

Item 4.a.

January 17, 2024 Special Meeting Minutes

MINUTES
JANUARY 17, 2024 SPECIAL BOARD MEETING
CITY OF DELRAY BEACH POLICE OFFICERS' RETIREMENT SYSTEM

1. CALL TO ORDER, ROLL CALL

Chair Weber called the meeting to order at 10:06 a.m.

Board Members present: Chair Paul Weber, Vice-chair Jim Hoesley, Secretary Jeffrey Rasor, Meer Deen, and Scott Privitera.

Also present: Pedro Herrera (Sugarman, Susskind, Braswell & Herrera as designated by City Attorney), Lisa Castronovo (City of Delray Beach), and Elizabeth Brown (City of Delray Beach)

Public attendees: Ronald Cohen, Robert Buschel, Nicole Lucas, Victoria Neil, Lynn Gelin, Duane D'Andrea, Vincent Gray

2. AGENDA ADOPTION

MOTION made by Mr. Rasor, seconded by Mr. Deen, to adopt the January 17, 2024 Special Board Meeting Agenda as amended to move Item 4.b. in front of Item 4.a. In a voice vote by the members present, **Motion** passed 5-0.

3. COMMENTS

- a. Public Comments – None
- b. Board of Trustees of Police Officers' Retirement System - None
- c. Active and Retired Members of the System – None

4. Consideration of Motions for Disability Applicant Nicole Lucas

Mr. Herrera summarized Ms. Lucas's application and initial disability hearing history to date. Mr. Herrera said Ms. Lucas's attorneys had filed several motions which they were presenting.

Mr. Cohen presented introductory remarks and emphasized that his and Ms. Lucas's motives were pure and presented with respect. He asked the trustees to consider the motions with the best intentions.

b. Motion to Recuse Board Member

Mr. Cohen's first motion was for Mr. Privitera to recuse himself from all aspects of Ms. Lucas's disability application process since Mr. Privitera was one of the people sent to Ms. Lucas's house to relieve her of duty. With Mr. Privitera on the panel, Ms. Lucas felt she would not receive a fair trial since he was professionally involved with her employment. Mr. Cohen argued that the Florida Supreme Court ruled that something like this had to be looked at from the litigant's point of view, not the Board's. Ms. Lucas sued Mr. Privitera as part of her lawsuit with the City and later released him from the suit, but still felt she would not get a fair hearing with him sitting on the Board in judgment of her.

Mr. Herrera told the trustees that legally, there was no conflict, but if Mr. Privitera felt he could not remain neutral, he could recuse himself. Mr. Privitera said when it came to the submitted documents, he could review them impartially and that he did not feel he had a conflict. Mr. Privitera added that while he was named in Ms. Lucas's lawsuit with the City, he had been dropped as his involvement in her case was minimal. When asked, Mr. Privitera said his only involvement with Ms. Lucas was to relieve her of duty.

Mr. Herrera told the trustees the statute Mr. Cohen cited as the reason Mr. Privitera should

recuse himself did not apply to the Board and its proceedings. Further, just because Mr. Privitera had professional knowledge of the circumstances around Ms. Lucas's relief of duty did not mean he was legally conflicted. Mr. Cohen countered that Mr. Privitera's professional knowledge of what happened could affect how he and the other trustees voted. Further, from Ms. Lucas's perspective, Mr. Privitera sitting on the panel that would hear and review her case was unfair.

MOTION made by Mr. Hoesley, seconded by Mr. Razor, to deny Ms. Lucas's motion for the recusal of Scott Privitera. In a roll call vote by the members present, **Motion** passed 4-0 (Mr. Privitera abstained).

a. Motion to Select Physician Other Than Dr. Goldschmidt

Mr. Cohen reviewed the City Ordinance directing the board to, once a disability application has been submitted, form a medical board composed of at least one physician who specializes in the applicant's disability. Mr. Cohen stated the Board did not establish a medical board as mandated and therefore had waived its right to form the medical board.

Mr. Cohen read aloud parts of various depositions given by Dr. Goldschmidt in which he made inappropriate comments about women's underwear, women lying as much as convicted felons, and Hispanics who see things that are not there.

Based on comments made by Dr. Goldschmidt, Mr. Cohen said his client would accept any psychiatrist except him. Mr. Cohen continued that out of 900 psychiatrists in the tri-county area, the Board had only been presented with one to use – Dr. Goldschmidt. Also, when a particular duty is given to a board, they have a duty to do their job, not give it to someone else (i.e. attorney). Mr. Cohen concluded that all Ms. Lucas requested was to see a different psychiatrist for her independent medical exam (IME).

Mr. Herrera asked Mr. Cohen if the basis for his motion was that Dr. Goldschmidt discriminated against women and was a racist. Mr. Cohen replied "yes" coupled with the documented incident of Dr. Goldschmidt attacking a videographer. Mr. Cohen reiterated that Ms. Lucas would go to any other doctor the Board selected and was fine with letting Mr. Herrera make such selection.

MOTION made by Mr. Deen, seconded by Mr. Hoesley, to grant Ms. Lucas's motion in part for the Board to select a psychiatrist other than Dr. Goldschmidt. In a roll call vote by the members present, **Motion** passed 4-1 (Mr. Razor voted "nay").

MOTION made by Mr. Razor, seconded by Mr. Deen, to deny Ms. Lucas's motion in part that the Board waived its obligations under Florida Chapter 185 and the City Ordinance to select an independent medical board for disability proceedings as it delegated such authority to their legal counsel as allowed. In a roll call vote by the members present, **Motion** passed 5-0.

c. Motion to Prohibit the Examiner from Giving an Opinion on the Applicant's Credibility

Mr. Buschel said the IME examiner should not be allowed to provide any opinion on the applicant's credibility, i.e. the doctor can't say "I think she's lying."

MOTION made by Mr. Deen, seconded by Mr. Razor, to deny Ms. Lucas's motion to prohibit the IME examiner from giving an opinion on Ms. Lucas's credibility. In a roll call vote by the members present, **Motion** passed 5-0.

d. Motion to Preserve Raw Test Data

Mr. Buschel said the motion was a request to direct the IME examiner to maintain and

preserve all data used in the IME (i.e. written tests, notes taken). Mr. Herrera said he was okay with the motion, but data retention would depend on whether the examiner routinely maintained the data as the Board could not compel the examiner to do something that was not their routine practice. Further, the data could only be seen at the disability hearing(s); it would not be provided under any public records request.

MOTION made by Mr. Razor, seconded by Mr. Deen, to deny Ms. Lucas's motion to preserve raw test data subject to formal engagement and the examiner's routine practices. In a roll call vote by the members present, **Motion** failed 2-3 (Chair Weber, Mr. Privitera, and Mr. Hoesley voted "nay").

MOTION made by Chair Weber, seconded by Mr. Privitera, to grant Ms. Lucas's motion to preserve raw test data subject to formal engagement and the examiner's routine practices. In a roll call vote by the members present, **Motion** passed 3-2 (Mr. Razor and Mr. Deen voted "nay").

e. Motion for Protective Order

Mr. Buschel said this motion was a request for videographer (and/or other interested parties) to be present during the IME with all associated costs covered by Ms. Lucas.

Mr. Herrera said if the Board was okay with allowing a videographer or an attorney to be present during the IME, then it should accept the motion, though it might limit the pool from which to select the examiner.

MOTION made by Mr. Deen, seconded by Mr. Razor, to grant Ms. Lucas's motion for protective order with the understanding that any and all additional associated costs be paid by Ms. Lucas. In a roll call vote by the members present, **Motion** passed 5-0.

ADJOURNMENT

The meeting adjourned at 12:04 p.m.

I, Paul Weber, the undersigned, am the Chair of the Board of Trustees of the City of Delray Beach Police Officers' Retirement System ("Board"). The information provided herein is the Minutes of the January 17, 2024 special meeting of said body. These Minutes were formally approved and adopted by the Board on May 16, 2024.

Board of Trustees, City of Delray Beach
Police Officers' Retirement System

NOTE TO THE READER: If the Minutes you have received are not complete as indicated above, this means these are not the official minutes of the Board of Trustees of the City of Delray Beach Police Officers' Retirement System. Minutes will become official only after they have been reviewed and approved, which may involve some amendments, additions or deletions to the Minutes as set forth above.

NOTE: upon official approval by the Board of Trustees, the Minutes will be posted on the City of Delray Beach website at: www.delraybeachfl.gov.