ATLANTA CITIZEN REVIEW BOARD
MINUTES OF THE LAST MEETING
MARCH 10, 2011, 6:30 P.M.
55 TRINITY AVENUE, S.W., COMMITTEE ROOM TWO, ATLANTA, GEORGIA 30303

ROLL CALL

MEMBERS PRESENT
PAMALA ALINIECE (Aliniece)
   (New member replacing Owen Montague)
PAUL BARTELS (Bartels)
BARBARA HUBBARD (Hubbard)
CHARIS JOHNSON (C. Johnson)
ALAN MORRIS (Morris)
JOY MORRISSEY (Chair/Morrissey)
SHARESE SHIELDS (Shields)
MACEO WILLIAMS (Williams)

MEMBERS ABSENT
RYAN JOHNSON (R. Johnson)

Two Vacant Appointments to the Board
City Council President's Office (vacant 11 months)
City of Atlanta Council Members (vacant 3 months)

STAFF ATTENDEES
MARC ADDINGTON, Investigator (Addington); CRISTINA BEAMUD, Executive Director (Director/Beamud); SHEENA ROBERTSON, Investigator (Robertson); MYOLA SMITH, Administrative Analyst (Smith /Transcriber); WILLIAM CASTINGS, Board Attorney, City of Atlanta Department of Law (Bill Castings)

MEETING CALLED TO ORDER:
The meeting was called to order at 6:34 p.m. The Chair welcomed guest, citizens and members of the Atlanta Police Department including Lieutenant Sharonne Steed, APD, Office of Professional Standards.

AGENDA

APPROVAL OF MINUTES OF THE LAST MEETING (Agenda Item II):
The Chair entertained a motion to approve the minutes of the last meeting held February 10, 2011 at 6:30 p.m. It was moved by Morris to accept the minutes of the last meeting. The motion was seconded by Bartels. No discussion, the motion was approved.
CONSIDERATION OF INVESTIGATION 10-35, COMPLAINT OF LEE McCracken
(Agenda Item III):

The Chair directed members to Agenda Item III, Director Beamud’s memo to the Board dated February 17, 2011 summarizing the investigation of Complaint #10-35. Investigator Addington provided oral remarks regarding the complaint.

A. SUMMARY OF ALLEGATION

Addington reported that the complaint involved an allegation of abusive language made by Mr. Lee McCracken against the Atlanta Police Department Officer V.A. Moreno.

Mrs. McCracken claims that she and her husband, Frank McCracken were at Hartsfield-Jackson Airport on July 12, 2010 to pick up family members. They were parked at the passenger drop-off/pick-up area of the North Terminal when they were approached by Officer V.A. Moreno who pulled up along side their vehicle and asked, “Are you clueless?” According to Mrs. McCracken, they asked Officer Moreno what she was talking about and Moreno responded by yelling, “Oh you don’t know, you don’t know! Stay right there!” Officer Moreno pulled her vehicle away from where they were parked and eventually, pulled up behind them and initiated a traffic stop on the complainant. According to the complainant, Moreno approached them, secured the driver’s license of the complainant’s husband, Frank McCracken. Officer Moreno went to her patrol car and returned a short time later and issued a traffic citation for parking in a No Parking zone.

B. WHAT THE INVESTIGATION REVEALED

Addington reported that during the interview, Mrs. McCracken was concerned that Officer Moreno was targeting them and disregarded several other cars that were also illegally parked in the same area. The McCrackens left the area and came back and videotaped the other cars that were illegally parked. According to Mrs. McCracken, Officer Moreno approached them a third time and told them she did not mind if they videotaped but they needed to move their car.

Frank McCracken submitted a written statement that confirmed his wife version of the events. He added that Moreno shoved the ticket in his face and told him to sign it. He told her, “I ain’t signing anything because you passed all those other cars that were parked illegally.” She radioed dispatch and Mr. McCracken agreed to sign the ticket.

When Officer Moreno was interviewed, she said that she saw the McCracken’s car illegally parked near the North Terminal. She approached the driver’s side and asked the driver to move. Moreno said that the driver replied, “Worry about the other cars.” She then said to the driver, “The others haven’t a clue; you, on the other hand are clueless.” She was distracted by another car that was driving on the wrong side of the street and she left to deal with that driver. Officer Moreno said that she dealt with that situation and then re-directed her attention to the McCracken’s. They were driving away. She initiated a traffic stop and when she approached the car, Mr. McCracken yelled, “What you pulling me over for, this is harassment. You are singling me out. You are a black officer treating me like this. I expect this from some cracker but you should be ashamed of yourself.” She issued him a citation and Mr. McCracken told her to burn in hell and drove off. He returned shortly and began videotaping the cars parked at the North Terminal.

C. STAFF RECOMMENDATION

The ordinance defines abusive language as meaning, harsh, violent, profane or derogatory language which would deme an the dignity of an individual and which shall also include profanity and racial, ethnic, or sexist slurs.

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Addington stated, “The staff recommends that the finding against Officer Moreno be not sustained; however, the finding of the Board turns on how the word, ‘clueless’ is interpreted. Also, for your consideration, APD’s OPS department has already adjudicated this case. They sustained a violation of the courtesy provision because the SOP addressing courtesy provides a broader view of how officers should interact with the public. Their requirements are an employee will be civil, orderly and courteous but it is unclear that this is a violation of the definition provided by the City Ordinance.

D. BOARD VOTE REGARDING STAFF RECOMMENDATION

The Chair opened the floor for discussion.

Discussion and Questions...
1. Alinniece asked, “When the McCrackens came back to video the cars in the area, was there ever a decision made to view the tape of the parked cars that Officer Moreno did not given any attention to?” Addington replied, “They did; however, we did not look at that aspect of the case because it does not fall within the ordinance. We were only looking at the abusive language part of it. Initially, Mrs. McCracken had concerns that her husband’s commercial drivers license would be affected due to the citation but I explained to her that it was not a moving violation and it would not impact his license. I also made her aware this was something that we could not address because we are limited by the ordinance and therefore, we could only focus on the interaction and the abusive language. Ms. McCracken immediately keyed in she felt that when Moreno approached them and said, ‘are you clueless’ that the officer was being abusive.”

2. Morrissey asked, “It really comes down to a question of whether or not the term ‘clueless’ is considered abusive. How long has Officer Moreno been assigned at the Airport?” Addington stated that he did not have the disciplinary files of Moreno, but he was reasonable sure she has been assigned there for over a couple of years. He did recalled she has had some complaints filed against her regarding courtesy, although they were believed to be not sustained. Morrissey stated, “We are paying attention to the officers at the airport and how they are performing because we believe it is a burn-out place. I can well imagine that this is a very difficult place to work in under very stressful conditions and probably not dealing with the nicest of people at times. However, the airport is the place where Atlanta gets to showcase who we are and the officers assigned to airport, can be a tremendous representative for us.”

Following the discussion, the Chair called for a motion to accept the recommendation of the staff. Hearing no motion, the Chair asked for discussion to determine what motion should be made. Bartels stated, “I think we need to discuss whether we believe the term ‘clueless’ comes under the ACRB’s definition of abusive language. My own thought is that it is on the edge. Reading the ordinance, I think you can make a good argument that it is derogatory. We don’t exactly know Officer Moreno’s expression on her face or her verbal tone. It is difficult for me to know how you could call somebody clueless, without being derogatory. At this point, I am not comfortable adopting the recommendation.”

Chair Morrissey entertained a motion. Williams moved to accept the staff’s recommendation of not sustained. Alinniece seconded the motion. Hearing no further discussion, the motion was approved with one No vote from Bartels.

CONSIDERATION OF INVESTIGATION 10-57, COMPLAINT OF MELVIN BURNS (Agenda Item IV)

The Chair directed members to Agenda Item IV, Consideration of Investigation #10-57. Investigator Addington was asked by the Chair to provide an overview of the complaint.

A. SUMMARY OF ALLEGATION
Investigator Addington reported that this is an allegation of excessive force made by Melvin Burns involving members of the Atlanta Police Red Dog Unit. The officers are Rodney Jefferson, Darnell Perry and Victor Guevara.

A. WHAT THE INVESTIGATION REVEALED

Addington reported Mr. Melvin Burns filed a complaint with the ACRB on the 29th of September regarding an incident that took place on the 23rd of September at approximately 8:00 p.m. in the area of 396 Rawson Street. According to Mr. Burns, he was in this area delivering literature to an individual who lives in the apartment complex on Rawson. Upon returning to his vehicle, he saw APD patrol cars pull up. He said that a black officer came from the rear of the police car and grabbed his wrist. He was surprised and asked what the problem was and a second officer twisted his arm and then used his knee to force him to the ground. He described this officer as a black male, approximately six feet tall, wearing eyeglasses. Mr. Burns claims that the two officers kicked, stomped and banged his head into the pavement as he lay on the ground. A third officer, described as Hispanic, also began to kick him. Mr. Burns suffered injuries to his right cheek, shoulders, left knee and wrists. The officers searched his car and removed a handgun that was locked in the center console. An ambulance was called to the scene and one of the officers told the medics to “clean him up” so that he could be transported to jail. Mr. Burns was subsequently charged with disorderly conduct and booked at the Atlanta Jail.

Although, the EMT’s treated Burns at the scene, three days following the incident, he returned to the South Fulton Medical Center on September 26, 2010. The medical records were secured from South Fulton Medical Center. These records support Burns claims regarding his injuries indicating a contusion on his chest and thigh area.

During the interview, Burns indicated there were several witnesses who observed this activity. He was able to identify one of the witnesses as Johnny Williams. When interviewed, Johnny Williams stated that he was at the Rawson Street location with about six others, drinking when the APD officers pulled up. He said that he observed Burns, whom he did not know prior to this incident, approached by two officers. He said that Burns appeared to be surprised and yelled, “What is going on?” Mr. Williams said that Burns was forced down to the ground and kicked in the head. Mr. Williams said he and the other men were allowed to go except Burns and another individual. This individual was arrested because he had a firearm in his possession. Mr. Williams confirmed that Burns was coming from the apartment building and was not part of the group who were drinking.

Altogether, there were four officers involved in this incident and all were interviewed. Officer Chao said that he observed people drinking in a public place and investigated. He did not initially see Mr. Burns since he was involved with another person but heard Officer Jefferson speak to a male who was yelling. Officer Chao said he eventually assisted with Burns. He conducted an inventory search of Burn’s car prior to the vehicle being impounded.

Officer Guevara said he and Officer Chao approached another individual who was consuming alcohol in public. He heard yelling but did not see Officer Jefferson and Perry. When Officer Guevara investigated, he saw Melvin Burns lying on the ground in handcuffs. He assisted by moving Burns from the ground into a sitting position on the curb. He saw an injury to Mr. Burns’ right cheek. Officer Guevara said he did not witness any force against Burns either before or after he was handcuffed and he did not observe Burns engage in illegal activity.

Officer Jefferson said that he first encountered Melvin Burns while Burns was in the group of people they were investigating. He described Burns as belligerent and disorderly and claims that Burns would not leave the area after being given several commands to leave. He decided to arrest Burns. He claims Burns resisted and that he had to use an arm bar to take him down to the ground. Mr. Burns continued to resist attempts to be handcuffed and Officer Perry then assisted by pulling Mr. Burns other arm behind
him. Officer Jefferson said that Mr. Burns suffered an abrasion to his cheek but he did not recall any other injuries. He called an ambulance to treat Burns and asked the medics to “clean-up” Mr. Burns.

Officer Perry indicated that he heard Officer Jefferson interact with Melvin Burns. He said that he saw Officer Jefferson take him to the ground and that he assisted Officer Jefferson by pulling one of Mr. Burns’ arms behind him. He recalls Mr. Burns’ injury to his cheek but could not recall if he suffered any additional injuries.

B. STAFF RECOMMENDATION

Addington stated, “The force reported by the officers does not account for the injuries sustained by Mr. Burns. The medical record supports Mr. Burns’ version of the events. The arm bar used to force Burns to the ground could not account for the contusion on his chest. An independent witness also confirms the complainant’s version of the events. For this reason, the staff recommends that the excessive force allegation be sustained against three of the four officers: Officers Jefferson, Perry and Guevara.”

Discussion / Questions...

1. Bartels said, “Was Mr. Burns charged with anything except disorderly conduct? Addington said, “No, just disorderly conduct.” Bartels said, “So they did confirm that he was drinking in public? Addington, “No, he was not drinking. They indicated that he was standing in a group of individuals who were drinking which initiated their stop. According to Mr. Burns and the witness, he was coming from an area that was approximately 75 feet away from where the other individuals were standing. Bartels, “Was it confirmed that the other individuals were actually drinking alcohol?” Addington, “By Mr. Williams’ (witness) admission, he indicated that they were drinking; however, the officers allowed them to leave.” Bartels, “So none of them were charged with anything?” Addington, “The only person that was charged was the person that had a gun in his waistband.” Bartels. “I find it curious that the whole reason for the stop and the encounter was they thought people were drinking alcohol but no one was charged for that and what Mr. Burns was charged with would not have happened but for the police being there.” Addington pointed out that the charges against Mr. Burns were dropped in Municipal Court.

2. Shields stated, “It was not clear to me what Johnny Williams (witness) saw. He said he saw Mr. Burns being beaten but did he indicate how many officers or how the officers look?” Addington responded, “He made it very clear that the Asian officer was not involved because he was engaging the individual with the weapon. All of them described two African American officers and a Hispanic officer. By process of elimination, the Hispanic officer would have to be Guevara and of course, Jefferson and Perry are the officers described as African Americans. Shields, “My concern is Guevara denies that he took part in the beating. He said he only assisted the two other officers by moving Burns from the ground into a sitting position. The witness (Johnny Williams) did not mention that Guevara took part in the beating of Mr. Burns. Mr. Burns on the other hand indicated that Guevara did join Jefferson and Perry in beating him. It is Guevara’s word against Burns and also, the witness did not name Guevara. When you consider all of what was going on with him (Burns)...kicking, stomping, beating Burns head into the payment, how could he have known who was doing what? I am not comfortable sustaining this kind of complaint against Guevara. However, I am wondering why there was not a charge of false arrest or false imprisonment especially, in light of the fact that he (Burns) was not drinking and there seems to be corroborating evidence of that. Williams, “The incident heated up when the officer approached Burns and Burns seemed surprised and amazed and asked what was going on. A major concern I have is that one of the officers told EMS to ‘clean-up’ Burns so that he could be taken to jail. The fact that they felt he had to be cleaned up before they could take him to jail, tells me that something went very, very wrong.”

3. Bartels, “I understand where Ms. Shields is coming from regarding her comments on Officer Guevara, but the point that I would like to make is that an officer is charged with upholding the law whether that is in respect to private citizens or his fellow officers. It seems if Officer Guevara is not actually hitting or kicking, he was present and the evidence shows he knew what was going on and did nothing to stop it.”
C. BOARD VOTE REGARDING STAFF RECOMMENDATION
At the conclusion of Addington's overview, the Chair entertained a motion to accept the staff’s recommendation to sustain regarding Complaint #10-57. Williams motioned for the Board accept the staff recommendations. Morris seconded the motion. Hearing no further discussion, the motion was approved. For the record, Shields voted ‘Yes’ with reservations to Officer Guevara.

D. RECOMMENDATION AND VOTE FOR DISCIPLINE
Before discussing discipline, Chair Morrissey asked Investigator Addington to provide background information on the three officers.
1. Tenure of Each Officer
   a. Officer Darnell Perry has been employed since 2003. He has had six incidents in the past five years. Three (3) have been sustained and all of the incidents were for not appearing in court. The other three were related to Use of Force complaints. Two (2) of those were not sustained and one (1) is currently pending (Melvin Burns case).
   b. Officer Victor Guevara has been employed since 2005. He has had four (4) incidents in the past five years. Two (2) of the cases have been sustained and two (2) are currently open. One (1) of the two open cases is related to the Use of Force alleged during the arrest of an individual and the other remaining open case is the Burns case.
   c. Officer Rodney Jefferson has been employed since 2007. He has had three incidents in the past five years. One (1) case has been sustained and two (2) are currently open. The two open cases are Use of Force complaints alleged during the arrest of an individual and the other remaining open case is the Burns case.
2. Type of discipline, Category C ranging from four (4) to fifteen day suspension within the reckoning period to demotion.

The Chair entertained a motion for discipline regarding each officer.

   1. Regarding Officer Darnell Perry, it was moved by Morris to recommend a ten (10) day suspension without pay for discipline regarding his involvement of excessive force against Melvin Burns. The motion was seconded by Williams. Hearing no discussion, the motion was approved.
   2. Regarding Officer Victor Guevara, it was moved by Morris to recommend a four (4) day suspension without pay for discipline regarding his involvement of excessive force against Melvin Burns. The motion was seconded by Bartels. Hearing no discussion, the motion was approved.
   3. Regarding Officer Rodney Jefferson, it was moved by Williams to recommend a four (4) day suspension without pay for discipline regarding his involvement of excessive force against Melvin Burns. The motion was seconded by C. Johnson. Following one question from Shields, the motion was approved with two members (Morris and Shields) voting No against the recommendation.

CONSIDERATION OF INVESTIGATION #10-60 – COMPLAINT OF BONITA HUNT (Agenda Item V)

The Chair directed members to Agenda Item V, Consideration of Investigation #10-60.

A. SUMMARY OF ALLEGATION
   Investigator Robertson provided an overview of complaint #10-60 filed with ACRB by Ms. Bonita Hunt, a 43 year old woman, alleging Excessive Force against her by APD Officer Tabitha Peterson.

Ms. Hunt alleges that on August 7, 2010, Atlanta Police Officer Tabitha Peterson engaged in unnecessary and excessive force during an arrest. Specifically, Ms. Hunt alleges that during the arrest, Officer Peterson applied the handcuffs extremely tightly. She further alleges that Officer Peterson ignored her request to loosen the cuffs which resulted in her sustaining injuries to her left hand.
B. BACKGROUND
The incident arose out of a dispute between Ms. Hunt and her sister, Jacqueline Bennett-Costello, regarding a vehicle that was in Ms. Hunt's possession. On the day of the incident, Ms. Hunt's younger sister, Keke Hunt, was driving the vehicle and was visiting a friend at 10 Mount Zion Road. The older sister, Jacqueline, showed up at the location and told younger sister Keke that she had called the police and was taking the vehicle. Keke then called Ms. Hunt and asked her to come to the location so she could explain the situation to the police to keep them from taking the car from her.

When Ms. Hunt arrived at the location, Officer Tabitha Peterson was already present. Officer Peterson asked Ms. Hunt to provide her identification; she complied. Officer Peterson ran a computer check on Ms. Hunt's identification and it came back that she had an outstanding warrant for her arrest. She was then handcuffed and placed in the backseat of the patrol car.

C. WHAT THE INVESTIGATION REVEALED
The investigation showed that Officer Peterson served a valid warrant out of Clayton County for Ms. Hunt for theft by deception and forgery. The two outstanding warrants were issued by Clayton County authorities on June 22, 2010.

During the interview with Ms. Hunt, she alleges that while in the patrol car, she pleaded with Officer Peterson to loosen the handcuffs because they were too tight but she ignored her request and did not loosen them. Ms. Hunt alleges that as a result of the tight handcuffs, her left hand was completely numb and she continues to experience numbness in her left hand. Ms. Hunt, however, failed to provide documentation that she received medical treatment nor did she provide any proof of her alleged injuries.

Witnesses at the scene included Keke Hunt and the parents of the complainant, Roy and Eddie Pruitt. They all corroborated Bonita Hunt's claim that she complained to Officer Peterson that the cuffs were too tight and she did not loosen them.

When Officer Peterson was interviewed, she stated that when she was on the radio inquiring about the warrants with Clayton County, Ms. Hunt began screaming and yelling that she had never been arrested before and that the handcuffs were too tight. She also requested the presence of a supervisor. Officer Peterson said she told Ms. Hunt that she would tend to her after she finished talking to the dispatcher. Officer Peterson said while on the radio, she contacted Sergeant Daniels and apprised him of the situation and of Ms. Hunt's request for a supervisor to come to the scene.

Shortly thereafter, Sergeant Daniels arrived and spoke with Ms. Hunt. She said that after Sergeant Daniels spoke with Ms. Hunt, he told her to remove the handcuffs because she was not a flight risk. Officer Peterson said she complied; however, when the warrants came back confirmed from Clayton County, she placed the handcuffs back on Ms. Hunt so that she could be transported to the Fulton County Jail. Clayton County authorities could not come and retrieve her at this time.

During the interview, Officer Peterson was asked how long Ms. Hunt had been handcuffed before Sergeant Daniels told her to remove them. She stated that it was no longer than 10-15 minutes. When she did removed them, she did not notice any visible injuries on her wrists.

Ms. Hunt was examined by medical personnel in both Fulton County and Clayton County Jails. The Fulton County record makes no reference to complaints or injuries. The Clayton County record indicates that Ms. Hunt complained that her arm was numb, but there was no medical treatment.

D. STAFF RECOMMENDATION
Ms. Hunt claims that as a result of the tight handcuffs, her left hand was completely numb and that since the incident, she continues to experience numbness. Ms. Hunt has failed to produce documentation to
show that she suffered injuries to her hand. Therefore, in the absence of such evidence, we cannot conclude that the officer used excessive force.

Based on the facts presented, the ACRB staff recommended to the Board that the Excessive Force allegation against Officer Tabitha Peterson be not sustained.

E. VOTE BY THE BOARD TO ACCEPT RECOMMENDATION
Following the conclusion of Robertson’s summary, the Chair opened the floor for questions and a motion on the staff’s recommendation. It was moved by Shields to accept the staff recommendation to sustain the Excessive Force allegation. The motion was seconded by Morris. The Chair called for questions and discussions. Hearing none, the motion was approved with only one member, Williams, voting ‘No.’

INTAKE REPORT (Agenda Item VI)
A copy of the Intake Report was included in the Board packets. Director Beamud reported five complaints were received for the month of February, 2011. The complaints are:

#11-06 / Vickie Slaughter alleging Poor Service
Staff recommends dismissal because the complaint is not within the Board’s jurisdiction. This is a service complaint.

#11-07 / Joe E. Gary alleging Traffic Ticket
Staff recommends dismissal because this matter is best resolved in court.

#11-08 / Kyle Chandler alleging Excessive Force
Complainant’s attorney has advised him not to file a formal complaint at this time, citing Fifth Amendment issues. Thus, the matter should be dismissed for lack of a signed complaint form.

#11-09 / Mateo Ramos alleging Unlawful Imprisonment
Staff recommends dismissal for lack of a signed complaint form.

#11-10 / Jurdís Nelson alleging Fabricating Evidence
Staff recommends dismissal because this is outside of the Board’s jurisdiction and is beyond the 180-day limitation period.

The Chair entertained a motion to accept the Director’s Intake report. It was moved by Morris to accept the Director’s report. The motion was seconded by Bartels. The Chair called for a discussion. Hearing no discussion, the motion was approved.

DISCUSSION REGARDING CONFLICTS WITHIN THE LAW DEPARTMENT (Agenda Item VII):

The Chair called on Shields to provide an overview of the conflict and to begin the discussion.

Shields stated, “The issue is whether or not the City Law Department can represent this Board, as well as, the Atlanta Police Department without having a conflict of interest in representing both entities, which often have adverse and particular interest.”

“This issue raised from the very beginning, since the establishment of the Board, is not a new interest. Recently, Director Beamud and I met with the City Attorney, Cathy Hampton alone with Roger Bhandari to talk about our
concerns. The Supreme Court Garry Decision is an example of what we perceived to be a conflict. This decision basically states that a statement given by an officer during the course of an administrative investigation cannot be used to prosecute him. Initially, we were told that Garry would protect the officers if they cooperate with our investigation. A memo was issued. A couple of years later, the former Acting City Attorney, Peter Andrews gave a public statement and I believe it was to the media, where he said that he did not believe that the officers were protected by Garry. We have attorneys within the Law Department with different opinions."

"Another example would be recently at a Special Call Meeting of the Board, when we had Chief Turner to come before us to answer why he had not responded to our recommendations within thirty days. If you recall, one of the questions that I asked was, 'have you been advised by your attorney in terms of determining whether and when to respond.' His response was that he was and that he had been so advised. His advice came from some attorneys in the Law Department. These are issues that have come up which, at least, raise the question of whether or not a conflict exist."

"We had a good discussion with Ms. Hampton and Mr. Bhandari. They are sympathetic with the concerns that we raised but we did not agree that there was indeed a conflict. They feel there is not and they have reasonable arguments as to why there would not be a conflict. City Law Departments all over the nation are charged with representing different entities within the city government that may, at times, have competing interests. They do not see themselves as a private law firm. You could not, by my interpretation of State Bar rules, have a law firm represent the city's police department and this board. I believe the rules maybe slightly differently for governmental entities, but in criminal context, there has been a ruling on public defender offices representing co-defendants in a criminal case. There are some similarities and some distinctions."

"The bottom line is we do not know if a conflict exists at the State Bar rules and only the State Bar can make that determination. We have previously gone to the State Bar and we have written a letter raising the question but the State Bar does not issue Advisory Opinions. The only way to get an official response to our question is to file a complaint with the State Bar against individual attorneys. Sounds harsh but we are not seeking any disciplinary action at all because that is not our intention. The intent is to get the answer to the question as to whether or not there is a conflict. We do not want these issues to keep occurring and we are uncomfortable that a conflict exists. Also, we are sharing resources and fortunately, we have not had any litigation. I think when there is litigation between the two competing interests, the question will become clearer. From my stand point, it is usually the client that has the right to request a change and there is no question about who is the client. We are the client and the City of Atlanta and if the client is uncomfortable, then it is certainly something to be of concern. This Board has expressed concern about this issue in the past. The issue that we have to decide tonight is what to do about it. Do we want to take it to the State Bar by way of a complaint and let them decide? Again, the intent is not to seek discipline, but just to get the question answered and we can certainly say that in our complaint to the State Bar."

"We have been talking about this issue since the inception of the Board and I am in favor of acting on it and not waiting until another issue arises before we do something about it."

"In our meeting with the City Attorney and Mr. Bhandari, there was discussion about whether or not there is a trust issue, specifically, a lack of trust because attorneys representing the police and ACRB work in the same department. They attempted to give us some assurances that they do not talk to each other and they do not share confidences, etc., but part of what makes a conflict is just the appearance. It is pretty clear that we are not going to agree with the City's Law Department on this issue. The ball is in our court, what do we want to do?"

To add to those comments, Beamud stated, Ms. Hampton indicated that they have a 'Chinese Wall.' The State Bar has a hotline and in conversations with the people at the Bar, I was told there is no such thing as a Chinese Wall in Georgia. The only way that you can represent clients who interest are adverse, is by consent. The Bar will not put this in writing unless we make the formal complaint. I tend to agree with Ms. Shields that this issue keeps on rearing its ugly head in moments where we really do not have time to get a formal opinion from the Bar. During the Christmas season, we had a meeting with the Chief. The Chief said that the Law Department explained and directed him about what questions he would and would not answer. Well those attorneys are part of
the same Law Department that our attorneys are from. There is nothing that could be done at that minute. Unless we seek some sort of formal opinion, we will always be wondering whether or not we are correct or not.

Following the remarks made by Shields and Beamud, the Chair opened the floor for questions and discussion.

Discussion and Questions...

1. Bartels asked, “Has a definite intention been communicated to the Law Department that if this is not done, an outside counsel appointed, then we will file a Bar complaint. Has a specific date been mentioned or is that what we need to discuss?” Shields responded, “I think we communicated that the only way to get an answer is to file; but, I do not think we set forth any timelines. We did not discuss this at last month’s meeting; but it had happened just before last month’s meeting. I believe Cris (Beamud) has been engaged in discussion with the Law Department.” Beamud, “I have only had one previous meeting with Ms. Hampton and she said she would try to become familiar with the issue. If you recall, it was before Thanksgiving, she told me that she would not be able to get back to me until after Christmas. We waited until after Christmas and we met with Ms. Hampton in January. She apparently, has had conversations with the State Bar but was unwilling to share the substance of those conversations.”

2. C. Johnson asked, “Are there other departments that you are aware of within the City, that have had to hire outside counsel because of a conflict?” Shields, “I am certain there have been. I don’t know who they are or when it happened, but one of the things that we talked about during the meeting with Ms. Hampton, in discussing why there was not a conflict, it was mentioned that if we did have to retain outside counsel that lawyer or law firm would be hired by the City Attorney and report to the City Attorney. I am not sure if they would have to divulge confidences but the City Attorney would have to see the kind of work that the attorney is doing for us which could reveal some things. So it is their belief that is why there really is not a true conflict because it would not really accomplish anything significant by having our own attorney that was hired by the City Attorney and also will have to report to her.”

3. C. Johnson then asked, “I’m thinking, if two separate departments have a conflict because of the nature of what is going on, for that reason, they would want to hire outside counsel for the other department or for both even if it has be on a limited basis. Depending on the nature of the issue and may not be an ongoing situation with an outside firm, but, again, just on a limited basis.

4. Shields, “It is not a clear cut answer. I am really surprised there is not more precedent out there that addresses the question, but we did look at some other jurisdictions but there was nothing that was directly on point.”

5. Morris, “Are there any alternatives...for example the Attorney General for the State of Georgia? Is there any other legal entity that we can ask for an opinion regarding this issue?” Shields, “No, the State Bar is it. They have exclusive jurisdiction.”

Following questions and discussion, the Chair entertained a motion. Shields moved to submit a complaint to the State Bar raising the question of whether or not a conflict exist with the City Law Department’s representation of Atlanta Citizen Review Board and the Atlanta Police Department with a notation that we are not seeking any sort of disciplinary action just need to clarify the conflict question. Morris seconded the motion. Call for discussion.

Discussions...

1. Bartels, “This is not about trust from my point of view. We have no reason to believe that the City Law Department would do anything unethical or could not be trusted; however, as noted, it is also about appearances. I had some situations, in the past, at the law firm where I worked
we decided that we just could not represent the people, and not necessarily because we would do anything unethical, but because of the appearance. What would any outside observer looking at this situation think of it? Would it cause the appearance of impropriety? Another thing I want to put out there is sometimes you do not know that you are in a conflict until it is too late. Other attorneys that I have worked with in the past have thought at the outset of a case that they could represent both parties. There was disclosure and consent and then you get to a point where you have to back out of representing one party; you cannot serve and they have to find another attorney because you have learned something derogatory of them through your representation of the other side. I think it is better just not to go there. I would hope that the City Law Department would not want to get to the point that we file a bar complaint, because it would really set a precedent. Sometimes it is easier to work out something before getting to that point rather than having a precedent that would apply to everybody and a lot of other city departments would come under that. While I don’t believe in setting deadlines and giving ultimatums, sometimes it is appropriate to say...we need some action on this and I think this is an appropriate timeline, X number of days and if not resolved, this is our next step.”

2. Shields, “I think we have done that because Cris (Beamud) had a previous discussion with Ms. Hampton and then there was a follow-up meeting and we pretty much agreed we are not going agree on the issue.”

3. Beamud, “I do not think that an ultimatum is going to make a difference. I think they have some sound legal arguments and I think we do. The cost of this could be considerable for the Law Department and put that aside. I think that they could also find themselves in a position where they are being asked to hire outside counsel for other boards.

4. Bartels, “It would be troublesome in either direction. If we do not file a complaint and they do agree to this then other City Departments are going to get word of it even without the decision from the State Bar. If we did go to the State Bar, if the decision is made, it is still going to be out there.”

5. C. Johnson, “I think it would be a good thing for the State Bar to do the opinion and clarify that point. As it stands, this Board needs to know and there may be other entities...boards, commissions, and departments that may feel they too have been using the Law Department with this Chinese Wall theory that does not really exist. There may have been some issues that should not have been handled that way...not saying that anything was mishandled nor am I suggesting that we throw aside or cast dispersions against any of the lawyers in the Law Department. The opinion is needed just to provide clarity so that everyone can understand what this is about and it is about having the proper and appropriate representation for this Board.

6. Hubbard, “I think we should proceed with getting an opinion from the State Bar for the purpose of clarification.”

7. Alinnie, “Definitely, something needs to be done.”

8. Morris, “Did I hear you say that the complaint has to be made against a specific individual and if so, who is that individual?” Beamud answered, “I believe it does have to identify a specific lawyer and that individual would be the City Attorney.”

9. Bartels, “I agree. I have never heard of the State Bar issuing any sort of report or finding against a firm or department.”

10. Morris, “Then I recommend that we amend the motion to specifically identify the appropriate person.”

11. Williams, “I agree with everyone. I think there is a conflict of interest and we should pursue the opinion.”
Following the discussion, Shields addressed the Chair and asked to withdraw the prior motion and substitute it with a new motion. The Chair accepted Shields request.

Shields motioned to have the ACRB submit a complaint to the State Bar of Georgia, through its Executive Director, against the City Attorney for purposes of raising the question of whether or not a conflict exist with the City Law Department’s representation of Atlanta Citizen Review Board and the Atlanta Police Department. This complaint does not seek any sort of disciplinary action, only clarification of the question.” The motion was seconded by Williams. Hearing no further discussion, the motion was approved unanimously.

DISCUSSION REGARDING COMMUNITY OUTREACH (Agenda Item VIII):

Due to the lateness of the hour, the Chair entertained a motion to table this item.

Shields moved to suspend agenda item VIII until the next board meeting.

The motion was seconded by C. Johnson.

Discussion: Williams indicated that although he was prepared to present tonight, he would bring the same information to the next meeting.

No further discussion, the motion was approved.

STAFF SALARIES (Agenda item IX):

Chair Morrissey directed attention to Agenda Item IX regarding staff salaries. To start the discussion, the Chair asked Director Beamud to provide an overview.

Beamud pointed out that the city is entering budget season and staff salaries are a concern. Regarding her position, she said, “There have been times during the past couple of years that I received invitations to apply for other jobs that do similar work as mine in other jurisdiction that are at least comfortable to Atlanta, i.e., New Orleans and Austin. The salary for the Executive Director in these jurisdictions was considerably higher, generally, about $140,000. I have provided information for your review regarding salary levels. Currently, my position level is a category 41. People in similar positions, make $17,000 more per year than I do. Salaries have to be looked at from a parody level not only exterior that is what does Austin pay or what New Orleans pay, but you also have to look at the interior and are you paying similarly situated people within the City, similar salaries. The second part of this conversation concerns the staff who has worked really hard to establish this Board I think we can agree that they bring the meat and potatoes and they have not received raises in a very long time. I know when the Board hired me, it was a different time but we are entering budget season and I would like to go into those discussion sessions with the Board’s vote that you support salary increases to bring us all to the upper levels of our current category. This is an appropriate subject for Executive Session and we will leave while you discuss this.”

The Chair entertained a motion to go into Executive Session. It was moved by Shields to enter into Executive Session to discuss personnel matters. The motion was seconded by C. Johnson. No discussion, the motion was approved.

It should be noted that the Board entered into Executive Session at 8:15 p.m.

Following the close of the Executive Session, the Chair entertained a motion. Shields motioned for the Board to recommend pay increases for the entire staff of the Atlanta Citizen Review Board and that the Board vote to have the Executive Director present a proposal to the Personnel Committee on how to accomplish that task as soon as possible. The motion was seconded by Williams. Hearing no discussion, the motion was passed unanimously.
PUBLIC COMMENTS *(Agenda item X)*:

*Chair Morrissey* opened the floor for public comments.

One person signed up to speak, Mr. John Michaels.

Mr. Michaels voiced his concern regarding what he referred to as 'on-going numerous conflicts of interest' between the Atlanta Police, the Law Department and ACRB. "I want this Board to be conscious of the fact that these systemic police conflicts in these areas, especially when it comes to abuse of the public, are going to continue happening again and again until Chief Turner is made to realize that you are not going away and that you are serious. I believe you are serious. Responding late to correspondence and continuous delays by withholding records is a common practice in Atlanta and it is all designed to wait you out. The community outreach is vital. You need to post a clear interpretation of what you do so that the public understands that you are not going to put up with these tactics and that you will fight any legal misrepresentation."

ADJOURNMENT:

*Chair Morrissey* entertained a motion to adjourn. *C. Johnson* motion to adjourn. *Williams* seconded. The meeting adjourned at 8:45 p.m.

Approved as to form and content.

Alan Morris
Board Secretary
Signature
Date: April 14, 2011