

**SUPREME COURT OF THE STATE OF NEW YORK  
MONROE COUNTY**

CONOR DWYER REYNOLDS,

Petitioner,

Index No.

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

-against-

CITY OF ROCHESTER and ROCHESTER  
POLICE ACCOUNTABILITY BOARD,

Respondents.

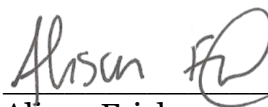
**NOTICE OF PETITION**

PLEASE TAKE NOTICE that upon the Verified Petition, Affirmation of Conor Dwyer Reynolds and exhibits thereto, and accompanying Memorandum of Law, Petitioner Conor Dwyer Reynolds will petition this Court, pursuant to Article 78 of the CPLR and N.Y. Public Officers Law § 107, at the Supreme Court of the State of New York, Monroe County, located at 99 Exchange Blvd #545, Rochester, NY 14614, on August 12, 2022 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order and judgment (a) declaring that Respondents failed to comply with the Open Meetings Law; (b) declaring that the suspension of Petitioner is void in whole; (c) requiring Respondents to have its members undergo a training session on the Open Meetings Law within sixty days; (d) awarding costs and attorney’s fees to Petitioner; and (e) providing other, further, or different relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that, pursuant to CPLR 7804(c), answering papers must be served upon the undersigned on or before August 8, 2022; and any reply papers shall be served on or before August 14, 2022.

Dated: July 11, 2022

KAUFMAN LIEB LEBOWITZ  
& FRICK LLP



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Respondents.

**VERIFIED PETITION**

Petitioner Conor Dwyer Reynolds, by and through his attorneys, Kaufman Lieb Lebowitz & Frick LLP, for his verified petition pursuant to Article 78 of the New York Civil Practice Law and Rules, respectfully alleges as follows:

**PRELIMINARY STATEMENT**

1. This action arises from Respondents' deliberate failure to comply with the New York Open Meetings Law ("OML") in order to conceal the wrongful suspension of Rochester Police Accountability Board ("Board") Executive Director Conor Dwyer Reynolds made in retaliation for his sexual harassment complaints.

2. In April 2022, Dwyer Reynolds informed former Board Chair Shani Wilson that he intended to report her sexual harassment of him. In response, Wilson, with the aid of friends involved in the Board's work, began a secret campaign to oust Dwyer Reynolds by soliciting criticisms of his work and manufacturing complaints about his leadership.

3. In service of that goal, the Board held at least six non-public meetings between April and May where it undertook deliberations and made decisions regarding the work of the agency and, specifically, Dwyer Reynolds.

4. The Board never made the community aware of these non-public meetings. No meeting was publicly noticed. None was recorded. None has minutes memorializing what occurred.

5. Then, only after Dwyer Reynolds's fate was already sealed, the Board held a meeting on May 12 to formally suspend him. But rather than publicly sharing the basis for its suspension decision—which would have revealed its pretextual and retaliatory nature—the Board swiftly moved into executive session, disclosing only that it needed to discuss a “personal matter.” The barebones minutes from the May 12 executive session do not reflect *any* motion, vote, or decision with respect to Dwyer Reynolds.

6. Nevertheless, as the Board met behind closed doors on May 12, the City's security team showed up at Dwyer Reynolds's home to inform him that the Board had “voted” to suspend him.

7. By holding multiple non-public meetings and failing to disclose the substance of the May 12 executive session, the Board flouted the OML with the express intention of hiding a wrongful process that, if made public, would have faltered under the community's watchful eye. If the Board had simply followed the OML's mandates, Dwyer Reynolds would never have been suspended. Nor would the agency's staff now be working amid a reign of punishment and retaliation that is sustained (and concealed from the public) by the Board's continuing use of secret meetings that violate the OML.

8. Dwyer Reynolds brings this Article 78 Petition to help restore the Board’s values of accountability and transparency and end an interregnum of impunity and secrecy.

**PARTIES**

9. Petitioner Conor Dwyer Reynolds is an individual who resides in Rochester, New York. From October 16, 2020 to the present, Dwyer Reynolds has served as the Executive Director of Respondent Rochester Police Accountability Board and, as such, is an employee of Respondent City of Rochester.

10. Respondent City of Rochester (the “City”) is a municipality organized and existing under the laws of New York State. The City is responsible for the policies, practice, supervision, and conduct of its officers and agencies. The City is a body within the meaning of Article 78 of the CPLR. The City’s principal office is located at 30 Church Street, Rochester, NY 14614.

11. Respondent Rochester Police Accountability Board is an agency of the City of Rochester charged with the powers and duties set forth in Section XVIII of the Rochester City Charter. The Board is a body within the meaning of Article 78 of the CPLR. The Board is overseen by Board Members, who, among other things, directly supervise the Executive Director. The Board’s principal office is located at 245 East Main Street, Rochester, NY 14604.

**JURISDICTION & VENUE**

12. This Court has jurisdiction pursuant to the Open Meetings Law, New York Public Officers Law § 107.

13. This Court also has jurisdiction pursuant to CPLR 7803(1) and 7804(b) to review the actions by bodies or officers who have failed to perform a duty enjoined upon them by law.

14. Venue in the County of Monroe is proper pursuant to CPLR 504(2), 506(b) and 503(a) as: (i) claims are asserted against the City of Rochester and the cause of action arose in Monroe County; (ii) claims are asserted against a body with principal offices located in Monroe County; and/or (iii) one or more of the parties resides in Monroe County.

### **FACTUAL ALLEGATIONS**

15. Throughout his time as Executive Director, Dwyer Reynolds worked diligently to ensure Board members were aware of their obligations under the OML. Shortly after he began working, he held a training session led by a City attorney that taught Board members about the OML's requirements. When the Board entered executive sessions, Dwyer Reynolds made sure they explained why they were doing so in detail. Moreover, he made sure that the minutes of any such executive session noted any motion made (and the details of any vote thereon). Dwyer Reynolds Aff. ¶¶ 3-5.

16. On April 19, 2022, after 20 months of sexual harassment, humiliation, and punishment by former Board Chair Shani Wilson, Dwyer Reynolds informed her that he intended to report her conduct to the Board. Wilson replied, "I'm going to hurt you because you hurt me." *Id.* ¶ 7.

17. True to her word, following the April 19 conversation, Wilson and other Board members with whom she is close friends began a campaign to oust Dwyer Reynolds's as Executive Director by manufacturing workplace complaints against him.

18. On information and belief, no Board Member took steps to discipline or suspend Dwyer Reynolds prior to this conversation. To the contrary, Board Members have consistently praised his work as exceptional. Certainly, Dwyer Reynolds was not made aware of any performance concerns warranting such drastic measures. *Id.* ¶¶ 8-9.

19. On April 27, six or seven Board employees attended a meeting convened by an unknown person. The apparent purpose of the meeting was to solicit and aggregate criticisms of Dwyer Reynolds. *Id.* ¶ 10.

20. On April 28, Board Member Drorah Setel (a close friend of Wilson's) hosted a "social get-together" at her home for members of the Board. Once all Board Members arrived, Wilson began a group discussion of what she called Dwyer Reynolds's "performance issues." *Id.* ¶¶ 11-12.

21. Under the Open Meetings Law, the Board's deliberations and decisions regarding these "issues" rendered the event a public meeting. Yet the public was never made aware of this April 28 meeting. It was never publicly noticed. There is no recording of it. There are no minutes for it. *Id.*

22. The next day, April 29, Dwyer Reynolds received an email from an employee asking him to address criticisms discussed at the April 27 meeting. The criticisms listed in the email had to do with things like workplace communication, job expectations, and hiring practices, rather than any kind of serious misconduct.

23. Shortly after, a Board Member called Dwyer Reynolds to say that Wilson had emailed the Board asking for an "emergency meeting" to discuss his "performance." *Id.* ¶ 13.

24. On April 30, Wilson texted Dwyer Reynolds to say the Board would “need a series of meetings” to discuss his work and that she would “be in touch with a time to meet.”

*Id.*

25. On May 1, the Board’s “Executive Director Oversight Committee” met in order to—in the words of committee co-chair Setel—“discuss the correct procedure” for addressing “concerns” about Dwyer Reynolds. The public was never made aware of this May 1 Board committee meeting. It was never publicly noticed. There is no recording of it. There are no minutes. *Id.* ¶ 14.

26. The secrecy around the May 1 meeting (and the many non-public meetings to follow) was intentional. In a follow-up email sent on May 2, Setel explicitly instructed the Board that all meetings concerning Dwyer Reynolds would be “confidential.” *Id.* ¶ 15.

27. On May 5, the Board held a Board Meeting to speak with some of the Board employees who had attend the April 27 meeting convened to solicit criticisms of Dwyer Reynolds. The purpose of the May 5 meeting was again for the Board to deliberate about the agency and Dwyer Reynolds’s work. *Id.* ¶ 19.

28. Although a Board Meeting was originally noticed for the evening of May 5, the public perception was that this meeting had been cancelled. Indeed, the Board’s own staff believed it had been cancelled, as Setel and Wilson told them on May 2 that the scheduled Board Meeting had been replaced by a “retreat” that included an “executive session.” *Id.* ¶¶ 16-20.

29. When a Board employee told Setel the proper procedure for an executive session was to have an “open” meeting where the Board “state[d] the purpose of us entering into



executive session,” Setel replied, “I don’t think that will be possible unless you do that on your own.” *Id.* ¶ 17.

30. Thus, the public was never made aware of this three-hour long May 5 meeting or given the opportunity to attend. There is no recording of it. There are no minutes for it. *Id.* ¶ 18.

31. On May 5, the Board immediately followed its first “Board Meeting” (which Dwyer Reynolds was barred from attending) with a second, separate “Board Meeting” that same night, wherein it invited Dwyer Reynolds to speak for ten minutes. Dwyer Reynolds used his time to read a prepared statement that reported Wilson’s sexual harassment and related misconduct. *Id.* ¶¶ 20-22.

32. The public was never made aware of this second Board meeting on May 5. It was never publicly noticed. There is no recording of it. There are no minutes for it. *Id.* ¶ 21.

33. On May 7, a Saturday, the Board held yet another Board meeting to “determine the next steps regarding” Dwyer Reynolds. During this meeting, the Board “considered putting [Dwyer Reynolds] on a paid administrative leave, however they were not able to reach a decision.” *Id.* ¶ 24.

34. The public was never made aware of this May 7 meeting of the Board. It was never publicly noticed. There is no recording of it. There are no minutes for it. *Id.*

35. On May 8, the Board had a meeting to “talk” with Dwyer Reynolds. An email sent from Setel to Dwyer Reynolds that day described the meeting as a “Board listening session.” In reality, the meeting was yet another non-public opportunity for the Board to deliberate about his work and the work of the agency. *Id.* ¶ 25.

36. The public was never made aware of this May 8 Board Meeting. It was never publicly noticed. There is no recording of it. There are no minutes for it. *Id.* ¶ 26.

37. The day after this meeting, the Board employee who worked with Setel to arrange the series of secret meetings emailed the President of City Council. The email claimed that—in the face of inaction from the Board—the entirety of the Board staff was “requesting” that Dwyer Reynolds be investigated and suspended. Days later, a group of Board staff would email this employee to reject this idea and demand that she and others stop presuming to speak on the employees’ behalf. *Id.* Ex. C.

38. On May 12, Dwyer Reynolds received a phone call from a Board Member telling him the Board was heading into a “Board training” scheduled for 6:30 PM that night. Earlier in the week, Setel emailed another Board employee asking them to “send out a Zoom link for our Board training this Thursday [May 12] at 6:30? This is not a public event.” *Id.* ¶ 27.

39. Yet rather than attending any sort of training on May 12, the Board convened what it called a “Special Board Meeting.” Contrary to the Board’s own rules, this meeting was not preceded by proper notice, failed to include a Board employee responsible for taking minutes, and failed to have a publicly posted agenda. Contrary to the Board’s regular practice, this meeting was not streamed on any of the Board’s social media pages. Instead, it was livestreamed on City Council’s YouTube page, with minutes taken by a City Council staffer. Neither Dwyer Reynolds nor the Board’s secretary was notified this meeting was happening. *Id.* ¶¶ 28-29 .

40. This May 12 meeting lasted over three hours. All but 67 seconds were held in executive session and thus not streamed on the City Council’s YouTube page. Before entering executive session, the Board only disclosed that a “personal matter” needed to be discussed; no further information about the session was provided. The public

portions of the meeting involved nothing more than a motion to enter an executive session and adjourn the meeting. *Id.* ¶ 30.

41. The minutes from the May 12 meeting taken by City Council’s staff say nothing about what happened during the three-hour long executive session. The minutes say nothing of a motion to suspend Dwyer Reynolds. The minutes say nothing about who (if anyone) voted to suspend Dwyer Reynolds, whether any such vote was unanimous, or whether anyone opposed the suspension. The minutes also fail to state an important fact: that Wilson, who appeared to be absent during the initial public portion of the meeting, was present during the meeting’s executive session. These minutes, unlike those for every other recent Board meeting, are not available on the Board’s website. *Id.* ¶¶ 32-33.

42. As the Board was in the midst of its executive session, a City security team arrived at Dwyer Reynolds’s home and gave him a letter telling him that the Board had “voted” to suspend him and banning from speaking with any Board members or employees. The letter did not state why he had been suspended. When Dwyer Reynolds called City Council’s Chief of Staff to ask why he had been suspended, the employee replied: “I don’t think it’s been defined.” The next day, the City Council President sent a private letter to the Board Members thanking them for their “quick action” to suspend Dwyer Reynolds. *Id.* ¶ 34-35.

43. Since Dwyer Reynolds’s suspension, at least some Board Members have recognized flaws in its “confidential” deliberative process. In a public meeting, one Board Member criticized the Board for doing “most” of their work outside of open meetings and making “decisions” without “thoughtful discussion of them” in public. Another lamented Dwyer Reynolds’s suspension as an example of the Board “jumping to

make a quick, fast decision.” A third, agreeing that “speed kills,” called the decision a “fiasco.” Upon learning about Dwyer Reynolds’s suspension, an ex-Board Member decried their former colleagues’ secrecy, saying, “They are rogue now.” *Id.* ¶ 37.

44. Unfortunately, despite these concessions, the Board’s violations of the OML have only continued. In the days following Dwyer Reynolds’s suspension, Setel and Wilson helped create a “Special Committee” of the Board consisting of themselves and two other Board Members. (The previous month, Setel had shot down the idea of creating such a committee, saying that it “sort of leads to cronyism and the kind of ‘closed-door, behind-the-scenes, private-agreement’ type of stuff that we really didn’t like previously.”) *Id.* ¶¶ 38-39.

45. Nevertheless, on May 23, the Special Committee held a meeting with a select group of community members over Zoom. Beyond those few invited, the public was never made aware of this meeting of a Board committee. It was never publicly noticed. There is no recording of it. There are no minutes for it. *Id.* ¶ 38.

46. On information and belief, despite meeting regularly to issue directives, guide staff, and create policy, the Board’s Special Committee has never noticed its meetings, made them open to the public, posted recordings of the meetings online, or taken minutes during their meetings. *Id.* ¶¶ 38-39.

47. The few public meetings the Board has held since Dwyer Reynolds’s suspension have typically mirrored the May 12 meeting insofar as they are held largely in executive session. The public has been given scant information about what has been discussed in these sessions, either beforehand or after they have concluded. *Id.* ¶¶ 41-42.

48. For example, on June 13, the Board held a secret meeting about PAB leadership focusing on staff concerns about Dwyer Reynolds’s suspension. The public was not

notified of this meeting. By hiding that meeting from the public, the Board concealed that its leadership has refused to address staffer concerns and has threatened those who spoke out with discipline and termination. Nor did the public see staffers resist those threats and press for accountability—including one staffer who, a week after raising their concerns, was fired without explanation. Despite the important and revealing nature of this meeting, it was never publicly noticed. It was never recorded. And it appears that there are no minutes for it. *Id.* ¶44.

49. By intentionally flouting the OML to carry out the wrongful suspension of Dwyer Reynolds, the Board has compromised very ethic of transparency and accountability that it was designed to promote, and hurt the staff that Dwyer Reynolds is tasked with protecting.

### **CAUSE OF ACTION**

#### **ARTICLE 78**

50. Petitioner repeats and realleges each allegation contained in paragraphs 1 through 47 as set forth fully herein.

51. The Open Meetings Law requires public bodies like the Board (and its constitutive committees) to make decisions and deliberations meetings that are publicly noticed and open to the public. N.Y. Public Officers Law §§ 103, 104. “In short, the purpose of the Open Meetings Law is to prevent public officials from debating and deciding in private what they are required to debate and decide in public.” *Goetschius v. Bd. of Educ. of the Greenburgh Eleven Union Free School Dist.*, No. 2861/95, 1996 WL 34565310 (N.Y. Sup. Ct. July 31, 1996).

52. The Open Meetings Law further imposes requirements on a Board’s ability to enter executive session, including requirements that the body “identif[y] the general

area or areas of the subject or subjects to be considered” and take minutes “of any action that is taken by a formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon.” N.Y. Public Officers Law §§ 105, 106.

53. Respondents have violated the OML by deliberately failing to publicly notice meetings, failing to make meetings open to the public, and failing to disclose the nature and substance of one or more executive sessions—all for the purpose of concealing its machinations to remove Petitioner as Executive Director.

54. As a result of the Board’s OML violations, Petitioner was wrongfully suspended and placed on administrative leave. He is thus an aggrieved person under the law, and he is entitled to relief declaring that his suspension is void in whole.

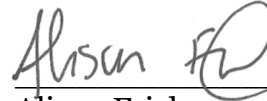
**PRAYER FOR RELIEF**

WHEREFORE, Petitioner DWYER REYNOLDS prays for the following relief:

- a. A declaration that Respondent Board failed to comply with the Open Meetings Law;
- b. A declaration that the suspension of Petitioner is void in whole;
- c. An order requiring Respondent Board to have its members undergo a training session, within sixty days, concerning the Open Meetings Law conducted by the Committee on Open Government;
- d. An award of costs and attorney’s fees to Petitioner; and
- e. Other, further, or different relief as the Court deems just and proper.

Dated: July 11, 2022

KAUFMAN LIEB LEBOWITZ  
& FRICK LLP



Alison Frick  
Alanna Kaufman

18 E. 48<sup>th</sup> Street, Suite 802  
New York, New York 10017  
(212) 660-2332

*Attorneys for Petitioner*

**VERIFICATION**

STATE OF NEW YORK )

) ss.:

COUNTY OF MONROE )

CONOR DWYER REYNOLDS, being duly sworn, is a Petitioner in this

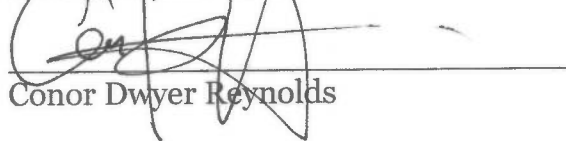
proceeding and has read the foregoing Petition and knows the contents thereof; that the

same is true to his own knowledge, except as to matters therein that are stated upon

information and belief; and as to those matters, he believes them to be true.

Dated: July 11, 2022

Rochester, New York

  
\_\_\_\_\_  
Conor Dwyer Reynolds

Sworn to me this

11<sup>th</sup> day of July 2022

  
\_\_\_\_\_  
Notary Public

NICHOLAS G. ZALYCKI  
Notary Public, State of New York  
No. 01ZA6363633  
Qualified in Monroe County  
Commission Expires Aug. 21, 2025



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**AFFIRMATION IN SUPPORT  
OF ARTICLE 78 PETITION**

Index No.

I, Conor Dwyer Reynolds, being duly sworn, hereby deposes and says:

1. I am an attorney duly admitted to practice law in the State of New York. I submit this Affirmation in support of my Article 78 petition.

2. In November 2019, Rochesterians overwhelmingly voted to create a Police Accountability Board (the “PAB” or “Board”). The PAB’s mission is to “ensure public accountability and transparency” over the Rochester Police Department. In October 2020, I was hired to execute this mission as the Board’s Executive Director. I was confirmed by a unanimous vote of the City Council in November 2020.

***The Board Is Aware of the OML’s Requirements***

3. In service of its mission, the Board has aimed to uphold the values of accountability and transparency with respect to its own work, including by ensuring that Board members are aware of the agency’s obligations under New York’s Open Meetings Law (“OML”). For example, in December 2020, a City attorney held a training session to educate Board members about their duties under the OML. In the months after that training, I regularly answered questions from Board members about OML requirements

pertaining to minutes, executive sessions, and the distinction between mere “social gatherings” and meetings that must be open to the public. We also kept Board members informed about legal developments under the OML. As recently as May 2022, an agency attorney (at my instruction) sent a legal opinion to a Board member reviewing the state laws and rules around public notice of meetings. Similarly, in March 2022, a legal memo was sent to the Board explaining the rules around executive sessions.

4. Furthermore, in March 2022, I drafted new rules governing the operation of Board meetings to ensure OML compliance, which are attached as **Exhibit B** to this Affirmation. The rules stated that for Board members to “discuss . . . things behind closed doors,” they must enter “an executive session” during a duly noticed public meeting. To do so, “the Chair must say: (1) which of the [Open Meetings Law] exceptions justifies adjourning to executive session and (2) the specifics of the matter to be discussed behind closed doors.” The rules also stated that, during any executive session, a “staff member” needed to “record in the meeting minutes” any “motions voted upon by the members and the results of those votes.” During a public meeting held on April 5, the Board’s Rules Committee reviewed the rules and voted to recommend their adoption to the full Board. During a public meeting held on April 7, the Board unanimously voted to adopt these rules.

5. In addition, I have personally instructed Board members on the need to follow the mandates of the OML with regards to executive sessions. For example, during a public meeting on April 1, 2021, I stopped a Board member from entering an executive session without proper notice. “You can only close a meeting for very specific reasons,” I said. “One of them is to discuss specific people or organizations the Board is looking to either hire or go into a contract with. We’re planning on discussing both. . . . We’re in

our final rounds of interviews for [communications] positions that we have open and I'm going to discuss some specific candidates. . . . There's been some proposals about bringing on some people who might be able to help us with our procedural rules and training and so I'm going to discuss some specific firms and people who might be able to help us there.”<sup>1</sup> Beyond this instruction, I have also ensured that—during every executive session where a motion is made—the minutes reflect that motion and the details of any subsequent vote. For example, the minutes for the Board's July 8, 2021 meeting indicate not only that the Board entered an executive session, but also the vote breakdown on a motion was made during that session to adopt a “plan to research and draft [a] code of conduct.” A true and correct copy of these minutes are attached as **Exhibit T**.

6. I have also observed Board members themselves indicate that they understand the OML's requirements and follow those rules when they want to. For example, on May 24, 2022, Board member Drorah Setel interrupted a meeting to stop a motion to simply “go into executive session.” “We need to explain why we're going into executive session in more detail,” Setel said. “We're going into executive session to discuss specific individuals for the possibility of appointing someone as interim administrator for our agency.”<sup>2</sup>

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<sup>1</sup>A recording of this meeting is available at <https://www.youtube.com/watch?v=WkCxOEq8G84>.

<sup>2</sup> A recording of this meeting is available at <https://www.youtube.com/watch?v=5dcpIN9AQ5U>.

***After I Inform the Former Board Chair That I Will Report Her Sexual Harassment, A Closed-Doors Campaign Ensues to Remove Me as Executive Director***

7. On April 19, 2022, I told former Board Chair Shani Wilson that I would no longer tolerate her sexual harassment of me and that I intended to report her conduct to the Board. Wilson had persistently sexually harassed me for years—by directly propositioning me, repeatedly sharing romantic feelings for me, trying to control my dating life, and making other inappropriate advances and remarks. In response to my statement that I intended to report her harassment to the Board, Wilson replied: “I’m going to hurt you because you hurt me.” A true and correct copy of my notes from this conversation, which I wrote immediately following the conversation, is attached to this Affirmation as **Exhibit A**.

8. Until Wilson issued her threat on April 19, I had never been the subject of a human resources complaint, a Division of Human Rights complaint, or any other formal disciplinary inquiry or action. Nor had I ever—in my entire career—received a negative performance review from a supervisor.

9. Indeed, prior to April 19, my sole performance review as Executive Director rated me as either “Outstanding/Role Model” or “Very Competent” in every area of evaluation with an overall score of “Outstanding/Role Model.” Board members regularly praised my leadership and work.

10. On April 27, six or seven Board staff, including a friend of Wilson’s, attended a meeting. The apparent purpose of the meeting was apparently to solicit and aggregate criticisms of me. After the meeting, one attendee told me his remarks had been limited to a concern about the lack of communication among the agency’s divisions. A second attendee told me her concerns had to do exclusively with delays in travel

reimbursements and contract implementation. A third attendee told me she didn't think the criticisms levied against me during this meeting justified anyone getting "in trouble." A fourth attendee told me he thought the criticisms were "ordinary stuff" that, at worst, reflected "blind spots" that "any leader had to deal with."

11. The next day, April 28, Board member Drorah Setel—another friend of Wilson's—hosted a "social get-together" at her home for members of the Board. I had encouraged these kinds of get-togethers, like the one I attended at Board member Bob Harrison's house during the week of March 27, during which we talked exclusively about non-work matters. Given its apparent status as a social gathering, it was appropriate (at least initially) that the PAB neither noticed the April 28 meeting, invited the public to observe, recorded the meeting, nor had an employee take minutes.

12. However, the April 28 gathering was different from previous social events in two ways. First, as Wilson informed me on a phone call about an hour before the event, I was not welcome to attend. Second, as I later learned, the group spent the meeting engaging in PAB business. Specifically, as related to me by a Board Member who attended the meeting, Wilson spent much of the April 28 meeting telling others that she and some PAB employees believed I was having "performance issues." This Board Member told me that only two other Board members—Bob Harrison and Rickey Harvey—were absent from the meeting, indicating that the other five Board members (a quorum) were present.

13. The next day, April 29, I received a call from a Board member asking me what was going on. The Board member informed me he had received an email from Wilson asking for an "emergency meeting" to discuss my "performance." When I asked the Board on April 30 for a chance to talk about what I believed was happening, Wilson

texted me to say that the Board would “need a series of meetings” to discuss my work and that she would “be in touch with a time to meet.”

14. Two days later, on May 1, an undefined group of Board members who described themselves as the “Executive Director Oversight Committee” met to discuss how to address “concerns” about me. The public was never made aware of this meeting. It was never publicly noticed. There is no recording of it. There are no minutes for it. Indeed, despite my status as Executive Director, I never even knew who was on the committee or Setel’s status as “co-chair.”

15. According to Setel, the “correct procedure” ended up being precisely what Wilson had proposed: a series of closed-door meetings where Board members would discuss my work. Speaking in her alleged capacity as the “co-chair” of this committee, Setel informed me and Board members in an email that these meetings needed to remain “confidential.” Setel also instructed Board members to “not discuss” any “personnel issues” with me. A true and correct copy of this email is attached as **Exhibit D**.

16. On May 2, my staff notified the public that the Board would have the first of its regular twice-a-month public meetings on Thursday, May 5, at 6:30. Shortly after, Wilson emailed an employee that the Board would instead have a “retreat” that evening. A true and correct copy of this email is attached as **Exhibit F**.

17. Shortly after, Setel emailed the same employee that the “retreat” would be held behind closed doors in an “executive session.” The employee told Setel the proper procedure for an executive session was to have an “open” meeting where the Board “state[d] the purpose of us entering into executive session.” Setel replied, “I don’t think that will be possible unless you do that on your own.” A true and correct copy of this email exchange is attached as **Exhibit G**.

18. As a result of Setel and Wilson's framing of the May 5 meeting as a "retreat," the perception among the public and most PAB employees was that the regular meeting had been cancelled and replaced by a non-public Board gathering. No meeting was livestreamed on the PAB's social media pages. Nor was there any meeting recording or meeting minutes posted on the PAB's website.

19. In truth, the Board *did* hold what it explicitly called a "Board Meeting" on the night of May 5 at 6:30 PM. All seven Board members met with some (but not all) of the staff members who had attended the criticism-solicitation meeting on April 27. The stated purpose of the May 5 meeting was to discuss the work of both the PAB and me. A true and correct copy of a statement by Setel describing that meeting is attached as **Exhibit E**.

20. The public was not allowed to view any portion of this three-hour long meeting. There was no public notice for this meeting. There are no minutes for this meeting. Despite being held over Zoom, there is no recording of this meeting posted online.

21. At the conclusion of this "confidential" Board Meeting, I was invited around 10 PM to speak for ten minutes during a second "confidential" meeting with all seven Board members. This meeting was also labelled a "Board Meeting" by Setel. The public was not allowed to view any portion of this meeting. There was no public notice for this meeting. There are no minutes for this meeting. There is no recording of this meeting posted online. Wilson was so intent on keeping this gathering secret that she intentionally kept my leadership coach, Kevin Beckford, from entering the meeting as planned.

22. At this meeting, I read a prepared statement. First, I stated that I respected the criticisms raised by staff and had a plan to address them. Second, I informed the Board

that a staff member who was Wilson's friend had been accused of misconduct by three of her subordinates and, with Wilson, was attempting to undermine any investigation into that alleged misconduct. Third, I informed the Board that Wilson had sexually harassed me and that I needed the Board's help in ending that harassment and protecting the rest of the staff from it.

23. Once I had reported Wilson for sexual harassment, the Board had an obligation under City policy to "report any complaint, whether verbal or written that they receive, or any harassment they observe to the Department of Human Resource Management." Rather than doing so, it disclosed my report to a host of City employees, minimized that report in doing so, and continued to hold closed-doors meetings to effectuate my suspension.

24. On Saturday, May 7, the Board held what a City employee described in an email as a "Board meeting" to "determine the next steps" regarding me and my work. A true and correct copy of this email is attached as **Exhibit C**. During this meeting, the Board purportedly "considered putting [me] on a paid administrative leave, however they were not able to reach a decision." *Id.* The public was never made aware of this May 7 meeting of the Board. It was never publicly noticed. There is no recording of it. There are no minutes for it.

25. On May 8, the Board held yet another non-public meeting—this time, titled a "Board listening session." A true and correct copy of a calendar invitation containing the zoom link to that session is attached as **Exhibit H**. I attended the meeting along with my leadership coach, Beckford, and all Board members except for Wilson. Beckford and I gave a presentation about how best to, over the following month, address structural issues in the agency that appeared to be the source of the criticisms made after I



complained about sexual harassment. Board members then asked me questions about that plan for about an hour. After I left the meeting around 8:30 PM, the Board remained in the meeting for another hour to deliberate about Board business.

26. The public was never made aware of this Board Meeting. It was never publicly noticed. There is no video recording of it. There are no minutes for it.

27. On May 12, the Board held yet another secret meeting, wherein I was ultimately suspended. Previously, Board members had been scheduled to attend a training that evening. Indeed, earlier in the week, Setel asked an employee to “send out a Zoom link for our Board training this Thursday [May 12] at 6:30[.] This is not a public event.” A true and correct copy of this email is attached as **Exhibit I**.

28. Around 6:00 PM on May 12, Board member Matthew Nickoloff ended a call with me because—in Nickoloff’s words—he was heading to “Board training.” At around 6:45 PM, I received a phone call from the employee whom Setel had asked to set up the Zoom meeting for the scheduled 6:30 PM Board training. The employee said that no Board member had showed up for the training. I checked the City’s website, my email, and the PAB’s website; none showed any notice for a Board meeting or City Council meeting that night. Assuming something came up, I told the employee to leave the meeting because it must have been cancelled. I then drove home.

29. What I did not know was the Board had worked with City Council to hold what they called a “Special Board Meeting” at 6:30 PM – the same time they were supposed to be in a training session. Contrary to typical practice, this “special” meeting was not livestreamed on any of the PAB’s social media pages, where most people “tune in” to our meetings. Instead, it was livestreamed on City Council’s YouTube channel. To this day, it

is still not posted on the Board's YouTube channel.<sup>3</sup> I was not told this meeting was happening.

30. The recording of the meeting available on YouTube is broken into two clips.<sup>4</sup> The first is 39 seconds long, showing the faces of all Board members except Wilson. The video began with Vice Chair Danielle Tucker saying, "Good evening, everyone. Welcome to the PAB meeting on May 12, 2022. We're going to go into executive session to discuss a personal matter and when we come back we will come back live again." Tucker then asked City Council staffer Katy Hasselwander, "Can we go into executive session now?" Rather than explaining that Tucker needed to give details about why the Board was entering executive session, Hasselwander responded, "I believe you need a motion and a second to go." Tucker replied, "Can I get a motion to go into executive session?" Board member Rickey Harvey makes the motion, it gets seconded, and then—without a vote on the motion being held—the first video ends. The second video is 28 seconds long and shows the faces of three Board members: Setel, Tucker, and Wilson. The video consists exclusively of Tucker adjourning the meeting.

31. In addition to violating provisions of the Open Meetings Law, this "Special Board Meeting" violated the more stringent transparency rules that the Board had adopted unanimously on April 7, 2022. Ex. B. First, the meeting failed to be preceded by a notice given to the public "at least one week" before the meeting. Second, it failed to have its time or location posted on the Board's website. Third, it failed to have a PAB employee

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<sup>3</sup> See <https://www.youtube.com/c/RochesterPAB/videos> (last visited July 8, 2022).

<sup>4</sup> Part 1 is available at <https://www.youtube.com/watch?v=jfuJh6ZKpSw>; Part 2 is available at [https://www.youtube.com/watch?v=45C\\_PN-bNSs](https://www.youtube.com/watch?v=45C_PN-bNSs).

in attendance “responsible for keeping minutes during meetings.” Fourth, it failed to have a “meeting packet” containing an agenda and a list of items for discussion posted on the Board’s website “six days before the meeting.” Fifth, the Chair failed to properly enter an executive session by stating both “(1) which of the below exceptions justifies adjourning to executive session and (2) the specifics of the matter to be discussed behind closed doors.”

32. The minutes for the May 12 meeting taken by Hasselwander are skeletal and largely incorrect. A true and correct copy of the meeting minutes is attached as **Exhibit N**. It contains numerous inaccuracies. For example, the minutes note that the Board entered an executive session to discuss a “personnel matter,” but Tucker unambiguously states on the video that the Board was entering an executive session to discuss a “personal matter”—a topic that is far from any listed as suitable for executive session discussion under the OML. In addition, the minutes state that all Board members *except for Wilson* attended the meeting. In the video, however, Wilson is shown on screen as the executive session ends. As such, the minutes do not record that Wilson, the person that the Board determined needed to recuse herself from any deliberation or discussion involving me—was present at the meeting where the Board voted to suspend me.

33. Beyond its inaccuracies, the most notable thing about the minutes is what they do not state. After noting that the motion to move into an executive session passed, the minutes state: “Executive Session – 6:42. Out of Executive Session – 9:54. Motion to Adjourn – Tucker. Adjourned – 9:55.” According to the minutes, there were no motions made or votes taken during the executive session. In other words, there is no record of why I was suspended, when I was suspended, or who voted to suspend me.

34. Nevertheless, at roughly 8:30 that evening, as the Board was apparently in an executive session discussing a “personal matter,” I heard the doorbell of my apartment ring. When I opened the door, I was greeted by a City security team. They handed me a letter from City Council’s Chief of Staff, James Smith. A true and correct copy of the letter is attached as **Exhibit J**. The letter states: “City Council has been informed that the Rochester Police Accountability Board (PAB) has voted to place you on Administrative Leave (suspension). This letter is to inform you that the PAB’s action means that, effective immediately, you are hereby suspended with pay pending an administrative investigation. While on Administrative leave, you are not to report to any City facilities or access any City information. All City records, City property issued to you or in your possession . . . are to be returned immediately. You are not to contact your supervisor, subordinates or co-workers.”

35. The letter did not state why I was suspended, what the scope of the investigation was, or how long the investigation was expected to last. I later Smith if “anyone knew” the reasons for my suspension and investigation. Smith replied, “I don’t think it’s been defined. . . . Once they know for sure, you know, what all the parameters [are] you’ll be notified.” Nearly two months later, I still have not been informed why I was suspended or why I am being investigated.

36. On May 13, the Board issued a press release announcing that I had been put on “administrative leave” in what was called a “transition” for the agency. Given the sudden and unclear nature of this drastic measure, many Rochesterians assumed I had done something heinous. I was publicly accused of things like masturbating and viewing pornography in the office, engaging in sexual harassment, being a pedophile, a child molester, a sexual predator, and a “groomer,” and committing crimes like

embezzlement. This entirely foreseeable response has caused me entirely foreseeable emotional harm, reputational damage, and psychological trauma.

***The Board Has Continued to Violate the OML Since My Suspension***

37. In the wake of my suspension, some Board members recognized the flaws of the decision to suspend me. In a recent public meeting, Board member Bob Harrison criticized the Board for doing “most” of their work outside of open meetings and making “decisions” without “thoughtful discussion of them” in public.<sup>5</sup> Board member Rickey Harvey lamented my suspension as an example of the Board “jumping to make a quick, fast decision.”<sup>6</sup> In a message to a friend, Board member Matthew Nickoloff said that “speed kills” and called my suspension a “fiasco.” A true and correct copy of this statement is attached as **Exhibit K**. A former Board member called me to say that Wilson and her friends on the Board “didn’t want any accountability for themselves and that’s just going to destroy the Board. . . . They are rogue now. They’re rogue, they’re rogue. . . . Shani does all this shit behind closed doors.”

38. In the days following my purported suspension, Setel and Wilson helped create a “Special Committee” of the Board consisting of themselves and two other Board Members, including Lawrence Knox, the current Chair of the Board. On May 23, this committee attempted to hold a meeting with a small handful of community activists. When other activists found out about this meeting, they insisted on making the meeting open to a broader audience of community members. Nevertheless, beyond those select

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<sup>5</sup> June 13 PAB Board Meeting, recording available at <https://www.youtube.com/watch?v=gbA2RWdb60A>.

<sup>6</sup> *Id.*

individuals invited, the public was never made aware of this meeting. It was never publicly noticed. There is no recording of it. There are no minutes for it.

39. On information and belief, the same can be said of all the meetings held by the Special Committee. The creation of this Special Committee ran in direct opposition to what Board members were telling the public. For example, during a public April 5 Board Meeting, Setel had shot down the idea of a four-person committee tasked with being “the point for interaction with the rest of the City [government].” Setel said, “I feel again that that sort of leads to cronyism and the kind of ‘closed-door, behind-the-scenes, private-agreement’ type of stuff that we really didn’t like previously.”<sup>7</sup>

40. It is true that, since my suspension on May 12, the Board has held four public meetings (on May 18, May 19, May 24, and June 2) that contained executive sessions. However, it appears that few, if any, these sessions were held in accordance with the OML or the Board’s own rules, including rules about the need to specify the subjects to be discussed during an executive session. Because these sessions appeared to be about me, the Board continued its practice of hiding information from the public. For example, on May 18, the Board entered executive session to discuss “some job-related hiring decisions and also updates for the Board regarding that.”<sup>8</sup> On May 19, the Board entered executive session to “have personnel updates.”<sup>9</sup> On June 2, the Board entered an executive session to “discuss potential litigation. That’s all we can say because of the nature of that.”<sup>10</sup>

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<sup>7</sup> A recording of this meeting is available at <https://www.youtube.com/watch?v=vtEYIwzkAWE>.

<sup>8</sup> A recording of this meeting is available at <https://www.youtube.com/watch?v=32qG1S9ZSsA>.

<sup>9</sup> A recording of this meeting is available at <https://www.youtube.com/watch?v=ZNj-4DPFFoQ>.

<sup>10</sup> A recording of this meeting is available at [https://www.youtube.com/watch?v=z8Eo\\_vpRv-Q](https://www.youtube.com/watch?v=z8Eo_vpRv-Q).

41. Under the OML, the Board needed to take minutes during the executive sessions of these four meetings that reflected “any action that [was] taken by formal vote.” Moreover, these minutes needed to be made “available to the public . . . within one week from the date of the executive session.” When I requested those minutes from City Council Chief of Staff James Smith on June 28, June 29, and June 30, Smith refused to provide those minutes or ensure that they were posted online. “I don’t have time today for games,” he said. “This seems to be just that.” A true and correct copy of this email is attached as **Exhibit L**.

42. The minutes for the May 18, May 19, and June 2 meeting were not posted online until on or about July 8, 2022.

43. The agency’s secrecy has only harmed not only me. It has also harmed Rochesterians who are entitled to transparency and accountability from their City government, as well as agency staff. In an agency-wide email sent after my suspension, a group of junior staff announced that they were “concerned about the current state of affairs, operations, and leadership within the PAB.” In the unsigned email, the employees stated that the “majority” of the agency’s staff was unaware of why I had been suspended and were subsequently being “left out of major decision making that happen[s] in closed door meetings between the Board and [Senior] Staff.” The email concluded by stating: “The claims that Conor Dwyer Reynolds fostered a toxic, paranoid, and racist work environment aren’t beliefs shared by all of the staff. Instead we believe the current state of the workplace is highly toxic; wrought with retaliation, fear, and low in morale.” A true and correct copy of this email is attached as **Exhibit M**.

44. It is my sincere hope that, in bringing this Article 78 Petition, I am able to restore the PAB’s ethic of transparency and accountability.

**Other Exhibits**

45. Attached as **Exhibit O** is a true and correct copy of Article XVII of the Rochester City Charter, regarding the Police Accountability Board.

46. Attached as **Exhibit P** is a true and correct copy of an advisory opinion by the Committee on Open Government, dated April 9, 2010.

47. Attached as **Exhibit Q** is a true and correct copy of an advisory opinion by the Committee on Open Government, dated September 19, 2006.

48. Attached as **Exhibit R** is a true and correct copy of an advisory opinion by the Committee on Open Government, dated July 18, 2000.

49. Attached as **Exhibit S** are the Operating Rules of the Police Accountability Board.

Dated: July 11, 2022  
Rochester, New York

*Conor Dwyer Reynolds*  
\_\_\_\_\_  
Conor Dwyer Reynolds



MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3131802

Book Page CIVIL

No. Pages: 2

Instrument: EXHIBIT(S)

Control #: 202207120095

Index #: E2022005139

Date: 07/12/2022

Time: 8:59:20 AM

Return To:  
ALISON ELLIS FRICK

Dwyer Reynolds, Conor

City of Rochester  
Rochester Police Accountability Board

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE  
WARNING – THIS SHEET CONSTITUTES THE CLERKS  
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



4-19-2012

URS LAW (84)

J. BAPERD  
PRES

ASSN PD (87-22)

↓  
1<sup>st</sup>

ASSN PD UNDER RENAISSANCE  
(CALL TM TO CHECK)

- ① WHY NIKES FROM SELECTION  
→ PROB. "PATTOS" BUT NEED DETAILS
- ② WHY PAB?
- ③ FULL TIME? (STUD PT...)
- ④ COMFORT w/ SALARY? (~\$110,000)
- ⑤ START DATE (MAY @ BEST, JUNE OK, JULY...)

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LIKELY NO, SOURCE DIR PENSION, POSS CONTRACT

"HURT YOU BC YOU HURT ME"

→ MEET SAT TO TALK

: FRAME - IMPASS. POSITION

: WRITE STATEMENT

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3131803

Book Page CIVIL

No. Pages: 8

Instrument: EXHIBIT(S)

Control #: 202207120096

Index #: E2022005139

Date: 07/12/2022

Time: 8:59:22 AM

Return To:  
ALISON ELLIS FRICK

Dwyer Reynolds, Conor

City of Rochester  
Rochester Police Accountability Board

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE  
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ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



## **Rule: Roles, Rules, and Structure for Board Meetings**

**Category:** General

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### **A Purpose of Rule**

Public meetings require rules, roles, and structure of order to ensure fair, orderly, and respectful deliberation and action. This rule establishes these necessary items to provide structure to the PAB's Board meetings. In having these meetings run according to a simplified version of the rules usually used by government and nonprofit boards (rules known as "Roberts Rules of Order"), the PAB allows its Board members to become familiar with the procedures they can use in other leadership positions.

### **B Roles**

Every Board or Committee meeting is run by individuals playing four roles: Chair, Vice Chair, Member, and Clerk.

#### **1 Chair**

The Chair's role is to facilitate discussion by recognizing speakers, keeping track of motions, and calling votes. The Chair also facilitates orderly meetings by enforcing rules and refereeing time usage. The Chair should try to engage all members in a meeting – and ensure no member monopolizes all the discussion. Phrases like, "Before voting, let's hear everyone's perspective" and "Good question, let's add that item to the agenda for the next meeting" can be powerful tools for achieving these goals.

#### **2 Vice Chair**

The Vice Chair's role is to serve as Chair when the Chair is absent.

#### **3 Member**

All Members, including the Chair and Vice Chair, are responsible for contributing to the consideration of all proposals made during a meeting. This responsibility requires Members to read over the prepared materials circulated before the meeting. It also requires consistent participation in Board discussion.

#### **4 Clerk (Staff)**

The Clerk's role is to keep meeting minutes, record all votes, assist the Chair or Vice Chair in managing discussion, and keep time. The Clerk is responsible for serving as a reference point on rules, actions and discussions from prior meetings, and prepared materials circulated to members before the meeting. Finally, the Clerk is responsible for coordinating all logistical support to the body. The Clerk is always a staff member, rather than a member of the board or committee.

### **C Pre-Meeting Work**

Boards are effective only if their meetings are run smoothly. Meetings run smoothly only if the board puts in pre-meeting work on things like agendas and review of meeting minutes. The rules below create a framework for ensuring this work is performed properly.

## **1 Roles**

All pre-meeting work should be performed by the Clerk. The Chair and Vice Chair should be included on all communications regarding pre-meeting work so they can provide input and finalize documents.

## **2 Minutes**

The Clerk is responsible for keeping minutes during a meeting. After a meeting, the Clerk should review the minutes to ensure their accuracy.

## **3 Soliciting Agenda Items**

No later than one week after a meeting, the Clerk should email all board members to: (1) circulate the draft of the minutes; (2) ask for any edits to the minutes; (3) ask for any agenda items, proposals, and related materials that members wish to discuss at the next meeting; and (4) ask for any messages or committee reports to be read at the next meeting. The Clerk should note a submission deadline of eight calendar days before the meeting.

## **4 Circulating the Draft Meeting Packet**

The day after the submission deadline, the Clerk should create a draft meeting packet consisting of: (1) an agenda; (2) a copy of the minutes with any accurate revisions suggested by members; (3) any messages or committee reports; and (4) any proposals and related materials. The meeting packet should be circulated to the Chair and Vice Chair seven days before the meeting. The meeting packet should also be sent to the General Counsel's Office so lawyers can determine if any materials are confidential and if any items on the agenda should be discussed behind closed doors (that is, in executive session). The Clerk may use Microsoft Planner to circulate these items.

## **5 Circulating the Final Meeting Packet**

The Chair (or the Vice Chair, depending on the availability of the Chair) and General Counsel's Office must review and approve of the draft meeting packet quickly, so that the Clerk can circulate the final meeting packet promptly. In general, the final meeting packet should be sent to all board members six days before the meeting. On the same day that the final meeting packet is circulated to the Board Members, the Clerk should post the packet on the PAB's website, with any confidential materials omitted.

## **D Structure**

When board meetings have a clear and consistent structure, all board members can contribute effectively and efficiently. To that end, all board meetings must follow the below structure.

## 1 Welcome

The meeting begins with the Chair welcoming the members and the public, thanking them for their attendance. The Chair should open with a summary of the key decision points and input for the group during the meeting, such as any important reports or pressing business.

## 2 Attendance

After the Chair completes the overview, they should ask the Clerk to take attendance. The Clerk will then “call the roll” by listing the names of the members. When your name is spoken, say: “Here.”

## 3 Minute Approval

Once the Clerk takes attendance, the Chair should make a motion to approve of the minutes from the last meeting.

## 4 Reports & Messages

After the minutes have been approved of (or referred back to the Clerk for revision), the Chair should call on committee chairs to report on any committee activity performed since the last board meeting. Once the reports are completed, the Chair may read out any messages sent to the board – for example, a letter from the Mayor addressed to the board. There should be no deliberation during this section.

## 5 Business

Once all reports and messages have been received and read out, the Chair should state that the board will begin its business. The business section is the heart of any meeting, the time when the board considers, debates, and votes upon proposals. The Chair should begin by addressing any business noted on the meeting agenda. Once this business has been completed, the Chair should ask if there is any new business that board members wish to discuss.

## 6 Adjournment

Once the Chair determines that all business has been addressed, they will move to adjourn the meeting.

### a Adjournment to Executive Session

In general, all Board deliberation and decision-making must be done in public. However, the law governing public meetings in New York allows the Board to discuss some things behind closed doors by adjourning to an *executive session*. To do so, the Chair must say: (1) which of the below exceptions justifies adjourning to executive session and (2) the specifics of the matter to be discussed behind closed doors. Then, a majority of the Board’s entire membership must vote to adjourn into executive session. The only part of an executive session that the Clerk should record in the meeting minutes are the motions voted upon by the members

and the results of those votes. The things that the board may discuss in executive session are:

**i. Employment-Related Information**

This refers to: matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person, or corporation.

**ii. Sensitive Personal Information**

This refers to: the medical, financial, credit or employment history of a particular person or corporation.

**iii. Threats to Public Safety and Criminal Investigations**

This refers to matters which: (1) will imperil the public safety if disclosed; (2) may disclose the identity of law enforcement agents; and (3) information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed.

**iv. Lawsuits**

This refers to matters which regard proposed, pending or current litigation.

**v. Union Bargaining**

This refers to collective bargaining performed under New York State's Civil Service Law.

**E Motions**

Board meetings are about taking action. Boards take action by considering proposals. Proposals come before a board through members *making motions*. Boards can only discuss and vote upon one proposal (that is, one motion) at any time. There are two kinds of motions: debatable motions and non-debatable motions. While any person can make a motion, all motions must be directed to the Chair, who is responsible for facilitating discussion and/or a vote on the matter.

**1 Debatable Motions**

The purpose of meetings is to obtain group input on a proposal before having the group decide whether to act on the proposal. To that end, most motions members can make are debatable, meaning that the group can discuss the proposal before voting upon it. After a debatable motion is made and seconded, the Chair should say: "The motion is now up for discussion. Would anyone like to say something before we vote?"

**a Bring A New Proposal Up (Main Motion)**

When you want to bring a new idea up for participants to deliberate and act upon, you should make a *main motion*. For example, you may say: "I move to adopt the hiring plan laid out for us by the staff."

**b Change The Wording of a Proposal (Motion to Amend)**

When you want to change some of the wording in a motion under discussion, you should make a *motion to amend*. For example, you may say: "I move to amend the motion to adopt the hiring plan laid out for us by the staff. I propose that we add the phrase 'three months from today' to the motion. The amended motion would read: I move to adopt the hiring plain laid out for us by the staff three months from today."

**c Refer the Proposal to a Committee for Study (Motion to Refer)**

When you want to wait to decide on a proposal until a subgroup of members takes time to study the proposal, you can make a *motion to refer*. You should be as specific as possible with the order you are giving to the committee. For example, you may say: "I move to refer this proposal to the Jobs Committee, which will complete their review and submit a report to us by our next meeting."

**2 Non-Debatable Motions**

Some motions are non-debatable because their purpose is to quickly end discussion. After a non-debatable motion is made and seconded, the Chair should say: "This motion requires no discussion. Clerk, would you call the roll for a vote?" Because non-debatable motions restrict the ability of members to ask questions about the purpose of the motion, you should always say the reason why you're making a non-debatable motion before doing so.

**a Consider the Proposal Later (Motion to Table)**

When you want to avoid voting on a proposal – either because you don't want it to be considered or because you want to consider it at a later date – you should make a *motion to table*. An example would be: "I move to table this motion."

**b Limit the Time Spent Discussing a Proposal (Motion to Limit Debate)**

When you want to restrict the amount of time spent discussing a proposal, you should make a *motion to limit debate*. An example would be: "I move to limit debate on this motion by only hearing from the next two speakers."

**c End Discussion of a Proposal (Motion to End Debate)**

When you want to end the discussion of an idea, you should make a *motion to end debate*. An example would be: "I move to end debate on this motion."

**d End Meeting (Motion to Adjourn)**

When you want to end a meeting, you should make a *motion to adjourn* by saying: "I move to adjourn the meeting."



### 3 Disposing of Motions

The meeting cannot end until every motion made has been disposed of. Motions can only be disposed of in one of four ways: (1) passage; (2) defeat; (3) tabling; or (4) referral to committee.

### 4 Seconding

Sometimes, meetings can be hijacked by individuals who want to force votes on motions that have not been properly discussed or crafted. To prevent this possibility, no motion can be voted on until another member says, "I second the motion."

### 5 Voting

Once a motion has been seconded, the Chair should ask the Clerk to "call the roll." The Clerk will then list the names of the members. When your name is spoken, you may say "Yes," "No," or "Abstain."

### 6 Abstaining

Sometimes, you may not want to vote "yes" or "no" on an issue. For example, if you haven't had a chance to review the minutes from the last meeting, you should feel free to abstain from a vote to approve of the minutes. Whenever you vote to abstain, you should generally say *why* you are voting to abstain.

### 7 Recusal

Board members may not participate in the deliberation of any business in which they have a financial, personal, or professional interest. For example, you should recuse yourself from a discussion of any contract with a company you own, or if the group is voting on whether to recommend your re-appointment to the board. To recuse yourself from discussion, you should ask t

## F Interruptions

In general, to preserve the orderly flow of the meeting, you should not speak until recognized by the Chair. However, there are three situations where you can interrupt another speaker. The point of these exceptions is to allow you to gain important information or make urgent points that will allow for a more orderly meeting. All interruptions should be directed to the Chair, who is responsible for addressing your point or question.

### 1 Getting Information About Business or Rules (Point of Information)

If you want to get some information about business on the agenda or a rule, you can make a *point of information*. For example, you may say, "Chair, I would like to make a point of information about the agenda item regarding our meeting schedule. Are we planning to meet on Wednesdays or Thursdays?" The purpose of this action is not to open debate among members, but to obtain a single response on a specific question.

**2 Noting a Violation of the Rules (Point of Order)**

If you want to note that the rules are being broken, you can make a *point of order*. For example, you may say, “Chair, I would like to make a point of order about the current motion. We’re voting on a motion that hasn’t been seconded yet.”

**3 Disagreeing With the Chair’s Decision (Appeal)**

If the Chair has made a decision you disagree with, you can make an *appeal*. For example, you may say, “Chair, I would like to appeal the decision you made that Board Member Smith is next to speak about this issue. My hand was raised before hers, so I am next to speak.”

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**Author:** Conor Dwyer Reynolds  
**Reviewer:** [name of staff in General Counsel’s office]  
**Adopted:** [date]  
**Last Update:** [date]  
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JAMIE ROMEO

MONROE COUNTY CLERK



**Green, Leslie D.**

---

**From:** Campbell, Deborah M.  
**Sent:** Monday, May 9, 2022 8:49 PM  
**To:** Nichols, Rose M.; Melendez, Miguel A.  
**Subject:** RE: Confidentiality statements

**Sensitivity:** Confidential

After much thought, I would like to add following for your consideration:

On Saturday, the PAB Board met to determine the next steps regarding Mr. Conor. It is my understanding that Shani Wilson and Bob Harrison have rescued themselves from all meetings regarding this matter. Ms. Wilson because of claim lodge against her and Mr. Harrison for sending a chat during the meeting on 5/5/2022, where he called the PAB staff on the call a "Den of Vipers."

During that meeting, the board considered putting Mr. Reynold's on a paid administrative leave, however they were not able reach a decision. I also requested that an independent entity to review and investigate the matter. The staff have expressed their concerns to me and to the board; due to their heightened sense of anxiety, apprehension in coming to work, and fear of retaliation, on behalf of the PAB staff, I am requesting that Mr. Reynolds be placed on a paid administrative leave. This will provide staff with some relieve to work unencumbered and allow for due diligence and fidelity of this process for all involved. Mr. Reynolds has proven by his actions that he does not respect the staffs' needs or concerns, not the advice and authority of the PAB Board.

Respectfully submitted,  
Deborah

**Deborah Campbell | Director of Support & Development**  
**Police Accountability Board - City of Rochester**  
80 Commercial Street Rochester, NY 14614  
Office: (585) 428-8894  
Mobile: (585) 629-6455  
[Deborah.Campbell@CityofRochester.Gov](mailto:Deborah.Campbell@CityofRochester.Gov)

**From:** Campbell, Deborah M.  
**Sent:** Monday, May 9, 2022 7:18 PM  
**To:** Nichols, Rose M. <Rose.Nichols@CityofRochester.Gov>; Melendez, Miguel A. <Miguel.Melendez@CityofRochester.Gov>  
**Subject:** Re: Confidentiality statements  
**Sensitivity:** Confidential

Good evening to you both,

I wanted to follow up regarding my conversations with you both today. I wanted to make it clear the that Senior Staff of the PAB wanted to express their concerns about the Executive Director Conor D. Reynolds. These staff, including myself, believes that Mr. Reynolds has created a hostile, toxic, and retaliatory work environment.

I was invited to Zoom meeting by six members of the PAB Senior Staff on Wednesday, April 27, 2022; in which each member was given an opportunity to express their concerns. On Thursday, April 28, 2022, I put their concerns in an email and sent it back to each member to make sure I'd captured their concerns accurately. I asked them to review and make any revision before I sent it to Mr. Reynolds. I did not received any revisions, and on Friday, April 29, 2022, I sent the email to Mr. Reynolds. (See attached email).

The six Senior Staff members wanted an opportunity to meet with Mr. Reynolds to discuss their issues at a later date and wanted to wait until one returned to work on Wednesday, May 4, 2022.

Mr. Reynolds had meeting for Senior Staff scheduled on Monday, May 2nd and insisted that staff meet to discuss their that day. In the meeting that Monday, I told Mr. Reynolds that we should adjourn the meeting because all of the staff that could not meet in person. There were three staff on Zoom and the remainder were in person. It was agreed by everyone to meet when two of the staff could meet in person. The third staff member currently lives in Albany and would meet by Zoom The subsequent meeting was held on May 4, 2022.

Since that meeting, the staff, including myself, met with the PAB and also expressed their concerns on Thursday, May 5, 2022 in an evening Zoom Call. Each staff member shared their same concerns with the board. At the end of the meeting staff thank the board and exited the meeting.

The staff was not aware that Mr. Reynolds was given time to make a statement after we all left. Mr. Reynolds read a statement in which, he accused PAB Board Chair Shani Wilson of Sexual Harassment and Associate General Counsel to the PAB, Chenoa Maye, of trying to take is job. This information was bought to my attention by several staff and board members on Friday, May 6, 2022. Later that afternoon, I sent Director Nichols an email to reported these claims and to request a meeting for today.

I know this is a lot of information but I felt the need to given some background about this past week's events. Here are few of the events that have occurred between Mr. Reynolds, myself and staff between 4/27/222 and 5/6/2022. Note, these are the events that I know about.

- Friday, April 29th after sending the email to Mr. Reynolds, he asked me via Zoom if he should reach out to staff, I asked him not to reach out to staff and that I would schedule the meeting. He did otherwise and called staff.
- On Monday, May 2nd, Mr. Reynolds warned me to the effect that; I needed to be careful, so that this situation does not blow up in my face.
- During the meeting on May 4th, with staff Mr. Reynolds stated that he took "ownership' of their concerns amd that he had let the staff down.
- On May 5th, after he met with the board, he called 2 staff members; 1 at 10:30 pm and another staff at 11-11:30 pm. I believe neither of them answered his call.
- On May 6th, he called several staff members. One staff told me that Mr. Reynolds shared some disturbing information with him. He meet with another staff member in person and read his statement to them. He called me into his office on Friday afternoon, but did not share his statement with me, because he asked me if he told me something "could he trust that I would believe him." My response was, 'It depends on what you tell me." At which he ended the meeting.

Also that day, I received a phone call from a Senior Staff that several Jr. Staff members called him. They reported that Mr. Reynolds was calling staff from his personal cell phone to their personal cell phone and requesting to meet with them on a Zoom call. I told the Senior Staff member to let the staff know they did not have to take his calls or meet with Mr. Reynolds.

After I learned of this, I called Drorah Setel and sent an email to PAB Board telling them what was happening and asked them to reiterate to Mr. Reynolds that he should not be reaching out to staff. I was told that Me. Reynold would be told for a second time to not speak to staff about this matter.

I am requesting on the behalf of the PAB staff that Senior Staff members and I have an opportunity to address their concerns. I also want to make it known that some of the PAB staff have spoken to their supervisors about their concerns. The current work environment at the PAB has staff stressed, anxious, and concerned about retaliation. I am asking that these concerns taking seriously and earnestly.

Respectfully submitted,  
**Deborah Campbell | Director of Support & Development**  
**Police Accountability Board - City of Rochester**  
80 Commercial Street Rochester, NY 14614  
Office: (585) 428-8894  
Mobile: (585) 629-6455  
[Deborah.Campbell@CityofRochester.Gov](mailto:Deborah.Campbell@CityofRochester.Gov)  
Website: [www.rocpab.org](http://www.rocpab.org)

---

**From:** Campbell, Deborah M.  
**Sent:** Monday, May 9, 2022 4:04:42 PM  
**To:** Nichols, Rose M.  
**Subject:** Re: Confidentiality statements

Hello Rose,

This information is extremely helpful. I will use these statements when I talk to staff and I will follow up with the City Council President today.

Thank you for your support,  
Deborah

**Deborah Campbell | Director of Support & Development**  
**Police Accountability Board - City of Rochester**  
80 Commercial Street Rochester, NY 14614  
Office: (585) 428-8894  
Mobile: (585) 629-6455  
[Deborah.Campbell@CityofRochester.Gov](mailto:Deborah.Campbell@CityofRochester.Gov)  
Website: [www.rocpab.org](http://www.rocpab.org)

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MONROE COUNTY CLERK



**From:** [Setel, Rabbi Drorah \(PAB-Non-Employee\)](#)  
**To:** [PAB Board](#)  
**Cc:** [deborah.campbell@cityofrochester.g](mailto:deborah.campbell@cityofrochester.g); [Reynolds, Conor D.](#)  
**Subject:** Personnel concerns and procedure -\*please read asap\*  
**Date:** Monday, May 2, 2022 4:20:25 PM

---

Hi all -

I'm sending this in my capacity as co-chair of the ED oversight (eg, Executive) committee.

The committee met last night and agreed to consult with Deborah Campbell as head of the PAB's HR section on the correct procedure for hearing staff concerns and addressing them with Conor. I met with Deborah this morning and we came up with the following plan:

1. On Thursday, the Board will meet in person at 6:30 pm with Deborah and any staff members who would like to speak to us about their concerns. This will be in executive session as it concerns personnel matters. Bob has graciously offered to host us at his home: 91 Berkeley Street, Rochester 14607 (please plan to arrive early as it can take some time to find parking). Also, it is important that the staff members have as much time as they need to speak to us so it is likely we will go past 8 pm.
2. Please let me know as soon as possible if you are available Sunday afternoon or evening (the 8th) or Tuesday evening (the 10th) to meet with Conor so that he can give us his perspective on what is happening with the staff.
3. After the Board has met with staff members and Conor the ED ctee will meet again to come up with a proposal for the Board as to how to proceed.

IMPORTANT NOTE: In the interest of fairness and impartiality, until we meet with them as a Board, please do not discuss any of the personnel issues with staff or Conor individually. Thank you.

ANOTHER VERY IMPORTANT NOTE: The viability of the PAB and the welfare of its employees depends upon these matters remaining confidential - please respect that trust.

Looking forward to seeing everyone on Thursday and please let me know about Sunday or Tuesday as soon as you can.

all good wishes,

Drorah



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Date: 07/12/2022

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Statement of Rabbi Drorah Setel, PAB Board Member

I was present at the PAB Board meeting of May 5, 2022 held to hear the complaints of the Senior PAB Staff of the PAB against Mr. Dwyer Reynolds. The complaints of the Senior staff included the following:

1. Retaliation by Conor Dwyer Reynolds:
  - a. The staff described disagreeing with Conor about certain things and then staff was re-assigned to a different position at the PAB.
  - b. The staff considered his behavior manipulative.
  - c. The staff disagreed with Conor hiring PAB staff that were not qualified.
  - d. The staff described how Conor changed job descriptions after staff were hired which resulted in lesser pay and/or benefits.
2. Mr. Dwyer Reynolds fostered a hostile work environment by yelling and speaking in a derogatory manner to PAB staff.
3. Mr. Dwyer Reynold would demand his staff complete a project immediately requiring the staff to work late and then he would disregard the work product. The staff considered this punitive behavior.
4. Staff described cronyism where Mr. Dwyer Reynolds changed job descriptions so that he could hire friends.

After the May 5, 2022, Board meeting with the senior staff, Mr. Dwyer Reynolds was granted a chance to speak to the Board regarding matters relating to the staff's complaints. Instead, Mr. Dwyer Reynolds made complaints against a Senior staff member and then he made allegations of sexual harassment against PAB Board Chair Shani Wilson. Mr. Dwyer Reynolds' demeanor and affect, at the time of his reading his allegations seemed desperate and hysterical. A few days later when I met with Mr. Dwyer Reynolds and another colleague, his affect was completely different. Additionally, when asked by the Board for the statements he read on May 5th, he declined to provide them.

I have been present at many events that Shani Wilson and Conor Reynolds attended together as colleagues. I witnessed Conor Dwyer Reynolds touch Shani Wilson at least two to three times, and observed Shani Wilson was noticeably uncomfortable with Mr. Dwyer Reynolds touching her.

During the time I have known Shani, the only individuals she has mentioned dating have been women.

Date: 6/7/22



Rabbi Drorah Setel  
PAB Board Member

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**From:** [Pacheco, Marina J.](#)  
**To:** [Wilson, Shani \(PAB-Non-Employee\); "Shani Wilson"; Tucker, Danielle \(PAB Non-Employee\); tucker922@gmail.com; Reynolds, Conor D.](#)  
**Subject:** RE: Thursday Agenda  
**Date:** Monday, May 2, 2022 3:00:41 PM  
**Attachments:** [image002.jpg](#)

Ah sure thing! Please do keep me posted as we will need to notify Public Affairs to announce on social media if we are cancelling the meeting. Thanks!

---

**From:** Wilson, Shani (PAB-Non-Employee)  
**Sent:** Monday, May 2, 2022 2:58 PM  
**To:** Pacheco, Marina J. <Marina.Pacheco@CityofRochester.Gov>; 'Shani Wilson' <axeptwjoy@gmail.com>; Tucker, Danielle (PAB Non-Employee) <Danielle.Tucker@CityofRochester.Gov>; tucker922@gmail.com; Reynolds, Conor D. <Conor.Reynolds@CityofRochester.Gov>  
**Subject:** Re: Thursday Agenda

Hello Marina,

I have learned that we will be likely having a retreat on Thursday- I will confirm this and be in touch with you.

Shani


---

**From:** Pacheco, Marina J.  
**Sent:** Monday, May 2, 2022 12:10:52 PM  
**To:** Wilson, Shani (PAB-Non-Employee); 'Shani Wilson'; Tucker, Danielle (PAB Non-Employee); [tucker922@gmail.com](mailto:tucker922@gmail.com); Reynolds, Conor D.  
**Subject:** Thursday Agenda

Morning All!

I am preparing the template for this week's Board Meeting agenda. Please let me know what agenda items you would like initially added and I can circulate the first draft.

Thank you!

	<p><i>Rina</i>  <b>Marina Pacheco-Walker   Executive Staff Officer</b>          (She/Her)</p> <p><b>Police Accountability Board</b>          80 Commercial St. Rochester, NY 14612</p> <p>Email: <a href="mailto:Marina.Pacheco@CityofRochester.Gov">Marina.Pacheco@CityofRochester.Gov</a></p>
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**From:** [Setel, Rabbi Drorah \(PAB-Non-Employee\)](#)  
**To:** [Pacheco, Marina J.](#); [PAB Board](#); [Reynolds, Conor D.](#); "Shani Wilson"; [tucker922@gmail.com](mailto:tucker922@gmail.com); [abrown4042@gmail.com](mailto:abrown4042@gmail.com)  
**Subject:** Re: Regular Board Mtg.  
**Date:** Monday, May 2, 2022 4:28:17 PM

We'll be "on retreat" in person at Bob's home so I don't think that will be possible unless you can just do that on your own.

**From:** Pacheco, Marina J.  
**Sent:** Monday, May 2, 2022 4:27:22 PM  
**To:** Setel, Rabbi Drorah (PAB-Non-Employee); PAB Board; Reynolds, Conor D.; 'Shani Wilson'; [tucker922@gmail.com](mailto:tucker922@gmail.com); [abrown4042@gmail.com](mailto:abrown4042@gmail.com)  
**Subject:** RE: Regular Board Mtg.

The previous procedure has been for us to open the meeting, state the purpose of us entering into executive session then adjourn into executive session from there.

**From:** Setel, Rabbi Drorah (PAB-Non-Employee)  
**Sent:** Monday, May 2, 2022 4:25 PM  
**To:** Pacheco, Marina J. <[Marina.Pacheco@CityofRochester.Gov](mailto:Marina.Pacheco@CityofRochester.Gov)>; PAB Board <[pab.board@CityofRochester.Gov](mailto:pab.board@CityofRochester.Gov)>; Reynolds, Conor D. <[Conor.Reynolds@CityofRochester.Gov](mailto:Conor.Reynolds@CityofRochester.Gov)>; 'Shani Wilson' <[axeptwjoy@gmail.com](mailto:axeptwjoy@gmail.com)>; [tucker922@gmail.com](mailto:tucker922@gmail.com); [abrown4042@gmail.com](mailto:abrown4042@gmail.com) <[abrown4042@gmail.com](mailto:abrown4042@gmail.com)>  
**Subject:** Re: Regular Board Mtg.

Since the Board will be meeting solely in executive session on Thursday does the public meeting need to be cancelled? Also, I think we're scheduled to have training on May 9 but I'll double check.

**From:** Pacheco, Marina J.  
**Sent:** Monday, May 2, 2022 11:07:02 AM  
**To:** PAB Board; Reynolds, Conor D.; 'Shani Wilson'; [tucker922@gmail.com](mailto:tucker922@gmail.com); [abrown4042@gmail.com](mailto:abrown4042@gmail.com)  
**Subject:** Regular Board Mtg.  
**When:** Thursday, May 5, 2022 6:30 PM-7:30 PM.  
**Where:** <https://cityofrochester.zoom.us/j/82196438585?pwd=V1VSbW01Vm02N2V2MXdYT0dpWmE4Zz09>



Hi there,

Pacheco, Marina J. is inviting you to a scheduled Zoom meeting.

## [Join Zoom Meeting](#)

One tap mobile: US: [+13126266799](tel:+13126266799) or [+16465588656](tel:+16465588656)

Meeting URL: <https://cityofrochester.zoom.us/j/82196438585?pwd=V1VSbW01Vm02N2V2MXdYT0dpWmE4Zz09>

Meeting ID: 821 9643 8585

Passcode: 431261

### Join by Telephone

For higher quality, dial a number based on your current location.

Dial:

US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or 888 788 0099 (Toll Free) or 833 548 0276 (Toll Free) or 833 548 0282 (Toll Free) or 877 853 5247 (Toll Free)

Meeting ID: 821 9643 8585

### Skype for Business (Lync)

<https://cityofrochester.zoom.us/skype/82196438585>



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MONROE COUNTY CLERK



**From:** [Setel, Rabbi Drorah \(PAB-Non-Employee\)](#)  
**To:** [Reynolds, Conor D.](#)  
**Subject:** link for tonight  
**Date:** Sunday, May 8, 2022 2:51:28 PM

---

Drorah Setel is inviting you to a scheduled Zoom meeting.

Topic: Board listening session with Conor

Time: May 8, 2022 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/83639935435>

Meeting ID: 836 3993 5435

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**From:** [Pacheco, Marina J.](#)  
**To:** [Setel, Rabbi Drorah \(PAB-Non-Employee\)](#)  
**Cc:** [Reynolds, Conor D.](#)  
**Subject:** RE: schedule zoom for training  
**Date:** Tuesday, May 10, 2022 4:11:58 PM

---

Gotcha, I can push to 9 and I'm happy to stay logged into the meeting to ensure that it does not cut you off.

---

**From:** Setel, Rabbi Drorah (PAB-Non-Employee)  
**Sent:** Tuesday, May 10, 2022 3:57 PM  
**To:** Pacheco, Marina J. <[Marina.Pacheco@CityofRochester.Gov](mailto:Marina.Pacheco@CityofRochester.Gov)>  
**Cc:** Reynolds, Conor D. <[Conor.Reynolds@CityofRochester.Gov](mailto:Conor.Reynolds@CityofRochester.Gov)>  
**Subject:** Re: schedule zoom for training

I don't know if the 8 pm end time will actually cut us off but just in case perhaps you should set it later since we might run over - thanks!

Get [Outlook for iOS](#)

---

**From:** Pacheco, Marina J. <[Marina.Pacheco@CityofRochester.Gov](mailto:Marina.Pacheco@CityofRochester.Gov)>  
**Sent:** Tuesday, May 10, 2022 10:02:24 AM  
**To:** Setel, Rabbi Drorah (PAB-Non-Employee) <[Drorah.Setel@CityofRochester.Gov](mailto:Drorah.Setel@CityofRochester.Gov)>  
**Cc:** Reynolds, Conor D. <[Conor.Reynolds@CityofRochester.Gov](mailto:Conor.Reynolds@CityofRochester.Gov)>  
**Subject:** RE: schedule zoom for training

Rabbi,

Will get this invite now. Setting the end time at 8 in case you need it but can change if you wish. I will attach the email that you sent earlier about it as well for context. If there are other materials that I can attach please let me know.

Thank you

---

**From:** Setel, Rabbi Drorah (PAB-Non-Employee)  
**Sent:** Monday, May 9, 2022 8:17 PM  
**To:** Pacheco, Marina J. <[Marina.Pacheco@CityofRochester.Gov](mailto:Marina.Pacheco@CityofRochester.Gov)>  
**Cc:** Reynolds, Conor D. <[Conor.Reynolds@CityofRochester.Gov](mailto:Conor.Reynolds@CityofRochester.Gov)>  
**Subject:** schedule zoom for training

Hi Marina -

Could you send out a Zoom link for our Board training this Thursday at 6:30? This is not a public event.

Thanks!

Drorah

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MONROE COUNTY CLERK





City of Rochester, NY  
Rochester City Council

City Hall Room 301A • 30 Church Street • Rochester, New York 14614-1290  
James P. Smith • Chief of Staff

Conor Dwyer Reynolds  
687 Linden Street  
Rochester, New York 14620

May 12, 2022

**RE: Administrative Leave (suspension)**

Dear Mr. Reynolds:

City Council has been informed that the Rochester Police Accountability Board (PAB) has voted to place you on Administrative Leave (suspension).

This letter is to inform you that the PAB's action means that, **effective immediately, you are hereby suspended with pay pending an administrative investigation.**

While on Administrative Leave you are not to report to any City facilities or access any City information.

All City records, City property issued to you or in your possession (laptop, tablet, mobile phone, keys, key fobs, ID badges, etc.) are to be returned immediately.

You are not to contact your supervisor, subordinates or co-workers. Any questions you may have regarding this matter are to be directed to me as your designated point of contact.

Access to City of Rochester email and any other access rights you may have to City technology systems or facilities will be immediately suspended and you are not allowed to access any City facility. City security will assist in the retrieval of any of the City property noted above.

You are encouraged to email ([james.smith@cityofrochester.gov](mailto:james.smith@cityofrochester.gov)), call or text me (585.967.0226) with any questions.

Sincerely,

James Patrick Smith, Chief of Staff  
Rochester City Council

xc:	Hon. M. Meléndez, Jr.	City Council	Hon. M. Evans	Dr. R. Nichols
	Hon. K. Smith	PAB	L. Kingsley	V. McIntyre

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Control #: 202207120105

Index #: E2022005139

Date: 07/12/2022

Time: 8:59:35 AM

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ALISON ELLIS FRICK

Dwyer Reynolds, Conor

City of Rochester  
Rochester Police Accountability Board

Total Fees Paid: \$0.00

Employee:

State of New York

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JAMIE ROMEO

MONROE COUNTY CLERK





5/17/22, 8:51 PM

Hi Conor

Here is my FB messenger exchange with Matthew.

FB Messenger - May 14 @ 5:35PM

Hi Matthew,

The decision to put Conor on Administrative Leave was not only surprising to me but strategically puzzling.

The community fallout and political damage has already started. From what I have heard so far the Board's decision is providing significant fuel to PAB critics. This decision will shake the council's credibility in the eyes of the council.

Sadly, this uncertain chapter will lead to more scrutiny of PAB's operations by the city council for some time.

Matthew, my ZOOM meeting with Dora on Wednesday left me with the impression that she and the Board was supportive of the path forward of " coaching Conor and the team"

I am deeply saddened by this turn of events.

I look forward to our discussion on the 19th, maybe you can provide some insight as to why these decisions were made.

FB Messenger - May 14 @ 7:32PM

The whole situation is definitely about the least ideal I could possibly imagine, for the city and community most of all.

Looking forward to Thursday, though, I am open to touching base at some point sooner if it's helpful.

What I can say is I spent a lot of time on the phone with Conor on Thursday, just trying to listen and be supportive. I wasn't aware we had reached the point of that vote until shortly before the meeting. I am deeply concerned for Conor's safety - self-harm, as well as possible further media harassment etc. and I can't check in on him. Are you two still in contact (assuming yes since he hired you on his dime)? Knowing he's not doing this on his own would help me feel less concerned. I know on top of this, he shoulders a lot of weight with his sister and family. My guess is, the person he's being most brutal to is himself.

Thanks [redacted],  
Matthew

FB Messenger - May 16 @ 5:12AM

I'm up early thinking about him and the whole thing this morning. Trying to stay off media and the relentless anxiety of everyone seeking resolution, as I know in my life, such rushing only causes me and others suffering. As my dad used to say, "speed kills." He's a fellow former Kodak guy - Keith Nickoloff, was in imaging and marketing. Did y'all ever cross paths?

I'm more sad than anything to ask if we can postpone our meeting this Thursday until after the investigation concludes. While I know we can sit and talk as professionals, I am concerned with any legal ramifications and how it might be perceived or even used against Conor ("his coach was meddling in the investigation by trying to influence board members, etc"). I know merely from your reputation that nothing could be further from the truth. Even so, I appreciate your understanding, and I can be back in touch once things have settled a bit.

NYSCEF DOC. NO. 13

RECEIVED NYSCEF: 07/11/2022

I will say, between us, that my vote for the leave was not "anti-conor," but "pro investigation." I think there's enough truth and enough contradiction between enough disparate parties that we need to get to the bottom of things, and regardless of feelings about Conor, we need to slow things down. A leave is standard procedure pending an investigation. If I had my way, we'd suspend ALL of the staff and board members accused of involved in this fiasco. If City Council could put the good of the city ahead of their need to rush opening the doors to meet their own machinations, I'd want to see a restorative process where we all sit down in a room, read the riot act to the board, staff, Council and everyone else involved and say, we are not leaving here until we figure this out together. This is too important to the city and especially to those who have been most impacted by this abusive system. And there's so much trauma we'll have to face together, I fear too much trauma is already being inflicted.

Spiritus could be a great location for that. Spiritually symbolic as the place protestors sought safety, we could bring enemies together and say, get it together for the common good. Did you see the film "The Best of Enemies?" When I was in divinity school in Durham, we were immersed in that story as Ann Atwater was still alive. Check out the trailer if you haven't. I think bold, creative action is what will save this. As someone who tries to make good out of my Christian heritage, I'd like to believe there is hope in non-violent confrontation rather than every side building up legal nukes for mutually assured destruction.

If you think we could discuss such creative paths forward, I'd be willing to still meet. But I cannot discuss Conor or any more of the board's reasoning, other than what I've said all along. This whole thing is tangled on all sides, no one is fully to blame or fully innocent. But if we continue on this path, we'll all be part of destroying something really beautiful and good.

Ok, thanks. Also, my contact is [REDACTED]. Thanks for all you do and are. Peace,

Matthew

5/17/22, 8:51 PM



<https://m.youtube.com/watch?v=eKM6fSTs-A0>

5/17/22, 8:51 PM



5/17/22, 8:53 PM

Matthew suggest this Movie as an example of having a PAB restorative circle

5/17/22, 8:53 PM

Dewey (+15857465380)

That is a remarkable text.

MONROE COUNTY CLERK'S OFFICE

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Index #: E2022005139

Date: 07/12/2022

Time: 8:59:37 AM

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Dwyer Reynolds, Conor

City of Rochester  
Rochester Police Accountability Board

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JAMIE ROMEO

MONROE COUNTY CLERK





Conor Dwyer Reynolds <conor.d.reynolds@gmail.com>

**RE: Minutes**

1 message

**Smith, James** <James.Smith@cityofrochester.gov> Thu, Jun 30, 2022 at 2:16 PM  
To: Conor Dwyer Reynolds <conor.d.reynolds@gmail.com>  
Cc: Justin Murphy <Jmurphy7@gannett.com>, "Hasselwander, Mary-Kate" <Mary-Kate.Hasselwander@cityofrochester.gov>, "Melendez, Miguel A." <Miguel.Melendez@cityofrochester.gov>

Conor –

I don't have time today for games and this seems to be just that. I am glad to provide answers and assistance, which I have.

Thanks for reaching out.

---

**From:** Conor Dwyer Reynolds <conor.d.reynolds@gmail.com>  
**Sent:** Thursday, June 30, 2022 2:12 PM  
**To:** Smith, James <James.Smith@CityofRochester.Gov>  
**Cc:** Justin Murphy <Jmurphy7@gannett.com>; Hasselwander, Mary-Kate <Mary-Kate.Hasselwander@CityofRochester.Gov>; Melendez, Miguel A. <Miguel.Melendez@CityofRochester.Gov>  
**Subject:** RE: Minutes

James,

I guess I'm a little surprised. It sounds like you're asking for something from a separate entity, rather than giving an order to a subordinate. But if PAB is part of Council, I would presume the Chief of Staff could . . . ah. But perhaps it's not.

Regardless, I'll follow up again tomorrow.

Best,

Conor

Sent from [Mail](#) for Windows 10

**From:** Smith, James  
**Sent:** Thursday, June 30, 2022 2:07 PM  
**To:** Conor Dwyer Reynolds  
**Cc:** Justin Murphy; Hasselwander, Mary-Kate; Melendez, Miguel A.  
**Subject:** RE: Minutes

Conor –

I made everyone appropriate aware of the fact that the minutes were overdue in being posted. I requested that they be posted as soon as possible. I also requested that minutes be posted in a more timely manner.

As you are aware this is not an uncommon situation as it occurred in the past as well when you had to be reminded to post overdue PAB Meeting Minutes.

I expect they will be posted. If something changes, however, I will be certain to let you know.

Thanks for making me aware of the issue and for following up.

J

---

**From:** Conor Dwyer Reynolds <[conor.d.reynolds@gmail.com](mailto:conor.d.reynolds@gmail.com)>  
**Sent:** Thursday, June 30, 2022 1:56 PM  
**To:** Smith, James <[James.Smith@CityofRochester.Gov](mailto:James.Smith@CityofRochester.Gov)>  
**Cc:** Justin Murphy <[Jmurphy7@gannett.com](mailto:Jmurphy7@gannett.com)>; Hasselwander, Mary-Kate <[Mary-Kate.Hasselwander@CityofRochester.Gov](mailto:Mary-Kate.Hasselwander@CityofRochester.Gov)>; Melendez, Miguel A. <[Miguel.Melendez@CityofRochester.Gov](mailto:Miguel.Melendez@CityofRochester.Gov)>  
**Subject:** RE: Minutes

James,

Checking in on this again, as nothing has been posted online. If you have a sense that no minutes were taken, just let me know and I can stop sending these emails.

Best,

Conor

Sent from Mail for Windows 10

---

**From:** Smith, James  
**Sent:** Wednesday, June 29, 2022 2:16 PM  
**To:** Conor Dwyer Reynolds  
**Cc:** Justin Murphy; Hasselwander, Mary-Kate; Melendez, Miguel A.  
**Subject:** RE: Minutes

I have asked that the minutes be posted online asap, so you will find them there.

---

**From:** Conor Dwyer Reynolds <conor.d.reynolds@gmail.com>  
**Sent:** Wednesday, June 29, 2022 1:52 PM  
**To:** Smith, James <James.Smith@CityofRochester.Gov>  
**Cc:** Justin Murphy <Jmurphy7@gannett.com>; Hasselwander, Mary-Kate <Mary-Kate.Hasselwander@CityofRochester.Gov>; Melendez, Miguel A. <Miguel.Melendez@CityofRochester.Gov>  
**Subject:** RE: Minutes

Thank you, James. I'll follow up with you tomorrow about the rest of the minutes.

I'll note that, looking at PAB's website, it looks like minutes stopped being posted *after* my suspension. So I appreciate your pointing out something I'll have to correct once I'm back.

Best,

Conor

Sent from Mail for Windows 10

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**From:** Smith, James  
**Sent:** Wednesday, June 29, 2022 1:48 PM  
**To:** Conor Dwyer Reynolds  
**Cc:** Justin Murphy; Hasselwander, Mary-Kate; Melendez, Miguel A.  
**Subject:** RE: Minutes

Conor –

I am asking for the minutes you've requested from PAB to be posted online as they are supposed to be.

I believe you are aware that PAB has often historically lagged behind with the posting of minutes, as I know Katy Hasselwander from our office often asked you to post them in a more timely fashion.

I have once again reminded that they be posted more diligently.

The minutes from May 12<sup>th</sup> are copied below and were sent to the PAB on May 12<sup>th</sup> by Ms. Hasselwander.

Members present – Vice Chair Tucker, Harrison, Knox, Nickoloff, Setel, Harvey, Brown (7 total)

Vice Chair calls meeting to order (6:40pm)

Executive Session regarding personnel matter – Tucker

1. Moved – Brown
2. Second – Harvey

Motion passes; 7-0

Executive Session – 6:42

Out of Executive Session – 9:54

Motion to Adjourn – Tucker

Adjourned – 9:55

---

**From:** Conor Dwyer Reynolds <[conor.d.reynolds@gmail.com](mailto:conor.d.reynolds@gmail.com)>  
**Sent:** Wednesday, June 29, 2022 9:58 AM  
**To:** Smith, James <[James.Smith@CityofRochester.Gov](mailto:James.Smith@CityofRochester.Gov)>  
**Cc:** Justin Murphy <[Jmurphy7@gannett.com](mailto:Jmurphy7@gannett.com)>  
**Subject:** RE: Minutes

James,

Good morning! Following up on yesterday's ask. I think state law says minutes need to be publicly available within two weeks of the relevant meeting. Given that, happy to wait until tomorrow for the June 16 meeting minutes, but I'd still hope you can pass along minutes for the other six meetings.

Best,

Conor

Sent from [Mail](#) for Windows 10

---

**From:** [Conor Dwyer Reynolds](#)  
**Sent:** Tuesday, June 28, 2022 11:26 AM  
**To:** [james.smith@cityofrochester.gov](mailto:james.smith@cityofrochester.gov)  
**Cc:** [Justin Murphy](#)  
**Subject:** Minutes

James,

Normally I'd reach out to someone at PAB, but given the situation, I'll reach out to you.

Would you mind passing along the minutes for PAB's May 12, May 18, May 19, May 24, June 2, June 13, and June 16 meetings? They are on neither the City's website nor the PAB's. It looks like minutes were taken at the May 12 meeting by a Council staffer, so you might have to get them from her.

Best,

Conor

Sent from [Mail](#) for Windows 10





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Index #: E2022005139

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Time: 8:59:38 AM

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Dwyer Reynolds, Conor

City of Rochester  
Rochester Police Accountability Board

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JAMIE ROMEO

MONROE COUNTY CLERK





Conor Dwyer Reynolds <conor.d.reynolds@gmail.com>

**FW: Formal List of Concerns & Requests by PAB Employees**

[Redacted]@gmail.com  
To: Conor Dwyer Reynolds <conor.d.reynolds@gmail.com>

Mon, Jun 27, 2022 at 5:30 PM

**From:** Jr.StaffRocPAB <Jr.StaffRocPAB@proton.me>

**Sent:** Sunday, June 12, 2022 7:58 PM

**To:** Durwin, Anthony J Anthony Durwin@CityofRochester Gov ; Maye, Chenoa Chenoa Maye@CityofRochester Gov>; Pacheco, Marina J. <Marina.Pacheco@CityofRochester.Gov>; Bascoe, Duwane T. <Duwane.Bascoe@CityofRochester Gov ; Hall, De'Jon J De'Jon Hall@CityofRochester Gov ; Barry, Erin K Erin Barry@CityofRochester Gov>; Dunwoody, Justice K. <Justice.Dunwoody@CityofRochester.Gov>; Kells, Colton J. Colton Kells@CityofRochester Gov ; King, Louis E , Jr Louis King@CityofRochester Gov ; Mattu, Keran A <Keran.Mattu@CityofRochester.Gov>; Bauza, Amanda M. <Amanda.Bauza@CityofRochester.Gov>; Cooper, Brandy M. Brandy Cooper@CityofRochester Gov ; [mary.elliott@cityofrochester.gov](mailto:mary.elliott@cityofrochester.gov); Gray, Janai A <Janai.Gray@CityofRochester.Gov>; Heard, Tiffany M. <Tiffany.Heard@CityofRochester.Gov>; Singletary, Joshua L. Joshua Singletary@CityofRochester Gov ; Antonetti, Rosabel Rosabel Antonetti@CityofRochester Gov ; Campbell, Deborah M. <Deborah.Campbell@CityofRochester.Gov>; Szentkiralyi, Arpad <Arpad.Szentkiralyi@CityofRochester Gov ; Harkness, Melody C Melody Harkness@CityofRochester Gov ; Benz, Ian C <Ian.Benz@CityofRochester.Gov>; Henderson, Shannon L. <Shannon.Henderson@CityofRochester.Gov>; Welch, Aubrey M Aubrey Welch@CityofRochester Gov ; Prins, Mark E Mark Prins@CityofRochester Gov ; Higgins, Michael F. <Michael.Higgins@CityofRochester.Gov>; Cheeks, Vanessa J.L. <Vanessa.Cheeks@CityofRochester.Gov>; Banks, Natalie Natalie Banks@CityofRochester gov ; Cultrara, Michaela D Michaela Cultrara@CityofRochester.Gov>; Guerrier, Mozart <Mozart.Guerrier@CityofRochester.Gov>; Simmons, Norman L., Jr. Norman Simmons@CityofRochester Gov ; Jackel, Donna D Donna Jackel@CityofRochester Gov  
**Subject:** Formal List of Concerns & Requests by PAB Employees

**Re: Formal List of Concerns & Requests by PAB Employees**

To PAB Board, PAB Staff  
From: PAB Jr. Staff

We, Jr. Staff members of the Police Accountability Board, are concerned about the current state of affairs, operations, and leadership within the PAB and hereby respectfully request the following

**Concern:** There is an absence of effective communication between Sr and Jr. Staff regarding internal operations and affairs. Staff has not received formal updates on the status of the investigations since the announcement of the Executive Director's suspension on May 13, 2022. On several occasions the majority of Staff was left out of major decision making that happened in closed door meetings between the Board and Sr. Staff. Instead, Jr. Staff learned of these matters at the time they were publicly announced. Matters such as the date of a soft launch to accept complaints, or choice of an investigating body for internal affairs, should not come as a surprise to Staff.

**Request:** Sr Staff establish a more formalized and frequent process of information exchange between Sr and Jr. Staff. Clarity on the investigation process, an update on investigation status, and expected timeline for conclusion should be provided to the Staff

**Concern:** There is an absence of clarity and equity on the Work From Home Policy. The policy currently ranges from Staff members who work from home everyday to Staff members required to be in office everyday. This includes

several members of Sr Staff, whose lack of regular presence in the office since the Executive Director was placed on leave contributes to the issues. We appreciate the flexibility to work from home but it needs to be fair.

**Request:** Clarity on the Work From Home Policy, specifically addressing considerations of ensuring a fair and equitable execution of the policy, needs to be provided.

**Concern:** There are Staff members who do not have docking stations and monitors set up for them and PAB still doesn't have a secure network in the building and operates off of Gannet's guest Wifi These operational delays influence the in-office presence.

**Request:** The Staff as a whole must be updated on the operations issues that are being experienced. Active measures need to be taken to ensure each Staff member has a sufficient working space with necessary equipment.

**Concern:** The All Staff Meeting was originally scheduled for Friday June 10, rescheduled to Wednesday June 15, then rescheduled again to Monday June 13 after a Staff Member inquired around the submission of additional questions. Staff is concerned that they will receive rehearsed responses instead of an open dialogue Per the agenda shared, there is only 40 minutes dedicated to discussing the numerous questions of Staff. This is a serious priority, and there must be an assurance that Staff is not rushed or questions overlooked in the meeting

**Request:** An open-dialogue format needs to be used in Staff Meetings when addressing Staff concerns. Clarity regarding the cancellation of the All Staff meeting and the interview with Evan Dawson on Connections should be provided as there previously has not been such an extreme response to the possibility of a COVID exposure.

**Concern:** The claims that Conor Dwyer Reynolds fostered a toxic, paranoid, and racist work environment aren't beliefs shared by all of the staff. Instead we believe the current state of the workplace is highly toxic; wrought with retaliation, fear, and low in morale Because of this we have drafted these concerns in effort to speak up for ourselves while remaining anonymous.

**Request:** Sr. Staff make efforts to effectively and equitably collect data from Staff that reflects workplace satisfaction before submitting statements, public or otherwise, that speak on behalf of Staffs collective experience. It must be made known that we as Staff do not all share the same experiences.

As Jr Staff of the PAB, we believe these requests and concerns are reasonable and necessary to achieve accountability and transparency.

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Sunday, June 12th, 2022 at 7:44 PM, Jr.StaffRocPAB <[Jr.StaffRocPAB@proton.me](mailto:Jr.StaffRocPAB@proton.me)> wrote:

**Re: Formal List of Concerns & Requests by PAB Employees**

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City of Rochester  
Rochester Police Accountability Board

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JAMIE ROMEO

MONROE COUNTY CLERK



---

**From:** Smith, James  
**Sent:** Wednesday, June 29, 2022 1:48 PM  
**To:** Conor Dwyer Reynolds  
**Cc:** Justin Murphy; Hasselwander, Mary-Kate; Melendez, Miguel A.  
**Subject:** RE: Minutes

Conor –

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I believe you are aware that PAB has often historically lagged behind with the posting of minutes, as I know Katy Hasselwander from our office often asked you to post them in a more timely fashion.

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Members present – Vice Chair Tucker, Harrison, Knox, Nickoloff, Setel, Harvey, Brown (7 total)

Vice Chair calls meeting to order (6:40pm)

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1. Moved – Brown
2. Second – Harvey

Motion passes; 7-0

Executive Session – 6:42

Out of Executive Session – 9:54

Motion to Adjourn – Tucker

Adjourned – 9:55

---

**From:** Conor Dwyer Reynolds <[conor.d.reynolds@gmail.com](mailto:conor.d.reynolds@gmail.com)>  
**Sent:** Wednesday, June 29, 2022 9:58 AM  
**To:** Smith, James <[James.Smith@CityofRochester.Gov](mailto:James.Smith@CityofRochester.Gov)>  
**Cc:** Justin Murphy <[jmurphy7@gannett.com](mailto:jmurphy7@gannett.com)>  
**Subject:** RE: Minutes

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Conor

Sent from [Mail](#) for Windows 10

---

**From:** [Conor Dwyer Reynolds](#)  
**Sent:** Tuesday, June 28, 2022 11:26 AM  
**To:** [james.smith@cityofrochester.gov](mailto:james.smith@cityofrochester.gov)  
**Cc:** [Justin Murphy](#)  
**Subject:** Minutes

James,

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Best,

Conor

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Index #: E2022005139

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Time: 8:59:42 AM

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Dwyer Reynolds, Conor

City of Rochester  
Rochester Police Accountability Board

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Employee:

State of New York

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JAMIE ROMEO

MONROE COUNTY CLERK



§ 18-1

§ 18-2

**Article XVIII**  
**POLICE ACCOUNTABILITY BOARD**

**§ 18-1. Purpose. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

The Rochester City Council hereby intends to establish a civilian-controlled process to fairly investigate and make determinations respecting complaints of misconduct involving sworn officers of the Rochester Police Department. The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedures. The Police Accountability Board shall ensure public accountability and transparency over the powers exercised by sworn officers of the Rochester Police Department. The Police Accountability Board shall provide a nonexclusive alternative to civil litigation.

**§ 18-2. Definitions. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

The following terms are defined, for purposes of this article, as follows:

**ALLIANCE** — The Police Accountability Board Alliance, a group of community organizations that nominate community members to be appointed by City Council to the Police Accountability Board.

**CHIEF** — The Chief of Police of the Rochester Police Department.

**CITY** — The City of Rochester, New York.

**COMPLAINT** — A written or oral report regarding police misconduct made by any individual or group of individuals.

**COUNCIL** — The Rochester City Council.

**DAY(S)** — Sequential days according to the calendar unless otherwise specified as "business days."

**DISCIPLINARY MATRIX** — A written, consistent, progressive, and transparent tool or rubric to determine discipline for misconduct. The disciplinary matrix shall determine a range of disciplinary action options for misconduct. The Chief will be required to impose discipline utilizing the disciplinary matrix based on the Board's findings and determination.

**EXECUTIVE DIRECTOR** — The highest-ranking staff hired by the Police Accountability Board, with ultimate responsibility for making managerial decisions.

**IMMEDIATE FAMILY** — A parent, sibling, spouse or child of a person or any members of a person's immediate household.

**MISCONDUCT** — Any acts or omissions by an Officer of the Rochester Police Department that are unlawful, contrary to Rochester Police Department policy, or otherwise inappropriate.

**OFFICERS** — The sworn officers of the RPD, including but not limited to the Chief, deputies, captains, lieutenants, commanders, and all other sworn law enforcement

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professionals.

PSS — Professional Standards Section, which is the internal affairs department of the Rochester Police Department.

RPD — Rochester Police Department of the City of Rochester, New York.

SANCTION — Disciplinary action for RPD Officer misconduct.

THE BOARD — The Police Accountability Board; such Board is a public agency within the meaning of New York Civil Rights Law § 50-a.

USE OF THEY, THEIR, THEM — A plural term or pronoun that shall be construed to mean the singular and vice versa where appropriate.

**§ 18-3. Establishment and jurisdiction. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. The Civilian Review Board, established by Rochester City Council Resolution 92-40 and expanded by Resolution 95-08, will be abolished after and only after the PAB is established and fully functional for 60 days. The PAB shall be deemed to be fully functional as soon as the first Executive Director assumes office and the Board has adopted rules and procedures in accordance with § 18-6.
- B. There is hereby established an independent office of municipal government to be known as the "Police Accountability Board." It shall be an autonomous office of the City separate from the Rochester Police Department and other local, state, and federal law enforcement agencies. The members of the Board, regardless of the original appointee of each member, shall be appointed through legislation approved by the City Council.
- C. The Board shall be independent of the RPD and shall investigate and adjudicate complaints of misconduct against RPD officers.
- D. As a condition of employment with the RPD, all officers, including but not limited to the Chief, shall fully cooperate with the Board and this article. In cases where officers do not cooperate, the Board shall send a recommendation to City Council to invoke its power under City Charter § 2-19 to remove the officer. This shall not in any way limit the Board's right to invoke other remedies, including judicial enforcement of the article.
- E. The Board shall have the power to conduct independent investigations as further outlined in § 18-5G below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD officers if a complaint of misconduct is sustained.
- F. Based on information and belief that an investigation is warranted, the Board shall have the power to conduct an investigation, even in the absence of a civilian complaint.
- G. The Board, in conjunction with the Chief of the Rochester Police Department and Locust Club President, shall establish a disciplinary matrix. The Board shall request input from the Chief, the Community Justice Advisory Board, the Police

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Accountability Board Alliance, and the President of the Rochester Police Locust Club when developing the matrix.

- H. The RPD and the City shall provide to the Board, as requested: access to all documents and evidence, including but not limited to RPD personnel files, IA Pro database, all other RPD databases, PSS investigative files, criminal and civil case files, disciplinary hearing records, video and audio recordings from body cameras or other sources, all RPD policies, procedures, and practices, the General Manual, and any other documents that pertain to policies, tactics, complaints, or charges against RPD officers and their subsequent investigation and adjudication, or other sources of information deemed appropriate by the Board.
- I. The Board shall have the power to investigate any and all conduct, acts, or omissions by any RPD officer.
- J. The Board shall have the power to review and recommend changes to RPD regarding RPD policies, procedures, patterns, practices and training.

**§ 18-4. Board composition, appointment, vacancy, and removal. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. The Police Accountability Board shall consist of nine members.
- B. Members of the Board shall serve terms of three years except for the initial Board, which shall serve staggered terms, pursuant to § 18-4J.
- C. Members of the Board shall be residents of the City of Rochester for a minimum of 12 months at the time of appointment to the Board.
- D. Members of the Board shall reflect the City's diverse community, including, but not limited to: age, race, creed, color, national origin, gender, gender identity or expression, sexual orientation, disability, marital status and source of income.
- E. Members of the Board and their immediate family shall not be currently or formerly employed by the RPD. At the discretion of the nominating and appointing authorities, no more than one member of the Board at a time may be a former law enforcement employee with an agency other than the RPD or an immediate family member of a person formerly employed in non-RPD law enforcement, provided that such employment was three or more years prior to the member's appointment.
- F. Board members shall not be current (or within the immediately preceding three-year period) City elected officials or immediate family of any incumbent elected official representing/serving any district or municipality in the State of New York. No practicing attorney or their immediate family who represents or has represented a plaintiff or defendant in a police misconduct lawsuit initiated against the RPD, the Chief or the Rochester Police Locust Club shall be a member of the Board. Board members may not represent a complainant or an RPD officer at Board hearings.
- G. The provisions of Article 2, § 5, and Article 3, § 30, of the Public Officers Law of the State of New York, regarding vacancies, shall apply to all members of the

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Board.

H. Appointments to the initial Board shall be made within 60 days from the effective date of this local law as follows:

- 1) The Mayor shall appoint one member.
- 2) Council shall appoint four members; one appointee from each of the four Council Districts: East District, Northeast District, Northwest District, and South District.
- 3) The Alliance shall nominate 12 individuals, three for each of four Board seats, within 30 days from the effective date of this local law, from which Council shall confirm and appoint one such individual for each of the four member seats at Council's discretion. If all three nominees for any one member seat are rejected by Council, then the Alliance will nominate replacements within 15 days until all four members are confirmed. If necessary this process will repeat until Council has deemed a candidate qualified and capable of serving the Board.

All appointments will be approved through legislation passed by a majority of Council.

I. Police Accountability Board Alliance nomination process. The initial Alliance shall include no more than two representatives from each organization listed in Appendix A.<sup>1</sup> The process used by the Alliance to make initial Board appointments shall be as follows:

- 1) The first Alliance Executive Committee shall consist of five individuals selected by the Alliance.
- 2) The Executive Committee will call for applications for nominees to fill four positions on the Board;
- 3) Each organization represented in the Alliance, as well as City residents, may submit applications to nominate individuals;
- 4) The Executive Committee shall screen nominee submissions and narrow the field to finalists, then call a meeting of the Alliance to seek input regarding the qualifications of the finalists;
- 5) The Executive Committee shall determine the final 12 names for the four nominees and submit them to Council for confirmation and appointment;
- 6) Should Council reject a nominee, a written rejection will be submitted to the Alliance and the Alliance will resume the nominating process to select a replacement;
- 7) The final list of community appointments shall not be published until all four

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1. Editor's Note: See § 18-15.

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nominees are confirmed by Council for the initial Board;

- 8) Future Board appointments to fill term-ended and mid-term vacancies shall follow a process determined by Board bylaws based on the initial selection process.

J. Terms.

- 1) The first term of the initial Board commences when all nine Board members are appointed and ends on the following June 30.
- 2) Except for the initial Board, members shall serve staggered three-year terms and may be reappointed for another three-year term, for a total of six years, after which the member shall not be reappointed for at least three years.
- 3) Except for the initial Board, each term shall commence on July 1 and end on June 30. If a person is appointed to complete the unexpired term of a former Board member, they shall complete the term. The members shall be appointed for terms of three years, except the first nine members appointed. Of the first nine members appointed:
  - a) Three members shall be appointed for terms of one year, of whom one shall have been designated by Council, and two shall have been designated by the Alliance;
  - b) Three members shall be appointed for terms of two years, of whom two shall have been designated by the Council, and one shall have been designated by the Alliance;
  - c) Three members shall be appointed for terms of three years, of whom one shall have been designated by the Mayor, one shall have been designated by the Alliance, and one shall have been designated by Council.

K. Vacancies. After the initial nine-member Board has been established, when any member vacates the Board, the Board shall notify the Mayor, Council, and the Alliance. The vacant position shall be filled in the same manner by which it was initially filled, within 60 days of the vacancy.

L. Removal.

- 1) A Board member seeking public office shall resign their seat at the time they announce their candidacy or file their petitions, whichever happens first.
- 2) A Board member who no longer resides in the City shall resign immediately.
- 3) By a majority vote, the Board may request that Council remove a Board member for good cause.

**§ 18-5. Powers and duties. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

A. The Board shall have the power to conduct independent investigations as further

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outlined in § 18-5G below, the power to use subpoenas to compel testimony and the production of evidence, and the power to discipline RPD officers if a complaint of misconduct is sustained.

- B. The Board shall establish a disciplinary matrix in conjunction with the Chief of the Rochester Police Department and Locust Club President. The Board shall request input from the Chief, the Alliance and the President of the Rochester Police Locust Club with respect to the disciplinary matrix. The disciplinary matrix shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints. The Board, in consultation with the Chief and the President of the Rochester Police Locust Club, shall review the disciplinary matrix annually, and consider any recommended changes. The Board shall decide the final version of the disciplinary matrix to be used.
- C. The Board shall review and assess RPD policies, procedures, patterns, practices and training and recommend changes to the RPD. Written acknowledgment of receipt of recommendations will be sent to the Executive Director from the Chief of Police within 60 days with a detailed listing of what items are and are not being implemented.
- D. The Board and the Chief shall establish a cooperative relationship to ensure the orderly and efficient flow of information.
- E. Accessibility.
  - 1) The Board shall provide language access for limited- or non-English-proficient complainants and witnesses at all stages of the investigative and adjudicative process. Language access shall be available during all operating hours of the Board.
  - 2) The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities at all stages of the investigative and adjudicative process. Such accommodations shall be available during all operating hours of the Board and shall include but not be limited to: accessible means of egress, accessible means of communication via auxiliary aids or services giving primary consideration to preferences of the individual deserving such services, and access to ASL interpreters.
- F. Initiation of complaints.
  - 1) Complaints may be received directly by the Board, or upon referral from PSS, the Mayor, the Council, any Councilmember, or the Chief. Any complaint received and accepted by the Board shall be transmitted to PSS, and any complaint received and accepted by PSS shall be transmitted to the Board.
  - 2) The Board shall receive complaints by telephone, in person, by mail, email or web form. Complaints shall be received and considered whether submitted under signature or anonymous. Efforts to simplify the procedure shall be made to encourage filing. Professional standards of confidentiality with regard to the

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written release of information and informed consent will apply to all complaints filed. With respect to the confidentiality of all interested parties, the Board shall comply with all local, state, and federal law, including Civil Rights Law § 50-a.

- 3) Before proceeding with the complaint process, the complainant shall be made aware of and referred to organizations that advocate for people who have experienced police misconduct and can explain the process of the Board and other options that exist beyond the jurisdiction of the Board.
- 4) Complainants shall be apprised by the Board of legal assistance options and the procedure for filing a notice of claim with the Corporation Counsel against the City, pursuant to Article IX of the City Charter.

G. Board investigation of complaints.

- 1) A City employee assigned to the Police Accountability Board shall interview complainants, witnesses and RPD officers, and gather relevant evidence. PSS shall provide the Board with written notice of the commencement of any investigation, and likewise, the Board shall provide PSS with written notice of the commencement of any investigation.
- 2) The Board shall have the power to investigate any and all conduct, acts or omissions by any RPD officer independent of any investigation conducted by PSS.
- 3) Subpoenas may be issued upon the affirmative vote of a majority of the Board at any time during the review and adjudication processes. Such subpoenas may compel the attendance of witnesses, RPD officers, RPD employees, and/or persons, and require the production of records and other materials, including records of the RPD, other persons or other agencies. A copy of any subpoena served upon an RPD officer or employee shall also be delivered to the Chief. Board subpoenas are enforceable pursuant to relevant provisions of Article 23 of the New York Civil Practice Law and Rules. The Chief will use the authority granted by Article VIIIA, § 8A-1, of the City Charter to promulgate new rules or utilize existing rules regarding discipline and administration of RPD officers to ensure compliance with Board procedure and applicable law. RPD officers and employees shall be notified of their rights against self-incrimination under *Garrity v. New Jersey*, 385 U.S. 493 (1967), before any testimony is taken from them.
- 4) Upon receipt of a complaint, within the time frame allotted in accordance with the police bargaining agreement, PSS shall provide to the Board its entire investigative case file related to the complaint. Thereafter, PSS shall send any newly acquired evidence to the Board within five business days of the acquisition of the evidence. If PSS makes any findings with respect to the complaint, they shall send all such findings to the Board within five business days.



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- 5) One police officer holding the rank of Captain or higher shall be made available by the Chief to the Board at the Board's request to serve as a consultant or advisor should questions arise from members of the Board regarding specific police practices, policies, or general orders. The officer so assigned shall be neither from PSS nor the Commanding officer of the officer(s) involved in the case being reviewed.
- 6) A complainant may, at any time, decline to have their complaint investigated and reviewed by the Board. Such declination must be made in writing by the complainant, and shall be forwarded to the Chief by the Board.
- 7) Statements made by complainants, RPD officers or employees, or witnesses are subject to the panel's determinations of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
- 8) The Chief shall take no action on a complaint, whether received directly by the RPD or by the Board, until receipt of the Board findings and decision, or notice that the Board has determined no disciplinary action is appropriate. Nonetheless, the Chief shall retain the authority to suspend an RPD officer during the investigation and adjudication of a complaint against the RPD officer.

H. Reasonable cause determination.

- 1) Upon completion of the review of the material from the PSS investigation and/or the Board investigation, the Executive Director shall present a report and recommendation to Board members as to whether there is reasonable cause to proceed to a Board hearing on the allegations of misconduct in a complaint.
- 2) Upon review of the report and recommendations from the Executive Director, the Board members may either affirm or reverse the recommendation as to whether or not there is reasonable cause to proceed to a hearing. If there is reasonable cause to proceed, the Board shall direct the Executive Director to schedule a hearing and notify the complainant and the Chief. If there is not reasonable cause, the Executive Director shall notify the complainant and the Chief of this determination.

I. Hearing process.

- 1) As described in § 18-6A(3), the Board Chairperson shall establish a rotation of Board members to serve on hearing panels composed of three members. Each panel shall include one Alliance-appointed member, but shall not include more than two Alliance-appointed members. Each panel shall select its own Chairperson on a case-by-case basis.
- 2) As described in § 18-5G(3), subpoenas may be issued during the hearing process.
- 3) Upon a majority vote of the Board membership in a duly published open

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meeting, the Board may determine to go into executive session so that the panel may conduct its hearing.

- 4) Panel hearings shall be recorded and transcribed by the Board. No other recordings or transcriptions are permitted.
- 5) Decisions made by the hearing panel will be documented in a Notice of Panel Decision delineating the findings of fact, and reasoning of the panel. If a panel member dissents from the majority's decision, the dissenter shall provide a written delineation of their findings of fact and reasoning.
- 6) Notice of Panel Decisions shall be provided to all parties with any confidential information redacted, pursuant to all local, state, and federal law.
- 7) Both complainants and RPD officers subject to a hearing shall have the right to obtain counsel or other representation and call witnesses on their own behalf. All due process rights delineated in NYS Civil Service Law § 75 shall apply.
- 8) Complainants and RPD officers subject to hearings may be questioned by the panel at the panel's discretion; relevant evidence pertaining to the case before the panel may also be entered into the hearing.
- 9) Statements made by complainants, RPD employees, officers, or witnesses are subject to the panel's determination of weight and credibility. Participation or lack of participation in the hearing process may be considered by the Board as one factor in their determination of credibility.
- 10) Decisions of the panel shall be made by a majority vote pursuant to the substantial evidence standard of proof. Deliberations of the panel shall be confidential and confined to the panel members assigned to that particular hearing, and their legal advisor(s). The decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD officer(s) pursuant to the disciplinary matrix described in § 18-5B.
  - a) If the panel finds that the RPD officer(s) may have engaged in criminal conduct, it shall refer the matter to the Monroe County District Attorney's Office or the New York State Attorney General's Office and request that their office initiate an investigation.
  - b) The Board shall notify the complainant and the Chief, in writing, within five business days of the panel's findings and decision. It shall be the responsibility of the Chief to notify the RPD officer(s) who were the subject(s) of the panel's findings and decision.
  - c) If a Notice of Panel Decision contains a dissenting opinion, the complainant may appeal to the Board for review of the panel's findings. The complainant's appeal requesting Board review must be in writing and received by the Board no more than 30 days after the Notice of Panel

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Decision was sent to the complainant. To adjudicate the appeal, all Board members shall review all evidence in the record, including the hearing transcript, and shall determine, by majority vote, whether the majority opinion in the Notice of Panel Decision shall be:

- (i) Reversed, if the Board decides that the decision of the panel was wrong, the Board vacates (cancels) the decision of the panel; or
  - (ii) Modified, if the Board changes part of the panel's decisions, e.g., the Board decides that the appropriate sanction shall be termination rather than suspension; or
  - (iii) Affirmed, if the Board decides that the panel made the right decision; the panel decision remains in effect.
- d) If there is an appeal by the complainant, the Board shall provide a written Notice of Board Decision to the complainant and the Chief. The Notice of Board Decision shall include: (i) findings of fact, (ii) a determination as to whether there is substantial evidence of misconduct, and (iii) the disciplinary action in reference to the RPD officer(s) pursuant to the disciplinary matrix described in § 18-5B.
  - e) RPD officers shall have the right to appeal pursuant to § 76 of NYS Civil Service Law.
  - f) Panel decisions may include disciplinary sanctions, including but not limited to counseling, reprimand, retraining, suspension, demotion, or dismissal.
- 11) The panel shall report its findings and decisions to the Board at its next scheduled meeting.
  - 12) The actions of the Board shall not preclude action by the criminal or civil justice system.
  - 13) Responses from the Chief of Police. Within 30 days of the receipt of a Notice of Panel Decision or Notice of Board Decision, the Chief shall provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix.

J. Discipline.

- 1) Before conducting any hearings, the Board shall establish a disciplinary matrix per § 18-5B.
- 2) This article shall not limit the Chief's ability to impose any additional discipline for an RPD officer above and beyond that recommended by the Board.
- 3) The Board shall notify the complainant and the Chief, in writing, within five business days of the Board's final decision of discipline.

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- 4) The Board's determination of discipline shall be binding on the Chief, who shall impose the discipline determined by the Board in accordance with the matrix within five days of receipt of the Board's decision. The Chief will provide the Board with a written explanation of the exact discipline imposed in accordance with the matrix within 30 days.

K. Policy assessment.

- 1) At least annually, the Board shall review and assess RPD policies, procedures, patterns and practices and recommend changes with input from the community.
- 2) The Board shall send its policy recommendations to the Chief, the Mayor, and City Council. The Board shall publish its policy recommendations on the Board website.
- 3) The Board's recommendations may address, but are not limited to: conduct and policies exhibiting bias against individuals based on race, gender, sexual orientation, perceived sexual orientation, gender identity, disability and perceived disability; use of force both lethal and nonlethal; de-escalation policies; vehicle and foot pursuits; use of canines; failure to acknowledge and/or accommodate the needs of people with disabilities, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities, traumatic brain injuries; and human rights issues.
- 4) Within 30 days of receiving the recommendations, the Chief shall provide the Board, the Mayor, and Council with a written explanation of why the Chief agrees or disagrees with the policy recommendations.
- 5) If the Chief agrees with the policy recommendations, then the Chief shall provide a timeline to the Board indicating implementation of each recommendation.
- 6) The Board shall publish on its website whether or not the policy recommendations have been implemented.

**§ 18-6. Officers and staff. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

A. At the initial Board's first meeting, the Board shall elect a Chairperson and Vice Chairperson, by majority vote. Subsequently, the Board shall elect a Chairperson and Vice Chairperson by majority vote, at the first meeting after July 1 of each year. Each Chairperson and Vice Chairperson shall serve until the June 30 following their election. No Board member shall serve as Chairperson or Vice Chairperson for more than three consecutive years. The initial Board shall convene a search committee for an Executive Director and a committee to establish rules of procedure not provided for herein. The search for a new Executive Director shall take place in the first year and whenever there is a vacancy. The Chairperson will also be responsible to:

- 1) Facilitate and preside over meetings of the Board;

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- 2) Establish committees of Board members as needed; and
  - 3) Establish a regular rotation of Board members to serve on hearing panels.
- B. A quorum of five Board members must be present to conduct Board business, regardless of vacancies. No business shall be transacted by the Board without a quorum being present. Board action shall be decided by a simple majority of Board members present.
- C. Police Accountability Board Executive Director.
- 1) The PAB shall conduct a search process to hire a full-time Police Accountability Board Executive Director in accordance with the City of Rochester hiring practices. The Executive Director is subject to a Council confirmation. The Executive Director will report to the Board and shall serve at the discretion of the Board.
  - 2) The Executive Director shall be a resident of the City within 12 months of hiring and shall remain a City resident for the duration of their tenure.
  - 3) The Executive Director shall not be currently or formerly employed by the RPD or any other local, state, or federal law enforcement agency, nor shall any of their immediate family be employed by the RPD. Neither shall the Executive Director be a member of the immediate family of any incumbent elected official of the City, or have litigation pending against the City involving a claim of police misconduct, or be a member of the immediate family of a person, or be an attorney representing a person with such pending litigation.
  - 4) The Council, through the annual budgetary process as set forth in Article VI of the City Charter, as amended, shall provide for the compensation and benefits of the Executive Director.
  - 5) The Board shall conduct an annual review of the performance of the Executive Director and may remove the Executive Director for good cause.
  - 6) The Board shall be responsible, through the Executive Director and staff, for the daily administrative work of the Board.
  - 7) The Executive Director shall be responsible for hiring and supervising staff in accordance with the City Charter and the Municipal Code. All such persons and their immediate family shall be free of any conflict of interest, including but not limited to current or former employment with the RPD or any other local, state, or federal law enforcement agency.

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**§ 18-7. Training and outreach. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. Board and Executive Director training. The Board and staff shall seek and participate in a broad range of training annually. Training resources will be selected by the Board and may include individuals and organizations such as law

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enforcement entities, attorneys, and any national, state, or local resources with expertise and experience in civilian complaints, investigation, police policies, auditing/monitoring, and other appropriate skills and knowledge. The Board and staff orientation and ongoing training shall include, but not be limited to, the following:

- 1) All relevant local, state, and federal law;
- 2) Implicit bias and antiracism;
- 3) Gender identity and sexuality;
- 4) Disability rights, including but not limited to physical disabilities, intellectual and developmental disabilities, psychiatric disabilities and traumatic brain injuries;
- 5) Classism, poverty and homelessness;
- 6) Trauma-informed policing and crisis intervention, including RPD officer well-being;
- 7) Patterns, practices, policies, and procedures of the RPD;
- 8) Police Accountability Board Local Law;
- 9) Civilian oversight history, models, trends, theories, standards and best practices;
- 10) How to conduct independent and objective civilian complaint investigations, e.g., interviewing, collection and preservation of evidence;
- 11) Community outreach to inform how the Board functions and serves the community and public reporting;
- 12) Discipline and remediation, education-based discipline, early warning systems, processes of arbitration/grievance;
- 13) RPD ride-alongs;
- 14) Access to RPD training; and
- 15) Access to RPD manuals.

B. Community outreach.

- 1) The Board shall conduct outreach to community members, groups, and nonprofit organizations. The Board shall provide language access for limited- and non-English-proficient individuals. The Board shall provide reasonable accommodations in accordance with the federal, state and local law to individuals with disabilities.
- 2) Complaint forms and instructions shall be made available by RPD officers and employees and at the Board office, at Board meetings, libraries, recreation

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centers, PSS office, police stations, Public Safety Building, courts, and all other government buildings, and on the City, RPD, and Board websites.

- 3) In addition to regular monthly business meetings that include review of complaints, the Board shall hold public meetings in each City district a minimum of at least once annually, to invite public input or comment, and to provide information education about the Board process and its work.
- 4) The Board shall, through a standing Board committee, be dedicated to youth and community engagement, establish and pursue ways to interact with and solicit input from youth, present educational programs designed to promote public awareness of the Board process, give the public information about their rights and responsibilities regarding encounters with law enforcement employees, and publicize the procedure for filing a complaint with the Board.
- 5) The City shall provide the Board with a website on which the Board shall post information, including but not limited to: educational materials, links, videos, reports, and forms related to the operation of the Board and its mission.
- 6) The Board shall survey complainants and the public to assess satisfaction and identify concerns with the Board's investigative and adjudicative processes.

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**§ 18-8. Retaliation prohibited. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

Retaliation by RPD officers and employees against complainants, witnesses, the Board and its staff, and other RPD officers and employees, shall be prohibited. Retaliation includes but is not limited to: harassment, intimidation, stalking, threats and assaults. If a complaint of retaliation is sustained by the Board, action will be taken based upon the disciplinary matrix. The Chief will also be notified of the misconduct.

**§ 18-9. Conflict of interest. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. No Board member or Board employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest. Any conflict of interest prohibited by Article 18 of the General Municipal Law or by the Code of Ethics shall disqualify a member. A conflict of interest shall include, but is not limited to: if they have reason to believe or expect that they will derive a direct monetary gain or suffer a direct monetary loss, by reason of their official activity; or if any benefit or detriment accrues to them as a member of a business, profession, occupation, or group to a greater extent than any other member of the business, profession, occupation, or group. Board members may not represent a complainant or an RPD officer before PSS or the Board.
- B. If a Board member has a personal, business or other relationship or association with a party to or a witness in a matter before the Board, the member shall disclose the situation to the Chairperson, and shall recuse themselves from deliberations or action in connection with that case.

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- C. Board members and employees shall be subject to the City of Rochester's Code of Ethics.

**§ 18-10. Legal representation. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. The Corporation Counsel shall advise and represent the Board as it would other public boards in accordance with the Law Department's duties under Article IX of the City Charter. The Board may then seek and retain independent legal counsel for any purpose and may also utilize the City's Corporation Counsel at its discretion.
- B. All contracts for outside services (legal or other) shall be procured in accordance with the City of Rochester purchasing requirements and are subject to City Council approval when over \$10,000 or the Police Accountability Board does not have adequate funds in their annual budget to cover the cost of an agreement less than \$10,000.

**§ 18-11. Police Accountability Board reports. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. The Board shall publish on its website monthly data on the receipt and dispositions of complaints.
- B. All complaints shall be issued a public tracking number, which shall be included in the quarterly and annual reports.
- C. The Board shall publish on its website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor public quarterly and annual reports that shall document:
  - 1) The total number and type of complaints and the City districts in which they happened;
  - 2) The categories of each complaint as defined in Section Three of the local law;
  - 3) The public tracking number of each complaint;
  - 4) Detailing information that is legally available to the Board, including but not limited to: the date, time, and location of each incident, whether there is video of the incident or not, age, race, and gender of adult complainant(s), rank(s), gender(s), section(s), and race(s) of the RPD officer(s) and if there were witnesses, how many, and whether they are employed by any local, state, or federal law enforcement agency and which agency; the Board shall comply with local, state, and federal law and redact any information that may not be disclosed publicly. The number of previous complaints against the RPD officer(s) within 10 years of the incident and whether or not those complaints were sustained.
  - 5) The number of times and the types of use of force used per complaint and the total number of times and types of use of force used;



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- 6) The number of times pepper spray was deployed per complaint and the total number of times pepper spray was deployed;
- 7) The number of times and types of pain compliance tactics used per complaint and the totals for each use of pain compliance tactic;
- 8) The number of times and types of use where a TASER<sup>®</sup> was deployed;
- 9) Complaint and sustain rates for each RPD section;
- 10) In the event where an RPD officer uses their firearm:
  - a) The type of weapon used (firearm, brand, type);
  - b) Number of shots fired;
  - c) The range from which the firearm was fired;
  - d) Injuries sustained by the complainant, animal(s), RPD officer(s), and/or any bystanders;
  - e) Any medical care provided and what type; whether the person or animal was killed;
  - f) The number of cases where the panel's disciplinary decision was enforced by the Chief;
  - g) The number of cases where the Chief disputed the disciplinary decision of the panel;
  - h) The type of sanctions imposed;
  - i) The type of sanctions decided upon;
  - j) The number of cases reviewed by the Board;
  - k) The number of complaints found not to have reasonable cause to be heard;
  - l) The number of complainants contacting the Board but not following through with a formal signed complaint;
  - m) The length of time each case was pending before the Board;
  - n) The number of complainants who filed a notice of claim against the City while their complaint was being considered by the Board.
- D. The annual report published on the Board's website for the public and deliver hard copy to the Office of the City Council and Office of the Mayor and shall contain:
  - 1) The recommendations related to changes in RPD patterns, practices, policies, and procedures;
  - 2) Whether the prior year's recommended changes have been implemented;

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- 3) A summary of complainant and public survey data with an assessment of if and how Board policies should change to accommodate concerns.
- E. Quarterly and annual reports shall be publicly available on the Board's website.
- F. Any video associated with the complaint that can be made public shall be made publicly available.
- G. The Board shall comply with all local, state, and federal law, including Civil Rights Law § 50-a concerning the release of personnel information.

**§ 18-12. Audit and evaluation. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. The Board may, by majority vote, perform an audit, or direct that an audit be performed, to assess the investigation and adjudication of civilian complaints.
- B. An independent organization of Council's choosing shall conduct a formal annual evaluation of the functions, processes, and outcomes of the Police Accountability Board. The evaluator will make specific recommendations to the Council regarding changes to the Board's functions, processes and outcomes.

**§ 18-13. Budget. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

- A. The annual proposed budget of the Police Accountability Board shall provide for sufficient funding to carry out the powers and duties set forth in the Police Accountability Board article, including the funding of staff and all necessary operating expenses for the purpose of resolving all complaints within 90 days. The Board shall be funded through the budgetary process of the City, pursuant to Article VI of the City Charter. The Board budget shall be separate from, and independent of, the RPD budget.
- B. The Board shall annually prepare a budget in accordance with the budget allocation level that it deemed appropriate from the Office of Management and Budget. The Board shall submit the proposed budget, along with appropriate financial documentation, to the Mayor and Council during the City's annual budgetary process.
- C. The Board's first year budget shall include appropriate start-up costs, such as office furnishings, equipment, training for all Board and staff, and a national search for the Executive Director.

**§ 18-14. Severability. [§ 1, L.L. No. 2-2019; § 1, L.L. No. 3-2021]**

The invalidity of any provision or provisions of this article shall not affect the validity of the remaining provisions thereof, but such remaining provisions shall continue in full force and effect.

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**§ 18-15. Appendix A: Supporting Organizations [§ 1, L.L. No. 3-2021]**

**APPENDIX A**

**Police Accountability Board Supporting Organization\*\***

- 19th Ward Community Association
- Action for a Better Community
- Action Together Rochester
- African American Health Association & Latino Health Coalition
- American Baptist Churches of the Rochester/Genesee Region
- Antioch Missionary Baptist Church
- Baber AME Church
- Beechwood Neighborhood Association
- Center for Disability Rights
- Citizen Action of Western New York
- Colgate Rochester Crozer Divinity School
- Compeer
- Delta Sigma Theta Sorority Alumna
- Dimitri House
- Empire Justice
- Enough is Enough
- Facing Race, Embracing Equity (FR=EE)
- First Unitarian Church
- First Universalist Church
- Flower City Noir
- Flying Squirrel Community Space
- Greater Rochester Community of Churches
- Green Party of Monroe County
- Ibero American Action League
- Inner Faith Gospel Tabernacle
- Justice For All
- MK Gandhi Institute
- National Lawyers Guild of Rochester
- Native American Cultural Center
- North East Area Development
- Omega Psi Phi
- Open Arms Christian Fellowship
- Out Alliance Ministry
- PLEX Neighborhood Association
- Re-entry & Community Development Center
- Roc/ACTS
- Rochester Black Authors
- Rochester Democratic Socialists of America

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**APPENDIX A**

**Police Accountability Board Supporting Organization\*\***

- ROCitizen
- Safer Monroe Area Reentry Team (SMART)
- Shades of Sisterhood
- Showing Up for Racial Justice (SURJ)
- Sisters of Mercy
- Social Welfare Action Alliance
- South West Area Neighborhood Assoc.
- Spiritus Christi Anti-Racism Coalition
- St. Joseph's House of Hospitality
- Table 23
- Teen Empowerment
- Trinity Emmanuel Presbyterian Church
- Turning Points
- Urban League of Rochester
- Rochester Chapter of VOCAL-NY

**\*\* Organization list is subject to change**

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OML-AO-4889

April 9, 2010

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, except as otherwise indicated.

Dear

We are in receipt of your request for an advisory opinion regarding application of the Open Meetings Law to gatherings of the Northport-East Northport School District Board of Education. Among other issues, you questioned the Board's procedure for entry into executive sessions and the propriety of topics discussed in executive session. In addition, you attached a copy of a notice of a Special Meeting of the Board, as follows:

"It is anticipated that the Board will act upon a resolution to convene an Executive Session to discuss matters leading to the appointment of particular persons. (This executive session is closed to the public). Wednesday, January 13, 2010 at 6:45."

In response to our notification, general counsel to the Board wrote to express his response on behalf of the Board, a copy of which is attached.

In an effort to provide guidance with respect to these issues, we offer the following comments, and to be as efficient as possible, recommend review of previously issued advisory opinions for more in-depth treatment of certain issues.

First, and with regard to the procedure for entry into executive session, we agree that a public body cannot conduct an executive session prior to a public meeting. Every meeting must be convened as an open meeting, for §102(3) of the Open Meetings Law defines the phrase "executive session" to mean a portion of an open meeting during which the public may be excluded. That being so, it is clear that an executive session is not separate and distinct from an open meeting, but rather that it is a part of an open meeting. Moreover, the Open Meetings Law requires that a procedure be accomplished, during an open meeting, before a public body may enter into an executive session. Specifically, §105(1) states in relevant part that:

"Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only..."

Based on the foregoing, it has been consistently advised that a public body, in a technical sense, cannot schedule or conduct an executive session in advance of a meeting, because a vote to enter into an executive session must be taken at an open meeting during which the executive session is held. In a decision involving the propriety of scheduling executive sessions prior to meetings, it was held that:

"The respondent Board prepared an agenda for each of the five designated regularly scheduled meetings in advance of the time that those meetings were to be held. Each agenda listed 'executive session' as an item of business to be undertaken at the meeting. The petitioner claims that this procedure violates the Open Meetings Law because under the provisions of Public Officers Law section 100[1] provides that a public body cannot schedule an executive session in advance of the open meeting. Section 100[1] provides that a public body may conduct an executive session only for certain enumerated purposes after a majority vote of the total membership taken at an open meeting has approved a motion to enter into

such a session. Based upon this, it is apparent that petitioner is technically correct in asserting that the respondent cannot decide to enter into an executive session or schedule such a session in advance of a proper vote for the same at an open meeting" [Doolittle, Matter of v. Board of Education, Sup. Ct., Chemung Cty., July 21, 1981; note: the Open Meetings Law has been renumbered and §100 is now §105].

For the reasons expressed in the preceding commentary, a public body cannot in our view schedule an executive session in advance of a meeting. In short, because a vote to enter into an executive session must be made and carried by a majority vote of the total membership during an open meeting, technically, it cannot be known in advance of that vote that the motion will indeed be approved.

In the example that you provided, above, the School District implemented an alternative method of achieving the desired result that complies with the letter of the law. Rather than scheduling an executive session, the Board, in a notice of a special meeting for January 13, and in agendas for the Board meetings outlined below, referred to a motion to enter into executive session to discuss a certain subject. We interpret the Board's notice to mean that there is intent to enter into an executive session as a considerate way of alerting the public that an executive session is likely to be held (rather than scheduled), and implicitly, that there may be no overriding reason for arriving at the very beginning of a meeting. See OML-AO-3339.

Second, in consideration of the foregoing, a motion to conduct an executive session must include reference to the subject or subjects to be discussed and it must be carried by majority vote of a public body's membership before such a session may validly be held. The ensuing provisions of §105(1) specify and limit the subjects that may appropriately be considered during an executive session. Therefore, a public body may not conduct an executive session to discuss the subject of its choice.

Upon review of minutes from four Board meetings held in September and October of 2009, we note that at each meeting the Board convened at 6:30 p.m. and unanimously agreed to enter into executive session to discuss one of the following four issues: 1) matters pertaining to custodial negotiations; 2) matters pertaining to contract negotiations; 3) matters pertaining to an individual student; and 4) matters pertaining to an individual employee and individual students. In our opinion, based on this documentation, the Board properly opened the meeting and entered into executive session to hold discussions that were likely appropriate for closed or executive session. See [OML-AO-3863](#) (issues pertaining to students) [OML-AO-2748](#) (employment history of a particular person), and [OML-AO-4346](#) (collective bargaining negotiations). With respect to questions regarding the Board's authority to discuss "matters of finances and audit findings" in executive session, we recommend review of OML-AO-4257.

With respect to your questions concerning agendas, there is no reference in the Open Meetings Law to agendas. Consequently, a public body, such as the Board, may choose to prepare or follow an agenda, and may have adopted by laws or policies regarding same, but there is no statutory obligation to do so.

With respect to your questions concerning the Board's obligations to include comments in the minutes, please note that the Open Meetings Law contains what might be characterized as minimum requirements concerning the contents of minutes. Specifically, §106 of the Open Meetings Law provides that:

- "1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.
3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session."

Accordingly, minutes need not consist of a verbatim account of everything that was said; on the contrary, so long as the minutes include the kinds of information described in §106, we believe that they would be appropriate and meet legal requirements. Most importantly, we believe that minutes must be accurate.

In situations in which members of public bodies have met with resistance when attempting to include their comments in the minutes, it has been advised that a motion could be made to include their statements in the minutes. If such a motion is approved, the inclusion of a statement is guaranteed. We recognize that you are not a member of the Board. Nevertheless, we believe that you may ask any member to introduce a similar motion in an effort to ensure that your statement becomes part of the minutes.

With respect to the opportunity for public comment, as you may know, while the Open Meetings Law clearly provides the public with the right "to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy" (see Open Meetings Law, §100), the Law is silent with respect to public participation. Consequently, by means of example, if a public body, such as the Board, does not

want to answer questions or permit the public to speak or otherwise participate at its meetings, we do not believe that it would be obliged to do so. On the other hand, a public body may choose to answer questions and permit public participation, and many do so. When a public body does permit the public to speak, we believe that it should do so based upon reasonable rules that treat members of the public equally.

Although public bodies have the right to adopt rules to govern their own proceedings (see e.g., Town Law §63 and Education Law §1709), the courts have found in a variety of contexts that such rules must be reasonable. For example, although a board of education may "adopt by laws and rules for its government and operations", in a case in which a board's rule prohibited the use of tape recorders at its meetings, the Appellate Division found that the rule was unreasonable, stating that the authority to adopt rules "is not unbridled" and that "unreasonable rules will not be sanctioned" [see Mitchell v. Garden City Union Free School District, 113 AD 2d 924, 925 (1985)]. Similarly, if by rule, a public body chose to permit certain citizens to address it for ten minutes while permitting others to address it for three, or not at all, such a rule, in our view, would be unreasonable.

Additionally, it has long been held that those in attendance at open meetings may tape or video record the meetings, so long as the use of a recording device is not obtrusive or disruptive [see e.g., Mitchell v. Board of Education of the Garden City Union Free School District, *supra*, People v. Ystuenta, 99 Misc.2d 1105, 418 NYS2d 508 (Suffolk Cty., 1979), Peloquin v. Arsenault, 162 Misc.2d 306, 616 NYS2d 716 (Franklin Cty, 1994), Csorny v. Shoreham-Wading River Central School District, 305 AD2d 83, 759 NYS2d 513 (2nd Dept., 2003)]. For an in-depth advisory opinion regarding the recording of public meetings, see OML-AO-3155, attached. We note that legislation that would codify this case law was recently passed by both the Senate and Assembly, and is currently awaiting action by Governor Paterson (A.10093/S.3195).

On behalf of the Committee on Open Government, we hope that this is helpful.

Sincerely,

Camille S. Jobin-Davis  
Assistant Director

CSJ:jm

Encs.

cc: Beth M. Nystrom, District Clerk  
John H. Gross

OML-AO-o4889  
4889



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OML-AO-4261

September 19, 2006

E-MAIL

TO:

FROM: Robert J. Freeman, Executive Director

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear

I have received your letter in which you indicated that you serve as a member of the Patchogue-Medford School District Board of Education. You have requested "an opinion on four school board members (1- President and 3 newly elected) attending a social gathering at a community member's house where were so called conversations on how to remove the Superintendent and negotiation with an employee involved in a 3020 proceeding."

In this regard, it is unclear whether the three "newly elected" persons had yet become members of the Board. If they were not yet members of the Board, the Open Meetings Law clearly would not have applied. On the other hand, since the Board consists of seven members, if all four, including the three newly elected persons, were members of the Board when the conversations occurred, the Open Meetings Law might have been implicated.

In this regard, that statute pertains to meetings of public bodies, such as boards of education, and the courts have construed the term "meeting" [§102(1)] expansively. In a landmark decision rendered in 1978, the state's highest court, the Court of Appeals, held that any gathering of a quorum of a public body for the purpose of conducting public business constitutes a "meeting" subject to the Open Meetings Law, whether or not there is an intent to take action, and regardless of the manner in which a gathering may be characterized [see *Orange County Publications, Division of Ottoway Newspapers, Inc. v. Council of the City of Newburgh*, 60 AD 2d 409, aff'd 45 NY 2d 947 (1978)]. In my opinion, inherent in the definition of "meeting" is the notion of intent. If a majority of a public body gathers in order to conduct public business collectively, as a body, I believe that such a gathering would constitute a "meeting" subject to the Open Meetings Law. In the decision cited earlier, the Court affirmed a decision rendered by the Appellate Division that dealt specifically with so-called "work sessions" and similar gatherings during which there was merely an intent to discuss, but no intent to take formal action. In so holding, the court stated:

"We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to form action. Formal acts have always been matters of public records and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire decision-making process that the Legislature intended to affect by the enactment of this statute" (60 AD 2d 409, 415).

With respect to social gatherings or chance meetings, it was found that:

"We agree that not every assembling of the members of a public body was intended to be included within the definition. Clearly casual encounters by members do not fall within the open meetings statutes. But an informal

'conference' or 'agenda session' does, for it permits 'the crystallization of secret decisions to point just short of ceremonial acceptance'" (id. at 416).

In view of the foregoing, if members of a public body meet by chance or at a social gathering, for example, I do not believe that the Open Meetings Law would apply, for there would be no intent to conduct public business, collectively, as a body. However, if, by design, the members of a public body seek to meet to socialize and to discuss public business, formally or otherwise, I believe that a gathering of a majority would trigger the application of the Open Meetings Law, for such gatherings would, according to judicial interpretations, constitute "meetings" subject to the Law.

If indeed the sole purpose of a gathering is social in nature, the Open Meetings Law, in my view, would not apply. However, if during the social gathering, a majority of the members of a public body begin to discuss the business of that body, collectively as a group, I believe that they should recognize that they are conducting public business without notice to the public and immediately cease their discussion of public business. Moreover, in that situation, I would conjecture that a court would determine that the public body would have acted in a manner inconsistent with law.

I hope that I have been of assistance.

RJF:tt

OML-AO-o4261  
4261

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Index #: E2022005139

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July 18, 2000

OML-AO-3185

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence.

Dear

I have received your letter of June 12, which reached this office on June 19. You questioned the propriety of "retreats" held by the Hilton Central School District Board of Education. Those gatherings, according to your letter, are not open to the public, and the agenda pertaining to one such retreat indicated that its focus would involve "roles and responsibilities of the President and Vice President (transition) and board committees."

You asked whether "this type of retreat [is] allowed under the Open Meetings Law", particularly in view of your belief that "decisions made during this retreat will affect how the board operates...and clarify the roles and responsibilities of board committees", whether records of the retreat should be made available under the Freedom of Information Law, and whether Board members are "free to discuss with the public details of what was talked about or decided at the retreat."

In this regard, I offer the following comments.

First, the Open Meetings Law applies to meetings of public bodies, and a board of education clearly constitutes a public body required to comply with that statute. Section 102(1) of the Open Meetings Law defines the term "meeting" to mean "the official convening of a public body for the purpose of conducting public business". It is emphasized that the definition of "meeting" has been broadly interpreted by the courts. In a landmark decision rendered in 1978, the Court of Appeals found that any gathering of a quorum of a public body for the purpose of conducting public business is a "meeting" that must be convened open to the public, whether or not there is an intent to take action and regardless of the manner in which a gathering may be characterized [see *Orange County Publications v. Council of the City of Newburgh*, 60 AD 2d 409, aff'd 45 NY 2d 947 (1978)].

Inherent in the definition and its judicial interpretation is the notion of intent. If there is an intent that a majority of a public body will convene for the purpose of conducting public business, such a gathering would, in my opinion, constitute a meeting subject to the requirements of the Open Meetings Law.

I point out that the decision rendered by the Court of Appeals was precipitated by contentions made by public bodies that so-called "work sessions" and similar gatherings held for the purpose of discussion, but without an intent to take action, fell outside the scope of the Open Meetings Law. In discussing the issue, the Appellate Division, whose determination was unanimously affirmed by the Court of Appeals, stated that:

"We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to formal action. Formal acts have always been matters of public record and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire

decision-making process that the Legislature intended to affect by the enactment of this statute" (60 AD 2d 409, 415).

The court also dealt with the characterization of meetings as "informal," stating that:

"The word 'formal' is defined merely as 'following or according with established form, custom, or rule' (Webster's Third New Int. Dictionary). We believe that it was inserted to safeguard the rights of members of a public body to engage in ordinary social transactions, but not to permit the use of this safeguard as a vehicle by which it precludes the application of the law to gatherings which have as their true purpose the discussion of the business of a public body" (id.).

Based upon the direction given by the courts, when a majority of a public body gathers to discuss public business, in their capacities as members of the body, any such gathering, in my opinion, would constitute a "meeting" subject to the Open Meetings Law.

From my perspective, a retreat that dealt with the roles and responsibilities of Board officers and committees constituted a "meeting" that should have been conducted open to the public in accordance with the Open Meetings Law and preceded by notice given pursuant to §104 of that statute.

Second, if indeed decisions were made, I believe that they would have been made in a manner inconsistent with law. Stated differently, a public body has the authority to make decisions only at meetings held in compliance with the Open Meetings Law. Further, if decisions were made involving policy, i.e., regarding the duties and functions of officers and committees, I believe that those issues should have been discussed in public, for there would have been no basis for conducting an executive session (see §105), and that any action must be memorialized in minutes.

Assuming that the retreat should have been open to the public and decisions were made, minutes should have been prepared pursuant to §106 of the Open Meetings Law, which provides what might be characterized as minimum requirements concerning the contents of minutes and states in relevant part that:

"1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon...

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session."

Based upon the foregoing, although minutes must be prepared and made available within two weeks, it is clear that minutes need not consist of a verbatim account of every comment that was made.

If other records of the proceedings were prepared, such as notes or summaries, they would be subject to rights of access conferred by the Freedom of Information Law. That statute pertains to agency records, and §86(4) defines the term "record" to mean:

"any information kept, held, filed, produced, reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes."

In view of the breadth of the definition of "record", notes or summaries, for example, would fall within the scope of rights of access.

The Freedom of Information Law is based on a presumption of access; all agency records are accessible, except to the extent that they may be withheld in accordance with one or more of the grounds for denial appearing in paragraphs (a) through (i) of §87(2). In my view, one of the grounds for denial would be pertinent in ascertaining rights of access to summaries or notes. Specifically, §87(2)(g) enables an agency to deny access to records that: "are inter-agency or intra-agency materials which are not:

- i. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public;
- iii. final agency policy or determinations; or
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government..."

It is noted that the language quoted above contains what in effect is a double negative. While inter-agency or intra-agency materials may be withheld, portions of such materials consisting of statistical or factual information, instructions to staff that affect the public, final agency policy or determinations or external audits must be made available, unless a different ground for denial could appropriately be asserted. Concurrently, those portions of inter-

agency or intra-agency materials that are reflective of opinion, advice, recommendation and the like could in my view be withheld.

To the extent that notes or summaries consist of a factual rendition of what transpired, I believe that they would be available. Again, if action was taken, minutes, in my opinion, must be prepared indicating the nature of the action and the vote of the members.

Lastly, I am unaware of any statute that would prohibit Board members from discussing the events that occurred during a retreat. Even when information might have been obtained during an executive session properly held or from records marked "confidential", I note that the term "confidential" in my view has a narrow and precise technical meaning. For records or information to be validly characterized as confidential, I believe that such a claim must be based upon a statute that specifically confers or requires confidentiality.

For instance, if a discussion by a board of education concerns a record pertaining to a particular student (i.e., in the case of consideration of disciplinary action, an educational program, an award, etc.), the discussion would have to occur in private and the record would have to be withheld insofar as public discussion or disclosure would identify the student. As you may be aware, the Family Educational Rights and Privacy Act (20 USC §1232g) generally prohibits an educational agency from disclosing education records or information derived from those records that are identifiable to a student, unless the parents of the student consent to disclosure. In the context of the Open Meetings Law, a discussion concerning a student would constitute a matter made confidential by federal law and would be exempted from the coverage of that statute [see Open Meetings Law, §108(3)]. In the context of the Freedom of Information Law, an education record would be specifically exempted from disclosure by statute in accordance with §87(2)(a). In both contexts, I believe that a board of education, its members and school district employees would be prohibited from disclosing, because a statute requires confidentiality. Again, however, no statute of which I am aware would confer or require confidentiality with respect to the kinds of issues described in your correspondence.

In a case in which the issue was whether discussions occurring during an executive session held by a school board could be considered "privileged", it was held that "there is no statutory provision that describes the matter dealt with at such a session as confidential or which in any way restricts the participants from disclosing what took place" (Runyon v. Board of Education, West Hempstead Union Free School District No. 27, Supreme Court, Nassau County, January 29, 1987).

In short, I believe that Board members are free to share details of the retreat with the public, especially since it appears that the retreat constituted a "meeting" that should have been held open to the public.

In an effort to enhance compliance with and understanding of open government laws, a copy of this opinion will be sent to the Board of Education.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:jm

cc: Board of Education

OML-AO-o3185  
3185





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City of Rochester  
Rochester Police Accountability Board

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JAMIE ROMEO

MONROE COUNTY CLERK



## Operating Rules

These Operating Rules serve as the Police Accountability Board's bylaws, determining how the Board conducts its day-to-day work. All Board Members, Board Staff, and others who serve the Board must follow the Operating Rules. The Board may modify its Operating Rules at any time.

### A Organization

The Board is a community-led partnership between Board Members, Board Staff, and Rochester residents. The roles and responsibilities of these partners are described below.

#### 1 Board Members

Board Members are unpaid public servants who lead the Board, make high-level strategic decisions, and judge cases of alleged officer wrongdoing.

#### 2 Board Positions

The Board must have a Chair and a Vice Chair. The Board must fill these positions at the first regular Board Meeting after July 1 each year. If any position becomes vacant, the Board must fill that position at the following regular Board Meeting.

##### a Chair

The Chair acts as the link between the Board, its staff, and the public. The Chair has the following responsibilities: (1) creating and circulating agendas for Board Meetings; (2) opening and closing Board Meetings; (3) creating Board Committees; (4) creating rotations for Board Members to serve on hearing panels; (5) leading the search for and evaluation of the Executive Director; (6) maintaining a healthy, safe, open environment among Board Members; and (7) communicating with Board Staff about pressing issues.

##### b Vice Chair

The Vice Chair acts as the Board's parliamentarian. The Vice Chair has the following responsibilities: (1) filling in for the Chair in the case of absence or inability; (2) educating all Board Members about Board Rules as they apply to Board Members; and (3) enforcing Board Rules as they apply to Board Members.

#### 3 Board Staff

Board Staff are responsible for executing the Board's vision and making day-to-day administrative decisions. Decisions that may be made by Board Staff without approval by the Board include, but are not limited to, the following: (1) hiring, organizing, and supervising staff; (2) purchasing equipment or services; and (3) communicating with the media, City staff, and elected officials. Board Staff must keep the Board informed about any hiring, purchasing, and communications decisions of significance.

The Executive Director is the leader of the Board Staff. The Executive Director reports to the Board. The Executive Director hires all staff and oversees any lawyers that the

Board chooses to hire. The Executive Director serves as a spokesperson for the Board. Before July 1 of each year, the Board must write a formal evaluation of the Executive Director's performance.

#### **4 End-of-Term Procedures**

The nine seats on the Board are filled using different procedures. Four seats ("City Council seats") are filled directly by City Council. Four seats ("Alliance seats") are filled through nomination by the Police Accountability Board Alliance and confirmation by City Council. One seat ("Mayor seat") is filled through nomination by the Mayor and confirmation by City Council. The below procedures ensure that, in the context of resignations, vacancies, and other end-of-term scenarios, the Board's seats are filled smoothly.

##### **a Duty to Resign**

If any Board Member moves out of Rochester, formally seeks public office, or takes any other action requiring their resignation, that Board Member must immediately send a letter of resignation to the Board.

##### **b Notice of Vacancy**

The Board must immediately notify the Alliance, the Board, City Council, and the Mayor of any vacancy on the Board.

##### **c End-of-Term Declaration**

At least 60 days before their term will expire, a Board Member must declare either their intent to vacate their seat or their desire be re-nominated to an additional term. They will do so through an email to the Alliance, the Board, City Council, and the Mayor.

##### **d Holding Over**

Any Board Member whose term has ended will continue to hold their seat until City Council has appointed a successor to that seat.

##### **e Alliance Role in Filling Board Seats**

The City Charter requires the Alliance to play a critical role in the selection of Board Members. The below rules define this role in a way that allows for the prompt filling of vacancies, the retention of qualified Board Members, and ultimate control of the appointment process by City Council.

##### **I Candidate Pool**

The Alliance will maintain a pool of candidates to fill open Alliance seats on the Board. This pool must be open to any Rochesterian who wishes to be nominated. The Alliance may use whatever procedures it desires to solicit, screen, interview, and accept applications.

## **II Nominations**

Within 30 days of learning of an Alliance seat becoming vacant, a Board Member's intent to vacate such a seat, or a Board Member's desire to be re-nominated to such a seat, the Alliance will email a notice of nomination to the Board, the Council, and members of the media. The Alliance may use whatever procedures it desires to submit between one and three initial nominees, though it must meet to discuss candidate qualifications. The initial nominee(s) must come from the Alliance candidate pool unless the Alliance chooses to support a current Board Member for re-nomination.

## **III Appointment**

City Council will decide whether to confirm the Alliance's initial nominee(s). If City Council chooses to reject the nominee(s) submitted by the Alliance, the City will request an additional nominee from the Alliance. The Alliance will have 30 days to submit a new nominee. This process of rejection-and-resubmission will continue until City Council has appointed an Alliance nominee.

## **IV Advice**

Upon learning of a non-Alliance seat becoming vacant, a Board Member's intent to vacate such a seat, or a Board Member's desire to be re-nominated to such a seat, the Alliance may choose to advise City Council on how to fill the relevant seat. The Alliance may provide names of qualified nominees or a letter supporting the re-nomination of a current Board Member.

## **B Board Meetings**

Board Members can only make decisions as a Board during Board Meetings.

### **1 Time & Frequency**

Whenever the Board holds a regular Board Meeting, that meeting will be held on a Thursday at 6:30 PM. The Board must have a regular Board Meeting at least once a month. The Board may hold other meetings on the time and dates it sees fit.

### **2 Notifying the Public**

Board Staff must notify the public of all Board Meetings in a given month at least one week before the first Board Meeting in that month. Board Staff must do so by (1) posting the times and locations of those Board Meetings on the Board's website and (2) emailing those times and locations to members of the media.

### **3 Agenda**

At least 24 hours before any Board Meeting, the Chair must circulate an agenda to Board Members. Board Staff should upload this agenda to the Board's website as soon as possible.

#### **4 Minutes**

Board Staff are responsible for keeping minutes during meetings of the Board. If Board Staff are absent for any meeting, a Board Member should keep minutes. Board Staff should post the minutes on the Board's website within two weeks of the relevant Board Meeting.

#### **5 Decisionmaking & Voting**

Board Meetings will be conducted using Robert's Rules of Order, which require Board Members to use motions and votes to make decisions. Board Members can only act as the Board through a vote held during a Board Meeting. The Board can only hold a vote when at least five Board Members are present. All votes are decided by the majority of present Board Members (rather than a majority of all Board Members). The one exception to this rule is a vote to close a portion of a public meeting by entering an executive session; New York law requires this kind of vote to be decided by a majority of all Board Members.

#### **6 Attendance**

If a Board Member will miss a Board Meeting, they must notify the Chair via email or text. The Board may issue a warning to Board Members who are consistently absent. If absences continue after a warning, the Board may send a formal notice about the absences to City Council.

#### **7 Conflicts & Recusal**

If a Board Member has a conflict of interest in any Board decision, that Board Member must recuse themselves from deliberating over the decision or vote on the decision.

### **C Communications**

The Board must have clear, open, and transparent lines of communication within itself and with the public.

#### **1 Communications Within The Board**

Board Members should strive to check their Board email at least once every weekday.

#### **2 Communications Between Board Members & Board Staff**

Any email between the Executive Director and the following entities should be sent to the full Board or have the full Board cc'd on the relevant email: (1) City Council as a whole; (2) the President of City Council; (3) the Mayor; (4) the Police Chief; and (5) the President of the Locust Club.

#### **3 Communications With The Public**

The Chair may speak on behalf of the Board as a whole. Other Board Members may speak to the public in their capacity as a single member of the Board, unless the Board decides otherwise.

#### **4 Disclosure of Meetings & Communications**

Any Board Member who speaks in any official capacity during a public interview, discussion panel, speech, or media appearance should notify the entire Board within 24 hours of doing so.

#### **5 Annual District Meetings**

Each year, the Board must hold at least one public meeting in each of the City's four residential districts to listen to residents' perspectives on public safety and to educate residents about the Board's work.

### **D Rulemaking**

The Board must create three kinds of rules. The first group of rules are *Operating Rules*, which determine how the Board and its staff conduct their day-to-day work. The second group are *Procedural Rules*, rules that determine how the Board deals with officer wrongdoing through investigations and hearings. The third group are *Disciplinary Rules*, rules that determine what counts as officer wrongdoing and what the consequences for such wrongdoing must be. The Board's rules are codified and compiled in a Rulebook that is maintained by Board Staff and available on the Board's website. The Board's Rules Committee shall consist of the entire Board.

The Board cannot investigate specific instances of wrongdoing in the context of disciplinary hearings until it has created Procedural Rules and Disciplinary Rules that amount to a complete, working justice system for holding officers accountable. The Board will notify the public when it has created Procedural Rules and Disciplinary Rules that are sufficient to create such a justice system.

#### **1 Operational Rulemaking**

The Board can modify its Operating Rules by asking Board Staff to write a Draft Rule that will implement the Board's desired changes. Within one month of the Board request, Board Staff must send a Draft Rule to the Rules Committee. At the next Board Meeting, the Board Staff will present the Draft Rule to the Rules Committee. If the Rules Committee approves of the Draft Rule, within 48 hours, Board Staff will post a Final Rule on the Board's website and update the Rulebook accordingly.

#### **2 Procedural Rulemaking**

The Board can create or modify its Procedural Rules by asking Board Staff to write a Draft Rule that will implement the Board's desires. Within one month of the Board request, Board Staff must send a Draft Rule to the Rules Committee. At the next Board Meeting, the Board Staff will present the Draft Rule to the Rules Committee. If the Rules Committee approves of the Draft Rule, Board Staff will, within 48 hours: (1) post the Draft Rule on the Board's website; (2) email notice of the Draft Rule to local media outlets; (3) request comment on the Draft Rule from the Locust Club, the Rochester

Police Department, and the Police Accountability Board Alliance; and (4) schedule a hearing to present the Draft Rule and receive public feedback on the Draft Rule. After the public feedback period closes, the Board Staff will use the feedback to create a new Draft Rule to present to the Rules Committee at the following Board Meeting. If the Rules Committee approves of this Draft Rule, within 48 hours, Board Staff will post a Final Rule on the Board's website and update the Rulebook accordingly.

### **3 Disciplinary Rulemaking**

The Board will establish a process for creating Disciplinary Rules if and when it receives disciplinary power.

## **E Oversight Investigations**

The Board must conduct oversight investigations that create transparency over all powers exercised by the Rochester Police Department and its officers. The Board may launch an oversight investigation by asking Board Staff to prepare and execute Investigation Plan that addresses a specific subject or aims to answer a particular question. Within 48 hours of launching an oversight investigation, Board Staff must publish the Investigation Plan by placing it on the Board's website, emailing the Investigation Plan to the Rochester Police Department and local media outlets, and posting notices about the Investigation Plan on the Board's social media pages.

### **a Conducting an Investigation**

In conducting an oversight investigation, Board Staff may use any tools including, but not limited to: requests for information from City staff, non-City organizations, or members of the public; oversight hearings; educational hearings. Board Staff may request information from any organization or person. Board Staff may require the City and any of its employees to produce specific sources of information. At any time in an investigation, Board Staff may ask the Board to vote to exercise its subpoena power. Board Staff should provide brief regular updates to the Board on the progress of each ongoing investigation during every Board Meeting.

### **b Briefing the Public**

At any time during an oversight investigation, the Board Staff may brief the public on findings or conclusions it has made. Before doing so, Board Staff must consult with the Chair, who may ask the Board Staff to present those findings or conclusions to the entire Board before making them public.

### **c Closing an Investigation**

At any time, Board Staff may present a draft Investigation Report to the Board at a regular Board Meeting. The Board may choose to close the investigation by approving the draft and asking Board Staff to issue a final Investigation Report to the public. The Board may also request that Board Staff revise the draft report or keep the investigation open without issuing an Investigation Report.

## **F Creating Proposals for Change**

The Board may, at any time, ask Board Staff to draft proposals to achieve a specific kind of change in Rochester's public safety system.

**a Community Input**

In creating proposals, Board Staff should hold community input sessions, create tools for receiving written feedback, or otherwise perform whatever tasks are necessary to obtain input from all communities in Rochester. After drafting a proposal, Board Staff must create deadlines for receiving input from the community at large and the following groups: (1) the Police Accountability Board Alliance; (2) the Rochester Police Department; and (3) the Locust Club. After a draft proposal is completed, Board staff will, within 48 hours: (1) post the draft proposal on the Board's website; (2) email the draft proposal to local media outlets; and (3) request comment on the draft proposal from the Locust Club, the Rochester Police Department, and the Police Accountability Board Alliance.

**b Finalizing Proposals**

After all deadlines for public input have passed, Board Staff should incorporate all input into a revised set of proposals. Board Staff shall present a revised set of Draft Proposals to the Board, which may choose to either approve, reject, or request a revision of these proposals. Unless these proposals are set to be published as part of an Investigation Report, within 72 hours of the Board voting to approve Draft Proposals, Board Staff must publish a Final Proposals document by placing it on the Board's website, emailing the proposals to local media outlets, and posting notices about the proposals on the Board's social media pages.

**c Submitting Proposals**

After Final Proposals have been released to the public, Board Staff must send the proposals to the Mayor, City Council, the Chief of Police, and any other party that Board Staff deem relevant. Board Staff must send the Chief a request to explain—within 30 days – their agreement or disagreement with each specific recommendation that can be implemented by the Chief. The Chief must present the Board with an implementation timeline for any recommendation they agrees with.

**d Tracking Implementation**

Board Staff shall track the implementation of all Final Proposals on the Board's website. In its annual and quarterly reports, the Board must include information on the status of each recommendation that was (1) implemented during the relevant period and (2) still unimplemented by the end of the relevant period.



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Rochester Police Accountability Board

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JAMIE ROMEO

MONROE COUNTY CLERK



**DRAFT MINUTES****Board Meeting  
Police Accountability Board****July 8, 2021****6:30 PM****30 Church Street Room 208-A****Attendees In whole or Partial**

Board Members: Brown, Harrison, McIntosh, Nickoloff, Perez, Setel, Tucker, Wilson.

Absent: Harvey

Staff: Reynolds

*Please Note: This meeting was the first in-person meeting held by the Board in over a year. At the time New York State decided to require in-person meetings of public boards, the City had not established the technological infrastructure to videorecord and livestream in-person meetings to the public. As such, no videorecording exists of this meeting. Therefore, the below minutes are more detailed than those provided for prior meetings. The Board expects that its future in-person meetings will be videorecorded and livestreamed to the public in line with recent prior practice.*

**Minutes Approval 6:35**

BROWN moves to approve draft minutes of the June 2021 Board Meeting. PEREZ seconds. ENTIRE BOARD votes to unanimously approve of draft minutes.

**Executive Director's Report 6:40**

REYNOLDS gives overview of past month's work and work to come. REYNOLDS discusses his submission of job descriptions to the City's Human Resources Department for approval, with plan for those descriptions to be approved of by the City's Civil Service Commission at their July meeting. REYNOLDS discusses the search for expanded office space, including an upcoming tour at a City-owned building. REYNOLDS discusses a proposed agreement with a City contractor to develop a new website for the Board. REYNOLDS discusses proposals to have the Civilian Review Board be resupplied with the staff needed to perform its duties while the Board gets its own investigatory process underway. REYNOLDS mentions need for comprehensive Board and staff training program.

**Selection of Chair Vice Chair 7:10**

SETEL nominates WILSON to be Chair. BROWN seconds, notes that WILSON has "done an excellent job." TUCKER also nominates WILSON, describing "sacrifices" WILSON has made. No other nomination are made for Chair. WILSON accepts nomination for Chair, saying she'd like to continue in the role because "there's more I can learn" and "you all will be helping me with this."

PEREZ nominates MCINTOSH to be Vice Chair. "Just like [WILSON], you started it, you should continue it." BROWN seconds nomination, says MCINTOSH "brings a lot of experience and knowledge to this Board."

TUCKER nominates TUCKER (self) to be Vice Chair, noting she has “a lot of time on my hands” and “could make a change” while “continu[ing] the work” of MCINTOSH and WILSON. HARRISON seconds nomination.

MCINTOSH accepts nomination for Vice Chair, saying, “We’re not done. We’re just getting started. . . . I have added value in asking the hard questions.” TUCKER accepts nomination for Vice Chair, noting HARRISON’s past calls to “maximize” work time and calls for “find[ing] out how much further we could go.”

WILSON announces beginning of question time for candidates. BROWN asks TUCKER where new time in TUCKER’s schedule is coming from. TUCKER notes recent change in job title and duties. SETEL asks MCINTOSH about availability for Board work. MCINTOSH describes prior commitments, practice of notifying Board Members of conflicts regarding attendance.

WILSON announces beginning of voting. Board Members submit completed ballots to DWYER REYNOLDS for counting. DWYER REYNOLDS announces that WILSON was unanimously chosen to be Chair, MCINTOSH received four (4) votes for Vice Chair, TUCKER received four (4) votes for Vice Chair.

WILSON announces second round of questions for Vice Chair candidates. HARRISON explains he nominated TUCKER because he felt “positively” toward her, rather than because he felt “negatively” about MCINTOSH. TUCKER describes approach to receiving feedback and working on team dynamics. BROWN notes this will be an attribute regardless of TUCKER’s position on the Board. MCINTOSH notes that she brings “advocacy and accountability” to the Board, and that TUCKER and MCINTOSH spoke about the opening for the Vice Chair position. PERE□ clarifies position on selection process, noting, “We have to pick the person based on what they can bring to the table.”

WILSON announces beginning of second round of voting. Board Members submit completed ballots to DWYER REYNOLDS for counting. DWYER REYNOLDS announces that MCINTOSH received three (3) votes for Vice Chair, TUCKER received five (5) votes for Vice Chair, TUCKER is selected as Vice Chair.

**□ eeting Time Discussion □7:40□**

BROWN moves to have the Board hold regular board meetings on the 1<sup>st</sup> and 3<sup>rd</sup> Thursdays of every month through the end of 2021. HARRISON seconds. Motion defeated 2 (BROWN & HARRISON) to 5 (MCINTOSH, NICKOLOFF, PERE□, TUCKER, WILSON), with one abstention (SETEL).

WILSON moves to have the Board hold regular board meetings on the 3<sup>rd</sup> Thursday of every month through the end of 2021, with meetings to be held at 6:30 PM. TUCKER seconds. Motion carries 7 to 0, with one abstention (NICKOLOFF).

Extended discussion of whether and how to hold and schedule Board training / committee meetings.

**Discussion Regarding Potential and Pending Litigation Matters Leading to the Employment, Discipline, or Termination of Particular Persons 7:55**

WILSON moves to enter executive session to discuss updates regarding the state litigation over the Board's disciplinary powers, along with potential litigation regarding the Board's ability to access information, as well as the pending request for an advisory opinion by the Ethics Board regarding Board staff. TUCKER seconds. Motion carries unanimously.

General discussion of topics described above. NICKOLOFF leaves meeting for prior engagement. WILSON moves to adopt REYNOLDS's plan to research and draft code of conduct along with a potential statement regarding Board ethics. Motion carries 6 (BROWN, HARRISON, PERE, SETEL, TUCKER, WILSON) to 0, with one abstention (MCINTOSH).

WILSON moves to exit executive session. TUCKER seconds. Motion carries unanimously.

**End of Meeting 8:30**

BROWN moves to end meeting. Motion carries unanimously.

**SUPREME COURT OF THE STATE OF NEW YORK  
MONROE COUNTY**

CONOR DWYER REYNOLDS,

Petitioner,

Index No.

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules

-against-

CITY OF ROCHESTER and ROCHESTER  
POLICE ACCOUNTABILITY BOARD,

Respondents.

**MEMORANDUM OF LAW IN SUPPORT OF ARTICLE 78 PETITION**

Kaufman Lieb Lebowitz & Frick LLP  
18 E. 48<sup>th</sup> Street, Suite 802  
New York, New York 10017  
(212) 660-2332

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**PRELIMINARY STATEMENT**

This case is about a government agency’s flagrant violations of New York’s Open Meetings Law (“OML”) to shield its deliberations about a sensitive issue of public concern from public scrutiny. Respondents disregarded the law in their haste to oust the Executive Director of the Rochester Police Accountability Board (the “PAB” or “Board”), Conor Dwyer Reynolds, for standing up against protracted sexual harassment by former Board Chair Shani Wilson.

After Dwyer Reynolds informed Wilson that he intended to report her harassment, Wilson spearheaded a retaliatory campaign to manufacture performance issues about his work. The Board, acting at the behest of Wilson and her friends within the agency, used these performance issues as pretext to suspend Dwyer Reynolds.

This entire process—which included at least six Board meetings, the creation and operation of a special committee, and a special joint meeting between the Board and City Council employees—occurred exclusively behind closed doors.

Respondents’ actions flagrantly violated New York’s broad OML, which was enacted to ensure that “public business be performed in an open and public manner.” OML § 100. Respondents defied that mandate repeatedly and deliberately in the weeks leading up to Dwyer Reynolds’s suspension. They were aware of their OML obligations, and they intentionally flouted them in order to screen the public from critical decision-making about the PAB, its leadership, and its direction.

Respondents’ OML violations fall into two primary categories. First, in the run-up to Dwyer Reynolds’s suspension, the Board held multiple secret meetings that failed to abide by the OML’s explicit provisions requiring public notice, public access, and public meeting minutes. Second, during the “special” meeting held for the purpose of



formally suspending Dwyer Reynolds, the Board improperly entered executive session without specifically identifying the topics for discussion. It then compounded that failure by not recording any meeting minutes reflecting any summary of discussion or vote about Dwyer Reynolds's suspension.

As a result of Respondents' intentional concealment, there does not appear to be *any* public record of a vote to place the leader of a city agency on administrative leave, let alone any public record of the deliberations leading to that vote. A Rochesterian who wants to know why the executive director of an agency dedicated to promoting good government was suddenly ousted from office would have nowhere to turn. This is precisely what the OML exists to prohibit.

Because Respondents deliberately violated the OML with the specific intent—and, ultimately, the effect—of hiding their discussions and actions about the Board's Executive Director, this Court should hold that their actions taken in violation of the OML are void and award attorneys' fees and costs. OML § 107.

The citizens of Rochester are entitled to transparency and accountability from their PAB—an entity whose very purpose is to promote those values across other city agencies. It is time for PAB's secrecy to end.

### **FACTUAL BACKGROUND**

Throughout his time as Executive Director, Dwyer Reynolds has worked diligently to ensure that Board Members are aware of their obligations under the OML and follow its mandates. Shortly after he began working at PAB, he held a training session led by a City attorney to educate Board members about the OML's requirements. When the Board entered executive sessions, Dwyer Reynolds made sure its members explained why they were doing so in detail. Moreover, he ensured that the minutes of

such executive sessions noted any motion made (and the details of any vote thereon). There is no doubt that Board members understand their obligations under the OML. Dwyer Reynolds Aff. ¶¶ 3-6.

On April 19, 2022, after 20 months of sexual harassment, humiliation, and punishment by former Board Chair Shani Wilson, Dwyer Reynolds informed her that he intended to report her conduct. Wilson replied, “I’m going to hurt you because you hurt me.” Ex. A.<sup>1</sup>

As promised, after this conversation, Wilson, with the assistance of other Board Members and staff with whom she maintains close friendships, began a campaign to oust Dwyer Reynolds from his post as Executive Director by drumming up workplace complaints against him.

On April 27, six Board employees, including a friend of Wilson’s, attended a meeting convened by an unknown person. The stated purpose of the meeting was to solicit and aggregate criticisms of Dwyer Reynolds, with the intention of distributing them to the Board. Ex. C.

Following that meeting, on April 28, Board Member Drorah Setel (a close friend of Wilson’s) hosted a “social get-together” at her home for members of the Board. Once all Board Members arrived, Wilson began a group discussion of what she called Dwyer Reynolds’s “performance issues.”

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<sup>1</sup> All citations to Ex. \_\_\_ refer to exhibits attached to the Affirmation of Conor Dwyer Reynolds, dated July 8, 2022.

The public was never made aware of this April 28 meeting. It was never publicly noticed. There is no recording of it. There are no minutes for it. Dwyer Reynolds Aff. ¶¶ 11-12.

Next, on May 1, the Board's "Executive Director Oversight Committee" met to "discuss the correct procedure" for addressing "concerns" about Dwyer Reynolds. Ex. D. Again, the public was never made aware of this May 1 Board committee meeting. It was never publicly noticed. There is no recording of it. There are no minutes. *Id.*; Dwyer Reynolds Aff. ¶ 14.

The secrecy around May 1 meeting (and the many non-public meetings to follow) was intentional: In follow-up email sent on May 2, Setel explicitly instructed the Board that all meetings concerning Dwyer Reynolds would be "confidential." Ex. D.

On May 5, the Board held a "PAB Board meeting" to speak with some of the Board employees who had attend the April 27 meeting convened to solicit criticisms of Dwyer Reynolds. Ex. E. The purpose of the May 5 meeting was again for the Board to deliberate about the agency and Dwyer Reynolds's work. Dwyer Reynolds Aff. ¶¶ 16-18.

Although a Board Meeting was originally noticed for the evening of May 5, the public perception was that this meeting had been cancelled. Indeed, the Board's own staff believed it was cancelled, as Setel and Wilson told them on May 2 that the scheduled Board Meeting had been replaced by a "retreat." *Id.*

When a PAB employee told Setel the "procedure has been for us to open the meeting, state the purpose of us entering into executive session then adjourn into executive session from there," Setel replied, "I don't think that will be possible unless you do that on your own." Exs. F, G.

Thus, the public was never made aware of the May 5 meeting or given the opportunity to attend. There is no recording of it. There are no minutes for it. Dwyer Reynolds Aff. ¶¶ 19-20.

On May 5, the Board followed its first “Board meeting” with another meeting that same night, in which Dwyer Reynolds “made allegations of sexual harassment against PAB Board Chair Shani Wilson.” Ex. E. The public was never made aware of this second Board meeting on May 5. It was never publicly noticed. There is no recording of it. There are no minutes for it. *Id.* ¶¶ 20-21.

On May 7, the Board held yet another non-public “meeting” to “determine the next steps regarding” Dwyer Reynolds. During this meeting, the Board “considered putting [Dwyer Reynolds] on a paid administrative leave, however they were not able to reach a decision.” Ex. C. The public was never made aware of this May 7 meeting of the Board. It was never publicly noticed. There is no recording of it. There are no minutes for it. Dwyer Reynolds Aff. ¶ 24.

On May 8, the Board had a meeting to “talk” with Dwyer Reynolds. An email sent from Setel to Dwyer Reynolds that day described the meeting as a “Board listening session.” Ex. F. In reality, the meeting was yet another non-public opportunity for the Board to deliberate about his work and the work of the agency. *Id.* ¶ 25.

The public was never made aware of a May 8 Board Meeting. It was never publicly noticed. There is no recording of it. There are no minutes for it. *Id.* On May 10, Setel emailed a Board employee asking them to “send out a Zoom link for our Board training this Thursday [May 12] at 6:30? This is not a public event.” Ex. H.

Yet rather than attending this training on May 12, the Board worked with Rochester’s City Council to coordinate and schedule a “Special Board Meeting.” No

website owned by the City or the Board contains a copy of a notice for this “Special Board Meeting.” Dwyer Reynolds Aff. ¶¶ 27-28. Not even PAB employees or Dwyer Reynolds himself—who all believed that the Board was attending a training—knew about the meeting in advance.

All but two minutes of the May 12 Board meeting were held in executive session. Before entering executive session, the Board only disclosed that a “personal matter” needed to be discussed; no further information about the session was provided. Ex. B. The minutes from the May 12 meeting do not reflect a record or summary of any determination made regarding Dwyer Reynolds, nor do they reflect any vote. Ex. J.

Nevertheless, as the Board met behind closed doors on May 12, the City’s security team arrived at Dwyer Reynolds’s home. They handed him a letter from an employee of the Rochester City Council. The employee claimed that the Board had “voted” to suspend him and ban him from speaking with any Board employees. Ex. J.

Since Dwyer Reynolds’s purported suspension, at least some Board Members have recognized flaws in its deliberative process. In a public meeting, one member criticized the Board for doing “most” of its work outside of open meetings, making “decisions” without “thoughtful discussion of them” in public. Another lamented Dwyer Reynolds’s suspension as an example of the Board “jumping to make a quick, fast decision.” Another said that “speed kills” and called the suspension a “fiasco.” A former Board member said that Wilson and her friends on the Board “didn’t want any accountability for themselves and that’s just going to destroy the Board. . . . They are rogue now. They’re rogue, they’re rogue. . . . [Wilson] does all this shit behind closed doors.” Dwyer Reynolds Aff. ¶ 37.

Unfortunately, despite these concessions, the Board's violations of the OML have only continued insofar as they relate to Dwyer Reynolds. In the days following Dwyer Reynolds's suspension, Wilson and her friend Setel helped create a "Special Committee" of the Board consisting of themselves and two other Board Members. On May 23, the Special Committee held a meeting with a select group of community members over Zoom.

Beyond those few invited, the public was never made aware of this meeting of a Board committee. It was never publicly noticed. There is no recording of it. There are no minutes for it. On information and belief, despite meeting regularly to issue directives, guide staff, and create policy, the Board's Special Committee has never noticed its meetings, made them open to the public, posted recordings of the meetings online, or taken minutes during their meetings. *Id.* ¶¶ 38-39.

In addition to the secrecy of the Special Committee, the Board has continued to engage in flagrant violations of the OML when engaging in public business with respect to Dwyer Reynolds. It has repeatedly failed to tell the public why it is entering an executive session, when it appears clear that the purpose is to discuss Dwyer Reynolds and the agency's leadership. It has repeatedly failed to take minutes during those executive sessions. And, despite publishing minutes that reflect no major decisions regarding Dwyer Reynolds, the Board continues to state that it has made such decisions.

By intentionally flouting the OML to carry out the wrongful suspension of Dwyer Reynolds, the Board has compromised the very ethic of transparency and accountability that it was designed to promote. Without swift and decisive judicial intervention, the Board will continue to do so.

## ARGUMENT

### I. THE OPEN MEETINGS LAW REQUIRES PUBLIC ACCESS TO AND KNOWLEDGE ABOUT THE BOARD'S ACTIONS

New York's broad Open Meetings Law (N.Y. Public Officers Law § 100, *et seq.*) serves to ensure that “public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.” OML § 100. The law achieves this through a variety of mechanisms.

To start, the OML requires that *every* “meeting” of a “public body” be open to the general public, except in limited circumstances when the body meets in executive session, as discussed below. *Id.* § 103(a). The Board and its subcommittees are “public bodies” under the law. OML § 102 (defining “public body” as “any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof . . . or committee or subcommittee”); *see also* Ex. O (Rochester City Charter Section 18) (defining the Board as a public agency, granting powers to the Board, and noting the ability of the Board to create committees).

The Board and its subcommittees engage in a “meeting” whenever they convene by “a quorum” of members for “the purpose of conducting public business.” OML § 102. Five Board Members constitute a quorum of the full Board, Ex. O § 18-6(B), while quorums for Board committees depend on the committee size.

The OML's requirement that meetings are “open to the general public” means that they must be physically accessible, *id.* § 103(b); videoconferences must allow for

public participation, *id.* § 103(c); photos and recordings must be permitted, *id.* § 103(d); any laws, rules, regulations, or policies that will be discussed at a meeting must be made available to the public in advance, *id.* § 103(e); and meetings should be broadcast to the public online, *id.* § 103(f). Agencies must provide notice of all meetings at least 72 hours in advance. *Id.* § 104. The law further requires that minutes must be taken—both at open meetings and during executive sessions where formal votes are taken—and those minutes must be made available to the public within two weeks of a public meeting and one week of an executive session. *Id.* § 106.

Although the OML permits agencies to hold non-public “executive sessions,” these sessions are subject to stringent requirements to ensure that agencies do not use them as a cover to conduct business in secret. First, an agency can only enter executive session by a “majority vote of its total membership, taken in an open meeting.” OML § 105(1). That motion must identify “the general area or areas of the subjects to be considered.” *Id.* Second, the law enumerates only eight topics that an agency may discuss in executive session. *Id.* If an agency wishes to discuss any other matter, it must do so in an open, public setting. Third, the law requires that minutes “shall be taken at executive sessions of any action that is taken by a formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon.” OML § 106. The law thus ensures that when decisions are made during executive session, there is still transparency about the nature of those decisions and the votes supporting them.

The OML also delineates the remedies available to anyone aggrieved by an agency’s violations of the law. Section 107(1) gives courts discretion to declare void any action taken during an unlawful meeting, as well as require training for the public body.



Section 107(2) permits courts to award attorneys' fees and costs to a prevailing petitioner in any case arising under the OML, and it *mandates* an award of fees and costs where "a vote was taken in material violation" of the law or "substantial deliberations relating thereto occurred in private prior to such vote," provided that the public body had no "reasonable basis" to believe that a closed session could have been properly held.

**II. THE BOARD INTENTIONALLY VIOLATED THE OML BY HOLDING SECRET MEETINGS TO DELIBERATE ABOUT THE AGENCY AND DWYER REYNOLDS**

In the months leading up to Dwyer Reynolds's suspension, Respondents held multiple secret meetings about his leadership and the agency in order to conceal their deliberations about matters of significant public concern. Respondents knew that their campaign to oust Dwyer Reynolds in retaliation for raising sexual harassment complaints would not hold up to public scrutiny, and so they deliberately carried it out in private.

In the run-up to Dwyer Reynolds's suspension, the Board held at least six "meetings" that should have been conducted publicly, but were instead held covertly.

*First*, on April 28, at least five members of the Board (Arlene Brown, Matthew Nickoloff, Drorah Setel, Danielle Tucker, and Shani Wilson) gathered to discuss Board business under the subterfuge of a "social get together" that Dwyer Reynolds was barred from attending. Dwyer Reynolds Aff. ¶ 11. During the meeting, the Board Members engaged in discussions of the Board's work and Dwyer Reynolds's leadership in contravention of the OML. That this event was superficially labeled a social gathering is meaningless; the Board cannot circumvent the OML's requirements by holding non-public meetings and terming them parties. *See* Ex. Q, Advisory Op. 4261, N.Y.S. Cmte.

on Open Gov't (Sept. 19, 2006) (“[I]f during the social gathering, a majority of the members of a public body begin to discuss the business of that body, collectively as a group, I believe that they should recognize that they are conducting public business without notice to the public and immediately cease their discussion of public business.”). The Board never noticed this meeting, and there is no formal record of it. Nor are there any meeting minutes. Dwyer Reynolds Aff. ¶ 12.

*Second*, on May 1, the Board’s “Executive Director Oversight Committee” met to solicit criticisms of Dwyer Reynolds. Dwyer Reynolds Aff. ¶ 14. It is unclear how many members this committee comprises or who serves on it. None of that matters here. The Board has admitted that the committee formally met and conducted business on this date. Ex. D. As such, it held a “meeting” subject to the OML, but did so unlawfully without notice, public access, or minutes.

*Third*, on May 5, seven Board Members (Arlene Brown, Bob Harrison, Rickey Harvey, Matthew Nickoloff, Drorah Setel, Danielle Tucker, and Shani Wilson) attended a three-hour Board Meeting labeled a “retreat,” during which the Board engaged in in-depth discussions about nearly every aspect of the Board’s work, including the roles and responsibilities of the Executive Director, Dwyer Reynolds. Dwyer Reynolds Aff. ¶¶ 19-22. As such, the “retreat” was a “meeting” subject to the OML that occurred without any notice or record. *See* Ex. R, Advisory Op. 3185, N.Y.S. Cmte. on Open Gov’t (July 18, 2000). (“[A] retreat that dealt with the roles and responsibilities of Board officers and committees constituted a ‘meeting’ that should have been conducted open to the public in accordance with the Open Meetings Law and preceded by notice given pursuant to §104 of that statute.”).

Contemporaneous emails show that Board Members knew their “retreat” violated the OML. After Setel emailed a staffer about cancelling a previously scheduled May 5 public meeting because “the Board will be meeting solely in executive session,” the staffer responded that the “procedure has been for us to open the meeting, state the purpose of us entering into executive session then adjourn into executive session from there.” Ex. G. Indeed, as New York’s Committee on Open Government has stated, “because a vote to enter into an executive session must be made and carried by a majority vote of the total membership during an open meeting,” agencies like the Board “cannot schedule or conduct an executive session in advance of a meeting.” See Ex. P, Advisory Opinion 4889, N.Y.S. Cmte on Open Gov’t (Apr. 9, 2010).

Yet rather than heeding the staffer’s guidance to follow the OML, Setel replied, “We’ll be ‘on retreat’ in person at [a Board member’s] home so I don’t think that will be possible unless you can just do that on your own.” *Id.* The Board’s insistence on secrecy when confronted with the OML’s mandates proves that the violation was intentional.

*Fourth*, on May 5 (following the Board meeting improperly labeled a “retreat”), seven members of the Board (Arlene Brown, Bob Harrison, Rickey Harvey, Matthew Nickoloff, Drorah Setel, Danielle Tucker, and Shani Wilson) attended what Setel called a “Board Meeting” to discuss Board work. The meeting also included at least one vote (specifically, whether to let Dwyer Reynolds complete his report of sexual harassment). Dwyer Reynolds Aff. ¶¶ 19-22. As such, this was a “meeting” subject to the OML that was not noticed and has no records.

*Fifth*, on May 7, Board Members held what a Board employee later called a “Board meeting” to “determine the next steps regarding” Dwyer Reynolds. During this meeting, it the Board held a vote that “considered putting [Dwyer Reynolds] on a paid

administrative leave, however they were not able to reach a decision,” according to an email sent by a Board employee who was apparently at the meeting. Dwyer Reynolds Aff. ¶ 24. There can be little doubt that this was a “meeting” subject to the OML, and there is no notice or record of it.

*Sixth*, on May 8, six members of the Board (Arlene Brown, Bob Harrison, Rickey Harvey, Matthew Nickoloff, Drorah Setel, and Danielle Tucker) held a Board Meeting that was labeled a “listening session” to circumvent OML requirements. Dwyer Reynolds Aff. ¶ 25. During the Board Meeting, Dwyer Reynolds was asked to present a one-month plan for moving the Board’s work forward, with Board members asking Dwyer Reynolds questions about that plan for about an hour. As such, this was a “meeting” subject to the OML.

These six meetings held in the run-up to the Board’s May 12 suspension vote meeting were subject to the Open Meetings Law and should have been publicized. Instead, they were held in secret, without notice or minutes or posted recordings—directly flouting the OML’s aim to “prevent public officials from debating and deciding in private what they are required to debate and decide in public.” *Goetschius v. Bd. of Educ. of the Greenburgh Eleven Union Free School Dist.*, No. 2861/95, 1996 WL 34565310 (Sup. Ct. Westchester Cty. July 31, 1996), *aff’d* 281 A.D. 2d 416 (1st Dep’t 2001).

There is no question that the Board intentionally failed to hold these meetings publicly in order to shield the sensitive subject matters discussed. Even setting aside Setel’s written acknowledgement of an OML violation and her instruction to Board members and staff to keep meetings “confidential,” Respondents are familiar with the mandates of the law. They have been trained on the OML and instructed on its

requirements pertaining to minute taking, executive sessions, and the distinction between mere “social gatherings” and meetings that must be open to the public. They have been diligently operating within the law’s confines for over two years. On the occasions where the Board has unintentionally strayed, Board Members and others, including Dwyer Reynolds himself, have reminded the Board of its obligations. Dwyer Reynolds Aff. ¶¶ 3-6. Indeed, as recently as April 7, 2022, the Board unanimously voted to adopt stringent transparency rules that mirror or exceed the mandates of the OML. Dwyer *Id.* ¶ 4; Ex. B. Its sudden departure from prior habit is not negligence nor mass amnesia. It is evidence of intent to violate the law. *See N.Y.S. Nurses Ass’n v. State Univ. of New York*, 39 Misc.3d 588, 591 (Sup. Ct. Kings Cty. 2013) (voiding determination made in violation of the OML where “[r]espondents are not unsophisticated. They have acknowledged their obligations pursuant to the Open Meetings Law.”).

### **III. RESPONDENTS INTENTIONALLY VIOLATED THE OML WITH RESPECT TO THE MAY 12 EXECUTIVE SESSION**

The Board also deliberately flouted the OML during the executive session in which it formally voted to suspend Dwyer Reynolds. Not only did the Board fail to properly notice this executive session, it also failed to properly notice the meeting as a whole *and* it failed to record meeting minutes reflecting actions taken during executive session.

A. Respondents Failed to Adequately Identify the Topics Discussed at the May 12 Executive Session

The Board’s pithy notice of the topics to be discussed during the May 12 executive session—*i.e.*, a “personal matter”—violated OML provisions expressly promulgated to ensure that closed-door executive sessions are the exception to the rule of open, public meetings. Although the law permits executive sessions in certain enumerated

circumstances, they must comply with the OML's strict requirements for notice and transparency. OML § 105.

To that end, the OML requires that an executive session may only be held “[u]pon a majority vote of its total membership, taken in an open meeting pursuant to a motion *identifying the general area or areas of the subject or subjects to be considered.*” OML § 105 (emphasis added). Unless it has details of what is to be discussed in executive session, “the public lacks the ability to determine whether the subjects may properly be considered in private.” *Lucas v. Bd. of Educ. of E. Ramapo Cent. Sch. Dist.*, No. 1640-2014, 2017 WL 4423565, at \*4 (Sup. Ct. Rockland Cty. Oct. 5, 2017). Thus, “[g]iven the overriding purpose of the Open Meetings Law, section 105 is to be strictly construed, and the real purpose of an executive session will be carefully scrutinized ‘lest the . . . mandate [of the Open Meetings Law] be thwarted.’” *Id.* (citing *Zehner v. Bd. of Educ. of Jordan-Elbridge Cent. Sch. Dist.*, 91 A.D.3d 1349, 1350 (4th Dep’t 2012)).

Although discussions regarding “the employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person” may be permissible topics for executive sessions, OML § 105, the Board is required to do more than “merely recit[e] the statutory categories for going into executive session without setting forth more precise reasons for doing so.” *Zehner*, 91 A.D.3d at 1350. Instead, it must identify “with particularity” the items to be discussed during the session. *Previdi v. Hirsch*, 138 Misc. 2d 436, 438 (Sup. Ct. Westchester Cty. 1998) (citing *Daily Gazette Co. v. Town Bd., Town of Cobleskill*, 111 Misc.2d 303, 304 (Sup. Ct. Schoharie Cty. 1981)).

Here, the Board's barebones motion for an executive session “to discuss a personal matter” does not satisfy the stringent requirements of the OML. Plainly, “personal matters” are not among the enumerated topics for executive sessions. OML §

105. Although the speaker may have intended to say “personnel matter,” an ordinary citizen attending the meeting would not have known that.

Further, even if the public had known that a “personnel issue” was to be discussed, that paltry description is still inadequate, as “mere regurgitation of the statutory language does not suffice for this purpose and respondents’ description here fell below even that standard.” *Previdi*, 138 Misc. 2d at 439-40; *see also Gordon v. Village of Monticello Inc.*, 207 A.D.2d 55, 58 (3d Dep’t 1994), *aff’d in relevant part and rev’d in other part*, 87 N.Y.2d 124 (1995) (holding that the “stated purpose for entering into executive session, to wit, the discussion of ‘a personnel issue’ does not satisfy [the OML]”, voiding the decisions made, and awarding fees and costs); *Cutler v. Town of Mamakating*, 137 A.D. 3d 1373, 1374-75 (3d Dep’t 2016) (holding “that the Town Board violated the Open Meetings Law by inadequately describing the purpose for entering into the executive session as, simply, ‘personnel issues’”).<sup>2</sup>

Even if the speaker had said “personnel matter” and had given a properly detailed description of that matter, the substance of the executive session likely went far beyond that matter and included the business of the agency, its operations, and its leadership. Due to the lack of minutes, however, the public will never know the full extent of what was discussed it during these secret meetings.

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<sup>2</sup> The caselaw on noticing executive session for reasons other than “personnel” issues is equally stringent and further supports a finding that Respondents’ cursory statement was insufficient. *See, e.g., Orange Cty. Publ’ns v. Orange Cty.*, 120 A.D.2d 596, 596-87 (2d Dep’t 1986) (holding executive session “called to discuss proposed, pending or current litigation . . . and the financial or credit history of a particular person” did not comply with the OML); *Daily Gazette*, 111 Misc.2d at 304 (same for session called for the purpose of “discussions regarding proposed, pending, or current litigation); *Zehner*, 91 A.D.3d at 1350 (finding OML violations where legislature “merely recit[ed] statutory categories . . . without setting forth more precise reasons for doing so).”

Like Respondents' other OML violations, this violation was unquestionably intentional. The Board has been advised over and over again as to the requirements to enter executive session, including by Dwyer Reynolds. Its recently adopted transparency rules also provide clear instructions in this regard. Ex. B. Further, Respondents entered the May 12 executive sessions a mere 67 seconds after convening the meeting, providing no context for the session or its agenda. As at least one court has held, "[t]he timing of entry into executive session almost immediately after commencing the meeting of the [Board], without any specificity as to the purpose of the Executive Session, appears to be specifically designed to deny the public the transparency guaranteed by the Open Meetings Law." *N.Y.S. Nurses Ass'n*, 39 Misc. at 593 (finding good cause to annul determination made during improperly noticed executive session).

B. Respondents Failed to Take Substantive Meeting Minutes During the May 12 Executive Session

The meeting minutes recorded during the May 12 executive session are even less transparent than Respondents' opaque explanation for entering executive session in the first place.

The OML requires that "[m]inutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon." OML § 105. Yet the meeting minutes from the May 12 executive session contain no record or summary of any action, nor do they reference any vote, Ex. N, even though Respondents voted to place Dwyer Reynolds on administrative leave during that meeting. *See* Ex. K (May 14 text from Board member, referencing Dwyer Reynolds's suspension, stating, "I wasn't aware we had reached the point of *that vote* until shortly before the meeting")



(emphasis added); Ex. J (suspension letter dated May 12 was delivered to Conor Dwyer Reynolds during the executive session and states that the Board “voted” to suspend him). The minutes are so sparse that they note nothing except the meeting start time (6:40 PM), the start of executive session (6:42 PM), the end of executive session (9:54 PM), and the meeting adjournment (9:55 PM). *Id.* They contain no substantive information whatsoever about what was discussed during this three-hour meeting. *Id.*

The lack of *any* record of any vote to suspend Dwyer Reynolds is a waving red flag. The public is entitled to know whether a vote occurred and, if one did, the votes that were cast. *See Wright v. New York City Council*, No. 160701/17, 2017 WL 6493323, at \*4-6 (Sup. Ct. N.Y. Cty. Dec. 19, 2017) (granting preliminary injunction under OML where vote to appoint a new democratic Commissioner apparently occurred at non-public meeting and “review of the minutes on the City Council’s website, while comprehensive, does not indicate that said meeting or any vote occurred”).

Yet again, this violation was plainly intentional. The Board had entered executive session repeatedly over the course of the prior two years. It knew to record votes taken during executive session. The transparency rules that the Board adopted just one month before the May 12 meeting explicitly state that, even during executive session, the Clerk should record “in the meeting minutes . . . the motions voted upon by the members and the results of those votes.” Ex. B. There is no justification for the Board’s failure to record a vote here, other than the intention to shield the vote from the public.

C. Respondents Failed to Adequately Notice the May 12 Meeting

In addition to the improper executive session, the suspension-vote meeting was fatally flawed by a failure of proper notice. The OML requires that, except in emergency circumstances, agencies must notice meetings “at least seventy-two hours before such meeting.” OML § 105. Even in emergencies, notice should be given “to the extent practicable, to the news media.” *Id.* The Board’s own rules go further than this. They state that the Board must—without any exceptions—“notify the public of all Board Meetings in a given month at least one week before the first Board Meeting in that month.” Ex. B. Such notice is accomplished, in part, by “posting the times and locations of those Board Meetings on the Board’s website.” *Id.* Whenever the Board holds a meeting via videoconference, that meeting is livestreamed on the Board’s YouTube channel, Twitter account, or Facebook page. Indeed, most members of the public find out about Board meetings not by email, but by seeing the meeting appear on these various social media platforms.

The May 12 suspension-vote meeting flouted all these laws, rules, and practices. It is unclear if notice was given or when it was given, as no website owned by the City of Rochester—including the Board’s own website and social media pages—reflect such a notice. Dwyer Reynolds Aff. ¶¶ 29-31. The Board staff, who normally issue such notices, were not involved in any notice-giving process. None of the Board staff, including Dwyer Reynolds, received a notice regarding the meeting. The meeting was not livestreamed on any of the Board’s social media pages. *Id.*

Again, this failure to provide notice was intentional. Just days before the meeting was held, a Board attorney sent a legal opinion to a Board member addressing the topic of how to properly notice Board meetings under the OML. *Id.* ¶ 3. The Board was well

aware of its own rules, Ex. B, having adopted them a month earlier. Beyond that, it appears that the Board intentionally led the agency's staff (including Dwyer Reynolds) to believe that it was attending a long-scheduled "training session," not a Board meeting. Minutes before the suspension-vote meeting, a Board member ended a call with Dwyer Reynolds because—in the Board member's words—he was heading to "Board training." However, when the training session was supposed to begin, the Board staffer responsible for logistics called Dwyer Reynolds to let him know that no Board member had showed up. It was only after Dwyer Reynolds was suspended that he discovered the Board had held the suspension-vote meeting with the assistance of City employees who do not work for the Board, with the meeting livestreamed on the Rochester City Council's YouTube channel.

**IV. RESPONDENTS' INTENTIONAL AND BRAZEN DISREGARD OF THE OML REQUIRES THAT PETITIONER'S SUSPENSION BE VOIDED**

The Court should exercise its authority to declare void Dwyer Reynolds's suspension because Respondents' actions violated the law intentionally and had the purpose and effect of shielding issues of significant public concern. OML § 107(1) (giving courts discretion to declare action taken in unlawful meetings to be void and require training for the public body). Although technical OML violations might not trigger such a remedy, "where as here the respondents have violated both the letter and the spirit of the Open Meetings Law and have acted with intent to circumvent the provisions of the Open Meetings Law, there exists good cause to void the actions taken pursuant to Public Officers Law Section 107(1)." *Goetschius*, 1996 WL 34565310.

Courts examining similar facts in comparable cases have reached the conclusion that this Court must also reach: that decisions made in violation of the OML must be

annulled. New York courts have consistently found OML violations in to be intentional under circumstances comparable to those presented here. For example, in *Goetschius*, a government employee who was suspended in retaliation for challenging misconduct sued his employer, a government board, for violations of the OML. The court found the board had intentionally failed to “facilitate attendance by members of the public” and gave “inadequate notice” at five meetings where they deliberated about and, eventually, voted to suspend the employee. *Id.* Additionally, a board gathering was “cancelled without notice” in an apparent attempt to dissuade the employee from attending it. As a result of these violations, the employee was unable to attend the meeting where he was suspended. *Id.* The court found that the board engaged in a “pattern of numerous [OML] violations” in an “irrefutably willful and flagrant manner.” It thus ordered “the most severe [remedy] allowed” to “deter respondents from any future violations of the Open Meetings Law,” declaring the suspension null and void, issuing an injunction permanently enjoining the board from violating the OML, and awarding costs and fees to petitioner. *Id.*

Respondents’ conduct here was even more egregious than the conduct in *Goetschius*. There, the board issued some notice for relevant meetings and recorded meeting minutes. Here, by contrast, no notice was given for any of the six Board meetings leading up to the suspension; whatever notice existed for the May 12 suspension-vote meeting, if any, was so paltry, belated, and irregular that neither Dwyer Reynolds nor any of the Board’s staff knew the meeting was set to occur. Likewise, no minutes exist for the six meetings leading up to Dwyer Reynolds’s suspension—meetings where the Board deliberated for hours and made decisions about the agency and its

leadership. Further, although meeting minutes exist for May 12, they contain zero information about any discussion or vote to suspend Dwyer Reynolds.

Other courts have found reason to overturn agency decisions based on inadequate notice of an executive session *alone*, even without the numerous other violations present here. For example, in *New York State Nurses Association*, the court overturned a decision made in executive session because the “motion to go into executive session . . . did nothing more than site [sic] the statutory provisions previously mentioned” and “the vagueness of the motion here, in conjunction with the skeletal statement of purpose in the written agenda for the meeting of the Committee, seems intentionally designed to shield the purpose of the meetings from the general public.” 960 N.U.S. 2d at 636; *see also Brander v. Town of Warren Town Bd.*, 18 Misc.3d 477, 488 (Sup. Ct. Onondaga Cty. 2007) (voiding decisions made during improper executive sessions). In cases like this one, where “the Board engaged in a persistent pattern of deliberate violations of the Open Meetings Law through insufficient notice . . . improper convening of executive sessions, and improper exclusion of members of the public,” there is easily good cause to overturn agency determinations made in improper meetings. *Goetschius*, 281 A.D. 2d at 552.

Finally, the Court should order a serious remedy because Respondents’ secrecy has had its intended effect: The Board successfully shielded from public view issues of immense public concern about the agency and its leadership, including Dwyer Reynolds’s allegations of sexual harassment against Wilson. By acting swiftly behind the scenes to remove Dwyer Reynolds altogether, the Board effectively prevented his allegations from coming to light. Instead, the Board made *Dwyer Reynolds* into the

subject of an investigation. It “minimize[d] public awareness” of a “sensitive” political matter. *See Previdi*, 138 Misc. 2d at 440.

Relatedly, the Board’s conduct has had the effect of hiding from the public a work environment that—according to a statement written by a group of junior agency employees—has become “highly toxic” and “wrought with retaliation, fear, and low in morale” in the wake of Dwyer Reynolds’s suspension. Ex. M. As recently as June 13, the Board held a secret meeting with employees to discuss “concerns” raised in the wake of Dwyer Reynolds’s suspension. If the public had been allowed to watch the June 13 meeting, it would have seen the Board’s leadership refuse to address staffer concerns and threaten those who spoke out with discipline and termination. It would have seen staffers resist those threats and press for accountability—including one staffer who, a week after raising their concerns, was fired without explanation. *Dwyer Reynolds Aff.* ¶ 44.

Respondents could not have carried out their campaign of retaliation if forced to do so under a watchful public eye. Their illegal determinations must be annulled.

**V. PETITIONER IS ENTITLED TO ATTORNEYS’ FEES, COSTS, AND INJUNCTIVE RELIEF**

The Court should also award attorneys’ fees and costs and injunctive relief. OML § 107(2) (permitting such awards in OML cases, and *mandating* fees and costs where public body had no “reasonable basis” to believe that a closed session could lawfully have been held).

While, under the OML, the court is permitted to award attorneys’ fees and costs to any successful party, the OML *requires* that when “a vote was taken in material violation of [the OML]” or “substantial deliberations relating thereto occurred in private

prior to such vote, the court *shall* award costs and reasonable attorney’s fees to the successful petitioner.” OML § 107 (emphasis added). The only exception to this rule is when “there was a reasonable basis for a public body to believe that a closed session could properly have been held.” *Id.* Here, the May 12 vote to suspend Dwyer Reynolds was taken in material violation of the OML, as there was insufficient notice for both the meeting and the topics to be discussed, and the vote was not recorded in meeting minutes. Further, substantial deliberations related to the suspension occurred during the six-run up Board meetings for which there exist no meeting minutes, recordings, or other substantial public records. Given the breadth of deliberations held during these meetings, which involved topics like basic agency governance and a plan to address issues in those operations, there was never any reasonable basis for the Board to think these meetings could be held behind closed doors. The Court would be hard-pressed to find a firmer basis on which to award fees and costs.

The Court also has the power under the OML to award “injunctive relief,” including an order that the Board undergo a “training session concerning the obligations imposed by [the OML]” conducted by state officials. OML § 107. Perhaps instruction from state officials—rather than local ones—can ensure future compliance. When board members have “repeatedly failed to comply with the clear and simple requirements” of the OML and express “reticence” in doing so, such training has been deemed appropriate. *Zehner v. Bd. of Educ. of Jordan-Elbridge Cent. Sch. Dist.*, 31 Misc. 3d 1218(A), 2011 WL 1549480, \*4-5 (Sup. Ct. Onondaga Cty. Jan. 20, 2011).

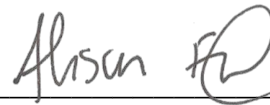
### CONCLUSION

“Democracy, like a precious jewel, shines most brilliantly in the light of an open government. The Open Meetings Law seeks to preserve this light.” *Daily Gazette*, 111

Misc.2d at 305. The Rochester Police Accountability Board’s decisions to snuff out that light not only offend the values of the State of New York, but pervert the agency’s own mission of “ensur[ing] public accountability and transparency.” To ensure this malfeasance is brought to an end and future violations are adequately deterred, the Petition should be granted and robust remedies imposed.

Dated: July 11, 2022

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