

**City of Albany
Citizen's Police Review Board
GWU the Center
274 Washington Avenue-Teen Center Conference Room
May 18, 2011
6:00 p.m. – 8:00 p.m.**

Present: Marilyn Hammond, Lilian Kelly, Andrew Phelan Jr., Anthony Potenza, and Reverend Edward Smart.

Absent: Jason Allen, Eugene Sarfoh, and Akosua Yeboah.

I. Call to Order and Roll Call

Chairman Edward Smart called the meeting to order at 6:06 p.m. He noted that Lilian Kelly stepped out and will return shortly.

II. New Business

A. *New Complaints*

1. New Complaints Received since April 11, 2011 Meeting

Chairman Edward Smart reported that seven (7) new complaints were received by the Board since the April 11, 2011 meeting. Andrew Phelan Jr. read a summary of each new complaint.

CPRB No. 16-11

According to the complainant, on February 11, 2011 he was stuck behind a police car because the police car was parked in the middle of the street. The complainant waited for eight minutes before he honked the horn. The complainant alleges that the officer let him pass only to pull him over. The complainant further alleges that the traffic stop was for twenty-five minutes. The complainant claims that the officer gave him a summons for an unsafe start by spinning his tires as he pulled out of his spot. The complainant alleges that the officer was sarcastic.

*A monitor **was not** appointed to investigate.*

CPRB No. 17-11

According to the complainant, an officer allegedly pulled her over on Orange Street for obstructing traffic. There were many others in the traffic as well because there is always

traffic on that street. The complainant alleges that the officer singled her out because she was a white female with a black male in her car. The complainant further alleges that the officer told her to avoid blocking Orange Street and she would have to back up onto Henry Johnson since no one was behind her.

A monitor was appointed to investigate this complaint.

CPRB No. 18-11

According to the complainant, on May 15, 2010 the Albany Police Department received a report that the complainant was in possession of a weapon. When an officer approached the complainant he allegedly asked him if he had any weapons. The complainant said that he had a work tool and tried to take it off his belt to give to the officers. The complainant alleges that the officers threw him to the ground and began to wrestle with him. The complainant woke up in the hospital. The complainant further alleges that the officers fabricated their statements which caused him to have a prison sentence. The complainant alleges that the officers harassed and abused him on numerous occasions which is why they did not bring him to the Capital District Psychiatric Center upon his request. They were afraid that he would tell the doctors what the officers were doing to him. On May 6, 2011, the Board voted and agreed to not accept his complaint for review because the incident occurred more than a year ago. The complaint is now considered closed.

Reverend Smart stated that we received this complaint and a question arose whether this complaint should be honored because it is past the statutory time limit. The Board decided to close the case.

CPRB No. 19-11

On March 17, 2011, when the complainant was in the custody of the Albany Police Department, he was transported to Albany Medical Center for chronic pain and anxiety. The complainant alleges that as he was waiting to be seen by the doctor, the arresting officer grabbed him by his disabled arm and yanked him back to the stretcher with full force. According to the complainant, a nurse witnessed the incident and said "Be nice, be nice." The complainant further alleges that the officer tried to keep his five cartons of cigarettes by telling him he was only allowed to have three. The complainant claims that the officer did not send his cigarettes and cell phone with the complainant to Albany County Jail and said that he was keeping them for safe keeping.

A monitor was appointed to investigate this complaint.

CPRB No. 20-11

The complainant alleges that several officers responded to a neighbor who called for their daughter's boyfriend. The daughter's boyfriend had the same jacket as the complainant's

son. The officers allegedly informed the complainant that her son had a warrant for an unpaid fine. According to the complainant, when she asked how much the fine was the officer seemed upset and yelled "That's not how we do that." As the complainant walked away, the officer allegedly grabbed her arm and asked for another individual who was not present. The complainant alleges that after going to court she was given community service and the officer was not given community service.

A monitor was not appointed to investigate this complaint.

CPRB No. 21-11

On April 1, the complainant was accosted by another man (who the complainant had an order of protection against) so he called 911. One of the officers who arrived on the scene allegedly made it clear to the complainant that she had a dislike for the complainant. The complainant alleges that the police officer let the other man go without making a report and put the complainant in harms way.

A monitor was not appointed to investigate this complaint.

CPRB No. 22-11

According to the complainant, her son was a victim of a stabbing which resulted in major surgery. The complainant alleges that the arresting officer had a conflict of interest with her son due to her son's past. The person who was responsible should be arrested.

A monitor was not appointed to investigate this case.

Chairman Edward Smart noted that Lilian Kelly had arrived.

III. Approval of the Agenda

The agenda was reviewed. Anthony Potenza moved to approve the agenda. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

IV. Approval of the February 4, 2011 Meeting Minutes

The Board reviewed the February 4, 2011 meeting minutes. Lilian Kelly moved to approve the February 4, 2011 meeting minutes. Marilyn Hammond seconded the motion. The motion carried unanimously.

V. Old Business

CPRB No. 27-10/OPS No. CC2010-056 (Presented by Chairman Edward Smart)

Chairman Edward Smart stated that this case was received by the Government Law Center (GLC) on May 14, 2010. The complainant has not responded to the OPS nor has

the complainant filled out a complaint form as required by the Board. Chairman Edward Smart moved to close CPRB 27-10. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 32-09/OPS No.CC2009-057 (Presented by Anthony Potenza)

Chairman Edward Smart acknowledged that the complainant was present by phone. Chairman Smart informed the complainant that they were the CPRB and were reviewing the complaint that she filed. He informed the complainant that Mr. Potenza will be reviewing her complaint and after Mr. Potenza has spoken, she will have the opportunity to add any information that she wanted. Anthony Potenza stated that this was the continuation of OPS No. CC2009-057/CPRB No. 32-09. The incident occurred on July 3, 2009. A monitor was assigned to the case. The complainant was alleging violations of conduct standards (2 counts), call handling (1 count), and use of force (2 counts). Mr. Potenza stated that this complaint was initially reviewed by the Board on February 4, 2010. At that meeting, the Board requested that the OPS conduct a further investigation by making an additional attempt to contact and interview the complainant regarding the allegations in the complaint. Extensive further attempts to contact the complainant resulted in the OPS being able to interview the complainant, by phone, about the incident. The complainant no longer lives in this area. The monitor listened to the phone interview which the OPS conducted with the complainant and the complainant's ex-boyfriend.

Mr. Potenza reported that he reviewed the documents: Citizen Complaint Form; Statement by the complainant; Civilian Complaint Report; the OPS Confidential Report; Albany Police Department Correspondence with the complainant; Citations from Criminal, Penal, and Vehicle and Traffic law; Use of Force Reporting Requirements; the SOP regarding issuance of uniformed traffic tickets; the SOP regarding motor vehicle stops; registration information including the license plate information report; and copies of tickets for improper or no signal, for nontransparent windows, for speed in a speed zone, for moving operation of a mobile phone, and for parking in front of a hydrant. Mr. Potenza further reported that he also reviewed: Intra-Departmental Correspondence (IDC) from officers; report by police officer that complainant was upset and used vulgar language which warranted disorderly conduct; spoke on the cell phone; and refused to comply with requests to roll down the windows. Other IDC's reflected that the officer did not shove or push the complainant and no tool was used to break the complainant's car window. Mr. Potenza further reported that he also reviewed: the Call Incident, Traffic Tickets, Citation Entry, and the Monitors' Report.

Mr. Potenza summarized the complaint. The complainant parked her vehicle at a grocery store in front of a hydrant. The complainant saw that a police officer was writing her a ticket. The complainant went outside and asked the officer not to write her the ticket and she would move her car. The complainant alleges that the officer screamed at her and

told her not to tell the police officer what to do. The complaint further alleges that the officer said that “He runs the city and makes the rules.” The complainant got into the car and moved the car two spaces. The officer drove away looking upset. The officer allegedly came back, got out of his car, and asked her to open her car window. The complainant ignored him and stayed in her car. The complainant stated that she did not see a reason to talk to him anymore because she was parked in front of the fire hydrant. The officer already gave her a ticket for that. The complainant kept ignoring the officer, so the officer allegedly punched the complainant’s car window. The complainant stated that she was scared at this point, and was not opening the window. The officer started asking for her license and registration, but the complainant kept her windows closed and doors locked. The complainant alleged that the officer went back to his vehicle and came back with something to break the car window. The complainant stated that she opened her car window a little in an effort to calm the officer down. She alleged that when she was talking to him, he put his hand through the “little space” and took off the door lock. The complainant alleged that the officer opened her car door, took off her seatbelt, and pulled her out of the car. The complainant alleged that the officer “pushed her around.” His partner, who arrived later, with the officer, handcuffed her. The complainant stated that she asked the officer why he was doing this. The officer allegedly responded that it was because she refused to give him her license. The complainant alleged that the officer went inside the vehicle and took her driver’s license out of her bag. She also stated that the officer gave her another ticket for not putting on her signal when she pulled the vehicle two (2) spaces up to park.

Mr. Potenza summarized the findings of the OPS. He reported that the OPS recommended that the first conduct standards allegation be closed as *not sustained*, where the review failed to disclose sufficient facts to prove or disprove the allegation that was made in the complaint. The complainant parked in front of a fire hydrant, attempted to ask for forgiveness. The officer allegedly responded that he did not care and started screaming. Based on the OPS investigation, the officer stated that he did not scream at the complainant, and the only conversation he had with her, other than explaining the violation of parking on a fire hydrant, was the potential charge of disorderly conduct for the way she was acting in a public place. The officer stated that he did not say that he was the one who runs the city and can do what he wants. A witness stated that there were no problems between the complainant and the officer at this part of the interaction with each other. One witness stated that everything was fine, there was no argument at this point of the interaction, and the officer did not say anything about the ticket that he was going to issue the complainant. Another witness stated that the complainant was giving the officer a really hard time by cursing at him, and he did not argue with her. The complainant continued to curse the officer as he was leaving, and the witness saw the complainant give the officer the middle finger as the officer began to drive away. A third witness account of what occurred during the incident is inconsistent to what the other two

witnesses and the officer stated. This witness recalled the officer and the complainant arguing during the issuing of the parking ticket.

Mr. Potenza asked Chairman Smart if he would like to hear from the complainant on each of these counts or make a determination on the first count of conduct standards.

Chairman Smart asked if there was anything that the complainant would like to share with the CPRB after hearing the monitor's and OPS' investigation of the case.

The complainant responded that she would like to mention two things. First, when the officer said that he was issuing her a ticket for not signaling when she moved the car forward she was confused because she believed that she did not need to signal when moving the car forward. Second, the reason why she did not open the door or window was because she did not know why he came back. He looked furious which shocked her. She was on the phone and scared of what he was going to do to her. He had his hand placed where his gun was, looked furious and punched her car. The complainant then asked if she could hear what the third witness stated. Mr. Potenza stated that a third witness account of what occurred during the incident is inconsistent to what the other two witnesses and the officer stated. This witness recalled the officer and the complainant arguing during the issuing of the parking ticket. The complainant stated that that there were fifteen (15) people and neighbors who saw the incident.

Mr. Potenza acknowledged that monitor George Kleinmeier was present. Mr. Kleinmeier asked the complainant to shed some light on the allegation that she was handcuffed and thrown on the hood of the car. The complainant stated that the officer reached into the window, unlocked the car, handcuffed her and threw her onto the hood of the car without an explanation. Even though she was not pregnant, she told the officer that she was so he would not hurt her. The complainant stated that she was not double parked by the hydrant and moved forward two spaces.

Mr. Smart asked if any of the Board had any questions for the complainant. Mr. Ponteza stated that there was a witness that stated that the complainant was giving the officer a really hard time by cursing at him, and the officer did not argue with her. The complainant continued to curse at the officer as he was leaving. The witness saw the complainant give the officer the middle finger as the officer began to drive away. Mr. Potenza asked the complainant if this was true. The complainant replied in the negative. Mr. Potenza stated again that a witness stated that the complainant was giving the officer a really hard time by cursing at him, and he did not argue with her. The complainant continued to curse the officer as he was leaving, and the witness saw the complainant give the officer the middle finger as the officer began to drive away. The complainant stated that that this is not true. The only reason that she reported the officer was because she felt unsafe. It was not fair how she was treated. She further stated that she hoped

that the witness saw the officer punch her car window, kick her car, pull her out of her car, and push her around.

Mr. Potenza explained that there are six (6) findings that the Board is able to offer in each one of the charges that the complainant made in her complaint. One of them was ***Sustained***, where there was enough proof to satisfy everyone that the facts presented occurred the way that you say they did. ***Not Sustained***, where it fails to disclose sufficient facts to prove or disprove, in other words there is not enough evidence to sustain or to disprove this particular case. ***Exonerated***, where the acts which provided the basis for the complaint occurred but the review showed that such acts were proper. In other words, the police officers acted according to their standard operating procedures. ***Unfounded***, where the review showed that the act or acts complained of did not occur at all. ***Ineffective Policy***, where the Board can suggest additional training for the officers. ***No Finding***, where the complainant fails to produce information to further the investigation. Mr. Potenza stated that those are the options. The tools that the Board has that are most effective are those of the monitor. The monitors' report carries a lot of weight because the monitor looks at all of the facts and makes a determination.

The complainant stated that people are getting away with a lot of things. She believes that the officer will do something else if the Board does not act.

Mr. Potenza stated that the Board is responsible for looking at the facts of the case to determine if the OPS investigation was thorough and complete. The fact that there was extensive efforts made to follow up after the initial hearing of this case in February of 2010 points to a sincere and thorough effort on the part of the OPS to do a complete investigation. When the Board concurs with the findings of the OPS, it means that the investigation was done thoroughly and completely. It is up to the OPS to take any action they deem necessary in regard to the conduct of a member of the police department in a particular incident or case like this.

The complainant asked to clear up whether there was a decision about her case without any evidence of any witness.

Chairman Smart explained that Mr. Potenza read the disposition of the Board's findings according to the legislation. The Board is governed by law. He explained that this case would have been closed some time ago except that the Board asked the OPS to locate the complainant. They found the complainant and interviewed her, which means the Board has done all that it can do in terms of coming to some agreement and trying to find the kind of information that will help move forward in terms of this particular complain that you have made.

The complainant stated that the officer must know that she has filed a report against him. How does she know that he would not try to find her to retaliate?

Ms. Kelly stated that one thing that might be of interest when they review all of the cases is that the name of the officer is redacted so the Board can look at it objectively through the point of view of the complainant. The Board does not know the race, gender, or name of the officer. In this particular case the Board does not know who the officer is.

The complainant stated that she did not remember the officer's name, but the officer has her name and information. He knows that she filed this complaint against him. How does she protect herself from him if he tries to do something against her?

Mr. Potenza stated that she may want to hear from the OPS Commander who supervises the APD. Commander Ron Matos stated that although they cannot guarantee that the officer will not retaliate, there has not been any such type of case. The OPS has not shared any of her information with him. There has been no effort on the officer's part to reach the OPS to ascertain her information. If the officer should have contact with the complainant it would be inappropriate. He advised the complainant to call him if the officer reaches out to her.

Mr. Potenza reported that the OPS recommended that the first conduct standards allegation be closed as ***not sustained***. Anthony Potenza moved to concur with the OPS finding of ***not sustained***, where the review failed to show sufficient facts to prove or disprove the allegation made in the complaint. He stated that the investigation was done in a proper manner. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended that the second conduct standards allegation be closed as ***not sustained***, where the review failed to show sufficient facts to prove or disprove the allegation made in the complaint. Anthony Potenza moved to concur with the OPS finding of ***not sustained*** for the second conduct standards allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended that the use of force allegation be closed as ***exonerated***, where the acts that proved the basis for the complaint occurred but review showed that the acts were proper. Anthony Potenza moved to concur with the OPS finding of ***exonerated***. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Chairman Smart explained to the complainant that there was another allegation in her complaint which she was unaware of. Mr. Potenza reported that the OPS recommended that the call handling allegation be closed as ***sustained***, where the review disclosed sufficient facts to prove the allegations made in the complaint. Based on the OPS investigation, the OPS found that the officer failed to submit a subject resistance report as required by departmental policy to which the officer admitted his deficiency. Anthony Potenza moved to concur with the finding of ***sustained*** and that the investigation on this

count was done professionally and completely. Chairman Edward Smart seconded the motion. The motion failed to carry with a 4-0 vote. Lilian Kelly abstained from voting.

Ms. Kelly explained her reason for abstaining. She stated that the Board should be voting on those allegations that are brought by the complainant. This is an internal matter for the OPS with respect to their policies and procedures and was not a matter brought in front of the Board by the complainant. Ms. Kelly explained that she does not want to discourage the OPS but does not want to be addressing deficiencies in procedure. The officer not filling out paper work is not something the complainant would know to allege. Could you ever see a situation where a complainant will file a complaint against an officer for failing to submit a subject resistance form?

Chairman Smart explained that if he was reviewing a case where an officer used a taser gun and he did not see a report in the packet, he would know that something was not done. It is great that the OPS holds its officers to a higher standard. A standard in which the Board should be able to scrutinize if the officers fail to do the proper paper work. The paper work is just as important as their conduct and what they do as officers. There are times when Board members may pick up on those particular items as well as the OPS because it is a check and balance situation. The Board cannot make a disposition on this particular call handling allegation because it does not have a majority vote. The Board needs five affirmative votes for a motion to carry.

Mr. Potenza stated that this investigation by the OPS on the call handling allegation is part of the whole investigation. Even though it was not necessarily brought by the complainant, it is a part of the investigation by the OPS for the Board to look at and make a determination regarding. Sustaining the OPS finding of *sustained* is concurring with the OPS that they have *sustained* an improper call handling findings and have taken action to address the issue. Mr. Potenza further stated that if the Board can't come to a majority vote on that fact, then he is flabbergasted.

Chairman Edward Smart moved to table the vote for this allegation until the next meeting. Anthony Potenza seconded motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended that the third conduct standards allegation be closed as *not sustained*, where the review failed to show sufficient facts to prove or disprove the allegation made in the complaint. Anthony Potenza moved to concur with the OPS finding of *not sustained* for the third conduct standards allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

Chairman Smart thanked the complainant for making herself available for the meeting.

Chairman Smart announced that Barbara Smith, Chairwoman of the Common Council's Public Safety Committee, was present. He thanked her for coming to the meeting.

Anthony Potenza reported that the complaint was received on February 19, 2010. It was noted that a monitor was assigned to the complaint. Mr. Potenza stated that the complainant alleged improper use of force and two (2) counts of violation of conduct standards. He reported that he reviewed the following documents: Citizen Complaint Form; Civilian Complaint Report; OPS Confidential Report; Intra-departmental Correspondence (IDC) from six (6) officers involved; Certificate from Conviction on the Violation and the Conditional Discharge and Court Surcharge document; Call Ticket; Incident Report of Making Graffiti and Possession of Graffiti Instruments; Arrest Report; Oral Statement by the complainant admitting the incident; Property Report of the Evidence; Property Report of Possessions of the Complainant; and Monitors Report. Mr. Potenza reported that this case involved the complainant who admittedly painted graffiti on a side of a building in the area of Lark Street. Mr. Potenza summarized the complaint. The complainant alleged that he was stopped by two officers, and later more officers arrived after he was stopped. The complainant alleged that one of the officers, not the arresting officer, grabbed him by the throat, and led him by the throat up against the patrol car where he was then threatened by an officer. The officer allegedly stated "I'll take you behind the building and beat the f**k out of you." The complainant further alleged that he asked the officer for his name and badge number and the officer refused to give the name and badge number. While the complainant was being booked, he allegedly asked several other officers for the name and badge number of the officer who grabbed his throat and threatened him. The officers in booking allegedly did not supply the officer's name or badge number to him. Mr. Potenza reported that the IDC's all refute the complainant's allegations of grabbing by the throat and threatening. It was noted that the complainant was not present. Mr. Potenza asked if monitor Al Lawrence had anything to add. Mr. Lawrence stated that there were six (6) officers who denied the complainant's allegations and there was no evidence that supported the complainant's allegations.

Mr. Potenza reported that the OPS recommended that the finding for the first use of force allegation be closed as ***not sustained***, where the review failed to prove or disprove the facts of the complaint. The complainant alleged that the officer grabbed him by the throat and choked him. Based on the OPS investigation, none of the officers reported witnessing any officer committing those acts. One of the officers stated that he grabbed the complainant by the shirt to keep him under control as he was moving around and not following verbal commands. Mr. Potenza stated that there are not sufficient facts to prove or disprove the allegation. Anthony Potenza moved to concur with the OPS finding of ***not sustained*** as to the first use of force allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended that the finding for the first conduct standards allegation be closed as ***not sustained***, where the review failed to prove or disprove the facts of the complaint. The complainant alleged that an officer threatened to take him behind the building and beat the f**k out of him. Based on the OPS investigation, the officer denied the allegation. None of the officers on the scene reported hearing the alleged threatening remarks. Anthony Potenza moved to concur with the OPS finding of ***not sustained*** for the first conduct standards allegation. Lilian Kelly seconded the motion. The motion carried unanimously.

Mr. Potenza reported that the OPS recommended that the finding for the second conduct standards allegation be closed as ***not sustained***, where the review failed to prove or disprove the facts of the complaint. The complainant alleged that the officers refused to help the complainant find the name of the officer who allegedly choked and threatened him. Based on the OPS investigation, one officer stated that he gave the complainant his name and badge number which was witnessed by another officer. There were no witnesses to the officers allegedly refusing to help the complainant find the name of the officer who had threatened him. Several officers admitted that they did not witness any officer refusing help to the complainant. Anthony Potenza moved to concur with the OPS finding of ***not sustained*** for the second conduct standards allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

CPRB No. 15-10/OPS No. CC2010-015 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complaint. The complainant alleged that after calling 911 to obtain assistance in getting her son to take his medicine; the police arrived, did not knock on the door, pushed the door in, and pushed her son for no reason. The complainant further alleged that the police yelled at her mother and the complainant's other son who is autistic. The complainant alleged that her son's nose was broken. Based on the OPS investigation, the complainant's son was using a laptop. When the officers tried to get information from him, the son grabbed one of the officers in the groin area and a struggle started. At this point, the complainant jumped on the back of the officer. It was probably during the struggle when he obtained the bloody nose. The police attempted to stop the son's nose from bleeding by placing salt on his face.

Ms. Hammond reported that she reviewed all of the records. There were several IDCs, a 911 video, the domestic incident report, and the Albany Medical Center grievance form. The complainant was sent to the Albany Medical Center and the Capital District Psychiatric Center (CDPC). There were several unsuccessful attempts to have a meeting with the complainant and her son. In July, the detective could no longer reach the complainant. The detective sent a certified letter and it was returned to sender unclaimed. Ms. Hammond noted that monitor Richard Lenihan was assigned. It was acknowledged that Mr. Lenihan was present. Mr. Lenihan stated that he listened to the 911 call which

clearly indicated that the complainant informed the police dispatcher that she was in fear of being assaulted by her son. Her son happens to be autistic and bi-polar. This was documented by a CDPC social worker. Upon their arrival, knowing that the women could possibly be assaulted, the officers got permission from their supervisor to physically open the outer door to the building to gain entrance to the inside of the building. The apartment door itself was opened by whoever was inside the apartment. Mr. Lenihan stated that he believed that the OPS investigation was thorough.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the first use of force allegation of the police hitting the complainant's son. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *not sustained* for the second use of force allegation that the police pushed the complainant's daughter. Anthony Potenza seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *exonerated* for the call handling allegation that the police did not knock on the complainants' door. The police were given permission by their supervisor. Lilian Kelly seconded the motion. The motion carried unanimously.

Marilyn Hammond moved to concur with the OPS finding of *not sustained* for the conduct standards allegation that the police yelled at the complainant's other son. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

CPRB No. 32-10/OPS No. CC2010-070 (Presented by Lilian Kelly)

Lilian Kelly reported that the alleged incident occurred on June 1, 2010 and involved one count of use of force. It was noted that a monitor was assigned to the case. Ms. Kelly summarized the complaint. The complainant alleged that a call was made with respect to a domestic dispute between family members including a sister and that the person in question was put into handcuffs under protective custody under the New York State Mental Health Law. The person was brought outside in handcuffs. Ms. Kelly reported that the complainant alleged that the officer handcuffed her, pushed her out the door, sat her on the stairs, picked her up, kicked her feet out from her, pushed her down, put her face to the ground and put her feet on her neck. Ms. Kelly stated that there were seven things that happened. All of the parties, including the complainant, agreed that during this incident the complainant was intoxicated. Ms. Kelly further stated that the complainant agreed that they called 911. Although from the 911 call, it may be possible that another family member actually initiated the call. Everybody agreed that the person was handcuffed and sat on the stairs. Where the stories diverge was where the complaint alleged that the officer pushed her to the ground. The officer stated that the complainant got up and attempted to run away. He tried to gain control over her and that was when

she fell. The complainant was taken to the hospital and treated for a laceration above her left eye. A witness saw some type of attempt to control the complainant on the ground from a second story window. The idea that the complainant was somehow restrained on the ground is likely because she was resisting while she was on the ground.

Ms. Kelly reported that the OPS recommended that the finding for the use of force allegation be closed as ***not sustained*** because it can't be determined how the complainant ended up on the ground. The complainant was treated at the hospital. Ms. Kelly explained that when a person is taken into protective custody there has to be a NY state report filed under the mental health law. A use of force report was filed in this case and a Subject Resistance Report indicating that the person was on the ground and resisting arrest. There was no video of the incident. Ms. Kelly stated that because this was a domestic call, the APD did not anticipate that they would have anything to video because they expected something to be occurring inside the house rather than on the street.

Monitor Al Lawrence was acknowledged as being present. Mr. Lawrence added that there were two (2) family members present who did not cooperate in the OPS investigation. The mother refused to give a statement and said that she saw nothing except that her daughter was on the ground. The sister said that she was not present.

Ms. Kelly stated that there was a witness present with the complainant when the call was made. The witness saw that the complainant was drunk and resisting on the ground. Lilian Kelly moved to concur with the OPS finding of ***not sustained*** for the use of force allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Chairman Smart asked Commander Matos if he was operating a police vehicle that had a video, was he required to leave the video on even if he suspected that something might take place on the street, if he was called inside a building. Commander Matos affirmed that there is no such requirement. The video in an instance like that would be very limited. The microphone package is portable but would have limited audibility.

CPRB No. 50-10/OPS No. CC2010-129 (Presented by Andrew Phelan, Jr.)

Andrew Phelan Jr. reported that on April 3, April 5, and April 6, 2011 he reviewed this case at the OPS. The case involved allegations of call handling and conduct standards. The incident happened on December 4, 2009 at 12:20 a.m. It was noted that a monitor was appointed to investigate this case.

Mr. Phelan summarized the complaint. The complainant alleged that an officer refused to document that the complainant had been hit by a tow truck. The complainant further alleged that the officer spoke to him in a rude manner, insulted him, and threatened to

lock him up by stating “If you go down to the station, I will put you in the cell over night.”

Mr. Phelan reported that the OPS recommended that the finding for the call handling allegation be closed as *sustained*. The complainant alleged that the officer did not properly investigate the call and file a report on behalf of the complainant. Based on the OPS investigation, the officer should have followed up with the Osborne Street Garage and interview the driver of the tow truck. Additional information may have been available to assist the officer as to whether or not a report would be required.

Mr. Phelan reported that the OPS recommended that the finding for the conduct standards allegation be closed as *not sustained*. The complainant alleged that the officer threatened to arrest the complainant if he went to the station to speak to another officer. Based on the OPS investigation, there was no independent witness or video to verify what was actually said to the complainant. The officer denied the allegation that he threatened to arrest anyone. Two (2) witnesses supplied by the complainant expressed different accounts of what they heard from the officer.

Mr. Phelan asked if the complainant was present. It was noted that the complainant was not present. Mr. Phelan stated that the monitors’ report stated that there was no one hit by the truck.

Andrew Phelan Jr. moved to concur with the OPS finding of *sustained* for the call handling allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Andrew Phelan Jr. moved to concur with the OPS finding of *not sustained* for the conduct standards allegation that the officer threatened to arrest the complainant. Chairman Edward Smart seconded the motion. The motion carried unanimously.

CPRB No. 6-10/OPS No. CC2010-006 (Presented by Marilyn Hammond)

Marilyn Hammond summarized the complainant. The complainant alleged that the detectives submitted an inter-departmental narco test affidavit that was signed by a notary public on the date of the complainant’s arrest on May 21, 2009. The complaint further alleged that the person who signed as the notary public did not provide a notary license number on the affidavit. The complainant claimed that the detectives submitted a fraudulent narco field test affidavit. The complainant further claimed that a detective never received a judge’s signature for a search warrant that was served on May 21, 2009. The complainant alleged that detectives forged the judge’s signature on the form.

Ms. Hammond reported that she reviewed the following documents: Confidential Report, Search Certification, several incident reports, several warrants, Arrest Report, Strip

Search Report, Property Report, Canine Utilization Report, and the Call Ticket. Ms. Hammond stated that based on the OPS investigation, the paper in question was signed by a judge because the court clerk verified the judge's signature. The Commissioner of Deed's does not require a number. Ms. Hammond stated that she agreed with the OPS finding that this was a valid search warrant and that this allegation be closed as ***unfounded***. Marilyn Hammond moved to concur with the OPS finding of ***unfounded*** for the first conduct standards allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

Ms. Hammond asked if the complainant was present. It was noted that the complainant was not present.

Ms. Hammond reported that the OPS recommended that the finding for the second conduct standards allegation be closed as ***unfounded***, where the review showed that the act or acts complained of did not occur. The complainant claimed that the detectives fraudulently filed a false written document. The OPS findings showed that this was not true. Marilyn Hammond moved to concur with the OPS finding of ***unfounded*** for the second conduct standards allegation. Lilian Kelly seconded the motion. The motion carried unanimously.

Ms. Hammond reported that the OPS recommended that the finding for the call handling allegation be closed as ***exonerated***, where the acts that provide for the basis of the complaint occurred but the review showed that such acts were proper. The complainant alleged that two (2) documents that were filed with the court and used in the case did not have a notary. It was proven that the Commissioner of Deeds paper was valid. Marilyn Hammond moved to concur with the OPS finding of ***exonerated*** for the call handling allegation. Andrew Phelan Jr. seconded the motion. The motion carried unanimously.

CPRB No. 19-10/OPS No. CC 2010-034 (Presented by Lilian Kelly)

Lilian Kelly reported that the complaint contained two (2) allegations, one (1) for call handling and one (1) for conduct standards. Ms. Kelly stated that the complainant alleged that the incident took place around March 5, 2010, at her workplace where she was allegedly held hostage by force. Ms. Kelly noted that the complainant did not call the police and it was not reported at the time. Ms. Kelly stated that the complainant went to the south station to report the incident but it was not clear in her complaint, when exactly she went to the South Station to report the incident. She alleged that they called her a mental patient and would not take her statement because she was black. She further states that she wanted a criminal complaint filed against her supervisor and employer presumably for the incident that occurred on the 5th. Ms. Kelly noted that no monitor was assigned to this case.

The complaint was filed with the OPS on March 26, 2010 at 2:30pm. The complainant filed the citizen complaint prior to filing the criminal complaint regarding the incident.

Ms. Kelly reported that as for the call handling allegation, it was not clear who the officer was who the complainant refers to as “they” but presumably one of the officers cited in this report. Although they said that she could not file a report she clearly filed a report which is why the OPS made the finding of *unfounded*. Although the complainant stated that she could not file a report she did. There was quite a long period of time between when the incident happened and when the complainant filed the report. Ms. Kelly stated that she reviewed the report by the investigating detective who interviewed witnesses, the complainant, officers, and people at the South Station who said that at least once the complainant came to the station but left without filing a report. Based on the OPS investigation, the complainant had other business with the police due to some incidents that occurred during the month of March, so presumably she might have come in to talk about something else. Apparently she had not requested to file a report. The complainant gave no evidence that no one would give her a report or anything to suggest that she could not have a report for any particular reason. Ms. Kelly stated that she concurs with the OPS finding of *unfounded* that the complainant was not able to file a report because she did file a report three (3) weeks after the event.

Ms. Kelly reported that the OPS recommended that the conduct standards allegation be closed as *not sustained*, where the review could not in all of the interviews taken find any evidence that anyone called the complainant a mental patient and it is not clear under what, when, or where that would have occurred because there was no description of the conversation in the complainants’ report. There was no evidence of whether it did or did not occur. Ms. Kelly stated that she concurs with the OPS finding of *not sustained*.

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

Chairman Smart asked whether the complainant had pressed charges against the employer that was holding her hostage. Ms. Kelly replied that she filed harassment charges. Mr. Smart asked what about whether charges were brought about being held hostage. Ms. Kelly replied that it was irrelevant to the merits of this case.

Lilian Kelly moved to concur with the OPS finding of *unfounded* for the call handling allegation. Chairman Edward Smart seconded the motion. The motion carried unanimously.

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

Chairman Edward Smart summarized the complaint. The complainant alleged that officers came to his home and requested to enter. He refused them entry. The complainant stated that he told his wife and son to go to the window just in case someone came to the window to show that everyone was okay. He alleged that that was not good enough for the officers, so they called his landlord and told him that they would get a warrant and kick the door in. The landlord attempted to open the door but the complainant stated that he prevented this from occurring. He alleged that the officers eventually left but as a result child protective services came the following day under allegations that he locked his son in the bedroom. Chairman Smart reported that he reviewed the following documents: Domestic Incident Report; two (2) Call Reports; and a Confidential Report. It was noted that a monitor was not assigned to this case. The complainant was acknowledged as being present.

Chairman Smart asked the complainant if he had any comments concerning the incident.

The complainant stated that when the police originally came to the house they were downstairs and would have to go through the first door before reaching the apartment. When the police knocked on the door downstairs he went down and answered. The police said they had a domestic violence call. The complainant told them that it was untrue. The officer allegedly wanted to come upstairs and into his house. The complainant stated that he refused them entry. He shut the door and went back upstairs. Eventually they called his landlord and told him that if he did not unlock the door without his keys they would get a warrant and kick the door down.

Chairman Smart asked if the officers told the complainant this. The complainant replied that the officers told the landlord this. He was not present at the time. The landlord attempted to open the door. Regardless of whether the police told him they were going to get a warrant, they had no right to get his landlord there at midnight. The complainant stated that he prevented them from entering by holding the deadbolt. If he didn't, the police would have entered without a warrant or just cause. Child Protective Services (CPS) came to his house the next day with fabricated allegations saying that he locked his son in his room yet the door to the son's room was broken and impossible to lock. The complainant further stated that this happened on New Year's Day. He believes that the police officers at the scene called CPS to attempt to put a further burden on his family and they succeeded.

Chairman Smart asked the complainant if he was arrested. The complainant replied that he was never brought up on charges and nothing happened to the child. The complainant stated that the police had no business entering his home.

Chairman Smart stated that the officers' conduct was precipitated by a concerned neighbor who called the police. It was not the police who were just going by and stopping in. Someone in the community called the police and complained that someone might be in danger.

Chairman Smart asked Commander Matos to explain what officers are required to do once that type of complaint is received. Commander Matos stated that officers responding to a complaint of domestic violence are obligated to investigate that complaint. They are mandated to stay until they are satisfied that no one is in danger or hurt. If you look at the search warrant exceptions, there is a exception called exigent circumstances. Exigent circumstances occur when there is an emergency situation which mandate an officer to make entry. Not knowing the persons involved, the police need to look into it to make sure everyone is okay. Once they were satisfied with that, they would have left. As far as CPS is concerned, the other mandate the officer have to follow is that they are mandated to report to CPS what they had found. Without having the ability to show that the child was okay they had no choice but to file that report. CPS follows up with all of those reports. When officers are met with resistance they have no other choice but to do what they did.

Chairman Smart reported that the OPS recommended that the call handling allegation be closed as *exonerated*, where the acts which prove the basis of the complaint occurred but the review showed that such acts were proper. Based on the OPS investigation, the officers responded to a domestic incident after receiving a call from a concerned neighbor. Chairman Smart stated that he agreed with the OPS finding. Chairman Edward Smart moved to concur with the OPS finding of *exonerated* for the call handling allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 22-10/OPS No. CC2010-031 (Presented by Chairman Edward Smart)

Chairman Edward Smart summarized the complaint. The complainant alleged that police showed up in his backyard and shined their flashlights and his dog started to bark. This is when one officer pulled out his OC spray and the other officer pulled out his pistol. An officer allegedly stated that he would shoot the dog if the complainant did not get her. The officer allegedly did not identify himself and just walked up the driveway. The officers were there to make the complainant put out his fire. The complainant was given an appearance ticket because the fire was within ten (10) feet of his garage which he alleged was a complete fabrication.

Chairman Smart reported that he reviewed the following documents: Confidential Reports; 197.5 fire in yards and buildings, wire steel, concrete brick or fireproof enclosures; and Call Report.

Chairman Smart reported that the OPS recommended that the call handling allegation be closed as *exonerated*, where the basis for the complainant is true but were appropriate. Officers were reporting to a call of a concerned neighbor of a fire in the rear of the yard. The fire was in violation of 197.5. The officers were in uniform. A pit bull was in the yard untied and the officers were concerned about their safety. The complainant was asked to extinguish the fire and was given an appearance ticket. Chairman Edward Smart moved to concur with the OPS finding of *exonerated* for the call handling allegation. Marilyn Hammond seconded the motion. The motion carried unanimously.

CPRB No. 24-10/OPS No. CC2010-041 (Presented by Andrew Phelan Jr.)

Andrew Phelan Jr. stated that on April 4, 5, and 6, 2011, he went to the OPS to review the case file. The incident occurred on April 8, 2010 on North Pearl Street. This complaint involved call handling and conduct standards allegations by a public safety officer (PSO). Mr. Phelan summarized the complaint. The complainant alleged that his company rented two (2) parking spots to cater an event. He parked the truck so that he could see the meter as he unloaded. Shortly after, a PSO approached the complainant and told him and his co-workers they had to back up because they were taking too much space in a handicapped spot. The co-worker went back to get the keys. The complainant went to the front of the car where the PSO was writing a ticket. According to the complainant, he explained that there was no way that prevented someone from parking in the spot and he was trying to comply with the PSO's request. The PSO allegedly rudely stated that she did not have time to sit there and wait. Later, they observed the PSO look at a car that was clearly out of the zone and chose to keep walking. This was not the first ticket that they have received and at times was clearly in the wrong but the complainant feels that he is being targeted.

Mr. Phelan summarized the OPS finding for the call handling allegation as *exonerated*, where the complainant alleged that he was given a ticket for parking in a handicapped spot when in fact he was not blocking anyone from parking there. Based on the OPS investigation, the PSO officer indicated that she measured the distance and the complainant was in the handicapped spot. She indicated the distance on the parking ticket. The duty of the PSO is to issue parking tickets to vehicles that are in violation of parking restrictions. In this case it was a handicapped spot. The mere fact that the parking fine was paid is a clear indication of an admission of guilt for the fact that the vehicle was parked in a handicapped parking spot.

Mr. Phelan summarized the OPS finding for the conduct standards allegation as *sustained*, where the review disclosed sufficient facts to prove the allegations made in the complaint. The complainant alleged that the PSO rudely admitted that after giving the complainant the opportunity to move the vehicle and he made no response, she issued the

ticket. Based on the OPS investigation, the complainant came back and the PSO admitted to saying that “she had other places to go.”

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

Chairman Smart stated that he disagreed with the fact that paying a ticket is an admission of guilt but agreed that even if you are partially parked in a handicapped spot you can receive a ticket.

Mr. Phelan stated that he agreed with the OPS finding of *exonerated* for the call handling allegation. Andrew Phelan Jr. moved to concur with the OPS finding of *exonerated* for the call handling allegation that the complainant was wrongfully ticketed for being in a handicapped parking space. Anthony Potenza seconded the motion. The motion carried unanimously.

Mr. Phelan stated that he agreed with the OPS finding of *sustained* for the conduct standards allegation that the PSO was rude to the complainant. Andrew Phelan Jr. moved to concur with the OPS finding of *sustained*. Anthony Potenza seconded the motion. The motion carried unanimously.

B. *Appointment of New Members to the Committee on Complaint Review for June 2011*

The following Board members were appointed to the Committee on Complaint Review for June 2011: Marilyn Hammond, Lilian Kelly, Andrew Phelan Jr., Anthony Potenza, Reverend Edward Smart.

C. *Approvals of Amendments to Operating Procedures*

Chairman Edward Smart stated that the approval of the amendments to the operating procedure will be voted on at the next meeting of the Board.

D. *Committee/Task Force Reports*

By-laws and Rules

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

Community Outreach

Chairman Edward Smart reported that the Board would assign someone to chair this committee at the next meeting of the Board.

Mediation

Chairman Edward Smart stated Committee Chairman Jason Allen is not present. He reported that the mediation program is in the hands of the OPS Commander Ron Matos and Chief Steven Krokoff. Chairman Smart asked Commander Matos if he had anything new to share with the Board. Commander Matos replied that he had nothing new to share.

Police Department Liaison- Policy Review/ Recommendations

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

Public Official Liaison

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

Task Force on Monitors

Chairman Edward Smart reported that the Board has received the video standard operating procedures for the cameras that were installed in Albany police vehicles.

E. *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 included in tonight's packets is the database scorecard. It was further reported that as of today, there are currently fifty-eight (58) active complaints before the Board for review. Of those fifty-eight (58) active complaints eleven (11) were reviewed and closed at tonight's meeting leaving the Board with forty-eight (47) active complaints.¹ There are possibly 8-9 cases that will be on the next meeting agenda in June.

It was reported that four hundred and forty-seven (447) complaints have been closed.² The total number of complaints that remain suspend from review is eleven (11). The total number of complaints filed to date is five hundred and five (505).

It was further reported that since the Board's last meeting, the GLC received twelve (12) grievance forms. The total number of forms received to date is two hundred and forty-three (243). In response to the GLC's outreach to all individuals, the GLC received seventy-three (73) complaint forms.

¹ The correct statistics are: Ten (10) complaints were reviewed and closed at tonight's meeting leaving the Board with forty-eight (48) active complaints.

² The correct statistics are: Four hundred and forty-six (446) complaints have been closed.

Community Outreach

It was reported that in the packets are drafts of the meeting guideline and complaint process brochure. Changes were made to the complaint process brochure as well as the meeting guideline brochure based on suggestions made by the Outreach Committee. The colors and pictures in both of the brochures will be different. Ms. Moseley asked that the Board email any comments to her.

Board Vacancies

It was reported that Board member James Frezzell has resigned effective immediately. He was a Common Council appointee. The Common Council is aware that they have to fill that vacancy.

NACOLE

It was reported that this year's NACOLE conference will be in New Orleans from September 12-15. The Albany City Code requires that one Board member attend this conference. Due to the large number of concurrent sessions in the conference, we feel that it is necessary to send more than one Board member, so this year we have money in the budget for three (3) members. Lilian Kelly, Marilyn Hammond, and Chairman Edward Smart stated that they would like to attend. It was further reported that in the packets was correspondence sent to Chief Krokoff urging him to send an APD representative to the NACOLE conference.

Training

It was reported that the GLC, along with the Corporation Counsel's office, is looking at a couple of training topics which will be mandated that the entire Board attend. As soon as those topics for training are confirmed, the Board will be notified. Chairman Smart stated that all Board members are required to participate in a ride-along annually.

Upcoming Meetings

It was reported that the next Board meeting is scheduled for Thursday, June 9, 2011 at GWU the Center at 6 p.m.

E. *Report from Office of Professional Standards*

Commander Ron Matos reported that the department has completed its bicycle operated course. Thirteen (13) officers are certified as bicycle operators. He further reported that on June 2, 2011, PAL is having an awards ceremony. Officer Chris Ort will be remembered at that ceremony.

F. *Report from the Chair*

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

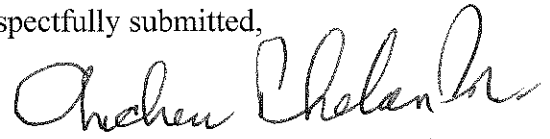
VI. **Public Comment**

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

VII. **Adjournment**

Marilyn Hammond moved to adjourn the meeting. Chairman Edward Smart seconded the motion. The motion carried unanimously. The meeting adjourned at 8:15 p.m.

Respectfully submitted,

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

Andrew Phelan, Jr.
Secretary