

-----  
2000 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2119  
TEL 612.371.3211  
FAX 612.371.3207  
www.ballardspahr.com

Leita Walker  
Tel: 612.371.6222  
Fax: 612.371.3207  
walkerl@ballardspahr.com

May 19, 2023

*Via E-Service and E-Mail*

Mark Enslin  
Assistant Minneapolis City Attorney  
Minneapolis City Attorney's Office  
350 South Fifth Street, Room #210  
Minneapolis, MN 55415

Re: Minnesota Coalition on Government Information v. City of Minneapolis, et al.  
Court File No. 27-CV-21-7237

Dear Counsel:

We write to address a number of deficiencies in Defendants' May 8 response to MNCOGI's recently served Requests for Admission and in Defendants' May 8 supplemental responses to written discovery requests that MNCOGI served in October 2021. In addition to the points raised below, we incorporate by reference points made in our deficiency letter of November 12, 2021, regarding the inadequacy of Defendants' boilerplate objections, made without regard for the scope of permitted discovery or the specificity required when lodging objections to discovery requests. Please advise when you are available to meet and confer next week on all these issues.

### **Document production**

We are still reviewing the documents Defendants produced on May 10, but note that they only produced 25 documents, that many of them were blank and others appear to be duplicates, and that no metadata was included with the production. Please re-produce the documents with these deficiencies corrected; for your convenience, we attach as Exhibit A to this letter a list of standard metadata we expect to receive. Meanwhile, given the paltriness of the production, we are concerned about the Defendant's search protocol. During our meet and confer we would like to discuss which document custodians you have identified, what repositories you are searching, and what keywords you are using to identify potentially responsive documents. We also request a date certain for when the next set of documents will arrive and an estimate of how many documents we can expect in that tranche, as well as a date certain for when we can expect to receive a privilege log for any documents withheld. We reserve the right to address additional deficiencies with the production at a later date.

### **Confidentiality designations**

Defendants initially designated *all* written responses served on May 8 as “confidential.” On May 12, after we objected to this approach, Defendants removed the blanket designation but continued to designate the following responses as confidential:

- Requests for Admission, Nos. 7-14, 34-37, and 72-73.
- Interrogatories, Nos. 1 and 4.
- Document Requests, Nos. 1 and 3.

We do not believe such designations can be justified under the Protective Order or the law. For example, in Requests for Admission (“RFAs”) Nos. 7-14 and 34-37, Defendants merely admit or deny the use of coaching for certain types of Policy Manual violations and address whether failure to impose some other consequence violated the then-existing Policy Manual. Neither the RFAs nor the responses to the RFAs contain any personally identifiable information of any employee and we do not believe it is appropriate for Defendants to treat as confidential the fact that they coach certain types of misconduct—especially when they have publicly admitted that they do so. Similarly, Defendants’ response to RFA No. 73 does not contain any personally identifiable information of any employee, and Defendants denied RFA No. 72 such that no private information about Derek Chauvin can be discerned from their response.

Designation of responses to the listed Interrogatories and Requests for Production (“RFPs”) are similarly indefensible. We therefore ask that you remove all designations from the written discovery responses.

### **General Objections**

Please confirm that Defendants are not withholding information or documents based on the General Objections they assert at the top of their responses to the RFAs, RFPs, and Interrogatories and that these objections were made simply as a matter of course and to avoid inadvertent waiver.

### **Objections to use of the term “Warning”**

Defendants have objected in their responses to the RFAs to use of the term “Warning” on grounds that the definition is “ambiguous and incomplete,” *see* Response to RFA No. 15; *see also* Response to RFA No. 16, 51-57. Defendants also objected to use of the term “Warning” in their Response to RFP No. 10 on grounds that the term is “undefined and subject to multiple interpretations.”

MNCOGI defined “Warning” in the RFAs by quoting the definition in the Minneapolis Civil Service Commission Rules. Please withdraw this objection from the referenced Responses to the RFAs. In the alternative, please explain in writing (1) how the definition MNCOGI used is “ambiguous and incomplete,” (2) what authority Defendants have to adopt a definition of

“Warning” that goes beyond the definition found in the Civil Service Commission Rules, and (3) how Defendants define “Warning.”

Admittedly, MNCOGI did not define “Warning” in the RFPs it served on October 4, 2021. Defendants, however, did not object to use of the term when they responded to those RFPs on November 4, 2021. Therefore the objection was waived and it is not appropriate to raise it for the first time in a supplemental response. In any event, MNCOGI clarifies that the term “Warning” in the RFPs is defined the same way it’s defined in the more recent RFAs. Please confirm Defendants are not withholding documents based on the objection. Please also explain in writing the “multiple interpretations” you believe can be ascribed to this word.

### **References to Section 2-112(C) in the “current Policy Manual”**

Defendants objected to discovery requests that reference Section 2-112(C) in the “current Policy Manual” on grounds that “the current policy manual does not contain a Section 2-112(C).” *See* Response to RFA Nos. 74-77, Response to Interrogatory No. 6.

For clarity, this was a reference to the Policy Manual attached to the Complaint as Exhibit 4. Our investigation shows that Section 2-112(C) remained in the Policy Manual, unchanged, through at least August 15, 2022. Sometime later, but no later than October 10, 2022, the provision was renumbered to Section 2-103(C), where it remains to this day, including in the version of the Policy Manual last updated on May 5, 2023, three days before Defendants served their latest responses. (To avoid further confusion, we have attached pertinent pages from that version to this letter as Exhibit B.)

MNCOGI served its Interrogatories on Defendants on October 4, 2021, when the “current policy manual” did indeed contain a Section 2-112(C). Defendants did not object to the reference to that section when they responded on November 4, 2021 and they therefore waived the objection. Further, it ought to go without saying that, when time came to supplement Defendants’ responses approximately 18 months later, they should have read “current Policy Manual” to refer to the Policy Manual in effect at the time the discovery was served—in fact, this is exactly what Defendants did in responding to RFP No. 18. Please therefore withdraw Defendants’ objection to Interrogatory No. 6 and answer that Interrogatory.

As for the RFAs, we apologize for the confusion caused by our phrasing, if any. Please advise whether Defendants will respond to the requests now that we have clarified the reference. If not, we will plan to promptly serve new requests.

### **Unanswered RFAs**

*RFA Nos. 40-41:* Defendants have not answered these RFAs; please do so. These RFAs seek to understand how Defendants interpret their collective bargaining agreement with the Federation, which is highly relevant. The RFAs do not assume facts that are not in evidence, though Defendants are free to clarify their position that certain facts are not established in their response.

*RFA Nos. 78-81:* Defendants have not answered these RFAs; please do so. Again, these RFAs seek to understand what Defendants consider disciplinary action, which is highly relevant. Defendants’ objections to these RFAs seem to be based on a misunderstanding of the law of the

case doctrine. The law is clear that, however the Court defined “disciplinary action” in ruling on the parties’ cross motions for partial summary judgment, it is free to revisit and change that decision at some later date, once it has the benefit of discovery. *See, e.g., Am. Fed. Bank v. F & W Props.*, 2007 Minn. App. Unpub. LEXIS 831, \*5 (Minn. App. Aug. 14, 2007) (“The district court does not normally apply the law-of-the-case doctrine to its own decisions. ... Therefore, ... the district court had the discretion to file a second order that made a different legal determination than the first order.”); *Virtual Home Care v. St. Paul Fire & Marine Ins. Co.*, 2001 Minn. App. LEXIS 990, \*10-11 (Minn. App. Sept. 4, 2001) (“[T]he ‘law of the case’ doctrine does not serve as a substantive limitation to a court’s power. It is a flexible doctrine that varies within the context of its application. Between coordinate courts, a court is not deprived of the power to revisit a previously decided issue, so long as the case remains within its jurisdiction.”). The Federation has already taken positions in discovery that are at odds with Defendants’ positions and that undermine arguments that both the Federation and Defendants took in connection with motions for partial summary judgment. As such, the Federation’s discovery responses reveal various fact issues related to how “disciplinary action” is defined not only by Defendants but by the rank and file of the MPD. *See generally* Federation Response to RFAs. MNCOGI is entitled to explore these issues prior to a second round of summary judgment briefing.

*RFA Nos. 59-68.* Defendants have not answered these RFAs. We take their refusal to mean that they cannot categorically deny that coaching forms exist that contain the referenced words. If this assumption is incorrect, please clarify.

In any event, we understand that because Defendants have agreed to produce “all Coaching Documentation Forms for Minneapolis Police officers who were coached for sustained B-, C-, or D-level violations of the Policy Manual from 2013-December 30, 2020,” *see* Response to RFP No. 1, MNCOGI can undertake review of these forms for itself. However, Defendants have *not* agreed to produce coaching forms that post-date December 30, 2020. Please agree to produce those forms so that MNCOGI can do the work you claim is too burdensome.

### **Other deficiencies in RFP Responses**

*RFP Nos. 2-3 and 6-8:* Defendants refuse to produce documents responsive to these RFPs. For the record, we do not believe Defendants’ objections to these requests have merit. However, the issue seems mostly academic since Defendants have agreed to produce “all Coaching Documentation Forms for Minneapolis Police officers who were coached for sustained B-, C-, or D-level violations of the Policy Manual from 2013-December 30, 2020,” *see* Response to RFP No. 1. Presumably, coaching arising from an officer’s rendering a person unconscious through use of a neck restraint would be included in this production. Likewise, it seems any coaching of Derek Chauvin, Thomas Lane, J. Alexander Keung, and Tou Thao for B-, C-, or D-level violations will be included in the production set. Please confirm.

Please also state whether Defendants will produce coaching forms that post-date December 30, 2020.

Finally, please clarify Defendants’ response that “none exist” in response to RFP No. 2. Given Defendants’ claim that coaching documentation forms are not kept in personnel files, *see*

Response to RFA No. 39, do they mean that no coaching forms for these officers exist? Or do they mean that coaching forms exist but they are not kept in the officers' personnel files?

*RFP No. 11:* Defendants have raised a relevancy objection to all but *four* of the RFAs, RFPs, and Interrogatories MNCOGI has served upon them to date. As discussed above, we see little point in discussing this boilerplate objection on a request-by-request basis and instead point you to arguments raised in our November 12, 2021 letter. However, a relevancy objection to RFP No. 11 is particularly inappropriate given the parties' and the Court's reliance on Department of Administration opinions that rely on phrases in the documents at issue to determine whether those documents constitute or reflect disciplinary action. Please confirm in writing Defendants will withdraw this objection

As for what remains of Defendants' response: As with Defendants' Response to RFA Nos. 59-68, we take it to mean that they cannot categorically deny that coaching forms exist that contain the referenced words. If this assumption is incorrect, please clarify.

And, again, as with RFA Nos. 59-68, because Defendants have agreed to produce "all Coaching Documentation Forms for Minneapolis Police officers who were coached for sustained B-, C-, or D-level violations of the Policy Manual from 2013-December 30, 2020," *see* Response to RFP No. 1, MNCOGI can undertake review of these forms for itself. Please agree that Defendants will also produce coaching forms that post-date December 30, 2020 so that MNCOGI can do the work Defendants claim is too burdensome.

*RFP No. 14:* Please withdraw the newly raised objections in Defendants' supplemental response, which they did not raise in their original response and which are therefore waived. In addition, state in writing the date Defendants entered into a common interest agreement with the Federation and identify with specificity the "common interest(s)" that you believe exist.

*RFP No. 19:* For context, the phrases included in this RFP are derived from a September 8, 2021, email sent by Assistant Minneapolis City Attorney Timothy A. Richards. The email was filed with the Court on October 24, 2022, as Exhibit 6 to the Affidavit of Isabella Nascimento. We are happy to discuss this RFP with you during our meet and confer in an effort to understand what Attorney Richards meant and to explain what we seek through the RFP.

*RFP No. 22:* This RFP seeks to understand how coaching data is fed into any early warning system used by the Minneapolis Police Department. Because this case is about whether coaching constitutes disciplinary action, how coaching data is used—including its possible use in a manner that adversely impacts employees by "flagging" them as problem officers—is obviously relevant. To put it differently and to use the Federation's words, what matters in deciding whether an action is disciplinary is the "effect" of the action. *See, e.g.,* Federation Response to RFA No. 2. That said, we are willing to narrow this request to seek only documents that address how misconduct that gives rise to coaching might be reported into an early warning system. Please confirm Defendants will produce responsive documents to this narrowed RFP.

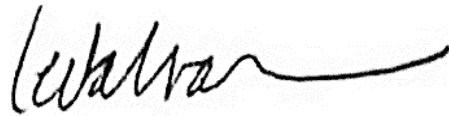
**Other deficiencies in Interrogatory Responses**

*Interrogatory No. 6-7:* These Interrogatories ask Defendants to answer a yes or no question and, if their answer is no, then to “explain in detail.” Defendants answered No. 7 with “no” but did not explain their answer. Defendants did not answer No. 6 at all, based on their review of the wrong Policy Manual (see discussion above). Please answer both Interrogatories completely.

\* \* \*

We look forward to speaking with you in the near future regarding these deficiencies. Please advise when you are available next week.

Sincerely,

A handwritten signature in black ink, appearing to read "Leita Walker", with a long horizontal flourish extending to the right.

Leita Walker

CC: All Counsel of Record

# **EXHIBIT**

**A**

**Ballard Spahr LLP**

**eDiscovery Services**

**Standard Production Format**



### General Data Delivery Format

Production format will be in Relativity format and should include a delimited file containing document and meta data fields, an Opticon load file for images, single page image files, document-level text files, and native files for electronically stored information (ESI) as outlined.

### **Delimited Text File (.DAT)**

The delimited text file should contain the fields listed below. Standard "Concordance" delimiters are preferred.

	Character	ASCII Number
Column		20
Quote	p	254
Multi-entry	;	59
New line	@	174

Field Orders	Field Name	Field Description/Contents	Format	Sample
1	Prod Beg Bates	Production begin Bates	Fixed-Length Text: 40	ACME0000001
2	Prod End Bates	Production end Bates	Fixed-Length Text: 40	ACME0000010
3	Prod Group Begin	Production attachment range begin Bates – the first Bates number of the first document in the document family	Fixed-Length Text: 40	ACME0000001
4	Prod Group End	Production attachment range end Bates – the last Bates number of the last document in the document family	Fixed-Length Text: 40	ACME0000015
5	Sort Date	Sent date for emails, propagated to email attachments; last modified date for non-email application files; coded date for scanned documents	Date\time: mm/dd/yyyy hh:mm AM/PM	10/31/2017 9:15 PM

Field Orders	Field Name	Field Description/Contents	Format	Sample
6	Doc Type	Application type or coded document type for scanned documents	Single Choice	Outlook Message File
7	Document Class	Class of document: Email, Attach, Edoc, Hard Copy	Single Choice	Email
8	Source	Name of processed file, i.e. PST/NSF	Single Choice	Garland_Judy.pst
9	Custodian	Custodian's name	Multi-Choice	Garland, Judy
10	All Custodians	All custodians for which a record existed before de-duplication	Multi-Choice	User, Jane; Nelson, Prince R.; Lewis, Sinclair
11	Virtual Path	Path of original file or email, not including the file name	Multiple Choice: 255 character maximum	\\Original file path\Subfolder 1\Subfolder 2
12	Filename	Full file name and extension of file	Fixed-Length Text: 400	filename of document.doc
13	File Extension	File extension	Single Choice	DOC
14	File Size	File size in KB	Decimal	235809
15	Unified Author	Name of e-mail sender; author of email attachment or application file; coded author for scanned documents	Long Text	Sinclair Lewis
16	Unified Subject	Email Subject line or Application Document Title; coded Subject for scanned documents	Long Text	RE: Example of email subject
17	From	Email from SMTP address		lewiss@acme.com
18	Recipient	Email to recipients SMTP address	Long Text	garlandj@acme.com
19	CCs	Names of all people copied on e-mail; coded CCs for scanned documents	Long Text	lewiss@acme.com;garlandj@acme.com

Field Orders	Field Name	Field Description/Contents	Format	Sample
20	BCCs	Names of all people blind copied on e-mail; coded BCCs for scanned documents	Long Text	lewiss@acme.com;garlandj@acme.com
21	Email Date Sent	Email sent date\time	Date\time: mm/dd/yyyy hh:mm AM/PM	10/31/2017 9:15 PM
22	Email Time Sent	Email time sent	Fixed-Length Text: 20, hh:mm:ss	9:15:42 PM
23	Email Date Received	Email date received	Date\time: mm/dd/yyyy hh:mm AM/PM	10/31/2017 9:15 PM
24	Email Time Received	Email time received	Fixed-Length Text: 20, hh:mm:ss	9:15:42 PM
25	Email Attach Count	Number of Email attachments; if no attachments then this should be "0"	Whole Number	1
26	Message ID	Unique identifier for email	Long Text	2C73522B-1267-4122-83DB-346263C11E5E@acme.com
27	Conversation Index	Used to identify emails in a discussion thread	Long Text	01D1DC693E236E8E6A4E2423814992E975316027F7BA
28	App Last Modified	Application date last modified	Date\time: mm/dd/yyyy hh:mm AM/PM	10/31/2017 9:15 PM
29	App Time Last Mod	Application time last modified	Fixed-Length Text: 20, hh:mm:ss AM/PM	9:15:42 PM
30	App Created Date	Application created date	Date\time: mm/dd/yyyy hh:mm AM/PM	10/31/2017 9:15 PM
31	App Time Created	Application time created	Fixed-Length Text: 20, hh:mm:ss	9:15:42 PM
32	App Date Last Accessed	Application date last accessed	Date\time: mm/dd/yyyy hh:mm AM/PM	10/31/2017 9:15 PM

Field Orders	Field Name	Field Description/Contents	Format	Sample
33	App Time Last Accessed	Application time last accessed	Fixed-Length Text: 20, hh:mm:ss	9:15:42 PM
34	App Last Print	Application last printed date	Date\time: mm/dd/yyyy hh:mm AM/PM	10/31/2017 9:15 PM
35	App Last Print Time	Application last printed time	Fixed-Length Text: 20, hh:mm:ss	9:15:42 PM
36	App Last Author	Application last author	Long Text	Prince R. Nelson
37	MD5 Hash	Hash value of e-mail, attachment or application file	Fixed-Length Text: 255	AA98A7CCBB6C7E5CD95504BE36BBA673
38	Time Zone Field	Time zone used when processing documents	Fixed-Length Text: 40	(UTC) Coordinated Universal Time
39	Relativity Native Time Zone Offset	Contains GMT offset (i.e. "-4" for EST, "0" for GMT)	Decimal	-5
40	Confidential	Designation applied to document	Fixed-Length Text: 255	Confidential
41	Redacted	Markup applied to document	Fixed-Length Text: 255	Redacted
42	Native Path	Path to native file on production volume	Fixed-Length Text: 255	.\VOL001\NATIVE\001\ACME0000001.xls
43	Text Path	Path to text file on production volume	Fixed-Length Text: 255	.\VOL001\TEXT\001\ACME0000001.txt

### Opticon Load File

An Opticon load file should be provided to import images. The Opticon load file must contain the following comma delimited data:

Column	Comments
IMAGE KEY	Must match Bates number applied to page\image
VOLUME ID	Volume name
FILE PATH	Path including image filename and extension
DOCUMENT BREAK	"Y" for the first page of each document, blank for each subsequent page
BOX BREAK	(Only if requested) "Y" for the first page of each box, blank for each subsequent page
FOLDER BREAK	(Only if requested) "Y" for the first page of each folder, blank for each subsequent page
PAGES	Page count of document applied on first page of document, blank for each subsequent page

Sample:

```
ACME_00000000001,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000001.JPG,Y,,,1
ACME_00000000002,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000002.TIF,Y,,,5
ACME_00000000003,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000003.TIF,,,,
ACME_00000000004,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000004.TIF,,,,
ACME_00000000005,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000005.TIF,,,,
ACME_00000000006,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000006.TIF,,,,
ACME_00000000007,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000007.JPG,Y,,,2
ACME_00000000008,VOLUME_001,\VOLUME_001\IMAGES\IMG001\ACME_00000000008.JPG,,,,
```

### Images

Documents should be converted to black and white, single-page 300 dpi TIFF files with Group IV compression. Documents containing photographs or significant color should be converted to color, single-page 300 DPI JPG files with JPG compression. Image files should be named after their corresponding Bates number.

### **Text Files**

Each record should have a corresponding document-level text file containing document text. Text should be extracted from native ESI. OCR should be performed on image-based files with no extractable text, hard copies, and redacted documents. Text files should be named after the beginning Bates number of their corresponding document.

### **Native Files**

Spreadsheet files, database files, media files, and other files as agreed to by the parties should be produced in native format with a corresponding placeholder image. Native files should be given a single Bates number and the same number should be applied to the placeholder image along with any confidentiality designations. Files should be named after their Bates number and include the original file extension of the native file.

### **Hard Copies**

Hard copy should be scanned according to the above image, text, and load file specifications. Documents should be logically broken with attachments ranges provided where applicable. If parties agree to exchange coding, coding will include the following fields: Doc Date, Doc Type, Author, Recipient, CC, BCC, and Subject.

### **Production Media**

Data should be transferred via USB thumb drive or hard drive. Media should be encrypted using Windows BitLocker or equivalent. Data may also be transmitted via secure FTP.

**EXHIBIT**

**B**

# The Minneapolis Police Department Policy and Procedure Manual

Last updated:

05 May 2023





## **II. Policy**

### **A. Intervention**

In addition to the requirements set forth in the Duty to Intervene section in the P&P 5-301 Use of Force policy:

1. Employees shall intervene when they are witness to and have a reasonable opportunity to prevent or mitigate harm caused by policy or legal violations.
  - a. This duty applies, regardless of rank, to any employee working in their capacity as an MPD police officer or civilian staff member.
  - b. Employees should intervene in a manner that protects the safety of the community, their colleagues, and themselves to the greatest extent possible.
2. Employees are also encouraged to intervene to assist colleagues in addressing health and wellness concerns, even where those concerns are not currently resulting in policy or legal violations.

### **B. Failure to Intervene**

The MPD will investigate all apparent instances of a failure to intervene when mandatory, whether discovered during the course of any use of force review, misconduct investigation, a community oversight review, or by any other means.

### **C. Reporting**

This policy does not alter the reporting requirements for violations in P&P 5-100, P&P 2-100 and any other policy that requires employees to report misconduct. The requirements to intervene are in addition to requirements to report.

## **2-103 Complaint, Coaching and Disciplinary System** (12/31/20) (09/26/22)

### **A. Investigation**

#### **1. Sworn Employees**

Complaints of misconduct and allegations of violations of the Policy and Procedure Manual by sworn employees are generally investigated by the Office of Police Conduct Review and by Internal Affairs (based on the nature of the complaint or allegation), in accordance with Minneapolis Ordinance Chapter 172.

## 2. Civilian Employees

Complaints of misconduct and allegations of violations of the Policy and Procedure Manual by civilian employees are generally investigated by Internal Affairs.

## 3. Both Sworn and Civilian Employees

Complaints of workplace harassment, discrimination or retaliation are generally investigated by Human Resources and Internal Affairs.

### **B. Minor or lower-level allegations**

Allegations which only describe minor or lower-level infractions by sworn employees may be referred directly by the Director of the Office of Police Conduct Review and the Internal Affairs Commander to the employee's supervisor for coaching or may be referred to a program of mandatory mediation instituted by the Office of Police Conduct Review. Such complaints may also be referred for formal investigation.

### **C. Discipline**

When investigations have concluded and when allegations have been sustained, the determination regarding discipline, if any, is made by the Chief of Police or the Chief's designee (such as the Assistant Chief).

### **D. Coaching**

1. Coaching is an interactive process between an employee and their supervisor. It should be used as a non-disciplinary management tool to assist an employee to identify and use proper workplace processes and procedures to improve the employee's performance and to achieve the goals of the MPD and the City.
  - a. Coaching is part of everyday work efforts.
  - b. When coaching is needed to address work quality or quantity standards, the supervisor will schedule a private conversation between the supervisor and employee about performance expectations.
    - i. The supervisor and the employee may develop a performance improvement plan, following the guidelines and procedures developed by the Human Resources Department.
    - ii. The supervisor may schedule follow-up meetings as needed.
2. Coaching may be referenced in performance reviews. Coaching is not discipline.
3. Coaching can occur in addition to discipline imposed by the Chief.