



**STATE OF ILLINOIS
TORTURE INQUIRY AND RELIEF COMMISSION SPECIAL MEETING
Wednesday, July 16, 2014, 3:00 p.m.**

James R. Thompson Center
100 W. Randolph Street, Meeting Room 2-025
Chicago, Illinois 60601

MINUTES

PRESENT:

Commissioners

Chairman Cheryl Starks
Leonard Cavise
Charles Dahm
Craig Futterman (non-voting alternate to Commissioner Cavise)
John Mathias
Paul Roldan
Natalie Scruton (non-voting alternate to Commissioner Mathias)

Staff on dais

Barry Miller (Executive Director)

I. Call to Order/Members Present

On July 16, 2014, at approximately 3:07 p.m., Chairman Cheryl Starks called to order the meeting of the Illinois Torture Inquiry and Relief Commission (TIRC). Chairman Starks and Commissioners Cavise, Dahm, Mathias, and Roldan were present, constituting a quorum. Alternate Commissioners Futterman and Scruton were also present. Chairman Starks introduced Natalie Scruton, who had been appointed an Alternate Commissioner.

II. Approval of Minutes

Chairman Starks called for a motion to approve the June 18, 2014 minutes. Commissioner Cavise stated that he would like the minutes amended to indicate that during the discussion of the Claim of Jaime Hauad, he had asked if a dissent or a minority report could be filed and the Chair had told him it could not. Judge Starks agreed and requested a motion to approve the June 18,

2014 minutes as amended by Commissioner Cavise. Cmsr. Mathias moved to approve the minutes, as amended. The motion was seconded and carried unanimously.

III. Executive Director's Report

Director Miller stated that most of the business for this meeting focused on the second notice of the Commission's proposed administrative rules amendments.

He also noted that:

- The commission had begun the process of moving the office within the Thompson building to the 10th floor and that the move should be completed within a week.
- Commission staff had continued to coordinate with the Special Master appointed by Judge Beibel to identify potential Burge victims and assist in obtaining counsel for them.
- The Commission had not completely resolved its relationship with the Attorney General's Office. The Attorney General's representation is required, under the Illinois Constitution, for court matters, such as obtaining impounded evidence from court files. A meeting had been arranged with Judge Starks and the Attorney General's Office for later in the week to try to expedite the process.
- The Commission staff also had not been able to expedite obtaining information from the Chicago Police Department. Director Miller had attempted to arrange a meeting with the General Counsel of the Police Department, but had not yet succeeded.

Cmsr. Cavise asked Director Miller to elaborate on issues between the Commission and the Attorney General's Office and the Chicago Police Department.

- Director Miller stated that the Attorney General's Office had not, so far, agreed to work in the most expeditious manner with the Commission and he hoped that procedures could be worked out to expedite the Attorney General's response when court action is requested by the Commission.
- The Chicago Police Department general counsel had been approached to discuss expediting information exchanges but had not yet been responsive.

Cmsr. Mathias also inquired about the nature of the discussion with the Attorney General's Office. Director Miller noted that, for instance, the Attorney General's Office had suggested that the Commission apply for a court order separately for each case in which it seeks impounded evidence. Staff believed that seeking a blanket order covering all cases would be more efficient, Director Miller said.

Chairman Starks suggested that the Commission draft suggested motions for the Attorney General as a way to expedite matters.

Cmsr. Futterman asked about the State's Attorney's cooperation regarding victim information.

Director Miller responded that the State's Attorney's Office said it did not have the resources to identify victims in every case and that the Office wanted the Commission to locate victim information. The State's Attorney's Office said that if the Commission had problems locating victims in a particular case then the Office would check its files for victim information. This was

the consensus of senior leadership of the State's Attorney's Office as expressed in a meeting with Commission staff.

Chairman Starks noted that the State's Attorney's Office should have victim information in every case because victim cooperation is usually needed to prosecute the case. She and Commissioner Mathias expressed disappointment with the State's Attorney's Office's approach to assisting the Commission with victim identification.

Director Miller noted that the Commission's staff is continuing to identify and notify crime victims and in those cases where it could not locate them, it requested and received some assistance from the State's Attorney's Office.

IV. Amendments to Commission Administrative Rules

Director Miller discussed the Commission's ongoing process of amending its Administrative Rules. He noted that the minimum initial notice period for the Commission's proposed rules had expired. Staff had prepared a second set of proposed revised rules.

The Illinois procedure for proposing rule amendments requires that a first notice be given and that a second notice be provided after comments are received. Many of the new amendments were based on comments the Commission received from the Secretary of State, the Joint Commission on Administrative Rules (JCAR), and Mr. Joe Heinrich on behalf of certain crime victims and their family members. Other were based on the Commission's response to issues that had arisen. If the rules were approved by the Commission at the meeting, JCAR could consider them at its August meeting. Formal approval by JCAR would streamline the procedures for the Commission.

Director Miller noted that the rules were codified in two Parts. He first discussed Part 3500.

The Director noted that various forms, such as the waiver form, were taken out of the Rules in the first proposal, but reinstated at JCAR's suggestion. Some forms, such as subpoena forms, were not reinstated, but rather their contents were described in the revised draft rule.

The Director noted there has been no change to section 3500.310c discussing the right of victims to speak at meetings since the Commission approved it.

Cmsr. Cavise stated that while "victim" is a defined term of the statute, there are really four types of victims: (1) the victim of the torture, (2) the victim of the underlying crime, (3) the families of the victim of the underlying crime, and (4) the families of the torture victims.

Director Miller noted that torture claimants' input is received through interviews with Staff, which are recorded and presented to Commissioners.

Commissioner Cavise felt torture claimants' next-of-kin should be given standing in the rules to address the Commission before it renders a decision. Commissioner Cavise made a motion to amend the proposed rules to that effect. After some discussion, Commissioner Mathias seconded the motion. The motion carried unanimously.

Director Miller then reviewed other new changes to the rules, which included:

- clarifying claim filing deadlines and procedures;
- adding language to conform the waiver form to the language of the statute;
- deleting references to the summary referral process, which was eliminated in the first draft;
- clarifying that the investigation process is conducted by staff on behalf of the full Commission;
- deleting the overbroad requirement that every witness interviewed (such as hospital staff when records are sought, for example) be informed of the right against self-incrimination;
- clarifying that non-party witnesses are entitled to be represented by counsel but clarifying counsel's limited role;
- deleting the prohibition against staff testifying at hearings;
- making formatting changes;
- clarifying crime-victim notification periods at the conclusion of an informal inquiry, such as in the case of a summary dismissal; and
- clarifying that the Commission has latitude to consider any factors in reaching its decisions.

Director Miller then discussed the new changes to Part 2000 of the rules.

The definition of "tortured confession," was briefly discussed by Commissioners.

Commissioner Cavise revisited the definition of "related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge." He believed it should be broad enough to examine all claims of torture alleged against Chicago police and not just those committed by Burge and his former subordinates. Without that provision, he said he would have to vote against the rules changes. Director Miller pointed out that that the language in question was previously approved by the Commission before First Notice on the rules changes was made.

Director Miller then reviewed other new changes, including:

- italicizing terms in the definition of "torture;"
- clarifying the scope of discovery the Director may take on behalf of the Commission;
- adding language on the content of subpoenas to permit variations in specific subpoenas;
- clarifying that recording of minutes will continue but minutes may be substituted in the event of a recording failure;
- adding statutory language to the waiver form; deleting subpoena forms; and
- deleting the copying fees schedule.

Commissioners Roldan, Mathias and Cavise, Chairman Starks and Director Miller discussed the previously approved change that accepts for filing those claims unrelated to Burge or his subordinates, but takes no action on them until and unless the appellate courts indicate the Commission has jurisdiction over those claims. Commissioner Cavise again expressed disagreement with the Commission's interpretation in the *Hauad* case that it does not have jurisdiction over cases unrelated to Jon Burge.

Director Miller requested the Commission approve or not approve the proposed rules changes subject to any form changes that are required to be made by JCAR, and including the change submitted by Commissioner Cavise regarding the right of a claimant's next-of-kin to speak. (The wording of the latter change would be subject to final approval by the Chair before submission to JCAR.) Cmsr. Mathias made a motion for approval and Cmsr. Roldan seconded. The vote carried 4-1 in favor of the rules changes, with Commissioner Cavise dissenting.

VI. Public Comment

Mary Johnson (the mother of claimant Michael Johnson) addressed the Commission. Ms. Johnson said police threatened her son with her arrest to extract a confession. She asked the Commission if her experience was considered torture. Chairman Starks responded that the Commission's main priority is to focus on the victims of torture that are currently incarcerated. Cmsr. Futterman added that torture is not just physical it is also mental, and verbal threats could conceivably be included into a claim of torture by Michael Johnson.

VII. Miscellaneous

Commissioner Cavise requested that the claim of Jamie Hauad be put on the agenda for the next meeting so that the vote could be reconsidered. Chairman Starks and Commissioner Mathias expressed opposition, with Commissioner Mathias noting that the motion might not be put on the next agenda because Robert's Rules of Order do not allow a Commissioner not on the prevailing side of a vote to call for its reconsideration.

VIII. Adjournment

The meeting was adjourned at approximately 4:15p.m.

Judge Starks stated that the next meeting is scheduled for September 17, 2014.