

(DRAFT) MINUTES (DRAFT)

Citizen Review Board Meeting
Old City Hall, 510 Greene Street

Monday, September 28, 2009

6:00 p.m.

1. MEETING CALLED TO ORDER AT 6:00 P.M.

2. ROLL CALL

BOARD MEMBERSHIP/AGENTS PRESENT:

Hayward Magby

Bryan Green

Virginia Altobello

Mark Kielsgard

Hayward Magby

Susan Srch

Mike Driscoll

Trice Denny

Robert Cintron, Attorney for the Board

Stephen Muffler, Executive Director of the Board

Inspector Randy Smith-KWPD/IA

Chief Donie Lee

ADDITIONAL ATTENDEES:

Shahdaroba Rodd

John Caris

Sedgwick Vogstein

J.P. Moyr

(Others present but did not sign in or their signatures are unreadable on the sign-in sheet)

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF MINUTES:

a. August 24, 2009

Motion made by Virginia Altobello to approve the Minutes of August 24, 2009 meeting with proper spelling of Sue Srch's last name and seconded by Mark Kielsgard

Vote: Passes Unanimously

Hayward Magby unable to vote

Hayward Magby introduced himself and his background to the members. The members welcomed him and thanked Kevin Collins for his past service on the Board. Attorney Cintron offered to schedule a meeting between himself and Mr. Magby and the two agreed that they would organize such a meeting between themselves.

5. TRACKING CHART REVIEW

Board members reviewed the CRB tracking chart and there were no questions/concerns.

6. CONTINUED OR NEW BUSINESS

a. **File Review/Hearing: CRB #09-005 Price**

Chairman Green introduced the file and pointed out that the complainant did not want any further action.

Motion by Mark Kielsgard and seconded by Virginia Altobello of no finding on this file and to take no further action.

**Vote: Passes Unanimously
Hayward Magby unable to vote**

b. **File Review/Hearing: CRB #09-007**

Chairman Green pointed out that this file should be handled like the Price file and no action should be taken. Mark Kielsgard pointed out that the officer seemed to have acted inappropriately and such conduct was not positive. Mark Kielsgard explained an unrelated personal observation of an officer parking and blocking a fire hydrant in front of Sandy's on White Street and seemed to be there for 45 minutes when there was plenty of parking available. He says this, and this file's allegations, seem to discredit the police's reputation in the eyes of the public. Virginia Altobello, Bryan Green and Mark Kielsgard qusted IA Randy Smith as to the process of investigating active restraining orders and validity. Mark Kielsgard asked if the complaint on its face stated a cause of action worthy of investigating. Chief Lee and Mark Kieslgard exchanged comments about a hypothetical review which Chief Lee preferred not to explore.

Motion by Mark Kielsgard and seconded by Susan Srch of no finding on this file and take no further action.

**Vote: Passes Unanimously
Hayward Magby unable to vote**

c. **File Review/Hearing: CRB #09-006**

Chairman Green updated the Board on the procedural posture of the case and the past review and the referral to Chief Lee. Chief Lee's responsive letter was discussed. Virginia Altobello addressed Chief Lee with her concerns and the Board's concerns generally. Chief Lee admitted that the overall handling of this case was not perfect and recognized errors but he felt

that it did not meet the minimum threshold of untruthfulness or false arrest to justify an internal affairs investigation. Chief Lee explained that Officer Kouri was in field training and the “turning over” of DUI suspects to fellow officers was typical in this case and the procedure was proper. Chief Lee stated that the DUI investigation was proper even though there was carelessness and errors.

Chairman Green asked about the apparent disconnect between the arresting officer (Smith) and the DUI report writing officer (Kouri). Chief Lee explained the “fellow officer” rule where probable cause could be compiled based upon fellow officers observations by the report writing officer.

Mark Kielsingard asked if there was a provision or policy to recheck the reports filled out and filed by other officers on duty when this “fellow officer” procedure is being used. Chief Lee acknowledged that he would look into the procedures of double checking reports like this one.

Chief Lee explained he met with State Attorney Ward and assistant prosecutors on the KWPD DUI process as a whole. Chairman Green questioned Chief Lee that part of the problem was that copies of the ticket (at least one) were allegedly not given to Mr. Rodd at the scene which compounded the confusion and injury to Mr. Rodd. Chief Lee explained if that was true, it was sloppiness on the part of the involved officer. Chairman Green asked about the procedures concerning the refusals to give a breath test and specifically if the arrestee could demand a urine or blood test. Chief Lee stated that if urine or blood is requested by the suspect, it is the defendant/suspect’s responsibility to arrange it and pay for it.

Mark Kielsingard asked about the field sobriety test and IA Inspector Smith explained that suspect declined field sobriety tests on the road, so Rodd was taken to the Jail to blow into the breathlizers. Mark Kielsingard asked Chief Lee if this matter could be submitted to the standing committee for improving the procedures of inter-communication between multiple officers involved in an arrest when the “fellow officer” rule in drafting a police report is involved. The Board directed the CRB Executive Director to meet with Chief Lee and propose ways to make the system better relative to the process of passing on the arrest information between fellow officers.

Mr. Rodd feels that this was more than just sloppiness, it is untruthfulness. Mr. Rodd feels that the paperwork reflects false reports done deliberately.

Mark Kielsingard felt that the subpoena issue should be addressed. Inspector Smith explained that he was not served properly and explained the administrative hearing process and that he was unavailable on the hearing dates. The Board came to the general conclusion that Officer Kouri would have been the material officer to testify to the revocation of license for refusal. Thus, the Board generally felt that the non-appearance allegation against Inspector Smith was really irrelevant at this point and not worth proceeding against.

Chairman Green requested input from the Board members if they would like to open up their own investigation. No Board member was inclined to proceed to make such a motion.

Mark Kielsingard moved to continue the matter until Chief Lee could look into amending and correcting the police reports and documents so that they properly reflected the facts. Virginia Altobello seconded the motion. Chief Lee questioned if such a process was even legal or

possible to amend paperwork that was about 3 years old. Other members shared his concern. Mark Kielsgard withdrew his motion and Virginia Altobello also withdrew her second on the pending motion.

Motion by Mark to move to dismiss the charges, but the Executive Director pointed out that such a motion was not proper. Mark Kielsgard moved for a finding of “Not Sustained” which was seconded by Virginia Altobello. Members generally felt this conducted amounted to deficient service by Officer Kouri only and not purposeful untruthfulness. Mark Kielsgard withdrew his pending motion and Virginia Altobello withdrew her second on the pending motion.

Attorney Cintron suggested the Board make a finding it wants to investigate the matter or not first, and then move into other motions. Attorney Cintron pointed out that an evidentiary hearing should be conducted by the Board at its next meeting to take sworn testimony from Mr. Rodd and Officer Kouri to conform to Due Process. Attorney Cintron suggested that new notices go out to Officer Kouri that his presence was requested for an evidentiary hearing. Mr. Rodd did not mind if the matter was deferred to the next meeting in November.

Motion by Mark Kielsgard to defer the recommendation until the next meeting and properly notice the officer that an evidentiary hearing would be had then, seconded by Trice Denny

**Vote: YEAS: Trice Denny, Mark Kielsgard, Bryan Green and Virginia Altobello
NEAS: Mike Driscoll & Sue Srch
Hayward Magby unable to vote.**

7. COUNSEL’S REPORT

Attorney Cintron reported to the Board that there was a hearing in the CRB litigation file relative to the CRB’s petition to enforce the subpoena before Judge Audlin this Thursday and that he would forward the information to the Executive Director to inform all the members as to the exact time/place.

8. CHAIRMAN’S REPORT

Chairman Green briefed the Board on a non-citizen complaint file that was delivered to him by IA directly. He suggested that any Board member who wished to review it should contact the Executive Director who would secure it from IA. Mark Kielsgard felt that since it was not a citizen complaint generated item, it really was not subject to review unless another member wanted to formally review it.

9. BOARD MEMBERS REPORT/GENERAL COMMENTS

None

10. EXECUTIVE DIRECTOR'S REPORT

- a. Executive Director explained that the City Commission approved the CRB budget FY 09-10
- b. Executive Director confirmed that Sue Srch and Hayward Magby would attend the upcoming NACOLE conference and were instructed to personally book their flights.
- c. Executive Director proposed to cancel the October 2009 meeting and hold the next meeting on November 9, 2009 and the Board agreed.
- d. Executive Director explained that the Fall 2009 CRB Newsletter would go out October 1st.
- e. Executive Director proposed the 2010 meeting dates/locations and the Board members had no objection to them and the Executive Director would proceed to schedule and reserve the big room at Old City Hall for the meetings.

11. PSO/IA COMMENTS/FOLLOW-UP

None

12. PUBLIC INPUT

Mr. John Caris wanted to remind the Board of the need in the CRB in the past and that he felt he was improperly treated by the Key West Police relative to his arrest several years ago and that the CRB had ruled wrongly on his past complaints. Mr. Carris wanted the members to know he intended to come before them with new evidence via a witness' testimony that would justify the re-opening and reconsideration of the Board's findings in his files. Attorney Cintron suggested that if Mr. Caris has a new witness or new evidence, it should be provided to the Executive Director.

13. MEDIA AND PRESS QUESTIONS

14. ADJOURNMENT

Adjourned at 8:15 p.m.

Respectfully Submitted

Stephen C. Muffler, Esquire
Executive Director