

APPROVED: February 14, 2013



ATLANTA CITIZEN REVIEW BOARD

JANUARY MEETING MINUTES

55 Trinity Avenue, SW, Committee Room Two

Atlanta, Georgia 30303

January 10, 2013 / 6:30 P.M

ROLL CALL

(Eleven Members of the Board)

ACTIVE MEMBERS PRESENT

PAUL BARTELS (<i>Chair/Bartels</i>)	CHARIS JOHNSON (<i>C. Johnson</i>)
BILL BOZARTH (<i>Bozarth</i>)	ALAN MORRIS (<i>Morris</i>)
WILLIAM HARRISON (<i>Harrison</i>)	RUTH PRICE (<i>Price</i>)
BARBARA HUBBARD (<i>Hubbard</i>)	MACEO WILLIAMS (<i>Williams</i>)

ACTIVE MEMBERS ABSENT

LABRIAH LEE (*Lee*) **RYAN JOHNSON** (*R. Johnson*)

ONE VACANT APPOINTMENT

Atlanta Business League (vacant 6 month)

STAFF ATTENDEES

SAMUEL LEE REID (*Reid*), Executive Director; **KENNETH LIVELY** (*Lively*), Investigator; **SHEENA ROBERTSON** (*Robertson*), Investigator; **MYOLA SMITH** (*Smith*), Recorder/Transcriber; **BILL CASTING** (*Casting*), Attorney, COA Law Department

A G E N D A

MEETING CALLED TO ORDER

The meeting was called to order by *Chair Bartels* at 6:35 p.m., starting with the roll call.

The *Chair* welcomed citizens announcing that Public Comments will be heard later into the agenda. Speakers must sign up and limit comments to three (3) minutes.

The *Chair* also welcomed members of the Atlanta Police Department (APD), Office of Internal Affairs: Major Elder Dancy and members of his staff.

Osa Benson was recognized by the *Chair*. Ms. Benson was nominated by the Gate City Bar Association to serve as *C. Johnson's* replacement on the board. Her confirmation is pending approval.

APPROVAL OF MINUTES OF THE LAST MEETING, DECEMBER 13, 2013

The *Chair* directed the board's attention to the minutes for December 13, 2013 meeting. The floor was open for discussion and corrections to the minutes. *One correction was noted on page 2, line one, first paragraph: 'Austin' changed to 'Alston.'*

Bozarth moved to accept the minutes as modified. The motion was seconded by *Morris*. No further discussion, the motion was approved by all.

EXECUTIVE DIRECTOR REPORT

Director Reid provided highlights from his report:

A. VALUES FOR THE MONTH

Fairness - We recognized and acknowledge that our investigations only have meaning if in every case and if everyone involved is treated fairly and respected without regard to race, color, creed, religion, sex, domestic relationship status, sexual orientation, national origin, gender identity, age, physical disability, criminal or misconduct history.

B. BOARD RETREAT AND BOARD ORIENTATION

Reid indicated that over the past couple of months, he has been working on the board orientation manual and other materials related to it. He also reported that he had a meeting with a facilitator to discuss the retreat, and progress is moving along. He proposed two Saturday dates for the retreat, February 16th and February 23rd from 9:00 a.m. to 2:00 p.m. with a working lunch or the time can be adjusted and the retreat can start at 12:00 noon to 5:00 p.m. also with lunch. Members were asked to check their calendars over the next couple of days and respond to him regarding their availability so that a date can be finalized.

C. OPEN ISSUES FROM LAST MEETING

Meetings with Appointing Agencies – Call to Action: In an email, members were reminded to set-up a meeting with the agency that appointed them to the ACRB. The purpose of the meeting is to do a presentation or talk about the board's work. This initiative is part of community outreach.

For the record, *Bozarth* stated that *Reid* is on the program for NPU – B, February 5th at the 7:00 p.m. meeting.

D. OURTREACH ACTIVITIY

M. L. King March– Reid reported that he sent out a communication requesting the board's participation in the M.L.K. March and Breakfast. He said, "At this time, I believe we have maybe two board members who have committed to attending the march and one member has committed to attending the breakfast. Several members will be out of town or have other events preventing them from participating, but I think it is important for those board members who can participate, to attend. It will be a good opportunity for us to be seen publicly and the work that we do is connected to Dr. Martin Luther King and his work. If you want to attend either or both events, please send me an email or call the office so that we can coordinate and have a good representation." *Reid* also noted that a banner had been ordered for the march on *Monday, January 21st* and there are 10 tickets for the breakfast on January 18th.

18th ANNUAL NACOLE CONFERENCE REPORTS

Williams provided a detailed report on the San Diego conference. He also reported on his involvement in several activities, for the year, leading up to the conference. Some of the documents included in the report are a list of the board officers and their role, board committees, NACOLE Code of Ethics, minutes, emails regarding the conference committees, monthly planning targets, workshops (*planned and eliminated*), key sessions, roundtable discussions and related decisions resulting from the discussions. **Williams** reported that he was designated to do PR for the conference, as well as, contact public safety organizations for the Mississippi River eastward region. In all, **Williams** reported that he attended seventeen sessions. To name a few...*Law Enforcement and Persons with Mental Illness; Law Enforcement and the CORE; Police Intervention Training; Beyond Complaints; Using Systematic Performances in Oversight Programs; Meet the Journalist; The Pros and Cons of Technology in Policing; and Social Media and Police Oversight.* The documents from these sessions will be copied to each member's flash-drive and returned at the next meeting

Williams also reported that NACOLE held its annual election and new officers were elected. Following his report he answered questions.

1. **C. Johnson** asked. *"You went to the last NACOLE conference (New Orleans), are you noticing any trending of these kinds of civilian review boards either growing or staying the same or falling by the wayside?"*
2. **Williams** responded, *"They are growing across the United States because citizens are becoming more and more aware of what is going on. In New Orleans one main concentration was on the Danziger Bridge shooting where police were acting as snipers, shooting people from the bridge. For the few days I was there, I must have seen 20 to 25 policemen indicted or convicted or put in jail. It was a highly televised situation and people at the conference were in an uproar. New Orleans had a lot of grass root people attending and there was a lot of commentary. The bottom line is they are going more towards being civilian oriented than police oriented...investigating rather than auditing. Last year, I was on the Annual Conference Committee but this year, I'm on the Membership and Community Outreach Committee and the goal is to open up more boards across the southeast United States since we are about the only one over here in this region but even in this state, there is a great demand."*
3. **Price:** *I asked one of the NACOLE officials why there was no representation from the southeastern part of the United States and his answer was, "You know that is something to think about." Price stated that she has also participated on conference calls with NACOLE's and was asked to be part of the Professional Standards Committee, but haven't committed herself because of the amount of time she has remaining on the board. She said, "I've got two more years and by the time we go next year, I don't know if it will be beneficial to me, but there are some issues that I have been asking questions about before I can commit myself to join. I don't want to commit myself and be a good worker. I have to believe in what I am doing."*

INTAKE REPORT FOR DECEMBER 2012

Investigator Robertson reported on the number of complaints received for the month of December 2012. **Robertson** reported that a total of five (5) complaints were received for the month and they are listed as follows:

Complaint Number: ACRB 12-63, Karen Sullivan alleging Negligence

Mr. Sims alleges a DeKalb County Police Officer was the cause of her car accident

Staff recommends dismissal because the allegation is outside the Board's jurisdiction

Complaint Number: ACRB 12-64, Citizen alleging False Arrest & False Imprisonment

Citizen alleged that on May 30, 2012, APD Officer Benjamin King falsely imprisoned and falsely arrested her.

Preliminary investigation revealed that the Citizen's case is still pending adjudication in the Fulton County State Court and the investigation into her complaint will depend on its outcome. Therefore, recommend suspension of the investigation pending the adjudication.

Complaint Number: ACARB 12-65, Johnnie Anderson alleging Impersonating a Police Officer

Mr. Anderson alleged that on December 18, 2012, someone impersonating an APD Officer called her and accused her of selling alcohol to minors.

Recommend dismissal because the allegation is outside the Board's jurisdiction.

Complaint Number: ACRB 12-66, Mr. Latif (first name not provided) / Allegation (Unknown)

Mr. Latif called to file a complaint against a Conyers Police officer.

Mr. Latif was informed that the ACRB does not have jurisdiction over the Conyers Police Department. Staff recommends dismissal.

Complaint Number: ACRB 12-67, Todd Craig alleging Inadequate Investigation

Ms. Craig alleges that in May 2012, his mopeds were stolen from his home. He alleges that APD has failed to contact him about the status of their investigation into the missing property.

Mr. Craig was referred to OPS. Recommend dismissal because the allegation is outside the Board's jurisdiction.

Request for Dismissal: ACRB Complaint No. 12-47, Juwanzo Simmons-Bey

Staff is requesting that the Board dismiss Complaint 12-47 due to the complainant's lack of cooperation.

Reason for request: On September 18, 2012, the Complainant, Juwanzo Simmons-Bey, filed a false arrest and Excessive Force complaint on behalf of his wife, Yvonne Jackson. To date, neither Mr. Simmons-Bey nor Ms. Jackson have responded to the ACRB's numerous letters and telephone calls to contact the office to be interviewed; thus the reason for the request.

Summary of ACRB Complaints Received from January 2012 - December 2012

<i>Investigations Initiated</i>	<i>25</i>
<i>Dismissals</i>	<i>42</i>
<i>Total Complaints for 2012</i>	<i>67</i>

Questions/Discussion...

1. **Bozarth** asked, "If the staff has time to work on it, would it not be worth considering to do the interviews at this stage even though we recognize that depending on how the case is adjudicated, it may be unnecessary, but in the interest of not letting more time go by, would the staff be willing to consider on item #2, to proceed with the investigation? There is only one complaint for the whole month that has any possibility of being further investigated. I don't know how the back-log is, but if you are quite busy anyway, then my suggestion is not appropriate, but if there are resources

- available in the month of January-February to look at this, I would suggest why not do some of the preliminary investigation in order to avoid the time delay problem we had on the last case.”
2. **Reid** responded, “In this case here, the staff has met with Ms. Williams on at least two occasions to try to get a statement from her and she was not willing to participate at that time. Actually, all we can do right now, is wait on this case and see what happens at the court and we can move from there.”
 3. **Bozarth**, “Had the complainant come forward and cooperated, would you have then been of the mind to do some other interviews during this time frame?”
 4. **Reid**, “My position is when someone comes in to file a complaint, we take the statement because you always want the statement closely related to the incident. As far as other parts of the investigation that may need to occur, some of those things can happen a little later, but you always want to try and get the statements as closely related to the incident as possible. However, it is a case-by-case basis but that’s the way I like to do things because you can avoid that situation where you have, “Well I can’t remember” given so much time passed since the incident.”
 5. **Bozarth**, “Well there is no disagreement that seven months is a long time to try to reconstruct testimony. We agree that should be avoided if we can?”
 6. **Reid**, “That is what I am telling you. It should be avoided if you can and I am telling you this also, the Board has discussed this matter in the past and I think it is something that the Board needs to either decided on one way or the other how you want to deal with those types of cases especially when we are talking about false imprisonment. We have to look at our resources but the sooner we can get a statement, the better it is for the investigation. So yes, I agree with you that seven months would be a long time but if the person is not going to give a statement at that time, you can’t make them give a statement. At that point, you can do either one or two things, totally close it out at that point because they are not comfortable giving a statement at that time or we can just wait, as in this case when the criminal case resolves itself and take it at that step.”
 7. **Bozarth**, “Do we suspect that in this case because the complainant has not wanted to make a statement that they may not be that interested in pursuing the complaint?”
 8. **Reid**, “Honestly, it is possible that could be the case and the Board can always say, ‘Well, we have given her long enough and she doesn’t want to participate.’”
 9. **Williams**, “In lieu of the Intake Report, let it also be reflected that some of these (complaints) came from outside our jurisdiction and that goes back to what I have been saying earlier about the demand for oversight being there in other areas. Mr. **Reid** just stated, since we are restricted by our resources, budget or what have you, on the news last week, it was reported there is a surplus of money here in the City of Atlanta, and we should ask for more money for our board.”
 10. **C. Johnson**, “To reference back again, the reason why the cases are kind of held abeyance until the criminal case is finalized or adjudicated is not necessarily or totally because of resources, it is also because of the legality of it. I think when we were structuring or creating the policy and procedures and by-laws, we wrestled with that. As Mr. **Reid** has mentioned, a few years ago when we were preparing the policies, as well as the by-laws, we voted to do this, but you can always go back and change and modify these things. However, the purpose of not doing an investigation was because you have, sometimes, issues where the person who is accused of a criminal act may or may not want to talk at that point or for whatever reason, is free to talk to an investigator. So we wanted to make sure that if it is going to be a case that ultimately, is in a Criminal Court or State Superior Court that it is adjudicated and completed, finalized or disposed of...before we go forth with the investigation...that was our thought process regarding these types of cases. It does seem like a long period of time possibly, but it would be the best use of our resources that we have now, as well as, the legal reasons for not trying to investigate a case while it is still pending in a Criminal Court. But again, this is something that you should probably address and looked at when you begin to review policies. That way the Board will clearly understand and not necessarily for just when you go out there talking to your community people and they ask “Why is it taking so long?” but also so that you can have an understanding that this is a process and we want to make sure our investigations are

- clean, through and will stand the test when people come back and want to review our files. I think to do it otherwise, would be an over use of our staff to do it the other way.”*
11. **Price** said, *“I’m confused about the two issues. Are we doing an administrative hearing or are we doing judicial? As far as I am concerned, they don’t rise to the same occasion. I don’t agree that we have to wait because we are doing administrative hearings and there is no need to wait on the judge to see what he has say especially about false imprisonment and so forth. I don’t think they both rise to same criteria. This is an administrative board and not a judicial board. I have a problem when I hear, we are waiting to hear what the judge does, to say whether the officer really made a good arrest or not. The officer is guided by the SOP not the city Court.”*
 12. **Bartels** said, *“I think this is something that we probably can think about some more. I think the board retreat is a good time to talk about. I can see the different viewpoints. On one hand, you don’t want too much time to go by because people do forget details and move out of town and so on. On the other hand, is it an efficient use of time? As an attorney, I can see why someone who has a pending criminal charge against them may be reluctant to go on the record and make statements about what happened because you know that is Open Records and it is discoverable by the Prosecution.*
 13. **Reid**, *“Investigator Lively informed me that in this case, Ms. Williams did not file her case until November 30th, just making the deadline. In fact, the date of the deadline. While the date has May 30th, we tried to do what we could do get the individual to give a statement but they haven’t given it.*
 14. **C. Johnson** stated, *“I would suggest that as new members come on board, this is an excellent time to revisit a lot of those issues. A couple of them would be the time line in terms of what staff limitations are when you file a complaint and the other would be legal side. So if you want to go through all of that, the staff is good historically to be able to tell you the pros and cons as to why that was happened that way; in addition to the legal reasons. Some were legal and some were resources and sometimes you come to a compromise.”*

Following the discussion, the **Chair** entertained two motions, the Intake Report itself and a second motion regarding the request to dismiss Mr. Simmons-Bey complaint #12-47.

Regarding the Intake Report, it was moved by **Bozarth** moved to accept the report as presented. **Price** seconded the motion. Hearing no further discussion, the vote was called and the motion was passed unanimously.

Regarding the Dismissal of ACRB Complaint No 12-47, **Price** moved to dismiss the complaint. **Bozarth** seconded the motion. Hearing no further discussion, the vote was called and the motion was passed unanimously.

REVIEW OF CASES:

A. COMPLAINT NO. 12-28, BYRON GODWIN

Chair Bartels summarized the complaint filed by Byron Godwin. Mr. Godwin alleged that he was falsely arrested at the Subway Restaurant by Officer Terrence Malone. Mr. Godwin was charged with theft by taking. The case was investigated by ACRB Investigator Sheena Robertson.

Discussion...

1. **Bozarth** commented, *“I think that the man, clearly as it turned out should not have been arrested. I don’t know if I were the officer and owner of the place was saying what the employee of the store was saying, he had to make a choice between who he believed. The staff is recommending sustaining the complaint. I have to depend on the investigator’s reading of the various testimonies if it was, in fact, the employee that convincing at the time,*

insisting that the man had not paid. That would be the determination I would have as to whether this was an appropriate arrest or not.”

2. **Bartels** said, *“The staff’s recommendation is to sustain the allegation. I think it is a good point made by Ms. Robertson (investigator) that the video was actually available and even the employee at the store could not access it that video could have been obtained and looked at later and it clearly would have showed what had happened. The other comment that I would make, which is pretty dispositive, is the receipt that he turned in not only did it have the amount he was suppose to pay, but it actually showed the cash amount that was tendered. I believe that the officer’s thought may have been that was this was just an invoice, or bill and it doesn’t show that anything was being paid; but it clearly shows an amount that was tendered which means that he did pay. That plus the fact that the video tape could have been accessed and viewed before that decision was made, in my opinion, is a reason to sustain the complaint.”*
3. **C. Johnson** said, *“The manager was at the store the night of the incident and at that point, could have probably had access to the video to confirm whether not the gentleman had actually paid for his food.”*

Following the discussion, the following motion was made:

It was moved by **Harrison** to accept the staff’s recommendation to **sustained** the allegation of False Arrest as alleged by Mr. Godwin against Officer Malone. **C. Johnson** seconded the motion. Hearing no objection, the motion was approved unanimously.

B. DISCIPLINARY RECOMMENDATION

The **Chair** asked **Investigator Robertson** to report on the Officer Malone’s disciplinary history and the normal range of sanctions for the sustained allegation.

Robertson reported that she went to APD last week to review the disciplinary file of Officer Malone and she discovered that Mr. Godwin had also filed a complaint with their office two months prior to filing with ACRB. APD had completed their investigation into this complaint and found Officer Malone in violation of work rule 4.233, Conformance to Directives for Violation of the Arrest Procedures. For this violation, he received a two day suspension. Therefore, based on APD’s disciplinary grid and his prior disciplinary history, this is a Category ‘B’ violation and the penalty that he received did fall within their guidelines. That type of infraction is a one to three day suspension and he was suspended for two days.

Officer Malone has been employed with APD since 2004. Within the past five years, he had eight complaints filed against him. Out of the eight, five resulted in a finding of sustained, but he only had one complaint that had this type of allegation. A summary of the complaints included failure to respond when he was called on radio after being dispatched to a location; another involved an allegation that he and another officer had taken cash from a complainant’s vehicle during a traffic stop. This particular complaint was sustained based on how the report was written.

Discussion...

1. **Harrison** asked, *“You are saying that this particular officer has already been disciplined for this particular case and the discipline that he received was a two day suspension.”*
2. **Robertson** replied, *“Yes.”*
3. **Price** said, *“I think that the two day suspension is enough time that was given to him for that type of violation.”*
4. **Harrison** asked, *“Did you also say that this particular officer had eight other violations?”*
5. **Robertson** responded, *“He had eight complaints and five were sustained.”*

6. **Harrison** stated, "Then our guidelines say that not only can we discipline him from one to three days, we can also administer proactive corrective action, right? Which means we can actually give him the two he has already served plus training or counseling, right?"
7. **Reid** responded, "Since the officer has already been discipline on this matter, you are not going to be able to put any other discipline on him."
8. **Harrison**, "But we can make the recommendation whether it is accepted or not. If it is not accepted it does not matter, at least we made the recommendation."
9. **Reid** stated that the recommendation could be made.
10. **Hubbard** asked, "How long has he been a member of the force?"
11. **Robertson** responded, "Since March of 2004."
12. **Bartels** asked, "Ms. **Robertson**, did you get an idea of how long Mr. Godwin was in jail and if he had to go to court several times, or was it dismissed immediately after he was arrested?"
13. **Robertson** answered, "He spent one night in jail and it was dismissed the following day."
14. **Bartels & Hubbard** commented that even one night can be traumatic. **Bartels** said, "Having to be arrested and spend the night in jail is a pretty traumatic experience especially, when something could have easily been avoided with some investigation and I think we should keep that in mind."
15. **Williams** asked, "What is the up and down on the grid?"
16. **Bartels** answered, "We can recommend anything we want to. The decision has already been made, it's not going to be followed, but we can go on record and make the recommendation. We have gone outside the grid in past cases."
17. **Williams** indicated that he agreed with **Harrison** to recommend the additional discipline.
18. **Robertson** added, "I apologize but I left out the fact that he was disciplined another time for arresting someone without probable cause and that was in 2011. So this will be the second time."
19. **Harrison** responded to **Williams**' question, "The answer to your question, Maceo, in a category B, he can do a one to three day suspension plus counseling and training, if that is what we decide to do. Now whether APD will actually do that or not is up to them."
20. **Price** stated, "If I am not mistaken, counseling is not considered discipline. It is a training thing to change behavior without anything disciplinary, so it really has no weight. You can send that back and recommend that the supervisor talk to him and given him some counseling."

Following the discussion, the **Chair** called for a motion.

It was moved by **Harrison**, to recommend a two day suspension alone with counseling from the supervisor. **Price** seconded. Calling for the vote, the motion was approved without further discussion.

PUBLIC COMMENTS

Chair Bartels opened the floor for public comments; however, no one signed up to speak.

CLOSING COMMENTS

A. APD CORRESPONDENCE

Referring to Chief Turner's letter in the board's packet dated January 3, 2013 regarding Case #11-32 **Price** noted that in the letter, the Chief accepted the findings of the Board with modifications. She asked if the modifications were known. This question was directed to Major Dancy.


Responding *Chair Bartels* stated, “Regarding the decision with modifications, if I recall correctly there was some discussion about whether one or more of the complaints was going to be exonerated verses not sustained, but it is not an issue that we can resolve today. I know Major Dancy and our staff will need a little time to work on that. Mr. *Reid*, if we can put that on the agenda for next month.

B. 2013 ELECTION OF OFFICERS

Reid reminded the board that next month, February, the Board will hold the annual election of officers. Information regarding the process will be emailed over the next few weeks.

ADJOURNMENT

Chair Bartels entertained a motion to adjourn. *Williams* moved to adjourn the meeting. The meeting adjourned at 7:45 p.m.

Approved as to form and content,
Alan Morris
Board Secretary,

Signature

February 14, 2013