and recommend clarification to the requirements to the extent needed.	No	Yes	MPD Website, Mission and Value Statement: "It is the mission of the Metropolitan Police Department to safeguard the District of Columbia and protect its residents and visitors." MPD also has a goal to "Support our employees as they work to serve the City." <sup>60</sup>

58 MPD's strategic objectives are included in the annual performance plans and reports posted on the website of the Office of the City Administrator. See: <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/MPD21.pdf>

59 About the D.C. Council, see: <https://dccouncil.us/about-the-council/>

60 MPD's Mission Statement is on their website: <https://mpdc.dc.gov/page/mpdc-mission-and-value-statement>

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
5. While arbitration remains an option, the Council should enact time limits on referring new cases for arbitration applicable both to MPD and sworn members of the department and their collective bargaining unit consistent with the 30-day limit now in place for cases referred to the Office of Employee Appeals.	No	Yes	MPD General Orders 120.21: "Discipline shall be prompt, consistent, fair, and equitable..." <sup>61</sup> In the 2014 Committee report for B20-810, which further refines the 90-day limit on discipline established in 2004, the Judiciary and Public Safety Committee wrote that "a promise by [the] department to efficiently process disciplinary cases, in the place of an enforceable rule, is not sufficient." <sup>62</sup>
6. To reduce the cost to the D.C. government of lengthy appeals, MPD should work with the Office of the Attorney General (OAG) to develop written criteria for whether to appeal termination cases including a financial risk assessment.	No	Yes	MPD's FY21 Strategic Objectives: "Create and maintain a highly efficient, transparent, and responsive District government." <sup>63</sup>
7. MPD should stop ignoring court orders and reinstate terminated employees in a timely fashion when so ordered.	No	Yes	MPD's FY21 Strategic Objectives: "Provide the highest quality police service with integrity... Create and maintain a highly efficient, transparent, and responsive District government." <sup>64</sup>

61 MPD General Orders are available on its website: <https://mpdc.dc.gov/page/written-directives-general-orders>

62 Committee report for B20-810, see: [https://lms.dccouncil.us/downloads/LIMS/31839/Committee\\_Report/B20-0810-CommitteeReport1.pdf](https://lms.dccouncil.us/downloads/LIMS/31839/Committee_Report/B20-0810-CommitteeReport1.pdf)

63 MPD's Strategic Objectives are posted annually by the Office of the City Administrator: <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/MPD21.pdf>.

64 MPD's Strategic Objectives are posted annually by the Office of the City Administrator: <https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/MPD21.pdf>.

Recommendation	Is There a Cost to the Agency/ Entity to Implement?	Potential to Generate Revenue or Savings to the District?	Specific Agency/Entity or District-Wide Goal Advanced by Recommendation
8. As part of the required annual report on misconduct and grievances, MPD should analyze the disciplinary data from the prior year to assess trends in misconduct and guide initiatives that reduce misconduct.	No	Yes	MPD Website, Mission and Value Statement: "Build on what the MPD is doing right by continuously evaluating our strengths and weaknesses and position the MPD to be viewed and respected nationally and internationally as a model for how it serves the community... Instill a sense of transparency in operations with regular reports..." <sup>65</sup>

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65 MPD's Mission Statement is on its website: <https://mpdc.dc.gov/page/mpdc-mission-and-value-statement>.

## Agency Comments

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On August 31, 2022, we sent a copy of this report to the Metropolitan Police Department (MPD) for review and comment. A copy was also forwarded to the Office of the Attorney General (OAG). OAG responded with comments on September 14, 2022, and MPD responded with comments on September 16, 2022. Agency comments are included here in their entirety, followed by ODCA's response.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
METROPOLITAN POLICE DEPARTMENT**

September 16, 2022

Kathleen Patterson  
District of Columbia Auditor  
Office of the District of Columbia Auditor  
717 14<sup>th</sup> Street, NW, Suite 900  
Washington, DC 20005

Dear Ms. Patterson,

Thank you for providing the Metropolitan Police Department (MPD) with an opportunity to review the draft Office of the District of Columbia Auditor (ODCA) report concerning the audit of “Causes and Trends of MPD Personnel Settlements and Reinstatements.” I take seriously MPD’s mission to protect and serve the citizens of the District of Columbia. Reinstatement of sworn members who committed misconduct that warranted termination is a threat to public safety; therefore, I appreciate the ODCA’s important work in examining this issue.

As discussed in your audit report, there is pending legislation that will remove discipline from collective bargaining, thereby eliminating arbitration from the discipline appeal process while still permitting sworn members to appeal to the Office of Employee Appeals (OEA) like all other District government employees. We are hopeful that this change and the MPD’s new disciplinary process will ameliorate the core challenges, as explained in your audit, that MPD has faced with reinstatement of terminated members. With one limited exception, we agree with the recommendations outlined in your report and provide our specific responses below.

<b>ODCA Recommendation Summary</b>	<b>MPD Response</b>
<b>1. When the D.C. Council acts on permanent legislation to codify the removal of discipline from collective bargaining as approved in the Comprehensive Policing and Justice Reform Congressional Review Emergency Act of 2022, legislators should make clear in D.C. Code or report language that they are eliminating arbitration and assigning additional responsibilities to the Office of Employee Appeals. This action will help reduce the risk of returning poor performers to the force while protecting the due process rights of District employees.</b>	<b>AGREE</b> MPD agrees with this recommendation.



<p><b>2. The D.C. Council should codify an MPD table of penalties to minimize subjectivity over the severity of discipline for misconduct and to ensure discipline decisions reflect current policy.</b></p>	<p><b>AGREE IN PART</b></p> <p>MPD agrees in part with this recommendation. MPD agrees that a revised, more precise Table of Penalties will help to eliminate the disparity in penalties and reduce the subjectivity currently exercised by arbitrators. Further, there are credibility and transparency benefits for members, the Department, and community stakeholders when penalty guidelines are available and accessible. However, we think that rulemaking, instead of legislation, will accomplish this goal.</p> <p>MPD will publish its own disciplinary rules, including a revised table of penalties, to govern sworn members, similar to Chapter 16 of the District Personnel Manual that currently applies to civilians. This rulemaking's table of penalties will be analogous to the current table found at § 1607's "Illustrative Actions."</p> <p>Rulemaking will 1) allow the public and interested persons to comment on proposed penalties and provide transparency as to the Department's penalty ranges; 2) address the problem involving prior comparable cases; 3) afford flexibility, allowing a new Chief of Police to articulate his or her disciplinary priorities through the rulemaking process; and 4) prove timely and less rigid than the legislative process, affording the Chief of Police flexibility to address emerging misconduct priorities as they arise.</p>
<p><b>3. The Mayor and Council should direct the review and amendment of MPD General Order GO-120, 6 DCMR § 1001.5, and/or D.C. Code § 5-133.06 to address the inconsistency between General Orders and D.C. Code that has resulted in overturned terminations.</b></p>	<p><b>AGREE</b></p> <p>MPD agrees with this recommendation. MPD is preparing a new disciplinary process through the issuance of rules and a new general order. This new directive does not contain the language at issue in this recommendation, which occurred in termination cases between 2007 to 2011, and were based on a prior arbitration decision that supported this practice. Once the Court of Appeals ruled on this matter in the Crystal Dunkins' case six years ago, this ceased to be an issue.</p>

<p><b>4. MPD should comply with statutory requirements on timely action in discipline matters and provide evidence sufficient to support any MPD appeals.</b></p>	<p><b>AGREE</b> MPD agrees with this recommendation, but urges that D.C. Code § 5-1031 (90-day rule) be repealed in its entirety. The 90-day rule, applicable only to the Police and Fire and Emergency Medical Services Departments, creates a technical hurdle that allows guilty employees to avoid accountability for their misconduct, particularly in cases involving criminal acts. Interpretations of when the 90-day clock started, when it stopped, whether the stopping was proper, when it re-started, and when it concluded have resulted in at least six (6) Court of Appeals cases, two Council amendments, and as this audit found, 14 members (<b>39% of all reinstatements</b>) whose terminations were overturned, including in cases where the misconduct was not in dispute.</p>
<p><b>5. While arbitration remains an option, the Council should enact time limits on referring new cases for arbitration applicable both to MPD and sworn members of the department and their collective bargaining unit consistent with the 30-day time limit now in place for cases referred to the Office of Employee Appeals.</b></p>	<p><b>AGREE</b> MPD agrees with this recommendation recognizing that the recently negotiated and ratified collective bargaining agreement eliminates disciplinary arbitration.</p>
<p><b>6. To reduce the cost to the D.C. government of lengthy appeals, MPD should work with the Office of the Attorney General (OAG) to develop written criteria for whether to appeal termination cases, including a financial risk assessment.</b></p>	<p><b>AGREE</b> MPD agrees with this recommendation and will work with OAG to develop appeal criteria similar to those used by OAG with other agencies that include financial and public safety risk considerations.</p>
<p><b>7. MPD should stop ignoring court orders and reinstate terminated employees in a timely fashion when so ordered.</b></p>	<p><b>AGREE</b> MPD agrees with this recommendation. The case files included in this report's index illustrated the egregious misconduct engaged in by the 37 terminated members. MPD's efforts in fully pursuing the appeal process after an unfavorable arbitration decision reflects its efforts to prevent reinstatement of individuals who were unsuitable to serve as law enforcement officers. However, once the appeal process is exhausted, MPD has and will continue to timely comply with an order of reinstatement.</p>
<p><b>8. As part of the required annual report on misconduct and grievances, MPD should analyze the disciplinary data from the prior year to assess trends in misconduct and guide initiatives that reduce misconduct.</b></p>	<p><b>AGREE</b> MPD agrees with this recommendation.</p>

MPD greatly appreciates the hard work and diligent effort by you and your staff in conducting this audit. Reinstatement of members who engaged in egregious misconduct that warranted termination has been a source of great frustration for me and my predecessors. Your audit highlighted this problem and the challenges faced by MPD in this regard. I am hopeful that the this audit's recommendations, the newly negotiated collective bargaining agreement that eliminates disciplinary arbitration, and MPD's new disciplinary process will substantially improve a problem that has plagued the District of Columbia for decades.

As requested in your correspondence of August 31, 2022, we will inform the D.C. Police Union of the individual members that are included in this report and mentioned by name.

Thank you for being a partner in our public safety mission of providing the best service to our community. Please do not hesitate to contact us if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Contee III". The signature is fluid and cursive, with a large, stylized "R" and "C".

Robert J. Contee III  
Chief of Police

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Attorney General**

**ATTORNEY GENERAL**  
**KARL A. RACINE**



September 14, 2022

Kathleen Patterson  
D.C. Auditor  
Office of the District of Columbia Auditor  
717 14<sup>th</sup> Street, NW  
Washington, DC 20005

**Re: OAG comments to draft report, “36 Fired Police Officers Reinstated, Awarded \$14 Million in Back Pay”**

Dear Ms. Patterson,

Thank you for providing the Office of Attorney General for the District of Columbia (OAG) with the draft report entitled, “36 Fired Police Officers Reinstated, Awarded \$14 Million in Back Pay.” The report documents a thorough, meticulous analysis of the factors contributing to the reinstatement of officers who had been terminated by the Metropolitan Police Department (MPD) and the financial and other costs to the District of those reinstatements. We write to provide OAG’s comments to the report.

The report notes MPD’s failure to comply with the 90-day statutory deadline in disciplinary matters as a basis for reinstatement in some matters. In our experience, MPD’s failure in this regard is due largely to the rule’s lack of clarity. Because of the rule’s ambiguity, arbitrators apply the rule in different and inconsistent ways. As a result, MPD has been unable to discern at the time that it is considering disciplinary charges whether the 90-day clock is running or whether it has been tolled pending a criminal investigation. For example, an arbitrator may decide for any day at issue that no criminal investigation was underway or that it had already concluded, despite strong evidence to the contrary. *See, e.g., Fraternal Order of Police v. Metro. Police Dep’t*, No. 18-CV-228 (D.C. Oct. 29, 2020) (remand because unclear whether tolling for a criminal investigation began when MPD started its excessive force investigation or when it provided the U.S. Attorney’s Office a formal investigative package, and also whether the 90-day clock for a disciplinary charge of being convicted of assault ran from the date of conviction or the date of the assault); *Butler v. Metro. Police Dep’t*, 240 A.3d 829 (D.C. 2020) (remand because unclear whether a criminal investigation occurred in the first 18 days after MPD began an investigation of an employee’s alleged time fraud, and also whether the 90-day clock began running later when MPD learned in the course of the investigation that the employee had unlawfully accessed another employee’s

medical records, which would become the principal basis of the disciplinary charges). OAG, therefore, suggests a slight revision to the report's fourth recommendation—that MPD comply with statutory deadlines in disciplinary matters—as follows: The 90-day deadline for MPD to bring disciplinary charges should be modified or eliminated.

Next, OAG agrees that a revised table of penalties may help minimize subjectivity over the severity of discipline for misconduct and ensure discipline decisions reflect current policy. However, we suggest that this revised disciplinary table not be legislated. Rather, OAG recommends that MPD develop the revised table of penalties after express delegation of this authority by the Council. This is consistent with the practice of other major metropolitan police departments, including those in neighboring Maryland. OAG is happy to consult with MPD in the development of this revised table of penalties.

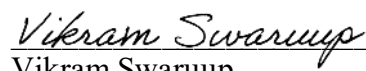
Finally, OAG agrees with the report's recommendation that OAG work with MPD to develop written criteria for whether to appeal termination cases. We will work with MPD to develop these criteria within 90 days and will arrange regular meetings to communicate regarding these matters.

Thank you again for your work on this important audit. We look forward to working with MPD, the Council, and other stakeholders to support effective systems of accountability at MPD.

Sincerely,

Karl A. Racine  
Attorney General for the District of Columbia

BY:

  
\_\_\_\_\_  
Vikram Swarup  
Chief Deputy Attorney General

# ODCA Response to Agency Comments

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ODCA appreciates the responses to the draft report provided by MPD and OAG, especially the shared dedication to improving public safety and thoughtful engagement with our recommendations. As a result of the agency comments, ODCA made small revisions to Recommendations 2 and 4.

ODCA did not direct any recommendations to OAG but provided the draft report to OAG for comment because OAG plays a critical role representing MPD during officer termination appeals. ODCA stands by the intent of a 90-day limit to initiate discipline, as the importance of timeliness is demonstrated in this report. However, OAG identified that there are inconsistent interpretations regarding the calculation of the 90-day time limit. As a result, we added a clause to Recommendation 4 that encourages MPD to recommend clarifications to the 90-day rule to Council so that the rule will be interpreted consistently. We believe clarifying or modifying the 90-day rule will reduce the likelihood of returning poor performers to MPD over technicalities while ensuring a timely response to officer misconduct.

MPD and OAG encourage the D.C. Council to consider publishing an MPD table of penalties through rulemaking in lieu of our recommendation to legislate the table of penalties in the D.C. Code. OAG identifies this practice is consistent with our neighbors in Maryland, and MPD highlights the public comment period and ability to flexibly adapt the rules over time. ODCA did not change the recommendation to codify through the D.C. Code, however, we added to Recommendation 2 that Council should give due consideration to recommendations from the Chief of Police. We believe that the D.C. Code is a stronger, clearer message to cut through subjectivity compared to rulemaking, but recognize the Chief of Police has subject matter expertise the Council may wish to consider.

We are encouraged by both agencies' comments that the report was helpful, and that the majority of recommendations were fully agreed upon.

# Appendices

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# Appendix A

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## Case Summary Chart



The chart below is a summary of the 37 case files coded in the audit sample. The bulleted list below defines the columns and explains how cases were qualitatively coded by ODCA.

- Cases highlighted in blue were overturned by OEA; unhighlighted cases were overturned through arbitration, except for the Bailey case which was remanded back to MPD.
- In order to analyze the level of risk posed by a given case, ODCA classified cases into two categories of Misconduct Type. **“Threat to Safety”** cases, marked as Yes in the chart below, include risk of harm to persons through action or inaction, such as physical and sexual violence, mishandling firearms, or compromising evidence related to an arrest. ODCA generated this classification system which is a subjective assessment of what constitutes or could constitute harm to persons.
- Columns **Termination was Excessive**, **MPD Exceeded Panel**, **MPD Missed Deadlines**, and **Insufficient Evidence** are the four possible reasons the original arbitration award or OEA opinion overturned the case. An X in this column means the arbitrator or OEA took issue with that case for the reason described in the column header. For Bailey, (row 2), the arbitrator determined the case could not go through arbitration because MPD had not properly completed the internal appeals process, so that row is marked as Not Applicable (n/a).
- Total **Case Length** was calculated by first identifying the last date of a case, defined as the last official decision by an arbitrator, OEA, or the courts where MPD was required to reinstate the officer and MPD has not or does not plan to appeal and then calculating the length of time since the later of three dates: the date the incident occurred, the end range of the incident in cases where the incident spanned years, or the date MPD knew or should have known about the misconduct when the arbitrator defined the date MPD knew or should have known.
- **Backpay Received** is the amount actually paid to the MPD officer, i.e. the award less any outside earnings. The **Total** is based on rounded amounts.
- **MPD Employment Status** is as of September 12, 2022, per MPD.

MPD Officer Last Name	Threat to Safety	Termination was Excessive	MPD Exceeded Panel	MPD Missed Deadlines	Insufficient Evidence	Backpay Received	Case Length (Years)	MPD Employment Status
Allen	Yes	X				\$158,884	7.9	Retired
Bailey		n/a	n/a	n/a	n/a	\$369,811	7.6	Retired
Banks				X		\$373,485	9.5	Sergeant
Bush			X	X		\$379,087	7.6	Retired
Dixon			X		X	\$137,423	6.7	Officer
Duncan	Yes		X			\$229,047	7.4	Retired
Dunkins	Yes		X			\$723,859	9.7	Retired
Dixon Durham	Yes	X			X	\$454,443	11.2	Retired
Durham		X				\$553,755	9.1	Retired
Edmiston			X			\$500,000	12.8	Retired
Flores	Yes		X			\$362,461	5.8	Officer
Fowler	Yes			X	X	\$681,815	10.1	Retired

MPD Officer Last Name	Threat to Safety	Termination was Excessive	MPD Exceeded Panel	MPD Missed Deadlines	Insufficient Evidence	Backpay Received	Case Length (Years)	MPD Employment Status
Garcia	Yes	X				\$790,795	11.4	Resigned
N. Goins				X		\$167,439	3.3	Officer
S. Goins				X		\$172,921	3.3	Officer
Gray				X		\$354,399	7.5	Officer
Gregory	Yes	X			X	\$541,336	7.1	Retired
Harper			X			\$144,601	8.5	Retired
Hong	Yes	X			X	\$290,811	11.7	Officer
J. Johnson	Yes	X		X	X	\$524,189	6.3	Retired
T. Johnson		X				\$520,372	10.8	Officer
Kennie		X		X		\$550,651	6.8	Sergeant
Lee				X		\$147,217	4.3	Officer
Liriano	Yes				X	\$440,136	7.8	Terminated
Mazloom	Yes	X			X	\$205,661	6.9	Officer
Medina	Yes		X			\$679,688	8.4	Retired
Mendoza				X		\$168,623	6.5	Investigator
Olive		X				Not Awarded	5.4	Retired
Pokladnik		X		X		\$199,800	7.9	Deceased
Randolph				X		\$226,679	7.9	Sergeant
Sims	Yes			X		\$520,505	Not Assessed	Retired
Sugg-Edwards	Yes		X		X	\$532,996	11.2	Retired
Taylor	Yes	X				\$327,363	7.9	Retired
Tucker			X			\$172,292	8.0	Officer
Venord		X				\$302,395	5.3	Officer
Whaley	Yes	X	X			\$80,422	7.7	Resigned
Williams				X		\$484,633	7.5	Retired
Total						\$13,469,995		

# Appendix B

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## Case Narratives

Appendix B contains narratives and summary data for the 37 reinstated officers in the audit sample. The bulleted list below defines the categories and explains how ODCA qualitatively coded the cases.

- The case narratives in the appendix are derived from descriptions by the arbitrator or OEA administrative judge. ODCA did not:
  - Review documents related to MPD disciplinary steps prior to the arbitration or OEA review.
  - Examine Adverse Action Panel proceedings.
  - Review court records pertaining to criminal cases.
- In order to analyze the type of risk posed by a given case, ODCA classified cases into two categories of **Misconduct Type**. “**Threat to Safety**” cases include risk of harm to persons through action or inaction, such as physical and sexual violence, mishandling firearms, or compromising evidence related to an arrest. “**Administrative (Misrepresentation, Misuse of Resources, etc.)**” cases include misrepresentation of injuries, time theft, fraud, and other misconduct not categorized as a risk of harm to persons.
- In every case, MPD charged an officer with violations of MPD General Orders. What are described as **MPD Charges** are distinct from criminal or civil charges, though some cases include both types of charges.
- **Backpay Received** is the amount actually paid to the MPD officer.
- For many cases, MPD was ordered to pay attorney fees, part or all of the cost of arbitration, or interest. However, the cost of the fees were not always explicitly listed in the case files reviewed by ODCA, so the total value of all fees is higher than the amounts given. In cases where the dollar amount of fees were explicitly listed, the amount MPD paid is provided in each officer’s summary data. In cases where a fee was awarded but the dollar amount of fees were not explicitly listed, **Fees** is identified as “amount unavailable.” If no fees were mentioned in the case, or in cases where the arbitrator stated that fees would be determined with the parties at a later date so it is unclear how the fees were resolved, **Fees** is identified as “not applicable.”
- **Total Case Length** was calculated by first identifying the last date of a case, defined as the last official decision by an arbitrator, OEA, or the courts where MPD was required to reinstate the officer and MPD has not or does not plan to appeal and then calculating the length of time since the later of three dates: the date the incident occurred, the end range of the incident in cases where the incident spanned years, or the date MPD knew or should have known about the misconduct when the arbitrator defined the date MPD knew or should have known.

## Appendix B.1: Julius Allen

Misconduct Type	Threat to Safety	Total Eligible Backpay	\$402,923
Charges	Untruthful statements, neglect of duty	Backpay Received	\$158,884
Current Employment	Retired	Fees	Not Applicable

### Description

Prior to being terminated, Julius Allen was the subject of two complaints made to the Office of Police Complaints (OPC).

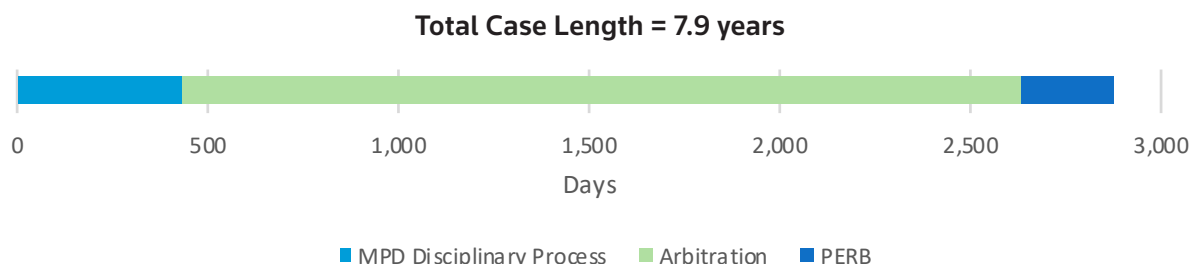
A different instance of misconduct on September 29, 2009, as claimed by MPD and described in the arbitration award, led to termination when Allen responded to a domestic violence call with Officer Japheth Taylor. Allen and Taylor left without making an arrest and reclassified the incident as a family disturbance. An MPD sergeant monitoring the call went to the scene and arrested the woman's boyfriend after seeing a photo a special police officer serving on the building security detail took of the woman's lip which appeared cut and swollen, as well as interviewing the woman's boyfriend. MPD concluded there had been probable cause of an assault and that officers had failed to make an arrest in violation of Department regulations in accordance with the Domestic Violence Act's arrest requirements and charged both officers with untruthful statements and neglect of duty. An Adverse Action Panel found Taylor guilty of the charges and recommended termination. MPD terminated Julius Allen on December 3, 2010.

In an undated decision that MPD stated was issued on December 13, 2016, the termination was overturned through arbitration because the arbitrator felt termination was an excessive punishment and that, specifically, MPD ignored endorsements from colleagues, the officer's past work record and commendations, the officer's capacity for rehabilitation and because similar cases in the past did not result in termination. The arbitrator found no evidence that the misconduct was committed maliciously or for gain, or was frequently repeated. The arbitrator determined that an appropriate penalty was a 30-day suspension without pay.

On August 17, 2017, PERB sustained the arbitrator's award.

Allen was reinstated on March 21, 2017, and paid backpay equal to \$158,884.

After reinstatement, Allen had three instances of misconduct according to MPD, including falling asleep at work which was captured by his body worn camera (2017), discharging his pistol while reloading it at his home (2018), and the unjustified takedown of a person in a jail cell (2020). Allen retired from MPD four years after being reinstated.



## Appendix B.2: Lawrence Bailey

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$369,811
<b>Charges</b>	Insubordination, untruthful statements	<b>Backpay Received</b>	\$369,811
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee Amount Not Available, Interest Fee Amount Not Available

### Description

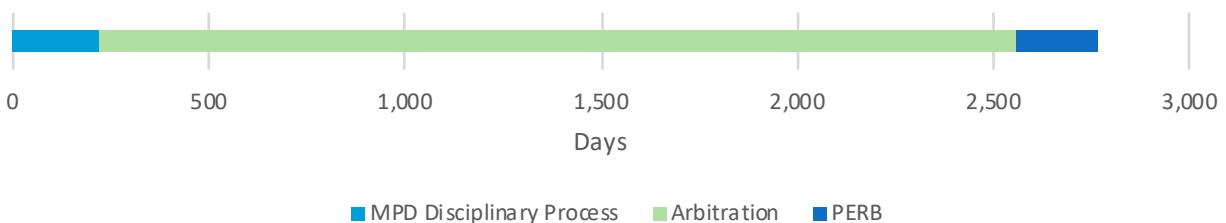
During September and October 2010, Bailey willfully “[disobeyed] orders, [and willfully and knowingly made] an untruthful statement” by not reporting to the clinic regarding an injury, according to MPD’s charges against him as described in the arbitration award. Per MPD, MPD terminated Lawrence Bailey on April 22, 2011.

On September 4, 2017, an arbitrator determined that the case could not be arbitrated because MPD did not hold an Adverse Action Panel for the case. MPD alleged that Bailey did not request an Adverse Action Panel in a timely fashion, but Bailey claimed MPD failed to ensure the notice was received by him in a timely manner. The arbitrator ordered Bailey to be reinstated and that MPD convene a panel to review the termination.

On March 27, 2018, PERB sustained the arbitrator’s award.

Bailey was reinstated on July 27, 2018, and paid backpay equal to \$369,811. Bailey immediately retired on July 27, 2018.

### Total Case Length = 7.6 years



## Appendix B.3: Daxzaneous Banks

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$666,605
<b>Charges</b>	Committing a crime, conduct unbecoming, inefficiency	<b>Backpay Received</b>	\$373,485
<b>Current Employment</b>	Sergeant	<b>Fees</b>	Not Applicable

### Description

Prior to being terminated, Daxzaneous Banks was the subject of two complaints made to the Office of Police Complaints (OPC).

A different instance of misconduct, as claimed by MPD and described in the arbitration award, occurred on March 13, 2008, when Banks signed himself into court and requested compensation for attending even though no trial was scheduled. He was charged with committing a crime, conduct unbecoming an officer, inefficiency, and fraud. An Adverse Action Panel found Banks guilty of all charges except for fraud. Per MPD, MPD terminated Daxzaneous Banks on June 12, 2009, for falsifying documents.

On September 6, 2016, the termination was overturned through arbitration because MPD violated the 90-day time limit to act on officer misconduct.

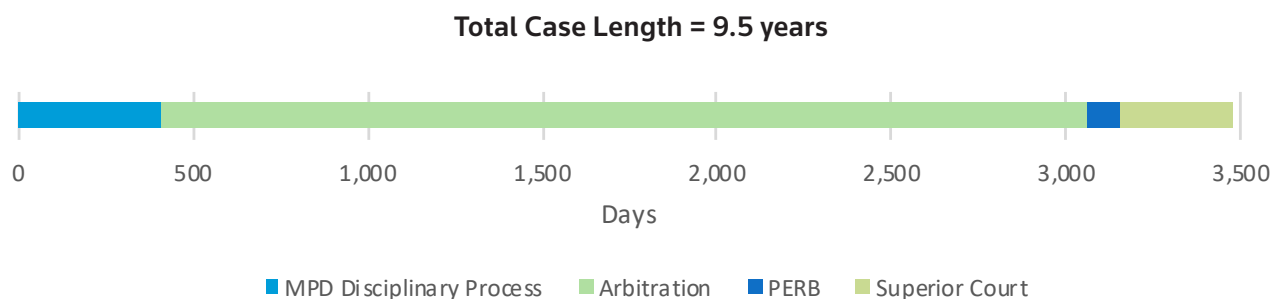
On December 15, 2016, PERB sustained the arbitrator's award.

On November 2, 2017, D.C. Superior Court sustained PERB's opinion.

Banks was reinstated on February 1, 2018, and paid backpay equal to \$373,485.

After reinstatement, Banks had four instances of misconduct according to MPD and three complaints to OPC. Instances include a background check in 2018 that showed Banks was arrested for soliciting a prostitute in 2010, failure to investigate and interview witnesses to an assault in 2019, losing his badge in 2020, and a vehicle pursuit in 2021 that was ultimately justified through Department policy.

Banks was working at MPD as a sergeant during the audit.



## Appendix B.4: Edward Bush

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$643,827
<b>Charges</b>	Fraud	<b>Backpay Received</b>	\$379,087
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee = \$5,500, Attorney Fee Amount Not Available

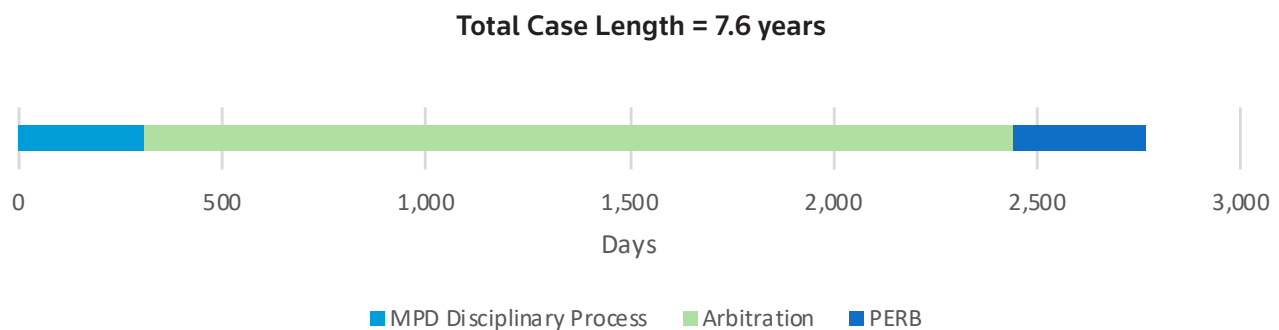
### Description

On August 15, 2005, according to MPD and as described in the arbitration award, Edward Bush answered information about himself untruthfully on a hiring form. MPD became aware that the information he provided was untruthful in 2009 and, during an investigation, Bush denied that he had been untruthful. MPD charged Bush with fraud in securing appointment or falsification of official records or reports, and, per MPD, he was terminated on February 5, 2010.

On December 2, 2015, the termination was overturned through arbitration because, although the arbitrator agreed there was evidence to support the charge leading to termination, MPD violated the 90-day time limit to act on officer misconduct. Also, MPD did not have authority to increase the penalty from the suspension recommended by a majority of the Adverse Action Panel to termination during the disciplinary process.

On October 20, 2016, PERB sustained the arbitrator's award.

Bush was reinstated on December 5, 2017, and paid backpay equal to \$379,087. Bush retired a little over a year later.





## Appendix B.5: Khalela Dixon

Misconduct Type	Administrative (Misrepresentation, Misuse of Resources, etc.)	Total Eligible Backpay	\$397,266
Charges	Inefficiency, conduct unbecoming an officer, failure to obey orders	Backpay Received	\$137,423
Current Employment	Officer	Fees	Arbitration Fee = \$14,000

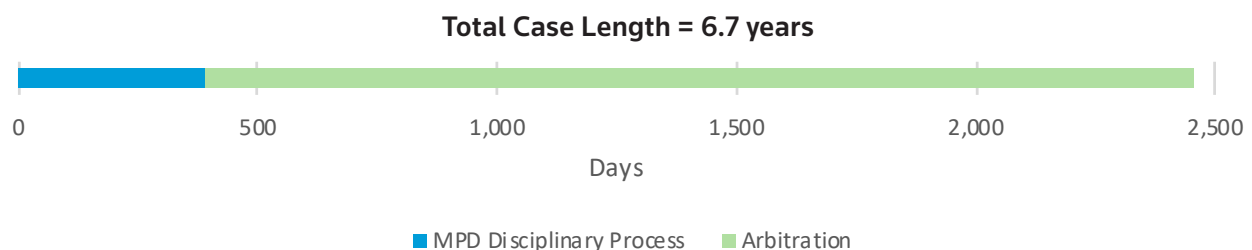
### Description

Prior to being terminated, Khalela Dixon was the subject of six complaints made to the Office of Police Complaints (OPC).

A different instance of misconduct, as claimed by MPD and described in the arbitration award, occurred on February 12, 2009, when Dixon responded to a traffic stop and was asked to take the female passenger out of the car. The passenger became combative, so Dixon put handcuffs on the passenger, who complained they were too tight. According to the arbitration award, the passenger told Dixon “she had just ‘beat up’ a man and would do the same to Dixon if the cuffs were off.” Dixon attempted to assist the passenger with loosening the cuffs, but when the passenger pulled her arm out, Dixon and another officer placed the cuff back on. After the arrest, the passenger filed a complaint that Dixon was using profanity and was removing the handcuffs in order to fight the passenger. MPD charged Dixon with inefficiency, conduct unbecoming an officer, and failure to obey orders. During the disciplinary process, an Adverse Action Panel found there was insufficient evidence that Dixon was in violation of any Departmental order and recommended no disciplinary action be taken. Regardless, per MPD, MPD terminated Khalela Dixon on March 20, 2010.

On November 2, 2015, the termination was overturned through arbitration because the arbitrator determined there was substantial evidence that Dixon was not in violation of any Departmental order and that MPD did not have authority to impose a penalty after the Adverse Action Panel concluded no disciplinary action should be taken.

Dixon was reinstated on March 15, 2016, and paid backpay equal to \$137,423. After reinstatement, Dixon had seven instances of misconduct according to MPD and four complaints to OPC. Instances include hitting a fence with a squad car, getting in a fight with a fellow officer, eating pizza in the squad car instead of working, using her body worn camera to record a conversation with her supervisor, and failure to appear at a hearing. Dixon was still working at MPD as an officer during the audit.



## Appendix B.6: Juandria Duncan

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$431,980
<b>Charges</b>	Untruthful statements, conduct unbecoming an officer, failure to obey orders	<b>Backpay Received</b>	\$229,047
<b>Current Employment</b>	Retired	<b>Fees</b>	Attorney Fee = \$12,875, Arbitration Fee Amount Not Available

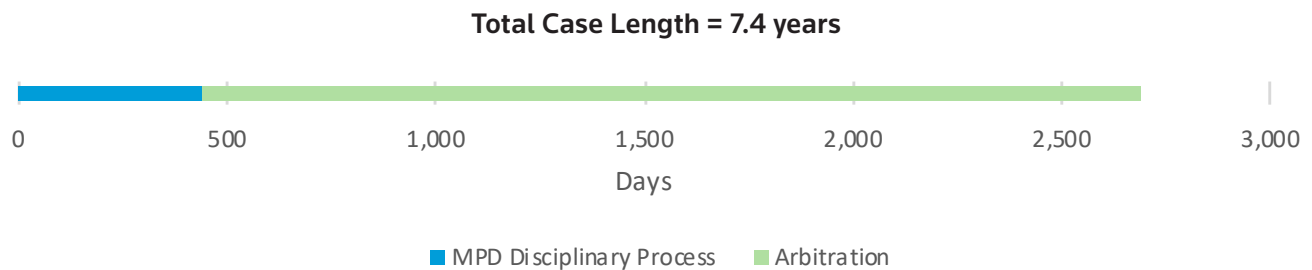
### Description

Prior to being terminated, Juandria Duncan was the subject of three complaints made to the OPC.

A different instance of misconduct, as claimed by MPD and described in the arbitration award, stemmed from an incident that took place on April 3, 2009, when Duncan was in an off-duty altercation with a citizen in a parking lot. Duncan's car was blocking the citizen from exiting, so the citizen honked their horn at Duncan. A heated argument ensued, and an independent witness stated Duncan kicked the citizen's bumper and drew her gun. Duncan later admitted to unholstering her gun. There was no evidence that the gun was ever pointed at the citizen. The citizen contacted MPD about the incident. MPD charged Duncan with untruthful statements, conduct unbecoming an officer, and failure to obey orders. An Adverse Action Panel found her guilty of the misconduct but recommended a suspension in lieu of termination. Per MPD, MPD terminated Juandria Duncan on June 18, 2010, despite the panel's recommendation.

On August 16, 2016, the termination was overturned through arbitration because MPD lacked authority to increase the penalty from suspension to termination during the disciplinary process.

Duncan was reinstated on December 28, 2016, and paid backpay equal to \$229,047. Duncan retired 1.4 years later.



## Appendix B.7: Crystal Dunkins

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$734,422
<b>Charges</b>	Conduct unbecoming, committing a crime	<b>Backpay Received</b>	\$723,859
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee = \$7,200

### Description

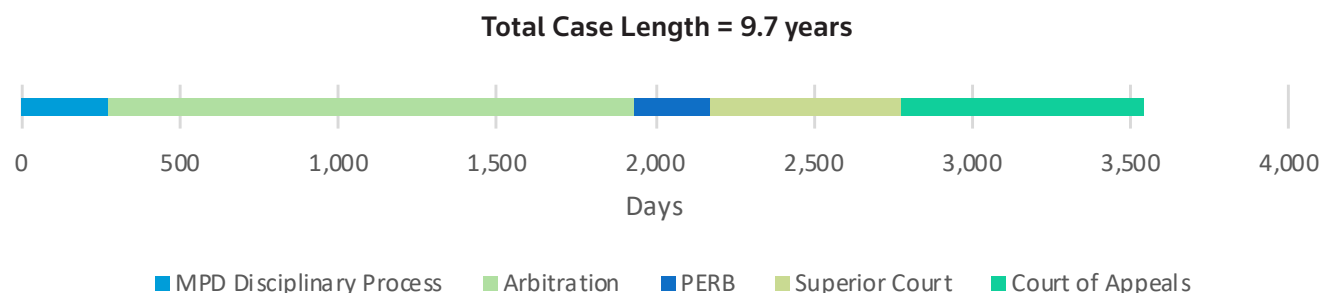
Prior to being terminated, Crystal Dunkins was the subject of one complaint made to the OPC.

According to MPD and as described in the arbitration award, Crystal Dunkins was arrested on November 21, 2006, for assault, child abuse, reckless endangerment, and confining an unattended child. Dunkins admitted to some of the misconduct, stating, “I beat [them]” when asked about marks on a child’s arms. Criminal charges were dismissed in exchange for a guilty plea to one charge, five years of probation, and successful completion of a class related to the treatment of children. MPD issued a notice to terminate Dunkins and charged her with conduct unbecoming an officer and committing a crime. An Adverse Action Panel found Dunkins guilty of all charges but reduced the termination to a 30-day suspension. Per MPD, MPD terminated Dunkins on August 24, 2007, despite the panel’s recommendation.

On March 6, 2012, the termination was overturned through arbitration because MPD lacked authority to increase the penalty from suspension to termination during the disciplinary process.

On November 8, 2012, PERB sustained the arbitrator’s award. On June 26, 2014, D.C. Superior Court sustained PERB’s opinion. On August 4, 2016, the D.C. Court of Appeals sustained the D.C. Superior Court opinion.

Dunkins was reinstated on December 28, 2016, and paid backpay equal to \$723,859. Dunkins retired three years later.



## Appendix B.8: Marian Dixon Durham

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$1,043,570
<b>Charges</b>	Conduct unbecoming, committing a crime, untruthful statements, failure to report	<b>Backpay Received</b>	\$454,443
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee Amount Not Available

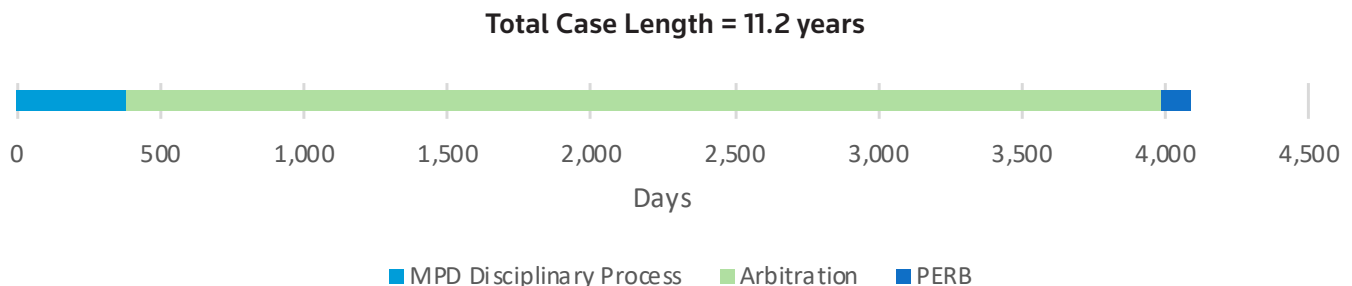
### Description

On April 7, 2009, according to MPD and described in the arbitration award, police responded to calls made by Dixon Durham's partner to the police alleging an assault and robbery by Dixon Durham. No arrest warrant was issued against Dixon Durham and no charges were filed. Dixon Durham received a notice that she was being terminated on September 9, 2009, for conduct unbecoming an officer, committing a crime, untruthful statements, and failure to obey orders. An Adverse Action Panel sustained the charges and, per MPD, MPD terminated Dixon Durham on May 7, 2010.

On March 2, 2020, an arbitrator identified that Dixon Durham's partner who made the call had a record of assaults against Dixon Durham. The arbitrator overturned Dixon Durham's termination because the evidence was not substantial. The arbitrator overturned a reprimand Dixon Durham received for failing to report domestic assaults she was victim of, due to the long history of abuse of which the Department was aware, including the fact that she testified she had informed her supervisor in 2006 and several of her colleagues testified that they were aware of these assaults.

On June 18, 2020, PERB sustained the arbitrator's award.

Dixon Durham was reinstated on April 7, 2021, and paid backpay equal to \$454,443. She immediately retired the same day.



## Appendix B.9: Diane Durham

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$803,906
<b>Charges</b>	Failure to obey orders, untruthful statements	<b>Backpay Received</b>	\$553,755
<b>Current Employment</b>	Retired	<b>Fees</b>	Attorney Fees = \$18,042

### Description

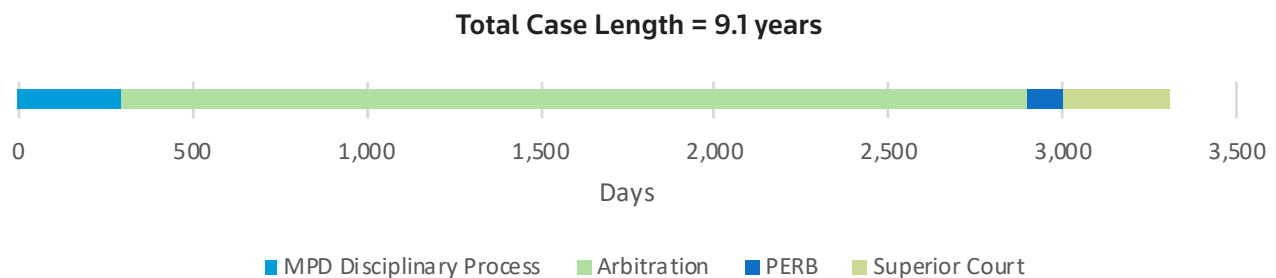
On November 28, 2011, according to MPD and described in the arbitration award, Durham texted a Sergeant at MPD that Durham's husband, also an MPD officer, had several boxes of evidence in their garage. Durham was charged with failure to obey orders for failing to notify MPD about the boxes and making untruthful statements when interviewed about it. An Adverse Action Panel recommended termination. Per MPD, MPD terminated Durham on September 17, 2012.

On October 31, 2019, the termination was overturned through arbitration because termination was deemed excessive.

On February 20, 2020, PERB sustained the arbitrator's award.

On December 16, 2020, D.C. Superior Court sustained PERB's opinion.

Durham's reinstatement was still being processed by MPD during the audit but she was paid backpay equal to \$553,755 and when she is reinstated, she is slated to retire immediately.



## Appendix B.10: Paula Edmiston

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$500,000
<b>Charges</b>	Conduct unbecoming, failure to obey orders, untruthful statements	<b>Backpay Received</b>	\$500,000
<b>Current Employment</b>	Retired	<b>Fees</b>	Attorney Fees = \$300,000

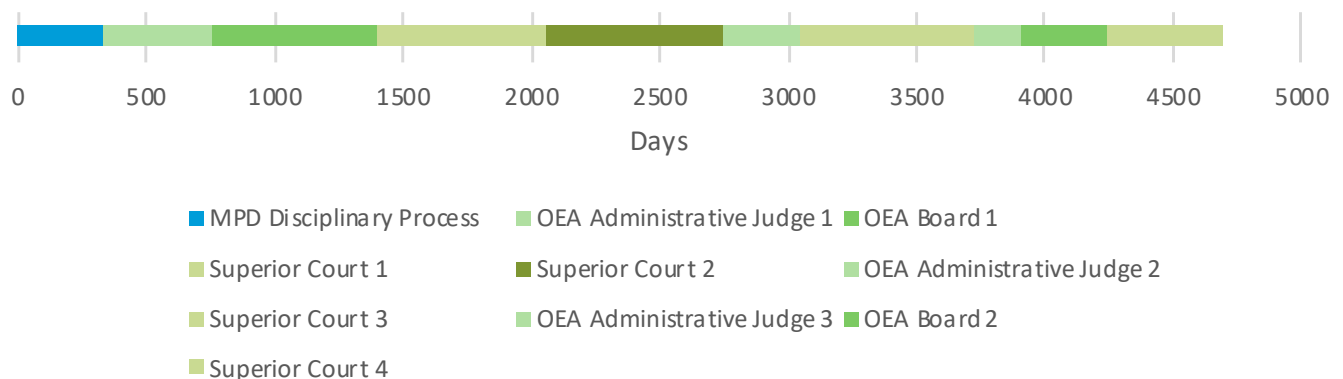
### Description

On April 1, 2006, according to MPD and described in the OEA award, Captain Paula Edmiston got into a confrontation with a grocery store cashier and, in retelling this story later, stated “Illegal immigrants need to go back to where they came from.” At a second Safeway, Edmiston got into a confrontation with a customer. While relating this story to her colleagues, she called the customer a “faggot” and said she “almost had to put her foot up his ass.” These comments were reported by a Lieutenant who overheard Edmiston recount the incidents. Edmiston received notice she was being demoted for charges of conduct unbecoming, failure to obey orders, and making untruthful statements. When she appealed the demotion to the Chief of Police, the Chief increased the penalty to termination. An Adverse Action Panel supported the termination and, per MPD, MPD terminated Edmiston on March 2, 2007.

On April 30, 2008, the termination was overturned through OEA because the Chief had increased a demotion to termination based on a General Order that became effective during the termination process and was not in effect at the time of the incident, which the Chief lacked authority to do.

In a subsequent series of appeals between 2008 and 2019, this case was reviewed by an OEA Administrative Judge three times, the OEA Board two times, and the D.C. Superior Court four times. The court sustained the OEA decision. Edmiston was reinstated on October 15, 2020, and paid backpay equal to \$500,000. She immediately retired.

**Total Case Length = 12.8 years**



## Appendix B.11: Wilberto Flores

Misconduct Type	Threat to Safety	Total Eligible Backpay	\$446,443
Charges	Conviction of a crime, conduct unbecoming	Backpay Received	\$362,461
Current Employment	Officer	Fees	Not Applicable

### Description

Prior to being terminated, Wilberto Flores was the subject of one complaint made to the OPC.

A different instance of misconduct, as claimed by MPD and described in the OEA award, occurred on June 24, 2010, when a woman in a grocery store parking lot called police claiming a man was exposing his genitals to women in the parking lot. Flores was identified as the perpetrator, found guilty in criminal court, and sentenced to 30 days of incarceration (suspended) and three years of probation. MPD charged Flores with conviction of a crime and conduct unbecoming an officer. MPD provided Flores a notice that he was going to be terminated, but an Adverse Action Panel recommended a 60-day suspension in lieu of termination. Per MPD, MPD terminated Wilberto Flores on June 30, 2011, despite the panel's recommendation.

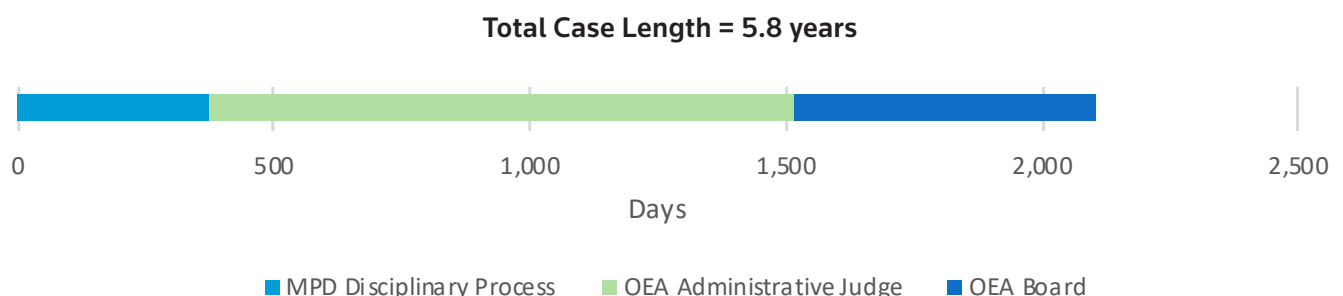
On August 18, 2014, the termination was overturned through OEA because the Adverse Action Panel assigned a suspension in lieu of termination and MPD did not have authority to increase the penalty the panel chose.

On March 29, 2016, OEA denied MPD's petition for review and upheld their decision.

Flores was reinstated December 28, 2016, and paid backpay equal to \$362,461.

After reinstatement, Flores had three instances of misconduct according to MPD, including crashing an MPD vehicle, not turning on his body worn camera after the crash, and parking in a bike lane.

Flores was working at MPD as an officer during the audit.



## Appendix B.12: Duane Fowler

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$954,529
<b>Charges</b>	Conviction of a crime, untruthful statements	<b>Backpay Received</b>	\$681,815
<b>Current Employment</b>	Retired	<b>Fees</b>	Interest Fees = \$141,534, Arbitration Fee Amount Not Available

### Description

On June 13, 2009, according to MPD and described in the arbitration award, Fowler was arrested for soliciting an undercover officer posing as a prostitute. In exchange for pleading guilty and completing a diversion program, the U.S. Attorney's Office agreed to drop the case. MPD charged Fowler with conviction of a crime and untruthful statements. The Adverse Action Panel sustained both charges and recommended termination. Per MPD, MPD terminated Fowler on July 30, 2010.

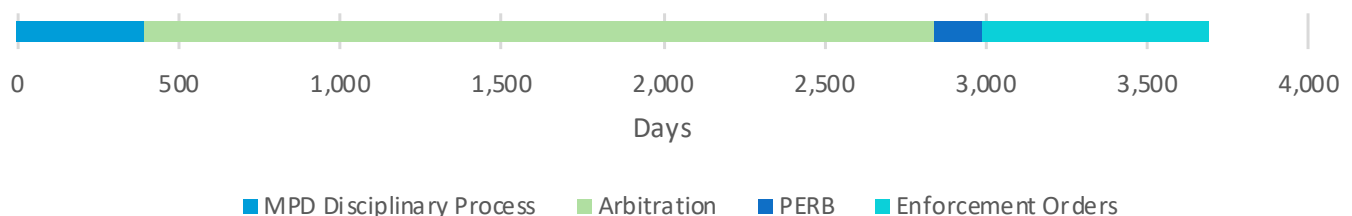
On March 24, 2017, the termination was overturned through arbitration because of insufficient evidence that Fowler made an untruthful statement and because MPD exceeded the 90-day time limit to initiate discipline.

On August 17, 2017, PERB sustained the arbitrator's award.

Despite being ordered to reinstate Fowler, MPD refused to do so. The FOP brought an unfair labor practices complaint, which PERB upheld on September 27, 2018. The Superior Court upheld the FOP and PERB's petition for enforcement on July 24, 2019.

Fowler was reinstated on September 10, 2019, and paid backpay equal to \$681,815. Fowler retired within six months.

### Total Case Length = 10.1 years





## Appendix B.13: Mayra Garcia

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$815,000
<b>Charges</b>	Conduct unbecoming, committing a crime, under the influence of an alcoholic beverage	<b>Backpay Received</b>	\$790,795
<b>Current Employment</b>	Resigned	<b>Fees</b>	Arbitration Fees = \$6,600

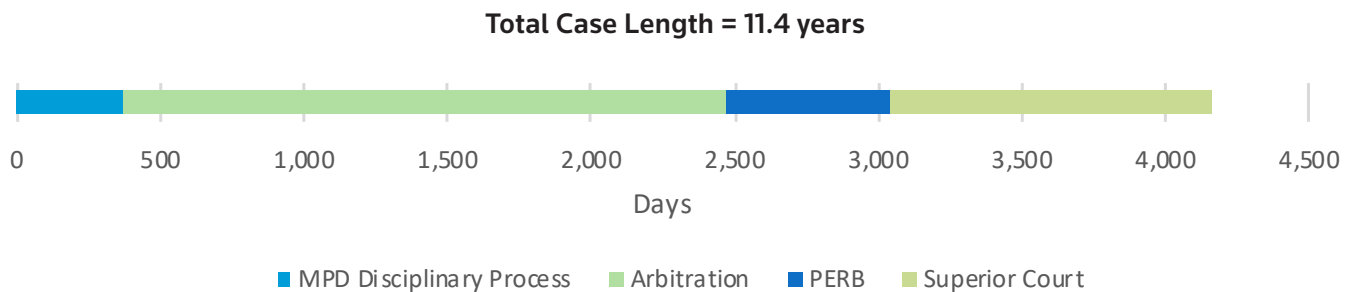
### Description

On September 29, 2007, according to MPD and as described in the arbitration award, Garcia was arrested for assault against her partner. The U.S. Attorney's Office declined to prosecute. MPD charged Garcia with conduct unbecoming an officer, committing a crime, and being under the influence of an alcoholic beverage. The Adverse Action Panel found that the charges were proven and recommended termination. Per MPD, MPD terminated Garcia on October 11, 2008.

On July 7, 2014, the termination was overturned through arbitration because termination was found to be an excessive punishment due to Garcia's previous work history and how decisions had been made in similar cases in the past.

On January 21, 2016, PERB denied MPD's request for review, as did the D.C. Superior Court on February 14, 2019.

Garcia was paid backpay equal to \$790,795 and resigned immediately pursuant to a settlement agreement with MPD.



## Appendix B.14: Nikeith Goins

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$176,078
<b>Charges</b>	Conviction of a crime, prejudicial conduct	<b>Backpay Received</b>	\$167,439
<b>Current Employment</b>	Officer	<b>Fees</b>	Not Applicable

### Description

Prior to being terminated, Nikeith Goins was the subject of four complaints made to the Office of Police Complaints (OPC).

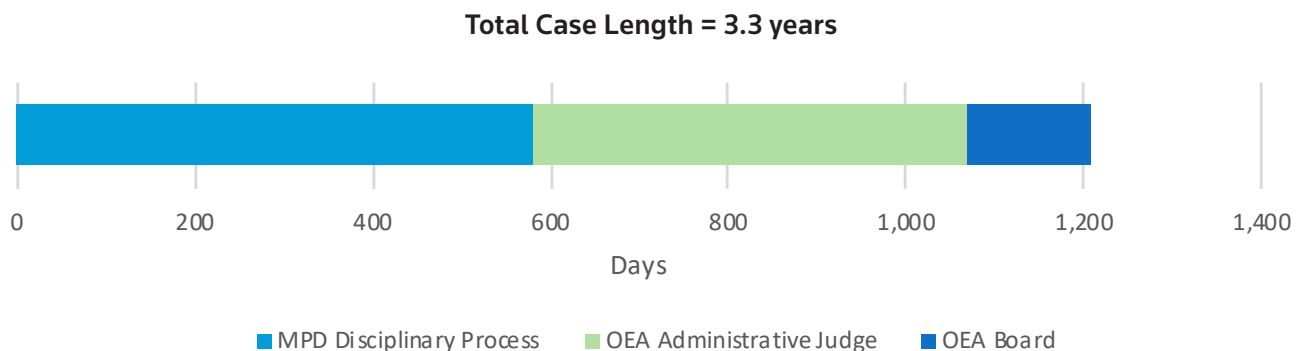
A different instance of misconduct, as claimed by MPD and described in the OEA award, stemmed from events that took place between 2010 and 2017, when Nikeith and Shawnee Goins, both members of the MPD, falsified residency paperwork to enroll their children in a D.C. public charter school. The Goinses were not residents of the District of Columbia. OAG filed a claim against the Goinses in D.C. Superior Court and reached a settlement. The Goinses were administratively charged by MPD with being convicted with a crime and prejudicial conduct. An Adverse Action Panel recommended terminating both Goinses. Per MPD, MPD terminated Nikeith Goins on August 2, 2019.

On December 3, 2020, the termination was overturned through OEA because MPD exceeded the 90-day limit to initiate discipline against the Goinses.

On April 22, 2021, the OEA Board responded to MPD's request for appeal but, by that time, MPD had already settled the case outside of the appeals process.

Nikeith Goins was reinstated on April 28, 2021, and paid backpay equal to \$167,439.

N. Goins was working at MPD as an officer during the audit.



## Appendix B.15: Shawnee Goins

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$172,921
<b>Charges</b>	Conviction of a crime, prejudicial conduct	<b>Backpay Received</b>	\$172,921
<b>Current Employment</b>	Officer	<b>Fees</b>	Not Applicable

### Description

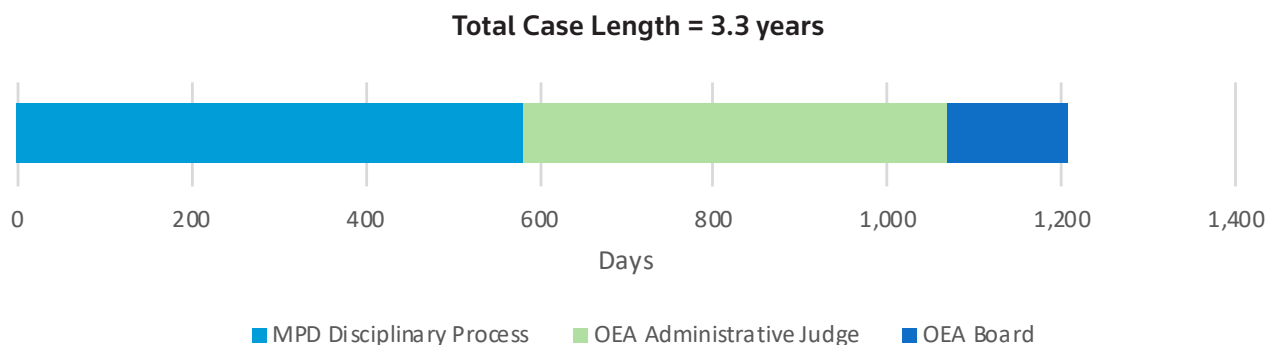
The misconduct that led to termination as claimed by MPD and described in the OEA award stemmed from events that took place between 2010 and 2017, when Nikeith and Shawnee Goins, both members of the MPD, falsified residency paperwork to enroll their children in a D.C. public charter school. The Goinses were not residents of the District of Columbia. OAG filed a claim against the Goinses in D.C. Superior Court and reached a settlement. The Goinses were administratively charged by MPD with being convicted with a crime and prejudicial conduct. An Adverse Action Panel recommended terminating both Goinses. Per MPD, MPD terminated Shawnee Goins on August 5, 2019.

On December 3, 2020, the termination was overturned through OEA because MPD exceeded the 90-day limit to initiate discipline against the Goinses.

On April 22, 2021, the OEA Board responded to MPD's request for appeal but, by that time, MPD had already settled the case outside of the appeals process.

Shawnee Goins was reinstated on April 28, 2021, and paid backpay equal to \$172,921.

S. Goins was working at MPD as an officer during the audit.



## Appendix B.16: April Gray

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$484,006
<b>Charges</b>	Untruthful statements, neglect of duty, failure to obey orders	<b>Backpay Received</b>	\$354,399
<b>Current Employment</b>	Officer	<b>Fees</b>	Arbitration Fee Amount Not Available

### Description

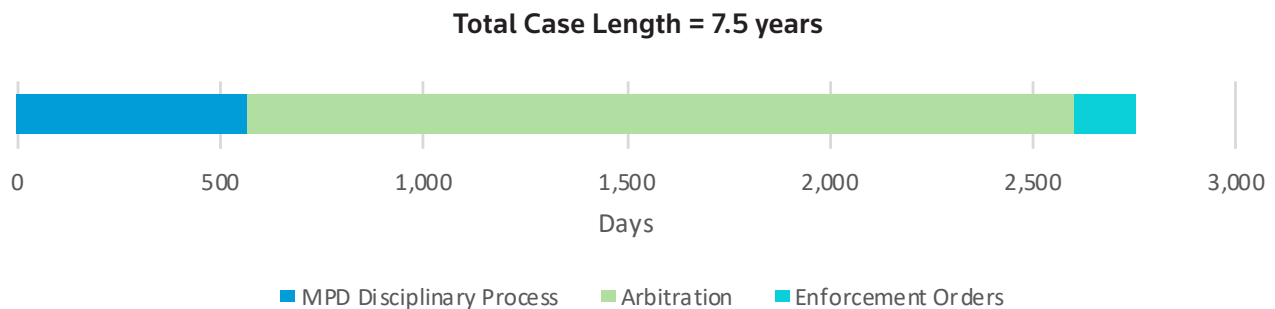
On July 4, 2010, according to MPD and described in the arbitration award, April Gray and Corey Williams wore their MPD uniforms and worked as private security at a July 4<sup>th</sup> party without authorization from MPD to accept outside employment. A guest at the party was harrassed and hit in the face by another guest and spoke to the officers about the incident, and later complained to OPC that Officer Gray was not professional. MPD charged Gray and Williams with making untruthful statements about being at the party, neglect of duty, and failing to obey orders. An Adverse Action Panel found Gray guilty of untruthful statements and failing to obey orders, and not guilty of neglect of duty. The Panel recommended termination and, per MPD, MPD terminated both officers on January 27, 2012.

On August 16, 2017, the terminations were overturned through arbitration because MPD violated the time limit written in their collective bargaining agreement with the FOP of 55 days between an officer requesting a panel hearing and receiving a final notice of discipline.

Despite being ordered to reinstate Gray, MPD refused to do so. The FOP filed a complaint with PERB alleging MPD engaged in unfair labor practices by refusing to abide by an arbitration award. On January 18, 2018, PERB upheld the unfair labor practices complaint and ordered MPD to comply with the arbitration award.

Gray was reinstated on April 27, 2018, and paid backpay equal to \$354,399.

Gray was working at MPD as an officer during the audit.



## Appendix B.17: Devonnie Gregory

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$644,321
<b>Charges</b>	Committing a crime, conduct unbecoming	<b>Backpay Received</b>	\$541,336
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee Amount Not Available

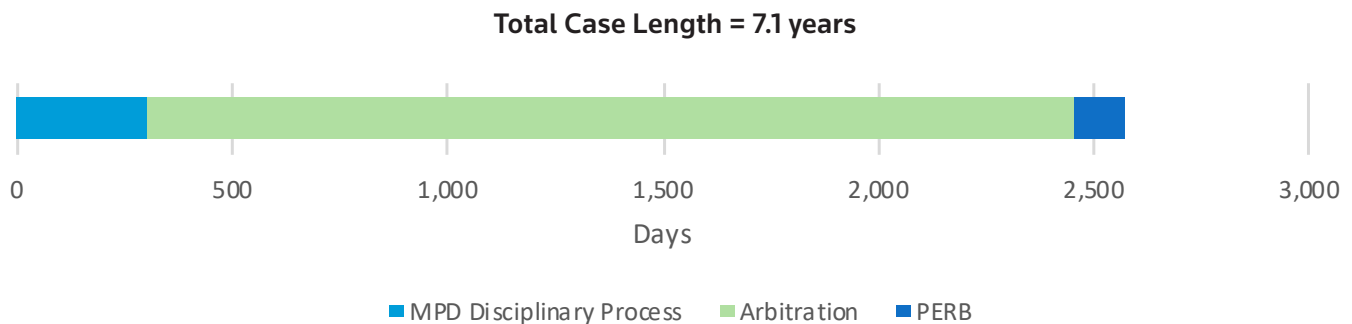
### Description

On November 13, 2010, according to MPD and as described in the arbitration award, Gregory assaulted her partner. She was criminally charged with domestic assault, but the case was dropped due to lack of evidence. MPD charged Gregory with committing a crime and conduct unbecoming an officer. An Adverse Action Panel sustained both charges, recommending termination and, per MPD, MPD terminated Gregory on September 30, 2011.

On August 3, 2017, the termination was overturned through arbitration because there was insufficient evidence that Gregory was guilty of committing a crime and, for what remained of the charges, the arbitrator found termination excessive for the misconduct.

On November 30, 2017, PERB sustained the arbitrator's award.

Gregory was reinstated on September 10, 2018, and paid backpay equal to \$541,336. Gregory retired 47 days later.



## Appendix B.18: Aaron Harper

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$614,569
<b>Charges</b>	Committing a crime, failure to obey orders, untruthful statements	<b>Backpay Received</b>	\$144,601
<b>Current Employment</b>	Retired	<b>Fees</b>	Attorney Fee = \$12,480, Arbitration Fee Amount Not Available

### Description

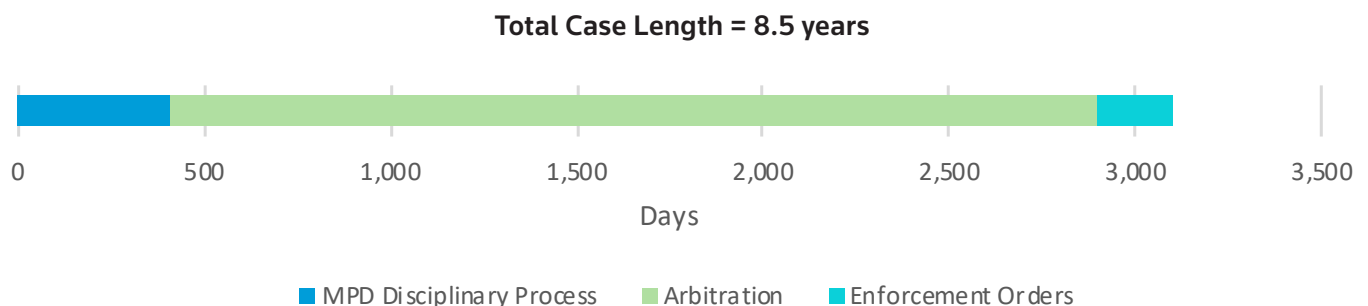
Prior to being terminated, Aaron Harper was the subject of four complaints made to the OPC.

A different instance of misconduct occurred when, according to MPD and described in the arbitration award, Harper was authorized to work security at an apartment building in addition to his work with MPD. On July 27, 2009, Harper came under investigation by MPD for exceeding his allowable hours at his second job and overlapping hours with his tour of duty at MPD. MPD charged Harper with committing a crime by overlapping hours, failure to obey orders, and untruthful statements. An Adverse Action Panel found Harper guilty of the first two charges and recommended a 45-day suspension. Per MPD, Aaron Harper was terminated from MPD on September 9, 2010, despite the panel's recommendation.

On June 28, 2017, the termination was overturned through arbitration because the Adverse Action Panel assigned a suspension in lieu of termination and MPD did not have authority to increase the penalty the panel chose.

Despite being ordered to reinstate Harper, MPD refused to do so. The FOP filed a complaint with PERB for unfair labor practices. PERB agreed with the FOP and ordered MPD to comply with the arbitration award on January 18, 2018.

Harper was reinstated on May 7, 2018, and paid backpay equal to \$144,601. Harper retired from MPD 3.5 years later.



## Appendix B.19: Jay Hong

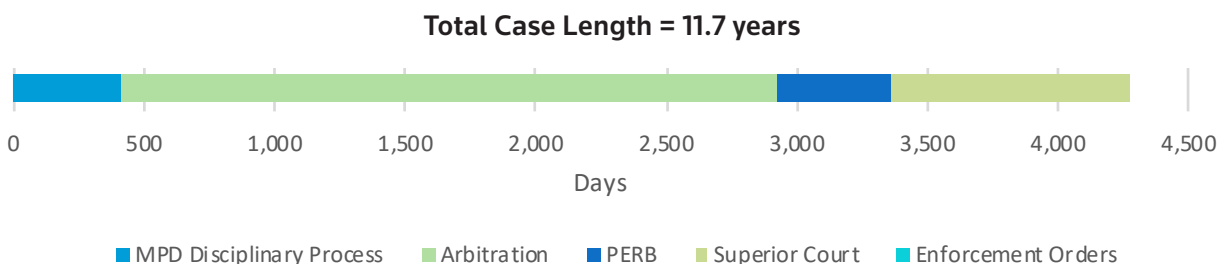
<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$882,092
<b>Charges</b>	Committing a crime, being under the influence of an alcoholic beverage, conduct unbecoming an officer, failure to obey orders	<b>Backpay Received</b>	\$290,811
<b>Current Employment</b>	Officer	<b>Fees</b>	Attorney Fee = \$23,521 Interest Fee = \$2,942

### Description

At 2:30 a.m. on January 11, 2009, according to MPD and described in the arbitration award, Hong drove his vehicle across the center line on a roadway and struck another vehicle. Hong had a female passenger in the car and both had been drinking. After the crash, the female passenger was found on the passenger-side floorboard, unconscious and partially nude. Hong's loaded and unholstered firearm was also found on the floor of the passenger's seat. The passenger gained consciousness later in the hospital and claimed she had been sexually assaulted by Hong. The passenger filed charges which were under investigation at the time Hong was terminated, but the arbitration award from 2016 states that "although the evidence indicates that a sexual assault investigation... was in process... there is no evidence... that Fairfax County ever brought sexual assault charges against him. The record also is silent regarding the date upon which the sexual assault investigation was concluded." Hong pleaded guilty to driving while intoxicated (DWI). MPD charged Hong with committing a crime, being under the influence of an alcoholic beverage, conduct unbecoming an officer, and failure to obey orders. An Adverse Action Panel found Hong guilty of all charges and recommended his termination. Per MPD, MPD terminated Jay Hong on January 26, 2010, effective March 26, 2010.

On August 8, 2016, the termination was overturned through arbitration because the arbitrator found insufficient evidence of sexual assault and that termination was not an appropriate penalty for the DWI and firearm charges. The arbitrator reduced the penalty from termination to a 35-day suspension.

On March 27, 2018, PERB sustained the arbitrator's award. On March 12, 2019, D.C. Superior Court sustained PERB's decision. Despite being ordered to reinstate Hong, MPD refused to do so. The FOP filed an unfair labor practice complaint. PERB concurred and filed an enforcement action in Superior Court. On August 12, 2020, the Superior Court granted the enforcement petition. Hong was reinstated on February 19, 2021, and paid backpay equal to \$290,811. Hong was working at MPD as an officer during the audit.



## Appendix B.20: Juan Johnson

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$540,564
<b>Charges</b>	Failure to obey orders, inefficiency, insubordination, untruthful statements	<b>Backpay Received</b>	\$524,189
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee = \$8,414

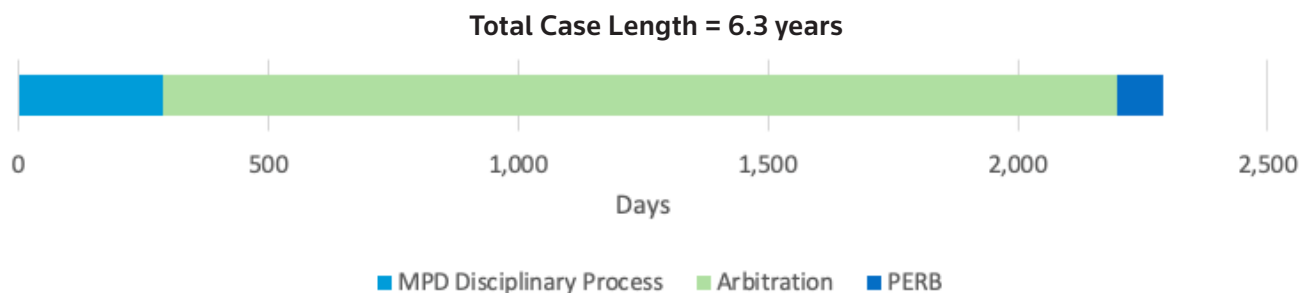
### Description

On September 4, 2015, according to MPD and described in the arbitration award, MPD terminated Juan Johnson for several charges. An Adverse Action Panel had found him guilty of four out of six charges: failure to obey orders to properly complete or obtain credits for attending a training in 2014, inefficiency by having repeating complaints related to driving while intoxicated (DWI), insubordination for not rescheduling a CPR class, and untruthful statements and failure to obey orders related to the failure to assist a citizen complete a police report after a car crash in 2015. The panel recommended termination for one charge and various amounts of suspension without pay for others.

On October 28, 2020, the termination was overturned through arbitration because the arbitrator found MPD missed deadlines pursuant to the 90-day Rule, the evidence was insufficient, the Adverse Action Panel erred in its analysis, and termination was deemed an excessive punishment. The arbitrator determined that Johnson should be suspended without pay for 30 days.

On January 29, 2021, PERB sustained the arbitrator's award.

Johnson was reinstated on March 12, 2021, and paid backpay equal to \$524,189. Johnson retired three days later.





## Appendix B.21: Taunya Johnson

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$880,479
<b>Charges</b>	Failure to obey orders, untruthful statements	<b>Backpay Received</b>	\$520,372
<b>Current Employment</b>	Officer	<b>Fees</b>	Interest Fee = \$129,442 Attorney Fee = \$14,008

### Description

In October 2009, according to MPD and described in the arbitration award, Johnson was supposed to assist in a witness conference and a trial and was charged with failure to obey orders by not appearing and untruthful statements by claiming to be excused. An Adverse Action Panel found Johnson guilty of the charges and recommended termination. Per MPD, Taunya Johnson was terminated from MPD on March 25, 2011.

On July 5, 2017, the termination was overturned through arbitration because the arbitrator determined MPD failed to identify any comparable cases which constituted inadequate consideration in determining the correctness of the penalty of termination.

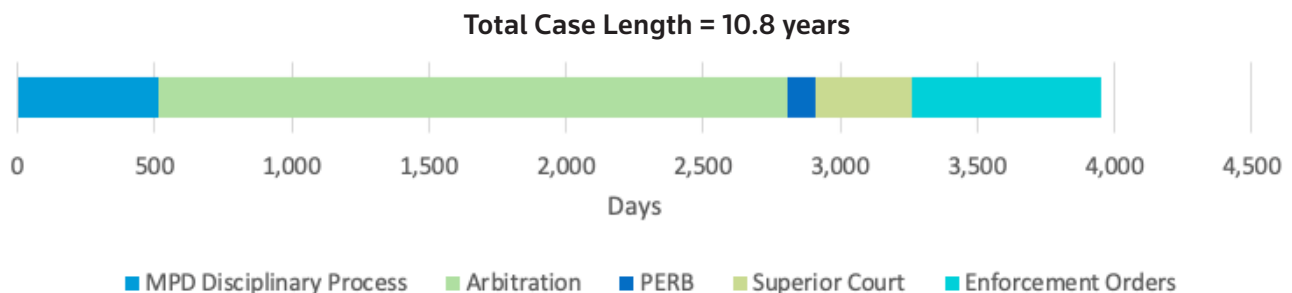
On October 19, 2017, PERB sustained the arbitrator's award.

On October 4, 2018, D.C. Superior Court sustained PERB's decision.

Despite being ordered to reinstate Johnson, MPD refused to do so. PERB petitioned the Superior Court for enforcement and received enforcement orders from the Superior Court on August 26, 2020.

Johnson was reinstated on November 30, 2020, and paid backpay equal to \$520,372.

Johnson was working at MPD as an officer during the audit.



## Appendix B.22: Tracy Kennie

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$601,515
<b>Charges</b>	Untruthful statements, neglect of duty	<b>Backpay Received</b>	\$550,651
<b>Current Employment</b>	Sergeant	<b>Fees</b>	Arbitration Fee Amount Not Available

### Description

Prior to being terminated, Tracy Kennie was the subject of two complaints made to the Office of Police Complaints (OPC).

A different instance of misconduct, as claimed by MPD and described in the arbitration award, occurred on February 25, 2009, when Kennie rear-ended a citizen in his MPD vehicle. No damage occurred and no one was injured. Six months later on August 14, 2009, he prepared an incident report for himself and signed off for his supervisor, who had neither prepared nor reviewed the report. MPD charged Kennie with untruthful statements and neglect of duty. Per MPD, MPD terminated Kennie on July 30, 2010, based on the finding and recommendation of an Adverse Action Panel.

On April 14, 2013, the termination was overturned through arbitration because MPD violated the 90-day time limit to act on officer misconduct and because termination was deemed excessive for the misconduct committed. The arbitrator reduced the penalty to a 30-day suspension.

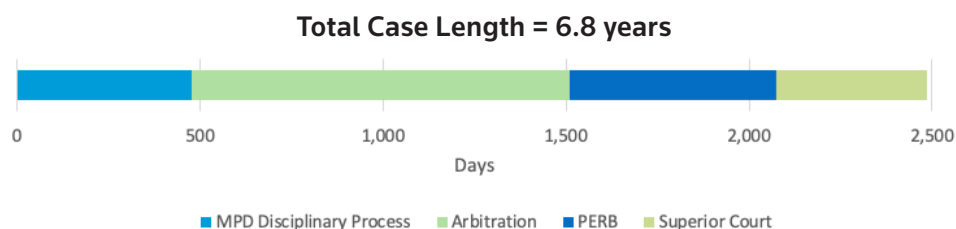
On October 30, 2014, PERB sustained the arbitrator's award.

On December 16, 2015, D.C. Superior Court upheld PERB's decision.

Kennie was reinstated on August 1, 2016, and paid backpay equal to \$550,651.

After reinstatement, Kennie was the subject of six complaints to the OPC and had 10 instances of misconduct according to MPD, including discharging a taser at the MPD gym, pulling a chair out from under a Sergeant who was trying to sit down, wearing improper footwear, releasing evidence back to someone too soon, and stating, regarding a citizen at the station who needed help, "I'm not going to deal with that woman[,] I have better things to do."

Kennie was working at MPD as a sergeant during the audit.



## Appendix B.23: Alice Lee

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$209,223
<b>Charges</b>	Fraud, conduct relating to the discipline and performance of the force, failure to obey orders, insubordination	<b>Backpay Received</b>	\$147,217
<b>Current Employment</b>	Officer	<b>Fees</b>	Not Applicable

### Description

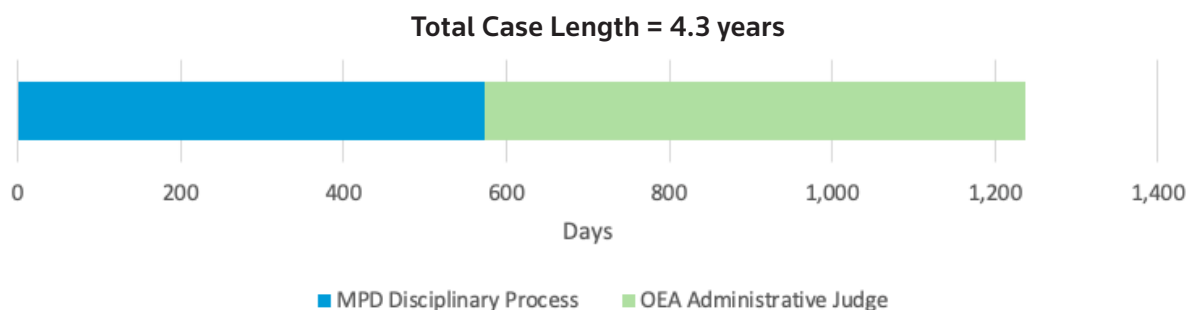
On October 25, 2013, as claimed by MPD and described in the Office of Employee Appeals (OEA) award, in a room full of her coworkers and supervisor, Lee was assigned to foot patrol and the OEA report notes that in response Lee “stated ‘f--- that, I’m not doing no foot beat’ or words to that effect.” She also stated that she would have an ankle injury to get out of the assignment. Prior to working the foot patrol, and prior to any alleged ankle injury, Lee prepared an injury report describing an ankle injury and then, during the assignment, claimed to be injured and submitted the report. Lee was charged with fraud, conduct relating to the discipline and performance of the force, failure to obey orders, and insubordination. Initially, an Adverse Action Panel assigned a suspension, but the MPD Chief remanded the case back to a new panel which assigned termination. Per MPD, MPD terminated Alice Lee on July 10, 2015.

On March 15, 2017, the termination was overturned through OEA because MPD exceeded 90-day Rule.

The D.C. Superior Court affirmed OEA’s decision in an undated order filed February 13, 2018.

Lee was reinstated on May 21, 2018, and paid backpay equal to \$147,217.

Lee was working at MPD as an officer during the audit.



## Appendix B.24: Wilson Liriano

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$590,267
<b>Charges</b>	Committing a crime, conduct unbecoming an officer, conduct relating to the discipline and performance of the force	<b>Backpay Received</b>	\$440,136
<b>Current Employment</b>	Terminated	<b>Fees</b>	Interest Fee = \$33,194 Attorney Fee = \$29,295 Arbitration Fee Amount Unavailable

### Description

On December 13, 2011, according to MPD and described in the arbitration award, Liriano assaulted his wife at their home, during which time a home alarm was set off. Officers reported to the scene and arrested Liriano. His wife refused to testify against her husband, so the criminal charges were dropped. MPD charged Liriano with committing a crime, conduct unbecoming an officer, and conduct relating to the discipline and performance of the force. An Adverse Action Panel found Liriano guilty of two charges and recommended termination. Per MPD, MPD terminated Liriano on December 14, 2012.

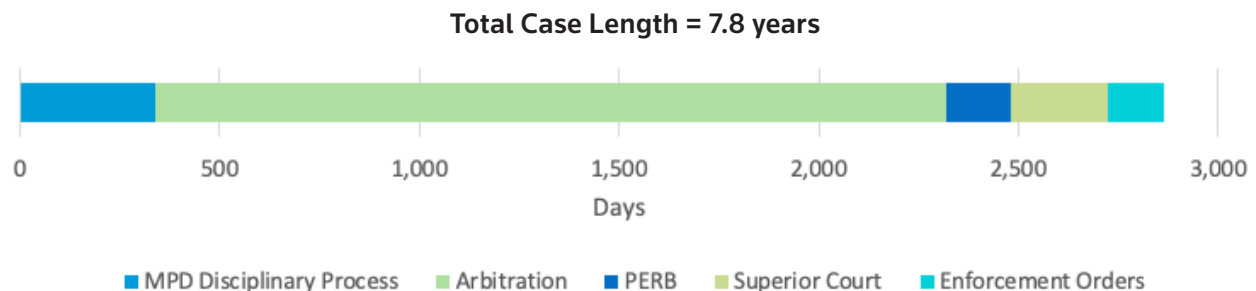
On April 17, 2018, the termination was overturned through arbitration because the arbitrator determined that evidence was insufficient.

On September 27, 2018, PERB sustained the arbitrator's award. MPD appealed to D.C. Superior Court but was denied on March 1, 2019, because the appeal was filed past the deadline. MPD appealed the D.C. Superior Court's dismissal and was denied again on May 28, 2019.

Despite being ordered to reinstate Liriano, MPD refused to do so. The Superior Court granted PERB's Petition for Enforcement on August 6, 2020.

Liriano was reinstated on June 23, 2020, and paid backpay equal to \$440,136.

Liriano's employment with MPD was terminated on March 1, 2022.



## Appendix B.25: Richard Mazloom

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$438,613
<b>Charges</b>	Untruthful statements, failure to obey orders, conduct unbecoming an officer, drinking an alcoholic beverage while carrying a firearm	<b>Backpay Received</b>	\$205,661
<b>Current Employment</b>	Officer	<b>Fees</b>	Arbitration Fee = \$12,772

### Description

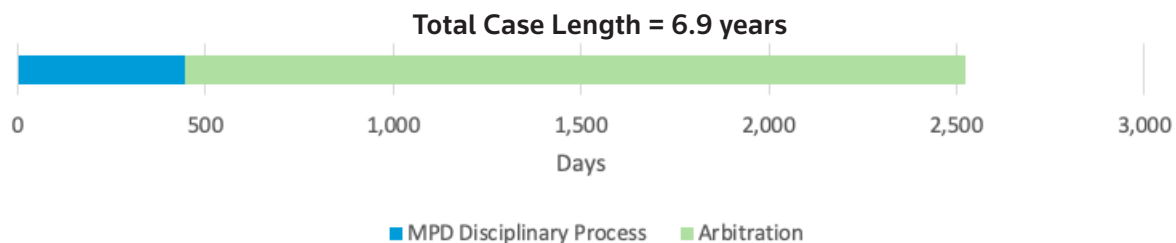
Prior to being terminated, Richard Mazloom was the subject of three complaints made to the OPC.

A different instance of misconduct, as claimed by MPD and described in the arbitration award, occurred on August 13, 2011, when Mazloom was off-duty and went out drinking with his girlfriend and a fellow officer while Mazloom had his MPD firearm on him. He got into a fight with other individuals on H Street N.E. MPD charged Mazloom with untruthful statements, failure to obey orders, conduct unbecoming an officer, and drinking an alcoholic beverage while carrying a firearm. An Adverse Action Panel found Mazloom guilty of all charges and recommended termination. Per MPD, MPD terminated Mazloom on November 30, 2012.<sup>66</sup>

On July 11, 2018, the termination was overturned through arbitration. The arbitrator did not believe there was substantial evidence, thought the evidence showed Mazloom was not the aggressor and the other party instigated the fight, and found that “termination is too severe” for the circumstances.

Mazloom was reinstated on January 7, 2019, and paid backpay equal to \$205,661.

Since being reinstated, Mazloom had one instance of misconduct reported by MPD and two complaints to OPC. Instances include hitting a pole in a parking lot with an MPD vehicle. Mazloom was working at MPD as an officer during the audit.



<sup>66</sup> The arbitration award states this termination became effective on November 20, 2012.

## Appendix B.26: Jose Medina

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$679,688
<b>Charges</b>	Unnecessary force, neglect of duty, conduct unbecoming an officer, untruthful statements, conviction of a crime	<b>Backpay Received</b>	\$679,688
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration and Attorney Fee Amount Not Available

### Description

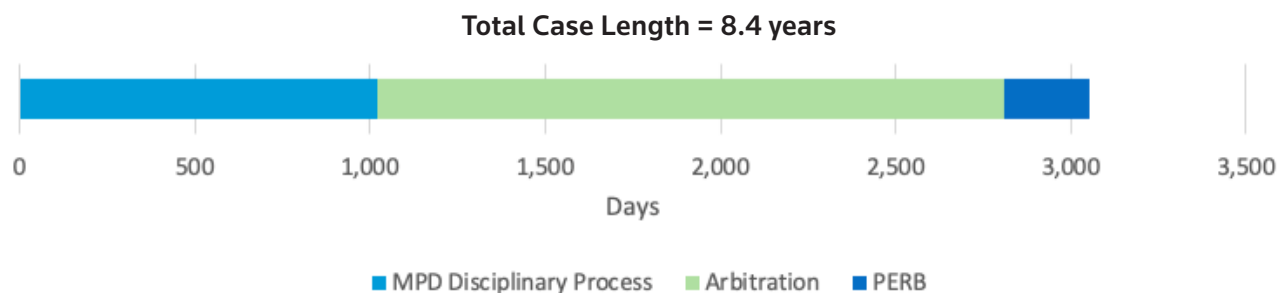
On October 14, 2006, according to MPD and described in the arbitration award, after an interview with an arrested person, Medina struck the handcuffed individual in the head several times with his elbow. The individual was transported to a hospital. Medina was indicted by a D.C. Superior Court grand jury for simple assault. Medina was found guilty at trial and sentenced to 30 days imprisonment with 30 of those days suspended, three years of supervised probation, and 500 hours of community service. Following the sentencing, and Adverse Action Panel found Medina guilty of MPD charges including using unnecessary force, neglect of duty, conduct unbecoming an officer, and conviction of a crime. The panel did not find Medina guilty of an additional charge of untruthful statements. The Adverse Action Panel did not recommend termination and indicated they believed Medina was not afforded due process rights during the investigation and criminal trial. The panel recommended that Medina serve a 30-day suspension. Per MPD, MPD terminated Medina on September 28, 2009, despite the panel's recommendation.

On August 22, 2014, the termination was overturned through arbitration because the Adverse Action Panel assigned a suspension in lieu of termination and MPD did not have authority to increase the penalty the panel recommended.

On April 24, 2015, PERB sustained the arbitrator's award.

Medina was reinstated on April 19, 2017, and paid backpay equal to \$679,688.

Medina retired within six months.



## Appendix B.27: Jose Mendoza

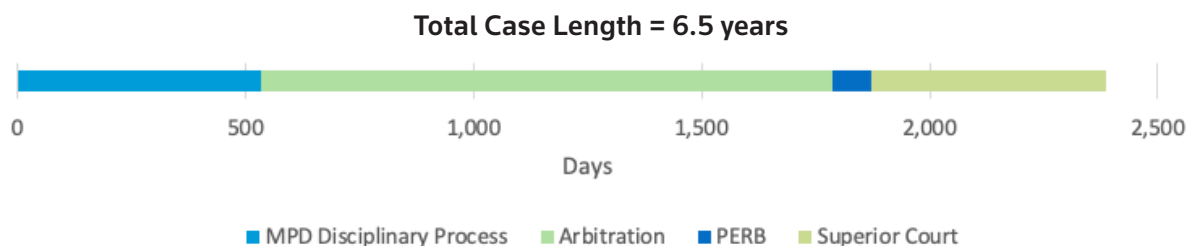
<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$402,641
<b>Charges</b>	Conduct unbecoming an officer, conduct relating to the discipline and performance of the force, conviction of a crime	<b>Backpay Received</b>	\$168,623
<b>Current Employment</b>	Investigator	<b>Fees</b>	Arbitration Fee Amount Not Available

### Description

On June 30, 2014, according to MPD and described in the arbitration award, Jose Mendoza bought an Amtrak train ticket to Baltimore and tried to ride the train to New York City. When he was stopped by the conductor, he asked the conductor if he could ride for free because he was a police officer. The conductor denied his request and asked him to purchase a ticket. The officer, who claimed he could not purchase the ticket due to poor internet and cellular service on the train, did not purchase the ticket, so the conductor asked him to leave the train. An Amtrak officer met him at the station in Philadelphia and offered Mendoza an opportunity to buy a ticket. Instead, Mendoza got back on the train to New York City and asked that conductor if he could ride for free, and the conductor obliged. Subsequently, the Amtrak officer from the Philadelphia station contacted MPD regarding the incident.

MPD charged Mendoza with conduct unbecoming an officer, conduct relating to the discipline and performance of the force, and commission of a crime. Originally, MPD served Mendoza a 30-day suspension. Mendoza appealed to the Chief to reduce the suspension, but Chief Lanier remanded the suspension back to MPD's Disciplinary Review Division, who increased the penalty to a termination. An Adverse Action panel found Mendoza guilty of all charges and recommended termination. Per MPD, Mendoza was terminated on January 15, 2016.

On May 20, 2019, the termination was overturned through arbitration because MPD exceeded its 90-day time limit to take action on discipline. On August 15, 2019, PERB sustained the arbitrator's award. On January 11, 2021, D.C. Superior Court sustained PERB's opinion. Mendoza was reinstated on March 16, 2021, and paid backpay equal to \$168,623. Mendoza was working at MPD as an investigator during the audit.



## Appendix B.28: Janice Olive

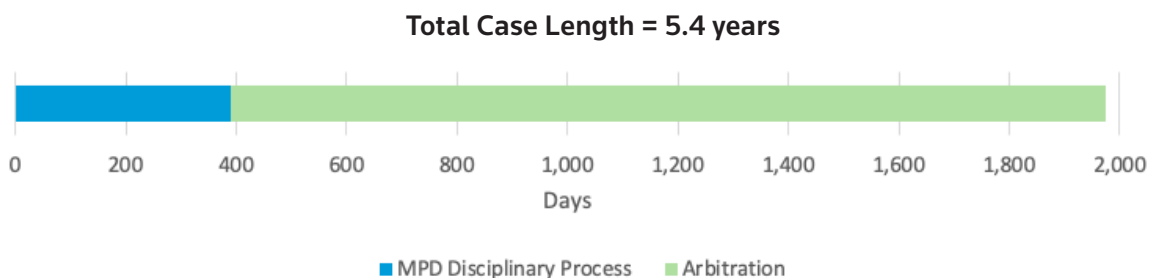
<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	Not Awarded
<b>Charges</b>	Fraud, untruthful statements, conduct unbecoming an officer	<b>Backpay Received</b>	Not Awarded
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee Amount Not Available

### Description

On May 6, 2014, according to MPD and described in the arbitration award, Olive showed up to work an overtime shift but too many officers had been scheduled for the same shift, so she and her coworkers discussed who should leave. Ultimately, Olive left. Later, there was confusion about whether she should get partial overtime for showing up, and she requested partial overtime to which she was not entitled. MPD charged Olive with fraud, untruthful statements, and conduct unbecoming an officer. An Adverse Action Panel found Olive guilty of all charges and recommended termination. Per MPD, Olive was terminated from MPD on July 10, 2015.

On October 1, 2019, the termination was overturned through arbitration because “termination is not the appropriate penalty” for falsifying four hours of overtime. Furthermore, the arbitrator scolded MPD for centering a substantial amount of their investigation around an alleged personal relationship within her chain of command that was not included in the charges against her, yet this inquiry consumed the investigation, evidence, and arbitration.

Olive was not awarded backpay by the arbitrator and retired pursuant to a settlement agreement with MPD.





## Appendix B. 29: Michael Pokladnik

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$199,800
<b>Charges</b>	Untruthful statements, conduct relating to the discipline and performance of the force	<b>Backpay Received</b>	\$199,800
<b>Current Employment</b>	Deceased	<b>Fees</b>	Arbitration Fee Data Not Available

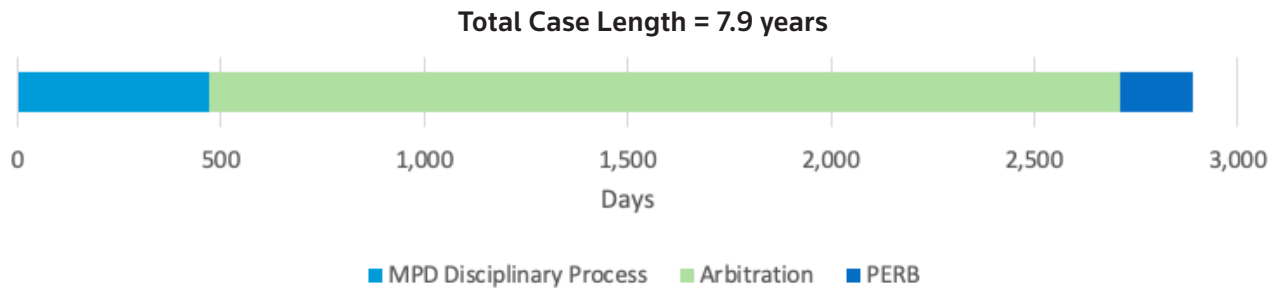
### Description

According to MPD and described in the arbitration award, Michael Pokladnik spent six months claiming limited duty status due to knee problems that had already resolved and should have been assigned to patrol duties. MPD charged Pokladnik with untruthful statements and conduct relating to the discipline and performance of the force. An Adverse Action Panel found Pokladnik guilty of the first charge and not guilty of the second. Per MPD, MPD terminated Pokladnik on September 23, 2011.

On November 1, 2017, the termination was overturned through arbitration because termination was deemed excessive and inappropriate for the misconduct. The arbitrator stated that MPD failed to meet the 90-day deadline to impose discipline by one day, though the arbitrator found it was a de minimis violation of the rule.

On April 26, 2018, PERB sustained the arbitrator's award.

Pokladnik was legally reinstated on May 11, 2018, but died before he returned to MPD. His estate was paid backpay equal to \$199,800.



## Appendix B.30: David Randolph

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$441,560
<b>Charges</b>	Untruthful statements in a report, falsification of a report, conduct unbecoming an officer, compromising a felony to assist a person suspected of a crime, inefficiency	<b>Backpay Received</b>	\$226,679
<b>Current Employment</b>	Sergeant	<b>Fees</b>	Arbitration Amount Not Available

### Description

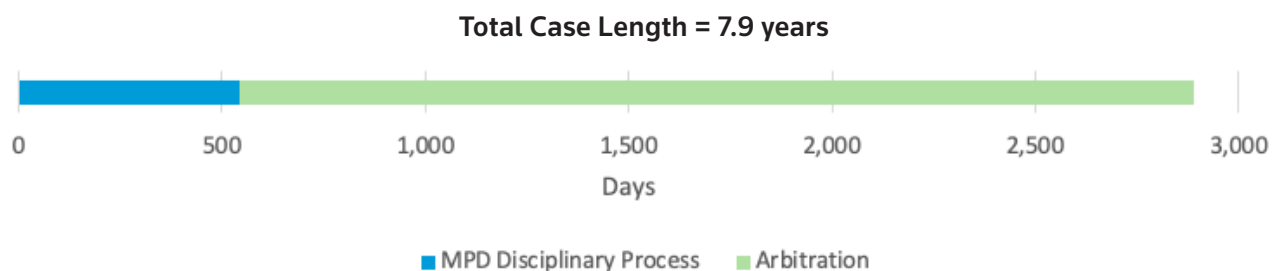
Prior to being terminated, David Randolph was the subject of two complaints made to the OPC.

A different instance of misconduct, as claimed by MPD and described in the arbitration award, occurred during a July 30, 2008, arrest when Randolph found a container of pills and did not test them. The U.S. Attorney's Office raised concerns regarding the accuracy of an arrest warrant and affidavit related to the testing of the pills. Randolph was charged with untruthful statements, falsification of official records or reports, conduct unbecoming an officer, compromising a felony to assist a person suspected of a crime, and inefficiency. An Adverse Action Panel found Randolph guilty of the first three charges, and not guilty on the remainder, and recommended termination. Per MPD, Randolph was terminated on February 19, 2010.

On July 6, 2016, the termination was overturned through arbitration because MPD failed to meet the 90-day deadline to impose discipline.

Randolph was reinstated on September 7, 2016, and paid backpay equal to \$226,679.

After reinstatement, Randolph had three instances of misconduct according to MPD and four complaints to OPC. Instances include backing into a car with an MPD vehicle, failure to appear at a hearing, and losing a dose of NARCAN. Randolph was working at MPD as a sergeant during the audit.



## Appendix B.31: Charles Sims

Misconduct Type	Threat to Safety	Total Eligible Backpay	\$597,206
Charges	Conduct relating to the discipline and performance of the force	Backpay Received	\$520,505
Current Employment	Retired	Fees	Arbitration Fee = \$19,600

### Description

Prior to being terminated in 2015, Charles Sims was the subject of two complaints made to the OPC.

According to the PERB award decision, Charles Sims was terminated and reinstated at least twice prior to our scope, once prior to 2000 for conduct unbecoming an officer, use of a firearm, and lying. He was reinstated because MPD failed to meet a 55-day deadline to issue a written decision after filing charges. Sims was terminated again in 2006 for getting into a fight at a pizza restaurant. The U.S. Attorney's Office declined to prosecute. He was reinstated in 2014 because MPD failed to meet a 90-day deadline to impose discipline.

Within our scope, as claimed by MPD and described in the arbitration, MPD terminated Sims a third time in 2015 because, during his pre-employment background investigation initiated by the reinstatement, MPD found Sims was arrested five times between 1997 and 2014, including one arrest for assault with a dangerous weapon. MPD charged Sims with conduct relating to the discipline and performance of the force. An Adverse Action Panel found Sims guilty of the charge. Per MPD, Charles Sims was terminated from MPD on February 27, 2015.

On February 27, 2019, the termination was overturned through arbitration because MPD failed to meet the 90-day deadline to impose discipline.

On July 18, 2019, PERB sustained the arbitrator's award.

Sims was reinstated on March 22, 2021, and paid backpay equal to \$520,505. Sims retired immediately.

Total Case Length = Unknown

A significant portion of this individual's case fell before the scope of the audit, and as a result, an effective summary chart could not be generated.

## Appendix B.32: Michael Sugg-Edwards

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$718,325
<b>Charges</b>	Conviction of a crime, conduct relating to the discipline and performance of the force, conduct unbecoming an officer	<b>Backpay Received</b>	\$532,996
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Fee Amount Not Available

### Description

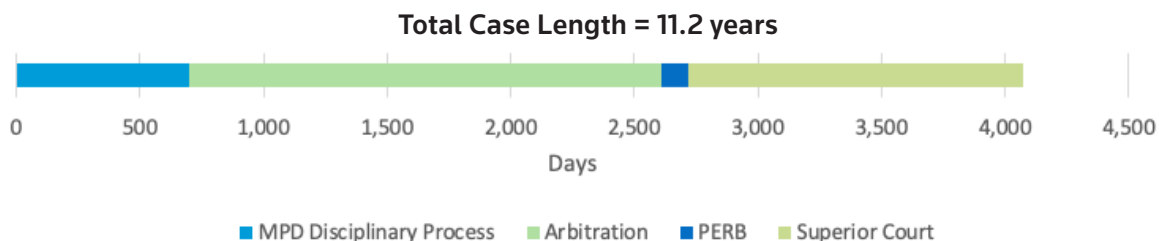
On November 16, 2007, according to MPD and described in the arbitration award, Michael Sugg-Edwards saw a young woman crying on a street corner because she couldn't get into a nearby club with her friends. He picked her up in his MPD vehicle and later took her back to the night club. The woman told the officers outside of the club she had been sexually assaulted by Sugg-Edwards, who was investigated, arrested, and later found guilty of misdemeanor sexual abuse. He was sentenced to a 100-day suspended sentence, one year of probation, and \$1,000 in court costs and fines. MPD charged Sugg-Edwards with conviction of a crime, conduct relating to the discipline and performance of the force, and conduct unbecoming an officer. An Adverse Action Panel found him guilty of the first two charges but not guilty of the third. The panel recommended Sugg-Edwards receive an official reprimand. Per MPD, MPD terminated Sugg-Edwards on October 23, 2009, despite the panel's recommendation. Additionally, MPD's Final Notice of Adverse Action found that the panel ignored evidence related to the third charge of conduct unbecoming an officer.

On January 9, 2015, the termination was overturned through arbitration because of due process and evidentiary issues surrounding the charge of conduct unbecoming an officer. In addition, MPD did not have authority to increase the penalty the panel recommended.

On April 24, 2015, PERB sustained the arbitrator's award. On January 8, 2019, D.C. Superior Courts sustained PERB's decision.

Sugg-Edwards was reinstated on December 10, 2019, and paid backpay equal to \$532,996.

Since being reinstated, Sugg-Edwards had one instance of misconduct reported by MPD which was stating on a form he had no criminal record, but a background check showed a misdemeanor for prostitution in 2016. Sugg-Edwards retired on January 13, 2021.



## Appendix B.33: Japheth Taylor

Misconduct Type	Threat to Safety	Total Eligible Backpay	\$398,861
Charges	Neglect of duty, untruthful statements	Backpay Received	\$327,363
Current Employment	Retired	Fees	Interest Fee Amount Not Available

### Description

Prior to being terminated, Japheth Taylor was the subject of one complaint made to the OPC.

A different instance of misconduct, as claimed by MPD and described in the arbitration award, occurred on September 29, 2009, when Japheth Taylor responded to a domestic violence call with Officer Julius Allen. Taylor and Allen left without making an arrest and reclassified the incident as a family disturbance. An MPD sergeant monitoring the call went to the scene and arrested the woman's boyfriend after seeing a photo a special police officer serving on the building security detail took of the woman's lip which appeared cut and swollen, as well as interviewing the woman's boyfriend. MPD concluded there had been probable cause of an assault and that officers had failed to make an arrest in violation of Department regulations in accordance with the Domestic Violence Act's arrest requirements and charged both officers with untruthful statements and neglect of duty. An Adverse Action Panel found Taylor guilty of the charges and recommended termination. Per MPD, MPD terminated Taylor on December 3, 2010.

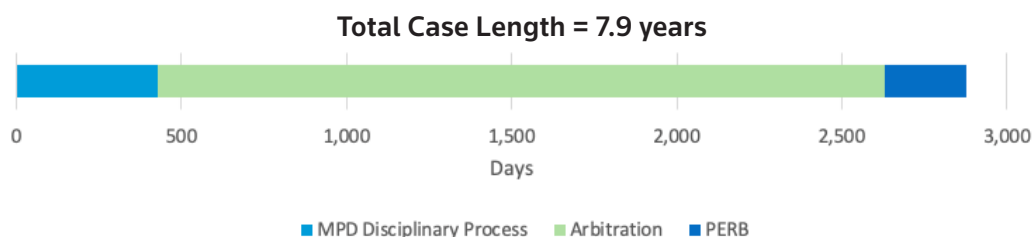
In an undated decision the MPD stated was issued on December 13, 2016, the termination was overturned through arbitration because the arbitrator felt termination was an excessive punishment, because MPD ignored endorsements from colleagues, the officer's past work record and commendations, the officer's capacity for rehabilitation and because similar cases in the past did not result in termination. The arbitrator found no evidence that the misconduct was committed maliciously or for gain, or was frequently repeated. The arbitrator determined that an appropriate penalty was a 30-day suspension without pay.

On August 17, 2017, PERB sustained the arbitrator's award.

Taylor was reinstated on March 22, 2017, and paid backpay equal to \$327,363.

Since being reinstated, Taylor had one instance of misconduct reported by MPD and one complaint to OPC including scraping the side of an MPD vehicle against a wall.

Taylor retired on May 28, 2019.



## Appendix B.34: Heath Tucker

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$540,197
<b>Charges</b>	Falsification of a form, failure to be “fully forthcoming” on a form, sleeping on duty, asking another officer to make untruthful statements	<b>Backpay Received</b>	\$172,292
<b>Current Employment</b>	Officer	<b>Fees</b>	Arbitration Amount Not Available

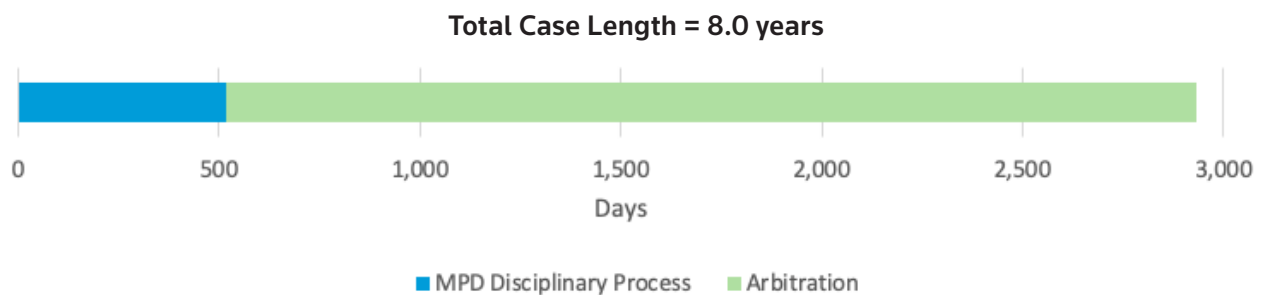
### Description

On May 1, 2010, according to MPD and described in the arbitration award, Tucker was caught sleeping in his squad car. After being caught, Tucker was asked to complete a form and denied sleeping but stated he was monitoring the radio. MPD charged Tucker with falsification of a form, failure to be “fully forthcoming” on a form, sleeping on duty, and asking another officer to make untruthful statements. An Adverse Action Panel found Tucker guilty of the first three charges, and not guilty of the fourth, and recommended a 45-day suspension. Per MPD, Tucker was terminated from MPD on September 30, 2011, despite the panel’s recommendation.

On May 11, 2018, the termination was overturned through arbitration because MPD did not have authority to increase the discipline assigned by the panel.

Tucker was reinstated on August 10, 2018, and paid backpay equal to \$172,292.

Tucker was working at MPD as an officer during the audit.



## Appendix B.35: Kirstie Venord

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$364,968
<b>Charges</b>	Untruthful statements, absent without leave (AWOL)	<b>Backpay Received</b>	\$302,395
<b>Current Employment</b>	Officer	<b>Fees</b>	Not Applicable

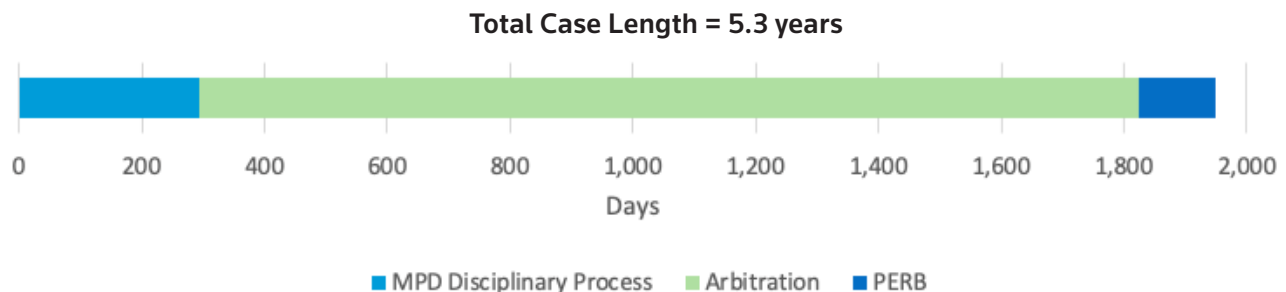
### Description

On February 15, 2015, according to MPD and described in the arbitration award, Venord made a last-minute request for a week of leave, only eight hours of which was approved. The reason she gave for the leave was untruthful and she took the whole week off. MPD charged Venord with untruthful statements and being absent without leave (AWOL). An Adverse Action Panel found Venord guilty of both charges and recommended termination. Per MPD, MPD terminated Kirstie Venord on January 16, 2016.

On February 13, 2020, the termination was overturned through arbitration because the arbitrator felt termination was not an appropriate penalty for a first-time lying offense.

Kirstie Venord was reinstated on March 15, 2021, and paid backpay equal to \$302,395.

Venord was working at MPD as an officer during the audit.



## Appendix B.36: Kevin Whaley

<b>Misconduct Type</b>	Threat to Safety	<b>Total Eligible Backpay</b>	\$472,194
<b>Charges</b>	Committing a crime, being under the influence of an alcohol beverage, failure to obey orders, conduct unbecoming an officer, untruthful statements	<b>Backpay Received</b>	\$80,422
<b>Current Employment</b>	Resigned	<b>Fees</b>	Arbitration Amount Not Available

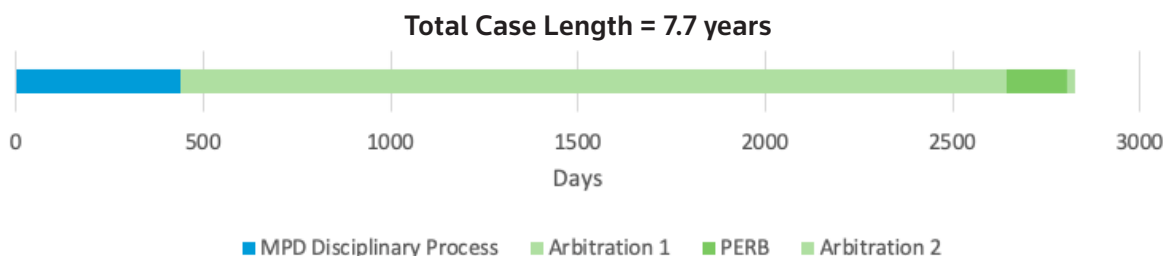
### Description

Prior to being terminated, Kevin Whaley was the subject of four complaints made to the OPC.

A different instance of misconduct occurred on July 16, 2010, according to MPD and described in the arbitration award. While off-duty, Whaley had a few drinks and went to see his wife, from whom he was separated, at a strip club in downtown D.C. where she worked. He had an unregistered firearm on him at the time. He had additional alcohol at the club and reportedly placed his arm around his wife, though his wife stated that nothing happened at the club. He was asked to leave by club security but refused to do so. MPD officers arrived at the scene and discovered the unregistered gun, though Whaley had not disclosed it when asked. No arrest was made. MPD subsequently charged Whaley with committing a crime, being under the influence of an alcoholic beverage, failure to obey orders, conduct unbecoming an officer, and untruthful statements. An Adverse Action Panel found Whaley guilty of some but not all charges and recommended a 60-day suspension. Per the arbitration award, MPD terminated Kevin Whaley in or around September 2011, despite the panel's recommendation.

On October 10, 2017, the termination was overturned through arbitration because termination was deemed an excessive punishment for the misconduct committed and because MPD did not have authority to increase the panel's proposed suspension to a termination. The arbitrator imposed a 150-day suspension.

On March 23, 2018, PERB issued an opinion that the arbitrator's 150-day suspension award was contrary to law and policy and remanded the decision back to the arbitrator. On April 12, 2018, the arbitrator reinstated the 60-day suspension recommended by the panel. Kevin Whaley was reinstated on January 10, 2018, and paid backpay equal to \$80,422. Whaley left MPD 119 days later.





## Appendix B.37: Corey Williams

<b>Misconduct Type</b>	Administrative (Misrepresentation, Misuse of Resources, etc.)	<b>Total Eligible Backpay</b>	\$565,621
<b>Charges</b>	Untruthful statements, neglect of duty, and failing to obey orders relating to outside employment	<b>Backpay Received</b>	\$484,633
<b>Current Employment</b>	Retired	<b>Fees</b>	Arbitration Amount Not Available

### Description

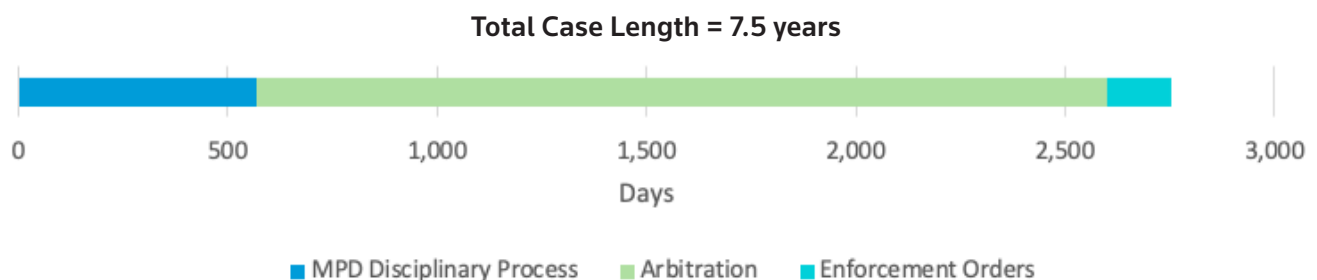
On July 4, 2010, according to MPD and described in the arbitration award, April Gray and Corey Williams wore their MPD uniforms and worked as private security at a July 4<sup>th</sup> party without authorization from MPD to accept outside employment. A guest at the party was harrassed and hit in the face by another guest and spoke to the officers about the incident, and later complained to the OPC that Officer Gray was not professional. MPD charged Gray and Williams with making untruthful statements about being at the party, neglect of duty, and failing to obey orders relating to outside employment. An Adverse Action Panel found Williams guilty untruthful statements and failing to obey orders, and not guilty of neglect of duty. The panel recommended termination and, per MPD, MPD terminated both officers on January 27, 2012.

On August 16, 2017, the terminations were overturned through arbitration because MPD violated the time limit written in their collective bargaining agreement with the FOP of 55 days between an officer requesting a panel hearing and receiving a final notice of discipline.

Despite being ordered to reinstate Williams, MPD refused to do so. The FOP filed a complaint with PERB alleging MPD committed unfair labor practices by refusing to abide by an arbitration award. On January 18, 2018, PERB upheld the unfair labor practices complaint and ordered MPD to comply with the arbitration award.

Williams was reinstated on April 17, 2018, and paid backpay equal to \$484,633.

Williams retired within a year and a half.



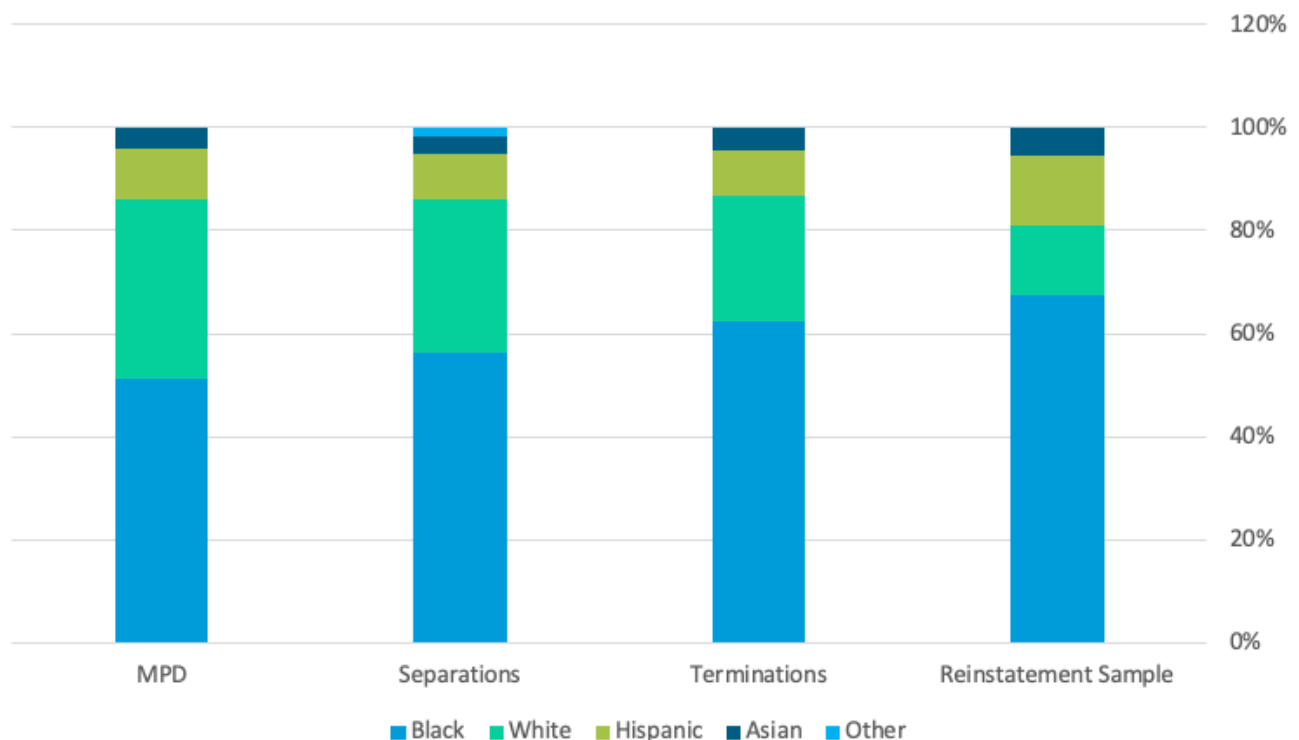
## Appendix C:

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### Demographic Analysis

Figure 12 shows the results of ODCA’s limited analysis of the demographics of our sample of reinstated officers. According to MPD’s 2019 Annual Report, MPD had 3,801 sworn officers in 2018. The majority of these officers were black (51%)<sup>67</sup> and 25 of the 37 officers in the audit were black (68%). In 2018, the majority of all MPD officers were male (77%) and 23 of the 37 officers in the audit were male (62%), as shown in Figure 13. The average age of officers who separated from MPD for any reason, were terminated by MPD, or were assessed by ODCA in the audit was around 40 years old, which means most were probably not rookie officers.

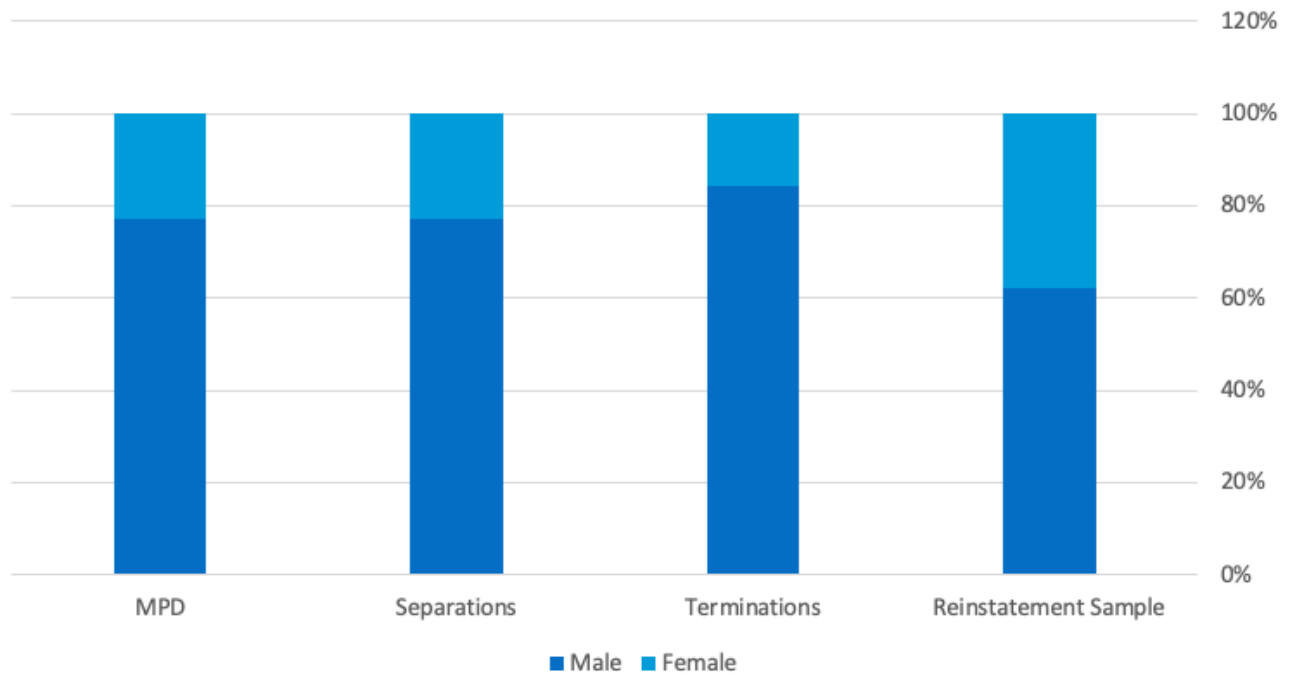
**Figure 12: Demographics by Race and Ethnicity**



Source: ODCA analysis of data provided by MPD and DCHR

67 MPD Annual Report 2019, see: <https://mpdc.dc.gov/node/1530701>

Figure 13: Demographics by Gender



Source: ODCA analysis of data provided by MPD and DCHR

# About ODCA

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The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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