

**City of Albany
Citizens' Police Review Board
Albany Public Library
161 Washington Avenue – Large Auditorium
May 8, 2008
6:00 p.m. – 8:00 p.m.**

Present: Daniel Fitzgerald, John Paneto, Anthony Potenza, Hon. Fowler Riddick, and Reverend Edward Smart.

Absent: Jason Allen, Ronald Flagg, James Malatras, and Andrew Phelan, Jr.

I. Call to Order and Roll Call

Vice Chairman Fowler Riddick called the meeting to order at 6:00 p.m. He noted that Chairman Jason Allen was not present

II. Approval of the Agenda

The agenda was reviewed. Andrew Phelan moved to approve the agenda. John Paneto seconded the motion. The motion carried unanimously.

III. Approval of the March 13, 2008 Meeting Minutes

The approval of the March 13, 2008 meeting minutes was postponed until the next meeting of the Board.

IV. New Business

A. *New Complaints*

1. New Complaints Received Since April 15, 2008 Meeting

Daniel Fitzgerald reported that eight (8) new complaints had been received by the Board since its April 15, 2008 meeting. Mr. Fitzgerald read a summary of each new complaint.

CPRB No. 23-08

According to the complainant, when she went to report a rape, she alleged that the officer was not attentive to her needs; short with her; and rude. The complainant further alleges that the officer questioned her several times asking her if she wanted to report the rape. The complainant also claimed that the officer asked her if she was sure it was not bad sex, and how could she work there all that time after what had happened.

It was noted that a monitor was appointed to investigate this complaint.

CPRB No. 24-08

According to the complainant, as he was pulling into a parking space behind a woman who was also pulling into a parking space in front of him, the woman hit his car three times. The complainant got out of his car and yelled at the woman "Hey, what are you doing?" The complainant alleged that an officer ran across the street to talk to the woman. The complainant further alleged that the officer then approached him and yelled at him at a distance of two inches in his face. The complainant claimed that the officer told the complainant to get out of his face and pushed him with both hands.

It was noted that a monitor was appointed to investigate this complaint.

CPRB No. 25-08

The complainant alleged that while he was being taken into custody for a domestic violence issue, APD officers started punching him and kicking him in the face. The complainant further alleged that the officers pushed him through the window of his house, and one of the officers got cut. While at Albany Medical Center, the complainant claimed that when he asked the officers to speak to their supervisor or a lawyer, the officers verbally abused him, denied him his rights and called him a nigger. The complainant further alleged that after he was transported back to the station, the officers continued to beat him.

It was noted that a monitor was appointed to investigate this complaint.

CPRB No. 26-08

According to the complainant, on May 25, 2007, her son was a victim of a shooting on Clinton Avenue. The complainant's son was an innocent bystander, who got shot in the leg as he was walking by a fight that was taking place. The complainant alleged that her son was questioned as a suspect; that she was never contacted by the APD although she was on the scene at the time of the incident; and that the APD contacted her son while she was at work to question him further about the incident. The complainant further alleged that her son was never offered any crime victims counseling or assistance. According to the complainant, as a result of her son not being offered crime victims counseling, he has developed post traumatic stress disorder because he was not treated for 12 months. The complainant's son has dropped out of high school, stopped participating in regular teenage activities; and has to be driven everywhere because he is afraid to walk the streets. The complainant alleged that the APD did not follow procedures for victims of violent crimes.

It was noted that a monitor was not appointed to investigate this complaint. It was also noted that because the allegations in the complaint occurred more than six months ago the

Board would have to decide if the complaint should be returned or accepted and reviewed.

CPRB No. 27-08

The complainant filed this complaint as a third party regarding alleged actions by an APD officer against toward her brother. According to the complainant, on April 26th at approximately 2 a.m., her brother, who is a SUNY Albany student, was physically assaulted on Quail Street. He was hit on the head with a beer bottle and then physically assaulted by three men. The complainant's brother ran down the street for help. He saw an officer sitting in a police car. Bleeding from his head and face, he approached the officer to ask for help. When the complainant's brother told the officer that he was attacked, the brother alleged that the officer said to him "Whatever, move along," and drove away. The complainant's brother claimed that he ran into his friend who took the complainant's brother to Albany Medical Center for medical care. The police officer at Albany Medical Center filed a report of the incident.

It was noted that a monitor was appointed to investigate this complaint.

CPRB No. 28-08

According to the complainant, as he was walking his dog along Lark Street, he had a physical encounter with a passenger in a pick-up truck. The driver of the pick-up truck almost hit the complainant and his dog; so the complainant slapped the driver's side of the truck with his hand. A passenger then exited the truck and hit the complainant on his left temple. The passenger continued coming at the complainant. According to the complainant, a jogger tried to separate the two individuals. The complainant called 911 for help. The complainant claimed that two officers responded to his call. The complainant alleged that the officers scolded the jogger telling him that this was no big deal and did not require any witnesses. The complainant further alleged that the officers did not take any notes on the incident, denied his request to file charges against the passenger of the truck because he did not sustain enough injuries, threatened to arrest him for starting fights in Albany if he did not return to Amsterdam, and was not offered medical help.

It was noted that a monitor was appointed to investigate this complaint.

CPRB No. 29-08

The complainant alleged that an officer punched her boyfriend in the face and dragged him down the stairs while he was handcuffed.

It was noted that a monitor was appointed to investigate this complaint.

CPRB No. 30-08

The complainant alleged that on April 3, 2008, as she was navigating her car around numerous pot holes on First Street, an officer stopped her and gave her a ticket. The complainant further alleged that before she got to Henry Johnson Blvd, the officer gave her a second ticket. Then as the complainant began to go up Second Street, the officer gave her a third ticket.

It was noted that a monitor was not appointed to investigate this complaint.

The Board discussed whether it should accept CPRB No. 26-08 as a complaint. Daniel Fitzgerald suggested that the Board investigate CPRB No. 26-08 because the complaint has to do with an issue of time. John Paneto stated that he did not think that the complaint involved an encounter with the police. He explained that nothing prevented the complainant from taking her son to counseling or to a hospital. Mr. Paneto added that he did not see how the Albany Police were the subject of this complaint especially since the complaint was not filed until one year later. Reverend Smart explained that the history of the Board has been that when people have filed complaints inappropriately, the Board would send the complaints back to those people for them to file the complaints correctly. He noted that the CPRB legislation requires that a person file complaints within six (6) months of the incident, and the complainant did not file within the timeframe. Reverend Smart moved that the Board notify the complainant that there is a filing deadline, and that according to Section 42-342C of the CPRB legislation the complaint must have been filed within that time frame. John Paneto seconded the motion. The motion carried unanimously.

2. New Complaints for Review

CPRB No. 28-01/OPS No. C01-363 (Presented by Daniel Fitzgerald)

Daniel Fitzgerald summarized the complaint. Mr. Fitzgerald stated that the complainant alleges **call handling** concerns, in regard to the search warrant, and **conduct standards** concerns, in regard to the officer shoving the complainant and not reading the complainant the Miranda warning. Mr. Fitzgerald summarized the findings of the Office of Professional Standards (OPS) on the call handling allegation as **exonerated**, where the acts which provide the basis for the complaint occurred, but the review shows that such acts were proper. Mr. Fitzgerald reported that based on the OPS investigation, the judge signed a search warrant, giving officers the right to search the premises for evidence related to a double homicide. He added that the complainant was not a resident of the house. Therefore, the detective did not have to show him the search warrant, and the complainant would not have been issued a copy of the inventory list of items taken. Mr. Fitzgerald summarized the findings of the OPS on the allegation of conduct standards as **unfounded**, where the review showed that the acts which provide the basis for the complaint did not occur, or were misconstrued. He reported that based on the OPS

investigation, the detective was allowed, by law, to defend himself from another party, and if the complainant was shoved when he attempted to take the key away from the detective, then the complainant placed himself in that situation. Mr. Fitzgerald further reported that by the complainant taking the key away from the detective, the complainant was preventing the detective from performing his official duty to complete the search of the residence. Therefore, the complainant was charged with obstructing governmental administration.

Mr. Fitzgerald noted that he reviewed the case file with Detective Kathy Hendrick. He reviewed inter-departmental correspondence (IDC) and a copy of the search warrant. Mr. Fitzgerald noted that there were no medical records or videos in the case file. He explained that in regard to the search warrant, it was a "no-knock" warrant. Detective Hendrick added that the "no-knock" on the warrant was crossed out. Mr. Fitzgerald explained that based on his review it is standard procedure to issue warrants in that way. He further explained that the warrant was used to retrieve a firearm that was used in a crime. In the interest of an officer's safety, the officers may choose not to have the residents accompany them in the search.

Mr. Fitzgerald reported that in regards to the *call handling* allegation, the shoving allegation was handled in a previous complaint that was reviewed at last month's meeting. Mr. Fitzgerald further reported that in regards to the Miranda warning not being read, according to the OPS investigation, the complainant was not being questioned. The complainant was arrested for obstructing the access to the closet, and for trying to grab the keys from the officer. The complainant did not need to be read the Miranda warning. Mr. Fitzgerald reported that after reviewing the case file, he agreed with the findings of the OPS. Mr. Fitzgerald asked if the complainant was present. It was noted that the complainant was not present.

Mr. Paneto asked for an explanation of the "no-knock" warrant. Detective Hendrick explained that the search warrant has two sections. One section states that the search warrant is a "no-knock" warrant where the officers do not have to give warning, they do not have to identify themselves, and they can go right in. The second section states that the warrant shall be served between 6 a.m. and 10 p.m. Detective Hendrick further explained that the second section was crossed out, and that section is what the complainant was questioning.

Mr. Paneto asked if the police announced their presence for entry. Detective Hendrick replied in the affirmative. Chief James Tuffey further explained that the section on the search warrant is crossed out before it is given to the judge. The judge knows what authorities the police have at that point. The time of the case reflected the time noted on the search warrant. Mr. Fitzgerald moved to accept the findings of the OPS on both allegations. Mr. Paneto seconded the motion. The motion carried unanimously.

CPRB No. 26-02/OPS NO. C99-253 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza explained that the investigation was on hold because the complainant filed a case in Federal Court. He asked Board Counsel Patrick Jordan if the date of the complaint predates the existence of this Board, what standing the Board has to consider this complaint. Mr. Potenza noted that the incident occurred on July 30, 1999. He stated that in the interest of the fair handling of this case, OPS investigated the case and issued its finding. Mr. Potenza asked if he needed to get the approval of the Board to proceed with this case. Mr. Jordan replied that the previous Board discussed, voted and accepted the complaint. Mr. Potenza asked if it was known what the disposition of the federal case was. Mr. Jordan replied that he did not know. He added that his assumption was that the complainant is in jail.

Mr. Potenza summarized the allegations in the complaint. The complainant alleged that he was placed in an interrogation room and strip searched two times. The complainant further alleged that the detective used a wooden coat hanger during the body cavity search. The complainant claims that the detective struck the complainant with his fist resulting in injuries to the complainant. In addition, the complainant alleged that the detective used racially insulting remarks towards him. Mr. Potenza summarized that the complainant alleged a violation of conduct standards, and two (2) counts of use of force. Mr. Potenza reported that the investigative report from the OPS was received by the Board on March 31, 2008. Chief Tuffey added that this case also was investigated by the Drug Enforcement Administration's (DEA) Internal Affairs Division. He explained that the target officer from the Albany Police Department was assigned to the Drug Task Force. Chief Tuffey added that it was his understanding that the DEA Internal Affairs issued a report of *no finding*. Mr. Paneto asked if Chief Tuffey had a copy of the DEA's report. Chief Tuffey replied that the OPS did not have a copy because it was a DEA Internal Affairs investigation. Mr. Paneto asked if there was a copy of the DEA's disposition. Chief Tuffey replied that there was a letter exonerating the case, which the OPS could provide to the Board. Chief Tuffey stated that in 1999, the OPS investigated the complaint and then the complainant re-filed the complaint. Chief Tuffey asked why this complaint would be accepted if it was investigated before the CPRB existed. Mr. Fitzgerald stated that he thought that the case came into the system quite a ways back, but was not investigated because of its involvement in the Federal Court. Chief Tuffey stated that the DEA investigated it back in 1999, and federal cases take a long time to conclude. Chief Tuffey further stated that he did not know what the final resolution was with the DEA.

Chief Tuffey stated that he would be glad to provide to the Board the letter that was received by the OPS from the DEA, showing that they investigated it. Detective Hendrick added that along with the DEA, the OPS investigated the complaint in 1999 after the incident occurred. She explained that the complainant filed this complaint with the Board in 2002. It was put on hold because the complainant filed a notice of claim.

The complaint was recently released by Corporation Counsel along with other complaints.

Board Counsel Patrick Jordan summarized the timeline of the complaint. The complaint was filed in 2002. The Board at that time agreed to accept it. The complaint was suspended by the Mayor because the complainant filed a federal suit. Recently, the complaint became active again because the federal case was complete. Chief Tuffey added that the OPS investigated and closed the case, before the complainant filed the lawsuit. The complainant filed the complaint again after the OPS had already done its investigation. The case was suspended pending the resolution of the federal case, but the OPS had already done an internal affairs investigation on it. Mr. Fitzgerald stated that then, at some point the Board, probably in 2002 when it was filed, voted to accept it, but it was put on hold because of the federal case. Mr. Jordan agreed. He stated that the complaint the Board is reviewing was filed in 2002. Mr. Fitzgerald stated that the Board was reviewing the 1999 investigation by OPS.

Mr. Potenza stated that the recommendation of the OPS was that the investigation be closed. He reported that the OPS finding on the first use of force allegation was *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation of the complainant. The complainant alleged that he was strip searched with a coat hanger. Based on the OPS investigation, the detective denied that this incident occurred, and it cannot be proven or disproven. Mr. Potenza reported that the OPS finding for the conduct standards allegation were *unfounded*, where the review showed that the act or acts did not occur or were misconstrued. Based on the OPS investigation, during its interview with the complainant, the complainant reported that the detective called him a "low life," a "bastard," and a "no good drug dealer." The complainant also stated that from the detective's attitude, the comments were perceived to be racial in nature. Mr. Potenza noted that the investigation found that no racial comments were made toward the complainant. Mr. Potenza further reported that the OPS finding on the second use of force allegation was *unfounded*, where the review showed that the act or acts did not take place or were misconstrued. Based on the OPS investigation, booking photos, and medical documents, there were no signs of injury. Mr. Potenza added that all the detectives were interviewed and reported that there was no punching or abusing of the complainant in any way. Mr. Potenza moved to concur with the findings of the OPS. Mr. Paneto seconded the motion.

Reverend Edward Smart asked Board Counsel Patrick Jordan whether this report as accepted by the previous Board, was filed on a timely basis according to the CPRB legislation. Mr. Jordan responded that he did not have a copy of the legislation with him, but it has been the practice of the Board, that if the allegations in a complaint are at a certain level, the Board can waive the six (6) month requirement.

Reverend Smart explained why he asked the question. He stated that if the Board takes this case in the same order, it still was not filed in a timely manner. If this incident took place in 1999, and legislation was passed, and the person filed six (6) months after the

time, then it seems that this case would qualify. Mr. Jordan read the CPRB legislation that applied to the time filing deadline verbatim. He noted that according to the legislation a complaint should be filed within six (6) months. Complaints filed after six (6) months of the alleged conduct shall however be returned or accepted for review by the CPRB upon a majority vote.

Mr. Potenza asked if the case was accepted in 2002. Mr. Jordan stated that within the law the Board is allowed to waive the deadline and accept it. Reverend Smart asked Mr. Jordan if this Board is bound by what the Board said in 2002. Mr. Jordan replied that this question never came up. He explained that based on the legislation once the complaint process has begun there was no stopping mechanism. Mr. Paneto added that the Board was going to close it. Reverend Smart stated that the Board would close it, but they are going to discuss and review it. He added that the Board has to be very careful about these kinds of things, because the Board will be second guessing police officers and police departments for years if anyone can file at any particular time, and come back and say there is a problem. He concluded that he thinks there should be a limit.

Mr. Jordan stated that this particular case could have been heard when it was filed in 2002, but the investigation was suspended because of the lawsuit. He added that it is not the OPS's fault, the complainant's fault, or the Board's fault that the investigation was paused for this length of time.

Mr. Paneto asked if the Board could move on the motion. He added that the Board can have a discussion at a later date on why the Board would continue to suspend cases and then pick them up three (3) or four (4) years later. Anthony Potenza moved to concur with the findings of the OPS. John Paneto seconded the motion. The motion carried unanimously.

CPRB No. 17-07 /OPS No. C07-468 (Presented by John Paneto)

Mr. Paneto summarized the complaint. The complainant alleged that Albany police officers failed to properly handle a problem she had with her neighbors. The neighbors are the complainant's landlord. Mr. Paneto noted that a monitor was assigned to investigate this complaint. Monitor Joel Pierre-Louis was acknowledged. Mr. Paneto noted that the complaint involved an allegation of call handling. Mr. Paneto summarized the OPS findings. The complainant alleged she was assaulted by the tenants on the second floor when they forced their way into her apartment by forcing open her front door. As the complainant tried to keep them from attacking her, she hurt her right hand. The complainant alleged that she called the police and the officer said he "didn't see any bodily injury or blood coming out of her body, so there was no report or charges to make." The complainant further alleged that she went to the police station and the officer did not help her either, by stating that the officers made a "judgment call." Based on the OPS investigation, the Albany police made numerous attempts to reach the complainant. The complainant was generally unresponsive and uncooperative. At one point the complainant moved, and the APD tracked her down. When the APD found the

complainant on October 2, 2007, the complainant stated that she received the OPS messages, but because everyone was brushing her off, she did not think anyone wanted to listen to her. Mr. Paneto reported that based on the OPS investigation, a supervisor on the scene conducted an investigation. He was told by the complainant, the landlord "broke into her apartment and assaulted her." When the supervisor asked the complainant to clarify how they broke in, she became irate. An hour later, the complainant and her mother went to the police station, and told the desk sergeant that no one took her complaint seriously. The desk sergeant spoke to the sergeant who was on the scene and was told that there was no injury or blood to anyone. Mr. Paneto noted that the OPS finding for the call handling allegation was *no finding*.

Mr. Paneto stated that there may have been a language problem. He explained that the complainant and the complainant's mother are Spanish speaking. Mr. Paneto stated that he thought there were a lot of, not language, but cultural issues in trying to communicate exactly what happened. He added that he did not know if the APD had a liaison to assist individuals when culture becomes a barrier to communication. This may have contributed to the complainant's frustration of not getting anybody to listen to her. Mr. Paneto suggested that this case appears to be a possible case for mediation, especially if there is a Spanish language interpreter who can explain police policy on these procedures, and the fact that a judgment call was made.

Monitor Joel Pierre-Louis clarified that there was a sergeant as well as a subordinate responding officer on the scene. The sergeant and the responding officer conducted a visual inspection of the door and frame of the complainant's apartment, and did not notice any signs of forced entry or damage. The sergeant and the responding officer also conducted a visual inspection of the complainant's arms and hands. Mr. Pierre-Louis added that pursuant to the OPS confidential report, the complainant's husband, confirmed to the sergeant on the scene that the landlord and his wife were invited into the apartment by the complainant to discuss the "original issues" and at no time did the landlord and/or his wife assault the complainant. Mr. Pierre-Louis noted that when the husband returned to the scene, the husband provided the APD with this statement on the day of the incident. He added that when the sergeant and officer arrived, the husband left the scene.

Mr. Paneto asked if the Board or monitor had any additional questions or comments. It was noted that there were none. John Paneto moved to accept the finding of the OPS as *no finding* on the call handling allegation. Reverend Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 3-08/OPS No. C08-63 (Presented by Daniel Fitzgerald)

Daniel Fitzgerald summarized the complaint. The complainant alleged during a domestic incident at her house involving her daughter, an officer threatened the complainant that he would contact Social Services. The next day the officer arrived at her house with Social Services and conducted an unauthorized search of her house and removed a hunting knife. The complainant further alleged incidents in which the officer had stopped

her son. In the complaint, the complainant also described other incidents between the officer and her son. Mr. Fitzgerald noted that the OPS finding for the conduct standards allegation was *no finding*, where the complainant failed to produce information to further the investigation; or where the investigation revealed that another agency was responsible and the complaint or complainant has been referred to that agency; or where the complainant withdrew the complaint; or where the complainant was unavailable to clarify the complaint; or where the officer was no longer employed by the City. Based on the OPS investigation, the incidents occurred in the Village of Altamont, involving an employee of the village. Therefore, the complaint has been referred to the Mayor of Altamont to address. Mr. Fitzgerald reported that based on his review of the case file, and due to the fact that the incidents happened outside the City of Albany, the OPS contacted the Mayor of Altamont, and turned the matter over to him. Mr. Fitzgerald noted that he agreed with the finding of the OPS as *no finding*.

Chief Tuffey clarified that the police officer is employed by the Albany Police Department, and he is also employed as a Commissioner in Altamont. The incidents occurred while the officer was on duty in the Village of Altamont and not in Albany. Chief Tuffey explained that the complainant filed the complaint with Albany because the officer was a police officer in Albany. The incidents happened in the Village of Altamont, so it was referred to that agency. Commander Beattie added that the police officer has filed for retirement from the Albany Police Department, so there should not be a conflict. Daniel Fitzgerald moved to concur with the finding of the OPS as *no finding* on the conduct standards allegation. John Paneto seconded the motion. The motion carried unanimously.

B. *Appointment of New Members to the Committee on Complaint Review for June 2008*

The following Board members were appointed to the Committee on Complaint Review for June 2008: John Paneto, Anthony Potenza, Hon. Fowler Riddick, and Reverend Edward Smart.

C. *Committee/Task Force Reports*

By-Laws and Rules

Vice-Chairman Fowler Riddick noted that a report from the Chair of the By-Laws and Rules Committee will be given at next month's meeting.

Community Outreach

Vice-Chairman Fowler Riddick noted that a report from the Chair of the Community Outreach Committee will be given at next month's meeting.

Mediation

Vice-Chairman Fowler Riddick noted that a report from the Chair of the Mediation Committee will be given at next month's meeting.

Police Department Liaison and Policy Review/Recommendations

Committee Chairman Daniel Fitzgerald noted that he had nothing new to report.

Public Official Liaison

Vice-Chairman Fowler Riddick noted that Committee Chairman Ronald Flagg was not present.

Task Force on Monitors

Vice-Chairman Fowler Riddick noted that Task Force Chairman James Malatras was not present.

D. *Report from the Government Law Center*

Government Law Center Coordinator of the Board Sharmaine Moseley gave the report.

Complaint Inventory as of Date of Meeting

It was reported that as of today, there are currently forty-three (43) active complaints before the Board for review. Of those forty-three (43) active complaints, four (4) were reviewed at tonight's meeting, which leaves the Board with thirty-nine (39) active complaints.

It was further reported that two hundred and sixty (260) complaints have been closed and nine (9) complaints remain suspended from review. The total number of complaints filed to date is three hundred and eight (308).

Community Outreach

It was reported that the APD has started its process of sending the contact forms to the Board. There seems to be a need for clarification of the process. Therefore, a meeting will be scheduled for next week with Chief Tuffey and Deputy Mayor Phil Calderone to discuss the process. It was further reported that the eleven (11) contact forms received from OPS were distributed to the Board earlier this evening. Eight (8) of the forms are from individuals who requested complaint forms; Two (2) of the forms relate to complaints received by OPS from 3rd parties; and one (1) form relates to a written

complaint received by OPS. It was noted that none of the eleven (11) forms received are from individuals who chose not to have their complaint reviewed by the Board.

Board Meeting

It was reported that the next Board meeting is scheduled for Thursday, June 12th at the Albany Public Library.

E. *Report from the Office of Professional Standards*

Chief James Tuffey reported that the form that he proposed and that was accepted by the Board seems to be working. Chief Tuffey noted that when the APD gives someone a complaint form, the APD forwards the person's contact information to the Board. He added that this is more than what the CPRB legislation requires. Chief Tuffey invited those individuals who do not attend the CPRB meetings but still criticize to visit with the OPS and observe what the OPS does. He added that the OPS sent the Board eleven (11) forms. There are two (2) third-party complaints, and a couple were just given out. Chief Tuffey noted that the APD has nothing to hide. The OPS said that they would investigate all complaints, and has given above what is asked of them. Chief Tuffey asked that there be a follow-up with Common Councilmember Richard Conti to see whether there is a need to change the legislation or whether this form will suffice. He added that the Board has accepted the form, and if this is the process, it would work well. Chief Tuffey asked if there was a follow-up meeting with Councilmember Conti or if the Board received correspondence from him. Ms. Moseley replied that the GLC did not receive any correspondence from Councilmember Conti. Chief Tuffey stated that maybe the Board should see if Councilmember Conti would be available to attend next week's meeting, because there is a question of whether these forms would be legal under the current legislation.

Mr. Fitzgerald stated that he thought that there was a cross between the legislation and the way for the Board to get more information. He added that he did not think the form was illegal; it was just something that was not included in the legislation. He stated that there was a little bit of a gray area that we have all identified by now, and the Board and the OPS have to work around it.

Chief Tuffey stated that he would like to respectfully remind the Board that there is pending legislation before the Common Council about providing the Board with the number of complaints against a police officer. When a complaint is filed against that police officer, it should not indicate that that officer is guilty of any previous incidents. He stated that he would hope that the Board would take a position on that. Chief Tuffey further stated that it seems that the OPS is the only public entity that is guilty before proven innocent, even if they found *no finding* in a case, they still have to report those numbers. He stated that the OPS is doing an early warning system, and it is up and running.

Patrick Jordan stated that the pending legislation is in a committee of the Council, and he will email it to the Board. Reverend Smart stated that Chief Tuffey should be commended for proposing the form to the Board and for the results that he submitted to the Board this evening. He suggested that the Board send a letter to the Police Chief stating that it is pleased by the way these forms have been filed. Reverend Smart added that it is a great step in the right direction, which demonstrates that the police chief and the APD are attempting to work very closely with this Board. Reverend Smart moved that a letter should be made a part of this meeting, and a letter sent to the police department commending Police Chief Tuffey. Anthony Potenza seconded the motion. The motion carried unanimously.

Mr. Paneto commented that he has a couple of issues with the cases listed on the CPRB complaint scorecard. He explained that the first issue involved cases that are still open after sixty-five (65) days. The second issue is the complaint suspension process. Mr. Paneto stated that he does not understand how a case gets suspended. He added that during his tenure on the Board, there has not been a case that was reopened after being suspended.

Chief Tuffey made reference to CPRB No. 24-05 on the scorecard. He noted that the complaint was a third-party complaint that was resolved satisfactorily by a couple of meetings between him and the group that filed the complaint. One of the issues in the complaint was pursuits and the other issues were on overtime. Chief Tuffey added that although at the time the complaint was filed there was a question of "standing," but he met with the group anyway. He further explained that his review of the overtime issue did not show any wrongdoing. He added that he could tell to the penny every week how much the APD spends on overtime. Chief Tuffey stated that the other issue involved the federal seized asset account which was mentioned in the Times Union. He added that he believes that he has a resolution with the federal government on this issue. Chief Tuffey further stated that he changed the procedures, so that now he is the only person who can sign seizure checks. The Chief's Deputy can sign it only with permission from the Chief. Chief Tuffey stated that this year, the APD sent the federal government its report, and the federal government sent it back within two weeks. The federal government was very complimentary to the APD's change in its procedure. Presently, there is one credit card which is located in a safe in the police department.

Mr. Paneto noted that the case is listed as still open. Chief Tuffey commented that it is because it is a third-party complaint. Mr. Paneto stated that the comment on the scorecard states that it is waiting on the status from the OPS. Chief Tuffey stated that the case was referred to him by the Board, because of the issue of "standing." Although the issue of "standing" still remains, this case was resolved. Mr. Fitzgerald stated that in the past, when the Board tried to address the issue of "standing," the Board was aware that this issue would come up again in the future. The Board was aware that third-party complaints would be forwarded by the OPS to the Board with a finding of *no finding* because those complaints cannot be investigated. But the Board could address issues raised in those complaints through policy and procedures. Chief Tuffey stated that he

would ask the OPS to do a report on his behalf to address the issues raised in CPRB No. 24-05. He added that there is still a question as to whether the group had legal standing to file the complaint. The question of "standing" still needs to be resolved.

Reverend Smart stated that he had a question about Section 42-344 of the CPRB legislation. He noted that it states that after 120 days, complaints can be forwarded to the Chief for a disposition that they may be closed. Reverend Smart added that complaints that are between 60-120 days, and in particular those that are there for 120 days, should be placed in the Chief's hands, so that they might be disposed of, and removed from the scorecard. Chief Tuffey stated that some of those complaints are temporarily closed because of lawsuits, so the timing would be stopped before the 120 days. He further stated that the OPS has been deficient in not getting the cases in 120 days because of the volume of cases they receive. Reverend Smart asked if the Board forwards those cases to the Chief, can they be removed from the CPRB's scorecard.

Mr. Fitzgerald stated that he thinks these cases remain a part of the scorecard for GLC record keeping purposes. The GLC uses this scorecard to keep track of all the cases that were filed including the suspended cases. Mr. Fitzgerald added that the Board cannot review a case that has been suspended until the litigation is complete. Mr. Paneto stated that he understands the GLC uses it as an administrative tool, but it holds policy implications for the Board because the cases are just sitting out there.

Mr. Jordan stated that the problem the Board had two or three years ago was that a group from Nevada could file a complaint and think that the Board had to review it. All of the Board's findings have a specific definition. He added that the group met with the Chief, and the matter was resolved. Reverend Smart added that Section B of the legislation states that if we did 1-7 in Section A of the legislation, then Section B says that you can place the matter in the Chief's hands.

Mr. Jordan stated that a lot of these cases are on hold because the complainant may be a defendant in another case that has been brought to the city's attention. Chief Tuffey explained that if litigation is involved in a case then it stops the clock from ticking. He added that currently there is one case where even though there is a notice of claim filed, the OPS has made a decision to concur with the City's legal staff. Mr. Paneto suggested adding a sunset date into the comment area on the complaint scorecard. He explained that if a complaint is suspended on December 20, 2007 there should be a sunset date of ninety (90) days from that date on the scorecard. Mr. Jordan stated that the Board would be acting on something that the legislation says it cannot act on. Mr. Paneto asked what is the status of the complaint that is "tabled for mediation." Mr. Jordan replied that the Board agreed for that complaint to be mediated. Chief Tuffey added that the APD is waiting for the final acceptance of the mediators. He explained that although there is an agreement on the mediation process, the APD has had changes in its Union leadership. Within the next week or two, he will meet with them and if they accept the mediators, then we can move forward.

Mr. Paneto stated that he appreciated the Chief's comments. The Board, however, made a decision to send this case to mediation without a mediation process. That was just silly. Mr. Paneto stated that the Board has to make a motion that if a case exceeds 180 days the Board should move it, close it, cancel it, or issue a finding. Mr. Fitzgerald stated that he does not understand what the problem is with reviewing an old case. Mr. Paneto stated that he has a problem with reviewing old cases because how can there be justice if a case has been suspended for 918 days? Mr. Fitzgerald replied that a case is not suspended by the Board but by the City. Mr. Paneto stated that by the legislation having no sunset date, the Board does not have to review the case and the complainant does not get justice.

Mr. Jordan stated that it is a Board disagreement, and the scorecard is not a public document. The scorecard is an internal document on the status of complaints. Mr. Jordan further explained that he discusses with Ms. Moseley the status of the suspended cases as he finds out the status of those complaints from the District Attorney's office. Mr. Fitzgerald stated that these are good questions for the Board. He moved that the Board create a task force to look at these issues. Mr. Paneto seconded the motion. Reverend Smart and Vice-Chairman Fowler Riddick opposed the motion. The motion to create the task force was defeated by voice vote. Anthony Potenza suggested that every month, the Board give the City a list of those complaints that are suspended per notice of claim. Then the Board will know which ones are suspended because of lawsuits, and the ones that are not. The Board should look at those that are not suspended.

F. *Report from the Chair*

Vice-Chairman Riddick noted that there was no report from the Chair.


V. **Public Comment**

Vice-Chairman Riddick asked if there was any public comment. It was noted that there was no public comment.

VI. **Adjournment**

Vice-Chairman Fowler Riddick moved to adjourn the meeting. John Paneto seconded the motion. The motion carried unanimously. The meeting adjourned at 7:20 p.m.

Respectfully submitted,


Ronald Flagg
Secretary