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Los Angeles City Council
200 North Spring Street
Los Angeles, Ca. 90012

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Honorable Members:

It is my understanding that the City Council is currently considering possible changes to the composition of the Los Angeles Police Department's Board of Rights panel. One of these changes would entail the replacement of the two sworn department members with civilians; thereby establishing a panel of three civilian members only.

As I currently serve as a civilian member of the Board of Rights and have done so since its inception in its present form, I have gained what I believe to be considerable insight into its effectiveness as well as its shortcomings with regard to the composition of the panel as it is presently constituted. I would, therefore appreciate the opportunity to offer for your consideration some of my thoughts on this matter.

Positive Aspects of Change:

In the case of a directed hearing where the Chief of Police has determined that an officer has committed serious misconduct, it is generally understood to mean that the Chief expects that, following a hearing where the evidence points to the guilt of the petitioner, a termination of employment will follow. With an understanding of the Chief's state of mind concerning the guilt of the officer, it is understandable that the sworn Board members would be under considerable pressure to conform to his views of the case. This could conceivably skew a decision by the Board against the petitioner. On the other hand, a Board composed entirely of civilian members would be under no compulsion to yield to pressures from the Chief and it is anticipated that decisions with respect to guilt or innocence would be more justly arrived at. Even if outcomes remain the same, a civilian Board would engender feelings of greater confidence in the integrity of the process by the public and members of the department and, at least, give the appearance of fairness.

On a personal note, having served on countless Boards of Rights over my many years of service, I have never directly encountered any concerns by the sworn members with regard to the Chief's position on any particular case.

Negative Aspects:

In the event that the City Council decides to seek a charter change and present the matter for a vote of the electorate, it is likely that placing the measure on the ballot would be an added expense which could be costly. That would not be the end of it. The Police Commission would have to greatly expand the size of its present panel to accommodate the change in Board composition. In so doing it would have to advertise for the position and invite members of the public to apply. The department would have to carefully screen applicants, and place the newly-appointed members through a rigorous training program with compensation paid for their time while in training. Currently, only the single civilian board member is paid; the sworn members receive their regular salaries while serving on a Board of Rights. Adding two civilian members to the board would triple the cost to the taxpayer.

The unique nature of the department's functions and use of specialized equipment, its culture and its legal responsibilities would have to be learned and understood by the newly-appointed civilian members in the context of what constitutes misconduct. These issues appear and re-appear during the course and scope of a disciplinary hearing and a clear understanding of them is key to making a correct and just decision with respect to the outcome of an appeal. A little white lie may be acceptable in general public discourse but in the performance of the police function, under the ruling of the leading case of *Brady v. Maryland*, it may be a career-ender for an officer who may be required to testify in court. Thus, making a false and/or misleading statement in the course and scope of performing one's duties as a police officer is never acceptable and must never be treated nonchalantly. Sworn members understand this; civilians sometimes have difficulty grasping this.

Disciplinary hearings are not intended to be protracted matters such as may occur in a criminal court case. The standards of proof are different and in an administrative proceeding such as a Board of Rights, all that is required is for the department to prove its' case by a preponderance of evidence. That is, that the evidence presented by the department makes it more likely than not that the accused officer did, in fact, engage in some form of misconduct. A board consisting entirely of civilians, presumably all of whom would be lawyers with some experience in the practice of criminal law, could result in unnecessary delays such as is sometimes found in criminal trials. It could become overly legalistic as well with the filing of motions (sometimes frivolous) that would not be helpful either to the department or to the petitioner and could result in a serious and costly backlog to the system of administrative justice.

Finally, is there any evidence that would point to the need for a change? If a showing can be made that an accused officer would get more fair and just treatment before a full civilian board than before a board as presently constituted then perhaps a change would be in order. I have seen no such evidence.

Sincerely,



Jerry Ellner

Civilian Hearing Officer, LAPD Board of Rights