



VIA E-MAIL

June 15, 2020

Jenna E. Rousseau
Strang & Patteson
660 W. Washington Ave.
Suite 303
Madison, WI 53703

Dear Ms. Rousseau:

I have reviewed a copy of the letter that you sent to City Attorney Michael Haas on June 12, 2020, raising concerns about the proposed ordinance to create an Office of Independent Monitor and Civilian Oversight Board. I very much appreciate your invitation to engage with members of the former Ad Hoc Committee that recommended these and numerous other reforms related to the Madison Police Department, after four years of study. I write to respond positively to that invitation, and to clarify the import of our recommendations and explain why those recommendations do not encroach upon the statutory authority of the PFC, but rather are designed to enhance and facilitate the PFC's ability to perform its duties.

As you will recall, I was a Commissioner on the Board of Police and Fire Commissioners at the time that I was also co-chair of the City's Ad Hoc Committee that generated the recommendations at issue. I was, accordingly, very aware of the responsibilities and authority of the PFC. I was also aware of the structural impediments that at times made it difficult for the PFC to exercise its authority as fully as many of the Commissioners, myself included, would have liked. I am a firm believer in the role of the PFC and I, along with my fellow Ad Hoc Committee members, wanted to find ways to help the PFC function as effectively as possible.

While I agree with you that it is important to respect and preserve the statutory authority of the PFC, I want to be clear that none of the recommendations our Committee made will intrude on that authority. The new Independent Monitor and Civilian Oversight Board will indeed work on matters that come within the purview of the PFC, but they will not intrude on the authority of the PFC because, unlike the PFC, they will have no authority to make decisions or issue directives related to the matters reserved to the PFC. While they will, for example, have responsibility to review disciplinary decisions and processes and conduct independent investigations, they will have no authority to impose discipline, reverse disciplinary decisions, or mandate any other response by the Madison Police Department, the PFC, or any other body with statutory or ordinance-based authority over

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these matters. Their role will instead be simply to compile data and evidence and make *recommendations* based on what they find.

This is how they will actually work to facilitate the work of the PFC. The PFC, as a quasi-judicial body, especially one with no staff (aside from your assistance as legal advisor), does not have the capacity to undertake its own investigations, and does not have the authority to review policy matters outside those set forth in the statutes. During my time on the PFC the other Commissioners and I, along with previous legal counsel, had a number of conversations about the challenges presented by the fact that the PFC primarily addresses disciplinary matters in a reactive way, responding to complaints filed by individuals who were often unable to advocate well for themselves because they did not have counsel. The Independent Monitor and Civilian Oversight Board that the Ad Hoc Committee has recommended help the PFC review disciplinary actions by providing a method for investigating and developing facts in a regularized fashion, appointing counsel, and making *recommendations* (not final judgments) to the PFC. The Monitor and Board will facilitate access to the PFC process, not replace it.

Let me respond to some of the specific concerns you raised.

- You raise concern about the authority of the Monitor and Oversight Board to make “recommendations as to whether the Chief has satisfactorily performed his or her duties or whether the Chief has failed to perform satisfactorily, thereby constituting ‘cause’ for referral to the PFC with a recommendation for dismissal.”
 - You are absolutely correct that the “determination of whether ‘cause’ exists to discharge a chief rests with the PFC, including the procedure(s) applicable to making this determination,” but the Ad Hoc Committee’s recommendations do nothing to change that. This recommendation does not purport to give the Monitor or Civilian Board authority to make a binding determination about “cause,” or to affect in any way the PFC’s procedures for making this determination. It instead provides a systematic mechanism for affected people in this community to gain access to that PFC process and enable the PFC to make that determination, when reasons for concern about the Chief’s performance might otherwise never be exposed or raised. All the Monitor and Advisory Board can do is monitor the performance of the Chief and bring concerns to the PFC to enable the PFC to perform its responsibilities as it sees fit.
- You raise concerns about the recommendation that the Monitor and Civilian Board “[m]ake policy-level recommendations regarding discipline, use of force, and other policies; rules; hiring; training; community relations, and the complaint process,” and about the recommendation that the Monitor and Oversight Board submit an annual public report to the Mayor and Common Council on those matters.
 - Again, of course, you are absolutely correct that the statutes give the PFC exclusive authority to make hiring and disciplinary decisions, and to

establish processes for both. But again, nothing in these recommendations changes that. All the Monitor and the Civilian Board can do is review those policy matters—and many other matters not within the purview of the PFC (such as use-of-force standards, policies on responding to individuals with mental health problems, and many more)—and make *recommendations*. None of the PFC’s authority is invaded at all. To the contrary, this process just provides another avenue for community input to the PFC as it makes its determinations on those matters that are within its purview, and to other City officials with regard to the many more issues that the PFC does not handle.

- You raise concerns about those parts of the recommendations that would give the Monitor a role in assessing MPD determinations about department rule and policy violations and the appropriateness of disciplinary sanctions, and that would authorize the Monitor to access pertinent police files in order to do so. You write that “[t]he PFC must determine whether a rule or order has been violated, along with related considerations, for purposes of determining whether just cause exists to impose discipline. Thus, if another individual or body is performing this task, it will encroach upon the statutory powers and duties of the PFC.”
 - Again, however, nothing in this recommendation undermines or encroaches on the PFC’s authority to make those determinations, because the Monitor is not given authority to make any determinations that have any binding effect. This is a watchdog role, not a disciplinary role. After full implementation of this recommendation, the PFC will remain the only body with authority outside the MPD itself to impose discipline or reverse disciplinary decisions. This recommendation envisions a broader, community-based inquiry than the PFC performs—examining disciplinary policies and practices holistically and examining whether police policies are adequate and effective. All this does, again, is give the Monitor the ability to make *recommendations*—to the MPD, the PFC, the Mayor, and the Common Council.
- You also raise concerns that “the resolution does not address what the next step would be if the Committee and/or Monitor determines that a policy has been violated and discipline is warranted. For instance, who would file charges (or a complaint) before the PFC? Would that individual or body have standing to file charges or a complaint? Would the same individual or body investigate *and* prosecute the matter before the PFC?”
 - But the recommendation (and attendant resolution) *does* spell out all that’s needed in this regard: it makes clear that the Monitor has the authority to appoint counsel to help an individual file and prosecute a claim before the PFC. It does not authorize anything more than that, because it does not fundamentally alter the decision-making structures already in place. It just helps the community access those processes and stay informed about the work of decisionmakers. If the Monitor or Committee were to determine

that a policy was violated or discipline were warranted, and an aggrieved individual was not interested in pursuing a complaint, then the Monitor/Committee's report and conclusion would serve to create a public record and foster public debate. That alone is an important tool in a democratic society, especially one ravaged with concerns about police/community relations.

Now, more than ever, our community needs as much community-member input into policing as can be accommodated without undermining the legitimate functions of the police. The PFC is an important part of the mechanisms for civilian oversight and civilian input into policing, and we have no desire to undermine the PFC's important work. Simply put, the Monitor and Oversight Board envisioned by our Ad Hoc Committee will help the PFC perform its duties more effectively, equitably, and comprehensively; they will not displace the PFC in any way. It would be a disservice to both the PFC and the MPD if we were to inhibit any initiative to make police oversight more effective, transparent, and responsive to community needs. It is never a good time to minimize community input into policing. This would be a particularly bad time.

Finally, I want to reiterate my willingness to engage further with you, President Nia Trammell (and the full Board of Police and Fire Commissioners), and the City Attorney on these matters. Our Ad Hoc Committee has now finished its work and has dissolved, and so cannot meet with you as a Committee. But I am confident that a number of the former Committee members would be happy to join these conversations as well. As you know, the Common Council is creating a three-member Alder Workgroup to finalize the ordinance drafting on these matters, so perhaps a joint meeting with that Workgroup would be most productive.

Please let me know how I can help as we address and discuss these important issues.

Sincerely



Keith A. Findley

Cc: Nia Trammell, President of the PFC (via e-mail)
Michael Haas, City Attorney (via e-mail)
Marci Paulsen, Assistant City Attorney (via e-mail)
All Madison Alders (via e-mail)