

INDEPENDENT REVIEW PANEL MINUTES

September 20, 2007

LOCATION: 140 West Flagler Street, Conference Room 908
Miami, Florida 33130

PANEL MEMBERS PRESENT

Jorge Reynardus, Esq., Chairperson
Julia Dawson, Esq., 1st Vice Chairperson
Glen P. Falk, Esq.
Josefa Velis, Esq.
Michael Band, Esq.
Doris Shellow

MEMBERS ABSENT

Moiez Tapia, Ph.D., 2nd Vice Chairperson
Julie C. Ferguson, Esq.
Jean-Robert Lafortune

PANEL STAFF PRESENT

Eduardo I. Diaz, Ph.D., Executive Director
Carol Boersma, Executive Assistant to the Director
Kristin Anderson, Conflict Resolution Specialist

AUDIENCE: Sgt. Gary Oliver, MDPD Professional Compliance Bureau and Don March, Civilian Investigative Panel (CIP).

Agenda Item #1) Call to Order. Jorge Reynardus called the meeting to order at 2:00 p.m. and asked staff to call roll.

Agenda Item #2) Approval and adoption of the minutes from August 23, 2007. Michael Band motioned to approve and adopt the minutes. Julia Dawson seconded. The motion was passed unanimously.

Agenda Item #3) IRP Complaint A2007.091 Austin v. MDPD. Ms. Boersma explained that Ms. Velis was the Panel member who chaired the committee meeting. Ms. Boersma informed the Panel members that the complainant was not present and reported that she sent out letters about the committee meeting and the Panel meeting, and left messages on the complainant's voice mail, but received no response.

Ms. Boersma stated that the committee meeting continued without the complainant because there were issues that the committee members felt they should look into. Ms. Boersma reported that the incident happened in 2005 and there were three family members involved; the complainant Karen Austin, her nephew, William Austin and her niece, Dana Smith. Ms. Boersma reported that the three were riding in a vehicle, driven by William Austin, on Northwest 69th Street, around Northwest 17th Ave. The three were laughing about a bag of mangos that were gathering fruit flies in the back seat of the car. The vehicle was pulled over by Officer Nieves, who said

Mr. Austin did not come to a complete stop at a stop sign. The officer told Mr. Austin to hand over his drivers license and car keys. Mr. Austin complied.

Karen Austin alleged that Officer Nieves was discourteous to her by calling her “knucklehead” and using the word “shit.” William Austin alleged that Officer Nieves searched his vehicle after he told the officer not to search it. The allegations were **Not Sustained** by MDPD, primarily due to the lack of independent witnesses. No traffic citations were issued.

Ms. Dawson inquired whether witness officers are considered independent. Sgt. Oliver replied that witness officers are treated the same as civilians who have some type of relationship; they are not considered independent witnesses.

Ms. Velis commented on the request that Mr. Austin give his keys to the officer. She explained that during the committee meeting, Sgt. Hall explained that a “request” is not an “order.” Ms. Velis added that most civilians interpret an officer’s request as an order and comply.

Ms. Dawson moved that the Panel adopt the committee’s findings and recommendations as follows:

Allegation 1- Officer Luis Nieves was discourteous to Karen Austin when he referred to her on several occasions as “knucklehead.” The preponderance of the evidence supports a SUSTAINED finding for allegation #1.

Allegation 2- Officer Luis Nieves was discourteous when he stated to Karen Austin, “South Miami cops don’t do shit.” INSUFFICIENT EVIDENCE to make a determination regarding allegation #2.

Allegation 3- Officer Nieves searched William Austin’s vehicle without consent. The preponderance of the evidence supports a SUSTAINED finding for allegation #3.

Allegation 4- Officer Nieves used profanity while talking to Karen Austin and William Austin. The preponderance of the evidence supports a SUSTAINED finding for allegation #4.

Recommendation - That MDPD discuss the IRP findings with Officer Nieves.

Mr. Band seconded the motion which passed by a vote of 4 to 2. Mr. Band and Mr. Falk dissented.

Agenda Item # 4) Executive Director’s Evaluation. The Panel members submitted their evaluations for the Executive Director. Dr. Diaz advised that no one at the executive level is authorized to receive a merit increase this year. He asked the Panel whether or not it wished to have the Executive Director be given a cost of living increase whenever it is available. Ms. Shellow moved that the Executive Director be given the cost of living raise when available. Jorge Reynardus seconded. It was passed unanimously.

Agenda Item # 7) Executive Director's Report. Dr. Diaz reported that the budget hearing was scheduled to begin at 5:01 pm today. He stated that citizens are first heard for several hours, followed by deliberations. Dr. Diaz advised that Commissioner Sosa's questions regarding House Bill 123 were answered. The bill does not have a significant impact on the Independent Review Panel. It went into effect on July 31 and requires that any entity that receives complaints against law enforcement officers must submit those complaints to the employing agency within 5 working days.

Dr. Diaz mentioned that three panel members will be going to the NACOLE conference in San Jose. He stated this is the largest registration that NACOLE has ever had.

Ms. Boersma reported that the next Panel meeting will be held on October 18, 2007. She stated that all Panel members responded that they would be present and, if that happens, a group picture will be taken.

Agenda Item # 8) Adjourn. Jorge Reynardus made a motion to adjourn. Michael Band seconded. The motion passed by unanimous vote.