

City of Detroit

Office of the Inspector General

BOPC Abuse of Authority
OIG Case No. 18-0050-INV
October 14, 2019



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Inspector General

Executive Summary

On November 15, 2018, the Office of Inspector General (OIG) initiated an investigation into allegations of abuse of authority by the Board of Police Commissioners (BOPC) Secretary Gregory Hicks. The OIG's investigation revealed the followings: 1) Mr. Hicks abused his authority when hiring certain BOPC key staff members; 2) the BOPC violated the 2012 City of Detroit Charter and the Michigan Open Meetings Act (OMA); 3) Commissioner Willie Bell violated the OMA when unappointing a certain BOPC staff; and 4) Mr. Hicks and Faye Johnson, a staff of the BOPC, provided false statements to the OIG during the investigation.

Therefore, on July 9, 2019, the OIG forwarded a confidential draft copy of its investigative report to: Mr. Hicks, Ms. Johnson, Commissioner Bell and the current members of the BOPC, as well as the Board's attorney, because the OIG was critical of actions taken by these individuals and the BOPC. Section 7.5-311 of the Charter states that "[no] report or recommendation that criticizes an official act shall be announced until every agency or person affected is allowed a reasonable opportunity to be heard at a hearing with the aid of counsel."

Under the OIG's Administrative Hearing Rules, affected parties have fourteen (14) calendars day to submit a written response and/or request for an administrative hearing. The purpose of the administrative hearing is to provide Mr. Hicks, Ms. Johnson, Commissioner Bell and the members of the BOPC, the opportunity to present testimony and/or any information which would support their respective positions against the OIG's findings reported in the draft report.

The OIG received requests for administrative hearings from: Commissioner Bell on July 12, 2019; from Ms. Johnson on July 17, 2019; from Mr. Hicks on July 19, 2019; and from the Board, via its attorney, Jermaine Wyricks on July 24, 2019.

On August 1, 2019, during a regularly held weekly Thursday meeting, the Board voted 8:1 to reject the OIG's recommendations in the case. At the same meeting, the Board voted 9:0 request training from the Attorney General on the OMA¹.

On September 16, 2019, the OIG held an administrative hearing for Commissioner Bell. At the hearing, no information was presented to refute the OIG's findings reported in the draft report.

On September 17, 2019, the OIG held administrative hearings for Ms. Johnson and Mr. Hicks separately. No information was presented to refute the OIG's findings in its draft report during their respective hearings to address the findings against each person.

On September 18, 2019, the OIG held an administrative hearing for the current BOPC, as the members of the current Board must decide on the OIG's recommendations and rectify the actions taken by the former BOPC members. Again, no information was presented to refute the OIG's findings, as reported on July 9, 2019.

¹ OMA Training was one of the recommendations the OIG made in its July 9, 2019 draft report to the BOPC.

After the administrative hearings and prior to issuing this final report, the OIG reached out BOPC's attorney, Mr. Wyricks, to inquire whether the BOPC would be responding to the OIG's recommendations. The OIG was advised by Mr. Wyrick that the Board's decision to reject the OIG's recommendations on August 1, 2019 stands, as is. As such, the remainder of this report contains the OIG's final decisions and recommendations to the BOPC.

CITY OF DETROIT
OFFICE OF INSPECTOR GENERAL
INVESTIGATION REPORT

I. INTRODUCTION

The Office of Inspector General (OIG) initiated an investigation after receiving an allegation that the Board of Police Commissioners (BOPC or Board) Secretary Gregory Hicks abused his authority when filling the position for an Executive Manager-Police. While conducting the investigation, the OIG received additional complaints against the BOPC alleging abuse of authority, violations of the Michigan Open Meetings Act (OMA), harassment, and retaliation.

The OIG's investigation revealed the following:

- 1) the BOPC violated Section 7-804(3) of the 2012 Detroit City Charter (Charter) by improperly delegating its Charter mandated authority to the Board Secretary Mr. Hicks;
- 2) the BOPC violated the 2012 Detroit City Charter and the Michigan OMA when hiring for the Executive Manager-Police (Fiscal, Policy, and Administration) positions;
- 3) the BOPC violated the 2012 Detroit City Charter and the Michigan OMA when unappointing Robert Brown from the Executive Manager-Police (Administration) position;
- 4) Board Secretary Gregory Hicks abused his authority by crafting a job description to support his decision to hire an individual for the Executive Manager-Police (Administration) position;
- 5) Mr. Hicks and Faye Johnson provided false statements to the OIG pertaining to the assistance Mr. Hicks gave Ms. Johnson with updating her resume that was submitted to the City's HR Department for the Executive Manager-Police (Fiscal) position; and
- 6) the BOPC did not violate the 2012 Detroit City Charter or the Michigan OMA when hiring the Chief Investigator for the Office of the Chief Investigator (OCI) and Director of Police Personnel.

The following is the summary of the OIG's findings, including its recommendations.

II. COMPLAINT

On November 15, 2018, the OIG received a complaint alleging that the Board's Secretary, Gregory Hicks, abused his authority while filling an open BOPC position. Specifically, it was alleged that Mr. Hicks purposefully changed the minimum qualifications of BOPC's official

posting for an Executive Manager-Police position. This was done solely to benefit Robert Brown (R Brown). The change in the job description reflected Mr. R Brown's experience so that he would qualify for the Executive Manager-Police position. Moreover, when Mr. R Brown was placed in the management position, his \$55,261.00 salary was increased to \$80,500.00,¹ an increase of \$25,239.00 per year without any substantial changes in job duties.

Subsequent to the above-referenced complaint, the OIG received additional complaints² against the BOPC pertaining to violations of the Michigan OMA, allegations of abuse of authority, harassment, and retaliation. While some of the complaints are being addressed separately by the OIG as investigations, this report addresses the common complaints made by several complainants. As to the remainder of the issues raised in the various complaints that fall outside of the OIG's jurisdiction, we have referred them to the appropriate City departments and agencies.

III. ANALYSES

A. City of Detroit Board of Police Commissioners Background

Article 7, Chapter 8, Section 7-802 of the 2012 Charter of the City of Detroit provides the BOPC with "supervisory control and oversight of the Police Department." The Charter specifically outlines the duties and responsibilities of the BOPC and what role it must play in the operation of the Detroit Police Department (DPD).

The Charter confers the BOPC with authority to ensure that the BOPC has the necessary resources to carry out its duties and responsibilities. The Charter mandates the BOPC to hire and appoint BOPC staff members. The Charter also outlines how the BOPC should interact with DPD as its oversight agency. It further outlines additional duties and responsibilities to the BOPC including the important role of disciplining and investigating civilian complaints against police officers.

B. BOPC's Delegation of Authority – Board Secretary

Mr. Hicks drafted a memo on June 24, 2016 to the BOPC regarding reorganization and delegation of authority. The memorandum sought the Board's approval on the following matters:

- 1) Secretary to the Board (the Secretary) would assume "day-to-day control over Board affairs with all employees;"
- 2) All BOPC employees would "report through chains of command" to the Secretary;
- 3) The Secretary shall act as "the only direct report" to the Board;

¹ City of Detroit Personnel Department Employee History File report for Robert Brown.

² OIG Complaints and Investigations BOPC Related: 19-0059-COM, 19-0034-COM, 19-0070-COM, 19-0011-INV, 19-0016-COM, 19-0019-COM, 19-0071-COM, 19-0040-COM, 19-0042-COM, 19-0075-COM, 19-0028-COM, 19-0044-COM, 19-0003-INV, 18-0256-COM, 18-0057-INV, 19-0086-COM, 19-0023-INV, 19-0019-INV.

- 4) The Secretary would have the delegated authority to reorganize the BOPC within certain parameters, including making “adjustments to the organizational chart” and implementing the changes, as well as monitoring and directing the BOPC internal budget;
- 5) The Secretary would create three (3) units within the BOPC: Fiscal and Policy, Legal Advisor, and Community Engagement and Publication;
- 6) The Secretary would hire a Fiscal Manager, Policy Manager, and a Community Engagement Manager;
- 7) The Secretary would have authority to transfer existing staff, as well as hire and assign additional staff to fill any vacancies in the 2016-2017 approved budget; and
- 8) The Secretary would report “authorized changes to the Board’s Personnel Committee within 30-day intervals or within the scheduling of regular committee meetings.”

The memorandum was presented to the BOPC on June 30, 2016. The delegation of authority to Mr. Hicks was approved by a majority of the Board. Then Commissioner Chairperson Willie Bell signed the memo on July 5, 2016. The bottom of the memorandum also contains a provision which stated that the “[a]ction amends the Standard Operating Procedures of the Detroit Board of Police Commissioners, effective, June 30, 2016.³” The OIG finds that an action of this magnitude by an elective body would have been more appropriately placed in a resolution or amendment to the BOPC Bylaws.⁴ However, there is no evidence that such an action occurred.

The memorandum delegates its authority to reorganize the structure of the BOPC and to hire BOPC’s staff to Mr. Hicks which is in violation of the Charter.⁵ It redefines the chain of command in the BOPC whereby the Secretary “would assume day-to-day control over Board affairs with all employees reporting through chains of command to the Board Secretary.” The Charter provides that the Board appoint its staff, including the Director of Police Personnel.⁶ In addition, it specifically states, in part, that “all members of the staff are under the direction of the Board.⁷”

The memorandum provides that Mr. Hicks, as the Board Secretary, “shall act as the only direct report to the Board.⁸” The memorandum empowers Mr. Hicks with a broad scope of

³ Delegation of Authority Memorandum, page 2.

⁴ Robert’s Rules of Order.

⁵ At the request of the OIG, on April 2, 2019, the City of Detroit Law Department issued a privileged and confidential legal opinion to the OIG concluding that the Board cannot delegate its Charter-mandated authority. After it became clear that the Board may not have been fully advised on the magnitude of this matter, on September 18, 2019, the OIG waived its privilege of the confidential legal opinion and had Board members who were present at the BOPC administrative hearing on September 18, 2019 to review the opinion. After reviewing the Law Department’s legal opinion, with their legal counsel, Jermaine Wyrick, the Board again chose to proceed with the administrative hearing.

⁶ Detroit Charter, § 7.804(2) and (3) and 7.810.

⁷ Detroit Charter, § 7.804(3).

⁸ Delegation of Authority Memorandum, page 1.

authority which is in violation of the Charter. The Charter confers only limited, administrative power and authority to the Board Secretary.

Similarly, the BOPC Bylaws⁹ provide the Secretary of the Board with additional responsibilities and authorities not specifically contemplated by the Charter. The BOPC Bylaws state, in part, that the Secretary is

responsible for coordinating and managing the day-to-day activities and operations of the Board and serving as the liaison between various City and Police Department officials, State agencies, unions, and the public.¹⁰

According to the Charter, the duties and the responsibilities of the Board's Secretary are limited to certain activities, which include attending board meetings and managing the complaint docket.¹¹ The Charter does not mandate the Board Secretary to operate and manage the BOPC. On the contrary, the Charter specifically denotes "all members of the staff are under the direction of the Board."¹²

The only permissible delegation of authority under the Charter is where the Board "may delegate in writing to a member of its staff the powers to administer oaths and take testimony."¹³ Thus, the Board cannot delegate its Charter mandated authority to hire BOPC staff to the Board's Secretary. As such, the OIG concludes the Board's delegation of authority to Mr. Hicks was impermissible under the Charter. Therefore, any personnel hiring decisions made by Mr. Hicks that were not approved by the Board are in violation of the Charter. When the Board voluntarily gave away their Charter mandated authority to Mr. Hicks, they also gave away the public's right to access the Board's decision making process through the Michigan Open Meetings Act.

C. BOPC's Delegation of Authority– Board Chairman

The Charter is silent on committees, including the appointment and removal of committee members. The Board, through the adoption of its Bylaws, approved delegation of authority to its Chairperson in matters concerning the appointment and the removal of committee members. It states in part

the Chairperson of the Board shall appoint the members thereof and designate the Chairperson. Any members of a committee may be removed by the Chairperson of the Board, whenever, in the Chairperson's judgment the best interests of the Organization shall be served by such removal. . . Vacancies in the membership of any committee shall be filled by the Chairperson of the Board.¹⁴

⁹ BOPC Bylaws, page 8.

¹⁰ BOPC Bylaws, Article IV, Section 10.

¹¹ Detroit Charter, § 7.804(1) and Detroit Charter, §7.808.

¹² Detroit Charter, § 7.804(3).

¹³ Detroit Charter, § 7.803.

¹⁴ BOPC Bylaws, page 9.

The BOPC is an oversight agency that must operate in a transparent manner. This transparency must extend to the selection of Committee Chairs and members. The sole authority delegated to the Chairperson under the Bylaws to appoint and remove a committee member contradicts such openness. The Bylaws, as written, do not require the Chairperson to provide any explanation why he/she felt that it was in “the best interests of the Organization” to appoint or to remove a certain commission member to or from a particular committee. Likewise, the Chairperson can remove whoever disagrees with him or her.

The OIG examined the policies and procedures of other cities with legislative bodies¹⁵ to determine the best practices for the appointment and removal of members to standing committees.¹⁶ The OIG found that these bodies require the approval or consent of the full body to appoint and remove members. In contrast, the BOPC Bylaws delegates this authority solely to the Chairperson.¹⁷ The OIG concludes the BOPC’s delegation is not best practice and that all members of the Board should have a say on how members are appointed and removed from committees.

D. Michigan Open Meetings Act (OMA)

The OIG received complaints alleging the BOPC violated the Michigan OMA. The statute of limitations for Michigan OMA violations is 180 days.¹⁸ Therefore, the OIG cannot refer the following allegations to the appropriate law enforcement agency. However, the OIG investigation finds that the following Michigan OMA violations occurred:

1. Appointment of Executive Manager- Police (Fiscal);
2. Appointment of Executive Manager– Police (Policy);
3. Appointment of Executive Manager– Police (Administration);
4. Unappointment of employee placed in Executive Manager– Police (Administration); and
5. Interview of BOPC Attorney in a closed session.

The Charter requires all BOPC meetings to be held in accordance with the Michigan OMA.¹⁹ The Board was not able to vet any applicants or appoint key staff in public because it delegated such authority to Mr. Hicks. It is important that the public is engaged in whom the BOPC hires to manage and to operate their offices, given BOPC is a police oversight agency. In fact, Messrs. Jermaine Wyrick, BOPC Attorney, and Hicks admit certain Executive Manager-Police positions were hired by Mr. Hicks through the Delegation of Authority Memorandum as discussed below.

¹⁵ The OIG compared BOPC to other legislative bodies, as unlike most police-oversight agency, the Detroit BOPC is unique in that it is comprised of eleven (11) members, seven (7) of which are elected by each of the seven(7) districts in the City and four (4) of which are appointed by the Mayor with the approval of City Council.

¹⁶ City Council Policies for following cities with populations comparable to Detroit: Detroit, MI; Atlanta, GA; Boston, MA; El Paso, TX; Indianapolis, IN; and Seattle, WA.

¹⁷ BOPC Bylaws, Article V, Section 5, page 9.

¹⁸ MCL 15.273(2).

¹⁹ Detroit Charter, § 7.802.

E. Appointment of Robert Brown as an Executive Manager-Police (Administration)

On July 3, 2017, Mr. R Brown was appointed to the position of Executive Manager-Police (Administration). Mr. Hicks contends that Robert Brown was promoted.²⁰ However, according to Gail Oxendine, former Director of DPD Personnel, the BOPC made a previous attempt to increase his salary. It failed because the work was valued at its maximum compensation according HR's salary survey.²¹ Therefore, Mr. Hicks created the Executive Manager-Police (Administration) position with the sole purpose of increasing Mr. R Brown's compensation.

However, to increase Mr. R Brown's salary, Mr. Hicks had to manipulate the Executive Manager-Police minimum qualifications. The Executive Manager-Police position required a minimum of a four (4) year college or university degree, which Mr. R Brown did not possess. Therefore, he would not have been eligible for the position of Executive Manager-Police without the impermissible manipulation of qualifications by Mr. Hicks. Additionally, instead of a college degree, Mr. Hicks changed the minimum qualification for the Executive Manager-Police (Administration) to "[k]nowledge and experience to perform" each task,²² thus making Mr. R Brown eligible for the position.

Mr. Hicks' "General Response to Allegations [M]ade by [C]ommissioner Darryl Brown [A]bout [S]taff [M]embers Robert Brown and Gregory Hicks (BOPC Sect.);" claims Mr. R Brown's job description was "created" to reflect the needs of the BOPC. Specifically, he states

ALL Job descriptions are reviewed and updated to reflect current needs and added responsibilities. In some cases, no job descriptions are on file, therefore descriptions must be created to reflect current needs and expanding responsibilities.²³

However, the OIG found that Mr. Hicks did not update the job description as he claims, but instead merely lessened the minimum qualifications to fit Mr. R Brown.

Mr. Hicks' manipulation of the minimum qualifications is further evidenced by Mr. Wyrick's letter to the OIG dated December 10, 2018 in which he states

On August 11, 2017,²⁴ Robert Brown was promoted to Executive Manager. Prior to that he had worked for the Board for 13 years. In evaluating his operational knowledge of the DPD and BOPC, and work experience, Commissioner Derrick Sanders (now deceased) recommended a promotion for Mr. Brown. The process entailed adding an additional Executive Manager to the BOPC, which began in September 2016, and completed in the 2017 Budget Process.

²⁰ Letter from Jermaine Wyrick to Inv. Jacqueline Hendricks-Moore, page 1 and Gregory Hicks Response dated 11-16-2018, page 1.

²¹ Gail Oxendine 12-20-18 Interview.

²² Job posting for Executive Manager-Administration-BOPC used to promote R Brown.

²³ Mr. Hick's General Response regarding Commissioner D Brown's allegation pertaining to Robert Brown.

²⁴ This date contradicts July 6, Personnel Letter from Gail Oxendine.

Messrs. Hicks and Wyrick characterized Mr. R Brown's new appointment as a promotion. The term promotion generally refers to obtaining a position in a higher class than the one in which you possess. While it denotes an increase in salary as well as an increase in responsibilities, Mr. R Brown's previous position was not in the same classification as the Executive Manager- Police position. However, he did receive a generous increase in compensation, but by all accounts no substantial increase in job duties or responsibilities. Therefore, the OIG finds that Mr. R Brown was appointed into a newly created position, not promoted.²⁵

Based on the evidence presented, some members of the BOPC knew about Mr. R Brown's new appointment and the significant increase in his salary (approximately \$25,000), while other members were not made aware of the same.²⁶ The Charter requires that the Board, as a body, approve appointments by a quorum.

While Mr. Hicks states that he had the authority to promote Mr. R Brown, it is interesting to note that both letters to Police Personnel seeking status changes and increase in pay for Mr. R Brown begin with "The Board of Police Commissioners has appointed. . ." ²⁷ This is not true on several levels: 1) there is no record of any BOPC minutes which reflect that the Board approved Mr. R Brown's appointment and 2) while the delegated authority memorandum states that he would "report authorized changes to the Board's Personnel Committee within 30-day intervals or within the scheduling of regular committee meetings of the Personnel Committee," ²⁸ there is no evidence that Mr. Hicks reported Mr. R Brown's new appointment to the BOPC Personnel Committee.

F. Unappointment of Robert Brown

On November 29, 2018, Dr. Marcella Anderson, Director of DPD Personnel, sent an Inter-Office Memorandum to Chairperson Bell which states in part "[p]er the Detroit Board of Police Commissioners request, one (1) budgeted Executive Manager-Police position (01-18-15), BU (9030), currently occupied by Robert L. Brown, will be reallocated to an Administrative Specialist III (93-14-01), BU (9070)." On November 30, 2018, Chairperson Bell issued a letter to Mr. R Brown, which states "the Detroit Board of Police Commissioners are exercising their authority to de-appoint [him] from the position of Executive Manager-Police... to the position of Administrative Specialist III" with an annual salary of \$61,041,²⁹ which effectively reduced his annual salary of \$80,500 by \$19,459.³⁰ Again, while the letter states the BOPC is exercising its authority on this matter, there are no minutes showing that the BOPC voted on this action.

²⁵ Commissioners Willie Bell, Lisa Carter and Eva Dewaelsche were interviewed by the OIG and were not able to articulate an explanation of what additional duties Mr. Brown received with his appointment.

²⁶ Commissioners Willie Bell and Eva Dewaelsche were not initially aware of Mr. R Brown new appointment. Commissioner Darryl Brown did not know of the promotion or the raise Mr. R Brown received until November 2018.

²⁷ March 6 and June 28, 2017 letters to Gail Oxendine.

²⁸ Delegation of Authority Memorandum.

²⁹ This is an increase over the salary from original position of Administrative Assistant.

³⁰ November 30, 2018 letter from BOPC Chairperson Willie Bell to Robert Brown.

A courtesy copy of the letter was sent only to Dr. Anderson, Agency CFO Lisa Jones, and Mr. R Brown's personnel file. According to Mr. Wyrick, Mr. R Brown's unappointment and pay cut was done in response to the OIG investigation into the matter.³¹ During the OIG administrative hearing, Commissioner Bell claimed he de-appointed Mr. R Brown because some Commissioners were not satisfied with Mr. R Brown's work performance in his newly appointed position. Commissioner Bell also claimed the Board discussed the de-appointment of Mr. R Brown in a closed session on December 18, 2019, where no meeting minutes were taken while the board was in the closed session.³² This we find is yet another violation of the OMA.

We further note Mr. R Brown's de-appointment letter is dated November 30, 2018, with an effective date of December 3, 2018, which is signed by Commissioner Bell. It is inexplicable how or why the Board would discuss Mr. R Brown's unappointment in closed session, fifteen (15) calendar days after Commissioner Bell's issued an unappointment letter. However, it appears Mr. R Brown's unappointment by Commissioner Bell further supports a finding that Commissioner Bell and/or other members of the Board recognized that Mr. R Brown was improperly appointed by Mr. Hicks in 2017. It is important to note that no documentation was provided to the OIG by Commissioner Bell during his administrative hearing that he sought the approval of the Board in unappointing Mr. R Brown or that the Board approved his decision to unappoint Mr. R Brown.

G. Interview of Jermaine Wyrick for BOPC Attorney

In July 2017, Jermaine Wyrick was hired as the BOPC Attorney. He stated that he applied for the position through Indeed, an employment-related search engine for job listings. He was initially interviewed by the Personnel Committee, which consisted of the following commissioners: Willie Bell, Eva Dewaelsche and Derrick Sanders. Mr. Hicks was also present during the Personnel Committee interview. According to Mr. Wyrick, he was subsequently interviewed by the entire Board in a closed session during a regularly scheduled Thursday meeting.

Interviewing Mr. Wyrick in a closed session is a violation of the Michigan OMA and the Charter. Section 15.268(f) of the Michigan OMA states that a public body may meet in a closed session

To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. **However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.** [Emphasis added.]

Therefore, the OIG finds that Mr. Wyrick's interview for the position of BOPC Attorney in a closed session is a violation of the Michigan OMA and Charter.

³¹ Mr. Wyrick interview December 19, 2018.

³² Commissioner Willie Bell provided this statement at his administrative hearing held on September 16, 2019.

H. Appointment and Hiring of Gertrude Faye Johnson (Faye Johnson) as BOPC Executive Manager-Police (Fiscal)

On October 31, 2016, Mr. Hicks appointed an acquaintance, Faye Johnson, as the Executive Manager-Police (Fiscal) soon after receiving his delegated authority. The OIG's investigation into this matter focuses solely on the hiring process and not Ms. Johnson's qualifications. Mr. Hicks authored a reorganization plan memorandum which listed an Executive Manager – Police (Fiscal) position with a CPA requirement, which was approved by the BOPC.³³ Between July 20, 2016 and October 10, 2016, Mr. Hicks exchanged more than 40 emails with Ms. Johnson pertaining to the BOPC Executive Manager-Police (Fiscal) position. Most of the emails were exchanged well before the official posting of the position on August 12, 2016.³⁴ Further, the OIG investigation reveals no similar volume of correspondence exists between Mr. Hicks and any other candidates.

Based on the evidence, Ms. Johnson was exchanging emails with Mr. Hicks prior to him creating the position. Ms. Johnson did not even know what position she was applying for with the BOPC. The July 20th email exchange between Mr. Hicks and Ms. Johnson begins with Ms. Johnson asking Mr. Hicks “[W]hat am I applying for?” Mr. Hicks then informs Ms. Johnson that “the job is manager of fiscal oversight with the Detroit Police Department, Board of Police Commissioners (oversight Board). This is a new position that I am creating.”

They exchanged more emails that same day. One of the emails makes it clear that Mr. Hicks reviewed and edited Ms. Johnson's resume. At 3:30 pm, Mr. Hicks forwards his edits of Ms. Johnson's resume and states in the email “from me. Read carefully. I re-added Florida because of work performed and listed on resume.” The emails exchanged between the two indicate that Mr. Hicks intends to hire Ms. Johnson for the position he created.

Mr. Hicks further ensures that Ms. Johnson gets the position by modifying the job description to fit Ms. Johnson's professional qualifications. On August 6, 2016, he emails Bridget Lamar, former Executive-Manager-Police, and directs her to require the applicants to have a CPA as a minimum qualification.

Ms. Johnson was the only applicant who matched the posting's required qualifications as a CPA. Mr. Hicks claims that Police HR recommended he hire Ms. Johnson because they do not typically get CPA applicants applying for such job postings. However, the OIG's review of the emails between Police HR and Mr. Hicks contradicts his claim because concerns were expressed by Police HR of the limiting effect the CPA had on the applicant pool for the position.

On August 25, 2016, at 7:29 pm, Ms. Lamar emails Mr. Hicks and Brian Tennille, Employee Services Consultant III, stating

The position requirements for the Executive Manager (Fiscal) be revisited. Currently, there are 5 applicants, and only 1 meets the

³³ Re-organization plan memorandum, dated June 24, 2016, was voted and approved by the Board on June 30, 2016.

³⁴ Executive Manager-Police job posting dated August 12, 2016.

MEQ.³⁵ Typically, the MEQ is a bit lower than what is currently posted. Brian, please share the previous posting for a[n] Executive Manager in Fiscal with Mr. Hicks.

Ms. Lamar clearly advised that eliminating the CPA requirement would increase the pool of eligible applicants. Additionally, in benchmarking the BOPC Executive Manager-Police (Fiscal) position created by Mr. Hicks against other comparable fiscal positions within local governments, the OIG found that none require a CPA.³⁶ Mr. Hicks was obviously aware, prior to creating the position, that Ms. Johnson possessed the designation since he assisted her with her resume.

Between August 12, 2016 and August 15, 2016, Mr. Hicks and Ms. Johnson exchanged additional emails. Mr. Hicks tells Ms. Johnson to use the “the City’s HR site” to apply for the fiscal position and lets her know that it has a “required credential for a CPA.” He coaches her on how to complete the on-line application and tells her to note that she is willing to relocate to Michigan upon her appointment to the position.

On September 2, 2016 at 11:38 am, Mr. Hicks emails Ms. Johnson and states in part

Just a quick update [sic]. The Department received your application. Of the responses, your application was the only [one with a] CPA. **The job posting should be out in public view for another two weeks.** I will then take a review of the balance of the applicants. I have **already talked with the Board Chair³⁷ about you and indicated to him that you are the most qualified candidate.** I discussed with him some of the history and work that you have done. He is in agreement. **I received delegated authority from the Board to facilitate hires and will do so on your application.** Given that you are out of town, **I will either have a telephone interview with a small group of people with you or I will simply decide to move more aggressively.** We are looking at a report date in four to six weeks. If you can arrange housing with relatives in the area that might be the best way to proceed and then conduct a more comprehensive search in town. Given the feedback, we will need a Detroit address to finalize things. [Emphasis added.]

Later that same day, while discussing what address she should use on her cover letter, Mr. Hicks effectively assures Ms. Johnson that she will be appointed to the position. At 4:13 pm, in an email, he tells Ms. Johnson that “[BOPC] will speak with the person that I recommend. The address issue is only a[n], issue after you start.” Based on the OIG review, Mr. Hicks “simply decide[d] to move more aggressively” to hire Ms. Johnson as he told her in his September 2nd

³⁵ MEQ stands for Minimum Employment Qualifications.

³⁶ City of Detroit Accountant III, City of Detroit Accountant IV, Wayne County Accounting Supervisor.

³⁷ Board Chair was Willie Bell.

email.³⁸ Approximately 10 days later, Mr. Hicks actually confirms the supposedly competitive application process timeline with Ms. Johnson.

On September 13, 2016 at 1:34 pm, Mr. Hicks emails Ms. Johnson and states in part

Hey Kid: NO bother. How about the following time line. Cut off applications – September 19th Interviews starting in October 3rd. (at this point, you will not have to interview) Report date – 30 days, November 1, 2016...

Mr. Hicks exercised his improperly delegated authority by offering the BOPC Executive Manager-Police (Fiscal) position to Ms. Johnson on October 10, 2016, after conferring with the Budget Department to ensure the BOPC has the funding. He offered the Executive Manager-Police (Fiscal) position to Ms. Johnson, via an email, which was copied to Mr. R Brown. The email states that Mr. R Brown would be coordinating with Ms. Johnson to process her paperwork. This email is notably more formal than previous emails between the two. The OIG’s review of Mr. Hicks’ emails indicates that, while he may have spoken to the BOPC Chairperson about Ms. Johnson,³⁹ there are no meeting minutes to reflect that her appointment was vetted by the Personnel Committee or approved by the full Board.

On October 11, 2016, Mr. Hicks emails Commissioners Willie Bell and Ricardo Moore and informs them

As per our discussion several weeks ago, I am moving forward in offering the Executive Manger- Police (Fiscal) position to the CPA [whose] resume I shared with you. This person was the only candidate that had the background and certification as we requested.

Mr. Hicks further informs the commissioners that he is “moving forward in offering the position” to Ms. Johnson. He tells the commissioners “this person (Ms. Gertude [Faye] Johnson, CPA) will be available on October 22, 2016.”

The October 11th email does not indicate that Mr. Hicks is seeking the commissioners’ approval as is required by the Charter or pursuant to the delegation of authority memorandum he drafted in June. Instead, Mr. Hicks is reminding the two commissioners that Ms. Johnson was the only applicant with a CPA. Therefore, he is “moving forward in offering” the position to Ms. Johnson. However, as noted in the previous paragraph, he had, in fact, already hired Ms. Johnson the day before, on October 10th.

In the same email, he tells the commissioners that interviews for the Executive Manager-Police (Policy) position will occur “within the next few weeks.” This is in contrast to how Ms. Johnson was hired. There is no evidence that Mr. Hicks sent any email to any commissioner informing him/her when the interviews for the Executive Manager-Police (Fiscal) position would

³⁸ We were not able to locate any email which would confirm that an interview of any kind was conducted in hiring Ms. Johnson.

³⁹ Mr. Hicks’ email to Ms. Johnson dated September 2, 2016, at 11:38 am.

be set. Likewise, Mr. Hicks did not exchange emails to provide any guidance or to edit resumes or cover letters for individuals who were vying for the Executive Manager-Police (Policy) position or any other positions that Mr. Hicks filled.

Lastly, in order to hire Ms. Johnson, Mr. Hicks wasted City resources and time. Mr. Hicks misled everyone to believe that the Executive Manger-Police (Fiscal) position was competitive and open. He coordinated with Police HR to post the position and accept resumes despite his predetermination to hire Ms. Johnson for the position.

I. Hiring of Drs. Polly McCalister and Marcella Anderson

Based on the OIG investigation, we conclude that the appointments of Dr. McCalister and Dr. Anderson by the Board were properly done in accordance with the Charter and the Michigan OMA.

J. Interviews Conducted by OIG

The OIG conducted interviews of the following people

1. Gregory Hicks
2. Faye Johnson
3. Melanie White
4. Commissioner Willie Bell
5. Commissioner Lisa Carter
6. Commissioner Eva Dewaelache
7. Gail Oxendine
8. Brian Tennille
9. Bridget Lamar
10. Robert Brown
11. Jermaine Wyrick

The following is a synopsis of the individuals interviewed and the OIG's analyses thereof regarding the various Executive Manager-Police positions.

i. Gregory Hicks

Mr. Hicks was initially interviewed by the OIG on January 18, 2019 pertaining to the appointment of Mr. R Brown to Executive Manager-Police (Administration). Subsequently, the OIG's investigation revealed new evidence that suggested additional misconduct by Mr. Hicks. Therefore, on May 28, 2019, the OIG interviewed Mr. Hicks again and asked specific questions relating to his actions and involvement in the hiring of all Executive Managers-Police (Administration, Fiscal, and Policy).

According to Mr. Hicks, he presented a reorganization plan memorandum to the BOPC that included a delegation of authority to him for hiring staff which was approved by the Board. Mr. Hicks exercised his delegated authority to appoint the following individuals to the Executive

Manager–Police positions: 1) Mr. R Brown (Administration); 2) Ms. White (Policy); and 3) Ms. Johnson (Fiscal). Mr. Hicks also hired additional personnel as listed in the reorganization memorandum.

Mr. Hicks stated he does not have the authority to hire BOPC staff positions listed in Charter, such as Board Secretary, Chief Investigator, Board Attorney,⁴⁰ and Director of Police Personnel. As such, BOPC’s Personnel Committee vetted the applicants for these positions and they were voted on by the Board as a whole.

He did not review any resumes or applications for the Executive Manager–Police (Administration) position. Instead, Mr. Hicks evaluated Mr. R Brown’s job duties and responsibilities and decided that Mr. R Brown’s role was that of an administrator. Therefore, Mr. Hicks stated he promoted Mr. R Brown to Executive Manager–Police (Administration). Mr. Hicks made the Board aware of his decision when he introduced Mr. R Brown in his new position at a regularly scheduled Thursday Board meeting.

Mr. Hicks explained that several resumes and applications were reviewed for the Executive Manager–Police (Policy) position. Also, several candidates, including Ms. White, were interviewed for the position. Mr. Hicks stated the position was posted internally to the BOPC staff and City employees. Mr. Hicks stated Ms. White was the best candidate for the position for the following reasons: 1) Ms. White was an OCI Investigator; 2) she is very knowledgeable about OCI’s policies and procedures; 3) she assisted in writing OCI’s training manual; and 4) she assisted in clearing out the backlog of OCI citizen complaints. Additionally, Mr. Hicks stated that he did not provide any assistance to Ms. White with her resume, cover letter, and/or interview. The OIG’s investigation did not find any evidence to contradict this statement.

As to the Executive Manager–Police (Fiscal) position, Mr. Hicks stated that it was posted externally on the City’s website. He worked with Police HR to draft the job description and qualifications for the position. Mr. Hicks told the OIG that he wanted a CPA for this position. Therefore, he added the CPA requirement to the minimum job qualifications. While the City received several resumes and applicants, Mr. Hicks stated he hired Ms. Johnson because she was the only applicant that met the CPA qualifications.

Additionally, the OIG asked Mr. Hicks if he knew Ms. Johnson prior to hiring her. Mr. Hicks stated he met Ms. Johnson when they worked for Wayne County. He stated he may have called Ms. Johnson about the job when he was looking for a CPA to fill this position. Mr. Hicks claims that he was putting “feelers” out to people letting them know he was looking for a CPA. According to Mr. Hicks, he did not provide any assistance to Ms. Johnson with her resume, cover letter, and/or interview. However, based on the OIG’s review of information obtained in emails between Mr. Hicks and Ms. Johnson, the OIG found this statement by Mr. Hicks to be blatantly false.

⁴⁰ BOPC Attorney is not a Charter mandated position contrary to this statement.

ii. Faye Johnson

Faye Johnson was interviewed on May 22, 2019 by the OIG regarding her hiring process with the BOPC. Ms. Johnson has been a CPA since 1984. She pays her annual CPA registration fee. Ms. Johnson is not a practicing CPA. She does not certify statements, perform audits or take the 40 hours of continuing education classes as is required for a licensed CPA.

According to Ms. Johnson, she has known Mr. Hicks for about 30 years. They met when she worked for the City in the 1980s and 1990s as an auditor. Mr. Hicks contacted Ms. Johnson, via an email, sometime in early 2016 about the Executive Manager–Police (Fiscal) position while she was living in Wisconsin. Ms. Johnson stated she submitted her application, resume, and cover letter via the City’s website. She believes she was not interviewed for the job because she worked with Mr. Hicks in the past and he knew her work. Ms. Johnson stated she was notified by HR that she was selected for the position.

Ms. Johnson stated she did not receive any assistance from Mr. Hicks with her resume, cover letter, and/or interview. However, based on the OIG’s review of information obtained in emails between Ms. Johnson and Mr. Hicks, the OIG also found this statement by Ms. Johnson to be blatantly false.

On September 17, 2019, at the request of Ms. Johnson, the OIG held an administrative hearing for issues specifically related to the OIG’s finding against Ms. Johnson. At the hearing, Ms. Johnson claimed Mr. Hicks assisted her by way of proof reading her resume and for “font” related issues only. Ms. Johnson also claimed that OIG Investigator Hendricks-Moore asked her specifically if Mr. Hicks wrote her resume, during her interview on May 22, 2019, to which she replied “no.”⁴¹

Lastly, during the administrative hearing, Ms. Johnson acknowledged that the emails referenced in the OIG’s draft report were her emails and emails that she received from Mr. Hicks. However, she claimed she answered all of the OIG’s questions truthfully and honestly during her May interview. Therefore, the OIG finds Ms. Johnson did not present any new evidence at her administrative hearing which would refute the OIG findings in the draft report.

iii. Melanie White

Ms. White was interviewed by the OIG on May 21, 2019 regarding her hiring process. According to Ms. White, she has been employed with OCI as an investigator since 2004. In 2009, she was promoted to Senior Investigator. While working for OCI, she assisted in developing their training manual and clearing the backlog of OCI citizen complaints.

Ms. White applied for the Executive Manager–Police (Policy) position after seeing it on the City’s website. She was interviewed by Messrs. Hicks and R Brown after submitting her resume and cover letter. Ms. White stated that she did not receive any assistance from Mr. Hicks

⁴¹ May 22, 2019, Ms. Johnson’s Audio Interview (9:15) – Ms. Johnson is clearly asked by OIG Investigator Hendricks-Moore if she received any help from anyone or Mr. Hicks with putting together her cover letter and resume concerning her employment with the BOPC and she replied “no”.

with her resume, cover letter, and/or interview. The OIG's investigation did not find any evidence to contradict this statement.

iv. BOPC Members Willie Bell, Lisa Carter, and Eva Dewaelache

On December 12, 2018, the OIG separately interviewed the following members of the BOPC Personnel Committee: 1) Willie Bell; 2) Lisa Carter; and 3) Eve Dewaelache. They were interviewed about the hiring process and procedures of the BOPC.

According to Commissioners Bell, Carter, and Dewaelache, they served on the BOPC's Personnel Committee at all times relevant. The Personnel Committee is responsible for reviewing applications and resumes as well as conducting interviews of potential BOPC staff. Additionally, Police HR assists the BOPC with the hiring process. The Commissioners explained the individuals appointed to the Executive Manager-Police (Fiscal) and Executive Manager-Police (Policy) positions went through the formal hiring process involving the Personnel Committee. Commissioner Dewaelache explained that all executive level positions, including Executive Managers, Board Secretary, Board Attorney, and Chief Investigator, are reviewed and approved by the Board as a whole. As indicated in the report, the OIG finds in multiple instances that this is inaccurate.

Commissioners Bell and Dewaelache explained that they became aware of Mr. R Brown's appointment to Executive Manager-Police (Administration) after he was appointed by Mr. Hicks. However, Commissioner Carter stated she knew that Mr. Hicks was going to appoint Mr. R Brown to the Executive Manager-Police (Administration) position. Commissioner Carter stated the Board delegated hiring and firing authority to Mr. Hicks because the Board members are volunteers while the Board Secretary is a paid position. Commissioner Carter further stated that the Board Secretary is responsible for keeping the Commissioners informed about the hiring process and applicants. Commissioners Bell, Carter, and Dewaelache could not describe what new duties or responsibilities were given to Mr. R Brown with this new position, though they stated he was a very hard worker and knowledgeable about the BOPC.

v. Brian Tennille, Bridget Lamar, and Gail Oxendine (Police HR)

The OIG interviewed Police HR employees⁴² Brian Tennille⁴³ and Bridget Lamar⁴⁴ as well as former Director of Police HR Gail Oxendine.⁴⁵ They were interviewed regarding the hiring process and procedures for BOPC staff.

According to Mr. Tennille, Ms. Lamar and Ms. Oxendine, Police HR assists the BOPC with their hiring process and procedures. For example, Police HR handles the job postings, applicant submissions, and interview process. Applicant submissions are generally forwarded to the BOPC's Personnel Committee for review. They stated Police HR assisted the Personnel Committee with the hiring process for the Executive Manager-Police (Fiscal) and Executive

⁴² Brian Tennille is an Employee Services Consultant III. Bridget Lamar was an Executive Manager-Police.

⁴³ Interviewed by the OIG on December 14, 2018.

⁴⁴ Interviewed by the OIG on December 21, 2018.

⁴⁵ Interviewed by the OIG on December 20, 2018.

Manager-Police (Policy). They stated there was no hiring process for the Executive Manager–Police (Administration).

vi. Robert Brown

On January 18, 2019, the OIG interviewed Robert Brown regarding his appointment to the Executive Manager-Police (Administration) position. According to Mr. R Brown, he was initially hired by the BOPC as an investigator for OCI in 2004 or 2005. Later, he became the BOPC’s assistant when that position became vacant. In 2010, he was promoted to Administrative Assistant and he received a pay increase. His duties and responsibilities as an Administrative Assistant included, but were not limited to, the day-to-day operations of the office, handling the meeting minutes, assisting with budget and payroll matters as well as any other directions from the Board Secretary.

Mr. R Brown stated he was promoted to Executive Manager–Police (Administration), because of his hard work. According to Mr. R Brown, his duties and responsibilities remained the same with the following additions: 1) he handles the paperwork of all new BOPC employees; 2) he manages the HR records of BOPC employees; 3) he assists with the interviews of potential BOPC candidates; and 4) he manages the BOPC’s Facebook page and website.

vii. Jermaine Wyrick

On December 19, 2018, the OIG interviewed Jermaine Wyrick, Attorney for the BOPC, regarding the allegations in this complaint. Mr. Wyrick provides legal advice to the Board on police matters. Mr. Wyrick reports directly to the Board, though most of his directions come from the Chairman. Based on his review of the re-organization and delegation of authority memo, Mr. Wyrick explained that he believed Mr. Hicks would have to submit his recommendations for perspective BOPC staff hires to the Personnel Committee. The Personnel Committee would then prepare their recommendations for the Board. Such steps were correctly taken for the hiring of the Chief Investigator and Police Personnel Director. Mr. Wyrick explained the Personnel Committee made the decision to unappoint Mr. R Brown, likely in response to the OIG’s investigation.

viii. OIG’s Findings Regarding Interviews

It is especially troublesome that Mr. Hicks and Ms. Johnson blatantly lied to the OIG considering they work for an oversight agency, which has the important task of supervisory control and oversight of DPD. Civilian oversight and supervisory control of the paramilitary operations of the City is a principle of deep significance in our City⁴⁶ and no employee’s actions should be allowed to call the BOPC’s integrity into question.

As such, Mr. Hicks and Ms. Johnson have a duty to conduct themselves with honesty and integrity at all times because that is what the BOPC must and should demand of DPD officers. If officers fall short of this standard, BOPC is responsible for disciplining them. BOPC staff and Commissioners cannot demand honesty and integrity from officers when Mr. Hicks and Ms.

⁴⁶ Detroit Charter, § 7-802. Board of Police Commissioners Commentary.

Johnson act contrary to these principles by lying to a fellow City oversight agency that questions them in relation to an ongoing investigation. Therefore, the BOPC must set a tone that such behavior is not acceptable and will not be tolerated under any circumstance.

K. Executive Manager- Police Position Appointment Conflict

In addition to the abuse of authority and violations of the Michigan OMA and the Charter, the Executive Manager position, which is a position that is appointed by the Chief of Police, represents a conflict to BOPC's oversight role of DPD. The City HR has an Executive Manager–Police job classification with the designated class code 011805. This job classification is an at-will appointment that serves at the pleasure of the Chief of Police. The minimum entrance job qualifications for this management level position requires a bachelor's degree. Under the City's HR policy rules and procedures, the hiring departments are only permitted to add supplementary job description requirements to an existing job classification. This makes the job description more detailed and specific for the hiring department's needs. While the hiring department may add requirements to the posting, the department cannot remove or delete the minimum qualifications.⁴⁷

Additionally, the appointment authority cannot be substituted. For example, the OIG–Attorney Position Job Classification (011715) appointed by the Inspector General cannot be changed so that the appointment is made by the City's Corporation Counsel. Even if this was possible by rule, it would be inappropriate because the OIG serves in an oversight capacity for City government. Likewise, if the Executive Manager positions were co-signed by the Chief, of which we have no evidence, the BOPC as an oversight agency cannot have its staff subject to removal by the Chief.

Our investigation revealed that the BOPC improperly appointed the following three individuals to the position of Executive Manager–Police: 1) Faye Johnson (Fiscal); 2) Melanie White (Policy); and 3) Robert Brown (Administration). They were appointed as Executive Manager–Police under the job classification designated class code 011805, which is an appointment by the Chief of Police. The OIG found no evidence that the Chief of Police appointed these individuals. The documents and appointment letters reviewed by the OIG clearly show these individuals were appointed by the BOPC or the BOPC's Secretary Mr. Hicks. This is not consistent with the City's HR job classification for Executive Manager- Police. BOPC staff cannot be appointed by the Chief of Police in that they are the selected and appointed civilian oversight for the Department.

IV. CONCLUSION

The OIG finds the following⁴⁸

⁴⁷ City of Detroit Human Resources Department Policy: Rule 11, Sec 3.

⁴⁸ On September 18, 2019, the OIG held an administrative hearing on this case per the BOPC's request. At the hearing, no information was present to refute the OIG's findings against the Board in the OIG's draft report. Therefore, the OIG findings did not change.

On September 17, 2019, the OIG held an administrative hearing on this case per Mr. Hicks' request. At the hearing, no information was present to refute the OIG's findings against Mr. Hicks. Therefore, the OIG findings did not change.

- 1) The Board as a whole, and individually Willie Bell as the former Chair, have neglected their Charter mandated responsibilities. Therefore, the OIG is referring these violations of the Charter to the Corporation Counsel for further action. Section 7.5-209 of the Charter states, in part, “Corporation Counsel shall be responsible for enforcing compliance with the Charter.”
- 2) All actions taken by BOPC, including all decisions made on the OIG recommendations, must comply with the Michigan OMA as appropriate;
- 3) Comply with all aspects of the Charter, including rescinding the BOPC’s delegation of authority through the Delegation of Authority Memorandum;
- 4) Any and all reorganization plans must comply with the Michigan OMA and Charter;
- 5) Issue appropriate discipline to Board Secretary Gregory Hicks for the following:
 - a. Abusing his authority by presenting a memorandum that assumed Charter-mandated authority granted to the BOPC;
 - b. Abusing his authority in the appointment of Mr. R Brown;
 - c. Abusing his authority in the appointment of Ms. Melanie White;
 - d. Abusing his authority in the hiring process and appointment of Ms. Faye Johnson; and
 - e. Providing false statements to the OIG and impeding the OIG investigation.
- 6) Issue appropriate discipline to Ms. Faye Johnson for providing false statements and impeding the OIG investigation;
- 7) All Board Members and BOPC staff need to be educated and trained on an ongoing basis pertaining to the Michigan OMA and Charter to ensure compliance;
- 8) Issue appropriate discipline to former Board Chair, Willie Bell, for violating a provision of the Charter in relation to the unappointment of Mr. R Brown; and
- 9) All positions created within the BOPC must be consistent with the requirements of the City HR’s regulations.

It should be noted that after the OIG issued its draft report dated July 9, 2019, on August 1, 2019, the Board voted to reject the OIG’s findings. However, on the same day, the Board voted to

On September 17, 2019, the OIG held an administrative hearing on this case per Ms. Johnson s request. At the hearing, no information was present to refute the OIG’s findings in its draft report. Therefore, the OIG’s findings against Ms. Johnson did not change.

On September 16, 2019, the OIG held an administrative hearing on this case per Commissioner Bell’s request. At the hearing, no information was present to refute the OIG’s findings in its draft report. Therefore, the OIG’s findings against Commissioner Bell did not change.

schedule a training a session on the Michigan Open Meeting Act. No evidence has been provided to the OIG that any such training has taken place or scheduled. Moreover, after the Board's September 18, 2019 administrative hearings, on October 4, 2019, the Board was provided an opportunity to submit an additional response to the OIG by Friday, October 11, 2019, to which the Board's attorney responded by reminding the OIG that the Board stands by its August 1, 2019 vote to reject the OIG's recommendations.

The OIG finds that the Board's rejection of the recommendations, other than perhaps to comply with the OMA training, troubling. The Charter requires that the OIG "ensure honesty and integrity in City government."⁴⁹ As an oversight agency of the Detroit Police Department, the Detroit BOPC must ensure its staff first exemplifies honesty and integrity. Therefore, we are also recommending that the Corporation Counsel consider the Board's decision not to discipline its staff a violation of the Charter. We finally conclude the Board's rejection of the OIG's recommendations further proves that the Board is willfully disregarding its Charter-mandated responsibilities.

⁴⁹ Detroit Charter, § 7.5-301.



AMENDED MEMORANDUM IN RESPONSE
TO THE INSPECTOR GENERAL INVESTIGATION 2018-00050
ON BEHALF OF THE DETROIT BOARD OF POLICE COMMISSIONERS
PURSUANT TO DETROIT CITY CHARTER SECTION 7.5-311, AND
PROVISION 11 OF THE ADMINISTRATIVE RULES OF THE INSPECTOR
GENERAL'S OFFICE.

INTRODUCTION

The people of the City of Detroit adopted its "Home Rule Charter" for purposes of providing for their continuing control of municipal government of the City of Detroit (Article 1, Section 1-1101, Detroit City Charter). That authority is conferred upon the City of Detroit by the Michigan State Constitution (Article 1, Section 1-1102, Detroit City Charter). The Detroit BOPC, former Chairperson Willie Bell, Board Secretary Gregory Hicks, Executive Manager Fiscal Faye Johnson, reserves their right to present a more informed response to the OIG's charges on appeal to the Circuit Court (Michigan Constitution 1963 Article 6, Section 28; MCR 7.123) should the OIG, as result of the additional evidence and law presented not dismiss this matter in its entirety.

BACKGROUND

Born from reforms to stop the police brutality and oppression protested in the 1967 civil uprising, the Detroit Board of Police Commissioners (hereafter "BOPC") was created in 1974 by City Charter, which was adopted by the vote of the people. The 2012 Charter enhanced Civilian Oversight by vesting broad supervisory and expanded authority over the Detroit Police Department (hereafter "DPD".) In doing so, the 2012 Charter solidifies the vision, leadership, and legacy of Detroit residents. The BOPC is a Civilian Oversight agency to ensure that policing is responsive to the standards, values, and needs of the community it serves, the City of Detroit.

Detroit Mayor Coleman A. Young convened the first meeting of the BOPC on July 22, 1974. Prior to Civilian Oversight, police departments were not accountable to anyone, and there was an increase in abuse of power by the police.¹ In Detroit, the police S.T.R.E.S.S. (Stop the Robbers, Enjoy Safe Streets) unit escalated the tension between the police department and city residents in the early 1970's, prior to the creation of the BOPC. Specifically, in a 2.5 year period, the STRESS unit killed 22 residents, and arrested hundreds without cause. In 2003, the City of Detroit and the DPD entered into two consent decrees with the U.S. Justice Department "to address systematic changes needed for law enforcement, including procedures for police training, the use of deadly force, and the process for arrest and detention of suspects."

¹ "Overview of Civilian Oversight of Law Enforcement in the United States" by Barbara Attard and Kathryn Olson;



The BOPC is an integral part of municipal government. By creating a system of accountability and transparency, Civilian Oversight of law enforcement in the U.S. has the goal of fostering trust and respect between the police and community served, constitutional policing, and enhanced public safety. The role of Civilian Oversight is basically a matter of policy.² There are aspects to the design of an oversight system, however, that require consideration of legal issues.³ Oversight is becoming integrated into the fabric of our society and government; there is a recognition that oversight is beneficial and here to stay. Community members are calling for independent oversight and voice in policing.⁴ In increasing numbers, police chiefs, sheriffs and government officials are recognizing that oversight is “*not about bad cops, but about good government.*”⁵

Former Chairperson Willie Bell, a diligent public servant, moved to Detroit as a small child. He has served in a volunteer capacity on the Board of Commissioners (hereafter “BOPC”) since being elected to District 4 in 2013, including in the leadership positions of Chair and Vice Chair. He graduated from Northeastern High School. Shortly thereafter, he worked at Chevrolet Gear and Axle. He joined the United States Army in 1966, 1st Air Cavalry Division, and was stationed in the Republic of Vietnam for a portion of tenure in the service. He was honorably discharged in 1969 after attaining the rank of Sergeant.

In August 1971, Commissioner Bell joined the DPD and served the City for 32 years as a sworn officer. He retired in 2003 at the rank of Lieutenant, in charge of the Office of Chief Investigator, the part of the BOPC that investigates citizens’ complaints. He worked for the Office of Chief Investigator. Commissioner Bell has dedicated his life and career to promoting justice, fairness, and effectiveness in law enforcement, with an emphasis on how it impact issues facing the community. He contributes his time and talent to youth organizations and civic and community groups as well. He is married and the father of two daughters and one granddaughter, and serves his church, Plymouth United Church of Christ, where he joined in 1980, and has been an ordained Deacon over 20 years. Commissioner Bell holds a BS degree from Central Michigan University. He is a 40 year resident of East English Village.

Board Secretary/Executive Director Gregory Hicks began full-time employment with the Detroit Board of Police Commissioners in April 2016. He has a long-standing accomplished reputation of being a consummate, honest professional. He served the City of Detroit as the Executive Director of the Detroit Charter Commission from 2010-2012. He taught Sociology at Mott Community College and Wayne County Community College, between 2007-July 2009. From September 2007-July 2009, he was the Development and Chief Financial Officer for Catholic Social Services. From February 2003-July 2005, he served as the Director of Administration for the Wayne County

² “Overview of Civilian Oversight of Law Enforcement in the United States” by Barbara Attard and Kathryn Olson

³ “Independent Police Review Boards” by Wendy R. Roudner

⁴ “Oversight of Law Enforcement is Beneficial and Needed – Both Inside and Out - by Barbara Attard.

⁵ John Crew, Former Acting Director and Police Practices Director, Northern California Chapter of the American Civil Liberties Union.



Department of Public Services. He has previously worked for the City of Detroit for the Honorable Kenneth Cockrel Senior, City Council Member, and the Honorable Mayor Coleman A. Young. Educationally, he has a Ph.D. in Sociology from Wayne State University, an M.A. in Sociology, and a Master's Degree in Urban Planning.

Faye Johnson, the Executive Manager – Fiscal began full-time employment with the Detroit Board of Police Commissioners in October 2016. She has an impeccable reputation of professional integrity. She adheres to the accounting profession's highest standard of professionalism. Prior to her BOPC employment, she has more than 15 years of experience as a registered public accountant. She served as an Assistant Controller in Interfaith Senior Programs in 2016. She was a Senior Accountant for Catholic Charities in 2015 in Milwaukee, Wisconsin. From June 2014 – February 2015 she served as a Senior Accountant for Milwaukee Social Development Commission. Prior to that, she served as a Financial Analyst for Kimberly-Clark in 2013. Educationally, she has a BBA in Accounting from the University of Detroit Mercy, and is a graduate of Cass Technical High School. She volunteers for the Little Red School House performing Financial Statement preparation. In this matter, she emphatically disagrees with the Office of Inspector General's characterization of the BOPC hiring process of her.

FACTS:

An anonymous complaint was filed against the BOPC regarding the Promotion of Robert Brown to Executive Manager. The investigation began approximately November 30, 2018.

On June 30, 2016, the BOPC at a public open meeting approved the BOPC Reorganization Plan, the purpose of which was to make the BOPC function effectively in an administrative way. Under that plan, several key areas were addressed, including Budget/Finance to ensure that BOPC operates its budget and the ability to monitor the DPD budget. This comports with Charter Section 7-803(2), the duty of the BOPC to review and approve the departmental budget. Another area addressed was Policy, so that the BOPC would comport with best practices, in policy making on issues such as body-worn cameras and Tasers. This comports with Charter Section 7-803(1) BOPC duty to establish policies, rules, and regulations in consultation with the Chief of Police and the Mayor. These duties necessitated an employee be designated to see duties fulfilled, considering the BOPC is not full-time, but rather a volunteer board. When the positions were created, they were vacancies to be filled within the BOPC budget. Consequently, based upon the aforementioned, the full board voted in favor of the BOPC Reorganization.

QUESTIONS PRESENTED SECTION:

1. Did the BOPC fulfill Charter mandated duties?
2. Did the BOPC properly delegate authority to the Executive Director/Board Secretary?
3. Do the BOPC Bylaws violate the law?



4. Did the BOPC Improperly Delegate Authority to the Chairperson?
5. Do the BOPC Subcommittees comply with the Law, including the Open Meetings Act (OMA)?
6. Did the BOPC violate the OMA when it hired the executive managers and the BOPC Attorney?
7. Was the unappointment of Robert Brown handled appropriately?
8. Did the BOPC comply with the Detroit City Charter Article 6, Chapter 4 on Personnel Administration?
9. Were Mr. Hicks' rights under *Garrity* violated during the Inspector General's investigation?

1. DID THE BOPC FULFILL BOARD CHARTER MANDATED DUTIES?

The Charter vests **broad** supervisory authority over the Police Department in the eleven-member civilian Board of Police Commissioners. Under Section 7-803(1) of the Charter, Duties of the BOPC it specifically states, "The **Board shall** in consultation with the Chief of Police, and with the approval of the Mayor *establish policies, rules, and regulations:*"

Section 7-804(1) of the Home Rule Detroit City Charter states "**Secretary to the Board:**" "The Board shall appoint a Board Secretary, who serves at its pleasure. The secretary shall not have been an employee or elective or appointive officer of the City within three years (3) years prior to appointment. The secretary shall attend board meetings.

When Gregory Hicks was appointed the Board Secretary he had not been an elective or appointive officer of the city for three years. Board Secretary Hicks attends board meetings, handling administrative procedures and operational direction. In order to comply with the Charter, the BOPC hired Gregory Hicks as Board Secretary/Executive Director in large part based upon the experience, wisdom, and insight he gained by serving as the Executive Director of the Detroit Charter Commission from 2010-2012.

Section 7-804(3) on Other Staff states, "The Board may hire, in accordance with Article 6, Chapter 4, such additional staff as is necessary to carry out its duties. Therefore, when the Board hired additional staff as is necessary to carry out its duties - Executive Manager Fiscal Faye Johnson, Executive Manager Policy Melanie White, and Robert Brown became the Executive Manager, the BOPC complied with Section 7-804(3). Notably, the Detroit City Council approves, deliberates, and publishes a compensation schedule for City of Detroit appointees and Civil Service. As a best practice, the BOPC set salaries of the Executive Managers at the mid-range delineated by City Council in order to comport therewith.

Further 7-804(3) also states, "All members of the staff are under the direction of the Board, and *the Chief of Police has no authority over any member of the staff.*" Disturbingly, the Inspector General's written report, erroneously states on page 16, under Title K, "The Executive Manager position appointed by the Chief of Police represents a conflict to the BOPC's oversight role of DPD." Further, "This job classification is an at-



will appointment that serves at the pleasure of the Chief of Police.” Moreover, in the next paragraph, last line, “The BOPC as an oversight agency cannot have its staff subject to removal by the Chief.” Conversely, accurately, and factually, the Executive Manager Position that Robert Brown served in at the pleasure of the BOPC, was an appointment by the BOPC, and comported with 7-804(3) that, “*the Chief of Police has no authority over any member of the staff.*” Because of the nature and role of Civilian Oversight, as reflected in 7-804(3), no BOPC employee is appointed nor serves at the pleasure of the Chief of Police.

The case of *Ewing v. City of Detroit*, 237 Mich. App. 696; 604 N.W.2d 787 (1999), the Michigan Court of Appeals dealt with Charter commentary. Therein the court held the official commentary is an interpretative aid to the Charter. The 2012 version of the Detroit Home Rule City Charter further expands and acknowledges the appointment power of the BOPC, from previous charters. Specifically, prior to 2012, the Mayor appointed the Chief of Police. That changed however, in 2012, wherein the commentary gives guidance as to the rationale, “Under this Charter the Board of Police Commissioners will conduct a professional search and provide the Mayor with a list of qualified candidates to choose from.” Hence, now the BOPC is empowered to select the three (3) finalists for the position of the Chief of Police.

Under Section 7-806, Duties of the Chief of Police, it states, “The Chief of Police is the Chief Executive Officer of the police department and **shall administer the department consistent with the policies, rules, and regulations established by the Board and shall organize the department with the approval of the Board.**” Therefore, the Board hired an Executive Manager for Policy Melanie White to accomplish that Charter mandated objective. Thus, the BOPC complied with Sections 7-804 of the Detroit City Charter when it hired the Executives including the Board Secretary, Executive Manager – Policy, Executive Manager Fiscal, and Board Attorney.

In the initial findings and recommendations of the City of Detroit Inspector General’s Office, the best practices from legislative bodies is erroneously used. Conversely, the best practices from Civilian Oversight shows ample and new evidence that the BOPC and the individuals therein – Commissioner Willie Bell (former Chairman), Board Secretary Gregory Hicks, Fiscal Manager Faye Johnson, and Administrative Specialist Robert Brown, previously Executive Manager, comports with the best practices in Civilian Oversight. For example, the Pittsburgh Citizen Police Review Board Rules and Operating Procedures state in Section 662.05(14), entitled, “Duties, Limitations and Operations of the Review Board, 1. The Review Board is authorized to hire a Review Board Solicitor. 2. The Review Board may use its funds to hire attorneys to assist the Executive Director or the Review Board Solicitor in special matters as the Review Board deems appropriate. 3. The Review Board is authorized to hire independent counsel, as it deems appropriate to represent either the Executive Director or the Review Board itself.” Therefore, Pittsburgh Civilian Oversight hires its own attorney in the same best practice that the BOPC does.

The Las Vegas Municipal Code Section 2.64.030(B) on the Citizen Review Board Director states, “The County and City may, upon, mutual agreement provide such funding, staffing, legal counsel and other resources as they determine, according to their



sole discretion to be necessary for the performance of the functions of the Director and Review Board. This language is similar to Detroit Charter Section 7-804(3). Thus, when the BOPC hired additional staff – Executive Manager Fiscal, Faye Johnson, Executive Manager Policy, Melanie White, and appointed and unappointed Robert Brown as Executive Manager, the BOPC comported with this best practice coupled with the Detroit Charter provision to “staff as necessary.”

In Long Beach, California, Section 1153, Powers and Duties of the Commission states, “To recommend to the City Council the provision of such staff as is necessary to carry out its powers and duties under this Article.” This is very similar to the Detroit Charter which empowers the BOPC to hire staff as necessary. In addition, Commissioners in Long Beach also serve from a district, which is similar to Detroit as well.

The Los Angeles Board of Police Commission, originally created in the 1920’s, provides an example of best practices for a Civilian Oversight Board. In Los Angeles, where there are 9500 sworn officers, although not expressly in the Charter, the Executive Director oversees budgetary appropriations for the Police Commission, including the recommendation of an annual Police Commission budget. In a manner similar to Los Angeles, the Detroit Executive Director oversees budgetary appropriations for the Police Commission, including the recommendation of an annual Police Commission budget. Hence, to fulfill the Detroit Charter mandated duty 7-803(2) to review and approve the departmental budget, the Detroit BOPC used Section 7-804(3) to “hire additional staff as is necessary to carry out its duties. Consequently, Faye Johnson, based upon her extensive accounting experience, was hired as the Executive Manager-Fiscal of the Detroit BOPC. In Los Angeles, the Commission has a Budget Analyst that prepares an analysis of all fiscal reports submitted by the Department including budget requests, grant agreements, contracts, and other items with fiscal impact, and makes recommendation for Board action. The Budget Analyst takes the lead in preparing the annual budget for the Police Commission and is responsible for synthesizing all requests submitted by the Executive Office, Inspector General and Commission Investigation Division into a consolidated budget. The Budget Analyst also acts as the Commission’s liaison to the Department on budgetary matters. Since her 2016 hire, Executive Manager Fiscal, Faye Johnson, an accountant, has performed the same duties for the Detroit BOPC.

The Los Angeles Board of Police Commission uses a Policy Group to assist the Board in developing and analyzing policy, monitoring the progress of policy implementation, and reviewing and proposed department actions. The Unit also provides overall research and analytical support to the Commission, and facilitates the transfer and coordination of information. Using L.A. as a best practice, when the BOPC hired Executive Manager-Policy, Melanie White, as the Charter affords the BOPC the ability to do so in 7-804(3) “additional staff as is necessary to carry out its duties,” the BOPC did so to fulfill the Charter mandate in 7-803(1) which states, “In consultation with the Chief of Police, and with the approval of the Mayor establish policies, rules, and regulations.”

In Los Angeles, the BOPC uses a Public Information Director who is responsible for disseminating information on Commission policy and initiatives to the public, as well



as to serve as a liaison to the media. In the Detroit BOPC, Community Relations Manager Teresa Blossom serves this role.

In Washington, D.C., where there are 3,800 sworn officers, there is a civilian oversight entity, the Office of Police Complaints (OPC) that has a similar best practice structure to the Detroit BOPC. There is a Research Analyst who makes policy review and recommendations on issues such as Body Worn Cameras, similar to the role Executive Manager of Policy Melanie White has played for the Detroit BOPC. There is a Community Outreach component in the Washington, DC office which is similar to the role that the Detroit BOPC Community Relations Coordinator Teresa Blossom serves. There is also a staff legal counsel, similar to the role Attorney Jermaine Wyrick currently serves for the Detroit BOPC. There is an Executive Assistant similar to the role Robert Brown has served for the Detroit BOPC. OPC operates under the supervision of its Executive Director, who is appointed by the Board. The Executive Director is assisted with the management of OPC by a Deputy Director and Chief Investigator. While the BOPC does not have a Deputy Director, there is a Chief Investigator, Dr. Polly McCalister, who oversees the BOPC investigative staff. The D.C. office has its own investigative staff. The D.C. management team and investigative staff are assisted by legal counsel, executive assistant, research analyst, public affairs specialist, staff assistant, program coordinator, investigative clerk, and receptionist.

The Detroit BOPC is an active member of The National Association for Civilian Oversight of Law Enforcement (NACOLE), which has been in existence for 25 years. NACOLE promulgates a Code of Ethics. Part of that Ethical code, mandates "Outreach and Relationship with Stakeholders" which requires a civilian oversight agency to disseminate information and conduct outreach activity in the communities they serve. To "Pursue open, candid, and non-defensive dialog with stakeholders. Educate and learn from the community." To accomplish this ethical objective, the Detroit BOPC hired Community Relations Coordinator Teresa Blossom. The NACOLE Code of Ethics also mandates "Agency self-examination and Commitment to Policy Review: Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness thorough evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance." When the Detroit BOPC hired Executive Manager of Policy Melanie White, the purpose was to comport with that NACOLE Ethical Standard. The Detroit BOPC has been successful in promoting police and community understanding by longevity – 45 years of existence, regularity – weekly meetings, coupled with preventing the same contemporary tragedies other communities have seen recently based upon discriminatory, tragic, and unjustified high-profile deaths of African-Americans.

In conclusion, based upon the Detroit Charter itself, authoritative case law, the NACOLE Code of Ethics, as well as the best practices from other Civilian Oversight Agencies – Pittsburgh, Las Vegas, Long Beach, Los Angeles, Washington D.C - the Detroit BOPC legally fulfilled Charter mandated duties.



2. DID THE BOPC PROPERLY DELEGATE AUTHORITY TO THE BOARD SECRETARY?

While the Bylaws properly delineate the full-time responsibilities of a Board Secretary, the Inspector General's narrow and flawed interpretation limits the Board Secretary's role to Charter Section 7-804 (1), "The secretary shall attend board meetings." Board meetings last between 2-3 hours. Therefore, such a narrow interpretation would relegate the Board Secretary, a full-time employee to a time status of less than part-time. Interestingly, the Inspector General states that the Board's Secretary is supposed to manage the complaint docket, but then erroneously states the Charter provision on such. Specifically, the Inspector General's Report references 7-804(1), which does not reference complaints. Section 7-804(2) empowers the BOPC to hire a Chief Investigator for investigative work. Further, in the 2012 Charter, the commentary states, "this section was revised to clarify that *the Chief Investigator and other Investigators must possess experience and skills that are necessary to 'complete' the investigative work they conduct.*" Moreover, while Section 7-808 states the complaints of the Police Department will be forwarded to the Board Secretary, the Chief Investigator is the position reposed with the duty to actually investigate the complaints. The commentary on Section 7-808 states, "the independent investigation of the Chief Investigator is arguably the preferred method of investigation, as it removes the appearance of bias, which can be claimed with an investigation by those with a relationship to the department."

Unfortunately, the Inspector General's Report gives a very limited, narrow interpretation to the Charter. The law and best practices from Civilian Oversight as opposed to legislative bodies, however, supports a broader interpretation in several respects. Federally, the Final Report of President Obama's Task Force on 21st Century Policing that was issued in 2015 Section 2.9 states as a Recommendation, "Some form of Civilian Oversight of Law Enforcement is important in order to strengthen trust within the community." Further, "We must examine Civilian Oversight in the communities where it operates and determine which models are successful in promoting police and community understanding."

In a watershed Michigan Supreme Court case, *City of Detroit v. Walker*, 445 Mich. 682; 520 N.W.2d 135; dealt with the powers and duties of the Charter Commission. The court held powers of the city under the Detroit Charter shall be construed liberally in favor of the city. The specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this article. The court stated, "Accordingly, it is clear that home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied. Home rule cities are empowered to form for themselves a plan of government suited to their unique needs and upon local matters, exercise the treasured right of self-governance. See Michigan Constitution 1963, Article 7, Section 22." Thus, when the BOPC delegated authority through a reorganization plan it did so in a manner that was suited to the unique needs of Civilian Oversight over the DPD, and comports with a liberal construction of the Charter.



In a Michigan Court of Appeals case, *Barrow v. City of Detroit Election Comm'n*, 305 Mich. App. 649 (2014), the court held, “the City of Detroit is a home rule city. And the Michigan Supreme Court has held that home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied.” Therefore, the BOPC, as an integral part of Detroit government, under the City Charter, when the BOPC delegated authority, it exercised powers under the Detroit City Charter that was not expressly denied. Further, the court in the *Barrow, Id.*, case, stated, “A power is necessarily implied if it essential to the exercise of authority that is expressly granted.” This is germane to the delegated authority which is essential to the exercise of authority that the BOPC is granted in the Detroit City Home rule charter such as establishing policies, rules, and regulations, which necessitated the hiring of Policy Manager Melanie White or reviewing the departmental (DPD) budget which necessitated the hiring of Fiscal Manager Faye Johnson. The *Barrow, Id.* case, is factually analogous to the BOPC because the Election Commission had the authority to appoint the Director and Deputy Director of the City’s Election Department under the Detroit City Charter. The Election Director shall supervise, plan and monitor all activities and operations incidental to the conduct of elections. Interestingly, from a factual standpoint, the court held there was no basis to conclude that the use of satellite offices for early absentee voting is prohibited by statute. Thus, when the BOPC delegated authority that is not prohibited in the Detroit City Charter, the Detroit BOPC exercised implied authority afforded to it.

In *Oshtemo Charter Twp. V. Kalamazoo County Rd. Comm'n*, 302 Mich. App. 574; 841 NW 2d 135 (2013), the Michigan Court of Appeals held, “Michigan is strongly committed to the concept of home rule, and constitutional and statutory provisions which grant power to municipalities are to be liberally construed.” Moreover, a local government may exercise ‘reasonable control’ to regulate matters of local concern. Thus, when the BOPC delegated authority such was done in order to have reasonable control to regulate matters of local concern as afforded in a liberal construction of the Detroit Charter as afforded under the concept of home rule.

In the case of *TCG Detroit v. City of Dearborn*, 261 Mich. App. 69; 680 N.W. 2d 24 (2004), the Michigan Court of Appeals addressed the issue of implied authority. Therein, the court held the reasonable control of the streets carries with it the implied power to contract for reasonable terms as a condition of allowing use of the streets, under the Michigan Constitution. Hence, when the BOPC delegated authority, the BOPC had the implied authority to do so under the home rule Detroit City Charter so that it could reasonably comply with the Charter mandate in Section 7-802 of supervisory control and oversight of the Police Department.

The BOPC delegated authority memo does not empower the Board Secretary with too broad scope of authority. Once the board delegated the authority to him, the Board still retained the power, over any decisions made. For example, when he began the process of interviewing job applicants, that process did not end, until the Board used its authority to approve an appointment that was referred by the Personnel Committee. The ultimate authority always remained vested in the BOPC. In due diligence and deference to this authority, from July 22, 2016 until January 13, 2017, Mr. Hicks wrote Executive



Director Report to the Commissioners to keep them apprised on the daily administrative operations of the BOPC. Thereafter, he compiled Briefing Agenda for weekly executive sessions, Leadership Meetings for administrative purposes as well.

The case of *New Process Steel, L.P. v. NLRB*, 560 U.S. 674, 130 S. Ct. 2635 (2010), dealt with the issue of the delegated authority within the National Labor Relations Board. There the U.S. Supreme Court reasoned the Board legitimately executed authority when the Board delegated authority to three members in order to preserve the Board's authority to function, which is consonant with Roberts Rules of Order. Further the court reasoned that the delegation was the only way to harmonize and give meaningful effect to the statutes that govern. Thus, when the BOPC delegated authority to the Board Secretary they did so in order to harmonize and give meaningful effect to the Charter. Moreover, the BOPC who are comprised of unpaid volunteers delegated authority to a full-time employee, Gregory Hicks in order to preserve the BOPC's authority to function. Interestingly in *New Process, Id.*, the court held failure to meet a quorum requirement does not necessarily establish that an entity's power is suspended so that it can be exercised by no delegee. Thus, when Mr. Hicks exercised his delegated authority that did not suspend the authority of the BOPC.

In a watershed decision, *Straus v. Governor*, 459 Mich. 526; 592 N.W. 2d 53 (1999), the Michigan Supreme Court held the State Board of Education can delegate authority to the Superintendent. In essence, the Board could constitutionally transfer functions that had previously vested in the Board, allocate a function through the exercise of reorganization. When the BOPC delegated authority to the Board Secretary they did so through reorganization so that the BOPC would operate effectively. Interestingly, the court stated such delegation is inherent to, and thus inseparable from constitutionally derived functions. Similarly, the BOPC delegated authority is inherent to and inseparable from BOPC Charter mandated duties. The court decided that the delegation did not divest the board of control over the system of public education in Michigan. Thus, the delegation by the BOPC did not divest them over control of Civilian Oversight in Detroit. The court acknowledged the Superintendent could exceed boundaries, but found he did not engage in ultra vires actions. Thus, the court found if the Board's constitutional prerogatives have been invaded, then the infringement should be redressed. The BOPC Board Secretary did not exceed boundaries, did not engage in ultra vires actions, and acted in a manner consonant with the Charter, so there is no infringement to redress. The court reasoned that the board, rather than the superintendent, is responsible for the leadership and general supervision of public education. Here, the BOPC, not the Board Secretary Gregory Hicks is responsible for supervisory control and oversight of the DPD, which currently has 2,480 sworn officers.

In *Tireman-Joy Chicago Impro. Asso. v. Chernick*, 361 Mich. 211; 105 N.W. 2d 57 (1960) the Michigan Supreme Court held courts are precluded from a reversal of the ruling of the Board save upon the traditional grounds of showing of arbitrary action or a clear abuse of discretion. When the BOPC delegated authority to Mr. Hicks that delegation was consonant with case law, the Charter, and best practices of Civilian Oversight, and thus not arbitrary nor an abuse of discretion.



In *Lehnert v. Ferris Faculty Association-MEA-NEA*, 643 F. Supp. 1306; 1986 U.S. Dist. LEXIS 21209 (1986), the court held that the Defendant Board of Control of Ferris State College is a public body empowered to control and manage Ferris, and was permitted to use agency to govern therein. Thus, for their administrative procedures they delegated authority to their Executive Director. In order to do so, in similar fashion to the way the Detroit BOPC did herein, the MEA Board of Directors approved a reorganization plan in order to implement new administrative procedures for policy. Therein the Executive Director of the Michigan Education Association was able to determine the amount of total budgeted expenditures that will be expended on activities. This was viewed as a tactical decision that was germane to the work. Similarly, the BOPC delegated authority the Executive Director Gregory Hicks.

In the case of *Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary v. Regents of the Univ. of Mich.*, 701 F. 3d 466; 2012 U.S. App. LEXIS 23443, the 6th Circuit Court of Appeals held the Boards of public universities have the authority to enact by-laws for the government of the university. The court stated the boards have independent, plenary authority to run their respective institutions. Notably, the court stated, "When an elected body delegates a power, it does not automatically follow that the delegate's decisions fall outside the political process." Hence, when the BOPC delegated authority it did not automatically fall outside the political process either, rather the BOPC retained political decision-making authority. Consonant with that retention, Board Secretary Hicks made consistent reports of administrative decisions through memorandums and announcements at public meetings.

Best practices in other cities reflect delegated authority by Civilian Oversight commissions to an Executive Director, with in most instances a broader scope of authority than was conferred to Mr. Hicks by the Detroit BOPC. Most Civilian Oversight agencies give their Board Secretary/Executive Director more unilateral authority than the BOPC gave Mr. Hicks. Specifically, in Albuquerque, New Mexico, the analogous position, the Independent Review Officer (IRO) employs and supervises employees. In fact, the IRO under Albuquerque statute, 9-4-1-6, is given autonomy and shall perform all duties under the direction of the Police Oversight Commission (POC). Similar to Detroit, the IRO Office provides staff assistance for the POC, coordinate and provide technical support for all scheduled POC meetings, publicize all findings and reports, recommendations, and/or suggested policy changes. Neither the City Council nor any of its members, nor the Mayor shall in any manner dictate the appointment or removal of any such employee of the Independent Review Office. Under Albuquerque statute, 9-4-1-7, the IRO will be provided the necessary professional and/or clerical employees for the Office, and shall prescribe the duties of these staff members after consultation with the members of the POC. The IRO will report directly to the POC and act as Lead Investigator and Manager of the Office. When the BOPC, delegated authority to Mr. Hicks they made him the manager of the BOPC office, yet still under the direction of the BOPC's authority. Using Albuquerque as a best practice, Mr. Hicks would be empowered to increase the long-time, dedicated, hard-working, and sacrificial employee Robert Brown's salary by \$25,000.



In Berkley, California, the Executive Director is the Secretary to the Commission who carries out the day to day operations including performance appraisals and discipline of all subordinate employees. The Executive Director with the Commissioner's consent, hires a Chief Investigator, and can dismiss the Chief Investigator at will, with the Commission's consent. The Executive Director has *sole authority* to hire, and dismiss consultants, additional investigators, and all subordinate employees. Similar to Detroit, the Commission and Executive Director uses the City's Human Resources for hiring, performance evaluation, discipline, and removal of employees. Moreover Berkley is similar to Detroit in that any actions that Mr. Hicks took had to be with the BOPC's consent. In addition, using Berkley as a best practice, Chairperson Willie Bell had the authority to discipline all subordinate employees such as when he decreased Robert's Brown salary. Berkley is an example of how many Executive Directors are more empowered than Mr. Hicks is. Specifically, he cannot fire the Chief Investigator Dr. Polly McCalister, while in Berkley the Executive Director can at will with the Board's consent.

In Boston, Massachusetts, there was a Community Ombudsman Oversight Panel convened in 2015 that issued a report entitled, "Civilian Review and Police Oversight in Boston: Review and Recommendations." On page 6 of that report, recommends the creation of the Community Office of Police Accountability (COPA), that should be headed by an Executive Director who will oversee the COPA's budget and operations, supervise employees, liaison with the police department, and coordinate the activities of the COPA board members, all of which are what Detroit BOPC Executive Director has done since being delegated authority from the Board in 2016. Moreover, in Boston, the recommendation stated, "The City should provide the Director with administrative support and sufficient budgetary flexibility to staff the COPA in a manner that ensures provision of services to the community in a timely and professional manner."

In Buffalo, New York, the Commission on Citizens' Rights and Community Relations is the civilian oversight agency. They have the same number of members as the BOPC – eleven (11). Section 18-21 of the Charter on the Buffalo Commission, entitled, "Membership of Commission; Conduct of Business" states in pertinent part, "The executive director shall be responsible for administering the commission's business and for carrying out such other duties as may be delegated by the commission." In addition, "the members shall appoint among themselves each year a chairperson..." The Buffalo Bylaws Article VII states, "The Executive Director shall serve as the administrative head of the Commission affairs and shall be selected as stated in the City Charter. The Executive Director shall work in conjunction with the Chair in all matters as previously described in these By-Laws and as further directed by the Chair."

In Cambridge, Massachusetts, the Police Review and Advisory Board was created in 1984. The ordinance therefore, Chapter 2.74 states in Section 2.74.030 on Officers and Staff: "Executive Secretary to the Board. The Board shall appoint an Executive Secretary to the Board. The Executive Secretary shall be responsible for the daily administration of the Board. The Executive Secretary's terms and conditions of employment shall be fixed by the Board. The Executive Secretary to the Board shall, with the consent and approval of the Board, be empowered to hire clerical help when



needed.” Therefore, the Executive Secretary in Cambridge is given discretion to hire staff. Moreover 2.74.030(3) C Other staff states, “The Board from time to time, may contract, in accordance with existing regulations and law, for such additional staff as is necessary to carry out its duties. Further, 3(D) states, “All members of the staff are under the direction of the Board.” Thus, the best practice from Cambridge is identical to the Detroit Charter mandate for the BOPC to hire staff as necessary, coupled with the members of the staff are under the direction of the Board.

In Chicago, Illinois, where there are 13,600 sworn officers, the Civilian Office of Police Accountability (COPA), was created by ordinance in 2006. COPA hires a Chief Administrator to serve as the chief executive officer of the office. The Municipal Code of Chicago, Section 2-78-120 delineates the Powers and Duties of the Chief Administrator includes:

- (r) To promulgate rules and procedures for the conduct of the Office
- (s) To set minimum qualifications and appropriate screening procedures for all persons to be considered for employment by the Office, and to set appropriate staffing levels to carry out the powers and duties set forth herein, provided, however that no investigator employed by the Office shall be a current or former sworn member of the Police Department the last five years. Thus, in Chicago the Administrator, as opposed to the Board, can set appropriate staffing levels, such as whether a long-time employee such as Robert Brown receives a raise or decrease in salary.

In Cincinnati, Ohio, there are 1040 sworn officers. The Administrative Code for the Citizen Complaint Authority (CCA) in Cincinnati, Section 2-B states in pertinent part, “The executive director will be accountable for the efficient operations of the CCA, and for the achievement of the desired outcomes set forth above.” Further, “The executive director shall be responsible for the day-to-day operations of the CCA, including (i) recommendations for the hiring of professional and support staff, (ii) preparation, submission and adherence to a budget, (iii) conduct and timely completion of investigations, (iv) reporting to the City on the CCA’s work, and (v) maintaining an effective working relationship with the CPD and other branches of government. Within the resources allocated by city council, the executive director shall ensure that the CCA’s human and other resources are sufficient to ensure timely completion of investigations and maintenance of complete and accurate records.” Detroit BOPC Gregory Hicks has performed this role for the Detroit BOPC to comport with best practice. In addition, in Cincinnati, there is a Senior Administrative Specialist and Administrative Specialist under the Director, which is similar to the role Robert Brown played as the Executive Manager then now as the Administrative Specialist for the Detroit BOPC.

In Cleveland, Ohio, the Office of Professional Standards (OPS) which handles Civilian Oversight issues has an Operating Manual and Procedures. Therein, the Office of Professional Standards Administrator duties include “ENSURE ADHERENCE OF ALL OPS PERSONNEL TO ALL PROVISIONS OF THIS MANUAL. The success or failure of OPS Investigators in effectuating full, fair, thorough, complete, unbiased, and timely investigations depends on *strong, focused, and effective leadership* by the OPS Administrator.” Further, the OPS Administrator also meets with personnel individually once per week to discuss the status of investigations, develops OPS training, attends



executive level leadership training, and develops performance evaluation plans for all OPS staff members. Provision 303 in the Cleveland OPS manual is analogous to the Detroit charter in that new complaints are forwarded to the OPS Administrator.

In Eugene, Oregon, under Ordinance No 20374, Section 3(3) the independent police auditor shall have exclusive authority to hire, supervise, and to make all other employment decisions regarding the auditor's support staff. No change relating to the authority to hire and supervise the auditor's staff shall be made without formal action of the city council. Thus, while Mr. Hicks did not have exclusive authority under the delegated authority, the BOPC did take formal action when a hiring decision was made, by voting to approve the hires of Executive Manager Policy Melanie White, Board Attorney Jermaine Wyrick, Chief Investigator Polly McAlister, and Personnel Director Dr. Marcella Anderson.

In Indianapolis, Indiana, the Citizen Police Complaint Board was created by ordinance in 1988. Under Section 202-805 of the ordinance, the Executive Director has authority to contract with investigators and legal counsel. In addition, staffing and budget recommendations are made by the Executive Director in consultation with the Mayor and the Board.

In King County, Washington, the King County Office of Law Enforcement Oversight (OLEO) ordinance states in pertinent part Section 4, "The director, with consultation of the council, may employ investigators, staff assistants, clerical personnel or use the services of consultants as may be necessary for the conduct of the office's duties." That language "as may be necessary" is similar to the Detroit Charter, which led the BOPC to hire Executive Manager Fiscal, Faye Johnson, and others.

In Las Vegas, Nevada, the Citizen Review Board Policy and Procedure Manual states Section 3.11 in pertinent part states, "The Executive Director shall supervise the administrative, clerical or any other personnel as necessary to discharge the functions of the Review Board....The daily operations of the Review Board shall be managed by the Executive Director, who shall oversee the regular functioning of the staff assigned to help carry out the duties of the Review Board. The Review Board may, in its discretion, from time to time **delegate** to the Executive Director certain of the procedural and administrative functions or duties assigned to the Review Board by these Policies and Procedures. The Board shall not, however, delegate to the Executive Director any functions, duties or responsibilities which are required by the Statute of Ordinances to be performed by the Review Board." Las Vegas has 4,800 sworn officers, and the Citizen Review Board was created in 1997. Las Vegas as a best practice, even uses the word "delegate", and functions in a manner analogous to the delegation of authority by the BOPC to Board Executive Director Gregory Hicks, wherein while the Detroit BOPC, in similar fashion delegated the day to day operations, of administrative and procedural functions, including supervising personnel, the Detroit BOPC did not delegate any Charter mandated duties.

In Long Beach, California, the Citizen Police Complaint Commission was created in 1990, by the electorate to amend the City's Charter, which is a similar way the Detroit BOPC was created in 1974. There are 860 sworn officers in Long Beach. According to their Bylaws which were adopted in 2016, article 1 Section 1© the "Executive Director"



shall mean the city employee appointed by the City Manager to (1) oversee the Commission's business; (2) direct the Commission's staff and support team.

In Los Angeles, California, the City Charter provision on the Board of Police Commissioners which starts with Section 571, states in Section 572 on the Executive Director of the Police Commission that the Executive Director has the power and duty to:

- (a) Administer the affairs of the Board of Police Commissioners as its chief administrative officer;
- (b) Appoint, discharge, discipline, transfer and issue instructions to employees appointed as independent staff of the Board of Police Commissioners, except for employees under the direction of the Inspector General, all subject to the civil service provisions of Article X of the Charter;
- (f) Exercise further powers in the administration of the Board of Police Commissioners conferred upon the Executive Director by the Board.

Therefore, the L.A. Executive Director of the BOPC, plans, organizes and directs the administrative work of the Police Commission and oversees a staff of 79 personnel. The L.A. Executive Director has subordinate employees similar to the Detroit BOPC reorganization/delegated authority in that subordinate employees in areas such as Administrative Support, Community Relations, Complaint, Audit, and Use of Force all report to the Inspector General as opposed to the Board directly. Using Los Angeles as a best practice, Gregory Hicks as the Executive Director would have subordinate employees such as Administrative Support through Robert Brown, Community Relations Teresa Blossom, Executive Manager Fiscal Faye Johnson, and Executive Manager Policy Melanie White.

In Miami, Florida, where there are 3096 sworn officers, Code Section 11.5-34 the Executive Director shall recruit, hire, supervise and make all other employment decisions regarding investigators and administrative staff. Using Miami as a best practice, Mr. Hicks as the Executive Director could recruit Faye Johnson as the Accountant, hire Executive Manager Policy Melanie White, and by making all other employment decisions increase Robert's Brown's salary by \$25,000 and change his job title to Executive Manager as opposed to Administrative Assistant.

The Milwaukee, Wisconsin Fire and Police Commission (FPC) was established in 1885 by state law and is one of the oldest civilian oversight agencies in the nation. The Milwaukee Commission's primary responsibility is policy oversight, including monitoring and prescribing the policies and standards of both the Fire and Police Departments. The oversight authority is exercised by board action. They independently investigate and monitor citizen complaints and discipline employees for misconduct. Thus, they serve functions that are parallel to the Detroit BOPC. The Milwaukee Code of Ordinances Chapter 314-5 on the Executive Director states, "Pursuant to the authority granted to 1st class cities under S. 62.51, Wis. Stats., there is created a position of Executive Director to comprise the role of Executive Secretary to the Board. Under the direction of the Board, the Executive Director shall act as the principal staff of the Board in exercising the board's functions and powers provided in S. 62.50, Wis. Stats., and described under Section 314.3." The Milwaukee Executive Director is responsible for all policy, financial, operational, and strategic matters of the Fire and Police Commission.



Thus, the Milwaukee Executive Director is delegated authority from the Board from the oldest civilian oversight agency in the nation. Using this as a best practice, the Detroit BOPC appropriately delegated authority to Board Secretary Gregory Hicks.

In New York, New York, where there is 37,000 sworn officers, the Rules of the Civilian Complaint Review Board Title 38-8, Chapter 1 of the Rules, was amended on July 2, 2018, section 1-53 titled, "Authority given to the Executive Director" states, "Consistent with the Charter mandate and without relinquishing its oversight authority, the Board authorizes the Executive Director, in consultation with the Chair, to manage all matters related to the appointment of Agency Staff, the organizational structure, and the day-to-day operations of the Civilian Complaint Review Board." This is noteworthy as a compelling best practice in light of the fact the Detroit BOPC did not relinquish its oversight authority when it delegated authority to Executive Director Gregory Hicks to manage all matters, the day-to-day operation under the BOPC Reorganization plan.

In Oakland, California, where there is 766 sworn officers, he Ordinance 2.46.040 on Agency Director for the Police Commission states, "The Agency Director shall report to, and be supervised by the Commission, and shall be responsible for the day-to-day operations of the Agency. The Agencies Director's job responsibilities shall include, but not be limited to, the following:

- A. Identifying the staff positions, in addition to the position of Investigator, necessary to perform the Agency's functions and duties;
- C Monitoring the work load of all Agency staff;
- E Conducting annual job performance evaluations of all Agency staff;
- G Any other duties assigned by the Commission, consistent with the Agency's powers and duties as described."

In Detroit, Gregory Hicks followed this best practice when he identified the staff positions within the BOPC that are necessary for the BOPC to perform the Detroit Charter mandated functions and duties.

In Pittsburgh, Pennsylvania, the Citizen Police Review Board Rules and Operating Procedures Section 662.03 on Budget and Staff, states, "The Review Board shall hire employees including, but not limited to, an Executive Director, clerical staff and investigators and may *delegate* to its staff such power, duties and authorities as necessary to carry out these Rules and the purposes of this legislation." Thus, the Detroit BOPC's delegation to Board Secretary Hicks comports with the rules and operating procedures of Pittsburgh.

In San Diego, California, where there are 2000 sworn officers, the Executive Director for the Citizen Law Enforcement Review Board provides operational procedures and administrative direction in the similar way the BOPC reorganization plan/delegated authority. The San Diego Citizen's Law Enforcement Review Board (CLERB) was created in 1990 by a voter referendum, and is comprised of 11 volunteer community members, which are both facts that parallel the Detroit BOPC. San Diego also elects a Chair annually. In the San Diego CLERB Rules and Regulations, adopted on March 9,



1993, and last revised June 27, 2017, Section 18 is entitled, “Delegation of Functions to Executive Director” specifically states, “CLERB in its discretion, delegate to the Executive Officer certain of the procedural and administrative functions or duties assigned to CLERB by these Rules and Regulations. CLERB shall not, however, delegate to the Executive Director any functions, duties, or responsibilities that are required by the Ordinance to be performed by CLERB. In the San Diego CLERB Rules Section 3.9, entitled Staff it states, “The Executive Officer shall recommend to CLERB a specific candidate to a staff position for approval by CLERB. CLERB delegates its authority to the Executive Officer to manage and discipline all staff positions.” Thus, the Detroit BOPC acted appropriately in the same manner when it delegated authority to Board Secretary Hicks, while retaining any functions, duties, or responsibilities that are Charter mandated.

The Seattle, Washington, ordinance for the Office of Professional Accountability (OPA) Director 3.29.120(B) states, the Director, “hire, supervises, and discharge OPA Civilian staff, and can supervise and transfer out of service.”

In Austin, Texas, there is a newly formed Civilian Oversight agency called the Office of Police Oversight Transition Advisory Committee that was formed largely in the wake of the tragic death of Sandra Bland. According to Attorney Sukyi McMahon who serves on the Committee, the Executive Director there will have discretion over hiring. In St Paul, Minnesota the Executive Director has the role of recommending who should serve on the Police Civilian Internal Affairs Review Commission (PCIARC).

Under 6CFR Section 1000.5. – Delegations of Authority for the Civil Liberties Oversight Board, Section C the Executive Director manages the staff and assist the Chairperson with the day-to-day operation of the Board. Thus, using the best practices of the Civil Liberties Oversight Board, an organization with similar objectives of the BOPC, Mr. Hicks manages the staff and assist the (now former) Chairperson Willie Bell with the day-to-day operation of the board. Under that best practice, Willie Bell acted properly when he decreased the salary of Robert Brown, as well as any staff decisions Mr. Hicks such as when Mr. Brown’s salary was raised, were proper as well.

In conclusion, based upon the proper interpretation of the Detroit City Charter, binding case law and best practices from other Civilian Oversight agencies – Albuquerque, Austin, Boston, Buffalo, Chicago, Cincinnati, Cleveland, King County, Las Vegas, Long Beach, Los Angeles, Milwaukee, New York, Oakland, Pittsburgh, San Diego, Seattle, the Civil Liberties Oversight Board, - the BOPC properly delegated authority to the Board Secretary Gregory Hicks.

3. DO THE BOPC BYLAWS VIOLATE THE LAW?

The Inspector General’s report is also critical of BOPC Bylaws, despite the fact the formulation of the BOPC Bylaws are authorized under the Detroit City Home Rule Charter Section 2-110 - the General Provision on Multi-Member Bodies. Therein the BOPC can adopt rules of procedure, which it did through adopting the Bylaws.

Moreover, Roberts Rules of Order also provides for Bylaws. Specifically, on page 566, the title “Committee to Draw up Bylaws” which affords the BOPC to



subcommittee to draw up proposed bylaws or revisions. Roberts Rules suggests the most judicious persons available. Consonant with that objective, in the most recent revision of BOPC Bylaws, Former Commissioner and Michigan State Supreme Court Chief Justice Conrad Mallett, drafted them. Justice Mallett served on the Michigan Supreme Court from December 1990 until January 1999. He served a 2-year term as Chief Justice in 1997.

In Columbia, Missouri, the Citizen Police Review Board legislation Section 21-47(d) states, "The Board may establish rules and procedures that do not conflict with this code or the rules and regulations governing internal affairs investigations." Thus, when the BOPC drafted bylaws that did not conflict with the Detroit City Charter or any other laws, they comported with best practice.

In Denver, Colorado, where there are 1400 sworn officers, the Citizen Oversight Board (COB) was created in 2005. The Governing Language for the Citizen Oversight Board, Section 2-385-Rules state, "The board shall publish and make available to the public such procedural rules as it may adopt for the conduct of its business."

In Long Beach, California, the Citizen Police Complaint Commission, Article VII on Meetings Section 9 states, "The Commission may promulgate such rules, regulations, policies and procedures for its conduct, as it deems necessary." Long Beach also adheres to Roberts Rules of Order in the same way that the Detroit BOPC does.

In Memphis, Tennessee, the Civilian Law Enforcement Review Board enabling ordinance #5620, 28-155C on Procedures states, "The established board may adopt such rules and procedures consistent with existing laws as are necessary for the conduct of its affairs and performance of its functions and responsibilities."

In Riverside, California, the Community Police Review Commission Bylaws, as Amended January 23, 2019, states in Article VII, Section 9, "The Commission may make such rules, regulations, policies, and procedures for its conduct, as it deems necessary."

In San Diego, California, the CLERB is empowered by statute, Section (60697) to establish the necessary rules and regulations for the conduct of its business, which is analogous to Home Rule Detroit City Charter Section 7-804(3). Hence, based upon Roberts Rules of Order, the Detroit City Charter Section 2-110, and best practices – Columbia, Denver, Long Beach, Memphis, Riverside, and San Diego - the BOPC Bylaws do not violate the law and comport with best practices.

4. DID THE BOPC IMPROPERLY DELEGATE AUTHORITY TO THE CHAIRPERSON?

Disturbingly, the Inspector General criticized the fact that the BOPC Bylaws on appointment to subcommittees were not the same as legislative bodies, such as Detroit City Council, which is a very flawed analysis for four compelling reasons. First and foremost, the Detroit City Charter Section on City Council, specifically 4-106, entitled "Standing Committee Structure", it states "The City Council shall have a standing committee structure....*The president of the council shall appoint the chairpersons of such standing committees*, with the approval of a majority of the City Council." Thus, in



a similar manner as prescribed for City Council in Charter Section 4-106, the Chairperson of the BOPC, Willie Bell appointed the chairpersons of the standing committees – Citizens Complaints, Disqualification Appeals, Budget, Legal Affairs, Personnel, Policy, etc. - for the BOPC. When Chairperson Bell made appointments, he still considered and valued the input of other commissioners. For example, on August 7, 2018, after the Board Secretary Gregory Hicks submitted the Final subcommittee list and staff assignments to the Commissioners, (now former) Vice Chairperson Darryl Brown complained about not being made chair of any of the committees. (See Attached e-mail). Consequently, Chairperson Bell appointed Vice Chairperson Darryl Brown to Chair both the Budget and Legal Affairs committee.

Second, the BOPC is not, a legislative body, and is structured very differently from one based upon the Detroit City Charter. For instance, with the Detroit legislative body, City Council members are full-time paid elected officials, whereas the Civilian Oversight, BOPC Commissioners are volunteers. Home Rule Detroit City Charter Section 2-109 on Reimbursement states, “Except as otherwise expressly provided, the members of every multi-member body created by this Charter or under Section 7-103 of this Charter shall serve without compensation but may be reimbursed for actual and necessary expenses incurred in the performance of their duties.” Therefore as a Detroit multi-member body, BOPC Commissioners serve without compensation. Conversely, under Detroit Charter Section 2-108 on Pay Plan, City Council members as a city officer employed by the City shall be compensated, paid a salary.

Third, Roberts Rules of Order governs the parliamentary procedure of boards such as the BOPC. According to Roberts Rules of Order, Article IX. Section 52 under the title: “*Appointment of Committees: Methods of Appointment*” it states: in section d) page 495, “In the absence of special conditions, *appointment of committees by the chair*, or by the regular presiding officer, is usually the *best method* in large assemblies, and it is the ordinary procedure in smaller societies as well.” Further, under the Section “Conduct of Business” page 524, it states, “*A committee of a whole cannot appoint subcommittees.*” Thus, when the Inspector General advises that the committee of the whole the BOPC should select subcommittees to do such would be in violation of Roberts Rules of Order.

Fourth, for best practices in Civilian Oversight, the analysis should encompass other Civilian Oversight agencies, instead of legislative bodies. In Albuquerque, New Mexico, where there are 907 sworn officers, a Chairperson is elected to hold office for one year, the same as in Detroit. The Police Oversight Commission (POC) may appoint subcommittees as are deemed necessary or desirable for the purpose of Albuquerque ordinances 9-4-1-1 through 9-4-1-14, provided that, membership on such subcommittees shall be limited to Commission members. Interestingly, those critical of the BOPC including the litigant Felon’s Crusade, contend that the subcommittees should be open to the public. Albuquerque, however, demonstrates that the Detroit BOPC is following best practices by limiting membership on subcommittees to Commission members.

In Albany, New York, where there are 340 sworn officers, the Citizen’s Police Review Board (CPRB) was created in 2000. Section 2 of the CPRB Bylaws, Powers and duties of the Chair, states in pertinent part, “The Chair shall (b) establish such ad hoc



committees of the Board...All such appointments shall continue at the Chair's discretion. Therefore, when Chairperson Bell appointed and unappointed Vice Chair Darryl Brown to chair subcommittees, Chairperson Bell comported with best practice.

In Berkeley, California, where there is 200 sworn officers the Chairperson of the Police Review Commission is also elected for one year. Special meetings may be called by the Chairperson. Thus, when Chairperson Bell exercised his discretion as it related to subcommittees, and called special meetings his actions were consistent with best practices. In Berkley, California, the Commission may appoint such subcommittees as are deemed necessary or desirable for the purposes of the Berkeley ordinance.

In Buffalo, New York, the Bylaws of the Commission on Citizens' Rights and Community Relations states Article VI on Advisory Committees, Section 4 states, "The Chair assigns Commissioners to each and appoints members from the Community in accordance with the Advisory Committee Guidelines, to participate in these committees."

The Denver COB Bylaws state the Chairperson may call special meetings of the Board under Section 2. Under Section 9, the Chair of the Board shall prepare the agenda for each regular meeting. Thus when Chairperson Bell held weekly executive Leadership sessions to administratively prepare the agenda, this comports with a best practice from Denver.

In Honolulu, Hawaii, the Police Commission Rule 7-2 states, "The members of the Commission shall elect annually a chair," which is identical to the Detroit City Charter. Moreover, Honolulu Rule 7-4 on Special committees, states, "Special committees, as may be necessary, shall be appointed by the chair." Hence, when Chairperson Bell appointed other Commissioners to subcommittees, it comported with the Bylaws.

In Houston, Texas, the Executive Order on Civilian Oversight which created the Independent Police Oversight Board (IPOB) states in pertinent part Section 6.3.1, "The Board Chair shall supervise the overall operation of the Board. Section 7.3.4, states the Board Chair shall, "Assign members and tasks to each panel. Interestingly, Section 6.3.6 states the Board Chair shall, "Recommend removal of members of the Board to the Mayor." Thus, the Houston Chairperson is more empowered than Chairperson Bell was because while Chairperson Bell was empowered by the Detroit City Charter City Council section, Roberts Rules and other best practices to remove Commissioners from subcommittees, he was not empowered to recommend the removal of members of the Board to the Mayor.

Interestingly, in Las Vegas, where there are 4800 sworn officers, under the Las Vegas Policy and Procedure Manual, Section 3.4 on Orientation and Training, the Executive Director may remove any member who fails to complete orientation and training, including any additional training provided to members to update or supplement information provided. Notably, since he was hired in 2016, Detroit Executive Director Gregory Hicks has coordinated not only the initial orientation and training for new Commissioners, but an Annual Training every June to keep Commissioners informed.

In Long Beach, California, the role of the Citizen Police Complaint Commission chairperson is analogous to Detroit. According to the Long Beach Citizen Complaint Commission Article VII on Officers, Section 2 "The Chair shall preside over all the



meetings of the Commission and shall have the same rights as other commissioners, including the right to vote on all matters. The Chair shall sign all documents on behalf of the Commission after such documents have been approved by the Commission and shall perform such other duties and delegated responsibilities as may be imposed upon the Chair by the Commission.” Further in Section 5 “All officers shall be elected by the Commission for a term of one year.” That is identical to the Detroit BOPC. Further, “in Article VIII on Meetings, in Long Beach, “Special meetings of the Commission may be convened at the call of the Chair.” Section R, “All meetings of the Commission shall be open to the public.” Notably, in Article XI on Committees, Section 1, “The Chair may appoint special committees as needed.”

In National City, California, the National City Community and Police Relations Commission (NCCPRC) was created in 2003. Article II (Officers) Section 5 (Election) states, “The term of the Chairperson and Vice Chairperson shall be one year, which is identical to the Detroit BOPC, Article V of the Bylaws on Subcommittees, Section 3 states, “Members of a subcommittee shall be appointed by the Chairperson of the Commission with the approval of the Commission.”

In New York City, the Rules of the Civilian Complaint Review Board Section 1-54 Committees and Subcommittees states, “The Chair has authority to create committees and/or subcommittees to assist the Board in fulfilling its responsibilities pursuant to law. The members of any such created committees and/or subcommittees will be chosen by the Chair and Executive Director, and will be chosen from the Board as well as Agency Staff, subject to review by the Full Board.” Therefore, if the best practice from New York mandates that the Chairperson selects subcommittees to assist the Board in fulfilling its responsibilities pursuant to law, there is no basis under which the Chairperson of the BOPC (former Chairperson Willie Bell) should be precluded from selecting the head of subcommittees.

In San Francisco, California, where there are 2200 sworn officers, the Rules of Order for the Police Commission Rule 2.11 on President states in pertinent part, “The President may create such committees to perform such advisory functions as he/she determine, and may appoint and remove as his/her pleasure, members from such committees. Therefore, when Chairperson Willie Bell appointed Commissioner Darryl Brown to head both the Budget and Legal Affairs Committee, he appointed him at his pleasure, consistent with this best practice from San Francisco. Similarly, when Chairperson Bell removed Commissioner Brown, this also is a permissible best practice in San Francisco. Commissioner Darryl Brown, was removed from the chairperson of both committees when he unilaterally engaged in behavior detrimental to the BOPC including seeking to have Gregory Hicks and Roberts Brown’s salary removed from the BOPC budget, and repeatedly harassing Board Attorney Jermaine Wyrick about the Attorney Grievance Commission. In St Paul, Minnesota, the Chairperson of the Police Civilian Internal Affairs Review Commission (PCIARC) appoints to the Subcommittees.

In Syracuse, New York, the Local Law 11 of 1993 Ordinance established the Syracuse Citizen Review Board. The Board has the same number of members as the BOPC – eleven (11). Section Six, on Officers and Staff of the ordinance states in part, “The first order of business for the newly convened Board is to select such a Chair, who



shall then convene a search committee for a CRB Administrator and a committee to establish rules of procedure not provided for herein.” This Search Committee in Syracuse, is similar to the BOPC Personnel Committee. Further in Syracuse under the same section of the ordinance, “The Chair will also be responsible to: a. Facilitate meetings of the Board; b. Establish committees of the Board members as needed; c. Work with the CRB Administrator to create agendas for Board meetings; and d. Establish a rotation of Board Members to serve on hearing panels.” (Former) Chairman of the BOPC, Willie Bell adhered to this best practice. First, he facilitated meetings of the Board. Second, he established committees as needed. Third, he worked with the Board Secretary Gregory Hicks to administratively create agendas for Board meetings. Fourth, he established a rotation of Board Members to serve on subcommittees. Syracuse even uses a committee to oversee and review the performance of the CRB Administrator. The ordinance states, “The CRB Administrator shall be responsible, on a full-time basis, for the daily administrative work of the Board.” This is parallel to the role of the Detroit BOPC Secretary Gregory Hicks.

In Tucson, Arizona where there are 985 sworn officers, the Citizen Police Advisory Review Board Rules, Article IV- Duties of Officers 1(b) states, “The Chairperson will appoint subcommittees as needed to accomplish Board business.” Article V on Meetings of the Tucson Citizen Advisory Board requires that they be in accordance with Arizona Open Meetings Laws, and in provision 4, states, “Any Board member may suggest an item be placed on the agenda; however, the majority rule of the Chair will decide agenda items.”

In conclusion, based upon the Detroit City Charter Section 4-106, Roberts Rules of Order and best practices of several other Civilian Oversight agencies – Albuquerque, Berkley, Buffalo, Denver, Honolulu, Houston, Las Vegas, National City, New York City, and San Francisco, St Paul, Tucson - the BOPC properly delegated authority to (now former) Chairperson Willie Bell, to select the chairpersons of subcommittees.

5. DO THE BOPC SUBCOMMITTEES COMPLY WITH THE LAW, INCLUDING THE OPEN MEETINGS ACT (OMA)?

The Michigan Open Meetings Act of 1977 is entitled to a broad interpretation to promote openness in government. The public has a right to understand how such an important public institution conducts itself. Statutory law delineates the parameters of the Open Meeting Act. (Hereafter “OMA”). M.C.L.S Section 15.261 is known as the “Open Meetings Act”. Section (2) states, “This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.” Section (3) states, “after the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.”

The purpose of the OMA is to provide openness and accountability in government, the act is to be interpreted to accomplish this goal. *Booth Newspapers v. Wyoming City Council*, 168 Mich. App. 459, 425 N.W. 2d 695, 1988 Mich. App. LEXIS



239. Therefore, the statute which provides eight exceptions for specified public bodies to meet in closed session should be strictly construed to limit the situations that are not open to the public. OMA is intended to require public bodies to open their meetings to the public, with notice required to that end. *Arnold Transit Co. v. Mackinac Island*, 99 Mich. App. 266, 297 N.W.2d 904, 1890 Mich. App. LEXIS 2831, aff'd 415 Mich. 362, 329 N.W.2d 719, 1982 Mich. LEXIS 583. Of the greatest importance, all decisions of a public body must be made at a meeting open to the public. M.C.L. 15.263(1) (2); M.S.A. 4.1800 (13) (1), (2). Decisions of a public body are presumed to have been made in compliance with the Act. A public body's decision can be invalidated if it is shown both to have been made in a meeting which failed to comply with the requirements of the Act, and that noncompliance has impaired the public's rights. M.C.L. 15.270(2). Michigan courts have been reluctant to enforce this provision for technical violations of the Act. *Esperance v. Chesterfield Township*, 89 Mich. App. 456; 280 N.W.2d 559; *Cape v. Howell Board of Education*, 145 Mich. App. 459; 378 NW2d 506 (1985).

The OMA provides that if a public body is not complying with the Act the prosecutor of the county in which the public body serves may commence a civil action to enjoin further noncompliance with the act. M.C.L. 15.271, M.S.A. 4.1800(21). A public official who "intentionally violates" the OMA may be found guilty of a misdemeanor. MCL 15.272. In addition, the violator may be personally liable for actual and exemplary damages of not more than \$500 for a single meeting. M.C.L. 15.273.

Case and statutory law governs the extent to which a public body can form a committee for the hiring process, such as the BOPC's Personnel Committee. A public body holding an open meeting in compliance with the OMA may recess the open meeting to hold sub quorum committee meetings for which no public notice was posted, provided no quorum of the public body will be present at the committee meetings, the committees are purely advisory in nature, and deliberation on a common topic leading to decision by the public body does not take place among the committees. 1993 Mich. Op. Att'y Gen. 6752. Therefore, the BOPC sub quorum subcommittee, the Personnel Committee comports with the OMA.

The OMA does not apply to committees and subcommittee composed of less than a quorum of the full public body if they "are merely advisory or only capable of making recommendations concerning the exercise of governmental authority." OAG 1997-1998, No. 6935, p. 18 (April 2, 1997); OAG No 5183 at p. 40. Conversely, when a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full body of the opportunity to consider a matter, a decision, of the committee or subcommittee "is an exercise of government authority which effectuates public policy" and the committee or subcommittee proceedings are, therefore, subject to the OMA. *Schmiedicke v. Clare School Bd*, 228 Mich. App. 259, 261, 263-264; 577 N.W.2d 706 (1998); *Morrison v. East Lansing*, 255 Mich. App 505; 660 N.W.2d 395 (2003); and OAG, 1997-1998, No 7000, p. 197 (December 1, 1998) – a committee composed of less than a quorum of the full board is subject to the OMA, if the committee is effectively authorized to determine whether items will or will not be referred for action by the full board, citing OAG, 1977-1978, No. 5222, p. 216 (September 1, 1977). The BOPC Personnel Committee consists of 4 members, which constitutes less than a quorum for the



11 member BOPC. Moreover the BOPC Personnel Committee determines which employment decisions will be referred for action by the full board.

In a watershed decision, *Booth Newspapers Inc. v. University of Mich. Bd of Regents*, 444 Mich. 211, 235-236; 507 N.W.2d 422 (1993) the Michigan Supreme Court held the application of the OMA to committees formed by governing boards of public universities to assist in the selection of university presidents is unconstitutional. Factually, the Board met in closed sessions regarding audit reports and procedures. A public body is privileged to retire to closed session to discuss materials exempt from disclosure, including, but not limited to, under the Michigan Freedom of Information Act, Mich. Comp. Laws Section 15.231 et seq. (Mich. Stat. Ann. Section 4.1801(1) et seq., which exempts from disclosure materials held by a public body and subject to the attorney-client privilege. The Board contended that the audit reports in question contain information of a personal nature which if disclosed could produce an unwarranted invasion of an individual's privacy. Thus, the BOPC Personnel Committee is entitled to meet in closed session to discuss personnel issues in a sub quorum meeting.

In *Federated Pubs., Inc. v. Mich State Univ. Bd. Of Trustees*, 460 Mich. 75, 594 N.W.2d 491, 1999 Mich. LEXIS 2069 (Mich. 1999), the court held application of the OMA to committees formed by governing boards of public universities in the selection of university presidents is unconstitutional; the legislature is institutionally unable to craft an OMA that would not, in the context of a Presidential Selection Committee (hereafter "PSC"), unconstitutionally infringe the governing board's power to supervise the institution. The court reasoned that MSU's presidential selection process was not required to be open to the public except when conducted at a formal session of the governing board. Further, the legislature may not interfere with the management and control of the universities. The constitution grants the governing boards authority over the absolute management of the university, and the exclusive control of all funds received for its use. The court has jealously guarded these powers from legislative influence. Factually, the court stated the MSU Board may add to the list of final candidates' individuals reviewed by the PSC. The PSC gathered and reviewed information regarding the candidates, eventually selecting fifteen to interview. After completing the interviews, the PSC recommended 4 candidates to the MSU Board, who then released the names of these individuals to the public. The OMA does not tell the board what the criteria should be for the selection, how to select a candidate, or whom to select as president. It merely requires that, when interviewing candidates and when making a detailed review of applications of candidates who do not request confidentiality, the university function in public meetings. It does not divest the board of its authority to select a president. 221 Mich. App. 103, 112; 561 N.W.2d 433 (1997). This case is factually analogous to the BOPC Personnel Committee who does not divest the board of its authority to hire employees.

In *Detroit Free Press Inc. v. Univ. of Mich. Regents*, 315 Mich. App. 294, 889 NW. 2d 717, 2016 Mich. App. LEXIS 852 (Mich. Ct. App. 2016), the newspaper's claim that the University of Michigan Board of Regents "closed informal sessions" violated the OMA and Mich. Const. Art. 8 Section 4 failed because (1) Mich. Const. Art. 8, Section 4 requiring governing boards' public formal sessions, was limited to "formal sessions,"



letting the Board decide whether to hold “informal” public sessions, (2) Mich. Const. Art. 8, Section 5 barred legislative intrusion into this constitutional power, and (3) lack of constitutional definition of “formal sessions” did not permit such intrusion, as it was not the legislature’s task to define “formal sessions,” so the legislature could not apply the OMA to the Board. Thus the BOPC, including the Personnel Committee can have closed informal sessions which comport with the OMA.

The OMA does permit one board member to canvass to find out where the votes would be on a particular issue, so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to avoid the OMA. *St Aubin v. Ispheming City Council*, 197 Mich. App. 100, 103; 494 N.W.2d 803 (1992). Thus, a BOPC Commissioner can canvass, as long as no decision or deliberations are made therein.

The exemption from the OMA which permits members of a public body commission a quorum to attend a conference to listen to the concerns of members of the public or of persons with special knowledge in the presence of other interested persons. It does not permit public bodies to listen to presentations by department heads and administrators of the public body. 1979 Mich. Op. Atty’s Gen. 5433. The BOPC’s Annual Training Session held in June is the type of conference referenced.

In *Wexford County Prosecutor v. Pranger*, 83 Mich. App. 197, 268 N.W.2d 344 (1978), the court held, although the City Commission acted in good faith, the Commission violated the OMA when it held a closed meeting in which a new residency policy for city employees was adopted. The closed meeting, which lasted slightly over an hour, was held at the request of the city manager with the approval of the city attorney. Then the commission resumed in open meeting, announced a new residency policy and indicated an ordinance would be formulated to implement the policy. The recent history of residence requirements as a condition of municipal employment, however, has become a mandatory subject of collective bargaining. Against that background, the court opined the commissioners should at some stage, be permitted to meet in closed session to discuss and arrive at strategy for its collective bargaining position relating to residency of municipal employees without being required to disclose every innuendo and consideration to the adversary unions. The court would not consider such a desire to be a guise to avoid compliance with the OMA.

A closed session can be called to review an application for employment or appointment to a public office if the applicant requests confidentiality. M.C.L. 15.268(f). A roll call is required. MCL 15.267. Section 15.268(f) Closed Sessions: permissible purposes states, “To review and consider the contents of an application for employment or appointment to a public office *if the candidate requests that the application remain confidential*. While the Inspector General stated, that the interview of Attorney Jermaine Wyrick violated the OMA, the Inspector General did not reference that Attorney Wyrick requested that the application remain confidential, necessitating a closed session, which is permissible under the Open Meetings Act. Thus during the Attorney’s closed session interview, the BOPC complied with the OMA.

The Detroit BOPC comports with best practices in other cities. In Albuquerque, New Mexico, while all meetings of the Police Oversight Commission has to comply with the Open Meetings Law, and the regular meetings are videotaped and aired on the



appropriate government access channel, as is the case in Detroit, there is no requirement, however, for providing live television coverage for subcommittee meetings. In Denver Colorado, the Citizen Oversight Board Bylaws Article V provides for subcommittees. Specifically, Section 1 states, "The Board may establish committees and subcommittees as needed."

In Albany, New York, Article VII Section 1 the CPRB Bylaws delineates Standing Committees as (1) By-laws and Rules, (2) Community Outreach, (3) Police Department Liaison, (4) Public Official Liaison, (5) Complaint Review, and (6) Such other standing committee(s) as the Board may by resolution authorize from time to time.

In Cambridge, Massachusetts, the Police Review and Advisory Board Rule 7E states, "No executive session shall be held until the Board has first convened in an open session for which notice has been given, a majority of the members of the Board have voted to go into executive session, and the vote of each member has been recorded on a roll call vote and entered into the minutes. The purpose of the executive session must be stated by the Chair, as defined in the state Open Meeting Law, and the Chair must state before the executive session whether the Board will reconvene after the executive session." The Detroit BOPC adhered to this best practice from Cambridge when hiring decisions were made with respect to the Executive Managers.

In Greensboro, North Carolina, ironically the civilian oversight entity, the Police Community Review Board (PCRB) is a subcommittee of the Greensboro Criminal Justice Advisory Commission (GCJAC). In Los Angeles, the BOPC uses Personnel Group and Policy Group subcommittees.

In National City, California, the PCCRPC Bylaws Article V (Subcommittees), Section 1, Establishment, states, "The Commission shall have the authority to, and may, establish subcommittees as necessary to accomplish the purposes set forth in Section 3 of Article 1 of these Bylaws."

In Oakland, California, the Police Commission uses Ad Hoc and Standing Committees that parallel the Detroit BOPC. Specifically, in Oakland, California, there are Committees for (1) Policies and Procedures (including draft enabling ordinance), (2) Discipline, (3) Personnel Recruitment and Hiring (4) Community Outreach, and (5) Budget.

In Richmond, California, where there are 190 sworn officers, the Police Review Commission was created in 1984 and the enabling ordinance 15-84, Section 3.514.100 (Rules and Records) states in pertinent part, "Said standing subcommittees may be formed to work on various topics within the scope of police activities."

In San Diego, the CLERB Rules and Regulations, Section 3: Organization and Meetings, 3.7. Transaction of Business states, "Subcommittees may be established by CLERB as appropriate, however, no more than five (5) members of CLERB shall serve on any one subcommittee. This is similar to the way the BOPC limits Subcommittee membership to no more than 4 Commissioners, so there is not a quorum.

In Tucson, the Citizen Police Advisory Board Article VII Rule (2) states, "Subcommittees also will be created for specific projects, programs, events, activities, issues, and case reviews as required." Further, Article VII (3) of the Tucson Rules on Subcommittees states, "Meetings of all subcommittees will be conducted in accordance



with the ARS Section 38-431 et seq. (Open Meetings Act). Based upon the aforementioned persuasive case law, the OMA itself, and best practices in other Civilian Oversight agencies – Albuquerque, Denver, Greensboro, Los Angeles, Oakland, Richmond, Tucson - the BOPC subcommittees are compliant with the OMA.

6. DID THE BOPC VIOLATE THE OPEN MEETINGS ACT WHEN IT HIRED THE EXECUTIVE MANAGERS AND BOPC ATTORNEY?

Legally, there is a long-standing tradition of police commissions having the authority to make appointments, including assistant chief. In the watershed decision, *Cicotte v. Damron*, 345 Mich. 528 (1956), the Michigan Supreme Court held under the Ecorse city charter providing that police and fire commission have general control and management of police department and should adopt rules and regulations for organization conduct of such department and for ranks of members thereof, plaintiff's office as assistant chief of police was subject to termination by the commission, and commission had authority to create office of police inspector who was to be second in command of department, to change duties of such office, and to abolish office of assistant chief of police. This case is germane to the controversy at hand. Under the *Cicotte*, 345 Mich. 528, case, the BOPC is empowered to adopt rules and regulations for organization conduct, such as the Reorganization plan that was voted upon by the full BOPC at an open public meeting that delegated authority to the Board Secretary. Moreover, under the reasoning of *Cicotte*, Id., the BOPC can also create positions such as Executive Manager – Police, Policy, and Fiscal – in the similar way that the office of police inspector was created to administer the operation effectively.

Historically, in *Wilkinson v. Board of Police Comm'rs*, 107 Mich. 394, 65 NW 668 (1895), the Michigan Supreme Court explained that, when appointing power was confided to an officer or the City of Saginaw Board of Police Commissioners the power of removal at will accompanied the power of **appointment** when no fixed term was provided by law. Factually, the board based upon the charter assumed and exercised the entire control of the police force of said city, and possessed full power and authority over the police organization, government, appointment, and discipline within said city. Hence, under the reasoning of *Wilkinson*, 107 Mich. 394, even after the authority was delegated, the BOPC retains the power to appoint employees such as Robert Brown to Executive Manager and also to discipline as well – unappoint Robert Brown.

In a seminal case, *Fraternal Order of Police v. Harris*, 306 Mich. 68 (1943), the court held the City board of police and fire commissioners is vested with a large measure of discretion. The BOPC exercised this discretion through the delegated authority, the appointments of staff, and the unappointment of Robert Brown. Therefore, in conclusion, based upon the aforementioned City Charter, DPD Manual, case and statutory law, the authority of the BOPC is broad, including the right to appoint and unappoint staff, such as when Robert Brown's job title was changed with a salary decrease.

Best practices in Atlanta, Georgia reflect that all hearings are in public, except when executive sessions are required. The Weekly leadership meetings held by Chairperson Bell constituted an executive session. In Cambridge, Massachusetts, the



Police Review and Advisory Board Rule 2.74.060 “Special meetings” states, “Special meetings may be called by the Executive Secretary or by three members of the Board.” This is similar to the BOPC Wednesday leadership meetings.

In Buffalo, New York, the Bylaws, Section 2 states, “The Chair or a majority of the members of the Commission may call special meetings to address specific matters.” Section 7 entitled “Agendas” states, “Chair and The Executive Director for the Commission shall prepare the agenda. The agenda shall consist of items requested by the Chair, Executive Director, or Commissioners.”

In Columbia, Missouri, the Citizens Police Review Board ordinance Section 21-54(b)(c) – Open records and meetings – states (b) The board shall meet in open session except as provided in (c) and (d), (c) The board shall meet in closed session to hear statements and discuss matters: (1) That cannot be heard or discussed in an open meeting under state or federal law; or (2) That would involve disclosure of the identity of an officer working undercover.

In Eugene, Oregon, the Civilian Review Board has meetings open to the public except when executive sessions are authorized by law and the civilian review board has determined that an executive session is necessary or desirable in order to carry out its business. Executive sessions by the Detroit BOPC have been held to administratively carry out its duties and functions.

In Kansas City, Missouri the Office of Community Complaints employs three (3) Senior Legal Analyst. By comparison the Executive Manager of Policy – Melanie White – for the BOPC is a policy analyst and law school graduate. In addition, Attorney Jermaine Wyrick serves as the Detroit BOPC Attorney.

In Las Vegas, Nevada, under the Las Vegas Municipal Code, Chapter 2.64, and Roberts Rules of Order, Section 3.10 of the manual states special meetings may be called at the call of the Executive Director. Hence, when the Chairperson Willie Bell convened Wednesday leadership meetings for the Executive Director/Board Secretary Hicks to submit an administrative and procedural Briefing Agenda, this constituted an executive session, which still comported with the OMA, based upon the aforementioned best practices.

In Minneapolis, Minnesota, The Police Conduct Oversight Ordinance 172.80 created the Office of Police Conduct Review (OPCR) and the Police Conduct Oversight Commission. The civilian unit of the OPCR created new staff positions to more effectively implement the unique mission of the Police Conduct Oversight Ordinance. The OPCR first created the role of legal analyst. The legal analyst, a licensed attorney, assists in intake, reviews and organizes cases for the joint supervisors, prepares and reviews materials issued to the precincts and chief, review data requests for legal compliance, and will assist the Police Conduct Oversight Commission in audits and policy recommendations. The OPCR also added an operations technician that coordinates the activities of the office, provides technical assistance, prepares materials on behalf of the department, fulfills data requests, and maintains the department database. The civilian personnel include the director of the Office of Police Conduct Review.

In National City, California, the NCCPRC Bylaws Article III (Meetings), Section 4. (All Meetings Open to the Public) states, “Nothing contained in these Bylaws shall be



construed to prevent the Commission from holding closed sessions during a meeting concerning any matter permitted by law to be considered in closed session provided the Commission complies with the conditions and procedures provided by law for closed sessions.” Thus, when the Detroit BOPC went into closed session on the hiring of Executive Managers, such was appropriate under the Michigan OMA as well, provided the decisions were made during the open part of the public meeting, which they were.

In Oakland, California, the best practice in Ordinance No 13498, speaks to the Attorney position for a Police Commission. Section 2.45.180(D) titled Staff Assistance states, “The legal advisor to the Commission shall report to the Commission. Neither the legal advisor to the Agency nor the legal advisor to the Commission shall report to or be supervised by the City Attorney or any Deputy City Attorney.” This is the same arrangement that the Detroit BOPC Attorney has. Commissioners Willie Bell, Lisa Carter, and Eva Dewaelsche state that for all executive level positions, including Executive Manager, Board Secretary, Board Attorney, and Chief Investigator all are reviewed and approved by the Board as a whole.

In Philadelphia, a city with 8,000 sworn officers, the Police Advisory Commission hires Executive Managers in the same manner the BOPC did. Specifically, there is a Public Affairs Specialist, which is similar to the role of Teresa Blossom in the Detroit BOPC, who is the Community Relations Coordinator. There are 3 policy analyst in Philadelphia, while the Detroit BOPC uses one – Melanie White. Philadelphia also uses an Executive Assistant under the Executive Director, which is similar to the role that Robert Brown played when he was Executive Manager.

Hence, based upon the aforementioned binding case law on the Open Meetings Act, coupled with best practices in other Civilian Oversight agencies – Atlanta, Cambridge, Columbia, Eugene, Las Vegas, Minneapolis, National City, Oakland, Philadelphia - the BOPC complied with the OMA when the executive managers and board attorney were hired. As a best practice that the BOPC complied with when hiring an attorney, there is a great deal of caution that must be taken considering the Attorney-Client Privilege, confidential information, etc.

7. WAS THE UNAPPOINTMENT OF ROBERT BROWN HANDLED APPROPRIATELY?

The case of *Williams v. Civil Service Comm.*, 15 Mich. App. 55; 166 N.W. 2d 309 (1968), held the City of Detroit Board of Fire Commission is not prohibited by the City of Detroit Charter from making an appointment. Moreover, the Charter confers upon the Fire Commission powers and duties “necessary to carry out the provisions hereof.” Similarly, in Section 7-804(3) it states, “Such additional staff as is necessary to carry out its duties.” Thus based upon the *Williams* case and Charter, the BOPC would have the authority to unappoint Robert Brown if that was necessary to carry out its duties (the Charter objective) and not specifically prohibited by the Charter.



The Inspector General Report references that Commissioner Darryl Brown did not find out about Robert Brown's salary increase until November 1, 2018. Interestingly, however, Commissioner Brown's term as a Commissioner did not even begin until January 1, 2018, long after Robert Brown's salary increase.

To reiterate as a best practice, in Houston, Texas, the Executive Order on Civilian Oversight which created the Independent Police Oversight Board (IPOB) states in pertinent part Section 6.3.1, "The Board Chair shall supervise the overall operation of the Board. In Tucson, the Citizen Police Advisory Review Board rules Article IV (f) states The Chairperson will sign all documents regarding Board business. Thus, under these best practices Chairperson Bell could decrease Robert Brown's salary. In Rochester, New York, the Chairperson is responsible for all administrative duties, during and after a Civilian Review Board. In San Diego, the CLERB Rule on staff states, "Once appointed, all unclassified personnel will serve at the pleasure of the Executive Officer. Once appointed, all classified personnel may be disciplined by the Executive Officer, subject to the County of San Diego's Civil Service Rules." According to 6 CFR Section 1000.5 – Delegations of Authority for the Civil Liberties Board, Section (b) the Chairperson of the Board is the executive and administrative head of the Board who is responsible for the day-to-day operations. Thus, under this best practice from the Civil Liberties Board, Chairperson Willie Bell of the BOPC would be authorized to unappoint Robert Brown considering as Chairperson he is the leader responsible for the day to day operations. Based upon the aforementioned best practices of Houston, Rochester, San Diego, Tucson, and the Civil Liberties Board, the appointment of Robert Brown was handled appropriately.

8. DID THE BOPC COMPLY WITH THE CHARTER ARTICLE 6, CHAPTER 4 ON PERSONNEL ADMINISTRATION?

Article 6-401, General Purpose on The Executive Branch: Staff Departments. Human Resources Department states:

The purpose of this chapter is to establish a system of **personnel administration that meets the needs of the people of Detroit**, assures that employment and promotion in Detroit government are on the **basis of merit** and in accordance with collective bargaining under law, and provides methods of redress when these provisions are violated. Interestingly, while the Office of Inspector General used this provision from the Charter to criticize the BOPC, it is not even applicable. There is a distinction between appointees/non classified employees who serve at-will/discretion and classified civil service employees who are just cause employees. For example, as an at will employee, the BOPC had the discretion to not only hire the Executive Managers – Faye Johnson(Fiscal), Melanie White (Policy) and the Board Attorney Jermaine Wyrick, the BOPC also had the discretion to increase or decrease the salary of the appointee Robert Brown.

Thus in its wisdom and discretion under Charter Section 6-401, the BOPC hired various individuals based upon merit including an Executive Manager Policy Melanie



White, Executive Manager Fiscal Faye Johnson, Administration Robert Brown, in order to comport with Article 6, Chapter 4 of the Home Rule Detroit City Charter, based upon many aforementioned reasons heretofore referenced.

9. **WERE MR. HICKS' RIGHTS UNDER GARRITY VIOLATED DURING THE INSPECTOR GENERAL'S INTERVIEW?**

The Constitution imposes more restrictions on government actors (including the government as an employer) than on private actors, which necessitates *Garrity* warnings. The seminal case, *Garrity v. New Jersey*, 385 U.S. 493 (1967), involved a 'ticket fixing' scandal under which six state employees were under investigation. The U.S. Supreme Court held the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and it extends to all. If an employee is under investigation for criminal acts it is best to notify them in writing of the charges being investigated prior to the interview. It is not accepted practice to verbally inform someone of *Garrity*. To do so clouds the issue as to whether the employee fully understood the process that was unfolding.

As a best practice within the City of Detroit, within the BOPC, when the Office of Chief Investigator conducts a *Garrity* interview of an officer, the officer is given written notice of their right to legal counsel at least 48 hours in advance of the interview. In addition, the DPD Internal Affairs a criminal investigation bureau thereof, adheres to this same best practice. Unfortunately, the Inspector General interview of Gregory Hicks did not comport with this best practice in three respects when a *Garrity* interview of Mr. Hicks was conducted May 28, 2019. First, in the communications planning the interview Gregory Hicks was not given written notice of *Garrity* beforehand. Second, nor was he given notice of his right to legal counsel beforehand. Third, he was not notified 48 hours in advance. Therefore, the *Garrity* interview of the Inspector General was not an accepted practice within the City of Detroit and violates his 5th Amendment rights against self-incrimination.

CONCLUSION

Pursuant to the Michigan Constitution and case law such as *Pickering v. Bd of Twp High School*, Dist. 2015, Will County, 391 U.S. 563; 88 s. ct 1731; 20 1 ed 2d 811 (1968), *Hodge v. U.S Sec. Associates Inc.*, 497 Mich. 189, 859 n.w.2d 683, 685 (Mich. 2015), administrative hearings are decided based upon competent, material, and substantial evidence:

In Article 6, Section 28, appeal, review is limited to whether the decision was "authorized by law" and whether the findings were "supported by competent, material, and substantial evidence on the whole record." Michigan Constitution 1963, Article 6, Section 28; MCR 7.123.

For the aforementioned reasons in this administrative process, the Office of Inspector General Report was not authorized by the aforementioned law and the



conclusion reached was not supported by competent, material, and substantial evidence on the whole record. For the aforementioned reasons:

1. Pursuant to Detroit City Charter Section 7.5-311(1) the Detroit BOPC is allowed a reasonable opportunity to be heard and demands a hearing with the aid of their counsel Attorney Jermaine Wyrick on this matter.
2. Neither (Former) Chairperson Willie Bell nor the BOPC neglected Charter mandated duties, but rather comported under 7-804.
3. The BOPC in all respects have complied with the OMA, including best practices from other Civilian Oversight agencies.
4. The BOPC complied with the Charter, case law, and several other best practices from Civilian Oversight agencies, and thus should not rescind the delegation of authority of the Board Secretary.
5. The BOPC reorganization plan definitely complied with both the OMA and Detroit City Charter.
6. No discipline should be issued against the Board Secretary Gregory Hicks because he complied with the Detroit City Charter, case law, and numerous best practices from other Civilian Oversight agencies.
7. Not issue discipline against Executive Manager Fiscal Faye Johnson because she made truthful statements, and vehemently denies the characterizations made by the Inspector General's report.
8. BOPC members are educated and trained on an ongoing basis on issues related to the BOPC including the OMA and Detroit City Charter, including an initial orientation and Annual Training.
9. No discipline should be issued against Former Chairperson Willie Bell, his actions in the unappointment of Mr. Brown comply with the best practices of several other Civilian Oversight agencies, including the Civil Liberties Oversight Board.
10. The appointments of the BOPC were proper under the Detroit City Charter, Detroit HR Regulations, and best practices from numerous other Civilian Oversight Agencies.
11. That the Board Secretary/Executive Director Gregory Hicks Garrity Rights were violated when interviewed by the Inspector General.
12. On August 1, 2019, at an open public community the Detroit BOPC voted to:
 - i. Reject the OIG's recommendations.
 - ii. Ratify Chairperson Lisa Carter's decision to request an administrative hearing in accordance with MCL 15.270(5).
 - iii. Ratify the Response already made on behalf of the BOPC by Attorney Jermaine Wyrick in accordance with MCL 15.270(5).
 - iv. Voted in support of a *Waiver* – that Attorney Wyrick's representation does not conflict with the Michigan Rules of Professional Conduct.
 - v. For Attorney Wyrick to represent the BOPC in this administrative non-adjudicative matter.



CITY OF DETROIT
BOARD OF POLICE COMMISSIONERS

DETROIT PUBLIC SAFETY HEADQUARTERS
1301 THIRD STREET, SUITE 767
DETROIT, MI 48226
TELEPHONE: 313-596-2815
FAX#: 313-596-1831
WWW.DETROITMI.GOV

HENCE, BASED ON THE ABOVE, THE DETROIT BOPC HAS IN THIS WRITING AND WILL ORALLY AT AN ADMINISTRATIVE HEARING, PRESENT NEW EVIDENCE THAT WILL CAUSE THE OIG TO AMEND ITS INITIAL FINDINGS AND RECOMMENDATIONS, AND DISMISS THIS IN ITS ENTIRETY WITH PREJUDICE.

Respectfully Submitted,

By:

Dated: August 6, 2019

/S/ JERMAINE A. WYRICK

Jermaine A. Wyrick (P54352)
Attorney for BOPC
Cell – (313) 920-4086

AFFIDAVIT OF ATTORNEY JERMAINE A. WYRICK

State of Michigan)
) SS.
County of Wayne)

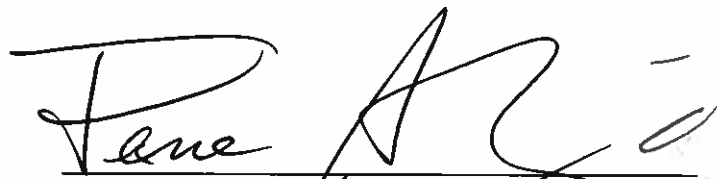
Now comes Attorney Jermaine A. Wyrick, and after being duly sworn, states the following under oath and under penalty of perjury.

1. I, Attorney Jermaine A. Wyrick, am an adult, and I am making this Affidavit based upon personal knowledge. I am competent to testify at trial if called upon to do so.

2. I am the current Attorney for the Detroit Board of Police Commissioners (“BOPC”) and have served as counsel since July, 2017.

3. On August 6, 2019, I filed an Amended Memorandum in Response to the Inspector General’s Report in Case Number 2018-0050. I swear under penalty of perjury that the above statements are true to the best of my knowledge, information and belief.

Further affiant sayeth not.



Attorney Jermaine A. Wyrick
Chair, Detroit Police Department Board
Of Police Commissioners

State of Michigan)
) SS.
County of Wayne)

On the 7th day of August, 2019, before me, a notary public, personally appeared Attorney Jermaine Wyrick, who, being first duly sworn, did state that he has executed the foregoing document as his free act and deed.

Felicia Antoinette Jewell

Notary Public, Wayne County, MI
Acting in Wayne County, MI
My commission expires: 8/25/2024

FELICIA ANTOINETTE JEWELL
Notary Public - State of Michigan
County of Wayne
My Commission Expires Aug 25, 2024
Acting in the County of Wayne



CITY OF DETROIT
OFFICE OF THE INSPECTOR GENERAL

In the Matter of:

OIG Case No. 2018-0050 INV

The proceedings had and testimony taken in the above-entitled matter before me, Diane L. Szach, CSR-3170, a Notary Public, within and for the County of Oakland, acting in Wayne County, State of Michigan, at 65 Cadillac Square, Suite 3210, Detroit, Michigan, on Friday, September 16, 2019 at 10:15 a.m.

PRESENT:

OFFICE OF INSPECTOR GENERAL
65 Cadillac Square, Suite 3210
Detroit, Michigan 48226
(By Ellen Ha, Kamau Marable, Jennifer Bentley, Esq., and Jacqueline Hendricks-Moore, Investigator)

Appearing on behalf of OIG.

BOARD OF POLICE COMMISSION
1301 Third Street, Suite 767
Detroit, Michigan 48226
(By Jermaine A. Wyrick, Esq.)

Appearing on behalf of Willie Bell.

ALSO PRESENT:

Willie Bell

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EXHIBITS

EXHIBIT	IDENTIFICATION	PAGE
No exhibits marked		

1 Detroit, Michigan

2 September 16, 2019

3 10:15 a.m.

4 * * *

5 MS. HA: I just need to put a couple of
6 things on the record. Today is Monday,
7 September 16th, 2019. We are here at the Office of
8 Inspector General. This is an administrative hearing
9 for Commissioner Willie Bell pertaining to the Office
10 of Inspector General OIG File Number 18-0050-INV.

11 We are holding this hearing today pursuant
12 to a request made by Commissioner Bell through the
13 City of Detroit Board of Police Commissioners attorney
14 Jermaine Wyrick in accordance with Section 7.5-311 of
15 the 2012 Charter of City of Detroit, and pursuant to
16 written notices sent to Mr. Wyrick on behalf of
17 Commissioner Bell.

18 So that there is no confusion on the record
19 today, I'd like to state the underlying report
20 submitted by the Office of Inspector General. On
21 July 9, 2019 the City of Detroit OIG issued a draft
22 report of its findings pertaining to its investigation
23 involving the City of Detroit Board of Police

1 Commissioners, here forth to be referred as the BOPC
2 or the Board. The report was issued to each member of
3 the board including Commissioner Bell and Mr. Wyrick.

4 In the draft report the OIG made several
5 critical findings against the Board, certain members
6 of its staff, and Commissioner Bell. Specifically as
7 to Commissioner Bell we found that after consulting
8 with the DPD personnel director, Commissioner Bell
9 unappointed Robert Brown from the BOPC executive
10 manager position on his own without any votes from the
11 board in an open session. Therefore, the report
12 recommended the Board take certain actions against
13 Commissioner Bell.

14 So we are here today to address this issue
15 only. Pursuant to Rule 3 of the OIG's Administrative
16 Hearing Rules, the purpose of this hearing is provide
17 Commissioner Bell with an opportunity to present
18 testimony and any supporting documentation or records
19 in response to the OIG findings against him.

20 I'd like to remind everyone in the room
21 that this is not a court of law. We do not make legal
22 determination. The OIG is not required under the
23 charter to make -- I'm sorry, the OIG is required

1 under the charter to make report of its findings and
2 make recommendations based on its findings.

3 The hearing is the not an adversarial
4 process. As such, the hearing will be conducted in a
5 manner pursuant to the OIG's administrative hearing
6 rules, a copy of which was provided to Mr. Wyrick as
7 well as to Commissioner Bell.

8 The hearing is not a forum for the Office
9 of Inspector General to present its case, evidence, or
10 witnesses. The purpose of this hearing is simply for
11 Commissioner Bell to provide the OIG with any
12 additional or new testimony or evidence which would
13 show that the OIG's findings against Commissioner Bell
14 as outlined in our draft report are inaccurate or
15 incorrect.

16 Upon completion of the administrative
17 hearing, unless we require additional information from
18 Commissioner Bell, the OIG will conclude the
19 investigation and close the record pertaining to
20 Commissioner Bell on this matter. Therefore, in
21 accordance with the Administrative Hearing Rules, the
22 OIG will either revise, amend, or supplement its
23 report of findings after today's hearing. Otherwise

1 we will simply supplement our draft report with a copy
2 of the BOPC written responses and a copy of this
3 administrative hearing transcript, at which time our
4 report will be made final.

5 At this time I would like to have
6 appearances from everyone.

7 Ellen Ha, Inspector General.

8 MS. HENDRICKS-MOORE: Investigator
9 Jacqueline Hendricks-Moore for the Office of Inspector
10 General.

11 MR. MARABLE: Kamau Marable, Deputy
12 Inspector General.

13 MS. BENTLEY: Jennifer Bentley, attorney
14 for the Inspector General.

15 MR. BELL: Willie Bell, Commissioner.

16 MR. WYRICK: Jermaine Wyrick, attorney for
17 the Board of Police Commissioners.

18 MS. HA: So before we begin, I would like
19 to confirm on the record by asking Commissioner Bell
20 these four questions.

21 Commissioner Bell, do you understand that
22 Mr. Jermaine Wyrick is here to represent you?

23 MR. BELL: Yes, ma'am.

1 MS. HA: Do you also understand that he is
2 the attorney for the BOPC?

3 MR. BELL: Yes, ma'am.

4 MS. HA: Do you understand that in our
5 report the OIG is recommending that the Board, the
6 body that Mr. Wyrick represents, take appropriate
7 action to discipline you?

8 MR. BELL: Yes, ma'am.

9 MS. HA: So you understand that there may
10 be a conflict of interest and that you are waiving the
11 conflict, is that correct?

12 MR. BELL: I'm sorry, repeat that last
13 statement.

14 MS. HA: Yes. So there may be a conflict
15 of interest here, and it's my understanding that you
16 are waiving the conflict, am I correct?

17 MR. BELL: What's the conflict?

18 MS. HA: The conflict is that Mr. Wyrick,
19 who represents the Board, the OIG is recommending that
20 the Board that Mr. Wyrick represents as a body take
21 appropriate disciplinary action against you.

22 MR. BELL: Mr. Wyrick has no authority to
23 take any action. He doesn't really work for the

1 Board. So the Board can take action, but not
2 Mr. Wyrick.

3 MS. HA: Right.

4 MR. BELL: So I'm not waiving that
5 particular interest. I don't see a conflict. He does
6 not represent the Board in that instance. Action
7 would have to be taken by the Board under the
8 direction of the Board to Mr. Wyrick, et cetera, et
9 cetera.

10 MS. HA: Okay.

11 MR. WYRICK: And I would just add that the
12 Board took a vote on this, a full vote at one of the
13 meetings about two or three weeks ago so in terms of
14 the record.

15 MS. HA: I just didn't want to do this
16 again.

17 MR. WYRICK: No problem.

18 MS. HA: All right. Mr. Wyrick.

19 MR. WYRICK: By way of introduction, my
20 thing today is based on the notion of what I call no
21 harm, no foul. From what I understand, the Inspector
22 General issued its report, unfavorable report based
23 upon its interpretation of the Charter, and perhaps

1 its interpretation of Robert's Rules of Order.

2 Very specifically, the Charter Provision
3 7-804 which delineates the appointment duties of the
4 Board of Police Commissioners, and by extension former
5 Chairperson Bell when he served as chairperson, very
6 specifically states in 7-804 that the Board appoints
7 the board secretary and the office of chief
8 investigator. Now, you and I both are attorneys,
9 Attorney Ha, and I believe we're not the only ones in
10 the room.

11 MS. HA: Actually Ms. Bentley is the
12 attorney for our office.

13 MR. WYRICK: I said we're not the only ones
14 in the room.

15 MS. HA: Oh, all right.

16 MR. WYRICK: That was my statement. I know
17 that. And the thing that we as attorneys look at is
18 what you call nuances. So in looking at the nuances
19 very specifically in the charter here, specifically
20 7-804, what I found very interestingly was the
21 charter's drafting as it relates to hiring at the
22 Board of Police Commissioners. It doesn't say that
23 anyone is appointed other than the board secretary and

1 the office of the chief investigator. The reason that
2 I point that out for the sake of this hearing is that
3 the particular position in controversy here, which is
4 Mr. Robert Brown's position as the executive manager
5 over administration from which he was demoted was not
6 someone that was appointed, that it is not necessarily
7 someone that is delineated very specifically in the
8 charter. The only people delineated in the charter
9 are the board secretary and the office of chief
10 investigator.

11 MS. HA: And the director of police
12 personnel.

13 MR. WYRICK: And the director of police
14 personnel, yes. But I didn't necessarily mention her
15 because she in and of herself is not just a board
16 employee. Although she is appointed by the Board, she
17 also serves a dual role at the police department. I'm
18 just talking strictly about board employees.

19 What it says very specifically as it
20 relates to board employees other than the board
21 secretary and other than the chief investigator and
22 other than the director of personnel, is that the
23 Board is entitled to hire staff as is necessary.

1 That's a very broad and that's a very liberal term,
2 hire staff as is necessary. Hire certainly is a
3 different terminology from appoint.

4 What I have also in my written response,
5 which is 33 pages, which I incorporate every word by
6 reference, I very specifically delineate how the case
7 law, whether it's the United States Supreme Court case
8 of Pickering versus Board of Education, which is a
9 1968 Supreme Court case, it says when you have this
10 type of administrative hearing, it has to be based
11 upon competent material and substantial evidence here.
12 We submit respectfully that the findings here have not
13 been based upon that for a few reasons.

14 First and foremost, it's based upon our
15 respective different interpretations of the charter.
16 Our interpretation of the charter on behalf of
17 Commissioner Bell this morning is much broader and
18 more liberal, and we believe not only does the charter
19 that I just referenced support that broad and liberal
20 interpretation, but the case law does as well.

21 I've specifically delineated in my brief,
22 and I'm going to mention it by reference here orally
23 as well, the Walker case, which is a 1994 Michigan

1 Supreme Court case which actually comes out of Detroit
2 and involved the Detroit Charter Commission, which is
3 a commission similar to the Board of Police
4 Commissioners. And in the Walker case it says the
5 powers of the Detroit Charter Commission have to be
6 construed liberally including those not expressly
7 granted to suit their unique needs. The reason that I
8 cite that specifically in this particular controversy
9 is this. The Inspector General's written report seems
10 to be very narrow and basically constrains the Board
11 in ways that the charter does not necessarily do, and
12 that these cases do not necessarily do. If you
13 construed this liberally as the Walker case suggests,
14 Commissioner Bell did absolutely nothing wrong and
15 nothing inappropriate by unappointing Mr. Robert Brown
16 when he did by virtue of this. If the charter is
17 interpreted broadly and liberally to say hire as is
18 necessary, that also means that you basically
19 unappoint as is necessary. If within his discretion
20 in his leadership position as a chairperson of the
21 Board that is given the proper interpretation that it
22 should under the Charter and under the law, then there
23 is nothing whatsoever wrong that happened here

1 whatsoever.

2 I also cite as well, but I also want to
3 mention one more case that actually comes out of
4 Detroit interestingly as well, it involves a case
5 called Barrow. That's a former mayoral candidate, Tom
6 Barrow. His case was a 2014 Michigan Court of Appeals
7 case which basically said the same thing that Walker
8 said back in 1994, that when you have a charter such
9 as our Detroit charter here, which is a home rule
10 charter, that an entity such as the BOPC or the
11 Charter Commission, or in this case the Detroit
12 Election Commission enjoys powers that is not
13 expressly granted by the charter. In fact, it goes so
14 far as to say that a board such as the Detroit Board
15 of Police Commission, the Charter Commission, the
16 Election Commission, which is specifically mentioned
17 in the 2014 Barrow case, it says that the board has
18 applied authority if it is essential to the exercise
19 of its authority. There it factually and basically
20 says that although there was criticism that the
21 Detroit Election Commission should not have satellite
22 offices because that wasn't specifically mentioned in
23 the charter, it's not prohibited because it was

1 considered to be an essential part of the exercise of
2 authority, just as the unappointment of Robert Brown
3 from his position was considered essential to the
4 exercise of the Board of Police Commission authority.

5 On that particular issue as well, in my
6 written report I cite some of the best practices of
7 other civilian oversights. One of the things, and I'm
8 not going to digress too much until the other
9 hearings, because we have two more or maybe even three
10 more, one of which I'm not involved with this week,
11 but I cite best practices of other civilian
12 oversights, because one of the things that I was
13 disturbed by in the report that was critical of the
14 Board specifically is that we were held to the
15 standard of being a quote unquote legislative body.
16 The Board of Police Commission is not a legislative
17 body. It's drastically different from a legislative
18 body, and Commissioner Bell will speak to that. It's
19 actually a civilian oversight body. And when you look
20 at civilian oversight bodies, even as it relates to
21 this particular unappointment of Mr. Brown, and I
22 specifically mention, and I can even cite to the pages
23 in the written report if you give me a moment. On

1 Pages 29 and going into Page 30 I cite some of the
2 other cities, such as Houston, Texas; Tucson, Arizona;
3 I believe Rochester, New York as well, they have the
4 same type of practice as the Board of Police
5 Commission has.

6 I'm honored to be sitting next to
7 Commissioner Bell. Commissioner Bell is one of the
8 pillars of our community. He actually started serving
9 the Detroit Police Department the year I was born in
10 1971. He did that for 32 years. He actually retired
11 as a lieutenant in the Office of Chief Investigator.
12 As my report reflects, he's a family man, he's a
13 devote Christian in his the church, he's a deacon.
14 He's resided in the same neighborhood here in Detroit
15 for 40 years.

16 So with that, that's my opening. And I'll
17 just ask you by way of guidance to one of the things
18 that I was even prepared to address, too, because I
19 thought this was a criticism of Commissioner Bell,
20 and correct me if I'm wrong, or we can maybe speak to
21 this Wednesday before the whole board, there was some
22 criticism about him appointing people to subcommittees
23 and things of that nature. I can address that as

1 well.

2 MS. HA: Actually we've addressed that
3 issue. As you recall Commissioner Brown filed an
4 Abuse of Authority by Commissioner Bell or against
5 Commissioner Bell in retaliation against Commissioner
6 Bell, and the report is on our website.

7 MR. WYRICK: Yes, I'm familiar. So I don't
8 need to address that issue is what you're saying?

9 MS. HA: No.

10 MR. WYRICK: All right. Very well then, I
11 won't.

12 MS. HA: In the overall arching report,
13 what we did is we just indicated that it's best
14 practice or it would be best practice for not just one
15 person and the Board to represent -- I'm sorry, to
16 appoint and unappoint subcommittee members because it
17 can lead to abuse of authority.

18 MR. WYRICK: Well --

19 MS. BENTLEY: But we didn't find abuse of
20 authority and we didn't recommend any discipline on
21 that. So really we said that was something for the
22 Board to consider. So that's up to you all to
23 consider. We weren't critical of him on that.

1 MR. WYRICK: The only problem with that,
2 though, and I specifically even tabbed Robert's Rules
3 of Order on this, it specifically says that the best
4 method when you have a committee of the whole, such as
5 the Board of Police Commission, when you have
6 subcommittees, it's for the chair to appoint the heads
7 of those subcommittees. Coupled with the fact that
8 when you look at the Detroit City Charter, I section
9 matched 406, which we were actually compared to,
10 Detroit City Council, the President of the Detroit
11 City Council actually appoints the chairperson to
12 standing subcommittees.

13 So I won't get into that a lot, because I
14 actually went into it a lot in my written response,
15 and if that's no longer an issue, that's no longer an
16 issue. But even in terms of the best practices that
17 is still our issue, one of the cities that I want to
18 cite very specifically is the City of Denver by virtue
19 of the fact that it's almost practically the same size
20 as Detroit. Denver has a population of 678,467
21 people. Detroit has a populations of 679,865. And
22 when you look at the best practices of the citizen
23 oversight in Denver, the board may adopt procedural

1 rules, the chair shall prepare an agenda, and the
2 bylaws provide for subcommittees. So -- but like I
3 said, if that issue is already resolved, I won't
4 necessarily deal with it today, we can move forward
5 with our questioning of Commissioner Bell.

6 Are you ready?

7 MR. BELL: No, I just -- you already
8 covered it, but I'm satisfied with that explanation,
9 so we go move on.

10 EXAMINATION

11 BY MR. WYRICK:

12 Q. Can you state your full name for the record?

13 A. Willie Bell.

14 Q. And how long have you served on the Board of Police
15 Commissioners?

16 A. Since 2014.

17 Q. Prior to your service as a commissioner on the Board
18 of Police Commission, what is your background?

19 A. Following school primarily with the Detroit Police
20 Department I served 32 years.

21 Q. And is the Board of Police Commission a legislative
22 body?

23 A. No, it's not.

1 Q. And how is it different from a legislative body?

2 A. It's designated by the city charter in terms of
3 functioning as a board.

4 Q. I didn't quite get that.

5 A. Designated by the city charter that the duties and
6 responsibilities are listed as a board so it does not
7 fall in that particular area that's legislated by
8 their involvement.

9 Q. Okay.

10 A. Let me try it again. It's designated and -- the
11 duties and responsibilities by a city charter,
12 designated as a board, so it does not function as a
13 legislative body at all.

14 Q. Let me ask it this way, Commissioner Bell. You've
15 been a resident of Detroit pretty much all your life,
16 correct?

17 A. That's correct.

18 Q. Since childhood, correct?

19 A. That's correct.

20 Q. And you're familiar with the City Council, correct?

21 A. Yes.

22 Q. And does the City Council, if you know, do they get
23 paychecks and compensation and things of that nature?

1 A. Yes.

2 Q. And does the Board of Police Commission, and as a
3 commissioner do you?

4 A. No.

5 Q. And how long have you been a commissioner?

6 A. 2014.

7 Q. So you've been a commissioner five years?

8 A. Yes.

9 Q. Have you served in any leadership capacities?

10 A. Chairmanship and vice chair.

11 Q. When did you serve as chair?

12 A. I started my chairmanship in 2014. We rotate the
13 chairmanship every year by city charter. You can only
14 serve one year, then you have to rotate off.

15 Q. Is that to prevent abuse?

16 A. I'm sorry?

17 Q. Is the service of only one year to prevent abuse?

18 A. That's correct.

19 Q. What year, if you recall, were you vice chair?

20 A. 2015/16.

21 Q. Are you familiar with the term civilian oversight?

22 A. Yes.

23 Q. What does that term mean to you?

1 A. It means that you have authority by city charter to
2 have supervisory control of the Department Police
3 Department, and oversight in Detroit has been
4 established since 1974.

5 Q. So when you said oversight has been established since
6 1974, you mean the Board of Police Commission?

7 A. The Board of Police Commission by city charter.

8 Q. All right. Are you also on the board of an entity
9 called NACO?

10 A. Yes, sir.

11 Q. Could you explain what that is?

12 A. National Association for Civilian Oversight of Law
13 Enforcement.

14 Q. And that goes -- that's nationwide?

15 A. That's nationwide.

16 Q. Okay. So do you learn best practices of civilian
17 oversight, say for instance the NACO, and bring them
18 back to the City of Detroit?

19 A. Yes. I've been involved in NACO even when I was
20 involved with the workforce as an administration
21 lieutenant through the office of chief investigator,
22 and I went to two or three conferences. And that's my
23 role in terms of NACO going back over ten years now.

1 Q. And these are nationwide conferences?

2 A. Nationwide conferences.

3 Q. Not necessarily held in the City of Detroit?

4 A. It varies throughout the United States.

5 Q. And how do you think these conferences benefit your
6 service as a commissioner or even a leadership
7 position at the BOPC?

8 A. It gives you an opportunity through education and
9 training to interface with the various seminars and
10 workshops they offer, and also with the people who
11 work in that particular capacity all over the country.
12 So you get best practice, but it's not consistent
13 across the board, because they vary in terms of their
14 dues. Some are -- review boards do not have the
15 proper authority in that sense, so -- but it gives you
16 the updated concept and concerns of not just your
17 local, but throughout the country in terms of law
18 enforcement issues that they are concerned about. So
19 therefore you're able to gain that type of insight and
20 training on how to respond and how to interact.

21 Q. So your position when you mentioned the review board
22 is that some of the civilian oversight agencies don't
23 have the same level of the authority?

1 A. No, it varies across the board.

2 Q. What insight would you bring from NACO into this
3 particular controversy as it related to unappointing
4 Mr. Brown?

5 A. It's quite common that people are appointed and
6 unappointed in terms of -- throughout the nation in
7 terms of staffing. They have that authority to
8 maintain their staffing and their function. And it's
9 not unusual a person is going to be -- I witnessed
10 that in Detroit. I worked for the Board for about
11 five years, so I witnessed the chief investigator, the
12 board secretary and other staff members have been
13 unappointed, removed from their particular position.

14 Q. Okay. And let's take that for a moment. How long did
15 you work for the Board when you were like with OCI?

16 A. About four to five years.

17 Q. Okay. And what was your duties at that point in time?

18 A. Administration lieutenant. In fact, how I arrived in
19 that capacity is because the chief investigator and
20 the board secretary had been removed by the board, and
21 they were seeking replacement, and that's how I ended
22 up in that particular capacity.

23 Q. And you said in that particular capacity you saw

1 instances of people unappointed. Could you explain
2 what you mean by that?

3 A. They were no longer employed by the Board of Police
4 Commissioners.

5 Q. Could you explain like what process that entailed? Do
6 you recall if that required a board vote, or what
7 process -- what do you -- you know, just tell the
8 story about what you remember about that?

9 A. Well, I don't know about the vote. We did not -- I
10 didn't always witness that. But mainly the chair of
11 the Board and the board secretary -- in this instance
12 there was no function by the board secretary. The
13 board secretary was removed from the office by the
14 chair of the Board. So I assume there was a vote
15 taken, but I was not privileged to that process. All
16 I seen was the results of it.

17 Q. Okay. So as you testify here this morning, you can't
18 accurately say whether or not there was a vote taken
19 in those instances or not?

20 A. No.

21 Q. You just saw the end result of somebody basically
22 losing their job?

23 A. That's correct.

1 Q. And do you recall what time frame or years that would
2 have been?

3 A. This is like '99, 2000.

4 Q. So you worked there in '99 to -- you started working
5 there in 1999?

6 A. '97 I think I started working there. I think I
7 retired -- well, not think, I retired in 2003.

8 Q. Okay. So you're talking about that time frame?

9 A. Yes, in there, right.

10 Q. Okay. And as a commissioner for the past five years,
11 and even in the leadership position, you're familiar
12 with the Detroit City Charter?

13 A. Yes, sir. I think I need to elaborate a little bit
14 about this removal. I did when this removal when I
15 was there, the board secretary and chief investigator,
16 that was by Mayor Kilpatrick. At that time the
17 commissioner could be removed without the approval of
18 the chair. A commissioner could be removed without
19 cause, and therefore Mayor Kilpatrick became mayor,
20 and he took those steps to have his own commissioner,
21 and those two people were removed from office.

22 Q. Was that under the prior charter, like under --

23 A. That was prior to the 2012 charter.

1 Q. Okay. Would that have been under the 1997 charter, if
2 you know?

3 A. Yes, it would be -- I think the charter took effect in
4 2012. So in that time frame, you know.

5 Q. Speaking to the 2012 charter, based upon your
6 understanding of the charter, were you entitled to
7 unappoint Mr. Brown?

8 A. Definitely.

9 Q. Okay.

10 A. Yes.

11 Q. And why do you say that, sir?

12 A. Because the charter gives you -- people are appointed
13 and disappointed. It's like Coleman A. Young, the
14 mayor, he used that terminology quite often.

15 Q. And when Mr. Brown was unappointed, did you get the
16 input of other commissioners?

17 A. Definitely.

18 Q. And what other commissioners did you receive the input
19 from?

20 A. It would be from the vice chair and Commissioner
21 Dewaelsche. I think -- she was not the vice chair.
22 Lisa Carter was the vice chair.

23 Q. And why did you seek the input of the vice chair, Lisa

1 Carter?

2 A. Well, that's incorrect. Lisa Carter was not the vice
3 chair. Darryl Brown was the vice chair. That is
4 correct.

5 Q. At the time that Mr. Brown -- at the time Robert Brown
6 was unappointed?

7 A. That's correct.

8 Q. Okay. So did you consult with the vice chair Darryl
9 Brown and Commissioner Dewaelsche?

10 A. Yes, and Lisa Carter, she was the immediate past
11 chair.

12 Q. So you consulted with three other commissioners?

13 A. Yes.

14 Q. And why is that, sir?

15 A. Basically that's how we functioned. The leadership
16 team would be the chair, the vice chair, and the
17 immediate chair, and also the person that was
18 interacting in personnel, he was the chair of the
19 personnel committee.

20 Q. Do you know besides Commissioner Dewaelsche who else
21 served on the personnel committee?

22 A. I can't say off the top who else was involved. I
23 think Commissioner Brooks.

1 Q. Do you know if Commissioner Card (ph) was on the
2 personnel committee at that time?

3 A. I can't say for sure.

4 Q. And this -- when you say this is the way the
5 leadership team functions, is that consistent with
6 what you've learned in other civilian oversight
7 agencies through NACO?

8 A. I know they function similar to how we function, yes.

9 Q. Okay.

10 MS. BENTLEY: Can I just ask a clarifying
11 question on that? So when you sought the input of
12 these other commissioners, was it during a committee
13 meeting, or was it during a formal meeting? When did
14 you get their advice?

15 A. It was a two-step process. The first step was the
16 leadership team interaction, you know, just to --

17 MS. BENTLEY: Is that a formal meeting?

18 A. No, a formal meeting would be the full board.

19 MS. BENTLEY: So when you meet with your
20 subcommittees, are there minutes taken?

21 A. This is a leadership meeting.

22 MS. BENTLEY: Okay. Are there notes taken
23 for that?

1 A. Not at that time, no.

2 MS. BENTLEY: Okay. And then did you ever
3 talk to the full board about the deappointment of
4 Mr. Brown?

5 A. Yes, I did.

6 MS. BENTLEY: In a formal meeting?

7 A. It started off in terms of a closed-session, and the
8 closed session embraced that particular issue.

9 MS. BENTLEY: Do you recall the date of the
10 when that occurred?

11 A. No, ma'am, I don't recall a date.

12 MS. BENTLEY: Is that something you could
13 figure out?

14 A. Can I figure it out? Yes.

15 MR. WYRICK: I can.

16 BY MR. WYRICK:

17 Q. When you say the leadership team interaction, is that
18 like a briefing agenda that you have on Wednesdays?

19 A. Yes.

20 Q. And is that more or less an administrative process to
21 prepare for the Thursday meeting?

22 A. That's correct.

23 Q. Any decisions made there?

1 A. No, it's just a briefing, the board secretary covering
2 the agenda for the upcoming board meeting.

3 Q. And are those type of executive sessions something
4 that happens pretty much nationwide?

5 A. I would assume so from my understanding interacting
6 how they function, yes.

7 Q. Okay.

8 MS. HA: Are you using the term executive
9 session and leadership committee session, are they one
10 in the same?

11 MR. WYRICK: Not necessarily, but --

12 MS. HA: Okay.

13 MR. WYRICK: The executive session is
14 something that is more or less used outside of the
15 BOPC, not within the BOPC. We don't really use that
16 term.

17 BY MR. WYRICK:

18 Q. And Attorney Bentley just asked you about whether or
19 not there is any discussion at a formal meeting. Do
20 you recall the community meeting that the BOPC hosted
21 at Wayne State University in December of 2018?

22 A. Yes.

23 Q. Do you recall whether or not the issue of Mr. Brown's

1 unappointment was brought up before the full board at
2 that time?

3 A. Yes.

4 Q. And what do you recall about that?

5 A. They were apprised of the unappointment and also the
6 salary in the new position in that sense, and we
7 provided documentation to that effect, the
8 unemployment letter to that effect.

9 Q. Do you recall there being some issue after that
10 particular session with the meeting running late and
11 the court reporter had actually left?

12 A. Yes.

13 Q. So there was difficulty in terms of actually recording
14 that by virtue of the fact that the court reporter
15 left?

16 A. Yes.

17 Q. Okay.

18 MS. HENDRICKS-MOORE: Can I ask a question?
19 I just need some clarification. So are you telling me
20 that there was a decision made by the board regarding
21 the deappointment of Mr. Brown that was not recorded
22 in the minutes?

23 MR. WYRICK: Yes, by virtue of the court

1 reporter leaving in December 2018.

2 MS. BENTLEY: So did the Board take a vote,
3 or did you merely inform them of the deappointment?

4 A. The closed session we don't take votes, it's just
5 information-wise. When we reconvene the session then,
6 we normally go through the process of getting back on
7 the record. Unfortunate, you know, at that time
8 period of what we discussed, the court reporter
9 assumed that we had finished all our business, and we
10 try to make sure that they understand that we have to
11 come back on the record and cover any matters that are
12 in closed session, but at some times it's not -- in
13 most cases, yes, we go back on the record -- we have
14 to go back on the record.

15 MS. HA: So you went back on the record
16 without a court reporter or anyone taking notes?

17 A. We can go back on record, because normally the board
18 secretary will record -- you know, it's not -- we
19 probably did not take care of any other business
20 besides that, because she was -- he or she was not
21 there. But we have to say we are back on the record,
22 and the board secretary would note the date and time,
23 that type of thing.

1 MS. BENTLEY: So I guess I'm still a little
2 unclear. When you went back on the record, was it
3 just more to say Mr. Brown had been deappointed, or
4 was it for the whole board to vote on the
5 deappointment?

6 A. I think it was discrepancy because we didn't have the
7 court reporter person.

8 MS. BENTLEY: Sure, I understand that. But
9 what was the -- what action did you want to take if
10 the court reporter had been there? Was it merely to
11 inform people, or was it to vote?

12 A. It was to vote, yes.

13 MS. BENTLEY: So did that vote ever
14 actually occur?

15 A. No, because I think we didn't have the court reporter,
16 so we just adjourned the meeting.

17 MS. BENTLEY: And the board secretary
18 didn't take any additional notes?

19 A. I can't say for certain, but he probably took a brief
20 note to the effect that we reconvened and we had to
21 adjourn, you know. I don't think we covered anything,
22 but I can't say for sure.

23 MS. HA: So did someone move to unappoint

1 Mr. Robert Brown at the next board meeting?

2 A. I would say no. I guess it was not an issue to some
3 extent, you know. I guess the way we --

4 MR. WYRICK: And if I may just interject,
5 part of the reason that I gave the opening that I did
6 is that our position is that you don't have to vote to
7 unappoint Mr. Brown by virtue of the fact that as I
8 said in those nuances he was hired, he wasn't
9 appointed. The only people that are appointed are the
10 board secretary, the chief investigator, and the
11 personnel director.

12 MR. MARABLE: And that's a technical
13 distinction that you're making.

14 MR. WYRICK: Based on the charter, yes,
15 sir.

16 MR. MARABLE: But based upon HR rules,
17 there are other appointed positions. So I understand
18 that the charter says that this is specifically what
19 the duty of the board is to appoint, but they are
20 designated appointed positions, is that not the case?

21 MR. WYRICK: Based upon my understanding of
22 the HR rules is that none of these people fall within
23 the civil service parameters anyway.

1 MR. MARABLE: So they would be --

2 MR. WYRICK: So they're not held to the
3 same standards that they would be if they were civil
4 service.

5 MR. MARABLE: So they would be appointed?

6 MR. WYRICK: Huh?

7 MR. MARABLE: The distinction in HR rules
8 is that you have appointed and then you have civil
9 service which falls under a different set of rule than
10 you have for appointed.

11 MR. WYRICK: Right, I agree.

12 MR. MARABLE: So he would be in the
13 category of an appointed, not a civil service
14 position?

15 MR. WYRICK: Right, exactly, I agree.

16 BY MR. WYRICK:

17 Q. By virtue of the question, you just told Attorney
18 Bentley, Commissioner Bell, that you don't take votes
19 in the closed session. Is that to comply with the
20 Open Meetings Act?

21 A. That's correct.

22 Q. All right. So you would only take a vote once you
23 reconvened is the term that you used to comply with

1 the Open Meetings Act?

2 A. That's correct.

3 Q. Is there anything else, Commissioner Bell, you want to
4 add about the unappointment of Mr. Brown as you
5 recall?

6 A. As I stated previously, it's not unusual from my
7 interaction with the Board, working for the Board,
8 that people, even the board secretary, you know, some
9 individuals have been discharged without a formal
10 process because you can appoint and dis-appoint, and I
11 think in most cases they support the chair or the team
12 of people, whatever that takes place. I think if
13 they're in opposition, they could raise that issue,
14 but there was no opposition to the chairman acting.
15 Even pre-2012 charter, the chair had awesome power in
16 terms of how they function. Even when they had the
17 five, they was all appointed by the mayor, the chair
18 spoke and acted on behalf of the board. And if there
19 was an opposition to it, I guess you could opposition
20 in terms of a formal procession, but it was not
21 unusual just to see people removed by the process.

22 Q. And as we sit here right now, Mr. Brown, Robert Brown,
23 is still employed by the BOPC?

1 A. Yes, he's still employed. And we had interactions
2 with Mr. Brown in reference to steps that we would
3 take. And even though it could have been just a
4 casual process, but we wanted to give an explanation,
5 and he could either except or decline.

6 Q. But he's actually employed in a different capacity at
7 this point?

8 A. That's correct. And we went through the process of
9 working through the process in terms of taking proper
10 steps.

11 Q. Did you see the unemployment of Mr. Brown as being
12 essential to the operation of the BOPC?

13 A. Definitely.

14 Q. Did you see it in compliance with Charter Section
15 7.804 as being necessary for the BOPC?

16 A. Yes.

17 MR. WYRICK: No further questions.

18 MS. HENDRICKS-MOORE: I have a question I'd
19 just like to ask based on what you presented, okay.
20 You said the leadership team was the one that had the
21 initial meeting which was VP chairman Darryl Brown,
22 Eva Dewaelsche, Lisa Carter, and I'm assuming
23 yourself.

1 MR. WYRICK: Not necessarily Commissioner
2 Dewaelsche because she wasn't on the leadership team,
3 but she was in the capacity of being the chair of
4 personnel.

5 MS. HENDRICKS-MOORE: Was she in that
6 meeting that -- her name was mentioned, so was she in
7 the meeting with that leadership team regarding --

8 MR. WYRICK: I'm not sure if he would
9 recall all this time later but --

10 MS. HENDRICKS-MOORE: I mean, I could be
11 wrong, but I thought that's what was presented to us
12 as far as the decision regarding the de-appointment of
13 Brown consisted of four people having a discussion
14 about that. So am I incorrect with that?

15 MR. WYRICK: I'm not sure the capacity in
16 which it occurred, and by that I mean I think his
17 testimony is that it occurred within the leadership
18 meeting, which would have consisted of those three
19 commissioners, naturally Commissioner Brown, who was
20 the vice chairperson, and Commissioner Carter who was
21 the former chairperson. I think the issue then
22 becomes the extent to which Commissioner Dewaelsche
23 was involved. Whether she was in that meeting or not,

1 I'm not sure if she was. I don't know if he recalls
2 if she was. But she was definitely consulted at some
3 point in that meeting or outside of that meeting by
4 virtue of the fact she was a chairperson, though, is
5 that correct?

6 A. Of personnel.

7 MS. HENDRICKS-MOORE: What was the reason
8 for the de-appointment of Mr. Brown?

9 A. We felt as though after the issue was raised about
10 dis-appointment that he did not qualify for that
11 position, and then therefore we had also witnessed his
12 duty capacity. We felt as though he did not meet that
13 challenge of executive manager, and therefore we felt
14 as though that we should demote him to a position that
15 he was serving in prior to, and that was the logic
16 behind his demotion.

17 MS. HA: So may I ask, you indicated on the
18 record that you had a leadership committee meeting to
19 obtain input from vice chair Darryl Brown and the
20 immediate past chair, Lisa Carter, regarding Robert
21 Davis -- not Robert Davis, Robert Brown's appointment
22 or de-appointment.

23 MR. WYRICK: Let me clear it up. The

1 leadership meetings are held on Wednesdays. That
2 wouldn't have necessarily have been convened just for
3 that purpose.

4 MS. HA: Well, yes, I understand.

5 MR. WYRICK: Okay.

6 MS. HA: So as I understand it, there is
7 also -- BOPC also has a personnel committee, am I
8 correct?

9 A. Yes.

10 MS. HA: And so why not have a discussion
11 about Robert Brown's de-appointment with the personnel
12 committee? Why have it at the leadership committee?

13 A. The personnel chair was present and acted on behalf of
14 the personnel committee.

15 MS. HA: Who was that?

16 MR. WYRICK: And just to shed light, as I
17 recall at that time, I believe at least three of those
18 commissioners were on -- three or four of them were on
19 the personnel committee. And I don't want to be
20 inaccurate about this, but I believe, and I'm not
21 certain, Commissioner Brown and Carter and
22 Commissioner Bell may have been on the personnel --

23 A. That's right.

1 MR. WYRICK: So you pretty much had the
2 leadership and the personnel committee there perhaps
3 minus one commissioner, which may have been Brooks,
4 and I'm not sure whether she was on the personnel
5 committee or not then. We would have to look at our
6 records to see who constituted the personnel
7 committee. But my point is that more than
8 Commissioner Dewaelsche was probably serving on that
9 personnel committee at that time. And to be accurate,
10 we can look at our records and see exactly who. But
11 I'm pretty sure that -- I'm pretty certain
12 Commissioner Brown was on the personnel committee as
13 the vice chair, correct?

14 A. I think so.

15 MR. WYRICK: But we can be for certain by
16 looking at our records.

17 MS. HA: The other question I had was, it
18 was our understanding, and correct me if I'm wrong,
19 that Mr. Gregory Hicks hired and appointed Mr. Robert
20 Brown. So why didn't Mr. Hicks de-appoint Robert
21 Brown?

22 A. Mr. Hicks, he did not have that authority to take
23 those steps. And that was the issue that was raised

1 about how Mr. Brown arrived in that position. So
2 that's why we was addressing that issue. Therefore it
3 would be inappropriate for Mr. Hicks to be involved.
4 As you well know, that's why we're here this
5 afternoon -- I mean, this morning, because Mr. Brown
6 raised the issue that Mr. Brown was inappropriately
7 appointed. And the point is that Commissioner Brown
8 was not even involved in the process when that
9 appointment took place.

10 MS. HA: Okay.

11 Q. He was not a commissioner. His commission did not
12 start until January '18. But through his lack of
13 knowledge, investigative experience, he reached his
14 own conclusion, he drafted that to the effect that he
15 based on his investigation that these actions took
16 place.

17 MS. HA: These actions took place meaning?

18 A. That Mr. Brown was appointed illegally.

19 MS. HA: Oh, I see.

20 A. And he raised that in the email, that therefore if we
21 don't take certain steps -- I think it's been cited
22 already. Therefore through his lack of knowledge -- I
23 think as you well know, when you go through a process,

1 people have to be investigated to make sure that we're
2 doing things properly. He took the initiative outside
3 of that that we should take these steps to unappoint
4 him, and Mr. Hicks should be removed -- Mr. Brown
5 should be removed, we should appoint him secretary to
6 serve in that capacity, and that was ridiculous, you
7 know. And he also took steps in terms of impacting
8 the budget to remove.

9 So these matters -- that's what raised the
10 issue of addressing this issue, not because the IG was
11 involved, because we were aware and we was taking
12 those steps to weigh all the facts and get the facts,
13 not just on casual dialogue of an inexperienced
14 commissioner who has no background in terms of doing
15 any investigating, period, as far as my knowledge.

16 MR. MARABLE: I want to go back to the
17 beginning. There was a distinction made between, you
18 know, a board and a legislative body. There is
19 something pretty unique about your board, is that
20 correct?

21 A. Unique?

22 MR. MARABLE: Yes.

23 A. You have to elaborate.

1 MR. MARABLE: Well, in the fact that you
2 are elected. Are there any other elected board
3 members?

4 MR. WYRICK: All aren't elected. You have
5 four that are appointed by the mayor.

6 A. Yes, we are the only board that I'm aware of in the
7 country that is involved in NACO, the only elected
8 board. Seven of those are elected as you well know by
9 city charter. Yes, we are unique.

10 MR. MARABLE: And there are no other board
11 or commissions within Detroit City government besides
12 the City Council that are elected, is that correct?

13 A. Well, City Council.

14 MR. WYRICK: I'm not sure about that.

15 A. I would say yes. I mean, yes, council is one of the
16 other elected bodies, and we are the secondary elected
17 body by city charter of 2012, right.

18 MR. MARABLE: Under the 2012 Charter.

19 A. That's correct.

20 MR. MARABLE: And to your knowledge there
21 is no other commissioners or boards or oversight
22 agencies that you're aware that are elected?

23 A. In NACO?

1 MR. MARABLE: Yes.

2 A. No. As far as the country again, I would say no,
3 there are no other elected bodies, because when people
4 see that and hear that, they say that's rather unique,
5 we would love to have that. Most boards are appointed
6 by -- it's very seldom if ever -- I mean, in most
7 cases they're appointed by the mayor.

8 MR. MARABLE: So for the record, it was the
9 reason why in our report you all were compared to a
10 legislative body is because you have elected
11 officials, whereas in a lot of -- most boards and
12 commissioners have appointed members. So the dynamic
13 of leadership is different in that you have -- that
14 there is somebody over you that can make decisions and
15 unappoint, but you all have the people -- the elected
16 members have the people over you who you answer to
17 primarily. So that is why the report kind of makes
18 the distinction and compares BOPC to a legislative
19 body, not necessarily the functionality, but the fact
20 that you are elected.

21 A. Oh, I'm glad you clarified that, because we don't have
22 the authority of a legislative body.

23 MR. MARABLE: Right.

1 A. Just on that election process.

2 MR. MARABLE: Yes. That was the
3 distinction.

4 A. Thank you.

5 MS. BENTLEY: Has the BOPC ever sought
6 guidance from the law department to make sure that
7 it's permissible under the charter to delegate any of
8 the hiring authority?

9 MR. WYRICK: You know, I would say yes,
10 but --

11 A. Well, yes, but the law department, that's not their
12 area of expertise. The expertise comes from the
13 director of personnel with DPD, and also with the City
14 of Detroit personnel director. And we also rely on
15 the budget, you know, process. That's basically --
16 the law department might give you a legal, but the
17 authority that we have consulted based on my
18 experience since 2014 is that we consult with Gayle
19 Oxendine, you know, and to Dr. Anderson most recently,
20 director of personnel.

21 We took the steps of basically -- we are
22 lay people. I have no HR experience. And there is no
23 SOP when I arrived with the Board of Police

1 Commissions. In fact, when I arrived in 2014, we did
2 not even have power of a board. And it took us two
3 years to get that power. And therefore I think a lot
4 of things fell to the wayside, you know, in terms of
5 getting authority and an SOP and the transition of
6 employees, et cetera. So it was a challenge to be a
7 commissioner but not having a standard operating
8 procedure, which I operated at my entire police
9 career. There is a format for any position that you
10 might be employed in DPD? But the board -- I knew how
11 the Board worked. It as said was a helter skelter
12 politically.

13 MS. HA: So, Mr. Hicks, you indicated
14 that --

15 A. Mr. Hicks?

16 MS. HA: I'm sorry, Commissioner Bell. I
17 wanted to talk about Mr. Hicks.

18 So Commissioner Bell, you had indicated
19 that when you met with the other -- with the
20 leadership committee or personnel committee pertaining
21 to Robert Brown and had concluded that Mr. Hicks
22 improperly hired Robert Brown --

23 MR. WYRICK: I don't think he said that.

1 A. I didn't say improperly. We felt it was -- primarily
2 we felt as though Mr. Brown was not qualified for the
3 position, and we had witnessed that in terms of his
4 work practice -- I mean, his skill level. We had
5 witnessed that, and I think I stated that on the
6 record in terms of why we -- and that was the
7 consensus of the leadership team that he did not merit
8 an executive position. He was doing great as
9 administrative assistant, but he could not function in
10 our appraisal of him or observation in that capacity.

11 MS. HA: But correct me if I'm wrong,
12 Mr. Hicks hired -- I'm sorry, Mr. Hicks appointed the
13 executive manager position to Robert Brown through the
14 delegation of authority?

15 A. He promoted him.

16 MS. HA: Promoted him. So again why didn't
17 it go back to Mr. Hicks to correct --

18 A. Mr. Hicks did not have the authority to --

19 MS. HA: He only had authority to hire?

20 A. Yes.

21 MS. HA: Okay.

22 MR. WYRICK: I have some followup.

23 MS. HA: Go ahead.

1 BY MR. WYRICK:

2 Q. Relating to that, you've read my written response, the
3 33 pages, correct?

4 A. Yes, I'm sorry, I did.

5 Q. And when you look at best practices of other cities,
6 and one that stands out to mind because it's similar
7 in population to Detroit, Las Vegas, other cities such
8 as Las Vegas have situations where they delegate
9 authority to their executive directors to hire,
10 correct?

11 A. Correct.

12 Q. In fact, a lot of other cities give more unilateral
13 authority to their executive directors than the BOPC,
14 correct?

15 A. Very much so.

16 Q. Some I believe, and I don't want to misquote the city,
17 one even goes so far as to allow the executive
18 directive to fire the chief investigator, correct?

19 A. That's correct.

20 Q. All right. So it's nothing out of the usual for a
21 civilian oversight agency to delegate hiring authority
22 to an executive director, correct?

23 A. That's correct.

1 MS. HA: So this executive director
2 position, there is no executive director position.

3 A. Board of secretary.

4 MS. HA: That's right. There is no
5 executive director position for the BOPC, there is the
6 board of -- secretary of the board, am I correct? So
7 when you say executive director, do you mean
8 Mr. Hicks, and how did he become an executive
9 director?

10 A. I think the terminology should be executive manager.

11 BY MR. WYRICK:

12 Q. But your understanding of best practices nationwide as
13 far as civilian oversight is that the term executive
14 director or board secretary is used interchangeably,
15 correct?

16 A. That's correct.

17 Q. Okay. And getting back to the issue of Mr. Brown, how
18 long has Mr. Brown worked for the BOPC as far as you
19 know?

20 A. I think about over ten years.

21 Q. Okay. Was he working there when you were there in
22 2003?

23 A. No, no.

1 Q. Do you know how he was brought into his capacity in
2 working for the Board of Police Commissioners?

3 A. He was hired by the Board of Police Commissioners.

4 Q. Do you know around what year that would have been?

5 A. It would have been the one -- the Mayor Kilpatrick
6 administration. I think Commissioner Blackwell was
7 the chair at the time he was hired, because
8 Commissioner Holley was on the board at the time. He
9 informed me that those steps were taken.

10 Q. So that would have been maybe mid 2000's?

11 A. No, no, I retired in 2003. He was not on board. So
12 he came there after.

13 Q. Well, mid 2000's could be after 2003.

14 A. Yes.

15 Q. Because I think Kilpatrick stopped being mayor around
16 2008 if I recall.

17 A. Yes. He was the mayor when I retired.

18 Q. So correct me if I'm wrong, you stated earlier that
19 Mr. Brown was not unappointed because of this IG
20 investigation, correct?

21 A. It had no bearing whatsoever. In fact, that process
22 was already underway before the IG was involved
23 through Commissioner Brown communication.

1 Q. And you were asked questions by Mr. Marable about the
2 appointed and elected position. Prior to 2012 none of
3 the Board of Police Commissioners were elected, were
4 they?

5 A. No.

6 Q. And under the city charter, if an elected commissioner
7 leaves or resigns for some reason, how is that person
8 replaced?

9 A. By city charter the mayor has an opportunity to
10 appoint, and that took place. I witnessed that in
11 2014, Wendell Byrd was elected, and he ran for the
12 state rep, he got elected, and Commissioner Hayward
13 Van was appointed to his position.

14 Q. By who?

15 A. That would be Mayor Duggan.

16 Q. More recently than that, when Commissioner Mallett was
17 elected last year, did he leave?

18 A. Yes.

19 Q. And how was he replaced?

20 A. He was replaced by Commissioner Griffie.

21 Q. And was she elected?

22 A. No, she was not.

23 Q. So as the board is currently constituted, there are

1 actually six people elected, correct?

2 A. That's correct.

3 Q. And five that were appointed by Mayor Duggan?

4 A. That's correct.

5 Q. When you said that in your opinion Mr. Brown, and I'm
6 trying to find the exact terminology you used, did not
7 have the duty capacity for the position, how long had
8 he been in that position prior to you all making that
9 assessment?

10 A. Commissioner Brown was elected in 2000 -- I mean, '17.
11 He started serving in 2018. And this took place in
12 2018 later on. Is that the dates you have?

13 Q. When was Robert Brown promoted, if you recall, what
14 time frame?

15 A. 2017. I'm thinking August or somewhere in that time.

16 Q. Okay. So if I'm doing my math correctly, Mr. Robert
17 Brown had been functioning in that capacity at least
18 five or six months before Commissioner Brown was
19 elected, correct?

20 A. That's correct.

21 Q. And Commissioner Brown was the one that more or less
22 started criticizing him, correct?

23 A. Yes.

1 Q. And were there things such as Mr. Brown misspelling
2 things?

3 A. Well, let's sort of correct the record. He was not
4 critical of Mr. Brown. He was critical of the board's
5 secretary.

6 Q. Okay. So this was part of his criticism of the board
7 secretary, this appointment -- I mean, this promotion?

8 A. This process, right, correct.

9 Q. So based upon your collectively assessing Mr. Robert
10 Brown, then a decision was made to unappoint him?

11 A. That's correct.

12 Q. Because of his duty capacity, that's the term you
13 used?

14 A. That's correct.

15 MR. WYRICK: No further questions.

16 MS. HA: Did the Board take any
17 disciplinary action against Mr. Hicks for putting the
18 Board in that situation?

19 A. No, we haven't taken any action. We felt as though he
20 had the authority, but there was some discrepancy how
21 that process -- communication and the whole process
22 took place. But the bottom line is we felt as though
23 Mr. Brown did not have the expertise and the

1 credentials. The main thing was the expertise.

2 MS. HA: I see.

3 BY MR. WYRICK:

4 Q. But did he have to be in that position for you to make
5 that assessment?

6 A. Yes, yes.

7 Q. So a lot of it was based upon his job performance,
8 correct?

9 A. As chair and vice chair I served that type of
10 interaction, because primarily you work in that
11 capacity, but closely with the staff, you know.

12 Q. So this isn't a situation where if Mr. Hicks came to
13 the Board without that assessment, you would have had
14 any objection to it?

15 A. No.

16 Q. You wouldn't have objected to his promotion?

17 A. Maybe on the criteria, yes. I felt, you know, perhaps
18 he did not have the credentials, you know, that we
19 normally utilize in terms of college degree, you know,
20 working in that capacity. And I think that if that
21 had been the old process, I think perhaps we might
22 have given him some consideration of his longevity,
23 but not in the capacity -- as you well know, you don't

1 go just because you have longevity or seniority. You
2 have to expertise or some type of exam or interview
3 process.

4 Q. But for a civil service position, it doesn't require
5 an exam, does it?

6 A. No.

7 Q. So he wouldn't have had to take an exam?

8 A. No, no, not --

9 Q. And when you say longevity, is he the most senior
10 board employee?

11 A. Yes. Well, in -- for the board staff. We only had --
12 yes, he would be the most senior person. We only had
13 two, that was the board secretary and Mr. Brown.

14 Q. Okay. And he preceded the board secretary? Mr. Brown
15 was working there before Mr. Hicks?

16 A. Yes.

17 MR. WYRICK: No further questions.

18 MS. HA: Do you have any plans to hire an
19 executive manager for the administration?

20 A. Not at this time. We -- when I arrived in 2014, we
21 only had a board secretary and administrative
22 assistant. So the last two years we have gained
23 staff. We had an attorney -- I take that back, we had

1 an attorney. But the other issue that -- we were
2 dealing with the budget, and all the issues that were
3 outlined by charter, we did not have the staff. We
4 could not even control our own budget, it was
5 submerged in DPD, and we could not control, we could
6 not manage the responsibility by this charter given us
7 in 2012. So therefore when we hired Mr. Hicks, we
8 wanted to rectify, to -- as you well know, that
9 department is rather progressive in terms of
10 administration.

11 Chief Grigg is -- it was some instance that
12 he would hire under the emergency manager without
13 board supervision, and sometimes he act as though, you
14 know, we do not exist in that formal process. I mean,
15 it's clear, we have indicated that on the record, that
16 we had to fight to get out from under the emergency
17 manager, and we had to have a proper staff to address
18 that. When you have five commissioners and you're all
19 appointed by one entity, there is less disruption in
20 terms of how -- when you have an election process,
21 it's a whole different ball game. I mean, you're
22 bringing people, including myself, that is elected by
23 the people in terms of awesome job opportunities, and

1 there is no SOP of how you should operate. That's why
2 we -- we didn't have bylaws when I arrived. We maybe
3 had in the past, but basically you've got a new
4 charter -- I mean, it gives us -- and the issue that
5 we're dealing with coming off from the justice
6 department with -- under that type of scrutiny, the
7 emergency manager, the justice department, all these
8 things was before us, and we're sitting there
9 twiddling our thumbs and not having authority.

10 So therefore, all those issues that we were
11 trying to address in a short period of time. And
12 that's why I went in for re-election, because the work
13 was unfinished, and to bring on somebody else that is
14 totally different -- we were very fortunate Lisa
15 Carter returned. Prior to that -- I am more incited
16 by the appointed individuals appointed by Mayor
17 Duggan. They bring certain expertise, they bring
18 certain mission. Clearly they've been vetted, they
19 understand their role working for oversight. When you
20 have an election, you have an idea, but they don't
21 know what they're getting into. It's really -- I
22 wouldn't say it's a part-time, but it's a full-time
23 responsibility, and I have witnessed -- I have worked

1 with this board, the Board of Police Commissioners
2 since 1974 lobbying.

3 So it's awesome. We have made some
4 tremendous transition in terms of how we function as a
5 board and to try to get eleven people involved, six
6 folks that understand the issue, it's a challenge.
7 How do you train people. How did you give people
8 insight. Well, Chief Grigg has got a tremendous
9 staff. And I indicated why do we need a staff. Well,
10 look at the mayor's staff. They have a tremendous
11 staff. So how can you function with 1.5 persons with
12 all the issues that you're dealing with outlined in
13 the charter.

14 So that's why we're trying to take the
15 steps that was appropriate to address that, you know.
16 And it's been a learning process. You know, but I
17 have learned a whole lot. It's a different level.
18 All of a sudden like you go from lieutenant to deputy
19 chief. It's a whole different ball game, or
20 commander. It's an awesome responsibility. I didn't
21 serve in that capacity. But in 2013, '14 we had very
22 experienced people who had law enforcement background
23 and understood how the system worked. So we had a

1 smooth transition. Then you -- the next wave, I don't
2 know what's going to come after us, you know. So it's
3 a challenge. Now, understanding the issue, you're not
4 here for political, you're here to try the serve the
5 people in a very critical issue of public safety. So
6 that's why I'm committed, and I've been committed for
7 all of my entire police career to police reform, and
8 that's my statement and I'll stick to it.

9 BY MR. WYRICK:

10 Q. Just two followup questions. In 2014 who was the
11 board secretary?

12 A. George Anthony.

13 Q. And when you say the position is not a part-time job,
14 you don't get a paycheck, do you?

15 A. We get a modest stipend.

16 Q. And what is that for? It's like a reimbursement?

17 A. It's supposed to cover some of your expenses, but it
18 don't even touch our obligations that we have in terms
19 of parking, gas, activities. People assume like you
20 mentioned, assume you're an elected official, and
21 therefore you can afford the \$100 ticket to come to my
22 affair, or you can afford to come to my, you know,
23 blah, blah, blah. They assume that you are like a

1 Wayne County Commissioner or like the council or state
2 rep. We are not in that vein, but there is
3 obligations as elected officials that people feel as
4 though we're obligated to. We cannot by budget spend
5 any money in any of those areas. So we don't have
6 that luxury.

7 MR. WYRICK: No further questions.

8 MR. MARABLE: So I just want to delve into
9 and just get the time line of the de-appointment of
10 Mr. Brown. And so Mr. Hicks would be his direct
11 supervisor?

12 A. That's correct.

13 MR. MARABLE: So was it a matter with board
14 members where you and the other board members were
15 dissatisfied with his job performance, or did
16 Mr. Hicks come to you all and say that he's not
17 working out, we need to make some changes?

18 A. No, we made that decision based on our observation and
19 interaction with Mr. Brown. Mr. Hicks did not make
20 that type of recommendation. Mr. Hicks -- in fact he
21 was satisfied with his work performance, but we were
22 as you can tell.

23 MR. MARABLE: Okay.

1 BY MR. WYRICK:

2 Q. And just to elaborate, why weren't you satisfied?

3 A. It did not -- his work ethic -- I mean, his work ethic
4 is good, you know. But as far as the duties and
5 responsibilities of executive, he did not measure of
6 up to that type of job description. We felt as though
7 he was still functioning in the same capacity, which
8 he was doing a great job. But as far as an executive
9 level, he did not have that skill set.

10 Q. So when you say his work ethics are good, what do you
11 mean by that?

12 A. Work ethics, I mean, he was a reliable employee, he
13 had loyalty and carried out the duties and
14 responsibility of Mr. Hicks. But in terms of what we
15 observed, we were not satisfied with certain reports,
16 et cetera, et cetera, in terms of if this person is
17 functioning in that capacity, he should be given that
18 task, but quite obviously he could not handle those
19 tasks that we designated or Mr. Hicks designated. We
20 were not satisfied with the results.

21 Q. But would it be fair to say that Commissioner Darryl
22 Brown was the person who more or less brought this to
23 everybody else's attention?

1 A. No, Mr. Brown -- Commissioner Brown did not have that
2 interaction in that sense.

3 MR. WYRICK: No further questions.

4 MS. HA: Nothing further.

5 MS. BENTLEY: No.

6 MR. MARABLE: I'm good.

7 MS. HA: Thank you very much. It is 11:15
8 right now, and we will close our administrative
9 hearing for Commissioner Bell. Thank you, Commission
10 Bell.

11 MR. BELL: Thank you.

12 (Hearing concluded at 11:15 a.m.)

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C E R T I F I C A T E

I, Diane L. Szach, do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the above-entitled matter at the time and place hereinbefore set forth, and I do further certify that the foregoing transcript, consisting of (XX) pages, is a true and correct transcript of my said stenograph notes.

---Diane L. Szach---

Diane L. Szach, CSR-3170
(Acting in Wayne County)
Oakland County, Michigan
My Commission Expires: 3/9/24

CITY OF DETROIT
OFFICE OF THE INSPECTOR GENERAL

In the Matter of:

OIG Case No. 2018-0050-INV

The proceedings had and testimony taken in the above-entitled matter before me, Deborah A. Elliott, CSR0129, notary public for the County of Oakland, acting in Wayne County, State of Michigan, at 65 Cadillac Square, Suite 3210, Detroit, Michigan on Tuesday, September 17, 2019 at 10:00 a.m.

PRESENT:

OFFICE OF INSPECTOR GENERAL
65 Cadillac Square, Suite 3210
Detroit, Michigan 48226
(By Ellen Ha, Kamau Marable, Jennifer Bentley, Esq.,
and Jacqueline Hendricks-Moore, Investigator)

Appearing on behalf of OIG

MR. JERMAINE A. WYRICK (P54352)
Board of Police Commissioners
1301 3rd St., Suite 767
Detroit, Michigan 48226-2503

Appearing on behalf of BOPC, Gertrude Faye Johnson

ALSO PRESENT:
Gertrude Faye Johnson

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1 Detroit, Michigan
2 September 17, 2019
3 10:05 a.m.

4 - - -

5 MS. HA: Today is Tuesday, September 17th.
6 It is five minutes after ten. We are here for an
7 administrative hearing for Miss Gertrude Faye Johnson who
8 is currently serving as the City of Detroit Board of
9 Police Commissioners, Executive Manager for Police
10 Fiscal, pertaining to the Office of Inspector General or
11 OIG file number 18-0050-INV. We are holding this hearing
12 today pursuant to a request made by Miss Johnson through
13 the BOPC's attorney, Jermaine Wyrick, in accordance with
14 Section 7.5-311 of the 2012 Charter of the City of
15 Detroit and pursuant to a written notice sent to
16 Mr. Wyrick for Miss Johnson.

17 So that there is no confusion and the
18 record is clear on this matter, on July 9th, 2019 the
19 City of Detroit OIG issued a draft report of its findings
20 based on its investigation pertaining to the City of
21 Detroit Board of Police Commissioners heretofore to be
22 referred as the BOPC or the Board. The report was issued
23 to each member of the Board including Miss Johnson and

1 Mr. Wyrick who are here today. In the draft report the
2 OIG made several critical findings against the Board and
3 certain individuals including Miss Johnson. The report
4 in particular found that when Miss Johnson was
5 interviewed by the OIG she provided false and misleading
6 testimony that were contrary to the emails exchanged
7 between herself and Mr. Gregory Hicks, the Board's
8 Secretary. Therefore, we recommended the Board to take
9 certain actions against Miss Johnson. As such we are
10 here to address this issue. Pursuant to Rule 3 of the
11 OIG's Administrative Hearing Rules the purpose of this
12 hearing is to provide Miss Johnson with an opportunity to
13 present testimony and any supporting information or
14 records in response to the OIG's findings against her.

15 I would like to remind everyone that this
16 is not a Court of Law. We do not make legal
17 determination. The OIG is required under the Charter to
18 make report of its factual findings and recommendations
19 based on its findings. This is not an adversarial
20 hearing. As such the hearing will be conducted in the
21 manner in the OIG's Administrative Hearing Rules, a copy
22 of which was provided to Mr. Wyrick and to Miss Johnson
23 prior to today's hearing. The hearing is not a forum for

1 the OIG to present its case, evidence or witnesses. The
2 purpose of this hearing is for Miss Johnson to provide
3 the OIG with any additional or new testimony or evidence
4 which would show the OIG's findings against Miss Johnson
5 in particular as outlined in the draft report are
6 incorrect or inaccurate. Upon completion of this
7 administrative hearing, unless we require additional
8 information based on what is presented here today, the
9 OIG will conclude the investigation and close the record
10 pertaining to Miss Johnson on this matter. Thereafter,
11 in accordance with the Administrative Hearing Rules the
12 OIG will either revise, amend and/or supplement its
13 report of findings. Otherwise, we will simply supplement
14 our draft report with a copy of the BOPC written
15 responses and a copy of this administrative hearing
16 transcript at which time our report will be made final.

17 May I have everyone's appearances. I'll
18 start, Ellen Ha, Inspector General.

19 MS. HENDRICKS-MOORE: Jacqueline
20 Hendricks-Moore, investigator for Office of Inspector
21 General.

22 MR. MARABLE: Kamau Marable, Deputy
23 Inspector General.

1 MS. BENTLEY: Jennifer Bentley, attorney
2 for the Inspector General.

3 MS. JOHNSON: Gertrude Faye Johnson, Board
4 Fiscal Manager.

5 MR. WYRICK: Jermaine Wyrick, Board
6 attorney.

7 MS. HA: Would you swear in the witness,
8 please.

9 G E R T R U D E F A Y E J O H N S O N
10 after being sworn by the notary public testified as
11 follows:

12 BY MS. HA:

13 Q Before we begin, Miss Johnson, I would like to confirm
14 four things on the record. First, I would like to ask
15 you that is it your understanding that Mr. Wyrick is here
16 to represent you?

17 A Yes.

18 Q You also understand that he is the attorney for the BOPC?

19 A Yes.

20 Q You understand that in our report the OIG is recommending
21 that the Board, the Body that Mr. Wyrick also represents,
22 take appropriate action to issue a discipline?

23 A Yes.

1 Q Okay. So you understand that there may be a conflict of
2 interest and you are waiving that conflict, am I correct?

3 A Yes.

4 MS. HA: Thank you.

5 MR. WYRICK: Just by way of opening and
6 introduction, as I stated yesterday for this to be an
7 administrative hearing the governing case law is a case
8 called Pickering out of the United States Supreme Court
9 in 1968. The Pickering case requires that administrative
10 hearing's competent material of substantial evidence will
11 be used. We strongly submit on behalf of Miss Johnson,
12 and it's an honor to represent her this morning, that
13 there's not competent material of substantial information
14 for the OIG to actually continue on with the written
15 report as written; and we respectfully request the OIG
16 revise and amend its report in light of the testimony
17 that it hears today.

18 Very specifically by way of background
19 Miss Johnson is a native Detroiter. She is a graduate of
20 Cass Tech High School, University of Detroit Mercy. She
21 has been an accountant for a long time. She's been an
22 accountant since 1984 which is 35 years; a lot of that
23 has been in the City of Detroit, but she's also

1 distinguished herself outside the City of Detroit. She
2 was working in Wisconsin prior to coming back to the
3 Board of Police Commission here in 2016 where she was
4 actually doing what a lot of us have to do, take care of
5 an elderly parent. Prior to working in Wisconsin for
6 several years she actually worked in Florida as well
7 where she also distinguished herself. One of the reasons
8 that I'm proud to be sitting next to her is that she has
9 an impeccable reputation of honesty and integrity. She
10 has distinguished herself with her zeal, her diligence in
11 doing her work not only as a Fiscal Manager of the BOPC
12 since 2016, but prior to that in various capacities
13 including at one time being self-employed. The
14 controversy in question here is as it pertains to the
15 Board's Secretary that directly Mr. Gregory, she actually
16 met Mr. Hicks way back. Detroit is a small town as you
17 may all know. She met Mr. Hicks way back in the early
18 1980s when she was working for the Barrow law firm which
19 is actually one of the cases that I referred to yesterday
20 and not as it relates to Miss Johnson, but a case, the
21 gentleman that owns the Barrow law firm actually filed
22 against the City of Detroit. She was a CPA there. At
23 the time Mr. Hicks was actually working for the Urban

1 League.

2 She respectfully submits this morning that
3 she in no way made any false statement whatsoever as
4 pertains to this OIG investigation. Part of her
5 impeccable reputation, part of her commitment as well as
6 integrity encompasses the fact that, and this is one of
7 the things that she educated me on, accountants adhere to
8 a code called the AICPA which is the Code of Professional
9 Conduct for Accountants that she's always adhered to for
10 the past 35 years in her various capacities as
11 accountant. It's a national code. It's not just one
12 code that's here unique to the State of Michigan, but
13 it's for accountants nationwide. She's a certified
14 public accountant which the Board is actually proud of as
15 well. By virtue of the fact that she's a certified
16 public accountant that gives her certain skill set for
17 the Board of Police Commission that the Board when
18 Mr. Hicks actually started looking for people to hire
19 gave the Board a certain advantage in that with her being
20 a CPA the Board was looking for someone who had the type
21 of auditing skills and experience that she has that I
22 think actually goes back to the early 1980s that I made
23 reference to as well.

1 The specific section of the Charter from
2 what I understand that's in controversy here is Section
3 7.5-310 which pertains to the OIG which basically says
4 whether or not a person withholds documents or withholds
5 testimony. She did neither. She respectfully submits
6 that when she found out about this opportunity from
7 Mr. Gregory Hicks -- who she had not had any contact with
8 in quite some time. She knew Mr. Hicks basically from
9 the City of Detroit. Since she left the City of Detroit
10 in 2005 she has lived in two different states. She has
11 first lived in Florida. She then moved to Wisconsin.
12 When she left the City of Detroit in 2005 she didn't
13 really have any contact with Mr. Hicks whatsoever, and by
14 that I mean telephone or any way. From what I understand
15 she found out about this opportunity, I'm sure she'll
16 correct me if I'm wrong, by an email Mr. Hicks sent
17 because I don't even think that he had a phone number for
18 her. When he gave her information about this opportunity
19 with the type of cordial professional relationship that
20 they had, I emphasize not a personal one; they were
21 professional colleagues and acquaintances from various
22 capacities both in the City and prior to the City that I
23 referenced earlier. He of course informed her of this

1 opportunity. Once he informed her of this opportunity,
2 him being the gentleman he is, she being the lady that
3 she is, was there some discussion back and forth with the
4 emails that you make reference to, of course there was
5 because Mr. Hicks was trying to put the Board in as good
6 of a position in terms of finding candidates. The
7 candidate search from what I understand was narrowed to
8 just Miss Faye Johnson. He was looking out for various
9 people. By the same token her job opportunities were not
10 just limited to the Detroit Board of Police Commission
11 from what I understand. She can speak to this herself.
12 She was also exploring employment opportunities in Tampa,
13 Florida as well.

14 And she'll correct me if I'm wrong, this
15 is what I try not to be, from what I understand did Mr.
16 Hicks give some input in terms of her resume? Yes, he
17 did. Did he give her some feedback in terms of whether
18 or not something might have been spelled wrong or font
19 not what it should be? Yes, he did give her feedback
20 into that. Did he write her resume? No, he didn't write
21 her resume because him with not having any contact with
22 her between 2005 through 2016 which was 11 year period he
23 knew nothing whatsoever about her background during that

1 time period during 11 year time frame where she lived not
2 only in Florida, but she lived in Wisconsin as well which
3 is actually where she was prior to coming back to
4 Detroit. So based upon that she did not violate the City
5 Charter as it pertains to this OIG. She did not withhold
6 any documents nor did she withhold testimony. She
7 testified honestly as she's always done. She's never
8 been disciplined on any type of professional capacity in
9 the 35 years that she's been an accountant. She takes
10 quite exception and umbrage even in terms of being
11 castigated this way, which she can speak to as well.
12 With that I'll be asking the questions.

EXAMINATION

BY MR. WYRICK:

Q State your full name for the record.

A Gertrude Faye Johnson.

Q What is your educational background, Miss Johnson?

A As you stated I finished my last year of high school at
Cass Tech, then I went on and attended University of
Detroit where I obtained my Bachelor with a major in
accounting.Q As we sit here today you're actually considered a
certified public accountant?

1 A Yes.

2 Q Is there any additional educational attainments or
3 qualifications that you have to go through once you
4 graduated from the University of Detroit to become a
5 certified public accountant?

6 A To be certified at that time, probably still is, you have
7 to graduate from college, number one, because you have to
8 have a certain number of hours of accounting. Also you
9 had to have passed a two and a half day exam which they,
10 the AICPA the State of Michigan, offered to anyone, which
11 I took that exam, but you also had at that time you also
12 had to have only public accounting experience in that
13 realm. So after college I went to work for Barrow
14 Aldridge & Company which was a CPA firm and worked as a
15 -- that's where I garnered my experience in the audit and
16 accounting field.

17 Q How long did you work there?

18 A I think I was there five years. And you had to have two
19 years of experience in order to obtain your CPA besides
20 passing the exam.

21 Q When you say five years do you know what years of time
22 frame that would have been or an estimate?

23 A Graduated from college --

1 Q You graduated from college in '84?

2 A Yeah, I graduated from college in '79 actually.

3 Q Seventy-nine?

4 A Yeah. I believe, I'm not sure.

5 Q That's from the University of Detroit?

6 A Yes, University of Detroit Mercy, well not Mercy then but
7 University of Detroit.

8 Q Do you recall when you passed that two and a half day
9 exam you made reference to?

10 A I obtained my certification I believe it was 1984. So
11 between -- I guess I went to Barrow in early 80's because
12 I had to have experience in order to obtain my
13 certification.

14 Q At certain points the Code of Ethics that I made
15 reference to -- and perhaps we can have this marked.
16 That's for the court reporter.

17 (Reporter marked Exhibit 1.)

18 Q In front of you is marked Exhibit 1 is the AI --

19 A -- CPA.

20 Q -- AICPA Code of Conduct, are you familiar with that?

21 A Yes.

22 Q Is the exhibit a fair and accurate representation of the
23 AICPA Code of Conduct?

1 A Yes.

2 MR. WYRICK: I would move for its
3 admission as Exhibit 1.

4 MS. BENTLEY: Where did this come from?
5 Is this in a book?

6 MR. WYRICK: This is the Code of Conduct
7 for accountants nationwide.

8 THE WITNESS: You can get it off the
9 website.

10 MS. HA: For the record can you define
11 what AICPA stands for?

12 THE WITNESS: American Institute of
13 Certified Public Accountants.

14 MS. HA: Thank you.

15 BY MR. WYRICK:

16 Q Very specifically when did that start being applicable to
17 you, if you recall?

18 A As soon as I started working for the CPA firm.

19 Q Would that have been 1979 or 1984 or somewhere in between
20 there?

21 A When I started with Barrow which would have been in --
22 well, if I didn't graduate till '79 it would be in the
23 eighties.

1 Q Why is that particular Code of Conduct relevant for
2 today's hearing?

3 A Well, you had to know all the rules and regulations just
4 in order to sit for the exam. So that was part of the
5 exam.

6 Q Okay. And does this Code of Conduct for CPAs require
7 such conduct on your behalf?

8 A Yes, any CPA.

9 Q Does this require certain conduct as far as honesty or
10 professional integrity?

11 A Yes.

12 Q Would that be something you would compromise or
13 jeopardize for the sake of these IG proceedings either
14 prior to or today?

15 A No.

16 Q Why not?

17 A Because it's a requirement of all CPAs. You have to know
18 them like the bible because you're dealing with in most
19 cases sensitive information. Anybody's financial
20 information is confidential.

21 Q Would it be fair to say that's more or less the ethical
22 code for certified public accountants?

23 A Yes. Even nowadays they require for anybody who wants to

1 practice, ethics is part of the requirement for CPAs now.

2 It wasn't back then, but it is now.

3 Q Okay. So that's something over the past 35 years you
4 always believed in adhering to?

5 A Absolutely, yes.

6 Q When you came here before today did you adhere to it
7 then?

8 A Yes.

9 Q During the course of your 35 year career have you ever
10 been disciplined?

11 A No.

12 Q Ever been suspended from a job?

13 A No.

14 Q Fired from a job?

15 A No.

16 Q At some point when you worked for the Barrow firm did you
17 meet a Gregory Hicks?

18 A He didn't work for the firm, no. I was what they refer
19 to as a financial auditor, and the firm would get
20 contracts with different companies that we would go out
21 and audit. The Urban League was one of the organizations
22 that was a client of the firm.

23 Q What was his relationship to the Urban League?

1 A I don't remember his exact title, but he was in charge of
2 overseeing the audit.

3 Q Was he an employee of the Urban League if you recall?

4 A Yes.

5 Q That's the capacity in which you met him?

6 A Yes.

7 Q Explain how going into recent years say 2016 you found
8 out about the employment opportunity with the Board of
9 Police Commissioners.

10 A Yes.

11 Q How did you find out about it?

12 A I'm sorry. He sent me an email and asked me if I might
13 be interested in coming back to Detroit.

14 Q When you say coming back to Detroit how long had you been
15 gone away from Detroit?

16 A Since 2005.

17 Q Why did you leave?

18 A Um, I had been laid off from Wayne County because at that
19 time I worked for -- before I left I worked for Wayne
20 County as an appointee. They were laying off people.
21 That's when the economy started tanking, and I thought
22 that would be -- I had no family here for all intents and
23 purposes, so most of my family had moved out of state.

1 So I thought that was the opportune time for me to make a
2 move if I was going to leave the state.

3 Q So it would be fair to say between 2005 and 2016, when
4 you came back, you weren't a resident of Detroit or the
5 State of Michigan?

6 A No, I wasn't.

7 Q Did you have -- that's in the 11 year time period. Did
8 you have any contact with Mr. Hicks during that time
9 frame if you recall?

10 A No.

11 Q Could you explain what your employment history was for
12 that time frame between 2005 and 2016?

13 A Well, I still worked as an accountant or an auditor. I
14 worked as an auditor and accountant all my career. So
15 those are the type of positions that I held during that
16 time.

17 Q Do you recall what states you lived in during that time
18 frame?

19 A Wisconsin, North Carolina and Florida.

20 MR. WYRICK: I'm actually going to hand
21 you what I'm going to mark as proposed Exhibit 2, your
22 resume, for the court reporter to mark it.

23 (Reporter marked Exhibit 2.)

1 MS. HA: Just for the record we're not
2 questioning the qualifications and the certification of
3 Miss Johnson.

4 MR. WYRICK: I know.

5 Q Looking at Exhibit 2, Miss Johnson, is that a fair and
6 accurate representation of your resume?

7 A Yes.

8 Q It reflects your background going back to when, if you
9 recall?

10 A In this case it went back to 2005.

11 Q So it does not reflect your work history say, for
12 instance, with Wayne County, correct?

13 A It does, Wayne County is on here, uh-huh.

14 Q How long did you work for Wayne County?

15 A I started there in 1999 and left in 2005.

16 Q At some point were you also employed with the City of
17 Detroit?

18 A I worked for the City prior to working for Wayne County.

19 Q So that would have been prior to 1999?

20 A Yes.

21 Q Do you know how long you worked for them?

22 A For the City?

23 Q Yeah.

1 A Almost 13 years.

2 Q So that employment would have started in the early
3 eighties, I mean not in the early eighties, in the
4 eighties?

5 A Yes.

6 Q You said until the year 1999. So if I'm doing my math
7 you started working for the City around 1986?

8 A Probably.

9 Q What capacities did you work for the City then?

10 A Both as an auditor, different positions as and auditor
11 and accountant.

12 Q Any discipline history there?

13 A No.

14 Q When you say you were laid off by Wayne County was that
15 because of budget cuts and things of that nature?

16 A Yes.

17 Q Not a reflection of any personal issues or anything of
18 that nature?

19 A No.

20 Q Does your resume reflect here work history beyond Wayne
21 County and the City of Detroit?

22 A Even the City of Detroit isn't on here. I tried to get
23 the resume condensed as possible.

1 Q What I mean by work history what I'm saying -- let me
2 rephrase it, I'll phrase it better. Does that resume
3 reflect your work history while you were out of state
4 between 2005 and 2016?

5 A Yes.

6 Q What type of work experiences did you have during that
7 time frame?

8 A Both audit and accounting.

9 Q Where?

10 A Various, various places.

11 Q What states if I may ask?

12 A Wisconsin I worked as an accountant, audit in Wisconsin,
13 Florida I was an auditor for a company.

14 Q How long did you work in Florida?

15 A Three or four years.

16 Q How long did you work in Wisconsin?

17 A Um, see when I left, I left Wisconsin the first time --
18 when I originally left Michigan I went to Wisconsin
19 because my dad and mom lived there. So I was there from
20 2005, maybe a couple years before I left there because I
21 really didn't care for Wisconsin. I went to North
22 Carolina for about a year, and was recruited to the job
23 in Florida from North Carolina.

1 Q What job were you recruited to in Florida?

2 A As an auditor.

3 Q For who?

4 A NCCI was the company.

5 Q NCI?

6 A NCCI.

7 Q It's on there (indicating)?

8 A Yes.

9 Q Any disciplinary issues or issues with your AICPA license
10 or standards in any of those capacities we've been
11 talking about?

12 A No.

13 Q Would it be fair to say that this resume was more or less
14 the resume that was put together for the current position
15 you occupy with the BOPC?

16 A Yes.

17 Q In order to apply for that position you more or less had
18 to write your resume?

19 A Well, I always have a resume. It's jut updated.

20 Q You had to update your resume?

21 A Right.

22 Q Could you explain the process you went through in terms
23 of updating your resume for your current position?

1 A Trying to consolidate it down to no more than hopefully a
2 couple pages because I do have a vast amount of
3 experience and just updating.

4 Q When you started that updating process were you living
5 here in the Detroit area or were you still in Wisconsin?

6 A I was still in Wisconsin because I tried to update my
7 resume after each position that I get so that I don't
8 forget.

9 Q When Mr. Hicks originally began communicating with you
10 about this opportunity you started updating your resume
11 in Wisconsin?

12 A Yes. It had already pretty much been updated because I
13 was looking outside of Wisconsin at that time.

14 Q So when you say you were looking outside of Wisconsin
15 were you looking for opportunities other than here in the
16 City of Detroit?

17 A Yes.

18 Q Where else were you looking for opportunities at?

19 A In Tampa.

20 Q Tampa, Florida?

21 A Yes.

22 Q When he initially reached out to you did you physically
23 see Mr. Hicks?

1 A No.

2 Q What kind of communication did you have with him?

3 A Just email.

4 Q Just email?

5 (Witness nodded her head.)

6 Q Is that a yes?

7 A Yes. I'm sorry.

8 Q Did you have any phone communication with him?

9 A I might have. It's been a long time because he did not
10 have my phone number which had changed a couple times
11 since I left Michigan.

12 Q Okay. So when you began updating your resume what did
13 that consist of?

14 A What my work experience had been.

15 Q When you say your work experience had been would that
16 have been like your recent work experience?

17 A Right. Like I said I keep a resume and just update it.

18 Q So is that something that you did alone or did you need
19 the assistance of someone else to update your work
20 history?

21 A Well, they can't because they don't know what I did. So
22 really it would only be the font. It might be -- even I
23 noticed after he brought it to my attention that some of

1 the font was different on pages, but little things; but
2 as far as the expanse of what I did nobody would know
3 that but me.

4 MS. HA: You just referenced he, you mean
5 Mr. Hicks?

6 THE WITNESS: Yes. Right.

7 BY MR. WYRICK:

8 Q When you say no one would know your work history, what do
9 you mean by that? Could you explain or elaborate on
10 that?

11 A No one would know where I worked or what tasks I
12 performed when I worked there.

13 Q So that would include Mr. Hicks?

14 A That would include him, yes.

15 Q Did Mr. Hicks have any input in terms of your resume as
16 it is presented today?

17 A He might have, and it's been so long I might not have --
18 might not remember everything; but like I said, he
19 noticed where the font might have been -- wasn't
20 consistent throughout primarily, you know, because at the
21 same time while I was responding to him, like I said I
22 was looking for jobs out of state anyway other than
23 Michigan. I was working during the day so it was, you

1 know, it was slow go so to speak.

2 Q So for a minute we can say Mr. Hicks noticed the font not
3 being consistent throughout. Would it be fair to say
4 that Mr. Hicks actually gave you feedback on your resume?

5 A I believe he did, yes. Like I say, it's been so long I
6 don't --

7 Q When you say it's been so long we're in 2019.

8 A We're in 2019.

9 Q You applied for this position in 2016?

10 A Yes.

11 Q So it's been three years. Do you recall any other input
12 that Mr. Hicks may have given you regarding your resume?

13 A Not really, you know, not that I can recall.

14 Q All right. Since you have been the Fiscal Manager for
15 the Detroit Board of Police Commissioners do you attend
16 any type of professional seminars or anything of that
17 nature?

18 A Just online, on occasion I do take some online classes
19 that the City offers.

20 Q Are you a member of NACOLE?

21 A Yes.

22 Q What does that stand for?

23 A National Association for Civilian Oversight of Law

1 Enforcement.

2 MR. WYRICK: If you would mark this.

3 (Reporter marked Exhibit 3.)

4 Q I have before you our proposed Exhibit 3. Is that a fair
5 and accurate representation of NACOLE Code of Ethics?

6 A Yes, it appears to be.

7 Q NACOLE is an organization that the BOPC is actually a
8 member of?

9 A Yes.

10 Q So as an employee of BOPC have you gone to NACOLE
11 conferences?

12 A I have.

13 Q When did you go to NACOLE conferences?

14 A There was one last year and 2017, 2018, I have been
15 to two.

16 Q You have attended NACOLE conferences in 2017 and 2018?

17 A Yes.

18 Q The Code of Ethics that we have marked as proposed
19 Exhibit 3 does that more or less parallel to the IACPA
20 Code of Ethics?

21 A Yes, some of it is, yes.

22 Q It requires that you adhere to certain standards of
23 personal integrity and honesty?

1 A Yes.

2 Q You adhere to those?

3 A Yes.

4 Q You adhered to those when you were here at the IG before?

5 A Yes.

6 Q And you adhere to them today?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yes.

10 Q Okay. Is there anything additional that you would like
11 to state at this time, Miss Johnson?

12 A Um, not really. I just don't -- I'm just surprised of
13 all this.

14 Q Okay.

15 A And I've never been through anything like this before in
16 my life. I don't think it's fair. I've only known Mr.
17 Hicks as a colleague over the years, nothing else. So
18 I'm glad he respects what I do, so he knows I'm
19 qualified. He knows that I enjoy what I do and that's
20 why I do it; and I make sure that I adhere to our ethics
21 that are, that are issued by any organization that
22 pertains to CPAs because I like being a CPA. I've been
23 one most of my career, if not all of my career really;

1 and I'm not going to do anything to jeopardize that.

2 MR. WYRICK: All right. No further
3 questions.

4 MS. HENDRICKS-MOORE: First of all, Miss
5 Johnson, I do want to thank you for coming in today and
6 clearing up some things.

7 EXAMINATION

8 BY MS. HENDRICKS-MOORE:

9 Q There are some questions I do have. There are some
10 questions I asked you when I interviewed you initially;
11 and it seems like you're doing some clarification for us
12 now which is great. I would like to start off by
13 clarifying some of the things that the attorney said.
14 The first question I do want to ask you is did you
15 receive some assistance from Mr. Hicks with your resume
16 for the Board of Police Commissioners?

17 A Um, I did ask him to take a look at my resume, yes.

18 Q Okay.

19 A Like I have from people over the years too.

20 Q So you received assistance from him, is that correct?

21 A Well, he looked to see if I had any misspellings or that
22 type of thing. Like I said, as far as content there's no
23 way that he would know what content because I know what

1 my career has been.

2 Q I understand that. But my question was did you receive
3 assistance from Mr. Hicks?

4 A Assistance in reviewing, yes.

5 Q Could you kindly elaborate a little more. I know your
6 attorney said some things; but verbally I would rather
7 hear it from you. Describe the assistance that you did
8 receive so we just kind of understand what Mr. Hicks did
9 for you.

10 A Um, I just sent it to him to review, if there might be
11 anything I might add because like I said I have a vast of
12 experience. I try to keep my resume down to at least a
13 couple pages. So of course that means some things are
14 going to be eliminated in the process; and I wanted to
15 ensure that I had enough reflected on my resume that
16 would reflect that I was the right person for the job.
17 So I didn't want to cut too much out.

18 Q That's understandable. You stated that Mr. Hicks did
19 reach out to you to let you know that he had a job
20 opening, is that correct?

21 A He said there might be a position opening up, yes.

22 Q Did he give you any information about the specific
23 position?

1 A Um, after a period of time I think it might have been two
2 or three months before the job had actually been posted,
3 so he knew I was looking elsewhere so I was keeping that
4 in mind that it might be coming up. So I wasn't sure if
5 the job was going to become available and that's why I
6 continued looking elsewhere.

7 Q Also I just wanted to ask did Mr. Hicks advise you that
8 he would be the one making the decision or have the
9 influence?

10 A No, not to my knowledge.

11 Q I think as I stated before I'm not really asking you
12 questions I don't know the answers to. You stated and we
13 can kind of go back to personal integrity, demonstrating
14 the highest standards of personal integrity --

15 MS. HA: Referring to?

16 BY MS. HENDRICKS-MOORE:

17 Q NACOLE. I'll just read it, "Demonstrate the highest
18 standards of personal integrity, commitment,
19 truthfulness, and fortitude in order to inspire trust
20 among your stakeholders and to set an example for
21 others." The reason I ask this is I truly at this point
22 want to make sure I get a clear understanding because
23 you're here because the report that we wrote you felt

1 there was some inaccuracies about the report. I want to
2 make sure that there is no inaccuracies at all. I want
3 to reach back out and say, did you have -- was it email
4 communication or whether it was verbal communication with
5 Mr. Hicks regarding the fact of the position that he gave
6 you information about, did he let you know or give you
7 any indication that he would be the one that would be
8 making the decision as to the hiring or he would have
9 some type of influence for the hiring of that position?

10 A Well, since he was I guess in charge (indicating)
11 so-to-speak of the office I'm assuming he would be one
12 who was bringing people in or selecting people to be
13 selected to be interviewed for the job. I didn't know if
14 he would be the sole person, you know, because I knew he
15 worked for a Board. So there was -- I thought the Board
16 as a whole (indicating) in conjunction with his
17 recommendation would be making the decision.

18 MS. BENTLEY: So was that your assumption
19 based on his position or did he tell you that?

20 THE WITNESS: I don't recall the email. I
21 didn't think it was his sole decision.

22 BY MS. HENDRICKS-MOORE:

23 Q You mentioned your qualifications being a CPA. In our

1 first interview you stated that you knew they were
2 looking for a CPA?

3 A Right.

4 Q Because you explained to me the specific qualifications
5 that a CPA has versus the regular. How did you know that
6 the Board was looking specifically for a CPA?

7 A As I indicated I think in the last interview that he said
8 he was looking for a CPA.

9 Q Did he at any point in time give you any communication
10 that you were the only one that as far as him wanting to
11 have a CPA that he was, in his job description he was
12 making changes for it to be, for the qualification to
13 request that the person that was hired be a CPA?

14 A He might have. I don't recall because I don't -- it's
15 been awhile. I know that he wanted a CPA because due to
16 the job that he was looking to fill, the position he was
17 looking to fill he wanted both an audit and accounting
18 background; and I have both. You don't find that in
19 non-CPAs.

20 Q You have extensive background We know you're qualified.

21 A Uh-huh. But I would never know if I'm the only one to
22 apply. I would have no knowledge of that.

23 Q Right, yeah, I knew that. I want to kind of clarify, and

1 maybe you can explain so that I can understand it.

2 During the first interview I did ask you if you had
3 received any assistance from Mr. Hicks, and you indicated
4 that you did not. So I'm just trying to understand when
5 I asked the question the first time versus the fact that
6 you being here this time and clarified for us that you
7 did receive assistance, what was your thinking back then
8 or why was your response different the first time
9 compared to this time. I just kind of want to have some
10 clarification because that's why we're here, and that
11 would just give us a better understanding as to why we
12 didn't get this information the first time and why we're
13 just now getting it.

14 A Because the first time I was here you indicated that he
15 wrote it, and he did not write my resume. Nobody can do
16 that. So there wasn't anything about any assistance. It
17 was implied or even said that he wrote my resume, and he
18 did not. That was the question, did he write my resume.
19 I said, no, because he did not.

20 Q So is that, are you saying -- is that your recollection
21 that verbally --

22 A Yes.

23 Q -- that was said to you or is that your interpretation

1 because the question was did he give you assistance, it
2 was not did he write your resume? I'm just trying to
3 understand.

4 A That's my recollection.

5 Q That's your recollection?

6 A Yes.

7 Q Okay. Did you think at that time you maybe should have
8 offered some clarification that he didn't write your
9 resume but you got some assistance from him?

10 A You still keep saying assistance, you know, he didn't
11 really assist. He reviewed it to see if the font was
12 correct, that type of thing, but as far as the content of
13 the resume, no.

14 Q But your attorney -- and I could be wrong and you let me
15 know. When your attorney first opened up and started
16 speaking he used the term assistance if I'm not mistaken
17 when he was describing --

18 MR. WYRICK: But the attorney also said
19 that she can correct me if I was wrong so --

20 BY MS. HENDRICKS-MOORE:

21 Q I'm just saying because I'm trying -- to me I think it's
22 a word game assistance versus saying somebody wrote or
23 did something other than nothing at all. You could have

1 clarified just as your attorney spoke and he told you if
2 you wanted to clarify what he was saying, you could have
3 clarified then. My thing is you could have done the same
4 thing in the first interview. You could have clarified,
5 oh no he did not. My interpretation is that you think he
6 did not write it. So I'm just trying to understand
7 because again the reason we're here is to make sure that
8 anything that we wrote the first time that might be
9 inaccurate that there's a clarification. I'm just trying
10 to make sure that we get that clarification this time
11 versus --

12 MR. WYRICK: I would just ask she is the
13 one testifying, not me. An opening statement is not
14 testimony of what she said.

15 BY MS. HENDRICKS-MOORE:

16 Q I'm just trying to understand. If you want to add
17 something.

18 A No. As I can recall to the best of my knowledge it was
19 said that he wrote -- you asked if he wrote my resume and
20 I said no.

21 MS. HA: Okay. Well, I have some
22 questions, Miss Johnson.

23 Q Did you have the opportunity to read and review our draft

1 report?

2 A I did.

3 Q Do you deny writing any emails to Mr. Hicks as referenced
4 in our draft report?

5 A No. We had emails back and forth periodically, yes.

6 Q You admit to receiving the emails from Mr. Hicks that we
7 referenced in our draft report, correct?

8 A Yes.

9 Q When you were interviewed here in our office on May 22nd,
10 '19 you adhered to the Rules of Professional Conduct
11 under AICPA, correct?

12 A Yes.

13 Q And same, you also adhered to the Code of Ethics by
14 NACOLE --

15 A Yes.

16 Q -- pertaining to your integrity, honesty? And your
17 testimony that you provided on May 22nd of this year in
18 our office was truthful, is that correct?

19 A Yes.

20 MS. HA: Okay. I don't have anything
21 further.

22 MS. BENTLEY: I don't have any questions.

23 MR. WYRICK: I just have one briefly.

1 Q Do you know why Mr. Hicks or the Board was looking for an
2 auditor?

3 A There was an area that they might, they were considering
4 was going to be up under them and it required -- it
5 didn't require. They wanted an auditor on staff just in
6 case that fell under the Board, which was the towing.

7 MR. WYRICK: No further questions. We're
8 done?

9 MR. MARABLE: Yes.


10 MS. HA: It is five minutes before eleven
11 a.m. We are closing the record for Miss Johnson's
12 administrative hearing. Thank you.

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C E R T I F I C A T E

I, Deborah A. Elliott, do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the above-entitled matter at the time and place hereinbefore set forth, and I do further certify that the foregoing transcript, consisting of (39) pages, is a true and correct transcript of my said stenograph notes.



Deborah A. Elliott, CSR0129
(Acting in Wayne County)
Oakland County, Michigan
My Commission Expires: 6/30/24

The **AICPA** Code of **Conduct** is based on six **principles**; (1) responsibilities (2) serve the public interest (3) integrity (4) objectivity and independence (5) due care and (6) scope and nature of services. These **principles** are required practices for all certified public accountants who are members of the **AICPA**.

he fundamental principles within the Code – integrity, objectivity, **professional** competence and due care, confidentiality and **professional** behavior – establish the **standard** of behavior expected of a **professional** accountant (PA) and it reflects the profession's recognition of its public interest responsibility.

RULES OF CONDUCT: The overarching purpose of the **AICPA** Code is to ensure that its members serve the interests of their clients with a high degree of integrity, technical competency, and diligence. It has several component parts: Members are obligated to act in the public interest.

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G. FAYE JOHNSON

Certified Public Accountant



PROFESSIONAL SUMMARY:

Certified Public Accountant with more than 15 years of experience as a registered public accountant. I have practiced in Michigan, Florida and Wisconsin. As a C.P.A., I adhere to the accounting profession's highest standard of professionalism. I am an aggressive senior financial manager skilled in public accounting, management and oversight analysis. My experiences include financial and performance auditing, management and analysis of charts of accounts, asset management, reconciliations of financial statements and periodic examinations of agency wide financial data to support senior management decision making and policy development. I am skilled in understanding and assessing various financial management programs used to track expenses and revenues, physical assets, inventory and personnel. I also have substantial experience in budgeting, financial forecasting and monitoring various agency budgets, federal and state grants and other resources. My experiences include several contracted engagements as a senior accountant, assistant controller and financial analyst. My responsibilities also required accessing various client systems including reviewing systems of internal controls. As a CPA, I prepared financial information, financial statements and performed operational and financial analysis on this information. My positions were to ensure the integrity of financial data by examining ledgers, receipts and expenditures, bank balances, records of physical assets owned or leased and many other records. I possess a strong background in Accounting and Auditing having begun my career in Public Accounting objectively obtaining and evaluating evidence regarding economic actions to ascertain the validity of those assertions and established criteria to communicate the results to interested users. For five years I operated a multi-engagement solo-practice firm with a wide client base from 2011-2016 (see below).

EDUCATION:

Bachelors of Business Administration, University of Detroit-Mercy, Detroit, Michigan

Major: Accounting

CERTIFICATIONS:

Certified Public Accountant, Michigan

Work Experience / Professional Contracted Engagements:

CITY OF DETROIT, Detroit, MI (2016 – Present)

Board of Police Commissioners

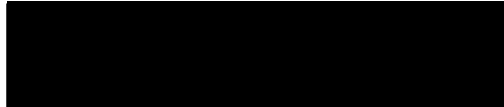
Executive Manager – Fiscal

- Establish operational plans and initiatives to meet the goals and objectives of the unit
- Implement and direct department plans, work programs, processes, procedures and policies
- Participate in internal audits and cost analysis
- Work with staff to develop and maintain high performance, customer service-oriented work environment that support City and Board mission strategic goals and core values
- Maintain a working knowledge of all city and departmental policies, procedures, rules, regulations, codes, guidelines and memorandums; ensure compliance and initiate any action necessary to correct deviations.
- Establish and maintain internal financial controls
- Maintain confidentiality of departmental documentation and information
- Perform other duties and responsibilities as assigned
- Conversant with GAAP and GAAS
- Proficient with Oracle, SAP and other brands of Accounting software

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G. FAYE JOHNSON

Certified Public Accountant



G. Faye Johnson & Associates - JOURNAL MEDIA GROUP, MILWAUKEE, WI. (March 2016 – October 2016), **SENIOR ACCOUNTANT** assigned to newly acquired media markets (approx. 200 accounts); **INTERFAITH, MILWAUKEE, WI.** (January 2016 – March 2016) **ASSISTANT CONTROLLER** prepare and record journal entries with appropriate supporting documentation in accordance with Governmental Accounting Standards Board (GASB) and Generally Accepted Accounting Principles (GAAP), analyzed financial transactions ensuring compliance with accounting standards, conducted various account reconciliations to ensure financial statements accurately reflected financial activity, wrote finance committee "Summary Statement" and documented procedures; **CATHOLIC CHARITIES, MILWAUKEE, WI.** (May 2015 – October 2015) **SENIOR ACCOUNTANT** researched and prepared journal entries with appropriate supporting documentation, performed various aspects of the month-end closing process within required deadlines, analyzed financial transactions ensuring compliance with accounting standards, assisted in implementing and maintaining internal financial controls and procedures; **SDC (SOCIAL DEVELOPMENT COMMISSION), Milwaukee, WI.** (June 2014 – February 2015) **SENIOR ACCOUNTANT** analyzed financial transactions ensuring compliance with accounting standards, assisted in implementing and maintaining internal financial controls procedures, assisted with the annual audit process; **US REPORTS, Colorado** (March 2014 – June 2014) **AUDITOR**, analyzed client information in the areas of underwriting and premium reporting; **KIMBERLY CLARK, Neenah, WI.** (September 2013 – December 2013) **FINANCIAL ANALYST** conducted quantitative analysis of information affecting overall capital budgets, Worked with various business group leaders to gather information needed to create analytical reports, assisted with identifying key spend areas needing further review and action thru data analysis, prepared all reports using SAP; **WISCONSIN BANK & TRUST, Sheboygan, WI.** (January 2013 - March 2013); **SENIOR ACCOUNTANT**; **HSBC BANK, Mettawa, IL.** (September 2012 – November 2012) **SENIOR ACCOUNTANT**; **KOHLER RENTAL POWER, Kohler, WI.** • May 2012 – August 2012 **FINANCIAL ANALYST.**

NCCI, Boca Raton, FL. (January 2008 - April 2011)

Compliance Auditor

Nation's largest provider of Workers Compensation Insurance Services

- Lead audit engagements from start to finish
- Presented internal control issues to management and supplied comprehensive recommendations to mitigate the associated risks
- Documented deficiencies in electronic data reporting to NCCI that resulted in revenue lost on contracts due to improper reporting of statistical data
- Initiated and developed a training manual for new hires and a new departmental procedures manual
- Analyzed information and reported on internal controls for financial reporting in the areas of Underwriting, Premium reporting and Loss prevention
- Identified audit issues and recommended process improvements
- Evaluated staff members after each audit

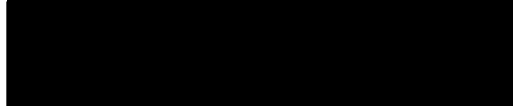
COUNTY OF WAYNE, Wayne County, MI (1999 – 2005)

Manager of Business Services, Department of Technology (2003-2005)

- Devised and integrated pivotal service and administrative procedures for the department, streamlining operations to maintain high levels of efficiency.
- Prepared and evaluated weekly income statements to conduct a regular comparative analysis against the department budget, recommending adjustments to implement more cost-effective allocations.
- Developed key programs to capture department financial information as well as transactions utilizing both J.D. Edwards and WebFocus applications.
- Managed activities of 2 staff members processing accounts payable accounts to ensure optimal accuracy and productivity.

G. FAYE JOHNSON

Certified Public Accountant



- Prepared and documented all accounts receivable billings and deposited all cash receipts as the designated Petty Cash Custodian to maintain updated files for current fiscal status.
- Performed monthly reviews of the general ledger as well as journal entries to effectively prepare financial statements and make adjusting entries as related to all County departments.
- Led divisional budget reviews and to create and present a comprehensive final budget in collaboration with the Chief Information Officer to the Chief Financial Officer and the Wayne County Commission for approval.
- Partnered with outside auditors to facilitate and organize year-end audits by compiling and preparing year-end accruals.
- Responsible for all general accounting functions and internal/external audit requests
- Managed accounting operations, year-end close, account reporting and reconciliations
- Guided accounts payable clerks, team of two
- Ensured complex general accounting functions, including preparation of journal entries, account analysis and reconciliations were completed timely
- Consulted with management to document and offset unusual expense variances in their respective areas
- Maintained confidential information, such as pay rates and pay grades
- Verified departmental controls were in compliance with established policies
- Monitored new trends and technologies as they applied to audit areas
- Planned and executed operational audits of various department areas using risk-based audit methodology

TECHNICAL SKILLS:

- Review Accounting systems and processes
- Variance Analysis
- US GAAP
- Balance Sheets
- Financial and Operational audits
- Review systems and processes
- GAAS
- GASB
- Income statements
- Financial Reporting & Modelling
- Familiar with SOX, MAR and SEC requirements

SOFTWARE SKILLS:

- Office Suite (Excel, Word, PowerPoint)
- Oracle
- Solomon
- Various Other Integrated software programs
- V Lookups
- QuickBooks
- SAP
- Hyperion
- JD Edwards
- Peachtree
- Pivot Tables

National Association for Civilian Oversight of Law Enforcement

Building Public Trust Through Law Enforcement Accountability and Transparency



NACOLE Code of Ethics

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NACOLE Code of Ethics™

Updated version adopted by the Board of Directors on August 12, 2015

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do

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not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including, but not limited to: age, ethnicity, citizenship, color, culture, race, disability, gender, gender identity, gender expression, housing status, marriage, mental health, nationality, religion, sexual orientation, socioeconomic status, or political beliefs, and all other protected classes.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

The following oversight agencies have adopted the NACOLE Code of Ethics:

- Citizen Oversight Board, City & County of Denver, CO
- Citizens' Law Enforcement Review Board, San Diego County, CA
- Citizens' Review Board on Police Practices, San Diego, CA
- Civilian Review Board, Eugene, OR
- Independent Review Panel, Miami, FL
- Milwaukee Fire and Police Commission, Milwaukee, WI
- Office of Citizen Complaints, San Francisco, CA
- Office of Community Complaints, Kansas City, MO
- Office of Police Complaints, Washington, D.C.
- Office of Professional Accountability, Seattle, WA
- Office of the Community Ombudsman, Boise, ID
- Office of the Independent Monitor, City & County of Denver, CO
- Office of the Independent Police Auditor, Bay Area Rapid Transit District, San Francisco, CA
- BART Police Citizen Review Board (BPCRB), San Francisco, CA
- Berkeley Police Review Commission, Berkeley, CA
- Office of the Independent Police Auditor, San Jose, CA
- Office of the Independent Police Monitor, New Orleans, LA
- Office of the Police Auditor, Eugene, OR
- Office of the Police Ombudsman, Spokane, WA
- Police Conduct Oversight Commission, Minneapolis, MN
- Richmond Police Commission, Richmond, CA
- Spokane County Sheriff Citizen Advisory and Review Board (CAB)
- Citizens' Police Review Board, Oakland, CA
- King County Office of Law Enforcement Oversight (OLEO)

- Citizen Complaint Authority, Cincinnati, OH

Please let us know if your agency has adopted the NACOLE Code of Ethics by contacting us at info@nacole.org or (317) 721-8133.

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CITY OF DETROIT
OFFICE OF THE INSPECTOR GENERAL

In the Matter of:

OIG Case No. 2018-0050-INV

The proceedings had and testimony taken in the above-entitled matter before me, Deborah A. Elliott, CSR0129, notary public for the County of Oakland, acting in Wayne County, State of Michigan, at 65 Cadillac Square, Suite 3210, Detroit, Michigan on Tuesday, September 17, 2019 at 1:00 p.m.

PRESENT:

Office of Inspector General
65 Cadillac Square, Suite 3210
Detroit, Michigan 48226

(By Ellen Ha, Kamau Marable, Jennifer Bentley, Attorney,
and Jacqueline Hendricks-Moore, Investigator)

Appearing on behalf of OIG

MR. CLAUDE M. CHAPMAN (P69850)
CLAUDE M. CHAPMAN & ASSOCIATES
18004 Roselawn St.
Detroit, Michigan 48221-2523

Appearing on behalf of Gregory Hicks

ALSO PRESENT:

Gregory Hicks
Jermaine Wyrick, Esq.

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WITNESS INDEX

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Gregory Hicks	7

EXHIBITS

EXHIBIT	IDENTIFICATION	PAGE
1	Concerns and Reactions dated September 14, 2019	9

1 Detroit, Michigan
2 September 17, 2019
3 1:00 p.m.

4 - - -

5 MS. HA: Today is Tuesday, September 17,
6 2019. It is about one o'clock. We are here at the
7 Office of Inspector General. This is an administrative
8 hearing for Gregory Hicks who is currently serving as the
9 Board's Secretary to the City of Detroit Board of Police
10 Commissioners pertaining to the Office of Inspector
11 General, file number 18-0050-INV.

12 We are currently holding this hearing
13 pursuant to a request by Mr. Hicks through his attorney,
14 Claude Chapman, in accordance with Section 7.5-311 of the
15 2012 Charter of the City of Detroit and pursuant to
16 written notice sent to Mr. Chapman for Mr. Hicks. So
17 that there is no confusion and the record is clear on
18 this matter, on July 9th, 2019 the City of Detroit OIG
19 issued a draft report of its findings based on its
20 investigation pertaining to the City of Detroit Board of
21 Police Commissioners' abuse of authority. Board of
22 Police Commissioners shall be referred to as BOPC or the
23 Board. The report was issued to each member of the Board

1 and a copy was also issued to Mr. Hicks. In the draft
2 report the OIG made several critical findings against the
3 Board and certain individuals including Mr. Hicks.
4 Specifically in the report we found (one) Mr. Hicks
5 wrongfully presented a memorandum to the Board whereby he
6 would be the only direct report to the Board and he would
7 assume the Board's Charter mandated authority to hire
8 BOPC staff. (Two) Mr. Hicks abused his authority in
9 appointment of all executive managers, fiscal policy and
10 administration without the Board's vote. And (three)
11 Mr. Hicks further provided misleading and false testimony
12 to the OIG when asked about his role in hiring and
13 appointing Ms. Johnson to the position of Executive
14 Manager for Fiscal thereby impeding the OIG's
15 investigation.

16 Therefore in the report we recommended
17 that the Board take appropriate disciplinary actions
18 against Mr. Hicks. As such we are here today to discuss
19 these specific findings against Mr. Hicks. Pursuant to
20 Rule 3 of the OIG Administrative Hearing Rules the
21 purpose of this hearing is to provide Mr. Hicks with an
22 opportunity to present testimony and any supporting
23 information and/or records in response to the OIG's

1 findings against him. The OIG's findings against
2 Mr. Hicks are outlined in the draft report as well as its
3 recommendation to the Board to take appropriate
4 disciplinary action against Mr. Hicks which is
5 specifically addressed in our draft report Page 17,
6 number five.

7 At this time I would like to remind
8 everyone this is not a Court of Law. We do not make
9 legal determination. The OIG is required under the
10 Charter to make report of its factual findings and make
11 recommendations based on its findings. This hearing is
12 not an adversarial process. As such the hearing will be
13 conducted in the manner pursuant to the OIG's
14 Administrative Hearing Rules, a copy of which was
15 provided to Mr. Chapman and Mr. Hicks prior to today's
16 hearing. The hearing is not a forum for the OIG to
17 present its case, evidence or witnesses. The purpose of
18 this hearing is simply for Mr. Hicks to provide the
19 Office of Inspector General with additional and/or new
20 testimony or evidence which would show the OIG's findings
21 against Mr. Hicks as outlined in the draft report are
22 inaccurate or incorrect. Upon termination of this
23 administrative hearing, unless we require additional

1 information based on what is presented here today, the
2 OIG will conclude the investigation and close the record
3 pertaining to Mr. Hicks on this matter. Thereafter, in
4 accordance with the Administrative Hearing Rules the OIG
5 will either revise, amend or supplement its report of
6 findings. Otherwise, we will simply supplement our draft
7 report with a copy of the BOPC written responses and a
8 copy this administrative hearing transcript at which time
9 our report will be made final.

10 At this time I would like appearances.
11 I'll go first, Ellen Ha, Inspector General.

12 MS. HENDRICKS-MOORE: Investigator
13 Jacqueline Hendricks-Moore.

14 MR. MARABLE: Kamau Marable, Deputy
15 Inspector General.

16 MS. BENTLEY: Jennifer Bentley, attorney
17 for the OIG.

18 MR. HICKS: Gregory Hicks, Executive
19 Secretary of the Detroit Police Board of Commissioners.

20 MR. CHAPMAN: Claude Chapman, attorney for
21 the Respondent, Gregory Hicks.

22 MR. WYRICK: Jermaine Wyrick, Board
23 attorney.

1 MS. HA: Mr. Hicks, I just need to --
2 oh, would you kindly swear in the witness.

3 G R E G O R Y H I C K S
4 after being sworn by the notary public testified as
5 follows:

6 MS. BENTLEY: Mr. Wyrick, are you here
7 as a witness? Will you also be testifying?

8 MR. WYRICK: No, I'm just observing.

9 EXAMINATION

10 BY MS. HA:

11 Q Mr. Hicks, I would like to ask you the following
12 questions. You understand that Mr. Wyrick is in your
13 administrative hearing, correct?

14 A Yes.

15 Q You understand that he's also the attorney for the BOPC
16 as he just stated?

17 A Yes.

18 Q Do you understand that our report, the OIG is
19 recommending the Board, the Body that Mr. Wyrick
20 represents, take appropriate action to discipline you?

21 A Yes.

22 Q You understand that then there may be a conflict of
23 interest and that you are waiving the conflict, correct?

1 A I don't understand that there is a conflict, but if there
2 is a conflict, yes, I would waive it.

3 MS. HA: Thank you. Mr. Chapman, the
4 floor is yours.

5 MR. CHAPMAN: I didn't hear you.

6 MS. HA: The floor is yours.

7 MR. CHAPMAN: Thank you. Based on the
8 documents that were provided to me I am suggesting that
9 we proceed on behalf of Mr. Hicks in this matter. We
10 will present you with what we would entitle Respondent's
11 Exhibit 1 which is the document that is compiled to
12 address the issues that were contained in your draft
13 report regarding Mr. Hicks. It is our intent to point to
14 some issues that are contained in this document, but we
15 will present the document in whole and then I will
16 address some issues as a result of your findings. And
17 these issues are addressed in the exhibit which we intend
18 to provide to you.

19 MS. HA: I have no problem or objection to
20 that.

21 MR. CHAPMAN: Okay. I didn't bring any
22 labels or anything.

23 MS. HA: Did you bring enough copies?

1 MR. CHAPMAN: Yes, we do.

2 THE WITNESS: We have four copies.

3 MR. CHAPMAN: We would entitle this
4 Respondent's Exhibit 1. It's entitled Concerns and
5 Reactions to the Office of the Inspector General's
6 Investigation on the abuse of authority of Mr. Gregory
7 Hicks, Secretary to the Board of the Detroit Police
8 Commission.

9 (Reporter marked Respondent's
10 Exhibit 1.)

11 MS. HA: The record should reflect that
12 OIG staff have all been provided with a copy of your
13 Exhibit 1. Thank you.

14 EXAMINATION

15 BY MR. CHAPMAN:

16 Q Just by way of background, and as briefly as possible
17 because I know most of this information is known to the
18 OIG staff, Mr. Hicks, how and where are you currently
19 employed?

20 A With the City of Detroit, Detroit Board of Police
21 Commissioners.

22 Q How long have you been employed in that capacity?

23 A I think I've been there about three, three and a half or

1 so years.

2 Q Now, just by way of experience, education-wise do you
3 have a high school diploma?

4 A Yes, I do.

5 Q From what school district?

6 A City of Detroit.

7 Q Do you have a Baccalaureate degree?

8 A Yes.

9 Q That is from where and what subject?

10 A Wayne State University, Public Administration.

11 Q Do you have a Master's degree, sir?

12 A Yes. I have two Master degrees, one in Urban Planning
13 from Wayne State University and the second in Sociology
14 from Wayne State University.

15 Q Do you have a degree that is higher than the Master's
16 degree?

17 A Yes. I also have a Ph.D. in Sociology from Wayne State
18 University.

19 Q As further background, have you ever been employed by a
20 municipality?

21 A Yes. Yes, I have.

22 Q That municipality was?

23 A I have been employed by the City of Detroit.

1 Q And in what capacity?

2 A I've had several employment stints with the City of
3 Detroit. The first one was with the Detroit City Council
4 with Detroit City Council Member Kenneth Vern Cockrel,
5 that would be Senior. Secondly, with the Honorable Mayor
6 of the City of Detroit Coleman A. Young as an appointee
7 working in originally it was Neighborhood City Service,
8 Neighborhood City Halls and then Director of the
9 Employment and Training Program of the City of Detroit,
10 and then I returned quasi City of Detroit when I was
11 Executive Director of the 2012 Charter Revision
12 Commission; and then finally my fourth stint with the
13 City of Detroit would be with the Board of Police
14 Commissioners as Executive Secretary.

15 Q Now, with regard to your position with the City of
16 Detroit are you familiar with the terms civil service or
17 civil servant and the term appointed?

18 A Yes.

19 Q All right. Now, with the civil service position it's
20 your understanding that that position is governed by and
21 derived from any instrument that governs the City of
22 Detroit?

23 A Yes. There's a body of Civil Service Rules which are

1 promulgated by the Civil Service Commission which relates
2 to civil service, that's as contrast against the rules
3 that relate to appointees. The primary difference one is
4 a competitive process and the other one is simply an
5 appointed process.

6 Q Now, in your term of employment with the City of Detroit
7 was that an appointed position or a civil service
8 position?

9 A Each of the positions that I've outlined in my previous
10 statements were as appointed positions.

11 Q Now with appointed position, are you familiar with the
12 term at will employee?

13 A Yes, I am.

14 Q An appointed position is an at will position?

15 A Yes.

16 Q Now, a civil service position, now do you derive any
17 rights to collective bargaining agreements usually?

18 A Yes, you do.

19 Q Those rights give you certain rights and
20 responsibilities?

21 A Yes.

22 Q Now, with an appointed position that would be an at
23 will position?

1 A Yes.

2 Q At will position would indicate that you don't have the
3 same rights as the civil service?

4 A That's right.

5 Q Have you worked with any other government agencies such
6 as accounting?

7 A Yes, I have.

8 Q With accounting was it an appointed position or civil
9 service?

10 A That was also appointed.

11 Q Would it be fair to say you are quite familiar with the
12 distinction between a appointed position and a civil
13 service position?

14 A Yes, I am.

15 Q Based on your education and experience you are able to
16 make the distinction between the two?

17 A I believe so.

18 Q All right. Now, at some point you became employed by the
19 Board of Police Commissioners, correct?

20 A Yes, I did.

21 Q Now, was it your understanding that that position was a
22 civil service position or an appointed position?

23 A It was an appointed position.

1 Q You reported directly to the Board of Police
2 Commissioners?

3 A That's correct.

4 Q In other words, for lack of a better term they would be
5 your bosses?

6 A That's correct.

7 Q Supervisors, so forth?

8 A Yes.

9 Q The Board of Police Commissioners would make assignments
10 to you, give you directives?

11 A Yes.

12 Q And so forth?

13 A Yes.

14 Q Now, when you became -- the position is Secretary to the
15 Board of Police Commissioners?

16 A Yes.

17 Q When you became Secretary to the Board of Police
18 Commissioners did you meet with them to discuss the
19 position?

20 A Yes, I did.

21 Q Were you given any directives with regard to this new
22 position that you have?

23 A Yes, on two occasions, first was in the interview process

1 leading up to the appointment and secondly on boarding
2 process, and they indicated the expectation was to come
3 into the office to assess the office and then to
4 delineate how it would move forward in implementing the
5 mandates that were associated with the Detroit City
6 Charter.

7 Q Now, as a result of that did you conduct a review of
8 operations of Board of Police Commissioners' offices?

9 A Yes, I did.

10 Q Did you make some assessment of the staffing needs to the
11 office?

12 A Yes, I did.

13 Q Did you make some assessment as to how the office should
14 be organized?

15 A Yes, I did.

16 Q And based on that assessment did you make any report to
17 the Board itself, Board of Police Commissioners?

18 A Yes. Yes, I did.

19 Q In that report did you make any recommendations?

20 A Yes, I did.

21 Q All right. Did you request that -- well, did you provide
22 copies of that report to each member of the Board?

23 A Yes. Copies of the report was given to the Board I

1 believe it was two weeks in advance of the date in which
2 it was scheduled for a discussion at the Board, and the
3 discussion at the Board took place --

4 Q Well, I'm going to get to that in a second.

5 A Yes, I did.

6 Q You provided the document?

7 A Yes.

8 Q You made recommendations?

9 A Yes.

10 Q You called for action by the Board on your
11 recommendations, correct?

12 A Yes.

13 Q All right. Now, I would like to direct your attention to
14 the document that we've described as Respondent's Exhibit
15 1 to I believe it's Page 4 I believe Attachment No. 1?

16 A Yes.

17 Q Now, you provided the Board with the document and you
18 requested authorization to conduct certain activities on
19 behalf of the Board, is that correct?

20 A Yes. Yes.

21 Q Some of those recommendations involved staffing?

22 A Yes.

23 Q Some of the recommendations involved how the office

1 should be organized?

2 A Yes.

3 Q And did you seek authority to implement what you saw as
4 needed for lack of a better term reforms in the operation
5 of the office?

6 A Yes, I did.

7 Q All right. Now, was there a meeting to discuss the
8 report that you have given and the request for
9 authorization to implement your recommendations?

10 A Yes.

11 Q And that -- did that occur in a regular meeting of the
12 Board of Police Commissioners?

13 A Yes, it did.

14 Q Was there a quorum?

15 A Yes, there was.

16 Q When we say a quorum how many members are on the Board?

17 A There are 11 members of the Board.

18 Q Now, this Board, very briefly this Board is an elected
19 Board?

20 A It's half elec -- well, not half. It is a mixture
21 between elected and appointed officials.

22 Q Okay. Are these full time positions?

23 A These are volunteer positions.

1 Q They are volunteer positions. So these individuals are
2 elected and appointed to oversee the operations would
3 that be of the Detroit Police Department?

4 A Yes.

5 Q But they are not full time positions?

6 A They are not employees of any --

7 Q They are not employees, they don't receive a salary?

8 A That's correct.

9 Q They derive their authority from what document?

10 A Detroit City Charter.

11 Q You mentioned previously that you had some
12 responsibilities in working on the present City Charter?

13 A Yes, the 2012 Charter.

14 Q Did you have some responsibilities in drafting that
15 Charter?

16 A Yes, I did.

17 Q Did you have some responsibilities -- now that Charter
18 had to be adopted by the population of the City of
19 Detroit?

20 A Yes. Yes, it was.

21 Q That takes place in a referendum, a vote?

22 A Yes. I don't remember if it was a general or primary
23 election; but it was an election of the City of Detroit

1 and it passed by some 60 percent I think of the City.

2 Q It's fair to say you had some responsibility in drafting
3 the Charter under which you performed your duties as
4 Secretary to the Board of Police Commissioners?

5 A Yes. Myself and Lamont Satchel were the two staff
6 persons who had direct responsibility of drafting the
7 Charter.

8 Q You are very familiar with the City Charter?

9 A Yes.

10 Q I'm not asking you to speculate, but would it be fair to
11 say the members of the Board understood your
12 participation in drafting the Charter?

13 A Yes.

14 Q You provided them with a resume when you were hired?

15 A That's correct.

16 Q At your interview was there a discussion about your role
17 in formulating or drafting the Charter?

18 A Yes. Yes.

19 Q So everyone was quite aware of that?

20 A Yes.

21 Q Now, when did this meeting of the Board occur to
22 deliberate your requests regarding adoption of your
23 recommendations?

1 A That would be June 30th, 2016.

2 Q It is your testimony that there was a quorum present?

3 A Yes. Right.

4 Q Now, getting -- now the Chair of the Board was who at
5 that time?

6 A At the meeting itself -- the Chair of the Board at that
7 time it was a handoff if I recall. The meeting likely
8 opened up with Lisa Carter chairing the meeting. Our
9 Bylaws require a change in leadership annually, and
10 probably it is likely at the end of the meeting a handoff
11 was to Chairman Bell.

12 Q All right. I briefly want to go through some of your
13 recommendations to the Board with regard to reconfiguring
14 the operations or reforming it. Now, you make
15 recommendations in your report regarding staffing?

16 A Yes.

17 Q I'll come back to this, but looking at the document you
18 recommended several positions be created?

19 A Yes.

20 Q Did you recommend that there would be individuals hired
21 in these positions?

22 A Yes.

23 Q Now, one of the positions you recommended the hiring of a

1 Fiscal Manager?

2 A Yes.

3 Q Right. And the hiring of the Fiscal Manager, that
4 recommendation was based on your analysis and review of
5 the fiscal operations of the Board of Police
6 Commissioners' staff?

7 A Yes.

8 Q Right. Now, you've outlined your considerable
9 educational background. Based on your education and your
10 experience did you feel competent to draft or recommend
11 the qualifications that an individual should have who
12 assumes the position of Fiscal Manager?

13 A Yes, I did.

14 Q Is one of those qualifications that the person have be a
15 certified public accountant?

16 A That was my judgment.

17 Q That was your judgment. In making that recommendation
18 you obviously have looked at the size and scope of the
19 budget?

20 A Yes.

21 Q How large was the budget?

22 A We were hovering at about \$3 million annually.

23 Q How many?

1 A Three million dollars annually.

2 Q It was based on your education and your experience that
3 this individual should be a certified public accountant,
4 right?

5 A Yes. Uh-huh.

6 Q You drafted for a posting or did you post the position?

7 A Yes, we did.

8 Q And you drafted the posting with the intent of an
9 individual among other qualifications at least being a
10 CPA?

11 A Yes.

12 Q Right. That was your judgment?

13 A Yes.

14 Q All right. Now, you also recommended a position of
15 Policy Manager and based on that you also drafted, not a
16 resume but a posting which outlined the qualifications
17 that that person should have?

18 A Yes.

19 Q Basically you were looking for someone who was a graduate
20 of a certified university?

21 A Yes.

22 Q Were you also looking for someone who's graduated from an
23 institution that was accredited by a regional

1 accreditation association?

2 A Yes.

3 Q Such as North Central?

4 A Yes.

5 Q So you drafted that, right?

6 A Yes.

7 Q You also recommended a Community Engagement Manager?

8 A Yes.

9 Q Now, that position primarily would serve what purpose and
10 would have what duties?

11 A This was an individual who would work more directly on
12 behalf of the Board with some of the community
13 stakeholders who tend to be part of the overall law
14 enforcement community. That would range from local
15 police community relations organizations that are
16 precinct based all the way over to communications if
17 necessary with the appropriate House or Senate committee
18 as we might be advocating for a particular position
19 around law enforcement activities and concerns for the
20 Board.

21 Q Would it be fair to say that you were primarily
22 interested in an individual that could be a liaison
23 between the Board and community organizations?

1 A That would be right.

2 Q I noted in this position there does not seem to be any
3 emphasis on graduate or academic training. Was it your
4 position what was needed here was an individual who as I
5 said previously would be a liaison between the Board and
6 the community and other stakeholders?

7 A Yeah. My emphasis there is as I think back on it my
8 emphasis there is a question of someone who has
9 connections and experience in interacting with that broad
10 group of -- with a broad group of stakeholders.

11 Q You also recommended that you would be able to make
12 internal transfers from existing, with existing staff?

13 A Yes, I did.

14 Q In other words, you wanted to be able to move people
15 around to fit, for lack of a better term, the purposes in
16 terms of the operation of the Board and the staff I
17 guess, is that right?

18 A Yeah, uh-huh.

19 Q You also sought authority in your capacity as Secretary
20 to be able to fill vacancies as necessary?

21 A Yes.

22 Q Now, when you made your analysis of the Board did you
23 find that there were some positions that were authorized

1 under the previous commission that had not been filled?

2 A Yes.

3 Q Right. Did you feel that not filling these positions
4 lessened the effectiveness of the Board?

5 A Yes.

6 Q So you sought authority to do that. Now, you mentioned
7 that this Board is volunteer. They don't have offices.
8 So would it be your critique of the operation that the
9 commissioners are not in a position to do hands on
10 management of the Board staff?

11 A Yes.

12 Q So one of the purposes of hiring a Secretary of the Board
13 is to have someone who's in charge of the staff
14 operations?

15 A Yes. Yeah.

16 Q To implement Board policy?

17 A Yes.

18 Q Now, the staff that was present when you assumed this
19 position, had this staff been reporting directly to the
20 Board?

21 A When I assumed the position there was a hodgepodge of
22 methods in which the staff was reporting to different
23 segments of the Board; and it was very confusing and the

1 Board was unable to craft specific policies as a result
2 of it in my opinion.

3 Q Was it your opinion that this hodgepodge, as your word as
4 you describe it, that that lessened the effectiveness of
5 the Board of Police Commissioners?

6 A Most certainly.

7 Q The staff?

8 A Yes.

9 Q One of your intents was to bring some structure to the
10 organization?

11 A That's correct. Uh-huh.

12 Q Just a little aside, at some point was the Detroit Police
13 Department under some type of sanctions or edict from the
14 national government with regard to its operations?

15 A Yes. The City of Detroit was under a, had been under a
16 Consent Decree. I think the length of that Consent
17 Decree was either something like 13 or 16 years. I don't
18 remember the actual period of time. And it was under
19 there for the way in which it had issues of confinement
20 of prisoners and secondarily there was a question of
21 abuse of -- I'm trying to get the technical term. But it
22 was what in general speak people refer to as police
23 encounters and brutality, you know, that type of thing.

1 Q So therefore was your recommendations in part with regard
2 to the operation of the staff, was it intended to address
3 some of the issues that were cited in this Consent Decree
4 in which the Detroit Police Department was operating
5 under?

6 A Indirectly. When I say indirectly the Detroit City
7 Charter gives the department ability to conduct certain
8 noncriminal investigations. Those criminal
9 investigations oftentimes are -- noncriminal
10 investigations are oftentimes citizen complaints. So a
11 good amount of the discussion related to the reason the
12 DOJ was involved with the Detroit Police Department had
13 to do with the way in which the department treated its
14 citizens. So within our area of responsibility because
15 we did not have -- I want to make it very clear -- we did
16 not have and do not have the ability to conduct criminal
17 investigations in the department. So to the degree in
18 our area, in our little bailiwick if you will, this was
19 an attempt to make sure that the department continued to
20 comply with the Consent Decree which had already ruled
21 that we were out of compliance if you will in the general
22 terms of general terms of policing.

23 Q Thank you. As I mentioned before one of your

1 recommendations was to have the ability to hire
2 additional staff as necessary.

3 A Yes. One clarification, these are not additional staff
4 that would increase our budget. These were vacancies
5 that were already in our budget.

6 Q Okay. So these were already positions for which the
7 budget could accommodate, right?

8 A Yes.

9 Q As I mentioned before I'll come back to some of the
10 individual positions in a minute. At this meeting where
11 your recommendations and obviously your document sought
12 authority to implement your recommendations, correct?

13 A Yes.

14 Q Was there a discussion among Board members regarding your
15 recommendations?

16 A Yes.

17 Q Would it be fair to say that some members of the Board
18 were wholeheartedly in favor of your --

19 A Yes.

20 Q Would it be fair to say some members of the Board may
21 have had some reservations?

22 A Yes.

23 Q But there was some discussion?

1 A Yes.

2 Q At some point in this meeting was there a call made to
3 take a vote as to vote yes or no with regard to accepting
4 the recommendations that you made?

5 A Yes.

6 Q Did that vote take place?

7 A Yes.

8 Q That vote took place on June 30th of 2016?

9 A Yes, that's correct.

10 Q That's at a regularly scheduled meeting of the Board?

11 A Yes.

12 Q Now, at some point was this document signed by a member
13 of the Board?

14 A Yes, by the Chair of the Board.

15 Q The Chair of the Board was who?

16 A Willie Bell as of that date.

17 Q His signing was merely memorializing what had already
18 taken place at the Board?

19 A Yes, that's correct.

20 Q Namely a vote to accept?

21 A Yes.

22 Q And Mr. Bell signed this document adopting your
23 recommendations on what date?

1 A He signed this and I believe his was July 5, 2016.

2 Q So approximately a week after the meeting --

3 A That's correct.

4 Q -- he memorialized what had already taken place at the
5 meeting?

6 A Yes.

7 Q You indicated that there was a great deal -- well, there
8 was discussion of your recommendations and your call for
9 adopting a reorganization of the staffing of the Police
10 Commissioners, correct?

11 A Yes.

12 Q I would like to turn your attention to within this
13 document what is labeled Attachment No. 2, Board of
14 Police Commissioner's reorganization and delegations of
15 authority to the Board Secretary. Could you briefly tell
16 us what this attachment is?

17 A Yes. The Board of Police Commission has a practice in
18 its meetings to memorialize its meeting and its decisions
19 in several fashions. One of them of course is the
20 Minutes that are taken by the Secretary. Secondly, are
21 taped audio visual tapes of the meeting which is done by
22 our media services section or department, I'm not really
23 sure if it was section or department. And thirdly by a

1 court reporter. What you have in front of you is the
2 transcripts from the court reporter who was present at
3 that meeting and the pertinent sections in which it
4 describes the actual discussion around the reorganization
5 plan including in the vote on the reorganization plan.

6 Q All right. To your knowledge this document would be
7 referred to as a transcript?

8 A Yes.

9 Q To your knowledge would this document recommend -- would
10 this document be a verbatim discussion, recording of the
11 discussion that took place in the meeting?

12 A Within the capacity of the court reporter, yes.

13 Q Would this document then reflect at least the statements
14 that were made by the various Board members at this
15 meeting?

16 A I believe they accurately reflect them, yes.

17 Q I refer to this as the June 30th meeting.

18 A Uh-huh.

19 Q In this document does it contain a representation of the
20 vote that was taken in the meeting?

21 A Yes, it does.

22 Q It would reflect that some members of the, a majority of
23 the members voted yes to adopt the recommendations of

1 your reorganization plan?

2 A Yes.

3 Q And that some members voted no?

4 A That's correct.

5 Q If you recall the specific vote in terms of the numeric
6 vote was, do you recall what the vote was?

7 A Yeah, of the 11 member Board at that time we had ten
8 members actually sitting on the Board. We had one
9 vacancy that had not been filled. Seven individuals I
10 believe voted to support the reorganization and
11 implementation plan. Two members I believe opposed it
12 and one member abstained from the vote.

13 Q So there was a majority vote and this document
14 memorializes the Board adopted the reorganization plan as
15 you presented it?

16 A Yes.

17 Q Based on your education and experience was it your belief
18 that based on the vote and the signature on your document
19 of the Chairperson that you had the authority to
20 implement your recommendations to the Board?

21 A Yes.

22 Q And in this document which is -- based on your education
23 and experience was it your belief that the Board had

1 delegated certain responsibilities to you?

2 A Yes.

3 Q And including in those responsibilities was the hiring of
4 staff?

5 A Yes.

6 Q The transferring internally of staff?

7 A Yes.

8 Q And the filling of vacancies that had been budgeted for
9 but not filled?

10 A Yes.

11 Q As you sit here today you believe that that authority was
12 vested in you based on delegation of the Board?

13 A That's correct. Yes.

14 Q I would like now to turn to what is contained in this
15 document as Attachment 3. Now, the Board, did it meet
16 monthly?

17 A That Board meets weekly with the exception of
18 Thanksgiving period which is normally on a Thursday. Our
19 Board meets weekly on a Thursday, and the Christmas
20 period. Take two out of the 52 and we meet every week.

21 Q Now, subsequent to the June 30th meeting was there a
22 meeting of the Board on August 4th of 2016?

23 A Yes.

1 Q And at that meeting was there any discussion of the
2 reorganization plan that the Board had previously
3 adopted?

4 A Yes.

5 Q Was there an individual there I believe her name is Gale
6 Oxendine?

7 A Yes.

8 Q What was her capacity?

9 A Gale Oxendine at that point was the Director of Police
10 Personnel.

11 Q I beg pardon?

12 A Gale Oxendine was the Director of City of Detroit
13 Department of Police Personnel.

14 Q At this meeting was there any discussion of plans that
15 the Board had previously authorized?

16 A Yes. Commissioner, I believe it was, Burton raised the
17 question that he had not seen resumes or something to
18 that effect. Miss Oxendine reminded him and the Board
19 that based upon their action a month or so previous to
20 this meeting that the Board had delegated authority to
21 Mr. Hicks to implement a reorganization plan and make the
22 necessary hires that was contained inside of the
23 reorganization plan. So she stood there essentially

1 refreshing his memory of an action that they had already
2 taken that coincides with the fact that delegated
3 authority had been given and that I was operating under
4 that delegated authority.

5 Q Now, was that Commissioner Burton?

6 A I believe it was.

7 Q That would be Willie Burton?

8 A Yes.

9 Q Was he present at the June 30th meeting?

10 A Yes. He was one of the individuals who voted against the
11 delegated authority and the reorganization plan
12 originally.

13 Q So he was present, he voted, and he voted in opposition
14 to the plan?

15 A Yes. Yes.

16 Q And at the August 4th meeting he raised, would it be fair
17 to say he raised some questions about the implementation
18 of the plan?

19 A Yes.

20 Q It's your testimony that his memory was refreshed by Miss
21 Oxendine?

22 A Yes.

23 Q And so did he acknowledge that he had voted and he was

1 present at the meeting in which the plan was adopted?

2 A I don't recall if he acknowledged it. I don't recall.

3 It's not a practice where in a public setting a

4 Commissioner would go back and say, oh, I you know I

5 didn't or whatever. It's not normally a practice.

6 Q For lack of a better term has it been your experience

7 that some of the meetings can be rather spirited?

8 A Yes.

9 Q And for lack of a better term has it been your experience

10 that at some of the meetings you've had to have

11 intervention by Police Authority to keep order?

12 A By the Chair as well as Police Authority, yes.

13 Q So Mr. Burton has, he was an individual you indicated

14 that voted no against the plan?

15 A Yes.

16 Q And then he raised issues regarding it a month later at

17 this August 4th meeting?

18 A Yes. Uh-huh.

19 Q Now, after Miss Oxendine reminded him that the authority

20 had been delegated to you with regards to certain

21 responsibilities did he challenge that?

22 A No. I think the Chair basically ruled that his concerns

23 had been asked and answered and move to the next item on

1 the agenda.

2 Q As part of your responsibilities you indicated that you
3 report to the Board?

4 A Yes.

5 Q And when you say report to the Board you report to them
6 in what form? Let me back up for a minute. Can we turn
7 to what is listed in the report as Attachment 4?

8 A Yes.

9 Q Now, you stay in constant communication with the Board?

10 A I attempt to do that, yes.

11 Q When you stay in constant communication with them do you
12 provide them with any type of written reports?

13 A Yes.

14 Q And just generally how often do you provide them with
15 written reports?

16 A Shortly after the delegation of authority I initiated a
17 process of a weekly written report to the Board updating
18 the Board on varying aspects of the operation of the
19 reorganization including personnel matters.

20 Q So you generally provide them with a written report at
21 least once a week?

22 A Yes.

23 Q And that report is intended to keep them apprised of all

1 the issues that you face?

2 A That's correct.

3 Q The Board was generally satisfied with the weekly report?

4 A Yes. I believe so. I believe so.

5 Q This is done weekly. Attachment 4, is that intended to
6 be a representation of some of the reports that you
7 filed?

8 A Yes. It's an example of such and I thought it was
9 appropriate also to memorialize the first of such
10 reports. So this report began summarizing the week
11 ending July 22nd, 2016. So the reports would start in
12 that week and then move forward.

13 Q Okay. So this was your practice to do on a weekly basis?

14 A Yes.

15 Q You felt that was consistent with your responsibilities
16 in terms of reporting to the Board because the Board
17 ultimately was your boss, correct?

18 A That's correct.

19 Q It is your practice to make certain that they were
20 current on all the issues that affected the Board?

21 A Yes.

22 Q I want to digress just for a second going back to the
23 transcript of the meeting that took place on the 30th of

1 June. Not everyone was wholeheartedly in favor of your
2 recommendation, correct?

3 A That's correct.

4 Q But everyone was provided with an opportunity to voice
5 their concerns, their objections, right?

6 A Yes.

7 Q And those who were in favor of it they had opportunity to
8 voice their support?

9 A Yes.

10 Q But in the final analysis the Chairperson called for a
11 vote?

12 A Yes.

13 Q And despite individuals' various concerns about different
14 aspects of it the vote was in the affirmative to adopt
15 this report?

16 A Yes.

17 Q Your report. It was clear, as you sit here today, it is
18 clear that part of that was to delegate the authorities
19 that you sought?

20 A That's specifically inside of the request itself to
21 delegate the authority.

22 Q As I mentioned before I want to go back to the report
23 itself. One of the positions you called for was Fiscal

1 Manager and one of the qualifications was that the
2 individual be a CPA?

3 A Yes.

4 Q Ultimately, did you recommend an individual for that
5 position?

6 A Yes.

7 Q Did that person have the requisite requirements of a
8 certified public accountant?

9 A Yes. I need to correct one thing when you said
10 recommend, I acted upon a person who had a CPA. I had
11 had, the authority was delegated to me even though I kept
12 the Board and varying members of the Board apprised along
13 the way of the varying candidates, the delegated
14 authority did not require for me to go back to the Board.

15 Q I understand that because they delegated the authority to
16 you to hire the individual and that speaks for itself in
17 the document itself.

18 A Uh-huh.

19 Q Ultimately what I'm asking is one of the qualifications
20 was this individual be a CPA?

21 A That's right.

22 Q The person hired, did that person have the educational
23 requirements that you called for?

1 A Yes. Yes.

2 Q Did the person have educational experiences that you
3 asked for?

4 A Yes.

5 Q The second position was the Policy Manager, and in that
6 position you indicated graduate certification. When you
7 say graduate certification do you intend the person to
8 have an advanced college degree?

9 A Yes. When you say advanced, a college degree.

10 Q A college degree. Did the individual that you hired meet
11 the requirements set forth in the posting?

12 A Yes.

13 Q Okay. You also asked for the community engagement
14 individual.

15 A Uh-huh.

16 Q Now, at the time in which you assumed this position was
17 there someone on staff who was already acting in that
18 position?

19 A At the community --

20 Q Engagement --

21 A No. Not -- no.

22 Q Well, in hiring did you consider individuals who were
23 presently on the staff or and as well as individuals who

1 were applicants from outside staff?

2 A I was new to the position. I was concerned with a
3 variety of things including in that was the shock to
4 existing staff as a new administration would come in.
5 Therefore, I was also concerned about looking and
6 identifying talent internal to the organization and
7 identifying people who could also become candidates for
8 promotion. So were in effect the ultimate implementation
9 was a mishmash of people coming in and people already on
10 staff, related to questions of morale, talent and other
11 reasonable concerns that I think a manager would take
12 into consideration.

13 Q Did the individual that you hired for this Community
14 Engagement Manager, did that individual meet the
15 qualifications that you were looking for?

16 A Yes.

17 Q Now, you also sought authority and was granted authority
18 to make internal transfers within staff. Did you make
19 any internal transfers within staff?

20 A Yes. Miss White, for example, who was eventually
21 elevated to the position Executive Manager for Policy at
22 that time when I came in the door was a investigator in
23 the office of chief investigator. So she was actually

1 promoted and transferred out of the chief investigator's
2 office into the direct staff of the Board of Police
3 Commission. So that would be formal transfer slash
4 promotion.

5 Eventually down the road there was also another
6 individual who had been with the organization for in
7 excess, and again I didn't go and check these numbers on
8 here, probably 13 to maybe 15 or 16 years, that is
9 Mr. Robert Brown who -- Mr. Brown was essentially running
10 the organization. During the period of time of the
11 emergency manager, the bankruptcy and the Consent Decree
12 and was actually running, seriously he was probably the
13 most central point of the operations of the entire
14 organization, and I felt that upon looking at his
15 experiences with, and his institutional knowledge that it
16 was a good idea to put him within the context where he
17 would be eligible for one of the slash transfers or
18 promotions.

19 Q So he was granted a position within the organization?

20 A Yes.

21 Q Which brings me to another subject. As part of your
22 analysis for staffing needs and so forth did you have to
23 make an assessment with regard to salary renumeration?

1 A Um, generally yes. However, as a employee of City of
2 Detroit who's governed by the rules of the City of
3 Detroit and more specifically by the personnel rules and
4 the compensation schedules that are authorized annually
5 by the Detroit City Council what we are obligated to do
6 is use that compensation schedule, align people up with
7 the category in which they fall in, and in those
8 categories they create ranges for compensation. We had a
9 practice in the organization of acknowledging the range
10 and then starting at mid point of that range; that would
11 allow us an opportunity as the employee performed better
12 and matured in their responsibility to offer some
13 increase in compensation, still falling with inside of
14 the range that was approved by the Detroit City Council.

15 Q So succinctly then you look at salary ranges compensation
16 guidelines for the City of Detroit and is it your
17 testimony that you attempt to align the compensation of
18 your staff as the --

19 A Yes.

20 Q When I say your staff, the staff of the Board of Police
21 Commissioners so that it aligned with the City of
22 Detroit's?

23 A Yes. I had no other authority to do anything

1 differently.

2 Q Now, based on your education, experience and your work
3 experience is it your experience that when you hire in
4 that you can place individuals on steps if you will or a
5 range if you will on compensation?

6 A I'm a person that will say our organization is a little
7 complicated. It's complicated for a couple of reasons.
8 We have, for example, an Office of Chief Investigator
9 people who still must comply with the wage and
10 compensation schedule of the City of Detroit, but who
11 also are members of a Collective Bargaining Agreement.
12 Therefore they have certain rights under the Collective
13 Bargaining Agreement, and it's really in that Collective
14 Bargaining Agreement that oftentimes what people
15 generally refer to as step increases and things of that
16 sort; that being the case they are still appointees of
17 the Detroit Board of Police Commissioners and serve at
18 the pleasure of Detroit Police Commissioner. I had
19 always hoped that if we had to cross that bridge we would
20 have probably something beyond our offices that would
21 opine as to what the correct and most appropriate steps
22 would be in that we never had a situation where we
23 demoted a person in the office of the chief investigators

1 who were covered by a Collective Bargaining Agreement
2 that forced the question of their rights under the
3 Collective Bargaining Agreement at least under my tenure
4 let me put it that way. I don't know what --

5 Q Right. You attempted to make certain the renumeration
6 was consistent with the general practices of the City of
7 Detroit?

8 A Uh-huh. Yes.

9 Q It would be fair to say that the individuals that you
10 hired were not compensated outside or over and above what
11 the normal practice was with the City of Detroit?

12 A That's right.

13 Q You indicated that you worked previously with Boards?

14 A Uh-huh.

15 Q You worked --

16 A Yes.

17 Q You worked for the City of Detroit for an individual
18 council member?

19 A Yes.

20 Q Now, is it your experience that it sometimes occurs that
21 individual members of the Board will have an opinion or
22 have a view which is inconsistent with say the majority
23 on certain issues?

1 A Yes.

2 Q Would it be fair to say that there's possibly some member
3 of the Board or members of a Board who had a view with
4 regard to this process that's inconsistent with the
5 majority?

6 A Yes. And I would also say this, I'm obligated to follow
7 the voting practice of the Board. I'm obligated to
8 follow the direction that is provided by the Chair of the
9 Board because the Chair of the Board through an internal
10 election of the Board establishes its leadership and sets
11 forth a process of how it will vocalize itself as a Body.
12 I can be in a meeting and I can get a Commissioner who
13 will say such and such, and until I hear that there's a
14 vote on that or direction given to me by the Chair on
15 that that is still a discussion that is taking place on
16 that Board that has not necessarily been resolved, you
17 know. We on a regular basis are 11 members. We get
18 members who represent a rainbow of opinions and in
19 connection what they think, but at some point the vote
20 takes place, you're obligated to file that vote, and when
21 the Chair directs you to do something in a public
22 meeting, you have Board members there and they are able
23 to call attention to the issue in which the Chair and

1 what they generally do is they simply agree with the
2 Chair's pronouncement in a particular item.

3 Q In summary, as you sit here today is it based on your
4 education, your information, your experience -- is it
5 your opinion that all the actions that you have taken in
6 your capacity as Secretary of Board of Police
7 Commissioners is consistent with what was authorized and
8 delegated to you by the Board of Police Commissioners?

9 A Yes.

10 Q And again being redundant, that was authorized in a
11 document adopted by the Board on June 30th, 2016?

12 A Yes.

13 MR. CHAPMAN: I don't have anything
14 further.

15 MS. HENDRICKS-MOORE: I do have a couple
16 questions that I just wanted to clarify.

17 EXAMINATION

18 BY MS. HENDRICKS-MOORE:

19 Q You stated that you do a weekly written report that you
20 gave us an example, and I think that was Attachment 4?

21 A Uh-huh.

22 Q I just want to understand. So you do a weekly report and
23 you send that, where do you send the weekly report?

1 A To the Board.

2 Q To each individual Board member?

3 A Each individual Board member receives a transcript, yes.

4 Q You started that?

5 A July 22nd, 2016.

6 Q So July 22nd, 2016 is when you started that process?

7 A Yes.

8 Q You've continued on?

9 A It was continued up to a certain point. After that point
10 which is really the exhibit, the next Attachment, I
11 instituted what was called weekly briefings of the Board,
12 and the weekly briefings of the Board involve the Chair,
13 the Vice Chair and the immediate Past Chair and what we
14 come in to do is we discuss the business of the
15 organization. So at some point after a certain period
16 where the weekly reports I also added to that was the
17 weekly briefings. You have a copy of an agenda and I
18 just simply pulled one. There's no particular reason to
19 pull this particular one, but I just pulled one where I
20 could easily associate an agenda. This would be February
21 2nd, 2018, and the briefing outlined for the same period
22 of time. The briefings take place on Wednesday in
23 preparation for the Thursday meetings.

1 Q The reason I'm asking is so with the weekly briefing
2 would that information include any of your
3 recommendations for the appointment of the people or
4 personnel that was selected for the different --

5 A I think by the time we got to the briefing format we had
6 passed the question of hiring and so forth. So you might
7 not find that in what is formerly referred to as the
8 briefing packet. You would find that in I think the
9 reports, the weekly reports to the Board. You would find
10 that in communications that I transmitted to the
11 Personnel Committee and so forth. And I had a practice
12 where if -- and this practice related more in terms of
13 the investigators. I separated the practice at two
14 levels. One is I had anyone whose name or their position
15 appeared in the chart what I attempted to do is to
16 recognizing that that person or that position would have
17 a considerable amount of interaction with the Board I
18 maintained -- I created and maintained what would be
19 referred to as a Board level search committee; and I had
20 the Board directly interacting in connection with that in
21 the interview selection process and so forth.

22 Mr. Wyrick was hired under that. The Chief
23 Investigator, the current Chief Investigator was hired

1 under that and the notion there again is they are going
2 to work closely with this Board and the Board ought to be
3 given an opportunity to interact with the person to see
4 whether or not a fit amongst everything else with work.
5 So that was one approach to that.

6 Secondary approach which related to the lower
7 classifications in the office like investigators. In
8 that instance I reviewed the recommendation of the Chief
9 Investigator. The Board had been indicating to me what
10 their priorities were in this area, and I would then send
11 a communication to the Personnel Committee with copies of
12 the resumes and so forth and I would ask the Personnel
13 Committee unless you have an objection to these
14 individuals we would move forward and offer them a job.
15 I can recall on a few occasions where the Personnel
16 Committee did voice an objection and that person was not
17 offered or those persons were not offered a job.

18 Q I'll go back and finish my question. I know I let you
19 finish, but you didn't answer it. So my question was you
20 do weekly, you were doing the weekly meeting briefings
21 and then you changed it over and you started doing a
22 different briefing that you said you presented to the
23 Board. So my question would be again as you went forward

1 and you were hiring, we understand that the memo had
2 already been presented to the Board, it had already been
3 voted on; but as you went forward and you started hiring
4 different individuals would that information have been
5 written in any of these briefings?

6 A It depends on the timing of the hires.

7 Q And because if you were notifying the Board, if the Board
8 was to be notified of the decisions that you were making
9 that would be a documentation that we would be interested
10 to see. That's why I was asking because you stated that
11 you were doing these weekly and you were notifying --
12 this information was being presented to the Board. As we
13 go forward we know that the hiring took place after the
14 Board had signed that memo. So if that information was
15 in your weekly briefings then you should have some type
16 of documentation that you might be able to present to us
17 that show you were notifying or making some type of
18 notification to the Board regarding what your decisions
19 were or the people who were being vetted by you to be
20 hired for these different positions.

21 A Two things. You keep referring to that memo.

22 Q Or briefing.

23 A Or briefing, whatever. This is a policy of the Board.

1 Information was presented to the Board, the Board acted
2 and therefore the item became policy of the Board. This
3 is not a frivolous memorandum which is floating around.
4 It is the authority in which I operated under. From that
5 meeting and in my discussions with Personnel Committee
6 and so forth and individual Board members I thought it
7 necessary to formalize records relative to things that
8 were going on. I therefore initiated a weekly written
9 report to the Board apprising them on any range of items
10 including the personnel issues. As that time passed I
11 elevated it again and thought it would be necessary to
12 convene a briefing that not only provided information,
13 but also helped us manage the weekly meetings in which we
14 were, we had to convene over.

15 These are volunteers. They don't come into the
16 office. Some of them come in five minutes prior to a
17 Board meeting; and I had to figure out methods in which I
18 communicate with them, put information in front of them
19 and give them time to evaluate that information prior to
20 them sitting in the cold in a meeting in front of who
21 knows who. Those were the methods in which -- when I say
22 it depends on the actual content, number one, I selected
23 not to supply a complete set of this. There is a variety

1 of communications quite frankly in those reports that
2 quite frankly are either, one, confidential and,
3 secondly, really are not the business of this particular
4 inquiry. Secondly, if the timing was such that it fell
5 between the different practices it would have been --
6 there is very likely that there is notation in those
7 particular items. But if you ask me as I sit here now
8 that I can spot and say it's in this particular item and
9 that item, I don't have that particular memory.

10 Q That's just what I'm just trying to understand is because
11 you mentioned weekly written report and then you made a
12 briefing, weekly briefing report I thought that was good
13 information. It sounded to me that you were presenting
14 information to the Board regarding things that were going
15 on. I saw this, this looked really good, you were
16 providing extensive information. I was wondering since
17 you were doing some hiring of different people, and the
18 memo does state that these changes would be brought
19 before the Board's Personnel Committee, I was just
20 wondering if it was documented in these weekly reports;
21 that you stated you were doing them weekly and that that
22 information was being presented to the Board.

23 I understand everything about the Board

1 being voluntary; but let's not -- let's remember they are
2 elected, they have a job to do and some are appointed.
3 So whether volunteers or not their role is still
4 important. So I hear that statement it just makes it
5 sound like --

6 A I'm not arguing that their role isn't important. When I
7 said volunteer, let me be clear what I mean by volunteer.
8 One, they're not employees of the City of Detroit, and as
9 they are not employees of the City of Detroit there are
10 certain types of things that we cannot offer them using
11 the resources of the City of Detroit. For example, we
12 cannot offer them a desk. We cannot assign staff to them
13 in order to facilitate directly their work. There are
14 things that we cannot do in that regard. What they
15 receive is, under the Charter they receive reimbursement
16 for expenses that they incur in their voluntary work,
17 that would be mileage, parking and things of that nature.
18 So I want that -- you know so at some point the notion of
19 them being volunteers is to delineate the responsibility
20 that we have versus employer -- the way one treats
21 employees in an institution versus a volunteer in an
22 institution.

23 Q Okay. You did answer. The other question I had is you

1 stated that you gave a report to each Board member, that
2 was another question I wanted. Each Board member did --

3 A I transmitted reports.

4 Q You transmitted them?

5 A Yeah, we transmitted them by email. These were email
6 documents that went to the Commissioners each week up to
7 the period where we changed over to the briefing.

8 Q The other question I just wanted to ask you was when it
9 came to -- and I see that you have the information in
10 here regarding the CPA. I do want to ask you when it
11 came to the selection for Mrs. Johnson for the position
12 of CPA did you reach out to her?

13 A Yes, I did.

14 Q Can you describe how that occurred?

15 A I was looking and recruiting people to fill appointed
16 positions.

17 Q And you contacted her?

18 A Yes, I did. I contacted a number of people; but, yes,
19 she was one of them.

20 Q Did you offer her -- did you assist her when it came to
21 the preparation of her documents or her resume, cover
22 letter, et cetera, for the position for which you were
23 recruiting? I'm just using your word.

1 A My recollection was that it was an exchange of emails
2 where certain questions had been asked relative to
3 inclusion of background information, whatever the case
4 may be, and that I made certain recommendations in
5 connection with that, yes.

6 Q So you assisted her?

7 A That's your formulation, that's not mine.

8 Q I'm just trying to understand what your role was because
9 you stated, I mean your words were you were looking, you
10 were recruiting people so that was one of the people that
11 you reached out to that you ended up hiring. You said
12 that you exchanged some emails?

13 A Yes.

14 Q The emails that we had a chance to look at was that you
15 were assisting her with that.

16 MR. CHAPMAN: I would object, that's your
17 interpretation. If you provide someone with information
18 regarding what the job is going to call for, what type of
19 education requirements and so forth that's assistance
20 that you would give to anyone who would make an inquiry.
21 It doesn't imply that there's any bias or any ill intent;
22 but I assume based on --

23 MS. HENDRICKS-MOORE: Well --

1 MR. CHAPMAN: Hold on. I assume based on
2 what you're saying here is that you are attempting to
3 indicate that assisting someone with giving them
4 information regarding the position is something that's
5 inappropriate. Mr. Hicks has indicated previously that
6 he served at an appointed position for the Mayor of the
7 City of Detroit. I'm quite certain that the procedures
8 for making appointments, seeking certain qualifications
9 doesn't necessarily arise to any inappropriate
10 assistance. I would object to your connotation that
11 providing someone with information regarding the position
12 is inappropriate.

13 MS. BENTLEY: I just want to put on the
14 record I feel that's a mischaracterization of what the
15 report said; but I think some of our questions will get
16 into that.

17 MS. HA: So what I wanted to say is that
18 this is why we are having this administrative hearing, so
19 everybody is entitled to their opinion and we can agree
20 to disagree.

21 MR. CHAPMAN: Okay. That's fine.

22 THE WITNESS: My point is real simple.
23 This was an appointed position. If you look at this

1 through the prism of employees who were hired under the
2 civil service and competitive process it clearly has
3 certain rules associated with that, okay. This was not a
4 hire under that schema at all. These are appointed
5 positions that are, that it is not uncommon and I have
6 done it before where I as well as colleagues of mine have
7 gone out and actually forged the field if you will
8 looking for candidates, looking for people for certain
9 appointment positions, and that is a horse of a different
10 color from the practice that you would be involved in in
11 the civil service process. And that's the point that I
12 think is clear in that regard. Under that scheme to the
13 degree that someone asked an opinion about something then
14 I did not feel that I was creating a favor or necessarily
15 retrenching on my obligations relative to the practice
16 that I was involved in. I had a number of people during
17 that period of time who contacted me in connection with
18 these positions. I transmitted information to them.
19 Some of them I copied the job description and so forth
20 and left it at the front desk down on the third floor for
21 them to pick up. There were a variety of different ways
22 in which I was attempting to disseminate information that
23 we were interested. If someone had a question I tried my

1 best to clarify their questions.

2 MR. CHAPMAN: But in terms of what we can
3 agree to disagree on, can we agree that the pool of
4 individuals who have a CPA degree and certification is
5 infinitely smaller than the pool of individuals who have
6 say a general high school diploma, correct?

7 MS. BENTLEY: We weren't discussing the
8 qualifications of the candidate; that's not what was in
9 question. It was more of the process. So CPA or not
10 that's sort of irrelevant to our analysis of the issue.

11 MS. HA: That would not fall under our
12 jurisdiction.

13 MR. CHAPMAN: I'll let it go.

14 THE WITNESS: But you would distinguish
15 the difference between the appointment and a civil
16 service process. I would assume you would distinguish
17 between that, is that right?

18 MS. HA: Well, there is an appointment
19 process and there is a civil service process; but I'm
20 just sitting here wondering if it was an appointed
21 process why didn't you just outright hire Faye Johnson?

22 MR. CHAPMAN: Let me ask the question
23 then.

1 MS. BENTLEY: I'm sorry, can he answer
2 that question first?

3 MR. CHAPMAN: Is your position appointed?

4 MS. HA: Yes.

5 MR. CHAPMAN: Then you are familiar with
6 the appointment process then; and then you understand
7 that Mr. Hicks -- the bottom line is that Mr. Hicks'
8 testimony is that he made these hires consistent with
9 what he thought he had authority to do under the policies
10 that were adopted by the Board of Police Commissioners
11 period.

12 MR. MARABLE: So I have to just hit on
13 this, this line was crossed in regards to assistance
14 given to Ms. Johnson which we believe crossed a verbal
15 line. We have an email on July 20th where you sent back
16 Ms. Johnson's resume stating from read carefully, I
17 re-added Florida because of the work performed and listed
18 on resume. So that to me is more than just clarifying
19 the information about the job position. It is providing
20 pretty clear assistance to Ms. Johnson or am I off base?

21 MR. CHAPMAN: Hold on.

22 MS. BENTLEY: But we don't want you to
23 testify. We need Mr. Hicks to testify in his words.

1 MR. CHAPMAN: I'm not testifying. In his
2 question (indicating) what he is indicating that his
3 interpretation, he's projecting that onto Mr. Hicks
4 (indicating), that's his interpretation.

5 MS. BENTLEY: And he asked Mr. Hicks for
6 clarification of his interpretation if that's incorrect.
7 So that's the question he was asked and he answered.

8 THE WITNESS: I'll tell you this, at the
9 point in which we, when I first started this process I
10 did not have any particular candidate in mind. I reached
11 out to a variety of different people. Some people asked
12 questions, sought clarifications and so forth you know.
13 That was in the line of seeking some clarification.
14 That's what that exchange is about. When you asked the
15 question why didn't I just hire Mrs. Johnson at that
16 particular point, I had not had my mind fixed on that. I
17 was trying to create a pool for me to consider, and there
18 was no particular sense that Ms. Johnson was the only
19 fit. There may have been other fits out there. So I
20 always have a practice while I'm trying to create the
21 broadest pool possible in order to then look and make
22 some kind of decision; that's what that process reflects.

23 MS. BENTLEY: So are you saying you waited

1 until to you received all resumes and applications before
2 you decided to hire Miss Johnson?

3 THE WITNESS: I can't make that
4 representation because I don't recall when they came in
5 and so forth. So I don't want to sit here and
6 misrepresent that. I'm telling you what my intent was.

7 MS. BENTLEY: If that was your intent if
8 you not wait why wouldn't you wait until you saw the
9 whole pool of applicants before making your decision if
10 you were trying to create a big pool possible --

11 THE WITNESS: First of all, I'm not saying
12 that I didn't. I'm saying I don't, I'm not going to say
13 that that was the actual item -- I mean that it strung
14 out in that fashion because, one, I don't remember.
15 Secondly, I'm saying that the issues that I was
16 confronted with as a manager is that I had coming up
17 within the next month the beginning of a process of
18 evaluation of roughly a \$350 million organization in the
19 Detroit Police Department its budget and so forth; and I
20 needed to get on staff a person who I thought was capable
21 of doing those types of things. So when I looked at
22 audit experience, when I looked at background relative to
23 dealing with government institutions and I looked at

1 balances from good practice or best practice if you will
2 that one might get both from public and private
3 institutions it became obvious to me, number one, that
4 she was the best candidate. And then I conferred with HR
5 and HR indicated to me that, look, we don't see CPAs that
6 much you know, and within that context I went on and made
7 the decision to hire.

8 BY MR. MARABLE:

9 Q So when would you say you made that decision
10 approximately, any sense of the time frame?

11 A I would have to pull the offer, the letter that was
12 generated and processed through HR in order to give you a
13 date on that and I don't have that in front of me.

14 Q So part of the issue and we've been talking about the
15 appointment process versus the civil service process and
16 you are very familiar with the appointment process. So
17 you can just appoint. You don't have to run an HR
18 process, but at the point that you decide to use City
19 resources and run a competitive process I think it is
20 more than best practice that that process be fair for the
21 folks who submit their resumes, for the folks who apply
22 if there's an actual interview who come into -- I think
23 they come into the table thinking it is a fair process

1 and that what they do in that process matters, that their
2 work history, that their resume matters and that a
3 decision hasn't been made already. So I think that's
4 where the line crosses between just making an
5 appointment, and that's why IG Ha asked you that, that
6 question, because you had every -- you didn't have -- I'm
7 not going to say didn't have every right; but under the
8 appointment process there is a right of a appointed Body
9 to make an appointment without doing the competitive
10 process.

11 A Let me just reconstruct what you said. I'm sorry. Let
12 me just reconstruct what you said. First of all, from
13 its inception this was advertised and discussed as an
14 appointment. No one switched gears cuz what you're
15 saying implies what may have happened is that a person
16 may be of the view that they were in a competitive
17 environment and then all of a sudden they're in a
18 appointed environment, and that intent was the fairness
19 associated with this competitive environment, you know,
20 and that that's where a person is wronged if you will.
21 Okay. This from its inception and every stitch of
22 information that you will find indicates that it was an
23 appointment. The Human Resources was used simply to

1 collect information coming into the organization. It was
2 not used, and they were not under the impression that it
3 was used for them to make a judgment. The judgment was
4 ours as appointed positions. That's what the situation
5 was. So there was no crossing of the road if you will of
6 people coming into well we have a competitive process
7 here and inferring that someone's relationship that now
8 they've identified the person and creating some kind of
9 advantage for that person. This was appointed from the
10 beginning. The original configuration of job specs and
11 so on and so forth everything indicates it is a
12 appointment by the Detroit Police Commissioners and under
13 that appointment of the Detroit Police Commissioners they
14 delegated that ability to me.

15 MS. HA: Well, I've got a couple of
16 questions.

17 Q So I assume you read our report more than once, am I
18 correct?

19 A Yes, I've read it, uh-huh.

20 Q Are there any emails in here that was not sent by you
21 that we claim was sent by you to Miss Johnson?

22 A I didn't flyspeck the information that you all put in
23 your report. I could not attest to what you put in your

1 report. I didn't flyspeck it in that sense, no.

2 Q Are you saying that the emails that we've referenced in
3 our draft report may not be your emails?

4 A No, I'm not saying that at all. How did you get to that?

5 Q Well, your first answer said that you're not looking into
6 this so you can't really say that. I just want to know
7 did somebody else send the emails that we said was sent
8 by you?

9 MR. CHAPMAN: Are you asking him to
10 validate or endorse --

11 MS. HA: Yes.

12 MR. CHAPMAN: -- the emails?

13 MS. HA: Yes.

14 MR. CHAPMAN: I don't think that's his
15 position to, without having going through in minute
16 detail, to endorse or validate what you put in your
17 report. That's your job.

18 MS. BENTLEY: That's the purpose of this
19 hearing is for him to let us know if anything in this
20 report is incorrect, and so unless you show us something
21 in this report is incorrect then --

22 MR. CHAPMAN: No. It's not his
23 responsibility to present to you what is incorrect. What

1 I hear Ms. Ha asking is can he validate what they put in
2 the report. The emails are his emails. I'm saying that
3 as he sits here today without going through in minute
4 detail it's not his job to validate what you put in the
5 report.

6 MS. HA: It's not his job, but it may be
7 your job.

8 MR. CHAPMAN: Well, if you want to send me
9 those emails and then I have an opportunity to sit down
10 with Mr. Hicks and go through them individually, go
11 through his server, go through his computer and then come
12 back to you and say this is Mr. Hicks' email, this is not
13 Mr. Hicks' email I'm perfectly willing to do that.

14 MS. HA: That's what probably should have
15 happened before.

16 MS. BENTLEY: We don't need to send the
17 emails to you. We clearly say the dates and times, and
18 he either has them or he doesn't.

19 MR. CHAPMAN: What he's saying is he's
20 neither endorsing or disputing that the emails that you
21 have are his emails. He's saying he doesn't have
22 opportunity to go through them in minute detail. If you
23 want to represent that these emails are his emails well

1 --

2 MS. HA: That's what we represented in our
3 draft report.

4 MS. BENTLEY: And again I just want to
5 point out in the Administrative Hearing Rules that we
6 sent you that the purpose of this hearing is to let us
7 know if we have anything incorrect in here. That's the
8 whole purpose of this hearing. So if you're not bringing
9 up any evidence to show what we have in here is incorrect
10 then we are going to go with the evidence --

11 THE WITNESS: There is a segment in your
12 report where you indicate, the report indicates -- I
13 don't know who actually penned the report (indicating) --
14 that an extension of this abuse for example was that I
15 essentially went off on my own and did these things and
16 there was no communications and so on and so forth with
17 this Board. One of the things, two of the things which
18 we provide for you today is weekly reports which clearly
19 goes against the notion that one was out there acting in
20 some kind of maverick portion. Those items, both the
21 briefing activity and the weekly report, were accessible
22 when you all searched the emails in our office. One
23 wonders how did you come and not include and not consider

1 essentially close to a year or two of constant reports to
2 our Board relative to the -- my implementation of the
3 delegated authority that was given to me? I mean how do
4 you all see that?

5 MS. HA: Well, we see the delegation of
6 authority issue as Charter mandated duties. So if it's
7 Charter mandated duties then you cannot delegate that
8 away. You cannot replace 11 person body with one person.
9 If you did then you don't need the 11 person body to make
10 a decision; and that's what happened here because the
11 Charter requires that the Board hire Board Secretary, the
12 Police Director of Personnel, and the Office of Chief
13 Investigator.

14 MS. BENTLEY: And any other staff that the
15 Board may need to hire.

16 THE WITNESS: My point is that I operated
17 under the direction of the Board. That's what the Board
18 told me to do, that's what I did. Number two, whether or
19 not the Board had its ability to whatever it did is
20 something that is really a issue with the Board as
21 opposed to me (indicating). And number two -- I mean
22 number three, it would be an item on which I believe you
23 all are going to cover at your next hearing where it

1 involves Board people. I can say what I operated under,
2 the direction I was given and that's what I implemented.

3 MS. HA: You proposed the direction that
4 the Board should take and the Board did approve it.
5 We're not questioning the fact that they approved --

6 THE WITNESS: So one should not evaluate
7 when you're coming into a new job, one should not
8 evaluate and make recommendations on the effective
9 organization in order to meet the goals and objectives of
10 the organization? Is that what you're telling me that
11 one should not do that?

12 MS. HA: No. One should do that. However
13 --

14 MR. CHAPMAN: Can I interject something I
15 think in terms of Mr. Hicks' rights, due process and so
16 forth. If you have an objection with how the Board
17 implemented its authority then your argument is with the
18 Board. It's not with Mr. Hicks. Mr. Hicks has already
19 testified that he acted solely within the authority that
20 was delegated to him by the Board. I might also add that
21 we, that is Mr. Hicks, would adopt as part of his
22 response to you the documents that have been supplied by
23 Mr. Wyrick on behalf of the Board. I think Mr. Wyrick

1 has cited numerous occasions that the Board was acting
2 under the best practices of numerous municipalities
3 including Sacramento, LasVegas, a number of cities across
4 the country. And it's our position look that if you had
5 looked at the best practices of all of these
6 municipalities across the country you would have seen
7 that the practice as implemented by the Detroit Board is
8 consistent with what is being done across the United
9 States. Again, the bottomline is Mr. Hicks acted under
10 the authority that was delegated to him under the Board.
11 Now, if you can find some examples where he didn't
12 operate under that authority then that's fair game, but
13 the authority was requested, the authority was granted
14 and the implementation of the Board's policies which was
15 consistent with what was delegated. You can flyspeck and
16 make some questions about the appointment of Ms. Johnson.
17 The bottomline is that again the hiring of Ms. Johnson
18 was consistent with the delegation of authority granted
19 to Mr. Hicks by his employer, the Board of Police
20 Commissioners.

21 BY MS. BENTLEY:

22 Q Mr. Hicks, I do believe, and correct me if I'm wrong,
23 that you testified earlier you worked on the 2012 Charter

1 revision?

2 A Yes.

3 Q And that you were very familiar with the contents of the
4 Charter?

5 A Uh-huh. Yes.

6 Q And that the Board would take your recommendations
7 because they believed that you knew --

8 A I didn't say that.

9 Q You said you believe you knew what was in the Charter and
10 that they knew you had worked on the Charter?

11 A Right, but that's not what you just said. I did not take
12 the lead that they would take my recommendations. They
13 knew I worked on the Charter. They knew that. To what
14 degree they may have measured that in terms of its
15 importance I couldn't speak for them. They could have
16 been of the view that the 2012 Charter was a piss poor
17 document and so forth, you know I don't know that. I
18 can't get in their head and try and determine and then
19 infer that that gave me some advantage or disadvantage in
20 their eye. I can't make that representation.

21 Q Do you believe that them giving you the rights to hire on
22 behalf of the Board is permissible under the Charter?

23 A I believe this: When we were going through the Charter

1 experience, okay, that there's a certain, how would you
2 call this, construction that we operated under, okay. We
3 operated under the fact that we, the City of Detroit, is
4 a creature of the State of Michigan, okay; and that the
5 powers of the City of Detroit is derived from the State
6 of Michigan. The State of Michigan then goes and what it
7 does, it reserves certain power unto itself, okay. And
8 that no municipality or lower levels of government can
9 encroach upon those powers in which the State of Michigan
10 reserved for itself.

11 The State of Michigan then also went and created
12 what was called Home Rule Authority, and under the Home
13 Rule Authority essentially what the State of Michigan
14 says if we did not preempt you in this area under your
15 Home Rule provisions you can do X and Y. You can do
16 whatever you want as long as again they are not
17 encroachments on state, on expressed state authority.
18 Therefore, in the creation of a document like the Detroit
19 City Charter it was not our intent to delineate sentence
20 by line each and every element in which city government
21 would operate under. We were, and if you go back and
22 check the preserved testimony, and there is preserved
23 testimony of Detroit City Charter you will have

1 Commissioners understanding and discussing that they
2 built what was referred to as a framework document and in
3 that framework document it had the ability and it
4 expressly says to read these and apply these things in
5 its liberal notion. So it did not -- that Charter did
6 not attempt to say if the wording is A, B and C that you
7 are restricted to A, B and C. That's not what that whole
8 process was about, and under the Home Rule provisions and
9 there was no -- the State of Michigan did not indicate
10 that the Charter and local governments could not do
11 anything. Long as you were not violating the state what
12 it held to itself under Home Rule you can do a lot of
13 things. In that interpretation and within that context
14 there is no restriction in that Charter that says they
15 could not delegate any of its responsibilities.

16 Q Understood. But it says the Board shall appoint a Chief
17 Investigator and additional staff. The Board shall
18 appoint a Secretary. The Board may hire -- then what I'm
19 hearing you say you feel there's flexibility in that
20 language?

21 A I'm saying that the methods in which they choose to
22 implement that is their decision and that's what they
23 did.

1 BY MS. HA:

2 Q So I believe the Board is required to meet every Thursday
3 under the Charter except for Thanksgiving and the other
4 holiday you mentioned, am I correct?

5 A That's right.

6 Q If someone proposed that the meeting once a week is just
7 nearly impossible for all of us, why don't we just decide
8 and meet once a month --

9 MR. WYRICK: There's been a lot of talk
10 about that lately.

11 BY MS. HA:

12 Q -- you're saying you can propose that and authorize that?

13 A No. The Board could not authorize that.

14 MR. CHAPMAN: Miss Ha, that's a question
15 for the Board. That's the Board's responsibility to make
16 certain how it complies with the Charter and how many
17 times it meets. For our purposes here now that we've
18 gotten down to what seems to be the central issue that is
19 the hiring of Ms. Johnson I would ask that this Board,
20 your Board, do one thing, that if you're alleging that
21 there was some sort of impropriety or some type of bias
22 or that this was tilted or weighted in favor of
23 Ms. Johnson then at least one of the things you need to

1 look at is who applied for this position. Now, if a
2 person who applied was more qualified than Ms. Johnson
3 then maybe that's some accusation you can make. For
4 instance, can you as you sit here tell me how many people
5 applied for this position who had a CPA?

6 MS. BENTLEY: Again, we're not questioning
7 her qualifications so that's irrelevant to our analysis.

8 MR. CHAPMAN: You are, by the question of
9 qualification and the questioning of her hiring you are
10 asserting that something biased was done.

11 MS. BENTLEY: No. We're saying that --

12 MR. CHAPMAN: How many applied? How many
13 people applied who had a CPA?

14 MS. BENTLEY: It's irrelevant to our
15 analysis.

16 MS. HA: No one applied with a CPA except
17 for Gertrude Faye Johnson, but it was Mr. Hicks who
18 insisted on putting a CPA requirement and Brian Tenille
19 and I believe Bridget Lamar informed Mr. Hicks that if
20 you put CPA on the minimum qualification as you've
21 pointed out earlier, Mr. Chapman, that the pool of
22 applicants would be much, much smaller.

23 MR. CHAPMAN: Would you agree then within

1 Mr. Hicks' authority under the classification of which
2 she was hired that he could make decisions regarding the
3 qualifications needed for the position that he was going
4 to supervise in implementing the policies of the Board?
5 So are you saying that he added CPA and that that was too
6 high a qualification for this position?

7 MS. HA: That's what it looks like.

8 MR. CHAPMAN: You can make that assertion.
9 I would think that -- I would say good luck.

10 THE WITNESS: I don't see how you get to
11 that. I mean this is not meant to be argumentative.
12 We're coming in trying to rebuild and restructure an
13 organization that had been decimated under the Emergency
14 Manager and so forth; and we had a variety of
15 intersectional points that we had to look at in terms of
16 how we were going to provide the oversight. Amongst
17 those things is had the Board decided as it evolved in
18 its process it was going to take ambitious and maybe even
19 an intrusive oversight view that looked at auditing, for
20 example, formally auditing the records and the practice
21 of the Detroit Police Department it was incumbent upon me
22 to either try and foresee that as a possibility and erect
23 staff in order to meet those things. Things I was

1 thinking about in that regard is in restructuring this
2 thing what are we going to be confronted with. So a
3 accountant in its general sense was not the kind of
4 person I thought would be necessary for the challenges we
5 were going to deal with.

6 In addition to that we had a -- the
7 Detroit Police Department is a fairly complex
8 organization. It's revenue sources and its expenses
9 reach over three or four different funds inside of the
10 Detroit Police Department. I needed a senior experienced
11 person that showed both in experience and credentials in
12 order to deal with that thing. I remind you, I also say
13 we were just beginning to hit the front end of an item
14 which you all learned and are acquainted with is this
15 whole towing issue; and we needed to have people on our
16 staff that had the ability to drill down into certain
17 documents and so forth, do certain types of research
18 which may even reach beyond the information in which the
19 Detroit Police Department did. We took a review, for
20 example, which I understand you all did later, of the,
21 some more successful than others, and that was of the
22 corporate ownership for example of some of the towing
23 companies to determine whether or not there was an issue

1 in connection with this whole towing item. Those types
2 of responsibilities and those types of judgments required
3 a more seasoned and a more credentialed person than one
4 associated with just simply an accountant who could come
5 in and look at and you know just look at a set of books.
6 So that's why -- that's what's in my mind and what I was
7 thinking about are the challenges that are in front of
8 that Board. I remind you the period of time in which
9 that activity took place the outline for the need for CPA
10 was well in advance of any decision to hire Ms. Johnson
11 if I recall the records on that, you know. So it wasn't
12 a situation decision made and fix documentation to deal
13 with that. Even then in terms of fixing documents these
14 again are appointed positions. They were always
15 appointed positions. There was never a change in process
16 where one could argue that you disenfranchised somebody
17 who thought they were going to be in a competitive
18 environment and then it's going to go over into a
19 appointed position.

20 On the specific question of the use of
21 City resources I would say this. At the time in which I
22 walked into that office that office, the Board of Police
23 Commission, had two or three functioning people out of an

1 allotment close to ten or 11 people. The organization
2 could not even find what it did the day before let alone
3 undertake a fairly, a demanding process that was
4 associated with trying to implement such a plan and bring
5 all these people in within the period of time in which we
6 needed them. So the HR receiving the information and so
7 forth, right, was simply a good method for us to record
8 information coming into the organization. It was never
9 represented that they had any decision making or people
10 were, that we changed our mind relative to appointments
11 versus a competitive process.

12 MR. CHAPMAN: At this point unless you
13 have some other questions I would close by saying we
14 appreciate the opportunity to present this material.

15 MS. HA: I'm not done.

16 MR. CHAPMAN: Oh, you have something else,
17 I'm sorry.

18 BY MS. HA:

19 Q Mr. Hicks, the Charter does not provide BOPC to have an
20 Executive Director, am I correct?

21 A Let me say it this way. Let me do this, let me do two
22 things. In the process of constructing if you will a
23 document the Board of Police -- I mean the Charter

1 Revision Commission was confronted with information
2 provided to it. I would say to you that every individual
3 prior to my taking that seat were Executive Directors of
4 the organization, okay. In the reconstruction or in the
5 construction of the 2012 I know that I did not have the
6 information and therefore did not put Executive in front
7 of Secretary. I will tell you that here is a badge
8 (indicating). This badge has been shared with everyone
9 who's ever had this position, and in this badge I'm an
10 Executive Director. I would tell you omission of the
11 word Executive is only an omission in the writing not of
12 the intent and the authority associated with that. If
13 you go further and look at the organizational Bylaws, the
14 Bylaws describe a relationship where this person in that
15 position has the ability and the authority to manage the
16 day-to-day operations, to have staff report to it and all
17 of those necessary things. So the quiver on whether or
18 not Executive Secretary versus Secretary to the Board was
19 not an attempt to dismantle, and that's what I would say
20 to you.

21 MS. HA: No further questions. Thank you,
22 Mr. Chapman. Thank you, Mr. Hicks.

23 MR. CHAPMAN: Thank you.

1 MR. WYRICK: The only thing I would add is
2 I think one of your initial criticisms under delegation
3 Mr. Hicks was the only direct report to the BOPC, but
4 under the BOPC Bylaws it's constructed the same way. And
5 under the Charter entity such as the BOPC is entitled to
6 have rules of procedure to Chapter 2 to construct Bylaws.

7 THE WITNESS: And I would also say that
8 those Bylaws in which he's referring to pre-dates my
9 arrival. Those are not Bylaws that I constructed put it
10 that way.

11 BY MS. HENDRICKS-MOORE:

12 Q Let me ask you a question, I'm just asking a question.
13 The badge that you showed, does it say -- is there a
14 statement on there? The only reason I ask police have
15 different badges. I didn't know. Does your badge say
16 like Deputy?

17 A No. It says Executive Secretary.

18 Q Oh, it says Executive Secretary?

19 A Yes.

20 Q Can I see it again?

21 A Sure, you can.

22 Q Okay. It says Executive Secretary. Thank you. I
23 appreciate it.

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MS. BENTLEY: That's it.

MS. HA: It is two minutes before three.

We will conclude Mr. Hicks' administrative hearing.

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C E R T I F I C A T E

I, Deborah A. Elliott, do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the above-entitled matter at the time and place hereinbefore set forth, and I do further certify that the foregoing transcript, consisting of (84) pages, is a true and correct transcript of my said stenograph notes.



Deborah A. Elliott, CSR0129
(Acting in Wayne County)
Oakland County, Michigan
My Commission Expires: 6/30/24

Concerns and Reactions to the Office of the Inspector General's Investigation on the abuse of authority of Mr. Gregory Hicks, Secretary to the Board of the Detroit Police Commission

September 14, 2019

Mr. Hicks is not responsible for an action ordered by the Board. He is required to implement the will of the Board. As documented below, Mr. Hicks presented and received the approval of the Board to re-organize the BOPC office with delegated authority to implement the re-organization plan. What is the bases of suggesting that Mr. Hicks abused his authority?

Further, abuse of authority. Is the question raised by the OIG of abuse indicating Hicks did not have the authority or he abused his authority?

Background: The central issue surrounds the Board approving a re-organization plan that created various organizational divisions (policy, fiscal and administration) and three associated positions (Executive Manager for Policy, Executive Manager for Fiscal Oversight and Executive Manager for Administration). Shortly after Mr. Hicks joined the Board of Police Commissioner's office as Board Secretary, Mr. Hicks conducted a review of the Office of the Board of Police Commissioners and determined that the old organization and operation of the Board was extremely narrow considering the mandates described by the 2012 Detroit City Charter. Mr. Hicks reviewed past documents, BOPC organizational By-Laws and other relevant information to formulate a plan to increase the functionality of the office. The above review included introductory meetings with Commissioners to solicit their input into what emerged as the BOPC's re-organization plan. The old organizational structure did not have resources devoted to adequately review and analyze police policies, promulgate new policies, develop and monitor police revenues and expenditures. Nor did it have a reasonable amount of resources devoted to administration including issues related to personnel matters. Of great concern during this evaluation period was the BOPC's ability to develop the capacity to review and approve the budget of the Detroit Police Department across all relevant city funds. Equally important was the task to stay on top of modifications to the police manual containing training and operational directives setting forth the conditions and procedures of engagement with Detroit citizens and visitors.

1. The following evidence is offered to demonstrate Mr. Hicks sought and obtained the necessary authority to realign the organization and hire the necessary personnel to respond to the demands associated with the 2012 Detroit City Charter:

(1,1) Memorandum / Resolution requesting authorization of Board Secretary to re-organize and implement a re-organization plan by delegating the authority to re-organize to Mr. Hicks, Board

Respondent
Exhibit
1 - Hicks
9-17-19 de

Secretary, dated June 24, 2016, reflecting the Board's approval at the June 30, 2016 Board Meeting. The result of the above Board vote is recorded as, Yes = 7, No = 2, Abstentions = 1. Signed by Chairman of the Board, Willie E. Bell, on July 5, 2016. (See Attachment # 1)

(1,2) Board Meeting 6/30/2016 (pages 18 thru 44) authorizing BOPC reorganization plan and delegation of authority to implement such plan to the Board Secretary by creating the necessary divisions, positions and implementation authority outlined in the re-organization plan. The Board approved said plan on June 30, 2016; Yes = 7, No = 2, Abstentions = 1. The discussion by the Board on the re-organization plan was robust with reasonable and compelling information shared with the Board resulting in the above vote to support the re-organization plan. A copy of the Board's action was supplied to the OIG during the time of the investigation. (See Attachment # 2)

(1,3) Board Meeting 8/4/2016 – (Pages 25-31) Discussion with Gale Oxendine (former DPD Personnel Director) regarding the Board's authorization of the BOPC reorganization plan and the granting of delegated authority to Mr. Hicks. On page 28, Board Chair Bell acknowledged the Board's approval of the delegated authority to Mr. Hicks two months before the above meeting. On page 30, in the face of Commissioner Burton's suggestion of Mr. Hicks being compromised in selecting and hiring staff (i.e., Ms. Johnson). DPD Personnel Director, Ms. Oxendine outlined the selection process and Mr. Hicks indicated that the entire Commission received copies of resumes under consideration. Mr. Hicks also addressed Mr. Burton's suggestion that Ms. Johnson worked with Mr. Hicks at the County and therefore the process was unfair or the result of favoritism. Mr. Hicks indicated that this person was recruited and hired because of their experience and merit. In fact, the person is a certified public accountant (CPA) a highly valued certification in public accounting. (See Attachment #3)

(1,4) Board Meeting 9/15/2016 – (Pages 52 -56) Discussion on the use of the Board subpoena power. Commissioner Crawford reported that as part of the Policy committee discussion, staff requested the narrow delegation of the BOPC's subpoena power to execute minor requests associated with the facilitation of investigations of complaints. This discussion recognized that the base-power rest with the full Board and that delegations can be sought with the approval of the Board. Herein is another example of the delegation of authority.

(1,5) Board Meeting 9/22/2016 – (Pages 34 – 44) Continuing the discussion on the minor delegation of subpoena power. The Board approved a resolution granting the execution of its subpoena power in certain instances jointly to the Board Chair and the Secretary of the Board. Demonstrating the ability of the Board to delegate a power designated under the Detroit City Charter.

(1.6) Board Meeting 11/3/2016 – (Pages 13 – 15) In a discussion about the delegated authority to hire the Board's attorney, Mr. Hicks outlined for the Board his intention to deviate from the Board's expressed will authorizing delegated authority and not use the delegated authority issued as part of the

reorganization plan, but to convene a Board level search committee to make sure that the eventual candidate was a good fit with the Board because of the required close and confidential working relationship that the new attorney would need with the Board. All Charter named positions were handled in the same fashion.

(1.7) Mr. Hicks provided weekly written reports to the full Board on the operation of the BOPC including personnel issues starting July 22, 2016 (See copy, Attachment #4).

(1.8) Mr. Hicks initiated and convened a weekly face-to-face internal discussion and briefing (regularly scheduled meetings) and reporting process with Board leadership (Chair, Vice Chair and Immediate Past Chair) to consider issues related to the operation of the Board including personnel matters. This process started in 2017 and continues to the current period. In the past year better than 40 weekly briefing meetings were held. The Administrative Briefing Agenda organized the meetings (See Attachment 5).

(1.9) Mr. Hicks as well as other city employees are obligated to hire within the Detroit City Council's approved Annual Compensation Plan. Said plan creates ranges of compensation by classification. The BOPC had a practice of beginning new hires and promotions at mid-point of the compensation range with adjustments for special experience and credentials for non-unionized appointed employees. The personnel practice complied in every respect with city personnel policy related to vacation and other compulsory time. This practice was shared with the Board's Personnel Committee.

2. The OIG discusses best practices, but fails to accurately evaluate best practices within Detroit's government including the direct operational authority derived from the BOPC By-Laws. Mr. Hicks incorporates the information provided by Attorney Jermaine Wyrick relative to the Board's operations and "best practices" in the community of oversight agencies like the Board of Police Commissioners.

Attachment No. 1

Memorandum / Resolution requesting authorization the re-organization plan and delegation of authority to Mr. Hicks,
Board Secretary

TO: Commissioner Lisa Carter, Chair
Commissioner Willie Bell, Vice Chair and Chair Elect
Commissioner Ricardo Moore, Vice Chair Elect

and Commissioner Eva G. Dewaelsche, Personnel & Training Committee
Commissioner Edgar Vann, Personnel & Training Committee

RE: Proposed Re-Organization Briefing, Detroit Board of Police Commissioners

FROM: Gregory Hicks, Secretary to the Board of Police Commissioners

DATE: June 24, 2016

Summary: Draft Re-Organization Briefing, Detroit Board of Police Commissioners

The Board of Police Commissioners has provided civilian oversight to the Detroit Police Department for over 40 years as authorized by the 1974 Detroit City Charter. The 2012 Detroit City Charter enhanced civilian oversight with an expanded Board and reaffirmed the Board's authority to provide oversight and budgetary controls. Challenges to this civilian oversight have come from several outside sources that resulted in reduced influence of the Board (including two Department of Justice (DOJ) Consent Agreements, Emergency Management and subsequent municipal bankruptcy authorized by State authority).

Upon return to normal municipal controls, the Detroit City Council restored full authority to the Board of Police Commissioners (Resolution: September 14, 2015, Member Sheffield). In June, 2016 the Board of Police Commissioners hired a new Secretary to the Board and determined that the Secretary to the Board would assume day-to-day control over Board affairs with all employees reporting through chains of command to the Board Secretary. Subsequent to this appointment the Board Secretary, Gregory Hicks, conducted an internal evaluation of the organization of the agency including personnel capabilities, fiscal and policy capabilities as well as summary reviews of the current work of the Commission.

Based on the above, the following recommendations and observations are presented to the leadership and Board for their consideration:

- Reaffirmation within our rules and procedures of the Commission that the Secretary to the Board shall act as the only direct report to the Board. All other staff shall report to the Secretary of the Board.
- Subsequent to the above review, the Secretary requests delegated authority to reorganize the agency within the following parameters:

Make adjustments to the organizational chart and implement changes to operationally restore the Police Commission as contemplated by the 2012 Detroit City Charter, including re-organizational efforts to build our capacity to provide fiscal oversight over the Detroit Police

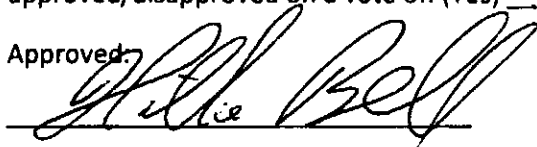
Department, monitor and direct the BOPC's internal budget and assemble and hire staff required to improve BOPC policy and fiscal oversight.

Specific elements associated with the re-organization are listed below:

- a) Create three additional units within the agency: (1) Fiscal and Policy section, (2) Legal Advisors section and (3) Community Engagement and Publications section.
- b) Hire on behalf of the Board: (1) Fiscal Manager, (1) Policy Manager and (1) Community Engagement Manager. The 2016/2017 BOPC approved budget has approximately eight staff vacancies. Budget amendments and staff reclassifications are currently in process to accommodate changes in staffing levels and responsibilities.
 - The Fiscal Manager shall have experience in municipal fiscal controls with certification as a CPA (Certified Public Accountant);
 - The Policy Manager shall have graduate certification and/or experience in policy formation and research.
 - The Community Engagement Manager shall have experience with publications, media and community service.
 - The Secretary may impose internal transfers of existing staff to augment the development of the above sections.
 - Hire and assign additional staff to fill any remaining vacancies in the 2016-2017 BOPC approved Budget.
- c) Report authorized changes to the Board's Personnel Committee within 30-day intervals or within the scheduling of regular committee meetings of the Personnel Committee.

Action presented at the regular meeting of the Detroit Police Commission dated June 30, 2016 approved/disapproved on a vote of: (Yes) 8 (No) 2 (Abstentions) 1.

Approved:



Honorable Willie Bell, Chair
Detroit Board of Police Commissioners
Date 7-5-16

Action amends the Standard Operating Procedures of the Detroit Board of Police Commissioners, effective, June 30, 2016.

Attachment No. 2

BOPC reorganization and delegation of authority
to the Board Secretary

7/25/2016

Page 1

City of Detroit
Board of Police Commissioners
1301 Third St. Michigan Room
Detroit, Michigan
Thursday, June 30, 2016
3:00 p.m.

Meeting before the Board of Police
Commissioners at Detroit Public Safety
Headquarters, 1301 Third St., Detroit,
Michigan on Thursday, June 30, 2016.

ATTENDEES FOR BPCM:

Elizabeth W. Brooks
Reginald Crawford
Eva Dewaelsche
Ricardo Moore
Conrad Mallett, Jr.
Derrick Sanders
Richard Shelby
Willie Burton

CHIEF OF POLICE:	James Craig
VICE-CHAIRPERSON:	Willie Bell
CHAIRPERSON:	Lisa Carter
SECRETARY:	Gregory Hicks

Reported by:



1 Commissioner Burton. Any other comments,
2 Commissioners?

3 (None responded.)

4 CHAIRPERSON CARTER: At this time the
5 Detective Unit, the presentation has been rolled
6 into organized crime so today there will not be a
7 presentation. Thank you. Commissioners, any
8 standing committee reports?

9 (None responded.)

10 CHAIRPERSON CARTER: Under new business,
11 the BOPC Reorganization Plan. So, Commissioners,
12 you should have received a letter that was
13 drafted by the Board Secretary, Mr. Hicks, to all
14 the--actually, it was to me and Vice-Chair Bell
15 and Commissioner Moore, Vice-Chair elect, and the
16 personnel committee members regarding the
17 reorganization of the BOPC. So Mr. Hicks, if you
18 would like to elaborate.

19 MR. HICKS: Yes. Commissioners, the
20 document that you have in front of you, which
21 we're requesting action on for today; it started
22 off as a document in which I used to essentially
23 go around and meet with members of the
24 Commission. One is a function that I'm
25 relatively new to the Commission and wanted to

1 introduce myself in greater detail to the
2 Commissioners; also, to get from Commissioners
3 their views relative to the work of the
4 Commission. But, implicit in that, what I was
5 attempting to also do was to, over a relatively
6 short period of time, evaluate in summary form
7 the work of the Commission up to this point. And
8 I reviewed a variety of documents in our office,
9 looked at several tapes of meetings and things of
10 that sort.

11 What I basically did in terms of just
12 general observations was found that in my
13 opinion, and I understand that reasonable people
14 may differ in terms of opinion, that once this
15 Commission was restored back to its full power
16 that there were areas of the--that we were not
17 operating in. Amongst those areas that we're not
18 operating in, of course, is exercising physical
19 control over our own budget as well as monitoring
20 the Department's budget. And we also did not
21 have sufficient people on our current compliment
22 of staff who could monitor those types of things.

23 In addition to that, as we were looking
24 at some of the discussion around the table here
25 relative to cameras, body cameras and any number

1 of other things, it occurred to me that at least
2 on paper -- now individually Commissioners may
3 have done this, but at least on paper I could not
4 find a kind of aggressive search for best
5 practices around the country without the other
6 police departments on developing policy on any
7 number of critical issues. So the next deficit
8 in which I point out is, of course, that we are
9 kind of policy narrow as a Commission.

10 And then given those types of
11 observations it then lead me to looking at the
12 question of reorganizing, if you will, the
13 operation. When I came in, when I met with the
14 leadership, you had indicated to me that my
15 responsibility was to assume day-to-day
16 operations over the Commission, and so this work
17 really reflects-

18 CHAIRPERSON CARTER: Commission staff.

19 MR. HICKS: Excuse me. I don't want to
20 elevate myself. But doing the day-to-day
21 operations, that we just really need to
22 reconfigure ourselves. So if you look at the
23 document that's in front of you it does several
24 things. The first thing it does, it reaffirms
25 what was told to me, and I think that we have to

1 have this reflected in some of our paperwork that
2 the secretary of the board is--has day-to-day
3 operation over the staff in connection with the
4 Commission.

5 There had been several complications
6 with multiple reports to the Commission in the
7 past from staff and what we wanted to do was kind
8 of straighten that out. Secondly, there was
9 again, the question of how we matched up against
10 our responsibilities. And in this plan I'm
11 suggesting that we create three additional units
12 inside of our office. One unit has to deal with
13 policy and fiscal operations. And, again, policy
14 and fiscal operations is a specific situation
15 where not only we monitor our own budget, but
16 also--I mean, operate our own budget but also
17 monitor the Department's budget.

18 The additional staff not only helps in
19 terms of analyzing it but also is designed to
20 give support to the sub committees in which we
21 have on the Board, because another area of
22 observation is that we were not doing a great
23 job, if you will, in providing individualized
24 support to the series of subcommittees in which
25 you have on the Board.

1 So the idea was to create those three
2 units. We had eight vacancies in our budget in
3 order to do that. And it's that kind of talent
4 that we're looking for; in the fiscal manager
5 we're looking for someone who is a CPA. As a
6 policy manager, someone who has graduate
7 certification and has good information and
8 experience in terms of policy formation and
9 research. And, if you go on, it continues to
10 delineate portions of this. If there are times
11 when you will have other items you have on the
12 agenda, but what this plan does is enact the
13 broad basis of what I was just describing. In
14 order to do that we would have to, one, adopt it
15 and change our table of organization and that's
16 the request before this body.

17 CHAIRPERSON CARTER: Commissioners.

18 COMMISSIONER MALLETT: Madam

19 Chairperson, if I might. So let me start out by
20 saying how pleased I am to see Gregory.

21 Mr. Hicks and I have been friends for a very,
22 very long time and I've got tremendous respect
23 for his ability and his experience. I will say,
24 however, that I disagree fundamentally with
25 everything that Gregory said and this won't be



1 the first time that Greg and I have had these
2 kinds of disagreements.

3 One, I really do believe that the Office
4 of the Inspector ought to report directly to the
5 Board. The primary function seems to me if the
6 Commission is the management of the citizen
7 complaint process, I would not want to have
8 anyone in that office feeding directly--going
9 through anyone, but instead reporting directly to
10 the Board.

11 Number two, as it relates to the three
12 positions that Mr. Hicks referred to, I recognize
13 that there is a drive toward making the work at
14 the Commission more full, more complete and so
15 that we feel like we're carrying out in a more
16 broad manner the responsibilities that we have.
17 But, I would just simply ask this, and as we
18 are--ask the question as we are going about the
19 business of developing our budget, managing our
20 finances, carrying out policy examinations or
21 engaged in the community, have we experienced any
22 point where we thought we were not doing or
23 capable of doing the job that the Charter
24 describes that we have? And, if we did, do we
25 really need three full-time persons? If we need

1 fiscal assistance couldn't we get that on a semi
2 permanent basis? Could we contract so that when
3 the budget time came up if we felt we need
4 assistance we could get it. During the course of
5 the time that we needed the assistance we provide
6 it and then after that it would go away. Trying
7 to save the taxpayers some money.

8 As relates to policy, I do believe again
9 that if we believe as an entity that there are
10 specific policy questions that we need further
11 work on, if we can't get that work ourselves, and
12 Commissioner Crawford has been awfully
13 resourceful in gathering information for us that
14 we wouldn't have and if we felt like we couldn't
15 do it ourselves. Again, we could contract for
16 that kind of assistance.

17 As relates to community engagement,
18 really setting up a calendar, setting up the
19 meetings that we have in the community, at a
20 certain point the staff that we have I think has
21 proven fully capable of doing that work. So what
22 I would--I would really say that we need to have
23 the Office of the Inspector report directly to
24 us, number one; and then number two, the rest of
25 it I think is an expansion of the cost associated

1 with managing the Commission that in this
2 particular circumstance is inappropriate. If we
3 need the help the Commissioners specifically
4 believe that there are gaps. I believe that we
5 can in a much more cost-effective manner fill
6 those gaps on an intermittent basis when the
7 questions that present themselves have to be
8 answered.

9 CHAIRPERSON CARTER: Commissioner
10 Crawford and then Commissioner Moore.

11 COMMISSIONER CRAWFORD: Yes, ma'am,
12 through the Chair. A question, Mr. Hicks. On
13 the eight vacant positions, are any of them we're
14 talking about from the Chief Investigator's
15 Office?

16 MR. HICKS: There are two positions, if
17 I recall, that were investigators out of that
18 eight.

19 COMMISSIONER CRAWFORD: So there are
20 two. So we're going to replace those two, those
21 vacant positions, in the Chief Investigator's
22 Office?

23 MR. HICKS: That's our hope, yes.

24 COMMISSIONER CRAWFORD: In addition to
25 this additional three?

1 MR. HICKS: Yes. Commissioner, what we
2 have, first of all, everything in which we're
3 talking about is within side of our budget.
4 We're not going outside of our budget, expanding
5 our budget or anything like that. We're
6 essentially utilizing what we have, vacancies, in
7 order to match up, if you will, at least in my
8 opinion, the skills that are necessary in order
9 to perform the function that is mandated by the
10 Detroit City Charter. And that's why we have
11 walked through the specifics of the type of
12 people in which we're looking for and so forth.
13 But again, we're eight slots down. We have room;
14 and the consequences of us, quite frankly, not
15 using the money is that through one process or
16 another we return that back to the City. I think
17 that we've had a--its been at least told to me, I
18 have not investigated myself, we have a series of
19 situations where we've been returning funds to
20 the City.

21 So again, my professional judgement as
22 you have brought me on to do the kind of job that
23 you want me to do, is that we were--we have
24 deficits in our operation in those areas and I'm
25 seeking to try and fill them so that we can put

1 this Commission in the best position to do the
2 job that is required for it under the City
3 Charter.

4 COMMISSIONER CRAWFORD: Yes, sir.
5 Further comments, this is not the first time we
6 talked about creating three positions, and I
7 think two of them actually spoke to what you're
8 talking about at this particular time and I
9 concur. I can go on record and say I concur with
10 all three. When I came onto this Commission at
11 that particular time--well, with me anyway it's
12 always a question of fiscal responsibility, being
13 fiscally sound, and having someone who just
14 strictly handles budget such as a CPA.

15 Also too, I appreciate the comments from
16 Commissioner Mallett in terms of, I guess one
17 might say, my research on the issues. Matter of
18 fact, unbeknownst to those who bark every time
19 there's a policy change, I read the policy, but I
20 also search other police departments across the
21 country and look for policy and pretty much their
22 policies have been okay. I haven't found any
23 flaws in comparing their policies, but that's
24 just my research, and I welcome someone else, you
25 know, who strictly just has that time to research



1 and look over not only the Department's policy
2 but look at best practice across the country so I
3 welcome that. Thank you.

4 CHAIRPERSON CARTER: Commissioner Moore.

5 COMMISSIONER MOORE: Thank you, Madame
6 Chair. The last line, Attorney Hicks, on Page 2
7 states action amends the standard operating
8 procedure in the Detroit Board of Police
9 Commissioners effective. What timeline can you
10 give us if we approve this today that we can
11 expect to see the changes to the SOP as well as
12 changes to our bylaws? This would effectively
13 change immediately?

14 MR. HICKS: Yes.

15 CHAIRPERSON CARTER: Commissioner
16 Burton.

17 COMMISSIONER BURTON: Madam Chair, I
18 have a few questions but I guess I will start
19 with, you know, I'm looking at a lot of different
20 departments how they do have a fiscal person or
21 policy person or whatnot, but I do kind of like
22 agree with Commissioner Mallett to some degree.
23 But also, I do have a concern and maybe Attorney
24 Celia Walker (sic) can maybe answer the question
25 or maybe someone else in the room probably could.

1 Not to put anybody on the spot or anything but
2 this has just been presented to us and our
3 attorney is not here. But I want to know is it
4 possible if there's any way that the Board of
5 Police Commissioners and I guess the Department
6 could we share our fiscal person without bringing
7 in another fiscal person. I don't know if that's
8 the right question to raise here, but bringing
9 somebody from OCI and converting them into fiscal
10 or whatever, you know, I don't really agree with
11 that but can someone help me out, anyone?

12 COMMISSIONER CRAWFORD: Madame Chair.

13 CHAIRPERSON CARTER: Commissioner
14 Crawford.

15 COMMISSIONER CRAWFORD: First and
16 foremost, and her name is Attorney Washington.

17 COMMISSIONER BURTON: Attorney
18 Washington. I'm sorry. I apologize.

19 COMMISSIONER CRAWFORD: She's not our
20 attorney. She doesn't represent the Commission
21 with all due respect. I do understand our
22 attorney is not here so if we need someone to
23 consult perhaps we need to deal with the issue at
24 hand.

25 CHAIRPERSON CARTER: Commissioner Vann

1 and then you wanted to say something?

2 MR. HICKS: It's really in response to
3 what the Commissioner has raised but of course
4 Commissioner Vann.

5 COMMISSIONER VANN: Go right ahead.

6 MR. HICKS: The notion of shared staff
7 is an interesting proposition. Of course at
8 first brush it does suggest certain types of
9 economists scale to reduce expenses and things
10 like that. I remind you, again, we're nowhere
11 toward expending the resources in which we have,
12 first of all. Secondly, we have to look at
13 whenever there is--we are an oversight board.
14 And as an oversight board it's rather difficult,
15 I would think, to take the individuals who you're
16 providing oversight to and then have them advise
17 you with reference to.

18 Generally probably 80 percent of the
19 time, yes, it works, you know, because of
20 collective wisdom of people on the Department and
21 it's great. But it's really in that 20 percent
22 of the time where you will actually come at
23 situations differently, have different priorities
24 and even have different interests from the
25 standpoint of oversight. That's where it would

1 pose a problem. So I would really underscore at
2 least in the approach that I'm taking here with
3 the Board is that you are an oversight board
4 designed and ordered to operate independent of
5 the main bureaucracy of the Department and
6 resources are provided to presumably sufficiently
7 allow you to exercise your judgement really as a
8 Board that happens to be comprised of both
9 citizens and appointed individuals.

10 So you have a mix on your board allowing
11 you to get varying perspectives, if you'll will.
12 And I would finally conclude that in an earlier
13 life, I guess, I was an Executive Director to the
14 Charter Revision Commission. The Charter
15 Revision Commission is the organization that took
16 a substantial review of the City of Detroit and
17 its charter. We spent two years essentially
18 going around into the community obtaining
19 comments and concerns from people with inside the
20 community. We looked at charters. First of all,
21 the main body of charters that are allowed under
22 the home roof provisions of the State of
23 Michigan, and then we looked at charters around
24 the country. What we thought we were doing in
25 that exercise was clearly responding to citizen's

1 concerns, but in this area I would say to you
2 this notion of civilian oversight is not new to
3 the City of Detroit.

4 The first time that you saw citizen
5 oversight in the City of Detroit goes back to the
6 1974 Charter. So you're not plowing through
7 ground in that regard. What you are likely doing
8 is recovering ground that may have been taken
9 from you through some extraordinary processes
10 that the City has gone through; namely, the
11 bankruptcy, the emergency manager and the
12 Department of Justice activity.

13 So we are really just trying to right
14 our ship, if you will, to a set of
15 responsibilities that really date back as far as
16 1974 inside the City of Detroit.

17 CHAIRPERSON CARTER: Commissioner Vann.

18 COMMISSIONER VANN: Madam Chair,
19 briefly, I'm hearing the discussion. I think its
20 a very cogent discussion. By the way, I think
21 that everybody, all of the positions are
22 reasonable and I respect everyone's views. I'm
23 always thinking that the Board of Police
24 Commissioners needs to always be on top of its
25 charter mandate responsibilities. We may have

1 different ideas about who we are as commissioners
2 or what we do or whatever, and personally you may
3 take it to different kinds of lengths or
4 whatever. But when we talk about charter
5 mandated responsibility, that is really the
6 purview of this Commission. I would want to see
7 in that regard, I fully understand the need for a
8 fiscal manager to help us bring oversight and
9 direction to our financial budget. I mean, we
10 have a budget of several million dollars and it
11 just isn't right for it not to be overseen by
12 someone who has a fiduciary responsibility who is
13 a certified public accountant.

14 I don't know what board--I sit on many,
15 many boards, and I know that that's the kind of
16 person or caliber of person that needs to be
17 looking at that policy as well because we are a
18 policy making body as a Board of Police
19 Commissioners. I think that's very, very good
20 for us to have that. Whether that's a
21 full-time person, a part-time person or whatever,
22 I think that's something that we can determine at
23 some point. And my esteemed colleague,
24 Commissioner Mallett, I truly understand what
25 he's saying about how we might be able to



1 configure that in a way that helps to meet the
2 need, but also as Commissioner Crawford has said,
3 make sure that these are our people who are doing
4 these responsibilities.

5 Now, the community engagement manager.
6 As much as I believe in community engagement, I
7 think is done quite well by these commissioners
8 who are sitting at this table. I think all of
9 them are community engagement managers. And I
10 think that all of us, I think that we're
11 under-estimating ourselves if we think that
12 someone can come in here and engage with the
13 community better than those of us who sit at this
14 table. So that may be one where, you know, we
15 could, you know, that's not so important, not so
16 charter mandated in that sense. But when it
17 comes to budget and our policy matters I think
18 it's important for us to have in house our own
19 people.

20 CHAIRPERSON CARTER: Commissioner Bell.

21 COMMISSIONER BELL: Madam Chair, I can
22 appreciate the dialogue and especially the
23 comments that's been made, Commissioner Vann has
24 been on the cutting edge in terms of serving on
25 this Board, and Commissioner Dawaelsche has

1 served. And I witnessed the onset of the Board
2 of Police Commissioner in 1974. I hired in in
3 1971. And during that process of the strong
4 effort it took for Affirmative Action, the Mayor
5 Coleman A. Young, had a clear mandate for the
6 commissioners in terms getting us that through.
7 I appreciate those who work with new Detroit in
8 terms of being that type of body who worked in
9 that endeavor to make sure that we have the
10 Department that we have today in terms of
11 oversight.

12 As we go forward, as one who appeared
13 before the Council for the last two years and
14 this year we found they were sympathetic in terms
15 of how we should operate even having dialogue
16 with Mayor Duggan about civilian review board
17 versus an oversight board. We had extensive
18 conversation with him in reference to, and I
19 think now we're on the same page.

20 The Council President Brenda Jones
21 indicated that she lobbied strongly for an
22 oversight board with this type of composition and
23 this type of clout. So we were able to address
24 the budget issues this year. We cannot rely on
25 any other source in terms of, its been clearly

1 stated by a couple commissioners here, we must be
2 our own entity and that must be the voice we have
3 conveyed to Council. They were very, very
4 supportive in terms of we should stand alone;
5 that this Board shall function. In the year it
6 took us to be in power, that was the form of the
7 community in terms of this Board should function
8 a hundred percent as an oversight board. So the
9 only way we can do that is by charter mandate to
10 have a Board Secretary full-time engaging.
11 That's charter language. That is not something
12 that we make up.

13 As you know, you look at Council, they
14 have all type of support staff. All these boards
15 function in a certain manner. So, in this
16 cutting edge of today 2016, we cannot take it
17 likely, and that's why we hired a Board Secretary
18 who works, has the skill set, has the background,
19 experience. We were all impressed because he
20 understands the Charter. He understands the
21 community voice.

22 Some people say what did you give up in
23 terms of getting your power back. We didn't give
24 up anything that's mandated by power. We're not
25 empowered to give up anything. This afternoon is

1 our opportunity to have a functional Board to
2 move forward in 2016 after two years of sitting
3 idle by that now--if you can't track your money
4 then why are you here? If you want to talk about
5 somebody else tracking you clearly indicated if
6 we don't spend it somebody else will spend it.
7 That's been the case for the last two years.

8 Community participation is very
9 important because Council look at how many people
10 are coming to your meeting. So you need to reach
11 out. In some instances we have more police
12 personnel than we have community. We have had
13 community people in the past. So if we do not
14 understand the rationale to bring people in and
15 we go to people then we miss the whole point of
16 being an oversight board because we must be
17 engaging. We have a whole caveat of people,
18 Black Lives Matter. Young people are impatient
19 in terms of dealing with police issues so we must
20 really be up to time.

21 The President of the United States
22 understands it. The Justice Department
23 understands the issues, and the people in Detroit
24 have been in the forefront. We had the wisdom of
25 a mayor and the people who changed the City

1 climate in terms of policing America in 1973. So
2 here we are in 2016. Are we a better Department?
3 The answer is yes. Are we a better oversight
4 Board? The answer is no until we take these
5 steps; until we take these steps where we have a
6 functional board because we are all busy people
7 engaging in our lives, in our jobs and other
8 duties so we need a functional office. You know,
9 in reality we haven't been functional in the last
10 two years. So we must move and it should not be
11 a debate. It should be a vote for yes. Thank
12 you.

13 COMMISSIONER SHELBY: Madame Chair.

14 CHAIRPERSON CARTER: Commissioner
15 Shelby.

16 COMMISSIONER SHELBY: It is clear to me
17 that these changes will allow us to meet our
18 Charter mandate. I make a motion that we accept
19 this proposal.

20 COMMISSIONER BELL: Support.

21 CHAIRPERSON CARTER: It's been moved and
22 supported that we-

23 COMMISSIONER BURTON: Discussion.

24 CHAIRPERSON CARTER: -that we accept the
25 proposal submitted by Secretary to the Board

1 Hicks. Is there any discussion?

2 COMMISSIONER BURTON: Discussion.

3 CHAIRPERSON CARTER: Commissioner
4 Burton.

5 COMMISSIONER BURTON: You know, through
6 the Chair, I mean, we're talking about creating
7 three new positions. Where are we going to house
8 these new positions when the Commissioners, we
9 don't even have our office space anymore due to
10 the fact that OCI is in our office. We talk
11 about the Charter mandate and what's in line in
12 the Charter. Yeah, we can create more positions,
13 but is this a time to create more positions?
14 Should we table this more? I think we should. I
15 don't think we should rush into this right now
16 but I think we should table this a little bit
17 further, you know; that's just my recommendation
18 to the Board.

19 COMMISSIONER CRAWFORD: Through the
20 Chair.

21 CHAIRPERSON CARTER: Commissioner
22 Crawford and then Commissioner Sanders.

23 COMMISSIONER CRAWFORD: I was just going
24 to say let's call for the vote.

25 CHAIRPERSON CARTER: Commissioner



1 Sanders.

2 COMMISSIONER SANDERS: Let's call for
3 the vote.

4 CHAIRPERSON CARTER: Those in favor?
5 (Several responded by indicating
6 aye.)

7 CHAIRPERSON CARTER: Those opposed?

8 COMMISSIONER MALLETT: No.

9 COMMISSIONER BURTON: No.

10 CHAIRPERSON CARTER: One abstention?

11 COMMISSIONER DAWAELSCHE: Yes. I
12 haven't had a chance to review.

13 MR. HICKS: Madam Chair, by your voice
14 vote we have sufficient members voting to
15 approve.

16 CHAIRPERSON CARTER: Thank you. The
17 motion carries.

18 COMMISSIONER SANDERS: Madame Chair.

19 CHAIRPERSON CARTER: Commissioner
20 Sanders.

21 COMMISSIONER SANDERS: By me being on
22 the Budget Committee this year and Ms. Brooks and
23 some of the other Commissioners, we ran across
24 issues that we needed a CPA really bad, because
25 me, myself, I think that we really got shafted.

1 I'm just going to be out there with it. This
2 proposal I think will put us on an even footing
3 where we don't have to worry about these issues
4 again.

5 CHAIRPERSON CARTER: Thank you,
6 Commissioner Sanders. I agree. We do need our
7 own budgetary person so I think that going
8 forward this has been long overdue because when
9 the Charter changed the staff should have changed
10 as well. I understand that at the time we were
11 under the consent--I mean, the emergency manager,
12 and there was nothing that we could do. This was
13 our opportunity and I'm glad that we're doing it.
14 I'm glad that we're moving forward. Commissioner
15 Mallett.

16 COMMISSIONER MALLETT: My disagreement
17 with the steps that are taken are based on a
18 couple of things. Number one, we are not out of
19 the fiscal crisis that got us into the mess that
20 we were in in the first place. So the fact of
21 the matter is I think it would be a point of
22 honor, in fact, to return money back to the
23 taxpayers that we did not spend as long as we are
24 behaving in a responsible manner.

25 Number two, if as Commissioner Sanders

1 says, they ran into budget difficulty and they
2 needed the assistance, what I'm saying is not
3 that you certainly should get the assistance that
4 you need, I don't necessarily believe that we
5 need to have three new staff persons to provide
6 it. So I do think that in furtherance of our
7 Charter responsibilities, there's a much more
8 cost efficient way to get to where it is that all
9 the Commissioners want to go.

10 What we ought not be doing is
11 unnecessarily building an organizational staff so
12 that we say that we can have one. I would also
13 point out that the Board has been extremely high
14 functioning. Its just been no question that the
15 Board of Commissioners has functioned; maybe not
16 up to the full level of every mandate contained
17 in the Charter, per se. But we have not run into
18 a circumstance, Commissioners, where there was an
19 investigatory manner that we didn't have the
20 capability of looking into directly. There have
21 not been policy decisions made where we did not
22 have the information that we needed to behave
23 intelligently. There was not a budgetary matter
24 that was not well managed by our budget team that
25 went to the City Council.

1 I remember, in fact, Commissioner, where
2 you and Commissioner Bell said you met with the
3 City Council and Mayor about our budget. Had
4 extensive conversations and reported back that
5 those conversations went very well. And I would
6 also point out that at the time that you did that
7 you didn't have a fiscal analyst. So as much,
8 I'm stealing some of the thunder of Bishop Vann,
9 but I'd simply point out that we have been quite
10 capable of managing ourselves.

11 I think that what we are doing today may
12 seem like the right thing, but as we are creating
13 our own bureaucracy as opposed to looking for
14 creative ways to solve the problems that have
15 been described here by my fellow commissioners, I
16 think that we're making a mistake. That's why I
17 voted no.

18 COMMISSIONER BURTON: Through the Chair.

19 CHAIRPERSON CARTER: Commissioner
20 Burton.

21 COMMISSIONER BURTON: And, you know, I
22 also want to raise too, you know, why my vote is
23 more like a no vote is the fact that we have been
24 in compliance as far as having a surplus. So,
25 you know, we've really been balancing things.

1 You know, the Commission, we've been in a surplus
2 since we've been here so that's always a good,
3 you know, good thing. So it looks like, you
4 know, we've been doing a great job as it is in
5 bringing in different entities at this point.
6 You know, I have to agree with my colleague,
7 Conrad Mallett, Commissioner Mallett.

8 CHAIRPERSON CARTER: Any other comments?

9 COMMISSIONER MALLETT: Does this mean,
10 Commissioner, that Mrs. Drake's office reports
11 now up through the Board Secretary?

12 CHAIRPERSON CARTER: Yes.

13 COMMISSIONER MALLETT: Wow.

14 CHAIRPERSON CARTER: Mr. Hicks.

15 MR. HICKS: Madam Chair, first of all, I
16 want to thank the Board for its vote of
17 confidence in connection with the plan of
18 reorganization. I do want to remind the Board
19 that as the Chief sits here he did raise the
20 question of the promotional list and that is the
21 next item on the Agenda.

22 CHAIRPERSON CARTER: Yes. Thank you.
23 So Chief, do you want to start, Chief Craig?

24 CHIEF CRAIG: Yes. Thank you, Madame
25 Chair. As requested, we are requesting to

Attachment No. 3

Board Meeting 8/4/2016 – (Page 25-31) Discussion with Gale Oxendine (former DPD Personnel Director) regarding the Board authorization of the BOPC reorganization plan and granting delegated authority to Mr. Hicks.

8/4/2016

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DETROIT BOARD OF POLICE COMMISSIONERS

WEEKLY MEETING

THURSDAY, AUGUST 4, 2016

3:00 p.m.

DETROIT PUBLIC SAFETY HEADQUARTERS

1301 THIRD STREET

DETROIT, MICHIGAN 48226



1 e-mail, sir.

2 COMMISSIONER BURTON: Okay.

3 MR. CROMWELL: I used the department e-mail
4 for these communications.

5 COMMISSIONER BURTON: Okay. Because a lot of
6 things that the Board Secretary sends out, they usually
7 send it to my personal e-mail. I didn't get it to my
8 personal e-mail.

9 CHAIR BELL: We can move on. Is there any
10 other questions or concerns?

11 Yes, ma'am?

12 COMMISSIONER BROOKS: Through the Chair, I
13 have been meeting with Eva and Lieutenant Gardner. We
14 have some great things on the horizon and there will be
15 a report next week.

16 MS. OXENDINE: Thank you, ma'am.

17 CHAIR BELL: Thank you. You need to stay
18 tuned.

19 MS. OXENDINE: Yes, they're working hard.

20 CHAIR BELL: If there's no other question or
21 concern, thank you for your outstanding --

22 Yes, sir, a question or comment?

23 COMMISSIONER BURTON: HR Director, I just
24 want to know, what is the practice -- like, just
25 recently, we just hired -- I just found out we just

1 brought on an Administrative Assistant. What is the
2 process when we bring on an Administrative Assistant to
3 our office? This Board right here have not read a bio.
4 We haven't seen any -- we haven't seen anyone come and
5 present to us. I -- you know, I thought -- in the past
6 practice, I thought it was narrowed down to maybe five
7 names, go to personnel subcommittee for three names to
8 come out of there so they can present before the Board
9 before we give a -- you know, before we bring that
10 person on.

11 What is the process like? Because I was
12 shocked when I came in the office the other day and we
13 got a new person but I never saw a bio, didn't get any
14 information. The person haven't come before the Board.
15 What is the process?

16 MS. OXENDINE: So the previous process was
17 pretty much as you have described. Subsequent to the
18 hire of the new Board Secretary, Mr. Hicks, and also
19 the motion that was put on the table with respect to
20 delegating some of Board authority to him, we worked
21 directly with Mr. Hicks with respect to the recruitment
22 process. The position was posed for several weeks. We
23 had hundreds of applicants. As a matter of fact, we
24 narrowed that down to about 20 or so applicants. About
25 five or six of those were chosen by Mr. Hicks and his

1 team for a final interview or review. Those interviews
2 took place. That person was selected and approved by
3 Mr. Hicks to hire.

4 COMMISSIONER BURTON: Through the Chair,
5 question for HR Director. I never saw the person's,
6 you know, bio or anything. And, in the past, the
7 secretary never had hands-on in that regards. I just
8 wanted this office and this body to operate, you
9 know -- you know, fair --

10 CHAIR BELL: Commissioner Burton.

11 COMMISSIONER BURTON: -- but --

12 CHAIR BELL: Commissioner Burton, I don't
13 think that's the role of HR Director.

14 COMMISSIONER BURTON: Point of order,
15 Mr. Chair.

16 CHAIR BELL: Sir --

17 COMMISSIONER BURTON: I'm a commissioner and
18 I'm still talking.

19 CHAIR BELL: Excuse me. Excuse me. Are you
20 calling for point of order?

21 COMMISSIONER BURTON: Yes, you're out of
22 order. I'm still talking to the HR Director.

23 CHAIR BELL: Sir, would you pause for a
24 minute?

25 COMMISSIONER BURTON: We on TV.

1 CHAIR BELL: Would you pause for a minute?

2 COMMISSIONER BURTON: And you're out of
3 order. Sure, but I will raise it back up.

4 COMMISSIONER CRAWFORD: Through the Chair.

5 CHAIR BELL: Yes, sir?

6 COMMISSIONER CRAWFORD: Can you get
7 Commissioner -- or can we get Commissioner Burton a
8 copy of the bio?

9 CHAIR BELL: Yes.

10 COMMISSIONER CRAWFORD: Thank you.

11 CHAIR BELL: Let us try to conduct our
12 business at hand. There is a process that we approved
13 that the Board Secretary is following and HR Director
14 is following, Gale Oxendine, and the personnel
15 committee is following and we will, hopefully, bring
16 everybody up to speed again in reference to what has
17 transpired, in terms of this process that we have
18 approved in the last two months.

19 COMMISSIONER BURTON: Well, Mr. Chair, the
20 person that we just brought on --

21 CHAIR BELL: Sir.

22 COMMISSIONER BURTON: -- to the Board of
23 Police Commissioners --

24 CHAIR BELL: Sir.

25 COMMISSIONER BURTON: -- as the

1 Administrative Assistant to the Board used to work with
2 the Board Secretary over at the County. So I just want
3 to make sure that we are practicing good practices
4 right here before the Board, as far as fairness for
5 all. If you got folks that's applying for positions --

6 CHAIR BELL: Commissioner Burton?

7 COMMISSIONER BURTON: If we got folks that's
8 applying for positions, Mr. Chair, and we have not seen
9 a bio, we have not seen any of the candidates and I
10 walk into the Board's office and, all of a sudden, we
11 got a person working here, that doesn't look right.
12 Thank you.

13 CHAIR BELL: Commissioner Burton, if you keep
14 outbursting, I'm going to ask them to cut your mic off.

15 COMMISSIONER BURTON: Mr. Chair, you're out
16 of order. You're really out of order.

17 CHAIR BELL: Can we cut the mic off? Is that
18 possible?

19 MS. SMITH: No, it's not possible.

20 COMMISSIONER BURTON: Thank you, audience.

21 MS. SMITH: Be quiet.

22 CHAIR BELL: Excuse me. We want to conduct
23 the meeting in orders. We want to give respect to
24 Commissioner Burton, but these outbursts and these
25 comments is inappropriate.

1 COMMISSIONER BURTON: Mr. Chair, it's not out
2 of order but --

3 CHAIR BELL: Let us move on, sir.

4 COMMISSIONER BURTON: I agree.

5 CHAIR BELL: Thank you for your reporting.
6 Thank you.

7 MS. OXENDINE: Thank you.

8 SECRETARY HICKS: Commissioner --

9 COMMISSIONER BURTON: I'm elected just like
10 you are, Bell.

11 CHAIR BELL: Yes, sir, Mr. Secretary?

12 SECRETARY HICKS: Commissioner, I just wanted
13 to straighten out the record on a couple of things.
14 The entire Commission was -- transmitted the resume to
15 every Commissioner in connection with the new hire.

16 Secondly, there is a suggestion that
17 potentially some favoritism may have taken place
18 because of a relationship in which I may have had with
19 this individual when I worked for the County.

20 The County has in excess of 10,000 plus
21 individuals. The person we hired, I've never worked
22 with her. She's never been a member of the office or
23 in the section in which I worked. And most of my time
24 at the County was on the legislative side, which is
25 where I first met that individual. So we had two

1 separations of structures of government separating us.

2 And then, when I moved over in the County to
3 the executive side, there was no contact or -- or any
4 structural relationship whatsoever with that. So I
5 just need to make it clear to people, as they listen to
6 a meeting like this, that suggests that this person was
7 brought on for any other reason than their experience
8 and their merit, as they documented it through their
9 resume, is simply not accurate.

10 So I just wanted to clear that up in
11 connection with the individual who's joining us as
12 staff and as well as my own reputation as the person
13 who is -- the Board has untrusted to expedite matters
14 on behalf of the hiring of any number of vacancies in
15 which we currently have.

16 CHAIR BELL: Thank you, Mr. Hicks.

17 COMMISSIONER BURTON: Through the Chair, the
18 whole reason we have an HR --

19 CHAIR BELL: Commissioner Burton, you do not
20 have the floor.

21 At this time, we're going to recognize
22 Chief Investigator for the OCI report.

23 MS. DRAKE: Good afternoon, everyone.

24 BOARD MEMBERS: Good afternoon.

25 MS. DRAKE: For the record, Pamela Davis



Attachment No. 4

Mr. Hicks provided weekly written reports to the full Board on the operation of the BOPC including personnel issues starting July 22, 2016

Board of Police Commissioners Weekend Summary #1 Not for Republication or Distribution July 22, 2016 – from Gregory Hicks, Board Secretary

Purpose: To communicate effectively with the Board, each week following staff's Friday 10:00 AM Management Meeting and the regular meeting of the Commission. I will prepare and transmit a general summary of activities within the Commission. The internal-news memorandum is for communications only and likely will not represent the last word on any given subject. It is however designed to keep an organized flow of information between the office and Commission. Please excuse any grammatical error in these transmissions, again as they are for communications only. Please read confidentially. This summary does not represent policy or direct action of the Board. This information is from the Board Secretary and reflect internal management decisions and opinions of the Board Secretary. I will seek to keep these communications to be within one or two pages.

Item #1: Office Buildout. As of today (July 22, 2016) we have been advised that the contract signed several months ago for the Buildout of BOPC space and furniture has been returned and the requisition number required to generate purchases of goods and services has been withdrawn. The item was returned to the Police Department as opposed to the Commission. We are checking to see what happen to the request and will advise Commissioner as we receive information.

Item #2: Memorandum from Ms. Bernard in connection with outstanding meeting minutes. Please note that the information contained in the memo is incorrect. The Commission has approved minutes within the past two months. Most notably, you have approved select transcriptions of the meetings. The Open Meetings Act sets a minimum amount of information that must be included in the minutes. The transcriptions are the complete record. I would also note that the Commission's meeting are taped by Media Services. While it is true that we must be open to public inspection, I believe if a request or challenge were made we are in a position to recover all the required information for public inspection. Finally, I am in the process of obtaining information on ALL of any outstanding minutes and will have them ready for Board approval at our next regularly scheduled full Board meeting (August 4, 2016).

Item #3: Follow-up to Promotional Process. Two weeks ago, I generated a matrix (worksheet) that lined-up the various feedback data available on individual officers who were legible for promotions. The matrix included information from Professional Standards (Internal Affairs and Force), Disciplinary Records from the department and OCI Citizen Complaints. The Chief of Police indicated, if the Commission wanted to raise a concern about any of the promoted officers that a two-week window was open for registering concerns. As staff, we did not flag any individual officer for objection, we only produced a comprehensive record for your consideration. As you may recall, we requested a two week delay in the consideration of the Chief promotional plan so that we could do our work in quantifying the performance records of the officers. In the Commission's wisdom, such a delay was not granted. To put the Commission in the best position to review and evaluate future promotions, I am in the process of generating a draft policy for Commission review and authorization that will set a timeclock in motion when we receive promotional lists. Any Commissioner who would like to provide information toward this draft, please do so.

Item #4: Outside Communications - Mungo Law Firm re: Traffic Stop of Adolph Mungo. Each Commissioner should have received a package from Attorney Leonard Mungo re: Adolph Mungo. Without a review of the merits of the allegations, I understand that Attorney Mungo is seeking a settlement on this case. Please note that no case has been files, no Commissioner has been served. As of today, there is nothing to settle. In the event that such a case is actually filed, the case is likely to be against the city, Chief Craig and less likely the Commission. The central issues are statements that Chief Craig is alleged to have made that according to Attorney Mungo is "slanderous and defamatory". While the Board attorney has been involved in some communications on this matter, specifically notifying the Law Department of Attorney Mungo's desire to sue, I have indicated that there is nothing that the Commission should be doing on this matter other than receiving general information of citizens. If and when a suit is filed that matter will be referred to the law Department and normal defenses and representations will begin.

Item #4: Outstanding CCR's and Appeals. During our management meeting we reviewed outstanding cases in connection with citizen complaints and appeals to the Board. Generally, our process is working well. There appear to be two outstanding cases of current concerns

- A) Gregory Jones. this is the environmental ticket case. This is the case that involves, over time, a series of environmental ticket issued to a complainant who is not the property owner. As of late today, an internal order has been issued to appropriate DPD staff to cancel all pervious tickets and if the problem persist other tickets will be issued to the owner of record on the property. I understand that Mr. Jones has filed another complaint. The complaint involves his allegation of harassment as additional tickets have been issued. The complaint has been in the office and under investigation for 4 weeks.
- B) Fuchon Drain, this is a property recovery and procedural case. Ms. Drain was arrested and she alleges that all of her property was not returned. It appears that a key lock of hers was destroyed. Our investigations as to property, demeanor and procedural conduct is closed. Our investigation sustained the complainant on one of the allegations. The request for reimbursement for the key locks has been referred to the appropriate agency (City's Law Department for reimbursement decision).

In both cases, I have instructed Attorney Bernard to ask the appropriate BOPC subcommittee for a final determination as to if they are interested in hearing an appeal on these matters. If the subcommittee indicates no, these matters will be closed.

Item #5: Following the assigned of new subcommittee chairs and membership, I have reviewed with staff their assignments in support of BOPC subcommittees. I have requested that they make contact with the new or current Chair and encourage a meeting within 30 days to discuss the agenda(s) for the subcommittee and to work out a schedule for future meetings.

Item #6: Commissioner Bell has indicated that next Thursday regular meeting of the Commission will be truncated to allow for the Commission to participate in the Department's DPD's Summer Jams (Thursday, July 28, 2016). The presentation on Chief's Neighborhood Liaison scheduled for next week will be redirected to another time. All other decision making agenda items will also be referred to the following week.

Item #7: Inter-office use of GroupWise. Management staff have been instructed to place all appointments related to the Commission (internal and external) on their shared calendar in GroupWise. This process will increase our ability to follow our work flow and provide Commissioners with a direct response to staff time outside of the office.

Item#8: Internal Access and Training on DPD's MASS system. I have requested via Chief's Liaison C. Washington to be trained on the DPD's MASS system. This is the internal system used by the department to track performance issues and management decision of the department. The training should start within a few weeks. I have also asked our central staff if they need the same training, most of them have indicated that they feel that their work activities will be enhanced if such training occurred. After the above training, I will also be requesting access and training on the city's financial management system. We will need "read-only" access to view and track departmental financial concerns. More on these items as they occur.

Item#9: City Website. I have asked Rob to investigate improvements to the City of Detroit's website/Commissioners Page. We hope to add a map and other interactive information to the site including a short bio of each Commissioner along with the ability to put some of our archived documents on site. Maybe even a copy of OCI's Complaint Form and some statistical data about the resolutions of citizen complaints. More on this as we make progress.

Item #10: Board taping. As you might have noticed, the chamber wherein the Commission meets had more lighting. Robert has been working with the Media Services staff to improve the environment during our tapings. We have several additional items that we will be attempting over the next few months, again more information as we progress.

Item #11: Personnel Issues / New Hires. We are still awaiting confirmation that our recent budget amendments have been authorized. If you recall we had eight vacancies. Four of the vacancies were to be consolidate into two vacancies to create the funds needed to attract a fiscal and policy manager. The 3 other vacancies are in process. One remain at our discretion.

Attachment No. 5

Mr. Hicks provided and convened weekly initiated an internal discussion and reporting process with Board leadership (Chair, Vice Chair and Immediate Past Chair) to discuss face-to-face issues related to the operation of the Board including personnel matters. - Administrative Briefing Agenda.

Briefing Agenda for the Chair BOPC – February 21, 2018

Thursday's Agenda

- a) Resolutions:
 - (1) Police Officer Sandra Brooks (retirement)
 - (2) Police Officer Gerri Randall (retirement)
- b) Presentations to the Board:
 - 1) Budget Report. DPD/CFO Lisa Jones. 2nd Quarter Financials (see proposed questions under Budget section of this agenda)
- (c) Minutes for approval: February 15, 2018 meeting (Action Item, copy attached)
- (d) Information to be included in Chair's Notes (expect draft text, Thursday AM)
 - 1) Fallen and Injured personnel.
 - 2) Order of the meeting.
- (e) Subcommittee Committee Reports (no formal reports projected)

Reminder:

- (1) Hicks meeting with David Massaron, Wednesday (clarification of FY2018-2019 BOPC budget)
- (2) Monday, February 26, 2018 Budget Hearing before the Detroit City Council @ 1:00 PM CAYMC
- (3) Tuesday, February 27, 2018 Meeting with Corporation Counsel, Lawrence Garcia @ 10:00 AM CAYMC Suite #500
- (4) Mayor's State of the City Address, March 6, 2018 @ 7:00 PM Western High School
- (5) Mayor's and Chief's Meeting with BOPC, March 27, 2018 @ 12:30 Noon

Attachments:

- Minutes 2/15/2018
- Homicide Daily report 2/13/2018
- Resolution PO Sandra Brooks (Retirement)
- Resolution PO Gerri Randall (Retirement)
- Draft Responses to Directive on Rank and Structure (to Leadership and Policy Committee 2/22/2018)
 - (1) Cover / transmittal
 - (2) Detailed point-by-point response to letter dated February 2, 2018. (Policy Division)
 - (3) Detailed point-by-point response to letter dated February 2, 2018. (Legal Division)

Board Follow-up

- a) Invitation to Mr. Willie Brooks, new CEO Detroit-Wayne County Mental Health Authority (Mr. Brooks will not be reporting to the Mental Health Authority until mid-March. BOPC will attempt to
- b) Subpoena requesting settlement information DPD.
 - 1) Request referred to Jerry Ashford, Chief Litigation Counsel, Law Department 11/14/2017 / note.
Request a meeting with new Corporation Council to resolved issue!
- c) Amended letter to COP re: Officer Rochelle Mayberry, awaiting response from COP
- d) Vann re-appointment to Board from Mayor.
- e) BOPC Reimbursements / Stipends, follow-up request by councilmember to draft ordinance

Recent Requests or Active Requests to the Chief's Office

- f) OCI space: awaiting information and single purpose meeting from AC White
- g) Audit information on Department performance: scheduling visit to Civil Rights
- h) Reimbursement data for sports and entertainment and other reimbursable expenses to Department: working with Bettison with target date to have information to Board for the March 27th meeting w/ M&C.

Recent Requests or Active Requests to the Mayor's Office

- i) Budget New Initiatives; BOPC Tow Unit (last e-mail to Massaron 1/30/2018): pending.

- j) **Read Only Access to Financial Data** (General Ledger and Funds Available Analysis Report last e-mail to Massaron 1/30/2018): **pending**
- k) **Parking:** BOPC member parking placard (all submitted to Mayor's office except Burton, Mallett)

Legal:

- l) Attorney Update on Boulevard & Trumbull Towing Case (chronology) from Jermaine Wyrick. BOPC Attorney (see attached)
- m) See Legal review of Chief's February 2, 2018 letter re: Rank and Structure

Personnel

- (1) Investigator Adela Rivera, in hospital condition improving.
- (2) Polly McCalister completed all pre-employment requirement, report date March 12, 2018.
- (3) Bridget LaMar is objecting to the 8% pay increase afforded her as Interim Personnel Director
- (4) CompStat / GIS (Geographic Information Systems) Part Time clerk, all paperwork plus clearance for Breanna Lockhart, done. Awaiting school schedule from Ms. Lockhart.

Budget:

- n) 2nd Quarter DPD Financials – **Questions submitted to DPD/CFO Lisa Jones**

Agency CFO Lisa Jones:

Thanks for the confirmation for this Thursday (3:00 PM).

My suggestions is to cover the following questions in addition to other questions that you feel appropriate.

Second Quarter Report Content

1. Variance analysis between Budget and Actual for Revenue and Expenditures by account and not high level?
2. Any significant changes to the budget between divisions, units or sections (department)?
3. Is the department within budget overall?
4. Do you project to be within, below or above budget at this point for the fiscal year ending June 30, 2018?
5. Where are your staffing levels?
6. Are any capital projects in process?
7. Where are the overtime levels to date? (i.e. over, under budget)

Also, if we can have an advance copy of your presentation, we can e-mail it to Commissioners 24 hours before your presentation.

General Report:

- o) **Public Safety Foundation:** Last discussion with Foundation Exec Director will pose issue to Board. **Awaiting update from Foundation.**
- p) Citizen Complaint Committee Orientation – Commissioners (Brooks, Brown), need Davis and Burch
- q) NACOLE conference, Appointments, Board level committee to monitor progress. Any volunteers?
- r) BOPC placement in the City's financial table (Attachment to DPD or aligned with other Elected Officials) no change.
- s) CBA Labor negotiation preparations
 - 1) Cross municipal evaluation of Police Contracts
 - 2) Arbitration issue
 - 3) Citizen's Advisory Panel review of Labor contract re: Police misconduct (must confirm panel membership: requested 2 representatives per District, plus old Commissioners. – 14 + 3 = 17 to 21 members



Board of Police Commissioners

Accountability through Civilian Oversight

Lisa Carter, District 6
Chairperson

Willie E. Bell
District 4

Darryl D. Brown
District 1

Willie E. Burton
District 5

Conrad Mallett Jr.
District 2

Vacant
At-Large

Eva Garza Dewaelsche, At-Large
Vice Chair

Elizabeth Brooks
At-Large

Shirley A. Burch
District 3

William M. Davis
District 7

Derrick Sanders
At-Large

Detroit Public Safety Headquarters
1301 Third St.
Detroit, MI 48226

Thursday, February 22, 2018 @ 3:00 p.m.

- I. Call to Order, Chairperson Carter
- II. Invocation
- III. Introduction of Commissioners (by individual Commissioners)
- IV. Approval of February 22, 2018 Agenda
- V. Approval of February 15, 2018 Minutes
- VI. Introduction of BOPC Staff, Chief of Police, Elected Officials or Representatives
- VII. BOPC Officers' Report, Chairperson Carter
- VIII. Chief of Police Report
 - A. Chief's Summary of CompStat Data and other Crime Information/DPD Information
- IX. Presentation to the Board
 - A. Budget Report/DPD Fiscal Second Quarter
- X. BOPC Standing and Ad hoc Committee Reports
- XI. Report from Board Secretary / Communications
- XII. Old Business
- XIII. New Business
- XIV. Announcements

A) Next Meeting:
Thursday, March 1, 2018 @ 3:00 p.m.
Detroit Public Safety Headquarters
1301 Third Street
Detroit, MI 48226

Next Community Meeting:
Thursday, March 8, 2018 @ 6:30 p.m.
Downtown Services @ Wayne County Community College District
801 W. Fort Street, Detroit, MI 48226
(Due to the construction at the main Fort Street
Parking lots, please use Lot 4 and Lot 5 at
Rear campus entrances)

- XV. Oral Communication/Public Comments
(Please Give Name and Limit Comments to Two Minutes)
- XVI. Adjournment

CITY OF DETROIT
OFFICE OF THE INSPECTOR GENERAL

In the Matter of:

OIG Case No. 2018-0050-INV

The proceedings had and testimony taken in the above-entitled matter before me, Deborah A. Elliott, CSR0129, notary public for the County of Oakland, acting in Wayne County, State of Michigan, at TCF Center, One Washington Blvd., Suite 411A, Detroit, Michigan on Wednesday, September 18, 2019 at 11:00 a.m.

PRESENT:

Office of Inspector General
65 Cadillac Square, Suite 3210
Detroit, Michigan 48226

(By Ellen Ha, Kamau Marable, Jennifer Bentley, Attorney,
Norman Dotson and Jacqueline Hendricks-Moore,
Investigator)

Appearing on behalf of OIG

MR. JERMAINE A. WYRICK (P54352)
Attorney at Law
1301 3rd Street, Suite 767
Detroit, Michigan 48226-2503

Appearing on behalf of BOPC, Lisa Carter

ALSO PRESENT: BOPC Commissioners (Darryl Brown, William
Davis, Annie Holt, Willie Bell, Eva
Dewaelsche)

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A	Legal Opinion of City of Detroit Law Department dated April 2, 2019	6

1 Detroit, Michigan
2 September 18, 2019
3 11:00 a.m.

4 - - -

5 MS. HA: Today is Wednesday, September 18,
6 it is 11 a.m. We are here at TCF Conference Center.
7 This is an administrative hearing pertaining to the
8 Office of Inspector General or OIG file number
9 18-0050-INV. This hearing is for the City of Detroit
10 Board of Police Commissioners whom we will hereforth
11 refer to as either the Board or the BOPC. We are holding
12 this hearing pursuant to a request made by the Board
13 through the Board's attorney, Jermaine Wyrick, in
14 accordance with Section 7.5-311 of the 2012 Charter of
15 the City of Detroit and pursuant to written notice sent
16 to Mr. Wyrick and to the Members of the Board.

17 So that there is no confusion and the
18 record is clear on this matter on July 9th, 2019 the City
19 of Detroit Office of Inspector General issued a draft
20 report of its findings based on its investigation
21 pertaining to the allegation of BOPC abuse of authority
22 to each member of the Board. The draft report contained
23 several critical findings against the Board as well as

1 certain members of its staff; specifically we found
2 against the Board (one) the Board delegated it's Charter
3 mandated authority to hire its staff to the Board's
4 Secretary in violation of the Charter and the Open
5 Meetings Act, (two) the Board violated the Open Meetings
6 Act when hiring and appointing Executive Managers for
7 Fiscal Policy and Administration and the Board's attorney
8 as we did not find any record of the Board's deliberation
9 or votes on such matters.

10 Therefore, in our draft report we
11 recommended that this Honorable Body refer the OIG's
12 report, our draft report, to the Corporation Counsel for
13 further action as required by the Charter so that the
14 Corporation Counsel can enforce compliance. All actions
15 and decisions made on the Board's recommendations must be
16 done in compliance with the Open Meetings Act and to
17 comply with all aspects of its Charter mandated duties
18 including rescinding the Delegation of Authority
19 Memorandum authored by Mr. Hicks and approved by the
20 Board. I understand it wasn't the current Board that
21 actually voted and authorized the Delegation of Charter
22 mandated duties to Mr. Hicks, but you are here today
23 because the current body if it decides to take such

1 action it is the current body that has to take the action
2 to rescind that Memorandum as a body and whole. We ask
3 the Board and recommended that the Board comply with the
4 Charter and the Open Meetings Act and the Board's
5 reorganization plan, train its members and staff on the
6 Michigan Open Meetings Act and to the Charter to ensure
7 compliance, to take appropriate and disciplinary actions
8 against Board Secretary, Mr. Hicks, Ms. Faye Johnson and
9 former Chair now Commissioner Willie Bell to ensure all
10 positions created by the Board be consistent with the
11 City's HR Rules and Regulations.

12 So we are here today to address the OIG's
13 findings against the Board as referenced earlier in the
14 OIG's recommendation and in our draft report pursuant to
15 Rule 3 of the OIG's Administrative Hearing Rules. The
16 purpose of this hearing is to provide the Board as a body
17 with an opportunity to present testimony and any
18 supporting information or records in response to the
19 OIG's findings against the Board.

20 At this time I would like to remind
21 everyone, sorry, that this is not a Court of Law. We do
22 not make legal determinations, the OIG is required under
23 the Charter to make a report of its factual findings and

1 make recommendations based on its findings. Now, in
2 terms of the position that we are taking that we are not
3 a Court of Law, so that under the Charter the Charter
4 interpretation and enforcement must be done through the
5 Corporation Counsel. I would like to present this legal
6 opinion (indicating) from the City of Detroit Law
7 Department dated April 2nd, 2019 as Exhibit A.

8 MR. WYRICK: I would object. I haven't
9 seen it.

10 MS. BENTLEY: Here (indicating), I have a
11 copy for everybody.

12 (Reporter marked Exhibit A.)

13 MR. WYRICK: Like I said I object. I
14 haven't seen this (indicating). This is obviously in
15 poor taste and poor timing by virtue of the fact that
16 here we are on the third day of these proceedings.
17 Looking at a calendar I have today is September 17th of
18 2019. I have been in regular correspondence with your
19 office and Corporation Counsel since I've been here these
20 two years and yet we get blindsided by something -- this
21 is the way I would characterize this today. I take
22 exception to this, and I can't speak for my
23 Commissioners, but as their attorney I think it's poor

1 judgment. I think it's very unprofessional to actually
2 give this to us as we begin these proceedings, and I
3 object to it vehemently.

4 MS. HA: By doing so today we have waived
5 our attorney-client privilege on this matter, and we
6 chose today to disclose this attorney-client privileged
7 memorandum and to waive our privilege for the reason it
8 is this Body that has to make the decision to rescind the
9 delegation of authority which violates the Charter, and
10 when Mr. Hicks was questioned yesterday during the
11 administrative hearing it was made very clear to us that
12 some members of the Board did not fully understand or
13 appreciate the magnitude of the delegation of authority
14 that was provided to Mr. Hicks, and so we are here to
15 present this legal memorandum; and I respectfully request
16 that you review the report and reconsider your decision
17 after we have this hearing.

18 MR. WYRICK: Again I object. You have
19 told me in the past three days you are not here to
20 present evidence. I don't see why this is being
21 presented if you've had this (indicating) for five months
22 now.

23 MS. HA: Before we begin our investigation

1 because we are not a legal authority for the City of
2 Detroit we could not initiate or further pursue our
3 investigation of abuse of authority if we did not have a
4 legal opinion which declares that either the BOPC had the
5 authority to delegate to hire. If so then we would have
6 closed our investigation. But that was not what was
7 determined through the Law Department.

8 MR. WYRICK: The Law Department is here to
9 testify then, to me it's irrelevant.

10 MS. HA: And I accept your objection and
11 it is duly noted on the record. So while this is not an
12 adversarial proceeding the hearing will be conducted in
13 the manner pursuant to the OIG's Administrative Hearing
14 Rules, a copy of which was provided to Mr. Hicks -- I'm
15 sorry, to Mr. Wyrick and to each member of the Board
16 prior to today's hearing. This hearing is not a forum
17 for the OIG to present its case, evidence or witnesses.
18 The purpose of this hearing is to provide the Board with
19 an opportunity to present its evidence including
20 testimony or records which would show that the OIG's
21 findings against the Board as outlined in the draft
22 report are incorrect or inaccurate. Upon completion of
23 this administrative hearing unless we require additional

1 information based on what is presented here today the OIG
2 will conclude the investigation and close the record
3 pertaining to the Board on this matter. Thereafter, in
4 accordance with the Administrative Hearing Rules the OIG
5 will either revise, amend or supplement its report of its
6 findings, otherwise we will simply supplement our draft
7 report with a copy of the BOPC written responses and a
8 copy of today's administrative hearing transcript at
9 which time our report will be made final.

10 Before I pose four questions to the
11 Members of the Board who are present here today if I
12 could I would like to have everyone's appearance.

13 Jennifer --

14 MS. BENTLEY: Jennifer Bentley, attorney
15 for the Office of Inspector General.

16 MS. HA: Ellen Ha, Inspector General.

17 MS. HENDRICKS-MOORE: Jacqueline
18 Hendricks-Moore, investigator for the Office of Inspector
19 General.

20 MR. MARABLE: Kamau Marable, Deputy
21 Inspector General.

22 MR. DOTSON: Norman Dotson, Law Clerk for
23 the Office of Inspector General.

1 MS. CARTER: Lisa Carter, Commissioner.

2 I'm sorry? Chairperson.

3 MR. WYRICK: Jermaine Wyrick, Board
4 attorney.

5 COMMISSIONER DEWAELSCHÉ: Eva Dewaelsche,
6 Commissioner and Vice Chair.

7 COMMISSIONER BELL: Willie Bell
8 Commissioner of District Four.

9 COMMISSIONER HOLT: Annie Holt,
10 Commissioner at large.

11 COMMISSIONER BROWN: Darryl Brown,
12 Commissioner of District One.

13 MS. BENTLEY: Just everybody make sure you
14 speak loud enough for the court reporter. It's kind of a
15 big room and it's hard to hear in here. Thank you.

16 MS. HA: Before I pose the next four
17 questions which I have been doing in every administrative
18 hearing procedure since Monday, I would like to ask this
19 Board if you would like a few minutes to discuss, maybe
20 ten, 15 minutes to discuss the legal opinion which was
21 provided to our office pertaining to the delegation of
22 authority and whether or not you would still like to
23 proceed with this administrative hearing.

1 MS. BENTLEY: If you would like to discuss
2 this with your attorney present and off the record.

3 MS. HA: We will step out.

4 COMMISSIONER CARTER: Yes, we would.

5 Thank you.

6 (Off the record)

7 MS. HA: So we are back on the record. It
8 is 11:20. I guess I should ask you, Mr. Wyrick --

9 MR. WYRICK: Yes.

10 MS. HA: -- is the Board going to continue
11 with today's administrative hearing?

12 MR. WYRICK: Absolutely.

13 MS. HA: So that everyone fully
14 understands the Charter Section 7.5-209 states the
15 Corporation Counsel shall be responsible for enforcing
16 compliance with the Charter. Corporation Counsel shall
17 document in writing any violation of the Charter by the
18 executive or legislative branches, office of the clerk,
19 elected officials or other persons subject to compliance
20 with the Charter. This written notice shall contain the
21 nature of the violation including the Charter's sections
22 violated, direct the necessary action to be taken to
23 remedy the violations, and the date by which the remedial

1 action must be taken. The time for taking the required
2 remedial action shall not exceed 14 calendar days. The
3 notice of Charter violation shall be presented to the
4 offending body or individual with a copy provided to the
5 Mayor, the City Council and City Clerk. In the event the
6 offending body or individual fails to remedy the Charter
7 violation within the time frame and manner as required in
8 the written notice the Corporation Counsel shall take all
9 reasonable action to secure compliance including but not
10 limited to judicial action. Nothing in this section is
11 meant to waive any right to attorney-client privilege.
12 So after having read this portion of the Charter does
13 this Body still wish to proceed with the administrative
14 hearing?

15 MR. WYRICK: Yes, ma'am.

16 MS. HA: Thank you. So now that we've had
17 appearances by all of the Commissioners present here
18 today I would like to ask this Body is it your
19 understanding that Mr. Wyrick is here to represent the
20 Board as a Body, starting with Commissioner Carter.

21 COMMISSIONER CARTER: Yes.

22 MR. WYRICK: If this will assist not to
23 interrupt I have a signed waiver from when the Board

1 waived that if you would like a copy dated August 1st,
2 2019.

3 MS. HA: If you don't mind I would rather
4 like to put the questions on the record.

5 COMMISSIONER DEWAELSCHÉ: Yes.

6 COMMISSIONER BELL: Yes.

7 COMMISSIONER HOLT: Yes.

8 COMMISSIONER BROWN: Yes.

9 MS. HA: Do you understand that some of
10 Mr. Wyrick's statements provided to our office was used
11 by our office to support certain findings as we reported
12 on July 9th, 2019? Commissioner Carter?

13 COMMISSIONER CARTER: Do I understand that
14 what some of his statements --

15 MS. HA: Yes.

16 COMMISSIONER CARTER: Yes.

17 COMMISSIONER DEWAELSCHÉ: Yes.

18 COMMISSIONER BELL: Yes.

19 COMMISSIONER HOLT: Yes.

20 COMMISSIONER BROWN: Yes.

21 MS. HA: Do you understand that Mr. Wyrick
22 has represented Commissioner Bell, Ms. Johnson in their
23 separate respective administrative hearings as well as

1 attending Mr. Hicks' administrative hearings and these
2 are the very individuals whom we have recommended that
3 this Board who is represented by Mr. Wyrick to take
4 appropriate disciplinary actions?

5 COMMISSIONER CARTER: Yes.

6 COMMISSIONER DEWAELSCHÉ: Yes.

7 COMMISSIONER BELL: Yes.

8 COMMISSIONER HOLT: Yes.

9 COMMISSIONER BROWN: Could you repeat that
10 again?

11 MS. HA: You understand that Mr. Wyrick
12 has represented Commissioner Bell, Ms. Johnson in their
13 separate administrative hearings and attended Mr. Hicks'
14 hearing yesterday, the very individuals whom we have
15 recommended that this Board take appropriate disciplinary
16 action and this Board is represented by Mr. Wyrick?

17 COMMISSIONER BROWN: Yes.

18 MS. HA: So is it my understanding that
19 even though there may be a conflict of interest here,
20 that this Body is waiving the conflict?

21 COMMISSIONER CARTER: Yes.

22 COMMISSIONER DEWAELSCHÉ: Yes.

23 COMMISSIONER BELL: Yes.

1 COMMISSIONER HOLT: Yes.

2 COMMISSIONER BROWN: No. I didn't agree
3 with that.

4 MS. HA: Thank you. Mr. Wyrick --

5 MR. WYRICK: Yes. My turn?

6 (Ms. Ha nodded her head.)

7 MR. WYRICK: Good morning, again my name
8 is Jermaine Wyrick. I am the BOPC attorney and from our
9 perspective the theme that I would speak on this morning
10 is the theme called no harm no foul. I'll repeat that so
11 everyone hears me, no harm no foul. No harm no foul.
12 The standard of law which I hope this Inspector General
13 will follow although its not a Court of Law that is used
14 in these types of administrative hearings comes from a
15 1968 United States Supreme Court case called Pickering.
16 It's based upon the fact that there is competent material
17 and substantial evidence presented at this type of
18 hearing to move forward with the written report that has
19 already been authored by your office. I respectfully
20 submit if the law is followed here you will revise and
21 amend that report and not issue any discipline whatsoever
22 against this Board of Police Commission by virtue of the
23 fact that it complied with the Charter by virtue of the

1 fact that it complied with the Open Meetings Act and they
2 complied with any other legal requirements that it was
3 legally required to do on any of the issues and
4 controversy here, and I'll get into that very
5 specifically.

6 The cases that I also cited that also go
7 to the City of Detroit are a case called Walker. It's a
8 1994 Michigan Supreme Court case, and this is where our
9 interpretations of the Charter vary very differently.
10 The Inspector General's interpretation of the Charter is
11 too narrow and too flawed to comply with the law by
12 virtue of the fact when you look at the law which is the
13 1994 Michigan Supreme Court case Walker which involved
14 the power of Detroit to collect taxes. It very
15 specifically said the Charter is construed liberally
16 including those not expressly granted to their unique
17 needs. Now what does that mean here? If the Charter is
18 construed liberally you don't construe the Charter as
19 narrowly as Inspector General does here which basically
20 limits our Board Secretary to our meetings and
21 investigating complaints or receiving complaints, excuse
22 me, that he doesn't even investigate. That proposition,
23 the law from Walker was also more recently solidified

1 again in 2014 by a case called Barrow where basically it
2 says Home Rule enjoys because the City of Detroit
3 Charter, the 2012 Charter is a Home Rule Charter. It
4 says Home Rule enjoys powers not expressly granted.
5 Authority is implied if it is essential to the exercise
6 of authority. Very specifically from a factual
7 standpoint that involved whether or not the Detroit
8 Election Commission could have satellite offices even
9 though that wasn't specifically delineated in the Charter
10 just like the delegation and other issues weren't
11 delineated here in the Charter on behalf of the Board of
12 Police Commissioners. Both of those cases stand for the
13 proposition that Boards such as the Board of Police
14 Commission or the Charter Commission or Election
15 Commission have authority and power that is implied when
16 it is essential to the unique needs for that Board to
17 operate effectively. When Board of Police Commission
18 delegated authority to the Board Secretary which is a
19 practice as my written, my 33 page written response
20 reflects is carried across the country; LasVegas,
21 Pittsburg, wherever you want to name it comports what the
22 best practice of the civilian oversight not a legislative
23 body which was what our Board in the written report was

1 cited for not being like -- not even accurately
2 criticized by virtue of the fact in your written report
3 it very specifically states that the Board should be more
4 like City Council because City Council doesn't have a
5 Chairperson and select subcommittees which isn't even
6 consistent with the Charter. The Charter Section on that
7 very specifically states 4-106 the president of Detroit
8 City Council appoints the Chairperson of standard
9 committees. Your report wasn't even accurate in that
10 regard.

11 Also pointing to the Detroit City Charter
12 Section 2-110 it states that "Any multimember body may
13 select its officers and adopt rules of procedure." Let's
14 think about what adopt rules of procedure might mean. It
15 may mean adopt Bylaws. It may mean delegate authority.
16 It may mean how do we function effectively and
17 efficiently in a way that we should under the Charter,
18 what's required under the Charter. Adopt rules of
19 procedure may sound like a delegation or something of
20 that nature.

21 Let's talk more about case law here.
22 Going way back to 1943 there was a case called Fraternal
23 Order of Police, that comes from Michigan Supreme Court

1 as well. It says there Commissioners have a large and I
2 profess the word large measure of discretion. If
3 Commissioners have a large measure of discretion there's
4 nothing that you have alleged against this Board that
5 doesn't fall within the discretion that this Board
6 individually and collectively is afforded.

7 I would also cite and I cited in my
8 written response United States Supreme Court case is very
9 specifically one that's called new process, another one
10 which allows delegation.

11 There's criticism of the Open Meetings
12 Act. Apparently you all didn't read the statutory
13 provision; and I'm going to cite it right here. I hope
14 the court reporter hears me, MCL 15.26 AF which says
15 under the Open Meetings Act a closed session is allowed
16 to review an employment application. So if the Board of
17 Police Commission such as when they hired me and they
18 hired other people and my hiring was criticized in the
19 report because it was done at a closed session. It
20 complies with the statute right here. And while I'm
21 speaking about myself, which I really don't like doing, I
22 do feel compelled to address the issue that you said a
23 few minutes ago, this notion that I said things that were

1 contrary to the report. I respectfully disagree. The
2 best that you have even in that regard it doesn't comport
3 with the Pickering standard competent material and
4 substantial evidence is me saying that Mr. Brown's
5 demotion or whatever you want to call it, his
6 unappointment was likely as a result of the Inspector
7 General investigation, that was speculation and
8 conjecture on my part; that wasn't competent material and
9 substantial evidence that you're held to legally under
10 that Pickering case. That was speculation and
11 conjecture. Commissioner Bell actually cleared that up
12 the other day when he testified under oath that Mr.
13 Brown's demotion or unappointment was not as a result of
14 the Inspector General investigation; that there were
15 other factors taken into consideration there.

16 I also would like to point to Section
17 -13.2 since there's some personnel issues here of the
18 City of Detroit's human resources rules, and it says that
19 if a department or agency shall determine respectively
20 the duties of such employees and should direct the manner
21 of fulfilling the requirements of the work week and work
22 duties. That sounds as though again this Board has a
23 large measure of discretion in terms of what it's

1 afforded to do.

2 I also point to Article 6 Chapter 4 I
3 believe. It says Board such as the Board of Police
4 Commissioners when they hire people must meet the needs
5 of the people of Detroit and it must be based upon merit.
6 Even the delegation itself was based upon meeting the
7 needs of the people of Detroit meritorious. What I would
8 remind for the sake of this hearing this morning was that
9 Charter Section 64-17 is not applicable although it seems
10 as though, and this is my third day of sitting here, it
11 seems as though that is some basis of criticizing the
12 Board that when the Board hired people in some way of
13 another the Board was engaging in some type of favoritism
14 or anything of that nature. The Board -- I think the
15 exact language Mr. Marable used yesterday is that
16 Mr. Hicks was tilting things in favor -- I might be
17 paraphrasing -- in favor of Miss Johnson; that's
18 absolutely preposterous by virtue of this, although the
19 Board did job postings that's quite frankly how I found
20 out about my job. I didn't know any of the individuals
21 that interviewed me, Board or staff. They weren't
22 required to post it because it was an appointed position.
23 All of these positions are appointed positions. None of

1 these positions are civil service. So although they
2 appointed so they could go out and have the most talented
3 pool that they can receive individually and collectively,
4 they weren't even required to post it. Some of that has
5 actually been criticized unbeknownst to me.

6 One of the things that I find from a
7 factual standpoint troubling and quite offensive, and I
8 don't know Mr. Hicks prior to this position is the fact
9 that one of the ways in which this Board benefited from
10 hiring him as the Board Secretary is based upon his prior
11 experience. His prior experience is that he was the
12 Executive Director for the Detroit Charter Commission.
13 That's not something that you just do overnight. He was
14 Executive Director of the Detroit Charter Commission
15 between 2010 and 2012. One of the things that he stated
16 yesterday he drafted the Charter. So now all of a sudden
17 this guy that drafted the Charter doesn't know what he
18 drafted which is essentially what's being alleged. He
19 doesn't know how to interpret what he drafted. I find
20 that preposterous as well. The Charter, when you look at
21 the Charter, specifically the section that applies to the
22 Board is Chapter 7-8. There's nothing in the Charter
23 that prohibits delegation. There have been criticisms

1 very specifically of our Executive Manager hiring
2 process. So I'll just deal with Miss Johnson's situation
3 for a moment.

4 Bridget Lamar's testimony from what I
5 understand, although I wasn't at her hearing, was that
6 when Miss Johnson's position was posted and there were
7 people that responded to the post, although it wasn't
8 required to be posted as I said a few minutes ago because
9 it wasn't civil service. There were five people that
10 applied. The Board of Police Commission was looking for
11 a certified public accountant, a CPA, and when those five
12 people that applied out of the five she was the only one
13 with a CPA. Would the Board have been exercising good
14 judgment to say we're going to hire someone who is
15 underqualified, we want a CPA because we're about to
16 engage in this towing auditing and we need an auditor, so
17 we're going to go out and hire somebody that we shouldn't
18 hire? It's absolutely preposterous as well.

19 I would also remind the Inspector General
20 that all of these appointments are at will appointments.
21 So when a person is hired or in the case of Mr. Robert
22 Brown, which is a lot of the controversy here,
23 unappointed or demoted or whatever terminology you want

1 to use, there is not an elaborate process that has to be
2 done in order for an at will employee in any employment
3 context to be demoted or fired or whatever the case may
4 be. One of the things that I'll talk about now, and by
5 virtue some of the Commissioners were not here, when you
6 look at this notion that very specifically 7-804, three I
7 believe which is the provision about the word hires; and
8 I pointed out this nuance especially to the two attorneys
9 in the room. When you look at the specific language of
10 this Charter it very specifically says a Board of Police
11 Commission appoints a Board Secretary. It very
12 specifically says a Board of Police Commission appoints a
13 Chief Investigator, but then it differs, it uses a
14 different verb. It then says the Board of Police
15 Commission hires. It doesn't say appoints. It says it
16 hires other staff as is necessary. And we talked about
17 the delegation and we talked about how these Executive
18 Managers were hired, Fiscal Policy, Mr. Brown's
19 administrative position. They would hire these people as
20 is necessary. When it was necessary to demote Mr. Brown
21 they took that necessary action in compliance with the
22 Charter, in compliance with the law. Yes, ma'am?

23 MS. HA: I hate to interrupt, but the

1 record should reflect that Commissioner --

2 COMMISSIONER DAVID: David --

3 MS. HA: -- David --

4 MS. DEWAELSCHE: William David.

5 MS. HA: -- William David just joined us.

6 MR. WYRICK: And what I want to talk about
7 now for a few minutes is this notion of best practices
8 that are not mentioned this in Law Department opinion
9 that we was blindsided with this morning that's been in
10 existence now since April 2nd of 2019. I want to talk
11 about best practice; and I don't even see any of the
12 cases that I mentioned a few minutes ago in here either.

13 MS. BENTLEY: Mr. Wyrick, we didn't ask
14 them to evaluate best practices. We asked them to under
15 the law what was permissible for the City of Detroit
16 pursuant to its Charter.

17 MR. WYRICK: Is this my opening or yours?

18 MS. BENTLEY: Yeah, I'm just letting you
19 know what our --

20 MR. WYRICK: I'm being interrupted.

21 MS. BENTLEY: We didn't question best
22 practices. You're free to talk about --

23 MR. WYRICK: I don't like being

1 interrupted.

2 MS. BENTLEY: Sir, I'm not trying to be
3 confrontational. I'm just trying to make sure we all
4 understand what our report was critical of.

5 MR. WYRICK: It doesn't really matter to
6 me.

7 MS. HA: It's not you. It has to be the
8 Board as a Body.

9 MR. WYRICK: I think I'm speaking as the
10 Board attorney and I think if anybody wants to nudge me
11 and object I think they know how to do that, everybody
12 over here as well.

13 MS. HA: All right.

14 MR. WYRICK: As I was stating before I was
15 interrupted, this opinion that has been in existence
16 since April 2nd, 2019 doesn't mention the Pickering case.
17 It doesn't mention the Walker case. It doesn't mention
18 the Barrow case. It doesn't mention a case that I talked
19 about, the Fraternal Order of Police case. It doesn't
20 mention any best practices that I'm about to go into that
21 apply to constitutional police and civilian oversight.

22 Very specifically the first city I want to
23 point to is Berkley, California. I want to point to that

1 since, Inspector General, by virtue part of the
2 conversation you had yesterday with Mr. Hicks and some of
3 the nuances, I recall part of your contention here is
4 that, well, Mr. Hicks under the Charter is not an
5 Executive Director, under the Charter Mr. Hicks is just a
6 Board Secretary. Well, let's speak to that for a few
7 minutes.

8 I think that for the benefit of the people
9 who weren't here yesterday, Mr. Hicks pulled out a badge
10 and on his badge it very specifically reflects that he is
11 an Executive Secretary. Quite frankly when you look at
12 best practices and civilian oversight across the country
13 you find a different terminology used, but the thing you
14 find in common is this type of delegation that this Board
15 did is that universally across the country, whether you
16 want to go to the biggest city in the country which is
17 New York or whether you want to go to small places like
18 Cambridge, Massachusetts, Eugene, Oregon, wherever you
19 want to go, this type of activity is considered legal and
20 appropriate nationwide. And I'm going to talk about that
21 for a few minutes.

22 One of the reasons that I point very
23 specifically to Berkley, California is because they don't

1 use the terminology Executive Director. They don't even
2 use the terminology that he has on his badge, Executive
3 Secretary. They just say the Secretary to the
4 Commission. Guess what they have the Secretary to the
5 Commission doing in Berkley, California? In Berkley,
6 California the Secretary to the Commission runs the
7 day-to-day operations. The Secretary to the Commission
8 does performance appraisals. The Secretary to the
9 Commission disciplines subordinate employees at will, and
10 guess what as well, the Secretary to the Commission in
11 Berkley, California can dismiss the chief investigator
12 with the Commission's consent and that person has sole
13 authority to hire and dismiss. So here we have a
14 Secretary that has more unilateral authority and power
15 than Mr. Hicks was even given in the delegated authority;
16 and I believe in Berkley, California they are trying to
17 legally operate and ethically operate.

18 As I go through most of these other cities
19 one thing you will find most of these cities give their
20 Executive Director or Board Secretary, whatever term you
21 want to use, more unilateral authority than even this
22 delegation did. Let's go to Chicago, Chicago not too far
23 away right down I94 they call the person in Mr. Hicks'

1 position the Administrator; and in Chicago the
2 Administrator can set staffing levels. I think Chicago
3 is a pretty good city. But let's go down to Ohio let's
4 go to Cincinnati, Ohio. The Executive Director can make
5 recommendations for the hiring of professional staff.
6 They even have a job there entitled as the same
7 controversy here with Mr. Robert Brown where they call
8 Senior Administrative Specialist and an Administrative
9 Specialist. And I'll speak to Mr. Brown for a moment.
10 From what I understand Mr. Brown has been employed with
11 the Board since 2004. So he's the longest serving, I
12 believe some of the testimony earlier this week reflected
13 that.

14 In Miami, Florida the Executive Director
15 recruits and hires employees. Let's go to New York, New
16 York, the biggest city, the Executive Director in
17 consultation with the Chair manages all matters, all
18 matters relating to the appointment of Agency staff, New
19 York, New York. Oakland, California, the Executive
20 Director identifies the staff positions. Pittsburg,
21 Pennsylvania, one of my favorites here and I'll tell you
22 why in a moment, although I've never been there. They
23 have a Review Board of Civilian Oversight, and guess what

1 they say legally there that the Review Board make and
2 they use this verb -- listen to this very carefully --
3 delegate to staff. So does LasVegas. LasVegas
4 population is almost identical to Detroit. Detroit's
5 population is 679,865. LasVegas is to 621,662 and their
6 Citizen Review Board Executive Director supervises
7 personnel, manages daily operations and calls meetings.
8 The Citizen Review Board may provide staff as determined,
9 that's as is necessary. That sounds like the same
10 language that we have in the Charter. And here's these,
11 this magical verb again, in addition they may in their
12 discretion delegate to the Executive Director. LasVegas
13 delegates. We have two that not only delegate in theory,
14 but very specifically in practice. Let's go to SanDiego
15 where they have 11 members just like our Board does. The
16 Executive Director recommends a specific candidate for
17 approval which is kind of similar to what Mr. Hicks did
18 with Miss Johnson here. The CLERB -- Executive Director
19 recommends a specific candidate for approval. In
20 SanDiego they have what you call a, the acronym is CLERB
21 Board which delegates -- they use the term delegates. So
22 that's the third city that I've said. I've said
23 Pittsburg. I've said LasVegas. I've said SanDiego. The

1 CLERB delegates to the Executive Director to manage the
2 discipline of all staff positions. I would remind in
3 light of the criticism I referred to earlier about this
4 Board not being an elected Body -- I mean not being a
5 legislative Body although some of Commissioners are
6 elected. We have to look at our Detroit City Charter to
7 see the differentiation of that. Charter Section 2-108
8 very specifically says for City Council they are subject
9 to pay plan and get a paycheck every two weeks, that's
10 nice. The honorable people sitting on this side of the
11 table with me they do not. They are volunteers. They
12 get what you call reimbursement under Charter Section
13 2-109 and it very specifically lays out for members of a
14 multimember Board they get reimbursed for necessary
15 expenses. They are not full time. So that's part of the
16 reason that I think Chairperson Carter is going to
17 testify to this in a few minutes, part of the reason they
18 have to delegate as all these other cities have followed
19 best practices and standard operating procedures for
20 civilian oversight not for a legislator.

21 Also under the Open Meetings Act as well a
22 public body can't committee for the hiring process which
23 Commissioner Dewaelsche has been involved with as

1 Personnel Committee. She is not the only person sitting
2 on this side of the table that were on a Personnel
3 Committee as well as the case law which I said I hope you
4 all would follow.

5 The Seico case goes way back to 1956,
6 that's a Michigan Supreme Court case. It very
7 specifically says the Ecorse Police Commission could
8 adopt rules and regulations for organization. It also
9 says that the Ecorse Police Commission could determine
10 the Assistant Chief of Police and create an Office of
11 Police Inspector. Go back to 1895 there's a case called
12 -- and none of these cases no matter how old have been
13 overruled -- states that under the Saginaw Board of
14 Police Commission they have the power of removal at will
15 which accompanies the power of appointment, which means
16 in a situation such as Mr. Brown when Mr. Brown was
17 actually receiving a pay raise he received it at will,
18 and when he received his decrease in salary he actually
19 received that at will. It wasn't required for that to go
20 before a full Board meeting based upon these cases, based
21 upon the Charter or based upon Open Meetings Act. I've
22 talked about Fraternal Order of Police -- I'm trying to
23 wrap this up. Even in terms of best practice and

1 standard operating procedures Philadelphia, Pennsylvania,
2 -- they call that the City of Brotherly Love -- they hire
3 Executive Managers the same way as Detroit Police
4 Commission did. They have a policy analyst similar to
5 the policy analyst Miss Melanie White that serves here
6 for the Police Commission. In Houston, Texas the Board
7 here supervises all operation of the Board I mentioned
8 that by virtue of the criticism of former Chairperson
9 Bell in terms of any involvement he had with Mr. Brown's
10 pay decrease, but even having said that he testified very
11 clearly and some of the testimony today will be he
12 received input from other Commissioners, that's not just
13 a decision that he made unilaterally himself. Rochester,
14 New York the Chairperson is responsible for all
15 administrative duties. SanDiego all unclassified
16 personnel served at the pleasure of the Executive
17 Director. Again, another situation where a civilian
18 oversight agency that's compliant with the law gives
19 their Executive Director even more than Mr. Hicks did in
20 the delegation.

21 I'll end this under the best practices
22 with the Civil Liberties Board which is a really nice
23 sounding name, but it complies with best practices and

1 standard operating procedures and it says, a Chairperson
2 is Executive Administrator here responsible for the
3 day-to-day operations. So based upon that I would
4 conclude my Opening Statement and we can begin the
5 testimony.

6 MS. HA: So I don't typically do this, but
7 for the sake of the Members of this Honorable Body I
8 would like to make a couple of points. So the Charter
9 that Mr. Wyrick read pertaining to City Council standing
10 committee structure he didn't complete the sentence. It
11 says, "The President of Council shall appoint the
12 Chairpersons of such standing committees with the
13 approval of a majority of the City Council" period. In
14 addition the Open Meetings Act that Mr. Wyrick cited
15 15.268 Closed Sessions Permissible Purposes, Section 8F.
16 He also did not complete the sentence here that says, "to
17 review and consider the contents of an application for
18 employment or appointment to a public office if the
19 candidate requests that the applications remain
20 confidential, however, except as otherwise provided in
21 this subdivision all interviews by a public body for
22 employment or appointment to a public office shall be
23 held in an open meeting pursuant to this Act. This

1 subdivision does not apply to public offices described in
2 subdivision J." So I just wanted to let the Board know
3 that while Mr. Wyrick is correct in what he said, but he
4 neglected to finish the sentence in the Charter.

5 The third thing that I would like to point
6 out is I applaud Mr. Wyrick's diligence in researching
7 best practices of all the other police oversight
8 commissioned bodies around the country; and I believe
9 best practice is probably a good thing to do, except best
10 practice does not trump Charter. This Charter states
11 that this Honorable Body hire its staff. So we're not --
12 the issue that the Office of Inspector General has is not
13 the delegation of authority per se, but we do have an
14 issue where if the Charter expressly as you had stated in
15 the Supreme Court case, if the Charter expressly provides
16 that duty to this Honorable Body this Honorable Body may
17 not and cannot delegate that particular authority to a
18 one person. One person cannot replace nine elected
19 officials -- I'm sorry, seven elected officials and four
20 appointees of the Mayor. So we have to comply with the
21 Charter, and that's why it was so egregious to me that
22 Mr. Hicks testified yesterday that this Honorable Body
23 hired Mr. Hicks because he authored the Charter. Well,

1 Mr. Hicks, while he was an Executive Director of the
2 Charter Commission he did not draft the Charter by
3 himself.

4 MR. WYRICK: I'm going to have to object
5 to that. I don't recall his testimony being that he was
6 hired because of that. That was part of his experience.

7 MS. HA: You said that this morning so we
8 can let the record speak for itself. So the Charter
9 revision was at the will of the people. They had a
10 Charter Commission members that was elected by the
11 citizens of Detroit. The Charter is the will of the
12 people. It was the will of the people for this 11 member
13 Body to hire its staff because who you hire is really
14 important in what you do, and this Honorable Body has a
15 very, very important role as Commissioner Bell testified
16 yesterday. We had just come out under Decent Decree from
17 the United States Justice Department. You have the honor
18 and privilege although you may be volunteers, which I
19 believe is most admirable, you don't get paid for what
20 you do, and I'm sure you have had many sleepless nights
21 because of what you do, but it is an important role, so
22 important that it was written into the Charter and that
23 is the very issue that we have. It is the will of the

1 people that this Honorable Body as a whole to hire its
2 staff. So I just wanted to put that on the record.

3 Mr. Wyrick --

4 MR. WYRICK: I will call Chairperson
5 Carter as my first witness.

6 L I S A C A R T E R
7 after being sworn by the notary public testified as
8 follows:

9 EXAMINATION

10 BY MR. WYRICK:

11 Q Good morning.

12 A Good morning.

13 Q Could you state your full name for the record?

14 A Lisa Carter.

15 Q What is your current role?

16 A Chair of the Commission.

17 Q How long have you served as the Chair of the Commission?

18 A This term since July 1st of this year.

19 Q That would be 2019?

20 A Yes.

21 Q You have previously served as Chair of the Commission?

22 A Yes.

23 Q When was that?

1 A I don't recall, but I have served two other times as
2 Chair of the Commission.

3 MS. BENTLEY: Make sure you speak up
4 because of the acoustics of the room, please.

5 BY MR. WYRICK:

6 Q Would it be fair to say that your service as Chair is a
7 relatively short stint, you only served a year?

8 A A year, yes.

9 Q Why is that if you know?

10 A Because of the Charter. The Charter states that the
11 Chair can only serve for a year or elected annually, or
12 something like that.

13 Q Have you served in any other leadership capacities?

14 A Yes. I spent 27 years with the Sheriff's Department. I
15 was retired at the rank of lieutenant. So I was
16 responsible for all training for the department.

17 Q When you say the department you mean Wayne County
18 Sheriffs?

19 A Yes.

20 Q Going back to the BOPC for a moment, have you served as
21 Chairperson at Board of Police Commission, have you
22 served in any other leadership role?

23 A Boards?

1 Q No, just the BOPC, have you been Vice Chair or anything
2 else like that?

3 A Yes, I have been Vice Chair.

4 Q Do you know when or how many times you have been Vice
5 Chair?

6 A I think twice.

7 Q How long have you been on the Board of Police
8 Commissioners?

9 A Since 2014.

10 Q So you served on the Board of Police Commissioners
11 approximately five years?

12 A Yes.

13 Q During that five year period you have had to make
14 yourself familiar with the Charter?

15 A Yes.

16 Q Is it your position this morning that the Board of Police
17 Commission over that five year period has complied with
18 the Charter?

19 A Yes.

20 Q Why is that?

21 A Because it's our job, everything that we do we reference
22 the Charter to make sure that we're in compliance with
23 the Charter. We also have legal advice from our

1 attorneys to ensure that we're in compliance with the
2 Charter.

3 Q When you say attorneys you use the terminology plural,
4 what do you mean by that?

5 A You I think are the third attorney since I've been on the
6 Board that we hired.

7 Q Okay. Do you recall the names of the previous two?

8 A Alia Sabri and Linda Bernard.

9 Q Do you recall if you were instrumental in their hiring?

10 A So Alia Sabri, the first day that we took the oath of
11 office in 2014 it was on the agenda to hire her. We had
12 no knowledge of who she was or anything. It was on the
13 agenda as an action item and we voted to hire her.

14 Q In terms of the hiring process, you were part of my
15 hiring process, correct?

16 A Yes.

17 Q What do you recall about that?

18 A I remember there being a meeting, not a meeting, but a
19 session with all Board members where we ask questions.

20 Q Would that have been in a closed session?

21 A I believe it was a closed session.

22 Q As you sit here today you don't know whether or not I
23 requested a closed session or not?

1 A I don't recall.

2 Q Would that have been at one of the BOPC community
3 meetings?

4 A It wasn't at a community meeting. I believe it was at
5 headquarters.

6 Q By community I mean some of the community meetings are
7 actually at headquarters, correct?

8 A Correct. All of the meetings are in the community. When
9 you say community meetings I'm thinking about the evening
10 meetings that we have on every second Thursday. If
11 you're talking about a community meeting other than that,
12 all of them are community meetings.

13 Q Okay. I'm talking about very specifically like a three
14 o'clock meeting.

15 A It was a three o'clock meeting.

16 Q By a community meeting it's not a meeting that's like
17 closed to the Board, it's open to the public, correct?

18 A Yes.

19 Q Maybe a better terminology would be a public meeting,
20 correct?

21 A Correct.

22 Q Were you involved in the process when Mr. Hicks was
23 hired?

1 A Yes.

2 Q What do you recall about that?

3 A Um, I remember working with the Personnel Director at the
4 time to post the position. I recall -- and that was a
5 Gale Oxendine at the time. I recall the Personnel
6 Committee I think interviewing some of the candidates or
7 Gale Oxendine setting up the interview, something like
8 that. And I recall Mr. Hicks coming before the Board.

9 Q When you say coming before the Board would that be the
10 full Board?

11 A Yes, full Board.

12 Q That would be at one of the public meetings that we
13 talked about a few minutes ago?

14 A Yes.

15 Q Is it your understanding as a Commissioner whether it's
16 Mr. Hicks, myself or any other people termed Executive
17 Managers they are at will employees?

18 A Yes.

19 Q They are not civil service employees?

20 A Correct.

21 Q When you used the terminology a few minutes ago the
22 position was posted, was that required based upon your
23 understanding of the Charter?

1 A It was not required.

2 Q What does the term at will mean to you?

3 A That they can be fired at any time.

4 Q Okay. Going to the delegation of authority were you a
5 member of the Board when the authority was delegated?

6 A Yes.

7 Q What do you recall about that?

8 A That because we were not able to provide the time needed
9 to go through the process we delegated the authority to
10 hire the staff to Mr. Hicks, and it was voted in a, we
11 all voted, the full Board voted on it from what I recall.

12 Q When you say not have the time what do you mean by that?

13 A We're volunteers and we have busy work schedules and it's
14 hard to get everybody together.

15 Q Making an assessment at that time did you have a Board
16 attorney then if you recall?

17 A I think Miss Sabri was the attorney at that time.

18 Q At some point when you made the decision to delegate you
19 weren't the only person made that decision, were you?

20 A No. The full Board voted on it.

21 Q Was there like professional staff consulted? By that I
22 mean was you there when there was a Executive Director
23 before Mr. Hicks?

1 A Yes, I was.

2 Q There was a lapse in time between the two?

3 A Yes. Linda Bernard was the attorney, I'm sorry. Linda
4 Bernard was the attorney because she filled in.

5 Q Do you know if Attorney Bernard was consulted in terms of
6 the delegation and whether it comported with the Charter?

7 A I don't recall. She was on staff and I'm pretty sure she
8 was.

9 Q That would have been the type of role she would have
10 served?

11 A Yes, absolutely.

12 Q To make sure that it comported with the Charter?

13 A Yes.

14 Q To make sure that it comported with Open Meetings Act?

15 A Yes.

16 Q Was Mr. Hicks hired based upon do you recall -- was he
17 hired based upon any type of merit?

18 A No. I didn't know Mr. Hicks.

19 Q By merit I mean was he hired based upon his credentials?

20 A His credentials, he had worked for the county. He had
21 worked for the city. He had vast knowledge of the
22 Charter and he was, I believe he was at the time
23 receiving his Ph.D. so he had education. So I was

1 impressed by his resume.

2 Q What about his Charter experience?

3 A He was very knowledgeable of the Charter, and some of the
4 language in the Charter he, he just knew the Charter and
5 he knew what the thinking behind the Charter was.

6 Q That was based upon his prior work experience if you
7 know?

8 A From what I recall, yes.

9 Q Okay. So for instance in my opening I referenced the
10 fact that he was the Executive Director of the Charter
11 Commission between 2010 and 2012?

12 A Uh-huh.

13 Q Is that correct?

14 A Yes.

15 Q You said something a few minutes ago interesting as well,
16 you said you did not know Mr. Hicks. When Mr. Hicks, and
17 I don't want to be compound about this, but you didn't
18 know me either, did you?

19 A No. I didn't know any of the staff that we hired.

20 Q It's not a situation where there's some type of
21 favoritism I'm bringing my friends in and giving them
22 jobs?

23 A No, not at all.

1 Q You speak to that as an individual, but that would
2 pretty much be across the Board, by that I mean other
3 Commissioners aren't bringing in their friends and saying
4 let's hire Executive Director, attorney, policy person,
5 et cetera, are they?

6 A No.

7 Q That you're aware of?

8 A No.

9 Q One of the criticisms in the Inspector General's report
10 is that Mr. Brown's position, Executive Manager for
11 Administration, served at the pleasure of the Chief of
12 Police, is that correct?

13 A No.

14 Q Do you know if that might have been based upon an
15 erroneous job description that Brian Tenille drafted?

16 A It could have been. We worked with him to get posting
17 like a draft of the posting, so it could have been.

18 Q Brian Tenille is not an employee of the Board of Police
19 Commission, is he?

20 (Off the record)

21 Q Was Brian Tenille an employee of the Board of Police
22 Commission?

23 A No.

1 Q Do you know what his title was when he worked for the
2 City?

3 A He worked in personnel.

4 Q Okay. For the City of Detroit?

5 A Yes.

6 Q Was Bridget Lamar an employee of the Board of Police
7 Commission?

8 A No.

9 Q Do you know what her title is?

10 A It is now or was?

11 Q Was at the time that these hires were made.

12 A At the time I think she was the Deputy Director of
13 Personnel.

14 Q The Board of Police Commission is a member of the
15 organization NACOLE. What's your understanding of what
16 NACOLE is?

17 A National Association for Civilian Oversight of Law
18 Enforcement.

19 Q You've heard me this morning talk about best practices.
20 Notwithstanding the fact that you all are volunteers do
21 you more or less kind of educate yourselves as it relates
22 to civilian oversight?

23 A We do. Since I've been on the Board I've attended the

1 NACOLE annual conference every year; and this year it's
2 going to be here next week. So I will be in attendance.

3 Q How many NACOLE conferences would that be that you
4 attended?

5 A Four or five.

6 Q For someone who hasn't been to a NACOLE conference what
7 does that consist of? If you described it to a stranger
8 how would you describe it?

9 A So we've all been to conferences trying to gain
10 information. It's different panels discussing different
11 issues regarding different, I guess you could say, hot
12 topics that are happening across the country. So
13 basically it's a conference where they have panels of
14 discussion, and then there's a dinner of course. It's
15 the normal conference kind of thing, but we got -- it's
16 people from all over the world, so it's a international
17 conference. It's individuals from all over the world
18 that come to get the information.

19 Q Do you all cover best practices or standard operating
20 procedures?

21 A We do.

22 Q As part of the best practices and standard operating
23 procedures do you cover issues such as personnel?

1 A Yes.

2 Q Do you cover -- would the opening statement that I made
3 pretty much reflect the best practices that you all have
4 learned at NACOLE?

5 A Yes.

6 Q You all have more or less brought those best practices
7 back to Detroit?

8 A We try, yes.

9 Q So say for instance this delegation that this Board is
10 being criticized if LasVegas, Pittsburg and other cities
11 --

12 COMMISSIONER BELL: Can we have a recess
13 for five minutes? There is no rest room accessibility.

14 MS. BENTLEY: We'll go off the record.

15 (Off the record)

16 BY MR. WYRICK:

17 Q Based upon your experience with NACOLE going to
18 conferences and things of that nature does the Board
19 comply with the best practices of civilian oversight
20 across the country?

21 A We try to, yes.

22 Q That's with respect to hiring?

23 A As respect to hiring?

1 Q Yes, best practice.

2 A Yes.

3 Q And with respect to the delegation?

4 A Yes.

5 MR. WYRICK: No further questions.

6 MS. HENDRICKS-MOORE: What I just wanted
7 to do to get a little clarification because there's
8 information being discussed I wanted the Board -- I'll be
9 addressing Commissioner Carter, but it's also for the
10 Board to understand.

11 MS. BENTLEY: Jackie, can you talk a
12 little louder?

13 MS. HENDRICKS-MOORE: I know.

14 BY MS. HENDRICKS-MOORE:

15 Q When we talk about the appointment or we talk about the
16 Executive Manager position and the fact that what is
17 being used it talks about the job classification
18 designated code because this information comes from
19 documents that we actually reviewed from the posting that
20 the Board of Police Commissioners did. That job
21 classification posting specifically in the City Code
22 states that that person is appointed by the Chief of
23 Police. So we know that the Board of Police

1 Commissioners was using that code to do the appointment
2 of their Executive Managers, but you were saying it was
3 appointed by the BOPC.

4 A We weren't using that code. That was the code that was
5 given to us by Personnel.

6 Q Right. So what we were saying was that the code being
7 used that it's incorrect?

8 A It's incorrect, okay. I'm sorry.

9 Q Right. You can't use that code for the appointment of --
10 because it's for the Chief of Police. Just like we were
11 saying I'm an investigator and our positions are
12 appointed, but my appointment is by the Inspector General
13 so she couldn't use that. That's what the report is
14 talking about is that that's why we were finding it was
15 inaccurate. I don't know if that maybe would be a
16 discussion you would have to have with your HR. I don't
17 know if that's a new classification that may need to be
18 generated so that if you're using the Executive Manager
19 position it can state that it's being appointed by the
20 Board of Police Commissioners. So that's what we found a
21 conflict.

22 MR. MARABLE: We realize that it presides
23 -- that the Board has been doing this for awhile, but

1 it's just incorrect because there's only one position
2 Executive Manager police code 0011805 and that position
3 --

4 THE WITNESS: Thank you.

5 MR. MARABLE: -- that the appointee is --

6 COMMISSIONER BELL: Submerged in the
7 DPD budget process personnel.

8 MR. MARABLE: Possibly, but I think what
9 would have to happen, and HR should have quite frankly
10 caught this and said to you we need to create a new
11 position, Executive Manager for the Board of Police
12 Commissioners with another code that specifically says
13 that those persons hired are appointees of the Board of
14 Police Commissioners.

15 COMMISSIONER DEWAELSCHE: I would just
16 like to add that as Chair of the Personnel Committee we
17 followed the HR guidance on all the hiring we did. We
18 met with her. She informed us this is what you need to
19 do; this is what we do at the City of Detroit, and so you
20 all should follow this. So that was an oversight I mean.

21 THE WITNESS: Well, thank you.

22 MS. HENDRICKS-MOORE: I just wanted to
23 clarify.

1 Q Just so I'm going to ask a couple questions really. I
2 want to just get an understanding.

3 A Uh-huh.

4 Q Can you just tell me what was the purpose of the
5 Personnel Committee? I know that's a subcommittee; and I
6 believe you served on it. Can you tell me what the
7 purpose is?

8 A The purpose was to review documents, any personnel issues
9 that we might have come to the Personnel Committee. The
10 Personnel Committee reviewed the postings before they
11 went out. What else did we do. We made recommendations
12 to the Board. We looked at, we looked at I think the
13 discipline, disciplinary procedures. We looked at when
14 we needed to hire an investigator it came through the
15 Personnel Committee, so those kinds of things.

16 Q So the other question I would have, and this is just
17 trying to understand when they did the delegation of
18 authority was the Personnel Committee involved in
19 reviewing any of the applications involving the hiring of
20 Melanie White, that was your Executive Manager, Robert
21 Brown. He was -- based on the information that we
22 received the Board's statements he was promoted and also
23 the hiring of Faye Johnson, was the Personnel Committee

1 involved?

2 A Involved, yes. We were updated.

3 Q Can you tell me who -- how you were updated? What
4 information was provided to you?

5 A Information that was provided was -- we actually had
6 conversations about the people who were like Melanie
7 White was already a member of -- she was an investigator,
8 so we reviewed her resume. Mr. Hicks made
9 recommendations basically to us, and we, that's how we --
10 that's what we did in the Personnel Committee.

11 Q And what about Robert Brown?

12 A Same thing. We knew that we reviewed -- we knew that we
13 wanted to -- he had been there for a long time. We knew
14 that we wanted to make his role, increase his role with
15 the Board. So his -- I'm not sure of exactly reviewing
16 his resume, I don't recall that, but -- I don't recall
17 that at all, but I do recall reviewing the resumes of the
18 others that we hired.

19 Q And also with Faye Johnson?

20 A Faye Johnson as well.

21 Q So when the Personnel Committee reviewed that information
22 is a decision made?

23 A No. The decision is not made. The decision goes before

1 the full Board.

2 Q Would that be in all three people?

3 A Yes.

4 Q Because one of the issues we had in searching the Minutes
5 I couldn't find any Minutes that showed where those three
6 people were discussed. I found minutes on Mr. Wyrick,
7 Dr. Anderson and the Chief Investigator, and there's one
8 other person who you guys hired that I was able to find
9 Minutes on those, but those three people I mentioned
10 there were no Minutes found. We don't have any
11 documentation that showed us that the Board had a
12 discussion with that.

13 A I can recall when, I remember the former -- okay. So I
14 don't know what happened, but I can recall the
15 Commissioner that passed away, congratulating him. I can
16 clearly see him congratulating Robert Brown on his
17 promotion in an open meeting -- Commissioner Sanders. So
18 that's what was vivid to me right now. I'm sure we did
19 something on the record, but that's what I recall about
20 Robert Brown's promotion; and I'm pretty sure that we did
21 all of them at the same time.

22 Q I can tell you that in my review of the Minutes that I
23 did see when some of your people were introduced at the

1 meeting, and I do remember in the Minutes about Sanders
2 and about the passing of Sanders, but as far as --

3 A Nothing as far as on the record?

4 Q Yeah, we could not find that. That's one of our findings
5 because we could not find any documentation.

6 A Yeah.

7 Q Again, when I had a chance to interview you and Eva,
8 Commissioner Dewaelsche and Commissioner Bell we were
9 advised that when you have the Personnel Committee that
10 you don't take notes so there's no documentation to
11 review on that. We know you have a leadership meeting
12 that we were told that you guys have some discussion.
13 Again, there was no notes provided on that. But the
14 information that we were told was because there were no
15 decisions made.

16 COMMISSIONER DEWAELESCHE: Can I just
17 interject here also as Personnel Committee? First of
18 all, we didn't meet regularly or any specific time. We
19 met when it was necessary, and so -- and they were
20 informal meetings because they were just for purposes of
21 discussion and how we were going to go before the Board
22 to recommend these things, you know, for Board approval.
23 So Minutes were not kept as a result. You know I will

1 just also add I do recall that meeting where Commissioner
2 Sanders, not only did he recommend that we consider
3 Robert Brown because of his work for a promotion the
4 following or a couple meetings later he congratulated
5 Robert Brown. I know we discussed it at least two
6 meetings because I recall that. When it happened when he
7 got the promotion I was not surprised, and at that point
8 it was Mr. Hicks who was hiring at that level and making
9 the recommendations, you know, to the Board actually.

10 I would just say that the reason why we
11 don't keep Minutes is, number one, we meet three days --
12 every three or four days we're meeting, I mean business
13 days I'm talking. There's no reason to have Minutes when
14 you're going to meet in three days to conduct our
15 business at the Board meeting and really we do that.

16 MR. WYRICK: I would just add that under
17 Open Meetings Act under a subquorum meeting that no
18 decisions are being made that require everybody.

19 COMMISSIONER DEWAELSCHE: We were always
20 reminded of that at every meeting, remember you cannot
21 take a vote because we were trying to comply with the
22 Open Meetings Act. I recall that as a regular discussion
23 item.

1 BY MS. HENDRICKS-MOORE:

2 Q I do understand that. Again, I was just trying to find
3 out when Personnel Committee meets, what the discussion
4 is and that information that you guys discuss do you
5 bring that before the Board. Does the Board vote on that
6 because that would mean again the Board is the one that
7 is making the approval, making the decision to hire.
8 Because the other thing we looked at was the letters that
9 were showing the appointment of some of these
10 individuals. Some of the letters stated that the Board
11 was the one that did the appointment. Again, it's the
12 letters. I'm a document person, fact finder. As I'm
13 looking at the documents and it says that the Board
14 appointed I'm looking for whatever documentation that
15 shows me and of course the Minutes when the Board meets
16 and makes approval.

17 COMMISSIONER BELL: Can I speak to the
18 Minutes on the subject matter? I assume you look at the
19 Minutes from our meetings, right?

20 MS. HENDRICKS-MOORE: Yeah, i downloaded
21 2016, '17, and '18 in the beginning.

22 COMMISSIONER BELL: If you look at those
23 Minutes verbatim --

1 MR. WYRICK: The transcripts?

2 MS. HENDRICKS-MOORE: I looked at what was
3 on your site.

4 COMMISSIONER DEWAELSCHÉ: Those are
5 summarized.

6 COMMISSIONER BELL: I think sometimes when
7 we meet weekly there is a tendency that sometime in the
8 Minutes we approve a list of Board members -- we meet so
9 often it's just a formality sometimes. We don't
10 scrutinize that to the extent that every action item
11 should be -- and perhaps we should, but we meet weekly
12 and Minutes rolling out all the time. When you say
13 approve the Minutes it's just a formality. We rely on
14 the Board's Secretary. We hope that we have all action
15 items, sometimes those things fall to the side because
16 they are not captured in that process.

17 MR. WYRICK: The only thing I would add
18 here to prepare for this I looked at the website and
19 there are transcripts that are missing. I don't recall
20 the exact time frame, but there are a significant period
21 of Minutes and transcripts that are not on the website
22 going back maybe going back two, two and a half years.

23 MS. HENDRICKS-MOORE: I would agree that

1 maybe there are some missing. I also state that when it
2 comes to the appointment of these individuals they're
3 time based, they're stamped -- so when reviewing the
4 appointment letters there are dates on those letters when
5 those employees were approved. So I did look anywhere
6 from 30 to 60 days and if I don't find anything I go 90
7 days above; and when I look at the dates and times below
8 then I would see where these individuals were introduced
9 to the Board. And the ones that were missing I did make
10 a request and, thank you, because I did get those Minutes
11 regarding the memo because that again was not posted on
12 the website so you did provide it. I did provide a
13 letter to Mr. Wyrick requesting for additional
14 information that we didn't get, but we did request them.

15 COMMISSIONER BELL: Right.

16 MS. BENTLEY: To your knowledge has the
17 Board ever sought guidance from the City of Detroit Law
18 Department on any provision of the Charter to ensure that
19 you are in compliance with the Charter?

20 THE WITNESS: To my knowledge we have.

21 MS. BENTLEY: Did you ever seek guidance
22 from the Law Department regarding hiring?

23 THE WITNESS: No. We went to the

1 Personnel Director.

2 COMMISSIONER DEWAELSCHÉ: Personnel
3 Director.

4 THE WITNESS: For the City.

5 MR. MARABLE: So I wanted to kind of ask
6 you by way of clarifying this matter of appointed versus
7 civil service, and some of the criticisms we've made on
8 that. In terms of the positions that you had appointed
9 our critique is that you don't have to run a process, you
10 don't have to get HR involved. You can say, hey HR, I'm
11 going to appoint this person, you believe that they are
12 the best for the job, that's it, it's over. Where we
13 feel there becomes a problem is when a process that looks
14 like a fair and open process when you have people submit
15 resumes, go submit to interviews, go through a process
16 thinking that they are on even keel in terms of when they
17 went to the table. What we clearly see in emails about a
18 decision made prior we believe that is a waste of City
19 resources and the time that the HR professionals would
20 work. We see they put the posting out there, did
21 everything, schedule the interviews, we believe that's
22 where there becomes a problem. Yes, you as a Body has
23 the power to appoint. However, if you choose to make

1 that appointment through a process that is competitive
2 then there at least needs to be a monocle of fairness in
3 terms of when you go in and you see these interviews that
4 everybody is on the same foot. So our issue was that
5 clearly there was a relationship between Mr. Hicks and
6 Ms. Johnson prior to this position being posted. We have
7 40 emails back and forth between them. Emails where it's
8 pretty clear that this position was promised to her early
9 on prior to the posting of the position. The position
10 was posted any way. Then lo and behold what was
11 indicated in the emails would happen happened. So that
12 is our issue. We just want to be clear the distinction
13 between, yes, you as appointed by the Body want to get
14 the position right in terms of your Executive Manager,
15 Board of Police Commissioner right, that can be
16 appointed, but you should never run a competitive process
17 and it not be competitive.

18 MR. WYRICK: By way of response,
19 Mr. Marable, because I feel compelled to. Part of the
20 reason I referenced earlier Miss Lamar's testimony that
21 I've been made aware of is the issue that you are very
22 specifically speaking to was when Miss Faye Johnson was
23 hired. My understanding from Miss Lamar's testimony

1 there were five candidates that applied for that
2 position. Out of those five candidates only one was a
3 CPA. So was the Board of Police Commissioners according
4 to your evaluation supposed to hire one of those other
5 four individuals that weren't even qualified for the
6 position?

7 MR. MARABLE: No, we're not opining on who
8 you should have hired, that's never been what we do and
9 how we do it.

10 MS. HA: Right.

11 MR. MARABLE: What we are saying is that
12 there needed to be fairness in the process and Mr. Hicks
13 couldn't come to the table with a candidate which we
14 believe was unbeknownst to the Board. We have no
15 evidence that clearly he indicated that this is somebody
16 he knew, that he recruited, that he helped with their
17 resume, that he pretty much promised the job before the
18 job was posted. So that's where we believe that line has
19 been crossed so that's where we believe the line was
20 crossed. We're not saying that -- we make it clear in
21 our report we are not opining on the skill set of
22 Ms. Johnson whether or not she should have been hired.
23 That is not our issue. Our issue is that the process

1 should always be fair. That is what we believe what we
2 call abuse of power in our opinion.

3 MS. HENDRICKS-MOORE: I just want to
4 comment and just clarification because, Mr. Wyrick, when
5 you keep says Miss Lamar's testimony understand that if
6 you're reading our report the references that we are
7 referencing are emails that was exchanged between
8 Mr. Hicks, Bridget Lamar, Brian Tenille and Faye Johnson.
9 There was no interview for Mrs. Lamar. So there's no
10 testimony.

11 MR. WYRICK: Are you telling me that Miss
12 Lamar --

13 MS. HENDRICKS-MOORE: I think you're
14 getting the cases mixed up because Mrs. Lamar's testimony
15 came from the case we weren't dealing with.

16 MR. WYRICK: Okay. I'll rephrase as
17 evidence, the evidence reflect the same. Miss Johnson
18 was the only CPA that applied for the position.

19 MS. HENDRICKS-MOORE: Right, but you just
20 said --

21 MR. WYRICK: I stand corrected.

22 MS. HENDRICKS-MOORE: There was no
23 testimony based on emails. We referenced that in the

1 report so you would be able to pull that up.

2 COMMISSIONER BELL: Can I chime in to the
3 point well taken. The Board in the past misused
4 appointment period and how people arrive at being hired
5 salaries up to Commissioners, and we thought that was not
6 a fair process in terms of how they arrived.

7 Commissioner warn to hired I witnessed that while on
8 staff. They hired some people and did not have the skill
9 set that we would need for the job. But the
10 Commissioners -- I can't say how the system worked. We
11 hired -- well, they hired the person, he or she. When
12 you talk about mixing apples and oranges trying to clean
13 up this whole process that's why we relied on Personnel
14 to get this Body a little bit more fair and equitable
15 process. Now what you have revealed to us we was not
16 aware, but we knew that Mr. Hicks made recommendation
17 that he wanted a CPA and somebody with a whole lot of
18 experience. I guess they went through the whole process,
19 but that was indicated. But what you reveal in terms of
20 emails I can't speak to that. Your investigation
21 revealed that. That's something that we would have to
22 address. Basically we felt we would have a fair process.
23 But what you saying he basically went out and hired

1 Miss Johnson --

2 MR. MARABLE: Yes.

3 COMMISSIONER BELL: -- without going
4 through the formality.

5 MS. HA: Right. As long as she was
6 interviewed in public. That is the authority that each
7 one of you have. So if I recommended that you hire my
8 brother for whatever position you -- you know, if you
9 have had bad dealings with him you can question the
10 candidate's qualifications, and that's why the public can
11 participate because you have the authority to choose
12 whomever you want to hire in the key positions because
13 you want to make sure that you're hiring the most
14 qualified person in your respective opinion not just one
15 person.

16 COMMISSIONER BELL: Duly noted.

17 COMMISSIONER DEWAELSCHÉ: I would just
18 like to add for the benefit of maybe some of the
19 Commissioners that we were not on the Board at the time
20 we hired several key positions or individuals. We held
21 interviews of candidates five at a time, two or three
22 days for each position. We invited the entire Board to
23 participate, and basically it was the same Board members

1 who always came, three or four basically. The others
2 could not, for whatever -- working, whatever their
3 schedule. So that was always the case whenever we tried
4 to fill these positions we could not get the full Board
5 to participate in the interview. However, we selected
6 the top three candidates. We took them before the Board
7 and the Board would allow us to or approve to move
8 forward and then selected the final candidate and Board
9 approved. There was a process, but participation
10 everybody was invited to participate in the process, all
11 Board members.

12 MS. HENDRICKS-MOORE: I will add that when
13 I looked at the memo that was presented to the Board by
14 Mr. Hicks there's a part in the memo that states the
15 review would go before the Personnel Committee. I just
16 don't have a copy here.

17 COMMISSIONER DEWAELSCHÉ: Review?

18 MS. HENDRICKS-MOORE: Here it is, yes.
19 There is a part on here down at the bottom that says
20 reported authorized changes to the Board's Personnel
21 Committee within 30 day interval or within the scheduling
22 of regular committee meeting of the Personnel Committee.
23 Based on this memorandum my interpretation initially when

1 I spoke with Mr. Hicks and I was told my interpretation
2 was wrong was that all of these positions that he would
3 be the one maybe reviewing some of the applicants and
4 vetting them, but that the applicants would be presented
5 to the Personnel Board --

6 MS. DEWAEELSCHÉ: Personnel Committee.

7 MS. HENDRICKS-MOORE: -- Personnel
8 Committee for their decision.

9 MR. WYRICK: But it couldn't be a decision
10 because that's a sub quorum.

11 MS. HENDRICKS-MOORE: Right. I take it
12 back. Based on the information I received and also there
13 was another part that talks about the role of the
14 Personnel Committee, and I believe it says the same
15 thing. I'm trying to remember because I know you guys
16 have made recommendations to the Board regarding
17 appointment. So it was initially my understanding that
18 that's what he would be doing.

19 COMMISSIONER DEWAEELSCHÉ: It wasn't just
20 him though, the Director of Personnel reviewed those, all
21 of those applications as well.

22 MS. HENDRICKS-MOORE: Right. But they
23 still went before the Board. You guys might have been

1 the one that reviewed, but then everything would have
2 went before the Board for the Board approval.

3 COMMISSIONER DEWAELSCHÉ: As far as the
4 final recommendations the Board approved us to come up
5 with five candidates, and then from those five we would
6 select -- am I correct? I remember five and then three
7 and then the final candidate.

8 THE WITNESS: Yes.

9 COMMISSIONER DEWAELSCHÉ: There were five
10 top candidates that we would bring in for the interviews.
11 In other words, if we received ten applications we would
12 select the five that met the criteria and it didn't have
13 to be five, if we had six of course set up the
14 interviews, that's fine. They gave us leeway to set up
15 the interviews for five and then of those five we were
16 supposed to recommend the top three and then of those top
17 three the final one would be selected. We even had, I as
18 Personnel Chair even expressed to the Board if any of you
19 want to review the applications we have them. If any of
20 you want us to interview more than five we will. It was
21 never set in stone, and in fact two Commissioners and I
22 could say Conrad Mallet and I think Reverend Holly at one
23 point wanted to interview all of the candidates. No, I'm

1 sorry, Van. So the Board was able to interview anybody
2 on the list. We were just making recommendations.

3 MS. HENDRICKS-MOORE: I think when I
4 interviewed you did express to me the Personnel Committee
5 does not make a decision.

6 COMMISSIONER DEWAELSCHE: No. We give
7 them names.

8 THE WITNESS: I would like to add a lot of
9 the vetting sometimes came from the Personnel Director.
10 She did a lot of the vetting for us when we had postings;
11 and we followed her advice because that's what she does.
12 So we just -- yeah, we followed her lead.

13 COMMISSIONER DEWAELSCHE: We felt that was
14 the most efficient way to go because she was the expert.

15 MS. HENDRICKS-MOORE: Again, the point I
16 was making with all of that everything in those positions
17 still came back to the Board.

18 MS. HA: The full Board.

19 MS. HENDRICKS-MOORE: The full Board.
20 When I say Board the full Board for your approval. So
21 you know as we were told when we interviewed or at the
22 administrative hearing with Mr. Hicks based on this
23 (indicating) he was stating that he had the total

1 authority to do the hiring, it didn't have to come before
2 the Board. That's why again we're saying that was the
3 issue that we were having because going back to the
4 Charter the Charter says that the Board does the hiring.

5 THE WITNESS: Got it. Click (indicating).

6 COMMISSIONER BELL: I think that's crystal
7 clear.

8 MS. HA: I don't have any further
9 questions.

10 MR. WYRICK: May I just have a moment.
11 (Off the record)

12 MR. WYRICK: No further questions.

13 MS. HA: You don't have any?

14 MR. WYRICK: No further questions. No
15 further witnesses.

16 MS. HA: Any other Members of the Board
17 would like to speak?

18 MS. BENTLEY: I need you to come down to
19 this chair so the court reporter could pick you up.

20 W I L L I A M D A V I S

21 after being sworn by the notary public testified as
22 follows:

23 COMMISSIONER DAVIS: I only would like to

1 say that I am in total agreement that we should adhere to
2 the actual language in the City Charter; and I think we
3 have an opportunity to do a better job of doing that.
4 That's all I need to say.

5 MS. BENTLEY: Thank you.

6 COMMISSIONER BELL: Commissioner Bell
7 speaking, I think that in this process up until this year
8 the 11 person Board there was never any opposition to the
9 process of the Board's obligations in fulfilling that up
10 until this year. I think we have Board members not
11 understanding how a Board should function. There are
12 things that you have concern to come before the full
13 Board. This takes six votes majority rule if you're
14 unhappy; and I thought other Commissioners raised the
15 same issue not understanding how a Board should function.
16 In 45 year history we never had any problem, even when
17 the five person Commissioners votes. You go along with
18 majority, and that is the process. I don't think there
19 was any criminality here. I think Mr. Hicks was trying
20 to do the Board bidding. I testified that Mr. Brown
21 worked at the pleasure of the Board and we vote and
22 disappointed him. There was no opposition to that
23 process. Even this year that Mr. Brown reverting back to

1 Administrative Assistant position. I think the flaw that
2 a Commissioner would raise issue of criminality or
3 misjudgment without any foundation because they was not
4 even here during that process. So I think it's unfair to
5 Mr. Brown and the whole process to attack his character
6 in terms of he received a promotion. I would have taken
7 a promotion too notwithstanding that. So we could have
8 worked through this process. If there is opposition to
9 it there's a process for the Board to function without --
10 when you make charges without any substance then I think
11 reflect your lack of integrity or your belief and concept
12 of the Board. Now we elected it's a whole different
13 ballgame I mentioned in terms of people coming on Board.
14 Trying to undermine what transpired prior to your
15 arrival, had no knowledge, had no understanding, didn't
16 have a bearing on that, no different accounts. You can't
17 speak to four years, eight years ago what took place.
18 You have to respect the process or change the process.
19 We did not have a formal process to operate; that's why
20 we relied on the Director of Personnel and she relied on
21 the City Director of Personnel. We took that type of
22 guidance to the best of our ability. We tried to have a
23 fair process for everybody. We went through a process to

1 review, even have second interviews to try to make this
2 fair. We knew about the flaws in terms of negotiating
3 and hiring and all that process. We want to be fair,
4 equitable and integrity and transparency; that's what we
5 try to do. I just want the record to show that. Thank
6 you.

7 MR. WYRICK: I would just like to close
8 with this. I left yesterday's proceeding with Attorney
9 Chapman and compliments to me and I hate to toot my own
10 horn because I try to be modest, is that my 33 page
11 response completely refutes everything that the Inspector
12 General has alleged against this Board and I stand on
13 that. Thank you.

14 MS. HA: Okay. It is --

15 MS. HENDRICKS-MOORE: One thing I just
16 wanted to point out first and that is with the different
17 Commissioners that I did interview no one said that
18 Robert Brown was not deserving of a promotion. Everyone
19 acknowledged that he was a hard worker, he had been there
20 for a long time and that they were trying to give him
21 some type of promotion. I just wanted to acknowledge
22 that.

23 Also, just a couple things I just wanted

1 to mention because this is part of what we are bringing
2 before the Board when it comes to disciplinary, so that
3 the Board understands. When it comes to us requesting
4 the discipline for Faye Johnson, and that was basically
5 because of there were some statements that we asked that
6 information was not provided to us truthfully, and that
7 was just the fact that there was some assistance that she
8 was given by Mr. Hicks, and so that was one of the
9 reasons we were finding that her statement was false. I
10 mean I understand sometimes there can be a
11 misunderstanding; but that was one of the reasons that we
12 are asking for disciplinary actions. That's just a
13 recommendation.

14 The same when it comes to Mr. Hicks just
15 the fact that there was information within the procedures
16 based on his memo that he should have followed that he
17 did not follow, and that was one of the reasons again we
18 were doing recommendations for the Board should take
19 disciplinary actions.

20 COMMISSIONER HOLT: I was just trying to
21 get the last of your words as relates to the disciplinary
22 actions, but I got them.

23 MS. HENDRICKS-MOORE: It's just a

1 recommendation. We don't tell the Board what to do.

2 It's just a recommendation. Everything in the report is
3 based on our findings. Since I was investigator and it
4 was not just me, it's a collaboration of our office
5 reviewing things. If you have any questions regarding
6 what we found or what our findings are please feel free
7 to reach out to me.

8 COMMISSIONER DEWAELSCHE: Are there
9 recommendations to make about disciplinary actions, but
10 are the recommendations on the disciplinary --

11 MS. HA: We do not dictate to any public
12 body including commissions and agencies and departments
13 what discipline should be issued. That is up to the
14 agency that is employing the employee in question because
15 we don't know their employment history. We assume the
16 Employment Director and Commissioner and Board will know
17 the employee's history, history of any disciplinary
18 actions. We don't step on other peoples' toes.

19 COMMISSIONER DAVIS: Is it posted if A or
20 B that the employee should be disciplined?

21 MS. HA: Yes.

22 MR. MARABLE: If there's a report it's
23 more than likely posted. We don't have a separate

1 section for recommendations. But in terms of just to
2 supplement what IG Ha said we would recommend generally
3 if the department would consult HR, you may want to
4 consult your attorney. There is a document Universal
5 Work Rules which lays out disciplinary action based on
6 actions. Most departments reference that in terms of
7 discipline. That may be a resource guide, but that's up
8 to the Board. We don't prescribe a level of discipline.

9 MS. HA: Just so that you have a clear
10 understanding when you are ready to discipline any
11 employee if that employee requests a closed session you
12 may go into closed session; but you cannot make any
13 decision. You have to come back and take a vote of full
14 Body.

15 COMMISSIONER HOLT: Annie Holt. I just
16 got on Board January of this year. So just reading
17 through the materials has been a lesson for me and when
18 people compliment you on receiving, I mean receiving this
19 appointment they have no idea as to the rigor that one
20 has to go through in order to stay abreast. Okay. It's
21 being recommended, if I understand, that the whole Board
22 institute negative actions against Mr. Hicks?

23 COMMISSIONER BELL: No. That's not the

1 case. They making a recommendation, all it is a
2 recommendation. Their role ends at that point in time.
3 It's up to the Board to take action or no action,
4 whatever it is. They just making a recommendation.

5 MR. WYRICK: But then Corporation Counsel
6 kicks in.

7 COMMISSIONER BELL: On certain parts of
8 it, not entirely.

9 COMMISSIONER HOLT: And that
10 recommendation will appear on your website?

11 MR. WYRICK: The report.

12 COMMISSIONER HOLT: The report mentioning
13 the suggestion?

14 MS. HA: Yes.

15 MR. MARABLE: The final draft of the
16 report. So just to be clear, everybody, on the process
17 from here so based on these administrative hearings, once
18 we get the transcript from the hearings we will go back
19 and review the transcript and review our report, and if
20 we feel that changes are necessary in our report those
21 changes will be made and a final draft will be issued.
22 That is the -- you all get a copy of that and that is the
23 copy that more than likely will be published on our

1 website.

2 COMMISSIONER HOLT: Thank you.

3 COMMISSIONER BELL: You could reverse
4 yourself.

5 MR. MARABLE: We could.

6 MR. WYRICK: That's what I'm asking.

7 MS. HA: So it is five minutes after one.

8 We are closing this hearing.

9 (Hearing concluded.)

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C E R T I F I C A T E

I, Deborah A. Elliott, do hereby certify that I have recorded stenographically the proceedings had and testimony taken in the above-entitled matter at the time and place hereinbefore set forth, and I do further certify that the foregoing transcript, consisting of (79) pages, is a true and correct transcript of my said stenograph notes.



Deborah A. Elliott, CSR0129
(Acting in Wayne County)
Oakland County, Michigan
My Commission Expires: 6/30/24



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PRIVILEGED AND CONFIDENTIAL

April 2, 2019

Ellen Ha, Inspector General
City of Detroit
65 Cadillac Square, Ste. 3210
Detroit, Michigan

Re: The Board of Police Commissioner's June 30, 2016 Decision to Delegate the Board's Authority to Hire Staff

Dear Ms. Ha,

On June 30, 2016, the Board of Police Commissioners (BOPC) adopted a proposal to amend its Standard Operating Procedures.¹ The Board's decision delegated the authority to reorganize the office of BOPC to the Board Secretary, Gregory Hicks. One of the specific responsibilities delegated to the Board Secretary as a result of that action included the authority to hire and assemble the Board's staff. You requested a legal opinion regarding whether the Board's delegation of authority to hire was authorized under the 2012 Detroit City Charter. The Law Department is now responding to that request.

SHORT ANSWER

The Board cannot delegate its power to exercise an authority conferred to it by the City Charter. The Board's decision to delegate its authority to hire constitutes an improper delegation of authority under the City Charter and governing law.

BACKGROUND

The Board of Police Commissioners (BOPC) was originally created by 1974 Detroit City Charter.² As a creation of the charter, the BOPC is limited to those powers enumerated in the City Charter as adopted by the voters. Like any governing body created under the City Charter, the Board "must act strictly within the powers granted to it in the charter."³ All of the powers and duties of the Board derived from the City Charter are set forth in Article 7, *The Executive Branch: Programs, Services and Activities*, Chapter 8. *Police*.

¹ Eight members of the Board voted in favor of the adoption; two members disapproved; and, one member abstained.

² The 1974 Detroit City Charter was subsequently revised in 1997 and later in 2012. The 2012 Detroit City Charter took effect on January 1, 2012.

³ *Thompson Scenic R Co v. McCabe*, 211 Mich 133, 139; 178 NW 662 (1920)(citing *City of Kalamazoo v. Titus*, 208 Mich 252; 175 NW 480 (1919) and *Cooley's Constitutional Limitations* (7th ed), pp 163 *et seq.*

EXHIBIT
A
9-18-19 de



The authority to hire staff is specifically referenced in Section 7-804, *Staff*, which provides:

1. Secretary to the Board.

The Board **shall** appoint a Board Secretary, who serves at its pleasure. The secretary shall not have been an employee or elective or appointive officer of the City within three (3) years prior to appointment. The secretary shall attend board meetings.

2. Investigative Staff.

The Board **shall** also appoint a Chief Investigator and such additional staff of investigators as it deems necessary. The Chief Investigator shall not have been an employee or elective or appointive officer of the city within three (3) years prior to appointment. Investigators serve at the Board's pleasure. They must possess skills and experience necessary to complete investigative work.

3. Other Staff.

The Board **may** hire, in accordance with Article 6, Chapter 4, such additional staff **as is necessary to carry out its duties**. All members of the staff are under the direction of the Board, and the Chief of Police has no authority over any member of the staff (emphasis added).

I. The legislative purpose in enacting Section 7-804 of the City Charter is to vest the Board with the authority to appoint and hire board staff as necessary.

The prevailing rules of statutory construction are well established and extend to the construction of home rule charters.⁴ A fundamental rule of statutory construction is to examine a statute's purpose as evidenced by the legislature.⁵ In seeking the meaning of statutes, words and clauses are not divorced from those which precede and those which follow.⁶ "Contextual understanding of statutes is generally grounded in the doctrine of *noscitur a sociis* which stands for the principle that a word or phrase is given meaning by its context or setting."⁷

⁴ *Brady v. Detroit*, 353 Mich 243, 248, (1958).

⁵ *In re Certified Question*, 433 Mich 710, 722 (1989).

⁶ *Herald Co. v. Bay City*, 463 Mich. 111, 130, n. 10, 614 N.W.2d 873 (2000).

⁷ *Brown v. Genesee Co. Bd. of Comm'rs (After Remand)*, 464 Mich. 430, 437, 628 N.W.2d 471 (2001), quoting *Tyler v. Livonia Schs*, 459 Mich. 382, 390-391, 590 N.W.2d 560 (1999).



The legislative purpose in enacting Section 7-804 of the Charter is to provide the Board with the authority to appoint and hire board staff. The fact that the drafters used the term “may” as opposed to “shall” with respect to hiring “Other Staff” does not impart the Board with the permissive right of delegation. The term “may” must be viewed in light of other terms and clauses employed in this section. In examining the word “may” in the context of Section 7-804(3) the intended meaning of the term is clearly used to vest the Board with the ability to hire staff as *may* be necessary.

II. The Board is precluded from delegating an authority that is not expressly authorized by the City Charter.

Basic principles of municipal law preclude a local unit’s ability to delegate powers⁸ unless it is expressly authorized by a home-rule charter provision.⁹ Although municipal boards may delegate ministerial powers which involve the performance of acts in connection with the execution of an existing law, the power so delegated can never involve the exercise of discretion or judgment.¹⁰ Generally, unless the delegating entity retains the ultimate decision-making authority, the delegation is considered unlawful.¹¹

The only reference to the Board’s power of delegation is contained in Section 7-803, *Duties of the Board of Police Commissioners*, of the City Charter. The delegable powers are specifically limited to administering oaths and taking testimony. Section 7-803 provides, in pertinent part:

[t]he Board may delegate in writing to a member of its staff the powers to **administer oaths and take testimony**. A delegation is revocable at the will of the Board and does not prevent exercise of any power of the Board (emphasis added).

Unlike the ministerial functions referenced in this section, the authority to hire does involve the exercise of discretionary consideration and judgment.

Section 7-804 of the City Charter exclusively vests the Board with the power to appoint a Board Secretary, Chief Investigator and hire other staff as necessary. The City Charter does not authorize the delegation of that authority. If the drafters of the City Charter intended to allow the Board to sub-delegate this authority, it would have been specifically included in this provision of the Charter, as was done in Section 7-803 above.

⁸ *People v. Sell*, 310 Mich 305 (1945); see also *Chemical Bank & Trust Co. v. Oakland County*, 264 Mich 673 (1993)

⁹ See *McGovern v. Patterson*, 273 A. D. 35, 75 N.Y.S. 2d 492 (1st Dep’t 1947), order *aff’d*, 298 N.Y. 530, 80 N.E. 2d 667 (1948) (Charter of New York City enables board of estimate to delegate to budget director power to fix salary at which vacancy occurring within fiscal year may be filled).

¹⁰ *Michigan Cent. R. Co. V. Michigan Railroad Commission*, 160 Mich 355, 125 N.W. 549 (1910)(fixing rate)

¹¹ *Federated Publications Inc., v. Michigan State University. Bd. Of Trustees*, 221 Mich App 103, 120, (1997) (rev’d on other grounds 460 Mich 75 (1999)); see also *Attorney Gen. v. Guy*, 334 Mich. 694, (1952)(a city council did not unlawfully delegate its authority when it sought a recommendation, but retained the authority to decide whether to act on a recommendation.



CONCLUSION

For the reasons set forth above, the Board cannot delegate its authority to hire staff to the Board Secretary. The Board's action is not authorized under the City Charter and constitutes an improper delegation of authority.

If you have any further questions regarding this matter, please let us know.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Vic Scrifovski".

Vic Scrifovski
Assistant Corporation Counsel

Concur:

A handwritten signature in cursive script, appearing to read "Tonja Long".

Tonja Long, Supervising
Assistant Corporation CounselA handwritten signature in cursive script, appearing to read "Charles Raimi".

Charles Raimi
Deputy Corporation Counsel