

# **INDEPENDENT REVIEW PANEL Minutes**

**October 23, 2008**

**LOCATION:** 140 West Flagler Street, Conference Room 1103  
Miami, Florida 33130

## **PANEL MEMBERS PRESENT**

Julia Dawson, Esq. Chairperson  
Michael R. Band, Esq., 1st Vice Chairperson  
Jean-Robert Lafortune, 2nd Vice Chairperson  
Glenn P. Falk, Esq.  
Jorge E. Reynardus, Esq.  
Tangier Scott, Ed.D.  
Doris Shellow  
Moiez Tapia, Ph.D

## **EXCUSED**

Julie C. Ferguson, Esq.  
Josie Perez Velis, Esq.

## **PANEL STAFF PRESENT**

Dr. Eduardo Diaz, Executive Director  
Carol Boersma, Executive Assistant to the Director  
Anna Sidan, Conflict Resolution Specialist

## **AUDIENCE:**

Civilian Investigative Panel (CIP): Don March

**Agenda Item #1) Call to Order.** Mr. Lafortune, 2nd Vice-Chairperson, called the meeting to order in the absence of the Chairperson and the 1st Vice-Chairperson. Mr. Band, 1st Vice-Chairperson, arrived and asked staff to call the roll.

**Agenda Item #2) Adoption of the minutes from September 25, 2007.** Mr. Lafortune moved to pass the minutes as written. Dr. Scott seconded. The motion passed unanimously.

**Agenda Item #3) Complaint Follow-up: Peddler and Vendor Ordinance.** Chairperson Dawson arrived. Ms. Boersma reviewed the Panel action taken regarding vendors. In December 2005, the Panel recommended that MDPD revise Legal Bulletin 95-4, Roadside Vendors, to either provide legal support for the statement that “Vendors and peddlers must remain mobile and may only legally stop to serve a customer at the customer’s request,” or eliminate the statement.

In May and August of 2006, the Panel recommended that the ordinance relating to peddlers and vendors be clarified. In a letter dated October 4, 2006, MDPD Director Robert Parker stated that the Legal Bulletin accurately reflects the law; however the Police Legal Bureau would work with the County Attorney’s Office to draft a new countywide ordinance containing clearer language.

In December 2006 and May 2007, MDPD Legal Advisor Robert Diers met with the Panel to discuss ordinance revisions. In August 2007 the Panel reviewed a draft ordinance submitted by Mr. Diers.

In an email dated October 14, 2008, Mr. Diers stated that the Legal Bulletin is an accurate summary of the ordinances, which remain to be “good law.” He added that “the current ordinances are valid and enforceable. We are no longer attempting to amend them.”

Ms. Dawson asked the Panel to consider its options, considering that MDPD changed its position completely, and a letter sent by the IRP to the County Attorney in 2006 received no response. Dr. Diaz replied there is a new County Attorney, Robert Cuevas, and he may take a different perspective.

Mr. Falk pointed out that two years have passed since the Panel first corresponded with MDPD, and Mr. Diers statement that MDPD will do nothing is inconsistent with Director Parker’s statement that MDPD would work with the County Attorney’s Office to draft a clearer ordinance with better language.

Mr. Falk made a motion to send a letter to Glenn Theobald, Chief Counsel for the MDPD Legal Bureau, pointing out this inconsistency and inviting him to explain it to the Panel. Mr. Reynardus seconded the motion. The motion passed unanimously. Mr. Reynardus stated that the current MDPD legal opinion is an invitation to arrest vendors for stationary vending, something the ordinance does not prohibit. Mr. Reynardus said that arresting street vendors only to nolle pros or dismiss the charges is not good use of taxpayers’ money.

**Agenda Item #4) Complaint Follow-up: Panel Recommendations and Responses.**

Ms. Dawson asked that staff continue presenting the Panel with specific responses to its recommendations, and include the following dates: incident, completion of IA investigation, committee meeting and panel meeting.

**Corrections and Rehabilitation**

A2007.012 John Dunn: Ms. Dawson stated that MDCR responded that it reviewed its policy on the use of OC spray on psychiatric inmates and the policy will not be changed.

Mr. Reynardus stated that a Holland & Knight Pro Bono team recently litigated a case involving the use of pepper spray by state prison officials. The case is pending the judge’s decision. Ms. Dawson asked Mr. Reynardus to keep the Panel apprised of the judge’s decision.

**MDPD**

A2007.311 Fernando Justiniani: Ms. Dawson stated that that MDPD responded that it would “consider audio recording statements in minor complaints.” Ms. Dawson suggested that the Panel ask MDPD if, after considering audio recordings, they are actually taking recorded statements in minor complaints.

The Panel recommended that an MDPD supervisor discuss the IRP disposition with Lt. Gonzalez, Officer Santana and Officer Schrader. Director Parker responded that the IRP report would be forwarded to Lt. Gonzalez's supervisor. Mrs. Dawson stated that we do not know if that referral resulted in a discussion. Dr. Diaz commented that Director Parker did not address the other two officers.

There was no response to the recommendation that MDPD adopt a policy which requires that a sobriety test be conducted on anyone arrested for disorderly intoxication.

A2006.148 Helen B. Williams Director Parker replied that this complaint required the addition of an "Investigative Allegation and further determination by the Disposition Panel." Ms. Boersma will contact PCB regarding the status of the Investigative Allegation.

A2007.030 Lamont Missick The Panel recommended that (1) uniformed officers prominently display their name at all times; (2) Officer Hanna be counseled; (3) MDPD provide the complainant a copy of the complaint he/she has filed; (4) Director Parker address PCB questioning techniques that leave facts unresolved; and (5) MDPD provide its officers with business cards. Director Parker responded that "the recommendations provided by the IRP have been reviewed and will be taken into consideration." Mr. Reynardus suggested that the Panel ask MDPD how the recommendations have been specifically addressed.

### *Animal Services*

A2008.036 Glenn Falk, Esq. Mr. Falk stated that Animal Services contacted him following the IRP Committee Meeting and he is very satisfied with the department's follow up.

Ms. Dawson point out the department has not responded to the Panel's recommendation that Luis Gonzalez be counseled for being unresponsive. Staff will follow up.

### *Consumer Services*

A2007.339 New Vision Taxi Drivers' Association The Panel recommended that CSD submit to the Board of County Commissioners an amendment to the Miami-Dade County Code which would give CSD the authority to impose more severe sanctions than are currently in existence for violations of the code. Ms. Dawson stated that the CSD Director did respond to the Panel Disposition; however she did not address this recommendation. Dr. Diaz suggested that staff ask the CSD Director whether she has had success in submitting an amendment.

Several Panel members felt that the Panel should be more assertive about getting feedback to its findings and recommendations.

**Agenda Item #5) IRP Officer Nominations for November Meeting Election** Dr. Diaz advised that it is time to submit nominations for the chair and vice-chairs, whose terms begin on January 1, 2009. Ms. Shellow nominated Michael Band. Mr. Reynardus seconded the motion.

Mr. Band suggested that Panel members who are willing to serve contact Ms. Boersma. He also suggested that the Panel consider a rotation format, where the 1<sup>st</sup> Vice-chair becomes the Chair and the 2<sup>nd</sup> Vice-Chair becomes the 1<sup>st</sup> Vice-Chair. Dr. Diaz responded that this format would be a change in the way chairs and vice-chairs have been selected historically. Mr. Boersma said she would email each Panel member about their willingness to serve.

Mr. Lafortune commented on the County Charter amendments on the November 4<sup>th</sup> ballot, suggesting that the Panel support those relating to petitions. Dr. Diaz replied that the Panel has never taken a position in the political process, and he will consult the County Attorney regarding Mr. Lafortune's suggestion.

**Agenda Item #6) Executive Director's Report** Dr. Diaz advised that he, Ms. Dawson, and Dr. Scott will attend the NACOLE conference in Cincinnati next week.

Dr. Diaz inquired about the meeting day for 2009, since the room currently being used by the Panel is not available on Thursdays, the day the Panel currently meets. The Panel decided to meet at 2 PM on the 4<sup>th</sup> Tuesday of the month.

**Agenda Item #7) Adjourn** Mr. Band moved to adjourn. Dr. Tapia seconded. It passed unanimously.