E-FILED
Transaction ID: 1-24-0875
File Date: 11/4/2024 10:52 AM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-24-0875

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO JOHN DINEEN LODGE #7, Plaintiff-Appellant, v. CITY OF CHICAGO, DEPARTMENT OF POLICE; BRANDON JOHNSON, in his official capacity as Mayor; LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department; and the CHICAGO CITY COUNCIL, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois, Chancery Division No. 2024CH00093 The Honorable MICHAEL T. MULLEN, Judge Presiding.

BRIEF OF *AMICUS CURIAE* ILLINOIS ATTORNEY GENERAL KWAME RAOUL IN SUPPORT OF DEFENDANTS-APPELLEES

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5376

ALEX HEMMER
Deputy Solicitor General
R. SAM HORAN
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526
Primary e-service:
CivilAppeals@ilag.gov
Secondary e-service:
Alex.Hemmer@ilag.gov

TABLE OF CONTENTS

POINTS AND AUTHORITIES

INTEREST OF *AMICUS CURIAE*

This case addresses the validity of an arbitration award that would, contrary to at least sixty years' unbroken practice, eliminate public access to disciplinary hearings concerning allegations of serious misconduct by Chicago Police Department ("CPD") officers. The award resulted from arbitration between the City of Chicago and Chicago John Dineen Lodge #7 ("Lodge"), a union that represents most CPD officers, to set terms for a new collective bargaining agreement after the parties' previous agreement expired in 2017. Among the issues that the parties could not resolve through negotiation and therefore submitted to the arbitrator[1] was the procedure for hearings in serious disciplinary matters — *i.e.*, cases in which the Superintendent of Police recommends termination of employment or suspension for over one year. Although historically hearings in such cases have taken place publicly, the arbitrator adopted the Lodge's proposal to allow officers facing such discipline to choose nonpublic arbitration instead. The circuit court vacated the portion of the award authorizing closed proceedings, explaining that closing hearings in such cases is contrary to Illinois public policy, which favors transparency in serious police disciplinary matters. The Lodge appealed.

---

[1] Although the arbitration featured a three-member panel, with one member chosen by each of the parties and one jointly selected chair, the chair cast the decisive vote in the panel's 2-to-1 decision and authored the relevant opinions and awards. The Attorney General therefore follows the parties' practice of referring to a single arbitrator.

The Attorney General submits this amicus brief in support of the City and a public, transparent process for serious police disciplinary matters. The Attorney General has an interest in ensuring continued public access to hearings in these matters both (1) because transparency in CPD disciplinary matters is crucial to the successful implementation of a federal consent decree between the City and the State of Illinois concerning CPD and (2) because of his role as a representative of the people, who depend on open proceedings to understand and evaluate public affairs.

To begin, the Attorney General has a strong interest in the effective implementation of the federal consent decree between the City and the State concerning CPD. *See* Consent Decree, *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill. Jan. 31, 2019), ECF No. 703-1 [hereinafter "Consent Decree"].[2] In 2015, in the wake of the shooting of 17-year-old Laquan McDonald by CPD officers, the U.S. Department of Justice ("DOJ" or the "Justice Department") initiated a civil rights investigation into CPD's policies and practices. That investigation culminated in a report that found numerous deficiencies in the City's and CPD's handling of disciplinary matters. *See* DOJ C.R. Div. & U.S. Att'y's Off. for the N. Dist. of Ill., *Investigation of the Chicago Police Department* 46-93 (2017) [hereinafter "DOJ Report"].[3] The Attorney General subsequently brought a civil rights suit against the City and CPD seeking to

[2] https://tinyurl.com/2kfhbaf2.

[3] https://tinyurl.com/muu76tet.

implement policing practices recommended by the Justice Department in its report, as well as other reforms. The Attorney General's suit culminated in the Consent Decree, which was drafted after extensive public engagement with Chicago residents and law enforcement groups, and was entered by a federal court in January 2019. The Attorney General continues to help oversee the implementation of the Consent Decree. The Consent Decree, among other things, introduced important pro-transparency reforms to redress the deficiencies described in the DOJ Report and rebuild public trust in CPD. In the Attorney General's view — as the state officer responsible for monitoring and securing compliance with the Consent Decree — moving hearings in serious police disciplinary matters outside public view would undermine these reforms.

The Attorney General also has an interest in his capacity as a representative of the people, who benefit from "full and complete information regarding the affairs of government and the officials acts . . . of those who represent them as . . . public employees." 5 ILCS 140/1. That information "enable[s] the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest." *Id.* Closing hearings in serious police disciplinary matters would deprive the public of this essential information.

Based on these unique interests and on his experience working on issues related to CPD and the Consent Decree, the Attorney General can assist this court by presenting his perspective on the important issue of public access to CPD disciplinary hearings.[4]

[4] The Attorney General takes no position on the other issues raised in this appeal.

ARGUMENT

The Court Should Affirm The Circuit Court's Rejection Of The Arbitration Award As To Serious CPD Disciplinary Matters.

"[D]iscipline, fairly and certainly applied, is vital to the police force, . . . not only for the members of the department, but in order to maintain the respect of the public . . . ." *DeGrazio v. Civ. Serv. Comm'n*, 31 Ill. 2d 482, 488 (1964). But since "it is difficult for [people] to accept what they are prohibited from observing," *Press-Enter. Co. v. Superior Ct.*, 478 U.S. 1, 13 (1986) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (plurality opinion)), police disciplinary proceedings can engender "the respect of the public" only if they are open to the public. Public access to police disciplinary proceedings thus plays a significant positive role not only in the functioning of the police disciplinary process but also in positive police-community relations.

Consistent with this principle, hearings in serious CPD disciplinary matters — that is, cases in which the Superintendent of Police recommends termination of employment or suspension for over one year — have long been open to the public. This practice persisted even while CPD fell short of adequate transparency in other respects, as documented in the DOJ Report. The Consent Decree introduced a variety of important pro-transparency reforms to remedy those shortcomings and rebuild public trust in CPD. *See, e.g.*, Consent Decree ¶ 531. In so doing, it built on the longstanding and beneficial tradition of public hearings in serious police disciplinary matters.

By closing these hearings to the public, the arbitration award would upend that tradition and frustrate the Consent Decree's reforms. The Attorney General therefore writes to provide important historical context, to explain that excluding the public from hearings in serious police disciplinary matters would undermine both the Consent Decree's reforms and public confidence in CPD, and to urge affirmance of the portion of the decision below requiring that such hearings remain open to the public.

A. Public transparency is a cornerstone goal of the Consent Decree, including in police disciplinary matters.

The arbitration award, which permits serious police disciplinary proceedings to occur behind closed doors without any meaningful opportunity for public participation, contravenes basic principles embodied in the Consent Decree, which institutes numerous pro-transparency reforms to address longstanding problems at CPD.

In January 2017, following a yearlong investigation, the Justice Department released a report describing numerous deficiencies at CPD and related entities. *See generally* DOJ Report at 1-16. Among those deficiencies was a widespread lack of transparency in disciplinary matters, which undermined public confidence in CPD. *See, e.g.*, *id.* at 91-92.[5] The Justice

[5] DOJ was not alone in this conclusion. A 2016 report by the Chicago Police Accountability Task Force similarly found that the City's police accountability system was insufficiently transparent and, as a result, had "lost [the] trust" of "many residents." Police Accountability Task Force, *Recommendations for Reform* 68 (2016), https://tinyurl.com/3shbxj2n; *see, e.g.*, *id.* at 68-69, 87-88.

Department observed, for example, that complainants and other interested community members often had difficulty learning about the progress and results of disciplinary cases. *See id.* at 127-28. It also criticized disciplinary authorities' practice of resolving certain complaints without complainants' input through so-called "mediation," in which the subject of a complaint would agree to a "plea bargain" that ordinarily imposed only "modest discipline." *Id.* at 54; *see id.* at 54-56.

The DOJ Report paid particular attention to proceedings before the Chicago Police Board — which, under the parties' previous collective bargaining agreement, decided all serious disciplinary matters. *See id.* at 84-92. It noted that Board hearings are open to the public and acknowledged that, likely because of this public access, the "Board's process provides a greater window into officer discipline than is available in many police disciplinary processes." *Id.* at 91; *see id.* at 89, 92 n.35. But the Justice Department nonetheless concluded — and the Board itself agreed — that the Board should go further. *See id.* at 91-92. The Justice Department urged the Board to "take [steps] to be more transparent and increase confidence in its process," including by "tracking and publishing more detailed case-specific and aggregate data about its decisions." *Id.* at 92.

Following the DOJ Report's release, and based in part on its findings, the Attorney General brought a federal lawsuit against the City, alleging that "CPD engage[d] in a pattern and practice of civil rights violations and

unconstitutional policing." Consent Decree ¶ 4. The parties resolved the case in 2019 through the Consent Decree, which requires the implementation of an extensive set of reforms to ensure that the City and CPD engage in lawful, effective policing. *See, e.g.*, *id.* ¶ 2.

As most relevant here, the Consent Decree repeatedly emphasizes the need for transparency, particularly in disciplinary matters. It acknowledges "the importance of transparency," including with respect to "investigations into CPD member misconduct," "to improving CPD-community relations," *id.* ¶ 544, and observes that "[m]eaningful community involvement [in the disciplinary process] is imperative to CPD accountability and transparency," *id.* ¶ 422; *accord id.* ¶ 531 ("In order to build public trust and credibility, CPD must provide opportunities for meaningful community engagement that extends beyond the [disciplinary] complaint process."). And it requires the City and CPD to "continue to take steps to increase transparency." *Id.* ¶ 544.

The Consent Decree also includes concrete reforms to address the problems the DOJ Report identified with respect to the lack of transparency in the disciplinary process. For example, recognizing that "complainants should be able to track the status of their complaints and receive current, accurate information," *id.* ¶ 424, the Consent Decree requires investigators to provide regular updates on pending misconduct cases, *id.* ¶¶ 446-49. It also mandates changes to the use of mediation: To move away from the plea-bargaining described in the DOJ Report, the City must "solicit public

input . . . regarding the methods by which mediation will most effectively build trust between community members and police," *id.* ¶ 511, and develop policies governing mediation that specify "methods of communication with complainants regarding the mediation process and the opportunity to participate," *id.* ¶ 512. And the reforms extend to disciplinary matters before the Police Board, which, consistent with the recommendations in the DOJ Report, must now "track and publish case-specific and aggregate data about [its] decisions." *Id.* ¶ 555.

In short, the Consent Decree makes transparency a cornerstone of its reforms of the City's and CPD's disciplinary processes.

B. Eliminating public access to hearings in serious disciplinary matters would undermine both the Consent Decree's reforms and public confidence in CPD.

Closing hearings in serious disciplinary matters to the public would significantly reduce the effectiveness of the Consent Decree's pro-transparency reforms. As the Consent Decree, the DOJ Report, and the consensus of policing experts show, the result would be decreased community trust in CPD.

The loss of public access would frustrate the Consent Decree's reforms in multiple ways. First, and most fundamentally, closing hearings in serious disciplinary matters would run directly counter to the Consent Decree's instruction that the City and CPD "take steps to increase transparency." Consent Decree ¶ 544. As discussed, *supra* pp. 5-7, transparency is a cornerstone goal of the Consent Decree, including in police disciplinary

matters. Indeed, the DOJ Report that laid the foundation for the Attorney General's lawsuit and the ensuing Consent Decree praised the public hearings that for decades occurred before the Chicago Police Board as an important measure for transparency and accountability. *See* DOJ Report at 91-92, 92 n.35. And although the Consent Decree does not expressly discuss hearings in serious police disciplinary matters (because such hearings were, and had historically been, open to the public at the time the Consent Decree was negotiated and entered), it directs CPD to identify additional opportunities to include the public in the disciplinary process — for instance, by mandating that any mediation allow for complainant involvement, Consent Decree ¶¶ 510-12 — thus indicating the parties' understanding that serious disciplinary cases would continue to proceed publicly. But the arbitration award contravenes the Consent Decree's goal: Rather than "tak[ing] steps to increase transparency," *id.* ¶ 544, the award would have CPD take a step in the opposite direction, eliminating a longstanding transparency measure that the parties to the Consent Decree and the Justice Department credited with helping build public trust in CPD.

The loss of public access to serious disciplinary proceedings would also undercut multiple specific provisions of the Consent Decree. For instance, although the Consent Decree requires the Police Board to publish both "case-specific and aggregate data about [its] decisions," *id.* ¶ 555, that requirement would have little purpose if officers accused of misconduct are able to proceed

through closed arbitration rather than by public proceedings before the Board. If the choice between arbitration and the Police Board is also a choice between closed and public proceedings, that is, officers will be more likely to opt for arbitration, thus depriving the public of information about precisely the serious cases in which its need to know is greatest. Again, this paragraph of the Consent Decree reflects the parties' expectations that the Police Board would continue to serve as the primary forum for serious disciplinary cases; under the arbitration award, however, the Police Board would likely become considerably less relevant as a means of transparency and accountability.

In addition, the loss of public access to police disciplinary hearings would undercut the Consent Decree's efforts to supply misconduct complainants with greater information about the status and handling of their complaints. As discussed, *supra* p. 7, the Consent Decree seeks to ensure that complainants "receive current, accurate information." Consent Decree ¶ 424. While the investigative updates mandated by the Consent Decree, *id.* ¶¶ 446-49 (requiring investigators to keep complainants informed about the status of their complaints), help advance this goal, they are only one aspect of a broader portfolio of transparency measures, and are no substitute for the public's longstanding ability to observe the evidence and argument presented at disciplinary hearings. Depriving the public of this opportunity would undercut the Consent Decree's mandate to keep complainants informed.

At bottom, the result of affirming the arbitration award would be a loss of public trust in CPD. As the Consent Decree explains, transparency is vital to "improving CPD-community relations." *Id.* ¶ 544. The DOJ Report agreed, pointing to transparency as central to "increas[ing] confidence in [the disciplinary] process." DOJ Report at 92. Unsurprisingly so, since "it is difficult for [people] to accept what they are prohibited from observing." *Press-Enter. Co.*, 478 U.S. at 13 (quoting *Richmond Newspapers*, 448 U.S. at 572 (plurality opinion)). A growing expert consensus supports this conclusion. The most recent draft of the American Law Institute's *Principles of the Law: Policing*, for example, explains that "transparency is essential to building trust and legitimacy between policing agencies and the general public." Principles of the Law: Policing § 1.05 cmt. a (Am. L. Inst., Combined Revised Tentative Drafts 2023).[6] The President's Task Force on 21st Century Policing similarly concluded that "[l]aw enforcement agencies should . . . establish a culture of transparency and accountability to build public trust and legitimacy." President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* 1 (2015).[7] And "[m]any policing and criminal justice scholars have pointed to improved transparency" as an important tool for reform. Christina Koningisor, *Police Secrecy Exceptionalism*, 123 Colum. L. Rev. 615, 620 (2023). As one observed:

---

[6] https://tinyurl.com/58bnduf6.

[7] https://tinyurl.com/yjevfy9w.

"[W]hen the public cannot access either records of allegations against officers or investigations into and assessments of those allegations, it cannot fairly judge whether its accountability system is working." Rachel Moran, *Police Privacy*, 10 U.C. Irvine L. Rev. 153, 187 (2019). These authorities confirm the likely negative consequences of eliminating public access to hearings in serious police disciplinary matters.

For all these reasons, it is the Attorney General's goal to ensure — consistent with the Consent Decree — that CPD acts in as transparent and accountable a manner as is practicable. The arbitration award in this case, if affirmed, would represent a profound step backward in that mission. It would decrease transparency in the most serious disciplinary cases — those most likely to attract the public's interest and to shape its perception of CPD. Moving those proceedings behind closed doors would undermine the public's faith in the disciplinary process and in CPD generally. Those consequences support affirmance of the portion of the decision below requiring that hearings in serious police disciplinary matters remain open to the public.

CONCLUSION

For these reasons, the Attorney General respectfully requests that this court affirm the portion of the decision below requiring that hearings in serious CPD disciplinary matters remain open to the public.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5376

/s/ Alex Hemmer
ALEX HEMMER
Deputy Solicitor General
R. SAM HORAN
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-5526
Primary e-service:
CivilAppeals@ilag.gov
Secondary e-service:
Alex.Hemmer@ilag.gov

October 31, 2024

SUPREME COURT RULE 341(c)
CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 14 pages.

/s/ Alex Hemmer
ALEX HEMMER

CERTIFICATE OF FILING AND SERVICE

I certify that on October 31, 2024, I electronically filed the foregoing Brief of *Amicus Curiae* Illinois Attorney General Kwame Raoul in Support of Defendants-Appellees with the Clerk of the Court for the Illinois Appellate Court, First District, using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Counsel for Plaintiff-Appellant
Joel A. D'Alba (jad@ulaw.com)
Matt Pierce (mjp@ulaw.com)
Joe Weishampel (jw@ulaw.com)

Counsel for Defendants-Appellees
Aya R. Barnea (aya.barnea@cityofchicago.org)
Myriam Zreczny Kasper (myriam.kasper@cityofchicago.org)
Suzanne M. Loose (suzanne.loose@cityofchicago.org)

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Alex Hemmer
ALEX HEMMER