BEFORE THE BOARD OF POLICE AND FIRE COMMISSIONERS
OF THE CITY OF MADISON

Blacks for Political and Social Action of Dane County, Inc.,
Complainant,

vs. ANSWER AND MOTION TO DISMISS

Officer Kiel Baitinger-Peterson,
Respondent.

Respondent Officer Kiel Baitinger-Peterson, through counsel Kathryn A. Harrell of the Wisconsin Professional Police Association, answers the Complaint and moves the Board of Police and Fire Commissioners of the City of Madison ("Board") to dismiss it. As a threshold matter, none of the named Complainants qualify as an "aggrieved person" authorized to file charges under Wis. Stat. section 62.13(5)(b). This warrants dismissal with prejudice. The Complaint also fails to satisfy the Board's mandatory pleading requirements, purports to charge officers who are not named as respondents, and asks the Board to determine the reasonableness of an officer-involved death while the independent criminal investigation and prosecutorial review required by Wis. Stat. section 175.47 remain pending. These defects warrant dismissal without prejudice. If the Board denies dismissal, Respondent asks it to strike the defective allegations and stay all merits proceedings until the independent investigation is complete and the district attorney makes a charging decision. If no criminal charges are filed, the stay may be lifted at that time. If criminal charges are filed, the stay should remain in place until the criminal proceedings are resolved.

ANSWER

Respondent incorporates and preserves all arguments, objections, defenses, and requested relief raised in his Motion to Dismiss. In particular, Respondent should not be required to give detailed answers to the factual allegations while the process required by section 175.47 is ongoing and the complete investigative record is not yet available to him. Requiring Respondent to make detailed admissions or denials now would force him to take factual positions before he has access to the evidence necessary to fairly evaluate several of those allegations.

The Board's Rule 1.b. reinforces that point. It provides that the Board's rules cannot be applied in a way that conflicts with section 62.13 or any other law. As such, the Board's procedural rules should not be applied to require detailed factual responses at this stage if doing so would interfere with the statutory process established by section 175.47 or create the evidentiary and due-process concerns identified in the Motion to Dismiss. Respondent therefore preserves his position that any requirement to provide detailed responses to the merits should be deferred until the process required by section 175.47 is complete and the investigative record is available.

Subject to and without waiving those objections, Respondent admits only that, on July 22, 2026, at approximately 1:30 p.m., Madison Police Department ("MPD") officers encountered Corey Ruiz in the vicinity of S. Baldwin Street and Williamson Street; four MPD officers were involved in efforts to take Mr. Ruiz into custody; a physical struggle occurred; an officer deployed a Taser against Mr. Ruiz; Respondent discharged his department-issued firearm three times; Mr. Ruiz was struck by that gunfire; at some point

during the incident, Mr. Ruiz was on the ground and in the presence of four armed MPD officers; and Mr. Ruiz later died.

Respondent denies the remaining factual allegations, characterizations, and conclusions, including any allegation that the force used was disproportionate, excessive, unnecessary, or otherwise improper, or that Respondent violated any department policy, legal standard, or community trust. Therefore, except as expressly admitted above, Respondent denies the allegations contained in the July 24, 2026 narrative and puts Complainants to their proof thereof. Respondent further denies that Complainants are entitled to any of the disciplinary relief requested.

Respondent affirmatively alleges that:

(1) Complainants are not "aggrieved persons" and therefore lack standing to bring the Complaint;

(2) Complainants fail to comply with Rule 6.c.i;

(3) The Complaint fails to state a claim against the "Respondent Officers;" and

(4) Consideration of the merits of the Complaint at this time violates Respondent's statutory, evidentiary, and due-process rights.

MOTION TO DISMISS

INTRODUCTION

This is a significant disciplinary filing. The Complaint asks the Board to terminate Respondent based on an officer-involved death that remains subject to the State's independent investigations law. Yet the people and organization who filed the charges do not allege that they witnessed the incident, were present at the scene, were related to Corey Ruiz, suffered any form of injury, or possessed any other legally recognized interest

directly affected by Respondent's actions. Indeed, they assert standing without providing any basis whatsoever.

That is not enough under section 62.13(5)(b), the Wisconsin Supreme Court's construction of the term "aggrieved," or this Board's precedent. Section 62.13(5)(b) does not authorize "any person" to prosecute disciplinary charges. It deliberately limits that authority to a chief, a Board member, a Board as a body, or an "aggrieved person." In *Brown v. Wis. Elections Comm'n*, the supreme court reaffirmed that "aggrieved" is a legal term of art that ordinarily carries the same meaning across Wisconsin statutes: the person must have suffered an actual or threatened injury to a legally recognized interest. 2025 WI 5, ¶¶13–16, 25, 414 Wis. 2d 601, 16 N.W.3d 619. This Board applied the same principle in *Lueders v. Riley*, dismissing allegations where the complainant was, at most, a peripheral witness whose interest was indistinguishable from that of any other observer. Dec. and Ord. at 1–2 (Madison PFC, Sept. 30, 1998). In short, both controlling authority and Board precedent require a particularized injury or direct interest, not merely a generalized concern shared with the public.

The formal defects are independently significant. Rule 6.c.i requires a complaint based on information and belief to identify the sources of that information, including the names and addresses of knowledgeable witnesses, and requires the complaint to specify the person complained about, the date and place of the offense, and the rule, standard, or provision of law violated. This Complaint does not identify the sources supporting its central factual assertions, does not specifically identify all standards and laws allegedly violated, and repeatedly purports to charge unnamed "Respondent Officers" or "co-respondent officers." A later witness list does not retroactively transform the sworn

Complaint into a compliant pleading, particularly where the supplemental information itself identifies the wrong incident date and changes the factual theory.

In addition, the timing of the Complaint presents fundamental problems. The independent investigation process required by section 175.47 remains ongoing as the District Attorney has not announced a decision on criminal charges. The Board is therefore being asked to decide whether Respondent should lose his career before the statutory process governing officer-involved deaths is complete, which creates serious practical and due-process problems.

Specifically, Respondent cannot fairly defend himself against allegations concerning the reasonableness of his use of deadly force without access to all of the evidence concerning what occurred before, during, and immediately after the shooting. As it stands now, the investigation remains in the hands of the Wisconsin Department of Justice and the evidence that comprises that investigation is not available to Respondent, Complainants, or the Board. A right to defend oneself means little if important evidence necessary to that defense remains in the possession of the independent investigating agency.

As a practical matter, the statutory just-cause framework provides an additional reason not to proceed on an incomplete evidentiary record. Section 62.13(5)(em) requires the Board to consider seven just-cause standards "to the extent applicable," including whether a reasonable effort was made to determine whether a violation occurred, whether that effort was fair and objective, and whether substantial evidence supports the charge. Wis. Stat. § 62.13(5)(em)3–5. Although some of those standards are phrased in terms of actions taken by the chief and therefore may apply differently where, as here, private complainants filed charges, the Board must ultimately determine whether the applicable

just-cause standards are satisfied by the evidence before it. That determination cannot fairly be made while the principal investigation into the underlying conduct remains unfinished and potentially material evidence remains unavailable to the parties and the Board.

Finally, Respondent may need to testify about the very conduct that remains under criminal investigation. But doing so while a charging decision remains pending could affect his rights in any later criminal case. *Garrity v. New Jersey* recognizes that a public employee cannot be forced to choose between protecting his job and preserving his constitutional right against self-incrimination. 385 U.S. 493, 497–500 (1967). A stay avoids that potential conflict by allowing the criminal process to run its course before Respondent is required to defend his employment on the merits.

The Board's rules allow it to dismiss a complaint at the Initial Hearing when the complainant lacks standing or when other defects prevent the complaint from going forward. For the reasons explained above, this Complaint has multiple defects that warrant immediate dismissal. If the Board declines to dismiss the Complaint, however, it should not move forward with the merits while the independent investigation and prosecutorial review remain unfinished. Instead, the Board should stay all merits proceedings until the independent investigation is complete and the district attorney makes a charging decision. If no criminal charges are filed, the stay may be lifted at that time. If criminal charges are filed, the stay should remain in place until the criminal proceedings are resolved.

RELEVANT ALLEGATIONS AND PROCEDURAL POSTURE

The Complaint names Officer Kiel Baitinger-Peterson as the sole respondent. It alleges that on July 22, 2026, officers encountered Corey Ruiz at South Baldwin and

Williamson Streets; four officers struggled with Ruiz; a Taser was deployed; and Officer Baitinger-Peterson then fired three close-range shots. The Complaint characterizes the force as disproportionate and excessive and asks that the Board terminate Respondent. It separately alleges that other officers failed to use proper de-escalation tactics and failed to intervene, and it asks the Board to impose discipline on the "remaining co-respondent officers," even though no other officer is named as a respondent.

The face of the Complaint identifies David A. Hart, Kirbie Mack, and Blacks for Political and Social Action of Dane County, Inc. ("BPSADC") as complainants, while the attached narrative states that BPSADC filed the complaint as an organization and through individually named people. Nothing in the Complaint alleges that Hart, Mack, or BPSADC witnessed the incident or suffered any form of injury arising from it. Rather, the Complaint states that the complainants "believe" they have standing, without identifying the basis for that assertion.

The President has directed a preliminary investigation under Rule 6.d concerning standing and jurisdiction, including the interaction of section 62.13(5), Chapter 164, section 175.47, and due process.

ARGUMENT

I. THE COMPLAINT MUST BE DISMISSED WITH PREJUDICE BECAUSE NONE OF THE NAMED COMPLAINANTS HAVE STANDING AS AN "AGGRIEVED PERSON" UNDER SECTION 62.13(5)(b).

Section 62.13(5)(b) identifies who may invoke the Board's disciplinary process: "the chief, . . . a member of the board, . . . the board as a body, or . . . any aggrieved person." The legislature's use of "aggrieved person," rather than "any person," "any citizen," or "any

elector," is important. The Board's Rule 6.c.i repeats the same limitation, and Rule 6.d expressly authorizes dismissal when a complainant lacks standing.

The supreme court's decision in *Brown* explains what it means to be "aggrieved." The statute in that case allowed "any elector" to file an administrative complaint, but only a complainant who was "aggrieved" by the resulting order could seek judicial review. The court held that an unfavorable decision alone does not make a complainant aggrieved. 2025 WI 5, ¶¶18–25. Instead, "aggrieved" is a legal term that generally has the same meaning across Wisconsin statutes unless a particular statute provides otherwise. *Id.*, ¶13. A person is aggrieved only if the person has suffered, or faces, an injury to a legally recognized interest. *Id.*, ¶¶14–16. Consistent with that rule, the ordinary meaning of "aggrieved" is "injured." *Liebovich v. Minn. Ins. Co.*, 2008 WI 75, ¶¶36–37, 310 Wis. 2d 751, 751 N.W.2d 764. The United States Supreme Court similarly explained that an abstract injury is insufficient; an injury must be direct, real, and immediate rather than conjectural or hypothetical. *L.A. v. Lyons*, 461 U.S. 95, 101–02 (1983) (citations omitted). Although the required injury may be slight, an actual or threatened injury remains essential. *Brown*, 2025 WI at ¶25; *see also, Fox v. Wisconsin Dep't of Health & Social Services*, 112 Wis. 2d 514, 524–25, 334 N.W.2d 532 (1983).

Nothing in section 62.13(5)(b) expands "aggrieved person" to encompass any citizen who disagrees with an officer's conduct. To the contrary, the Wisconsin Legislature modified the law in 1977 by narrowing the former ability of an elector to initiate charges by replacing that language with "any aggrieved person." *See* 1977 Assembly Bill 44. The amendment confirms that only a person with a particularized injury or direct interest may initiate charges.

This Board has already applied that distinction. In *Lueders*, it concluded that the complainant lacked standing as to allegations where he was, "at most, a peripheral witness." The Board reasoned that the change from "elector" to "aggrieved person" signaled a requirement of "some degree of particular interest or involvement in the circumstances of the matter at issue," and that a complainant whose interest was indistinguishable from that of any other observer was not aggrieved. Dec. and Ord. at 1. The Board allowed only a separate allegation involving a false representation made directly to Lueders, because that direct interaction supplied the particularized involvement otherwise missing. *Id*. at 1–2.

The same reasoning controls here, and the facts are even less favorable to standing. Hart, Mack, and BPSADC do not allege that they were present, witnessed the shooting, were subjected to force, were related to Ruiz, or were otherwise directly affected. A generalized organizational interest in police accountability may explain why BPSADC cares deeply about the incident, but it does not make BPSADC legally "aggrieved" by Respondent's conduct.

Nor can standing be supplied by later identifying eyewitnesses. Standing belongs to the complainant who invokes the Board's jurisdiction. A witness with first-hand knowledge is not thereby substituted as a complainant. Rule 6.c.i itself distinguishes between a "complainant" who files and verifies the charges and "witnesses having knowledge" who may be identified as sources. If witnesses believe they are aggrieved persons, they may pursue whatever rights the law affords; their existence does not cure the named Complainants' lack of standing.

The proper disposition is dismissal with prejudice as to the charges by Hart, Mack, and BPSADC because they lack the statutory status necessary to invoke the Board's

jurisdiction under section 62.13(5)(b). To hold otherwise would effectively read the word "aggrieved" out of the statute. If a generalized interest in police accountability were sufficient, then any community organization, advocacy group, business, association, or member of the public could initiate disciplinary charges against an officer without alleging any direct injury, personal involvement, or other particularized interest arising from an officer's conduct. Section 62.13(5)(b) does not authorize disciplinary proceedings at the request of anyone who disagrees with or objects to an officer's conduct; it limits that authority to an "aggrieved person." Permitting this Complaint to proceed despite the absence of that statutory requirement would substantially expand the class of persons authorized to invoke the Board's disciplinary process and render the Legislature's deliberate use of the limiting term "aggrieved" largely meaningless.

II. THE COMPLAINT SHOULD BE DISMISSED WITHOUT PREJUDICE DUE TO COMPLAINANTS' FAILURE TO COMPLY WITH THE MANDATORY PLEADING AND VERIFICATION REQUIREMENTS OF RULE 6.c.i.

A. The Complaint Fails to Properly Identify the Sources of Information Upon Which Factual Allegations Are Based.

Rule 6.c.i is specific. A complaint must be written, signed, and sworn. When allegations are made on information and belief, the complainant must identify the source of the information and belief, "including the names and addresses of witnesses having knowledge." The complaint must also identify the person complained about and specify the date and place of the alleged offense. These requirements impose binding obligations. Rule 6.d expressly provides that "formal defects" may bar a complaint and authorize dismissal at the Initial Hearing without an evidentiary hearing.

This Complaint does not satisfy these requirements. Its central claims are based on secondhand information, and it fails to identify a source of the information or any witness

with personal knowledge. The form's "Statement of Sources of Information" only says "See attachments," but the attached narrative similarly does not identify the source of the asserted facts. Therefore, the verification swears these allegations are true without identifying the sources required by Rule 6.c.i.

The later witness list does not cure the defect. Based on the materials supplied to Respondent, it is not itself sworn or verified; it does not seek to amend the Complaint; it does not establish that the original charges were based on information from those witnesses; and it does not include the physical addresses required by the Rule. It identifies July 15, 2026, as the date on which the witnesses observed the incident, although the shooting occurred on July 22, 2026. One witness states that Respondent shot Ruiz "while other officers had subdued Ruiz," which differs from the Complaint's allegation that Ruiz had been tased, taken to the ground, and surrounded.

Those deficiencies matter because a verified disciplinary complaint starts a public process that could end a police officer's career. The Wisconsin Supreme Court has repeatedly held that due process in disciplinary proceedings includes the right to seasonably know the charges and to meet those charges with competent evidence. *State ex rel. Richey v. Neenah Police & Fire Comm.*, 48 Wis. 2d 575, 580–81, 180 N.W.2d 743 (1970). In *State ex rel. Hennekens v. River Falls Police & Fire Comm.*, the supreme court set aside a PFC charge that failed to provide enough information to apprise the officer of the nature of the violation. 124 Wis. 2d 413, 424–26, 369 N.W.2d 670 (1985). The same due-process principles require that Respondent be given a sufficiently specific, properly verified complaint identifying the conduct and rules he is alleged to have violated before he can be required to defend against charges carrying such serious consequences.

Richey recognizes that PFC charges do not need to be written with the same technical precision as criminal charges. 48 Wis. 2d at 581. But that does not excuse compliance with the Board's own Rule 6.c.i. Nor does it allow a complainant to file charges based on unidentified secondhand information and later change the allegations through an unsworn filing. The Board should enforce its filing rules and dismiss the Complaint without prejudice rather than allow the Complainants to keep adding new information after the fact.

B. The Complaint Fails to Identify With Sufficient Precision the Rules or Legal Standards Allegedly Violated.

Rule 6.c.i separately requires a complaint to "specify the rule, standard, or provision of law violated." This Complaint states broadly that the officers violated "Madison Police Department Policy, Madison Code of Ordinances, and Wisconsin Law regarding the Use of Force, De-escalation, and Professional Conduct," but it does not identify any Madison ordinance or Wisconsin statute allegedly violated. The charges cite MPD policies on use of force and de-escalation, and also allege a failure to intervene. But the Complaint does not identify a specific MPD policy supporting the failure-to-intervene claim.

That deficiency matters because section 62.13(5)(em) requires the Board to decide whether there is just cause to sustain "the charges," including whether "the rule or order that the subordinate allegedly violated is reasonable" and whether substantial evidence shows that the subordinate "violated the rule or order as described in the charges filed against the subordinate." Wis. Stat. § 62.13(5)(em)2, 5. Therefore, at the outset, the just-cause analysis requires an identifiable rule or order and a charge describing how the respondent violated it. *See City of Madison v. State Dep't of Workforce Dev.*, 2003 WI 76, ¶16, 262 Wis. 2d 652, 664 N.W.2d 584.

The Board should not require Respondent to guess which ordinance, statute, policy subsection, or professional-conduct standard the Complainants intend to prove. *Hennekens* confirms that due process may be violated when a charge does not clearly tell the officer what they are accused of doing wrong. 124 Wis. 2d at 424–26. The vague references to unspecified "Wisconsin Law," "Madison Code of Ordinances," and "Professional Conduct" should therefore be dismissed or stricken. If any claim moves forward, the Board should require the Complainants to file one amended, sworn complaint that clearly identifies the specific policy allegedly violated and what Respondent allegedly did to violate it before he is required to respond or proceed with discovery.

III. ALL ALLEGATIONS CONCERNING UNNAMED OFFICERS MUST BE DISMISSED OR STRICKEN.

The Complaint names only Officer Baitinger-Peterson, but repeatedly alleges misconduct by multiple "Respondent Officers." It asserts that three other officers failed to use proper de-escalation tactics, surrounding officers failed to intervene, and that the Board should suspend or terminate "remaining co-respondent officers." No other officers are named as respondents.

The Board's rules do not allow a complaint to be filed this way. Rule 6.k states that "[s]eparate complaints shall be made against each commissioned officer involved in the alleged misconduct resulting from the same event." Complaints can be combined later, but each officer must first have a complaint that specifically identifies the allegations against that officer. Here, the Complaint does the opposite: it names only one officer but asks the Board to decide whether several unnamed officers did something wrong and discipline them for it.

Those allegations cannot be treated as charges against Respondent. He cannot be disciplined for another officer's alleged failure to de-escalate or intervene, and the Board cannot impose discipline on nonparties who have not been served with charges or afforded due process required by section 62.13(5). At a minimum, the Board should strike the de-escalation and failure-to-intervene charges directed at other officers, all references to "co-respondent officers," and the request for discipline against the unnamed officers.

IV. PROCEEDING ON THE MERITS BEFORE COMPLETION OF THE SECTION 175.47 INVESTIGATION WOULD CREATE SERIOUS STATUTORY, EVIDENTIARY, AND DUE-PROCESS PROBLEMS; IF THE CASE IS NOT DISMISSED, IT SHOULD BE STAYED.

A. The Board Should Not Adjudicate the Merits Until the Section 175.47 Investigation Is Complete and Respondent Has Access to the Evidence Necessary to Defend Himself.

Wisconsin has prescribed a specific process for investigating officer-involved deaths. Section 175.47 requires an investigation by at least two investigators, including a lead investigator, with neither employed by the agency employing the involved officer. Wis. Stat. § 175.47(3)(a). The investigators must provide a complete report to the district attorney, who then determines whether there is a basis to prosecute. *Id.* § 175.47(5). The statute permits a department to conduct an internal investigation only if it does not interfere with the independent investigation. *Id.* § 175.47(3)(c).

While section 175.47 does not expressly require every other proceeding to be put on hold, the structure of the statute strongly supports a stay here. The very facts the Board would have to decide—what Ruiz did, what Respondent perceived, what force alternatives were attempted, the timing of the knife assault, and the circumstances existing at the moment deadly force was used—are the subject of the ongoing independent investigation. Nearly all the evidence regarding those questions remains in the possession of the

independent investigating agency and is not yet available to Respondent, Complainants, or the Board.[1] Indeed, the independent investigative report is not released until the district attorney determines there is no basis to prosecute. *Id.* § 175.47(5)(b).

That creates both a practical and a due-process problem. Section 62.13(5) is a quasi-judicial process that must include the basic elements of fair play required by administrative due process. *Conway v. Bd. of Police & Fire Comm'rs*, 2003 WI 53, ¶40, 262 Wis. 2d 1, 662 N.W.2d 335. Due process includes the right to know the charges and to meet those charges with competent evidence. *Richey*, 48 Wis. 2d at 580–81. That right has little practical meaning if important evidence necessary to evaluate and defend Respondent's actions remains unavailable because the district attorney has not yet rendered a charging decision.

An evidentiary hearing now would therefore require Respondent to defend a potentially career-ending charge on an incomplete record. The Complaint relies on publicly released civilian video, but there were no body cameras, and a bystander recording necessarily depicts events only from the camera's vantage point. Publicly available information also indicates that officers were responding to reports including an attempted burglary, that Ruiz fled, and that less-lethal deployments were unsuccessful.[2] Those circumstances bear directly on the reasonableness of Respondent's actions and illustrate why the complete investigative record matters.

The problem is not merely that additional evidence might be helpful. The missing evidence concerns the central factual questions the Board itself would be required to

[1] *See* https://www.cityofmadison.com/attorney/about/formal-opinions/2026-001.

[2] *See* https://www.wisdoj.gov/PressReleases/press-release-madison-oid-july-2026-update.pdf.

decide. Proceeding now creates the risk that the Board will make findings based on the limited evidence currently available, only for the completed independent investigation to later reveal additional witness statements, physical or forensic evidence, video, or other information bearing directly on those same findings. Respondent should not be required to defend himself first and receive the evidence necessary for that defense later. If the Complaint is not dismissed, the fair and orderly course is to stay the merits proceedings until the section 175.47 investigation is complete and any resulting criminal proceedings are resolved.

B. The Statutory Just-Cause Framework Further Supports a Stay Until the Relevant Investigative Record is Complete.

The statutory just-cause framework provides an additional reason not to adjudicate the merits on an incomplete evidentiary record. Section 62.13(5)(em) requires the Board to apply seven just-cause standards "to the extent applicable." Several of those standards are phrased in terms of actions taken by the chief and therefore may apply differently where, as here, charges were filed by private complainants rather than the chief.

The framework nevertheless reflects the importance of a sufficiently developed factual record before the Board sustains charges and imposes discipline. Among the statutory considerations are whether a reasonable effort was made to determine whether the officer violated a rule or order, whether that effort was fair and objective, and whether substantial evidence supports the alleged violation. *See* Wis. Stat. § 62.13(5)(em)3–5. Even where some of those factors do not apply in precisely the same manner to citizen-filed charges, the Board must ultimately determine whether the applicable just-cause standards are satisfied on the evidence before it.

That determination cannot fairly be made on the present record. The independent investigation required by section 175.47 remains ongoing, and the evidence developed through that process is not yet available to the parties or the Board. The Board therefore does not presently have the benefit of the complete investigative record concerning what occurred, what evidence supports or contradicts the allegations, or what additional evidence may bear on Respondent's conduct.

Section 62.13(5)(em) does not expressly require the Board to await completion of a particular investigation before proceeding, nor does it prescribe a specific investigative sequence for citizen-filed charges. But its requirement that discipline rest on the applicable just-cause standards—including, where applicable, substantial evidence—strongly supports allowing the independent investigative process to run its course before the Board decides the merits. Otherwise, the Board would be asked to determine whether just cause exists to end Respondent's career while potentially significant evidence bearing directly on that determination remains unavailable to the parties and the Board. A stay avoids that problem and permits the Board to evaluate the charges on a sufficiently complete and reliable evidentiary record.

C. Proceeding Before Respondent's Potential Criminal Exposure Is Resolved Would Force Him to Choose Between Fully Defending His Job and Protecting His Fifth Amendment Rights.

Proceeding before potential criminal exposure is resolved creates a significant practical problem. Respondent is being asked to defend his job based on the same conduct that remains under criminal investigation. To fully defend himself before the Board, Respondent may need to testify about what he saw, what he perceived, why he believed deadly force was necessary, and other circumstances surrounding the shooting. But

providing that testimony before the criminal matter is resolved could affect his defense if criminal charges are later filed. Remaining silent, on the other hand, would deprive Respondent of an important means of defending himself against termination.

Garrity illustrates the constitutional concern created when a public employee's employment obligations collide with the Fifth Amendment. 385 U.S. at 497–500. *Garrity* holds that the government may not compel a public employee to provide potentially incriminating statements under threat of losing his employment and then use those compelled statements against him criminally. Wisconsin courts likewise recognize the constitutional protections applicable when an officer is required to answer employment-related questions. *See Herek v. Police & Fire Comm.*, 226 Wis. 2d 504, 514–23, 595 N.W.2d 113 (Ct. App. 1999).

The issue here is not that *Garrity* itself requires a stay. Rather, the unresolved criminal investigation creates the very tension those protections are designed to address. If Respondent testifies fully to defend his employment, he must do so before knowing whether criminal charges will be filed or what issues may become important to his criminal defense. If he remains silent to protect himself from possible criminal prosecution, he gives up an important means of defending himself against a charge that could end his career.

There is no reason to require Respondent to make that choice at this stage of the proceedings. If no criminal charges are filed, the disciplinary proceeding can move forward without that conflict. If charges are filed, the stay can remain in place until those charges are resolved. *See Milwaukee Police Ass'n v. Flynn*, 213 F. Supp. 3d 1113, 1115 (E.D. Wis. 2016) (disciplinary charges adjourned pending resolution of criminal charges). A stay therefore does not determine the merits or prevent the Board from ultimately hearing any

legally sufficient charges; it simply avoids requiring Respondent to defend his employment while his potential criminal exposure arising from the same conduct remains unresolved.

D. Chapter 164 Further Supports Staying Any Merits Proceedings Until the Investigation Is Complete.

Wisconsin law separately provides procedural protections to law enforcement officers who are being investigated for conduct that may result in discipline. Wis. Stat. ch. 164. Among other things, Chapter 164 regulates the circumstances under which an officer may be questioned during such an investigation and protects the officer's right to representation. *See* Wis. Stat. §§ 164.02–164.03.

Chapter 164 does not require the Board to stay this proceeding. But it reflects the Legislature's recognition that the investigation of alleged officer misconduct and the questioning of an officer during that investigation carry procedural protections when discipline may result. That principle matters here because the investigative process into the very conduct underlying these charges remains ongoing. Proceeding immediately to the merits risks putting the disciplinary case ahead of that process. Respondent could effectively be required, through testimony, discovery, or other merits proceedings, to provide his account of the shooting and defend his actions before the District Attorney has made a charging decision and before Respondent has access to the complete investigative record. The PFC proceeding should not become a substitute means of developing Respondent's account of the incident while the process required by section 175.47 remains pending.

Chapter 164 therefore reinforces the concerns raised by section 175.47 and the constitutional protections discussed above. Read together, those provisions support allowing the investigation and prosecutorial review to run their course before Respondent

is required to litigate the merits of charges that could end his career. A stay preserves the Board's ability to adjudicate any legally sufficient charges while respecting the procedural protections Wisconsin law affords an officer during the investigation that precedes potential discipline.

E. A Stay Is the Narrow and Practical Remedy.

If the Complaint is not dismissed, the appropriate remedy is not to proceed on an incomplete record. It is simply to put the merits of the PFC case on hold until the independent investigation is complete and the possibility of criminal prosecution has been resolved. If the District Attorney declines to file criminal charges, the stay can be lifted at that point, as the investigation is then available to the parties and Board. If criminal charges are filed, the stay should remain in place until the resulting criminal proceedings are concluded. A stay does not prejudice the Complainants or prevent the Board from ultimately adjudicating any legally sufficient charges. It preserves the case while allowing the section 175.47 process and, if necessary, any resulting criminal proceedings to run their course, ensuring that the parties and the Board have access to the evidence necessary for a fair hearing and avoiding unnecessary conflict between Respondent's ability to defend his employment and his Fifth Amendment rights.

The Board can retain jurisdiction and schedule periodic status conferences while staying merits discovery, testimony, and evidentiary proceedings. The stay should remain in effect until the District Attorney determines that no criminal charges will be filed or, if charges are filed, until the resulting criminal matter is concluded. That limited approach protects all parties while ensuring that any eventual decision on Respondent's career is

made on a complete record and without requiring him to simultaneously defend his employment and a criminal prosecution arising from the same underlying conduct.

REQUESTED RELIEF

For these reasons, Respondent respectfully requests that the Board:

(1) dismiss the Complaint with prejudice because Hart, Mack, and BPSADC are not "aggrieved persons" under section 62.13(5)(b);

(2) alternatively, dismiss the Complaint without prejudice for failure to comply with Rule 6.c.i's verification, source-identification, charge-specificity, and rule, standard, or provision of law requirements;

(3) dismiss or strike all allegations concerning unnamed officers and all requests for discipline against them; and

(4) if any claim remains, require Complainants to file a single verified amended complaint; stay the deadline to file the answer, all merits discovery, testimony, and evidentiary proceedings until the process under section 175.47 is complete and either:

(a) a decision is made not to pursue criminal charges; or

(b) if charges are filed, the resulting criminal proceedings are resolved.

CONCLUSION

Section 62.13(5)(b) does not permit any concerned member of the public to initiate disciplinary charges against a police officer; it reserves that authority to an "aggrieved person"—someone personally and directly affected by the conduct at issue. The Complainants allege no such injury, involvement, or particularized interest here. That is not a pleading defect that can be cured by adding more detail; it is the absence of the statutory

status necessary to invoke the Board's disciplinary process and warrants dismissal with prejudice as to these Complainants.

The Complaint also fails to satisfy the Board's requirements for identifying the sources of allegations made on information and belief, stating the charges with sufficient specificity, and identifying the particular policy, rule, or law Respondent allegedly violated. Those defects warrant dismissal without prejudice.

The Complaint is further defective by asking the Board to discipline unnamed officers who are not respondents and against whom no separate, legally sufficient charges have been filed. Those allegations should be dismissed or stricken.

Even if the Board concludes that some portion of the Complaint may proceed, the merits should not be litigated while the independent investigation remains open and Respondent's potential criminal exposure remains unresolved. The evidence being developed through the section 175.47 process bears directly on the same conduct the Board would be asked to evaluate, including whether the applicable just-cause standards are satisfied. Proceeding now would require Respondent to defend his career without access to the complete investigative record and could force him to choose between fully defending himself before the Board and protecting his rights while potential criminal prosecution remains unresolved. Chapter 164's procedural protections for officers under investigation further support allowing that process to run its course before requiring Respondent to litigate the merits.

The Board should therefore dismiss the Complaint with prejudice at the Initial Hearing pursuant to Rule 6.d. If, however, any portion of the Complaint survives, the Board should require a single, properly verified amended complaint stating a legally sufficient

charge against this Respondent alone and should stay all proceedings on the merits until the independent officer-involved-death investigation and prosecutorial review are complete and, if criminal charges are filed, until those criminal proceedings are fully resolved, so that Respondent is not required to defend his career on an incomplete evidentiary record or while facing unresolved criminal prosecution arising from the same underlying conduct.

Dated this 21st day of September 2026.

Respectfully Submitted,

/s/ Kathryn A. Harrell

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