

Ethics Review Board

City of New Orleans

July 14, 2015

3:30 – 6:00 P.M.

Algiers Regional Library | 3014 Holiday Drive | New Orleans, Louisiana 70131

Minutes

Present: Dr. Michael Cowan, Chair; Mr. Allen Miller, Vice Chair; Mr. James Brown; Mr. Howard Rodgers; Dr. Joe Ricks; Rev. Dr. Donald Frampton
Guests: Mr. Ed Quatrevaux, Inspector General
Ms. Susan Hutson, Independent Police Monitor
Steve Scheckman, Former General Counsel, Ethics Review Board

At 3:35 p.m., a quorum being present, the chair called the meeting to order. On a motion by Dr. Cowan seconded by Mr. Brown, the board unanimously approved the minutes of May 12, 2015.

Mr. Brown moved the nomination of Dr. Cowan as Chair of the Ethics Review Board. All were in favor and the motion passed unanimously.

Mr. Brown moved the nomination of Mr. Allen Miller as Vice Chair of the Ethics Review Board. All were in favor and the motion passed unanimously.

Mr. Brown moved the nomination of Dr. Joe Ricks as Secretary of the Ethics Review Board. All were in favor and the motion passed unanimously.

Dr. Cowan updated the board on the responses to the RFP's and next steps for an Ethics Trainer and General Counsel. Two applications were received for the Ethics Trainer RFP and seven applications were received for the General Counsel RFP. The New Orleans City Council has approved for the Selection Committee to meet in two weeks to make a decision.

Agenda Item #4, 2015 budget report was skipped.

A discussion took place prompted by a report issued by Professor David Marcello. Dr. Cowan stated that this report was very critical of ERB in terms of enforcement. Mr. Scheckman was invited by Dr. Cowan to explain to the board. Mr. Scheckman told the board that Professor Marcello's report contains misrepresentation of the memorandum written January 23, 2012, misrepresentation of facts and the law, mischaracterizes the positions taken and mischaracterizes the legal advice that are referred to in the legal memorandum prepared for the ERB's March 2012 Strategic Planning Retreat. Mr. Scheckman also stated that the memorandum detailed inherent systemic & structural problems and limitations with the ERB and also detailed constitutional infirmities with the Home Rule Charter.

Mr. Scheckman told the board that the systemic and structural problems with ERB caused him to voluntarily request that his full time position as General Counsel be reduced to ¼ time. Mr. Scheckman stated that he felt this was the morally, ethically, fiscally and responsible decision to make. This was not mentioned in the report issued by Professor David Marcello. He also told the board that Professor Marcello did not disclose in his report issued, the memorandum dated January 23, 2012 or his own personal bias of the Home Rule Charter that he created, which is now causing problems.

Mr. Scheckman told the board that the memorandum dated January 23, 2012, discusses the provisions of the City Code of Ethics that may be enforced by the ERB and what may be enforced by the Ethics Review State Board. He refers to Professor Marcello's report on page 7, which alleges, "The ERB was inadequately informed about dual state-local jurisdiction for ethics enforcement." Mr. Scheckman refers to the memorandum he wrote to the ERB on January 23, 2012, page 1, which states, "Section 9-402 of the Home Rule Charter of the City of New Orleans provides, in pertinent part, that "The City Council shall authorize the Ethics Review board to establish additional recommendations for the code of Ethics, to issue advisory opinions, to promulgate rules regarding the interpretation and enforcement of the Code of Ethics, to **refer cases for investigation on referral or complaint**, to retain counsel, and to **impose fines.**" (Emphasis added). Moreover, "**the Code of Ethics shall incorporate by reference and adopt the provisions of the Louisiana Code of Government Ethics and shall provide for such other, more stringent provisions as the Council may deem appropriate.**" (Emphasis added). However, Section 9-402 of the Home Rule Charter of the City of New Orleans also provides that, **the Code of Ethics shall prohibit the Ethics Review Board from hearing any alleged violation that constitutes a violation of the State Code of Governmental Ethics if the Ethics Review Board ascertains that the entity designated by the State to enforce said state Code has considered or is considering the alleged violation.**" (Emphasis added). Critically, for the purposes of the ERB, La. Const. art. 10, § 21 (1974) provides in pertinent part: "The legislature shall enact a code of ethics for all officials and employees of the state and its political subdivisions. **The code shall be administered by one or more boards created by the legislature**..." (Emphasis added).

Mr. Scheckman explained to the board that this is a problem for the ERB because the board was created by the New Orleans City Council not by the legislature. The ERB received a case involving "gifts." The ERB wrote the Ethics Review State Board asking for approval to investigate the case with its authority under our Home Rule Charter. The Ethics Review State Board had no knowledge of the Home Rule Charter and asked that the complaint and any supporting documents be forwarded and no permission could be given to enforce or prosecute a State Ethics Board case or any other state cases that fall within the State Ethics Code. Mr. Scheckman told the board that the Home Rule Charter conflicts with the Louisiana Constitution.

Mr. Scheckman refers to Professor Marcello's report on pages 10-11, which alleges, "The ERB neglected opportunities to strengthen ethics enforcement and expand its authority by failing to recommend any revision to the city's code of ethics." He explained to the board that there were financial constraints with the shared budget between the ERB, the OIG and IPM Divisions and

ERB was also concerned with duplicating efforts. Mr. Scheckman advised the ERB to prepare a written rebuttal if Professor Marcello's report is published.

Mr. James Brown stated that he found Professor Marcello's report to be long on criticism and short on practical solutions and alternatives. He also stated that the best thing the ERB is doing with Ethics Enforcement for the City of New Orleans is supporting the Inspector General and the Independent Police Monitor. He suggested that the ERB continues to keep its focus on not taking resources from the OIG and OIPM in order to duplicate what the State Ethics Board is already doing. Mr. Brown also stated that he firmly believes that Ethics Education is a part of Ethics Enforcement; in order for a body of principles to be applied the people who are subject to it need to be educated on recognizing the situations that arise in local government that implicate ethical issues and problems.

In response to Mr. Miller, Mr. Scheckman told the board that Jefferson Parish is fairly new and their Ethics Code is more expansive of the New Orleans City Code but they have not asked the Jefferson Parish Council to incorporate and adopt the State Ethics Code.

In response to Dr. Cowan, Mr. Scheckman told the board that it's absolutely a good idea for the ERB to review the City Codes and consider if revisions should be suggested to the New Orleans City Council.

Inspector General Quatrevaux told the board that he was responsible for Professor Marcello's public records request. The IG also told the board that the OIG would never attempt to conduct an analysis and write a report without talking to the people who are responsible for running the operation in question. In addition, for quality assurance, the OIG's standards require that the OIG give responsible officials thirty days to comment on a draft report. The IG stated that he was astounded after reading Professor Marcello's report. The IG believes this has a lot to do with Professor Marcello's inherent conflict of interest because the Home Rule Charter is his model and that construct did not work out.

Inspector General Quatrevaux referenced the following reports issued by the OIG since the ERB's May meeting: the City of New Orleans Utilities Regulation, DWI Case Processing and issued a public letter on jail size. The New Orleans City Council regulates utilities for the City of New Orleans. The evaluation found that the industry is in a time of great change and it would be hazardous if the City of New Orleans considered making any moves or changes at this time. The evaluation also found that the New Orleans City Council relies heavily on contactors. Ninety-seven percent of its 2013 regulatory budget was for outside contractors, which is highly abnormal. In comparison to the District of Columbia, ten percent of regulatory dollars went to contractors and Rhode Island used twenty-three percent. The impact is that there is no institutional knowledge and the contractors are relied on for almost everything, including some routine tasks. The City of New Orleans pays six times as much for regulations as other parishes per capita. The Council's regulatory approach and practices lack basic safeguards to ensure transparency, prevent misconduct, and promote effective decision making.

Inspector General Quatrevaux told the board that the process of transferring DWI cases is flawed in every stage. More than 14,000 cases filed before 2009 remained open and 8,000 cases are over 20 years old.

Inspector General Quatrevaux told the board that the City Attorneys downgraded eighty-four percent of cases with high BAC readings to lesser charges and second-offense sentences occurred in less than 2 percent of DWI cases compared with a national rate of twenty-eight percent. When tickets indicated a BAC reading of 0.15 or above, prosecutors crossed out the reading and wrote 0.149, altering the official record of the arrest and providing no rationale for the change. Last, the number of probation officers was insufficient and they did not have telephones or emails to monitor the probationers effectively. Traffic Court has a new case management system and NOPD is moving to a system of electronic citations, which should make it easier to implement many of the recommendations of the OIG.

Inspector General Quatrevaux updated the board on the OIG's Public Letter on Jail Funding and told the board that the issue is whether or not the City of New Orleans will pay \$7 million or \$85 million to do the same job. Building another facility will cause another impact, which includes, increased staff requirements and higher operating costs.

Deputy Police Monitor Simone Levine reported that OIPM year to date has performed 5 mediations this year (9 in total), 8 critical incidents, 18 disciplinary hearings, 48 complaints received for the calendar year, 18 contacts only, 15 criminal liaisons, 14 case monitorings, 2 official inquiries and 4 police commendations. Disciplinary hearings have increased from 2013 and 2014. Critical Incidents have improved since 2014; 11 critical incidents were reported.

Ms. Levine told the board since the ERB's May meeting the OIPM has been involved in a number of serious cases with NOPD. OIPM was involved in the former New Orleans Police Officer Terrance Saulny case, where excessive force on a juvenile was used at the Youth Study Center. The OIPM made 2 recommendations: 1. Require that all NOPD officers to be equipped with body worn cameras that will be activated in all parts of the Youth Study Center. 2. All NOPD officers who are housed in the juvenile unit and all NOPD Officers in general should be specifically trained in verbal de-escalation, treatment of a juvenile and use of force. Ms. Levine stated that this trend is now happening all over the country and in a recent article in the New York Times, the Seattle Police Department requires all officers to attend de-escalation training. Ms. Levine told the board that the Superintendent of the Youth Study Center invited OIPM and NOPD to attend the de-escalation training at the end of the month.

Independent Police Monitor Susan Hutson was notified of the Holloway shooting and has viewed all videos that were involved, attended all interviews of officer witnesses and suspects in the case, monitored the decision process that NOPD has undertaken and she attended the autopsy. Ms. Levine stated that the OIPM is impressed with the NOPD's level of questioning, the interrogation of officers involved and the coordination of the NOPD.

In response to Mr. Rodgers, Ms. Levine told the board that OIPM was very impressed with how the Public Integrity Bureau Investigators interviewing the officer who are officer suspects and officer witnesses. The IPM told the board that the OIPM is staying in touch and keeping the Holloway Family updated.

Independent Police Monitor Hutson told the board that she does support a stronger ERB role in the dispute between the OIG and OIPM. She stated that she is reaching out for the ERB's assistance in supporting a budgetary separation, a physical separation and a legal separation of the OIG and OIPM. She stated that the IG has stopped all negotiations with budgeting and the OIPM is asking for a fair and ethical MOU with the OIG.

Independent Police Monitor Hutson told the board that the OIPM reached out to their national organization The National Association for Civilian Oversight of Law Enforcement (NACOLE) to start conducting peer reviews for OIPM. This would be the 1st peer review for the NACOLE Organization. The IPM told the board that Inspector General Quatrevaux has already selected an organization to conduct the OIPM's peer review. The IPM stated that she feels this is a "surprise inspection" and the IG gave the OIG five months to prepare for their peer review and the peer review was conducted by a national organization of the OIG.

Independent Police Monitor Hutson told the board that the peer review is scheduled during the time of ongoing projects and the Hurricane Katrina Anniversary, which will include many activities. IPM also told the board that the OIPM has found a new office location on Broad Street that is more accessible for the citizens that the OIPM serves and she hopes for the ERB's help and leadership in this matter.

In response to Mr. Miller, the IPM is requesting that the ERB write another resolution and mediate another budget negotiation between her and the IG.

Mr. Brown stated that he looked over the resolution that the ERB adopted last year in December 2014. Mr. Brown told the board that the resolution states the OIPM is a Division within the OIG and the Inspector General must be given the reasonable measure of supervisory authority of the OIPM and the OIPM should be willing to accept the supervisory authority. Mr. Brown also stated that within the language that was adopted, the IG can select Police Assessment Resource Center (PARC) to conduct the review. Last, Mr. Brown stated that ERB does not have the right or place to interfere.

Inspector General Quatrevaux stated that PARC is the only organization that has experience with conducting a peer review. PARC is the nation's leading authority of police monitoring. PARC ran the project of fifty police monitors around the country to write national guidelines for police monitors. Today, PARC is by contract performing as the Police Monitors for the City of Seattle. The IG stated that he spoke to the NACOLE President and asked for their organization to get a program together, to get the functions to be able to conduct peer reviews and some experience

and he would be happy to use their organization every other time. The IG also stated that there is no comparison of the two organizations.

Inspector General Quatrevaux told the board that he wrote the IPM on June 30, 2015, advising her that the External Review does not require an advanced preparation. The IG stated that “surprise” is a misrepresentation. The IPM and her staff will only need to make themselves available to discuss policies and procedures that the OIPM follows and to provide documentation as requested. PARC will communicate directly with the IPM.

In response to Mr. Miller, the IG told the board that the charter states the OIPM is a Division within the OIG.

Independent Police Monitor Hutson told the board that she has been a member of NACOLE since 2004 and that PARC is also a member. The IPM stated that PARC is the consent decree monitors for Seattle and the organization resides in Los Angeles and are not their peers. She also stated that PARC does not operate in government agencies; they do not take complaints and do not require use of force. The IPM is asking that the OIPM’s national organization peers are considered to conduct the peer review according to the national organization standards.

Mr. Brown stated again that the ERB does not have the authority to select who the oversight will be. He also stated that the ERB is a Review Board and does not have the power or authority to tell the Inspector General what to do.

In response to Mr. Rodgers, Dr. Cowan told the board that the New Orleans City Council cannot separate the OIG and OIPM. The citizens would need to vote in order for there to be a legal separation; anything before that is provisional. Dr. Cowan also stated that he has real questions about the separation solution and does not feel comfortable writing a letter to the New Orleans City Council until the board has had some study and debate about it.

In response to Mr. Rodgers, Dr. Cowan asked the IG and IPM if PARC would be offering any judgement, opinion or recommendations on the structure of the OIG and OIPM.

In response to Dr. Cowan, the IG stated that in 2007 PARC provided a draft report that recommended the OIPM have 6 employees at a cost of \$450,000. The IG also stated that the peer review will not provide an outcome for separation but will provide a review to make sure that the OIPM is consistent with National Standards and whether or not the OIPM is operating effectively and efficiently.

Mr. Miller stated the ERB has the ability to evaluate if the IG is performing his function appropriately, including how he deals with his Divisions.

Dr. Cowan stated that PARC appears to be a highly experienced and qualified organization to conduct the assessment. He expects the organization to be fair, objective and professional. Dr. Cowan also told the board that he sees no reason to prejudge PARC’s outcome as unfair.

Dr. Cowan told the board that two members of the ERB have mediated and the outcome was unsuccessful. In addition, the ERB wrote a resolution, encouraging the IG and IPM to work at separating and the outcome was again unsuccessful. Dr. Cowan recommends the ERB to not go back the same path. Dr. Cowan also recommends that that the ERB review the recommendations from PARC and the IG to the IPM and proceed accordingly.

Dr. Cowan told the board that the ERB only has the authority to hire and fire the Inspector General for cause.

There are no active complaints.

At 5:19 p.m., Dr. Cowan moved that the meeting adjourn, a second was offered by Mr. Rodgers. The motion carried unanimously and the meeting adjourned.

Public Comment Card OIG
Quality Assurance Review
Advisory Committee

7/14/15
M.C.

Date: July 14, 2015

Name: Rev Dwight Webster PhD
(please print clearly)

Representing: Justice and Beyond
(name of organization you are representing if applicable)

Address: 6801 Rugby Court
NOLA 70126

Remarks: Speak in support of the
Office of the Independent
Police Monitor (at the end)

Public Comment Card OIG
Quality Assurance Review
Advisory Committee

Date: 7/14/15

Name: NORRICK HENDERSON
(please print clearly)

Representing: V.O.T.E
(name of organization you are representing if applicable)

Address: P.O. Box 13022

Remarks: