

**City of Albany
Citizens' Police Review Board
GWU the Center
274 Washington Avenue-Teen Center Conference Room
October 28, 2010
6:00 p.m. – 8:00 p.m.**

Present: Jason Allen, Marilyn Hammond, Andrew Phelan Jr., Anthony Potenza, and Reverend Edward Smart.

Absent: Ronald Flagg and Akosua Yeboah.

I. Call to Order and Roll Call

Chairman Jason Allen called the meeting to order at 6:05 p.m.

II. Approval of the Agenda

The agenda was reviewed. Anthony Potenza requested that CPRB Complaint No. 32-09/OPS No. CC2009-057 be tabled so the Board could receive further clarification to straighten out a few minor discrepancies. Chairman Jason Allen asked Coordinator of the Board Sharmaine Moseley and OPS Commander Ron Matos if either of them needed to make any reports since the Board met two days earlier. Commander Matos stated that he would waive his report. Ms. Moseley stated she had to report the updates for the complaint inventory. Chairman Allen asked if it had changed in two days. Ms. Moseley replied in the affirmative. Chairman Allen stated that the third complaint listed on the agenda, as well as the report from OPS are stricken from the agenda. Reverend Edward Smart moved to approve the agenda. Chairman Jason Allen seconded the motion. The motion carried unanimously.

III. New Business

A. *New Complaints*

1. New Complaints Received since October 26, 2010 Meeting

Chairman Allen reported that zero (0) new complaints were received by the Board since its October 26, 2010 meeting.

2. New Complaints for Review

CPRB No. 6-09/OPS No. CC2009-008 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that during the first traffic stop of his vehicle the officer yelled at him, and when a second officer arrived, he tried to intimidate the complainant. The complainant further alleged that the

officer refused to provide his name and badge number. The complainant was stopped a second time and alleged he was issued two tickets that were false. The complainant alleged that this incident was a result of harassment and racial profiling. The complainant further alleged that a State Trooper has repeatedly used profanity and was harassing him, which intimidated the complainant.

Marilyn Hammond summarized that the OPS finding for the first conduct standards was ***not sustained***, where the review fails to disclose sufficient facts to prove or disprove the allegations made in the complaint. Based on the OPS investigation, the officer stated that at no time did he yell at the complainant, and he does not recall the complainant asking for his name and/or badge number. Another officer stated that he does not recall any officers giving the complainant a stare down. Both officers do not recall using a horn in an effort to signal the complainant to move his vehicle from a parked position. Ms. Hammond reported that a witness, who was interviewed, did not remember the officers utilizing a horn during or at the conclusion of the traffic stop. Furthermore, the OPS confirmed that the area to which the complainant describes he was first pulled over does not in fact support any standing parked positions for vehicles. Ms. Hammond reported that this point only confirms that if it was found that the officers did in fact utilize a horn to signal to the complainant to move his vehicle from this location, they would have been justified in doing so. Finally, the interview with the witness provided no pertinent information to support or refute the complainant's allegations.

Marilyn Hammond summarized that the OPS finding for the second conduct standards was ***not sustained***, where the review fails to disclose sufficient facts to prove or disprove the allegations made in the complaint. Based on the OPS investigation, the officers stated that they did not point and laugh at the complainant. Additionally, there was no pertinent information given by the witness to support or refute the complainant's allegations on this matter. Ms. Hammond reported that there are no facts to sustain that the officers had any prior motivating factors (in reference to harassment or racial profiling) to conduct a second traffic stop on the complainant's vehicle, other than the issuance of the Uniformed Traffic Tickets for violations of the New York State Vehicle and Traffic Law. All three officers indicated it was not their intention to racially profile or harass the complainant by initiating a traffic stop of his vehicle.

Marilyn Hammond summarized that the OPS finding for the third conduct standards allegation was ***no finding***, where the investigation revealed that another agency was responsible and the complaint and the complainant had been referred to that agency. The complainant indicated that the State Trooper had repeatedly used profanity and was harassing him, which in course intimidated the complainant. The OPS forwarded this complaint to the New York State Police (NYSP) and the complainant himself stated he had previously followed up with the New York State Police on the matter.

Ms. Hammond stated that she reviewed the following documents: a Call Card dated January 15, 2009 ; four (4) Citation Reports dated January 15, 2009; the Confidential Report dated January 15, 2009; certified letters sent to the witness and the complainant on April 23, 2010; Article 10 of NYS Penal Law and Traffic Infractions; Article 1 of the NYS Vehicle Traffic Law: arrest without warrant; Article 1 of NYS Criminal Procedure Law: Simplified Information; Article 140 of the NYS Criminal Procedural: Petty Offense Penal; Article 210 NYS Criminal Procedurals: Perjury in the 3rd Degree; and a phone interview with the witness on May 5, 2010.

Ms. Hammond reported that based on the OPS investigation, the witnesses stated that it seemed as if they were being targeted. On the second stop the officer was lecturing the complainant like a father figure. The witness does not remember the officer doing a stare down to them at the stop. Ms. Hammond further reported that the officers were having side conversations and the witness did not know what was being said. The officer asked for the witness' identification and they were not bothering him. The officer stated that he did have contact with the passenger prior to the vehicle incident. The officer knows the witness to be a hall monitor at one of the Albany schools. Marilyn Hammond stated that she agrees with the OPS findings of *not sustained* and *no finding*.

Marilyn Hammond asked if the Board had any questions. It was noted that the Board did not have any questions.

Chairman Allen asked if the complainant was present. It was noted that the complainant was not present.

Chairman Allen asked again if the Board had any questions. It was noted that the Board did not have any questions.

Marilyn Hammond moved to concur with the OPS finding of *not sustained* for the first conduct standards allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *not sustained* for the second conduct standards allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *no finding* for the third conduct standards allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 21-09/OPS No. CC2009-037 (Presented by Anthony Potenza)

Anthony Potenza summarized the complaint. Mr. Potenza noted that a monitor had not been assigned to the complaint. The complainant alleged that he made a U-turn on N.

Pearl Street and parked in front of a handicapped sign without realizing it and went into his business to close for the night. He alleged that as he was in the store closing, an officer came into the store with a very loud tone and attitude yelling, "Who's driving the white BMW out front?" The complainant alleged that he replied "That's my car," and the officer yelled at him to get out to his car and sit in it. The complainant further alleged that when he went outside, his vehicle already had a parking ticket on it issued by another officer. He alleged that the officer yelled at him, "Who the f**k do you think you are parking here?" The complainant alleged that he informed the officer that he did not realize there was a handicapped sign and was going in to close his business. The officer allegedly said, "I don't give a f**k, give me your license and registration." The complainant further alleged that the officer told him that he was going to have his f**king car towed. After waiting 20 minutes and being humiliated, embarrassed and harassed, the officer came back to the complainant's car and dropped two (2) tickets, his license and registration that he crumpled on his lap. The complainant also alleged that the officer then told him to see if his family and friends in law enforcement can get him out of this one. He alleged that the officer continued saying rude and disrespectful things to him. He further alleged that the officer then told him to "bring his mommy's car home and go back to his own f**king country," smiling the whole time. The complainant also alleged that as the officer pulled away he saw the officer giving him the middle finger.

Anthony Potenza stated that he reviewed the following documents: Citizen Complaint Form, including the statement by the complainant; Civilian Complaint Report; the OPS Confidential Report, including the report by the detective assigned to further investigate the case; copies of traffic tickets; Call Ticket; and an inter-departmental correspondence (IDC) from the officers which stated that the complainant was being verbally abusive and irate after being asked to return to his car.

Anthony Potenza reported that the OPS recommended that the first allegation of conduct be closed as *exonerated*, where the acts which provide the basis for the complaint occurred but review shows that such acts were proper. The complainant alleged that an officer came into the store with a very loud tone and attitude, yelling "Who's driving the white BMW?" The complainant responded that it was his car, and the officer yelled at him to go out to his car and sit in it. Mr. Potenza stated that based on the OPS investigation, the complainant stated that the backup officer did not act out of line and there was nothing that the officer did that he would want to file a complaint about. The complainant only stated that the officer raised his voice and got loud with him. Mr. Potenza he moved to concur with the finding of *exonerated* on the first count of conduct standards, where the acts which provide the basis for the complaint occurred by review shows that such acts were proper.

Chairman Allen asked if there were any questions from the Board. It was noted there were no questions from the Board.

Chairman Allen asked if the complainant was present. It was noted the complainant was present.

Chairman Allen explained to the complainant that Mr. Potenza had just read the synopsis of the OPS investigation and asked if he had anything that he would like to add that was omitted or if there was anything he would like to discuss with the Board. The complainant stated that Mr. Potenza had pretty much got the story, and the officer also had chewing tobacco in his mouth during the whole process. The complainant further stated that the officer was speaking a little bit differently and had something in his mouth which he believes was chewing tobacco. The complainant stated that his only point was that what the officer did to him was really awful. He stated that it was in front of his business. He is a well-known business owner in Albany and contributes a lot to the community. There is no reason why he should have been treated this way just because he is young. He further stated that there was obviously some kind of hatred that the officer had for him to have acted that way and it was uncalled for.

The complainant stated that the officer could have given him a parking ticket and let him go, or he could have given him five tickets and let him go, but the thing that ticked him off most of all was when the officer told him to "Take his mommy's car back home" and to "Go back to his f**king country." The complainant stated that he was born and raised in this country. His family moved here from Afghanistan about 31 years ago, and he is more Americanized than anything. He further stated that it was not right what the officer said, and he would never make a big deal out of this if he had not been so violated, and he felt really violated. The complainant stated that he was very professional and courteous until the time when the officer dropped the tickets, crumpled his registration and license, and threw them on his lap. The complainant admitted that after that, he was giving the officer attitude back and forth, but up until that point, he had been very courteous, patient and had been doing what he was told to do. The complainant further stated that at the same time the officer came to his business he was getting ready to close, as it was ten minutes to seven, and he still had one customer there getting ready to leave. The officer was yelling, or speaking loudly, while the customer was still in there and it was very embarrassing because the next day he had to see that customer again. The complainant stated that it just was not right, and he feels that something needs to be done. He further stated that it was not the first time, and he had a bunch of stuff in his folder where the officer had gotten into prior incidents and personal problems, problems with work and other stuff, so obviously this is a repeated thing. The complainant stated that the officer was taking out his anger and personal problems on other people, which is really wrong.

The complainant stated that he was strong enough to make it a point and attend this meeting to explain his story. He wondered how many other people just let it go and do not do anything about it, and the officer gets away with it. The complainant stated that officers are supposed to protect us and take care of us, especially in the downtown area.

His business is just down the road from the station. He further stated that he knew a lot of people in law enforcement, family and friends, and the officer made a comment to him stating, "Let's see what your family or friends can do and how they can get you out of this mess." The complainant stated that he did go to court, and he did take care of the tickets. He further stated that they nailed him, but he did not care, because what the officer said and did, especially the last part, was unacceptable. The complainant stated that it should not matter if he was somebody or nobody, the officer should not have said that.

Chairman Allen asked if there were any witnesses present. Anthony Potenza stated that there was only one witness listed, and he was the nephew of the complainant. The complainant stated that his nephew was standing by the door working, and he heard a lot, but not everything. Reverend Smart asked what the nephew said. Mr. Potenza reported that the witness stated that he heard the target officer use profanity, which is what is stated in the complaint. The complainant stated that the officer was not just a uniform officer. The officer was in an unmarked car wearing regular clothing, with a chain and a badge on it. The complainant stated that the officer went out of his way for him parking in a handicap space and the meter was just 20-40 feet away from where he had parked, which is the reason why he did not see him. The complainant further stated that the reason why the whole thing happened was because he parked his car on a composite garage and left his keys to the store in the car, so he went to go get them to lock the store up. He decided to bring his car back down so he did not have to go back up and it is where he made the u-turn on the bus stop and parked on the corner of Pearl and Maiden Lane.

Chairman Allen asked Commander Ron Matos if the Board could ask the target officer if he would be interested in mediation. Commander Matos replied that there were some actions involving the target officer's employment status, so he did not know if the target officer would be able to avail himself to mediation.

Chairman Allen asked if there was a witness who corroborated with the witness' statement. Mr. Potenza stated there were statements from the officers that they did not make such statements. Commander Matos stated that they had an interested witness, not an independent witness. The OPS were unsuccessful in its attempts to locate the gentleman who was a customer in the store.

Mr. Potenza stated that in examining the record there was some documentation with regard to the efforts of the OPS to contact the other disinterested witness.

Reverend Edward Smart stated that he would like to use this opportunity, even if it was down the line a bit, to entertain the idea of mediation. He further stated that in this particular case it would serve the officer and the complainant well. Reverend Smart

stated the fact that the complainant is present at this meeting to present his case, and contrary to what others might think, the credibility of the nephew is as credible as the person who was working with the officers. He further stated that if you put weight on one, that weight must be given to the other as well. Reverend Smart stated that in fairness to all parties, the Board could at least ask for mediation.

Board Counsel William Kelly asked if he could make a comment. He stated that the first finding is regarding a second officer who entered the store and needed to raise his voice to get the attention of the complainant. Mr. Kelly stated that the party who they are speaking mostly about is the first officer, or the target officer. The target officer wrote the tickets. He further stated that there were other findings, if Mr. Potenza could read them it might add some clarity and allow the complainant to understand the investigation. Chairman Allen stated that the Board should hold off on making any motions.

Mr. Potenza stated that he agreed with Reverend Smart, that this case is the perfect case for mediation. Mr. Potenza stated that in the report and in the OPS' findings, some of the allegations had been sustained by the OPS and some of the allegations had been not sustained.

Mr. Potenza reported that the complainant alleged that the officer yelled at him "Who the f**k do you think you are parking here?", "I don't give a f**k give me your license and registration," and he was going to have the complainant's "f**king car towed." The officer stated that he did not make such comments and the Board has documentation concerning things reviewed, including Inter-departmental Correspondence. Mr. Potenza reported that, in fact, both officers stated the complainant was the one who was verbally abusive toward them and using profanity. The witness stated that he heard the target officer use profanity. Mr. Potenza reported that he is not an independent witness, as he is the complainant's nephew. He further reported that with regard to the second allegation, conduct standards, **not sustained**, where the review fails to disclose sufficient facts to prove or disprove allegations made in the complaint, he concurred with OPS.

Chairman Allen stated he would like to go through everything before motions were made.

Mr. Potenza reported that in the third count of conduct standards, the complainant alleged that he was humiliated, embarrassed and harassed in front of his customers. Mr. Potenza reported that based on the OPS investigation, there was no evidence to support or refute this claim. Being pulled over by police in such a public fashion would cause anyone to feel a level of humiliation. However, there is no direct evidence to prove that the officers acted in an intentional way to harass the complainant or provoke the complainant to feel humiliated.

Mr. Potenza summarized that the OPS finding for the call handling allegation was **sustained**. The complainant alleged that an officer came to his car and dropped two

tickets, along with his license and registration on his lap. Based on the OPS investigation, the officer stated that he attempted to issue the tickets to the complainant and the complainant refused to take them. The officer stated that he then dropped them into the complainant's lap. Mr. Potenza reported that while dropping the information in a motorist's lap was not the preferable method, under such circumstances, where a motorist is being uncooperative and combative, another option would be to simply leave the information on the dashboard of the vehicle so the officer can avoid escalating an incident or cause the motorist to lose their information. While taking possession of a motorist's information during a traffic stop, it is the responsibility of the officer to safeguard that information. Mr. Potenza reported this allegation of improper call handling was *sustained* by the OPS.

Mr. Potenza summarized that the OPS finding for the third conduct standards allegation was *not sustained*. The complainant alleged that the officer stated "See if your family and friends of law enforcement can get you out of this one," and "Bring your mommy's car home and go back to your own f**king country." It is further alleged that the officer gave the complainant the middle finger. Based on the OPS investigation, the officer denied making the alleged statements, as well as showing the complainant his middle finger. Mr. Potenza reported that he reviewed those officer statements in the case file.

Mr. Potenza summarized that the OPS finding for the fourth conduct standards allegation was *sustained*. Based on the OPS investigation, the officer stated that in response to a comment made by the complainant. The officer stated to the complainant to make sure that he told whoever he called, that "He was acting like an a**hole and driving on the wrong side of the road with people all over." These actions are in violation of the SOP 47.1 and Article 14.1.24, Article 47.1 of the Albany Police Department SOP in the issuance of Uniform Traffic Tickets. In the performance of their duties, members of the APD shall not curse, use violent or profanely insolent language or gestures and shall not express any prejudice concerning race, religion, politics, national origin, lifestyle or other personal characteristics. Mr. Potenza reported the OPS finding for this allegation was *sustained*.

Mr. Potenza stated that going back to the second count, of *not sustained*, he moved to concur with the OPS finding. Reverend Smart stated that the Board never voted on the first allegation. Mr. Potenza stated the Board had voted on the first allegation. Chairman Allen stated that the Board had not voted. Mr. Potenza apologized for the mistake.

Chairman Allen stated that the Board had a few options, accepting the OPS' findings, or recommending the complaint for mediation. Mr. Potenza stated that the Board could send the complaint back for further investigation. Marilyn Hammond stated that she believed the complaint should be sent back, because she has some issues with the complaint. Chairman Allen asked Ms. Hammond what her concerns were regarding the

complaint. Ms. Hammond stated that unfortunately the complainant had stated the officer's name, and she knows that the officer has been involved in other instances of misconduct. The complainant apologized for using the officer's name, and explained that he was not sure if he was allowed to use it. Chairman Allen stated that the officer's name is redacted, and the Board never knows the officer's name. Mr. Potenza stated that he agreed with Reverend Smart that the case was perfect for mediation. Marilyn Hammond also agreed.

The complainant asked to speak again. He stated that he has done a lot of homework on this officer. Commander Matos stated that there was a level of confidentiality that must be maintained during the meetings and stated that no names can be mentioned.

Reverend Smart stated that he believed that not all of the counts needed to be sent back. He further stated that it was the third count of conduct standards, where the complainant talks about being harassed and embarrassed that should go to mediation. If you have ever been pulled over by a police officer, you are always embarrassed. Reverend Smart stated that he did not think that was out of the ordinary. He further stated that there are two counts which the OPS *sustained*, so he did not think that it was necessary to send all the counts back.

Chairman Allen asked if the Board should send it back and ask for mediation, or send it back and ask for further investigation, specifically asking if the officer has a history of complaints.

Marilyn Hammond asked the complainant if he saw the person who was in the store with him that day. The complainant asked if she meant the witness. Ms. Hammond replied in the affirmative. The complainant stated that he got rid of the business he was in about seven months ago, but he was sure that the witness frequented the business.

Chairman Allen asked for the opinions of the Board members. Marilyn Hammond stated that she thought they should send the complaint back to the OPS. Reverend Smart stated that he did not believe that the OPS would be able to track the missing witness down. Ms. Hammond stated that she did not believe that OPS would be able to either. Reverend Smart stated that he believes it might be a waste of time, and what might be constructive, in his opinion, would be to seek mediation. Andrew Phelan stated that he would agree with that. Commander Matos stated that the only issue is that the matter has not been resolved yet, so he does not think mediation is an option at this point. Chairman Allen asked if he was referring to mediation. Marilyn Hammond asked if it was because another officer was involved in it. Commander Matos stated that he believed that because it has not been resolved yet with the Union representation, mediation should not be an option at this point.

Chairman Allen stated that the Board should recommend mediation or send it back for further investigation. Marilyn Hammond stated that the Board had done mediations before, so it was not out of the question. It is up to the officers to make that decision. She further stated that whether the meetings were fruitful or not, the Board has always had the option of mediation, it is up to the officer and she thinks it should still be on the table.

Chairman Allen stated that within the next two months, the Board should either make a decision that it go to mediation, if the target officer agrees to it, or send it back to be re-investigated.

Reverend Edward Smart stated that he would like to move to mediate on items one, two, three and four. Marilyn Hammond seconded the motion. The motion carried unanimously.

Chairman Allen stated that the letter would state that the Board would like to know within two months, that the target officer and complainant agreed to mediation with the draft protocols developed. If not, the Board will ask for it to be re-investigated.

Chairman Allen asked the complainant if he understood what just happened. The complainant stated that he almost understood. Chairman Allen explained that the Board decided not to accept the OPS's findings, and the Board was sending the case back and asking for a choice. Chairman Allen explained that the Board had a draft protocol out called mediation, where a trained mediator would sit down in a room with the complainant and the target officer and discuss the issue and come to an amicable conclusion. If the target officer chooses not to do that or if that is not possible, then there will be a re-investigation and it will come back to the Board. The complainant stated that was fair.

Reverend Edward Smart moved to concur with the OPS on allegations four and six. Chairman Allen stated that Reverend Smart had previously stated that counts one, two, three and four be mediated. Reverend Smart clarified that he meant counts one, two, three and five.

Anthony Potenza moved to concur with the OPS findings on the call handling allegation, as **sustained**. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Anthony Potenza moved to concur with the OPS finding on the sixth allegation of conduct standards as **sustained**. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Chairman Allen thanked the complainant for coming.

Reverend Edward Smart summarized the complaint. The complainant alleged that she was in front of a house with friends when she noticed a police car driving slowly down the street. A friend of the complainants' stated that he knew the officer because the officer always gives him a hard time, so he was leaving. The officer said "Hi" to the friend, but by then he disappeared down the street among the crowd. The complainant walked to her house and stood in the doorway. The officer approached the complainant's house, walked up the stairs, and asked who she was and did she live there. She was leaning with one arm on the outer door frame and one on her hip. The officer allegedly then told her to move out of the way so he could go in. She asked if he had a search warrant and he allegedly rudely replied "What did you say to me?" She told the officer he could not enter her home, and he allegedly grabbed her by her wrists and turned them backwards the wrong way. She struggled trying to free her wrists and felt her elbow pop. The officers allegedly rammed her twice and her head smacked the mailbox. The officer allegedly pushed her, and she fell back into the door. The officer walked into her home, and went to walk into her bedroom, and she blocked his way. The officer then allegedly "grasped" her into the ironing board. The officer grasped the friend, twisted his arm and smacked his head on the wall.

Reverend Smart reported that he reviewed the following items: IDC's dated July 29, July 28, August 22, 2009 and July 26, 2010; Arrest Record dated August 20, 2009; Log dated August 22, 2009; Field Interview dated March 3, 2009; Citation Entry dated October 12, 2007; Request to Report dated June 10, 2010; Discipline Advisory Rights June 1, 2010; Monitor's Report dated September 1, 2010; and Citizen Complaint Form dated August 29, 2009.

Reverend Smart asked if the complainant was present. It was noted that the complainant was present.

Reverend Smart noted that a monitor had been assigned to the case. Reverend Smart asked monitor George Kleinmeier if he had anything to add. Mr. Kleinmeier stated that he did not have anything to add.

Reverend Smart asked if the complainant would like to make a statement. The complainant stated that everything was pretty much covered in the statement, but she did not understand the officer's actions. She further stated that she understood a cop being in hot pursuit, being after somebody or whatever the situation might be, but he did not directly go to her house first. The complainant stated that he went next door, first looking through the alleys, and then going next door. She further stated that her neighbor was outside with his friends and the officer kicked them off the porch because they had beer or beer cans, so the officer told them to get off the stairs and go. The complainant stated

that the officer then went up the street to another house, and when he came to her house she was standing in the doorway leaning up against the door. She further stated that she had the door closed behind her but it was not locked. The complainant stated that it was her house door and neither doors were locked. She was just standing there. She further stated that if the officer went up the stairs, and she noticed him going from house to house, and everyone was saying the same thing, by the time he got to her house he must have been frustrated. The complainant stated that the officer was already cussing at the people out front, and if it is her house that she is standing in front of, she has the right to ask what the problem is or what is going on. She further stated that she believed that officers usually state what is going on. The complainant stated that she was standing there and the officer had no right to touch her. She further stated that the officer grabbed her, and if the officer was in hot pursuit, then she was supposed to get out of the way. The complainant stated that to her, a hot pursuit, whether on foot or in a car, the officer should be after someone. She stated that if the officer was in hot pursuit, he would not have mingled outside yelling at people and coming up and down the street, he would have gone straight for who he was going for. The complainant stated that when she asked the officer if he had a search warrant and what was going on, and her mother asked the same thing, once they were inside the house, the officer grabbed her by her wrist. She further stated that she knew he was an officer so she knew she could not do anything back to him, so she sat there and knew she had no choice but to take it. The complainant stated that the officer pushed her into the doorway and walked right into the house. She further stated that the only reason her mother's attention was triggered was because her little brother came out of the room when she was blocking the officer's way. The complainant stated that her little brother came out of the room because he heard her yelling and screaming and their doors are directly connected to each other. She stated that was when the officer grabbed her and pushed her through the ironing board, so her brother automatically ran to their mother's room to get her mother. She further stated that when her mother came out, by that time the officer had the person he was after. The complainant stated that her mother asked the officer what was going on, what was the issue, and the officer kept yelling "Shut up before you both go to jail."

The complainant stated that by that time the officer grabbed her and threw her through the front door, she heard everybody outside yell "Call his supervisor" and "Call downtown" because you have rights. The complainant stated that she automatically took out her cell phone. While she was on the phone, she was still sobbing to him inside the house. She further stated that the secretary, who heard how the officer was talking, told her, "Do me a favor, give me his badge number and give me his name." The complainant stated that by that time she was inside and she said out loud "his badge number is..." the officer turned away, but revealed his last name to her. She further stated that she was memorizing his name because it was so many letters in his last name and she was trying to make sure she had it right to tell it to the lady on the phone. Commander Matos told

the complainant that she could not use any names. The complainant stated she understood. The complainant stated that the only thing she heard him say was "Dispatch 206," so that is how she knew to say it was number car 206. She further stated that it was not right. She is a woman, and if she was being searched, or whatever the situation was, then she felt that is when they should approach her. She said that if she was in a room or if she was doing anything wrong, she should have been approached, but she was not in the room.

Chairman Allen asked monitor George Kleinmeier if there had been an arrest. Mr. Kleinmeier replied that there had been an arrest. Chairman Allen asked if the person the officer had been chasing was apprehended in the house. The complainant stated he had been arrested.

Reverend Smart asked if the monitor, in his investigation, had found that the officer went to other homes prior to coming to their home. Mr. Kleinmeier stated that he did not recall that. Reverend Smart asked the complainant if she had included that in her report. He stated that he had read her complaint, and while he could have missed it, he wanted to know if she had put it in her complaint that there were other homes that were searched before the officer came to her home. The complainant responded that they were not searched, the officer went in front of the houses where people were standing and he was yelling and cussing at people telling them to get out, or go here, go there, go do something with yourselves and then he went to the house next door prior to coming to her house. Reverend Smart asked if the officer went in to the house. The complainant responded that the officer did not go into anybody's home because she heard people say he could not come in without a search warrant. Reverend Smart asked if he had entered anyone else's home. The complainant stated that the officer did not enter anyone else's home but hers. Reverend Smart asked if the person the officer was looking for was in her home. The complainant stated that he was in her home. Reverend Smart asked if she knew the person. The complainant responded that she did know the person.

Mr. Kleinmeier stated that the complainant might not be aware that part of the investigation revealed that some of her allegations were sustained against the officer because of his physical contact with her. The monitor stated that might be something the complainant needs to be aware of. Reverend Smart asked the monitor to repeat what he had just stated. The monitor told Reverend Smart to look at where the paper states "use of force, not sustained," and read the next paragraph.

Reverend Smart stated that he did not think that the complainant was really concerned with whether the officer filled out the form or not. Mr. Kleinmeier stated that it did relate to the officer's physical contact with the complainant. Reverend Smart asked Chairman Allen if he knew what they were talking about. Chairman Allen stated he understood that the officer saw the person that they had a warrant out for, so he did not need to show a

warrant. The person was caught, and they went to a court of law so it must have passed that due diligence. He further asked if otherwise, if the officer had needed a warrant and went in without the warrant, the case would have been thrown out. Board Counsel William Kelly stated that it depends on the facts and he did not know if they knew everything, so he cannot comment because he has not reviewed the evidence.

Chairman Allen read that "The officer had a lawful right to enter the residence due to the fact that he was pursuing a wanted person who had just entered the residence. The complainant had no lawful right to prevent the officer from entering as per NYS Penal Law Article 35." Chairman Allen asked if the officer concurred that he used physical force. Reverend Smart stated that was why she was standing in the doorway. Chairman Allen further stated that was why the OPS stated that the officer had violated SOP by not filling out the form. He stated that he understood the complainant's concern, and asked the complainant if she had stated in her complaint that she blocked the officer's way. The complainant stated that she was standing in her doorway already when the officer came up to her and asked who she was, if she lived there, and before she could respond to who she was, she stated that she did live there and the officer told her that was good, smacked her arm and went in the house. The complainant stated that it was common sense to ask why he was entering the house or what for or what was going on or anything of the sort. She further stated that she asked the officer if he had a search warrant to come in and he asked her "What did you say to me?" and she asked him again if he had a warrant. The complainant stated that if the officer was in hot pursuit and any of these things, he could not have been in hot pursuit of somebody if he never chased that person. She further stated that the only reason why she even knew there was an issue was because as soon as her friend said to her "Yeah, I know him from the car number coming down the street." He took off, he left, and there was a bunch of people on the block that day and she did not pay attention to where he went because she was standing in front of another house a couple of doors up with family of hers that lives there. The complainant stated that she walked down to her house after the fact, and she was standing in her doorway while the officer was next door to her house. She stated that the officer chose to use discretion, once the complainant spoke to his supervisor. His adrenaline was pumping. The complainant asked how hard do you grab somebody where it causes pinching of the nerve and inner swelling and bruising of the arm, and if he had just grabbed her to get her out of the way, she would not be going through all of this. She stated that her arm was in a sling for two months and she still has to go back and she still has a prior doctor's appointment coming up in reference to her arm. The complainant also stated that she was in school, and she could not complete the things that she was doing due to her arm being messed up.

Reverend Smart asked the complainant if she was aware that the officer could have arrested her. The complainant replied that she did not understand how he could have

arrested her, and if that was the case then why wasn't she arrested, if she was in the room. Reverend Smart stated that he thought the officer used discretion. He stated that years ago he was on the highway, and he was going over the speed limit, the officer moved out, did not turn on lights or anything, but moved up beside him, slowly accosted him and pulled him over. Reverend Smart stated that the officer did not speed to pull him over. Regardless of what takes place, the officer has the right to pull that person over. A hot pursuit does not necessarily mean that they are chasing someone; the officer may have seen the person going into her home, and intended to go into the home to find that person. Reverend Smart stated that to that officer, as she is standing in her doorway, she was actually violating the law and the officer could have arrested her and he chose not to. Reverend Smart further stated that he did not know the types of courtesies that she expected and perhaps something could have been done, but the law says that if that officer is in hot pursuit and then, if he actually arrests someone, and actually finds that person in her home, and she may say that she did not know that person was in violation or whatever the case may be, he was sure that is what she would perhaps say. She would not say "Well, I knew he was wanted by the police and I decided to give him sanctuary." The officer did not put her in that particular situation. Reverend Smart stated that he thinks the officer was doing his duty by pursuing someone who was wanted, and there was a warrant out for that person's arrest. Reverend Smart further stated that he understood where the complainant was coming from and that they could all sympathize with her, but the idea of it is that she should have moved out of the way.

The complainant's mother stated that she had a question for the Board. The complainant's mother stated that where her daughter was standing, in the doorway, there is a doorbell and the officer could have knocked on the door. She stated that if the officer had knocked on the door or rung the doorbell, she would have come to the door. She further stated that if the officer had stated to her "I believe so and so is here," she would have asked if so and so was there and if the person was there, they would have to come out and talk to the police officers. However, the officer just walked in like it was his house and she did not think that was right. Reverend Smart stated that when the officers are in hot pursuit, that is the law. Reverend Smart explained that if he came and knocked on her door, and he is not a police officer, he would have to ring the doorbell or knock on the door. If an officer is in pursuit of someone, it is a whole different scenario. The complainant's mother asked Reverend Smart if he was saying that if the officer was pursuing someone and he did not know where he went, for example he went to the house next door looking in the back yard. Reverend Smart stated that the officer must have known something because the suspect was in her home. The complainant's mother stated this was correct. Reverend Smart reiterated that the man was in her home. The complainant's mother stated that the officer's manners could have been better. Reverend Smart stated that for the Board to sustain the manners, it needs to be collaborated. Reverend Smart asked to read through the rest of the complaint. Chairman Allen agreed.

Reverend Smart reported that the OPS recommended that the finding for the call handling allegation be closed as *exonerated*. The complainant alleged that the officer entered her home without permission or a warrant. Based on the OPS investigation, the officers observed a party that was wanted on a warrant, the party fled into the complainant's residence. The officer had information there was a warrant for the party, had direct observations of the party and was considered to be in "hot pursuit" of the suspect. The officer is allowed to follow said suspect into the residence and take that suspect into custody, which is what occurred in this incident, however the complainant by her own admission blocked the doorway to prevent the officer from entering. It should be noted that "hot pursuit" is an exception to search warrants which is established and authorized by the courts. By the complainant's actions she could have been and should have been charged with Obstruction Administration, however, the officer chose only to arrest the party he was pursuing.

Reverend Smart reported that the OPS recommended that the finding for the first use of force allegation be closed as *exonerated*. The complainant alleged that she was grabbed by the wrists, and they were turned backwards. Based on the OPS investigation, the complainant by her own admission blocked the doorway to prevent the officer from entering. The officer had a lawful right to enter the residence due to the fact that he was pursuing a wanted person who had just entered the residence. The complainant had no lawful right to prevent the officer from entering and as per NYS Penal Law Article 35, the officer may use physical force when and to the extent that he reasonably believes such to be necessary to effect the arrest, or to prevent the escape from custody, or to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force.

Reverend Smart reported that the OPS recommended that the finding for the second use of force allegation be closed *not sustained*. The complainant alleged that her head was smacked into the mailbox. Based on the OPS investigation, when she was treated in the hospital emergency room she did not indicate having suffered any injury to her head. The officer does not recall her hitting her head. The witness listed by the complainant did not indicate her receiving any force to her head, only that she hurt her arm, therefore there is not sufficient facts to indicate this allegation did in fact occur.

Reverend Smart stated that he would just like to express his thanks to the complainant for coming and expressing her concerns. He further stated that the Board takes those concerns very seriously.

Reverend Smart stated that with regard to the first allegation, which was *exonerated*, it was the admission of the complainant that she stood in the doorway and the law says that an officer in hot pursuit of someone does not have to ask for permission to enter a home.

Reverend Smart stated per law, the Board must concur with the OPS on the finding of exonerated.

Reverend Edward Smart moved to concur with the OPS finding of *exonerated* for the allegation of call handling. Marilyn Hammond seconded the motion. The motion carried unanimously.

Reverend Smart stated that with regard to the second allegation, it was reported that the actions of the officer were within reason, and the complainant intentionally blocked the officer's means to pursue and apprehend the suspect. The physical force was not excessive according to law. Reverend Smart stated that he concurred with the OPS on the finding of *exonerated*. Reverend Smart also stated that it must be said that the officer and the OPS stated that the officer should have arrested the complainant for obstructing administration.

Reverend Edward Smart moved to concur with the OPS finding of *exonerated* for the first use of force allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Reverend Smart stated that with regard to the second use of force allegation, the complainant's own witnesses did not agree with the complainant that the officer injured her head. He further stated that if the witness had said something, it would have put it in a totally different category, but the OPS investigated, and the witness stated that the complainant talked about her wrist. Therefore, the Board is forced to agree with the OPS on the finding of *not sustained*.

Reverend Smart moved to concur with the OPS finding of *not sustained* for the second use of force allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 40-09/OPS No. CC2009-090 (Presented by Andrew Phelan Jr.)

Andrew Phelan summarized the complaint. Mr. Phelan stated that on October 26 and 27, 2010, he reviewed the case file at the OPS. Mr. Phelan reported that he reviewed the following documents: the OPS Confidential Reports and the IDCs. Mr. Phelan further reported that the complaint was filed by the mother of the defendant. The complainant alleged harassment and use of force. Mr. Phelan reported that the incident happened on September 5, 2009 and the complaint was filed on September 8, 2009. On February 5, 2010 another letter was received by the GLC by the same complainant about harassment. Mr. Phelan reported that the complainant failed to mention in her complaint that her son had two warrants out for his arrest for robbery in the third degree and two counts of grand larceny in the fourth degree, as well as a warrant out of Albany County Court for not

appearing for the September 5, 2009 incident. Mr. Phelan stated that there was one allegation of use of force and four allegations involving conduct.

Mr. Phelan reported that the complainant alleged officers in a maroon car pulled up and two males exited the vehicle. One of the males is alleged to have had his weapon out and in his hand. The two males, who the complainant later learned to be police officers in civilian clothes, chased her son into the house. The complainant stated that the officers never identified themselves and only yelled "Don't run." The complainant alleged that one officer pointed a gun at her chest. The complainant further alleged that her son was then dragged outside by officers and was then subjected to excessive use of force (knee into his head) which caused a scrape to his cheek. The complainant also alleges that her son was not read his rights and that he never resisted arrest.

Mr. Phelan stated that the OPS recommended the use of force allegation be closed as ***unfounded***. The complainant alleged excessive use of force was used on her son when he was being arrested. Based on the OPS investigation, the officers denied ever dragging the complainant's son. The officers stated that the son was resisting his lawful arrest and was further documented in the Albany Police Subject Resistance Form, which is required to be completed following any type of force used by an officer. Mr. Phelan further reported that the officers used the amount of force necessary to affect the arrest. A witness further corroborated the officer's account of the incident.

Mr. Phelan stated that the OPS recommended that the first conduct allegation be closed as ***unfounded***. The complainant alleged an officer pointed his weapon at her chest. Based on the OPS investigation, the officer stated that he did draw his weapon, but at no time pointed his weapon at anyone. The officer further stated that his weapon was at the low ready, pointed down towards the floor at all times. Mr. Phelan reported that several attempts have been made to contact the complainant to gather information about witnesses that may have been inside the house during the incident, but she has not returned calls.

Mr. Phelan stated that the OPS recommended that the second conduct allegation be closed as ***exonerated***. Based on the OPS investigation, according to the NYS Criminal Procedural Law, officers are allowed to follow a suspect into a house under the hot pursuit exception to a search warrant clause. In this case, officers witnessed the complainant's son smoking marijuana and the subject fled. An officer chased the son and followed him into the house. The officer expressed the fact that information was put out that the son was dealing drugs and may be in possession of an unknown type of weapon. Furthermore, officers witnessed the complainant's son in possession of marijuana, committing the crime of Criminal Possession of Marijuana.

Mr. Phelan stated that the OPS recommended that the third conduct allegation be closed as ***not sustained***. The complainant alleged that an officer told her to “get the f**k out of the way.” The officer admitted that he ordered the complainant out of the way. The officer denied the allegation that he used profanity and said, “get the f**k out of the way.” Several attempts have been made to contact the complainant in reference to speaking with other witnesses who may have witnessed the incident and the complainant has not responded.

Mr. Phelan stated that the OPS recommended that the fourth conduct allegation be closed as ***exonerated***. The complainant alleged that officers continually circled her house and harassed her son in regards to a warrant that he never had. Based on the OPS investigation, the officers were patrolling the area where the complainant lives due to the fact that her son, with whom she lives, had an active warrant issued out of the City of Albany Criminal Court, and an active Felony Arrest warrant for Robbery issued out of the City of Rensselaer Criminal Court. According to the complainant, officers did approach her son but he fled the house.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was not present.

Mr. Phelan reported that a monitor had been appointed to the case and he did a very nice job with the report. Mr. Phelan asked if the monitor had anything to add. Monitor George Kleinmeier stated that he had nothing to add.

Mr. Phelan asked if there were any questions from the Board. It was noted that the Board had no questions.

Andrew Phelan Jr. moved to concur with the OPS finding of ***unfounded*** for the use of force allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of ***unfounded*** for the first conduct allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of ***exonerated*** for the second conduct standards allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of ***not sustained*** for the third conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of *exonerated* for the fourth conduct standards allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 41-09/OPS No. CC2009-068 (Presented by Reverend Edward Smart)

Reverend Edward Smart summarized the complaint. The complainant alleged that her son was involved in a traffic accident, was injured and required medical attention. The complainant alleged that the investigating officer was rude towards her, used profanity, and inappropriately moved her son while he was being medically treated by EMS personnel. The complaint alleged that the officer was attempting to look for her son's driver's license by going through his pockets and flipping him to the right while EMS personnel were telling the officers to stop. The complainant alleges that the officer told some unknown person to, "shut her the f**k up," referring to a girl who was disabled. The complainant alleged that during her conversation with the officer, the officer told her he had "18 ½ f**king years on the job," called her an "f**king liar," and told her to get away from him. It was further alleged that the officer told the complainant's son that he was a f**king liar when referring to whether the son was or was not wearing his seatbelt.

Reverend Smart reported that he reviewed the following documents: sworn statement dated May 14, 2010; log dated August 4, 2010; Amended Accident Report dated August 4, 2009; Fire Report dated August 4, 2009; Citizen's Report mailing dated August 8, 2009; Confidential Report dated September 15, 2010; Ambulance unprofessional language report; Fire Fighter's Statement; Step Father's No Foul Language Statement; and Citizen's Complaint Form dated September 1, 2009.

Chairman Allen asked if there were any EMS witnesses. Reverend Smart responded that there were from those in the ambulance and those are the people who testified and those statements were included. Chairman Allen asked if those statements were in the report. Reverend Smart replied in the affirmative.

Reverend Smart reported that the complainant alleged that the officer inappropriately moved and flipped her son from side to side while he was being treated by medical personnel. Based on the OPS investigation, several witnesses were interviewed as well as the complainant and her witnesses, which indicated different accounts of the alleged events. The officer admitted to looking for the son's wallet. However, there is not enough evidence to sustain the allegation that the son was flipped or moved in any inappropriate manner. Fire officials and ambulance crew members all stated that the patient was not moved by the officer. Reverend Smart stated that the actions of the officer and the admission by the fire officials suggest that the actions by the officer were not inappropriate. Witnesses did not affirm that the officer moved the complainant's son

in any manner. Reverend Smart stated that he concurred with the OPS finding of *not sustained*.

Chairman Allen asked if the complainant was present. It was noted that the complainant was not present.

Chairman Allen asked if the Board had any questions. It was noted that the Board did not have any questions.

Reverend Edward Smart moved to concur with the OPS finding of *not sustained* for the first conduct allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Reverend Smart stated that the OPS recommended that the second conduct standards allegation be closed as *not sustained*. The complainant alleged that the officer used profanity towards her, called her a liar, and told her to get away from him. Based on the OPS investigation, the officer denied ever using profanity. Another witness of the complainant stated that she "believed" the officer used the "F" word when the officer told the complainant to back up. Therefore, conflicting recollections of the facts of the incident fails to prove or disprove the allegation. Reverend Smart stated that he would like to add that the ambulance and firefighter crews were there, and according to the complaint itself, they were providing medical care to this person, and they would have heard whatever was said and whatever conversations took place. Reverend Smart stated that the conflicting facts of the dialogue makes it impossible to determine what was said and the precise language used is unclear by the witnesses. What constitutes profanity seems also to make it difficult to determine language, words, and the inappropriate language that may have been used.

Reverend Edward Smart moved to concur with the OPS finding of *not sustained* for the second conduct allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Reverend Smart reported that the OPS recommended that the third allegation for conduct be closed as *not sustained*. The complainant alleged that the officer called her son a f**king liar. Based on the OPS investigation, the son never mentioned in his written statement that the officer called him a f**king liar. The officer denied saying the above allegation. The complainant's husband/boyfriend could not verify the allegation, and only recalled the officer calling his step-son a liar. Reverend Smart stated that the witnesses cannot agree once again who said what and the language used. The step-father could not recall the officer using profanity. The witness called by the complainant could not verify the language used or if profanity was used.

Reverend Edward Smart moved to concur with the OPS finding of *not sustained* for the third conduct standards allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

Reverend Smart reported that the OPS recommended that the fourth allegation for conduct standards be closed as *not sustained*. The complainant alleged that the officer stated when referring to an unknown girl who was at the scene, "What the f**k is she talking about, shut her the f**k up." Based on the OPS investigation, there were no independent witnesses available and the officer denied the allegation. The other witnesses on the scene did not recall the above incident. Several attempts were made to contact the witness who the alleged comment was made to. The witness did not return calls for an interview. Reverend Smart stated that the witnesses were not forthcoming and the other persons who were at the scene did not recall the incident. Reverend Smart stated that although he is concerned about the continuing suggestion of profanity, there are not any supporting witnesses. He further stated that he must note the unreturned phone calls made by the OPS, in attempts to interview a witness that might have shed some light on the incident. Reverend Smart stated that without any supporting evidence of inappropriate language he is compelled to agree with the OPS' finding of *not sustained*.

Reverend Edward Smart moved to concur with the OPS finding of *not sustained* for the fourth conduct allegation. Anthony Potenza seconded the motion. The motion carried unanimously.

CPRB No. 50-09/OPS No. CC2009-111 (Presented by Andrew Phelan Jr.)

Andrew Phelan summarized the complaint. Mr. Phelan stated that on October 27, 2010, he went to the OPS and reviewed the case file. Mr. Phelan reported that the incident happened on November 1, 2009 on State Street. The complainant alleged that he and his friend were robbed and they called 911 and no one came, so they called again. Allegedly the same group damaged a nearby house by breaking the windows and the residents also called the police. The police arrived and about five (5) people went to the police officer and all began talking at once. The officer said to "Back up." The complainant stated that he advised the officer that he was robbed, but the officer did not take their names or file a report. The officer allegedly only took a report from the male whose house was damaged. A witness told the officer that the group was still on the corner and the officer replied, "Do you want to play Kojack?" When asked if he was going to file a report the officer told the complainant to go home. The complainant's mother contacted the police the following day and was told the officers did not believe her son was truthful about what happened. The sergeant was contacted, and he said he would speak with the officers involved. The sergeant called back and said he spoke with the officer who said

that neither the complainant nor his friend said they were robbed. The complainant alleged that the officer never asked if the son needed medical attention.

Mr. Phelan reported that the OPS recommended that the investigation be closed as *no finding* for the call handling allegation. The complainant failed to produce information to further the investigation. Based on the OPS investigation, the OPS made attempts to contact the complainant for clarification, and he has not been cooperative. The officer stated there was no mention of anyone being robbed or assaulted on the night of the police contact. Days later, however, when speaking with one of the parties, he wished to file a complaint of robbery, to which the officer responded he did not believe the incident occurred based upon his observations that night. Mr. Phelan stated that a phone call was made to the complainant on March 17, 2010, and there was no response or answer. He further stated that a certified letter was sent on May 3, 2010 and it was received on May 5, 2010, but there was still no response.

Mr. Phelan asked if the complainant was present. It was noted the complainant was not present.

Mr. Phelan asked if the Board had any questions. It was noted the Board did not have any questions.

Andrew Phelan Jr. moved to concur with the OPS finding of *no finding* for the call handling allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

CPRB No. 54-09/OPS No. CC2009-118 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. Marilyn Hammond reported that the complainant alleged that an officer unjustly threatened to arrest her during a domestic incident involving her son and her son's ex-girlfriend. Ms. Hammond reported that the OPS finding was *exonerated* for the first conduct allegation. The complainant alleged that an officer told her to leave the scene, and if she did not leave, she would be handcuffed and arrested in front of her children. Based on the OPS investigation, the officer denied mentioning the children, but admitted telling her if she did not leave the scene, she would be arrested for obstructing governmental administration. The officers on the scene indicated that the complainant was creating a disturbance and interfering with their investigation and also double parked and obstructing traffic. Her arrest would have been in the presence of her children had she not left. Officers, however, have no control over who is with the complainant at the time.

Ms. Hammond reported that the OPS recommended that the investigation for the second conduct allegation be closed as *exonerated*. The complainant alleged that the officer was calling the victim after she said she did not want to press charges. Based on the OPS

investigation, the officer upgraded the charge at the station, made the correction to the report, and called the victim to notify her of the change and to ascertain if she was still unwilling to follow through with charges against her ex-boyfriend. The victim received another call from an In-take Specialist from the Domestic Violence Unit, as a matter of routine follow-up, to check on her and inform her of her rights and to make sure she did not wish to pursue criminal charges or an order of protection against her ex-boyfriend.

Marilyn Hammond stated that after reviewing the case, she read seven IDCs, one Order of Protection, one Domestic Incident Report, one Confidential Report, and the 911 call.

Ms. Hammond reported that the complainant's witness stated that the argument was with the boyfriend, it was his night to have his child, which was December 9, 2009 and he left with the child. The complainant did not want him to have the child, so she called the police. The witness was speaking with the officer, and the complainant's car was double-parked behind a police car. The officer asked her to leave, and then the officer told her witness to leave, which she did. The complainant asked why. The officer told her that if she did not leave she would be arrested. The complainant's witness stated that she did not think that the officer was really going to arrest the complainant and the officer was looking out for her. The complainant was upset and raising her voice at the officer and vice versa. Ms. Hammond stated that it was the witness who was saying these things. She further reported that the witness stated that the conversation was not argumentative. The witness also did not hear the officer mention anything about her children. The complainant mentioned that she had kids in the car and he was scaring them. Ms. Hammond reported that there was no physical contact between the two parties.

Chairman Allen asked if there were any questions from the Board. It was noted that there were no questions.

Chairman Allen asked if the complainant was present. It was noted the complainant was not present.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the first conduct standards allegation. Chairman Jason Allen seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the second conduct standards allegation. Reverend Edward Smart seconded the motion. The motion carried unanimously.

- B. *Approval of the Board's 2010 First Quarterly Report, 2010 Second Quarterly Report, and the 9th Annual Report.*

The 2010 First Quarterly Report was reviewed. Reverend Edward Smart moved to approve the 2010 First Quarterly Report. Chairman Jason Allen seconded the motion. The motion carried unanimously.

The 2010 Second Quarterly Report was reviewed. Reverend Edward Smart moved to approve the 2010 Second Quarterly Report. Chairman Jason Allen seconded the motion. The motion carried unanimously.

The 9th Annual Report was reviewed. Chairman Jason Allen moved to approve the 9th Annual Report. Anthony Potenza seconded the motion. The motion carried unanimously.

C. *Committee/Task Force Reports*

By-Laws and Rules

Committee Chairman Jason Allen stated that he had nothing new to report.

Community Outreach

Committee Chairman Reverend Edward Smart stated that he had nothing new to report.

Mediation

Committee Chairman Jason Allen reported that he sent an email to the Chief earlier that day asking him about next steps. Chairman Allen asked Coordinator of the Board Sharmaine Moseley to find time late in the afternoon next week to talk to the Chief about mediation and some other things concerning the video and early warning. He stated that there were just some things he wanted to follow-up on from before the summer.

Police Department Liaison and Policy Review/Recommendations

Committee Chairman Andrew Phelan Jr. stated that he had nothing new to report.

Public Official Liaison

Chairman Jason Allen stated that Committee Chairman Ronald Flagg was not present and asked if he was going to be at the meeting next month. Ms. Moseley replied Mr. Flagg would not be present. Chairman Allen requested that meetings be scheduled in January with the Mayor and Common Council Public Safety Committee.

Task Force on Monitors

Task Force Chairman Jason Allen reported that he understood there were some concerns regarding the monitors' protocol, and he just needed some data. Chairman Allen stated that it helped in conversations with others if it was indeed happening. Ms. Moseley

asked Chairman Allen if he would like to discuss having someone else Chair the Task Force, since Jean Gannon had been Chair of the Task Force on Monitors. Chairman Allen stated that he was okay with having his name as Chair for the Task Force on Monitors until the Board elects new officers and get new Board members.

D. *Report from the Government Law Center*

Government Law Center (GLC) 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 seventy-nine (79) active complaints before the Board for review. Out of those seventy-nine (79) active complaints, six (6) were reviewed at tonight's meeting, which leaves the Board with seventy-three (73) active complaints. There are twenty-six (26) cases ready for review.

It was further reported that three hundred and ninety-two (392) complaints have been closed. The total number of complaints that remain suspended from review is eleven (11). The GLC sent a letter to the City requesting the status of those complaints suspended from review. The total number of complaints filed to date is four hundred and seventy-six (476).

It was reported that since the Board's last meeting, the GLC received zero (0) grievance forms.

Board Meeting

It was reported that the next board meeting is scheduled for November 19, 2010 at 6 p.m. at Albany Law School. Chairman Allen stated he was okay having the meeting at the GWU the Center. Chairman Allen stated it might be preferable to have it at the GWU the Center as long as Reverend Smart was okay with it. Reverend Smart stated that he was okay with it. Chairman Allen asked if anyone had a problem with changing the location. Andrew Phelan stated he did not have a problem with it.

E. *Report from the Office of Professional Standards*

The report from the Office of Professional Standards was removed from the agenda.

F. *Report from the Chair*

Chairman Jason Allen stated he had nothing new to report.

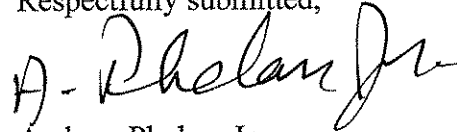
V. Public Comment

Chairman Jason Allen opened the floor for public comment. It was noted that there were no public comments.

VI. Adjournment

Reverend Edward Smart moved to adjourn the meeting. Chairman Jason Allen seconded the motion. The motion carried unanimously. The meeting was adjourned at 7:32 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Phelan Jr.", written in a cursive style.

Andrew Phelan, Jr.
Secretary