

History of APU Litigation

January 2001: Former Mayor Rudolph Giuliani and former Police Commissioner Bernard Kerik proposed the CCRB be given the authority to prosecute all cases that the Board substantiated. Under the proposal, the administrative trials would be conducted by administrative law judges employed by the City's Office of Administrative Trials and Hearings (OATH). Though CCRB would be prosecuting, the police commissioner would retain the sole authority to impose discipline.

April 2001: The NYC Law Department issued an opinion stating that the CCRB could lawfully assume prosecutorial power by changing its rules. The CCRB and the police department entered into a memorandum of understanding (MOU) and the Board adopted new rules. Together, the MOU and new rules would have transferred prosecutorial authority to the CCRB beginning June 25, 2001. However, the police unions sued the city, the police department and the CCRB, blocking the change from taking effect.

July 16, 2001: The New York Supreme Court ruled that granting the CCRB the power to prosecute "enhances its ability to make detailed findings and informed recommendations, and thereby furthers its mandate."¹ However, the court ruled that only a member of the police department could preside over hearings that might result in the officer's termination.

January 7, 2003: The New York State Appellate Division, First Department, ruled that all disciplinary charges stemming from substantiated CCRB complaints must be filed before the NYPD's deputy commissioner of trials, rather than OATH. However, the court stated, "We uphold that aspect of the MOU and the amendments to the Rules of the City of New York which grant the CCRB the revocable authority to administratively prosecute police officers for certain enumerated offenses."²

¹ Lynch v. Giuliani, No.1114361/01, slip op at 7 (N.Y.Sup Ct July 16, 2001) (emphasis in original).

² Lynch v. Giuliani, No. 10051, 2003 N.Y. App Div. LEXIS 68 at 7 (1st Dep't. Jan. 7, 2003).