



Police Review Commission

**ACTION MINUTES OF THE REGULAR MEETING
OF THE
POLICE REVIEW COMMISSION**

**South Berkeley Senior Center
2939 Ellis Street
Berkeley, California**

**Date: Wed., September 11, 2002
Time: 7:40 p.m.**

1. ROLL CALL 7:40 PM
Commissioners Present: Clark (7:50), Mapps, Ritchie, Sherman, Sternberg, White, Yang (8:10)
Commissioners Absent: Sanchez-Resnik, DeBose (Both Excused)
PRC Staff: Barbara Attard
BPD Staff: Sgt. Morizono, Lt. Flemming

OBSERVANCE OF ANNIVERSARY OF SEPTEMBER 11, 2001 TERRORIST ATTACKS
The anniversary of the September 11, 2001 terrorist attacks was acknowledged.

2. PUBLIC COMMENT –None.
3. MINUTES OF THE JULY 24, 2002 REGULAR MEETING
White/Mapps (Moved/Seconded) to approve the meeting minutes. Passed unanimously with Sherman abstaining.
4. PRC OFFICER'S REPORT (For Discussion or Action)
 - a) New Filings—Six since last meeting.
 - b) Boards of Inquiry—Possible of rescheduling of 9/19 board discussed.

POLICE REVIEW COMMISSION OFFICES: 1900 Addison Street #300, Berkeley, CA 94704



TEL: 510.981.4950 TDD: 510.981.6903 FAX: 510.981.4955
e-mail: prc@ci.berkeley.ca.us [http:// www.ci.berkeley.ca.us/prc/](http://www.ci.berkeley.ca.us/prc/)

- c) Late Filing Approval Request from Ms. Shale Well, PRC Case #1938
Barbara Attard reviewed details of Ms. Well's filing of her complaint and explained that she miscalculated the deadline and filed one day past the 90-day limit. Ms. Well has also stated that she has a disability and it is difficult for her to complete paperwork.

Ms. Well stated that she made an error in calculating the timeline and filed one day late. She stated that she has a severe disability from a past accident that has caused her to have some chronic pain that contributes to her difficulty to complete paperwork.

Barbara Attard explained that the named officer would not be required to participate in the Board of Inquiry in a late filed case. When asked, Ms. Well stated that she would be satisfied with the process even if the officer was not present at the Board of Inquiry.

Sternberg/Sherman (Moved/Seconded) to approve request for late filing, passed unanimously.

Claudia Pitas of the ACLU asked the PRC to reconsider the late filing based upon PRC Regulation II. 1. b.:

- b. All complaints shall be filed within ninety (90) calendar days of the alleged misconduct, and any complaint not filed within ninety (90) calendar days shall be dismissed; provided, however, that a complaint may be filed within an additional ninety (90) calendar days if at least six (6) Commissioners vote that the Complainant has demonstrated by clear and convincing evidence that failure to file the complaint within the initial ninety (90) calendar day statutory period was the result of inadvertence, mistake, surprise, or excusable neglect; **provided, however, that the running of such ninety (90) calendar day period shall be tolled when a Complainant is incapacitated or otherwise prevented from filing such complaint.** Lack of knowledge of the existence of the Commission or its complaint procedures shall not constitute mistake, inadvertence, surprise, or excusable neglect in any case.

(Emphasis added)

The findings of the Commission in cases which have been filed during the extension period will not be considered by the City Manager or Police Chief in any disciplinary actions.

Subject Officer testimony is not mandatory in hearings of cases which are filed during the ninety (90) day extension period.

Ms. Pitas pointed out that according to a letter dated July 19, 2002, from Dr. Deena Neff, Ms. Well had had suffered a concussion on June 4 and was likely incapacitated for a period of the 90-day filing period.

Sternberg/Sherman (Moved/Seconded) to rescind motion to approve late filing. Passed unanimously.

Clark/Mapps (Moved/Seconded) to toll time from 6/4/2002 to 6/12/2002 based upon the July 19, 2002 letter from Dr. Deena Neff that states that Ms. Well allegedly sustained a concussion on 6/4/2002 and was seen on 6/12/2002. The complaint is accepted as a timely complaint. (Medical record to substantiate the concussion and period of incapacitation to be provided.) Passed unanimously.

- d) Recommendation for Administrative Closure—PRC Case #1924—Filed by Celeste Thomas

Barbara Attard explained that a Board of Inquiry was scheduled for this case with approval of the date by the complainant. The complainant moved and did not return calls by staff to verify her attendance. When staff was finally able to speak with her the day before the Board, she stated that the date was not convenient. This was beyond the timeline to request a continuance and an administrative closure is in order. **Sherman/Clark (Moved/ Seconded) to approve recommendation for administrative closure. Passed unanimously.**

e) Recommendation for Summary Dismissal—PRC Case #1931—Filed by Jeffery Collins

Barbara Attard explained the issues of the complaint, staff assessment that it did not rise to the level of misconduct and the fact that staff was unable to determine the subject officer.

White/Clark (Moved/Seconded) to approve staff recommendation for summary dismissal. Passed unanimously.

f) Recommendation for Administrative Closure—PRC Case #1918—Filed by the Said Family

Barbara Attard explained that a Board of Inquiry was scheduled for this case with approval of the date by the complainant. The complainant moved and staff received a call from the complainant's attorney on the Friday before the Monday hearing informing staff that he would not be available for the Board. Staff responded that the complainant had informed staff that the attorney would not be involved in the Board. On the date of the hearing the complainant called and cancelled the Board stating that after reviewing the PRC report again he did not want to go forward without representation. When staff informed the complainant that according to PRC Regulations III.8. it was beyond the timeline to request a continuance and the case would be administratively closed, the complainant agreed to closing the case. **Clark/Sherman (Moved/Seconded) to approve administrative closure recommendation. Passed unanimously with Commissioner Mapps abstaining.**

g) Policy Updates—No update

h) Stipend Requests Due

5. BPD CHIEF'S REPORT—Chief Meisner will be unable to attend the PRC Special Meeting on 9/25/02, but Captain Miller will attend in his place. Chair Ritchie stated that he had a very productive meeting with Chief Meisner.

6. COMMITTEE REPORTS (For Discussion or Action)--None

7. OLD BUSINESS (For Discussion or Action)

a) Procedural Error in PRC Case #1909 Rehearing Request of Daniel Wilkerson

Barbara Attard explained that a procedural error was made in the counting of votes in the action taken on Mr. Wilkerson's request for a rehearing. The vote on May 8 to grant the request for a rehearing did not have sufficient affirmative votes to pass. Three commissioners voted in favor of the rehearing request. However, pursuant to Section 7 of the PRC Ordinance, four votes were required to grant the motion. Therefore, the request for rehearing has been deemed denied for failure to have sufficient votes to pass.

Additionally, pursuant to PRC Regulations, Section 22, the PRC is required to make a decision on a petition for rehearing within 21 days of receipt of the petition. The time period to act on the request expired on May 13, 2002. Accordingly, because the PRC regulations provide that no further action can be taken by the PRC on Case #1909, the Board of Inquiry's decision of April 9, 2002 is final.

Commissioner Clark stated that she had abstained from the vote on this matter; however, had she

known that it did not have enough votes to carry she would have voted to approve the request for rehearing.

b) Policy Review—PRC Case #1839 “Searching the Mouths of Suspects”

The PRC reviewed Training and Information Bulletin #280 “Safely Preventing the Swallowing of Contraband by Suspects” and the PRC policy recommendation on this subject. The commission decided by consensus to take no further action on this issue at this time and monitor this practice to determine whether a recommendation is warranted on this issue in the future.

8. NEW BUSINESS (For Discussion or Action)

a) Planning for September 25 Special Meeting and Community Policing Public Forum

Barbara Attard reported that staff had completed a mailing of over 200 to neighborhood and community groups and business associations, and put the notice on bulletin boards at Craig’s List and BTV. A further mailing will be sent to complainants since 2000. There will be one further planning meeting before the community meeting.

The Community Policing Public Forum will be postponed until 11/13 or 12/11.

b) Berkeley Police Association Lawsuit

Barbara Attard and Chair Ritchie discussed the pending lawsuit. The Commission requested that staff ask the City Attorney to come to a PRC meeting to discuss the suit and give periodic updates. Some issues of concern cited are:

- The PRC is interested in timeline on the complaint—when filed, when answered, what is the next step and timeline?
- The PRC is interested in being informed in a substantive way about the issues raised in the complaint—it appears that it could possibly challenge some of the core issues/procedures that are part of the PRC process.

9. COMMUNICATIONS

Commissioner White—has made two outreach presentations and suggested that other commissioners make presentations to community groups. He stated that members of the groups were very interested in the PRC process.

Photo Exhibit—A photography show by David Bacon, “Hunger: What will you do about it?” is currently exhibited at the PRC office. The exhibit will run through the end of October and is a sensitive, beautiful portrayal of this difficult, serious subject.

Patriot Act Council Item—Passed unanimously on 9/10/02 by Council.

10. ADIJOURNMENT

Yang/White (Moved/Seconded) to adjourn meeting at approximately 10:20 PM. Passed unanimously.