



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: January 26, 2023

AGENDA TITLE

Consideration of a motion appointing Claybourne M. Douglas as Special Counsel to investigate and, if necessary, prosecute a complaint filed pursuant to § 2-7-10(c), Boulder Revised Code, 1981.

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Teresa Taylor Tate, City Attorney

EXECUTIVE SUMMARY

This matter arises out a complaint filed pursuant to § 2-7-8, Boulder Revised Code, 1981.

STAFF RECOMMENDATIONS

Suggested Motion Language

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to request special counsel to investigate and, if necessary, prosecute a complaint filed pursuant to § 2-7-10(c), Boulder Revised Code, 1981, and to appoint Claybourne M. Douglas as Special Counsel.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic:** None.
- **Environmental:** None.
- **Social:** Careful and independent investigation of ethics complaints supports community trust in government.

OTHER IMPACTS

- **Fiscal-Budgetary:** Mr. Douglas’s hourly rate is \$250.
- **Staff Time:** The City Attorney’s Office will provide any necessary support.

BOARD AND COMMISSION FEEDBACK

None.

PUBLIC FEEDBACK

None.

BACKGROUND

On January 19, 2023, John Neslage filed a complaint with the city clerk alleging violations of section 2-7-8, B.R.C., 1981. A copy of the complaint is **Attachment A**. Section 2-7-10(b)(2), B.R.C., 1981 provides as follows:

A resident of the City or any city employee may initiate an investigation of any city council member, employee or appointee to a city board, commission, task force or similar body by filing a sworn statement with the city clerk setting forth facts which, if true, would constitute a violation of a provision of this chapter.

Mr. Neslage’s original complaint was not sworn. Accordingly, the city clerk informed Mr. Neslage that no further action would be taken until he submitted a sworn statement. Later, on January 19, 2023, Mr. Neslage supplied an appropriate verification of the complaint. The filing of a sworn complaint triggers an obligation of either the city manager or the city council; depending on the subject of the complaint, to refer the complaint to the city attorney for investigation and prosecution. This referral is mandatory. The code does not provide for any discretion. Here, the complaint is filed by a community member, therefore the Council “shall request the city attorney to conduct an investigation regarding a violation of this chapter.” § 2-7-10(c), B.R.C. 1981. This request does not reflect any decision regarding the merits of Mr. Neslage’s complaint, because the referral is required by the city code.

The code further provides:

The city attorney may request that the city council appoint special counsel to investigate and prosecute any case that may cause the city attorney to have a conflict of interest or may cause an appearance of impropriety under the provisions of this chapter or may violate any rule regarding professional responsibility § 2-7-10(c), B.R.C. 1981.

The city attorney provided legal advice to the Selection Committee during this selection process at the direction of city council. The city attorney believes it would be a conflict of interest to now investigate the Selection Committee regarding a complaint related to the selection process. Therefore, the city attorney requests that council appoint special counsel to investigate and, if necessary, prosecute Mr. Neslage's complaint.

The city attorney contacted Claybourne M. Douglas who has agreed to act as special counsel if council approves the appointment. Mr. Douglas has extensive municipal law experience, including serving as Special Counsel to the Ethics Review Board on conflict-of-interest ethics and conducting a previous investigation of a code of conduct complaint for the City of Boulder. A copy of his resume is **Attachment B**.

OPTIONS

Council has the option of appointing special counsel or requiring the city attorney to conduct the investigation.

ATTACHMENTS

Attachment A – Complaint with Exhibits

Attachment B – Claybourne Murray Douglas Résumé

Attachment A – Complaint with Exhibits

From: [City Clerk's Office](#)
To: [John Neslage](#); [City Clerk's Office](#); [City Clerk's Office](#)
Cc: [Tate, Teresa](#); [Rivera-Vandermyde, Nuria](#); [Llanes, Sandra](#); [Poe, Erin](#)
Subject: RE: Confirming Receipt and Sufficiency of Code of Conduct Complaint w Exhibits and Sworn Statement
Date: Thursday, January 19, 2023 6:30:29 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Mr. Neslage,

Your complaint has been received and will be reviewed and processed in accordance with the Boulder Revised Code.

I will keep you abreast of the progress.

Elesha

From: John Neslage <john.neslage@sbcglobal.net>
Sent: Thursday, January 19, 2023 4:16 PM
To: City Clerk's Office <cityclerksoffice@bouldercolorado.gov>; City Clerk's Office <cityclerkstaff@bouldercolorado.gov>
Subject: Confirming Receipt and Sufficiency of Code of Conduct Complaint w Exhibits and Sworn Statement

External Sender

City Clerk and Staff,

Would you please confirm receipt and sufficiency of the filing earlier today referenced below?

Thank you,
John

Begin forwarded message:

From: John Neslage <john.neslage@sbcglobal.net>
Date: January 19, 2023 at 1:03:19 PM MST
To: City Clerk's Office <cityclerksoffice@bouldercolorado.gov>, cityclerkstaff@bouldercolorado.gov
Cc: Teresa Tate <tate@bouldercolorado.gov>, Sandra Llanes <llanes@bouldercolorado.gov>, poe@bouldercolorado.gov
Subject: Code of Conduct Complaint w Exhibits and Sworn Statement

Boulder City Clerk and Staff:

Pursuant to City of Boulder Municipal Code Title 2, Chapter 7, I am filing a complaint for a Code of Conduct violation by the Selection Panel for the Police Oversight Panel. The Panel signaled their unwillingness to comply with the applicable ordinance governing qualifications of panel members by renominating the same candidate despite demonstrated bias, prejudice and conflict of interest. Additionally, this candidate also fails to satisfy another stated precondition requiring an ability to build working relationships and communicate effectively with diverse groups.

Determination of bias is not in the opinion of the nominee, but rather from the perspective of the persons to be governed/overseen by this Oversight Panel. The nomination of Lisa Sweeny-Miran by this panel demonstrates their intention to use whatever criteria they feel like, rather than those criteria carefully deliberated and codified into Ordinance 8430.

I will include by separate email certain social media posts by Ms Miran which clearly demonstrate bias, which is generally understood to mean a tendency to prefer one person or thing to another, and to favor that person or thing. While she has a First Amendment right to her opinions, she does not have a First Amendment right to be on this Police Oversight Panel, nor does the Selection Panel have the right to disregard clearly worded ordinances governing the process.

I will also add that the social media posts have been deleted by Ms Miran, which should be taken as an her own admission of their poor reflection of her candidacy and obvious bias. She is also an attorney and should be held to a much higher standard, including her duty of candor owed to a deliberative body, which she is also violating by claiming she is unbiased and trying to advance her candidacy.

Further, I would add in the words of the great American poet Maya Angelou, "When someone shows you who they are, believe them."

Please keep me apprised of progress in this matter. Applicable exhibits showing both perceived and actual bias of candidate follow below.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 19, 2023.

Thank you,
John Neslage
Boulder Resident and Concerned Citizen

Exhibits: Please review these in light of Ordinance 8430, Section 1, Chapter 2-11-6 (a)(9).

They clearly demonstrate a perceived bias, not to mention an actual one. Especially from the perspective of a police officer. Imagine a self proclaimed racist adjudicating claims against a historically oppressed minority defendant, or a misogynist sitting in judgment of a woman's allegation of harassment. Wouldn't there be at least a perception of bias in both instances? She has also added the hashtag #abolitionist to her new Mastodon account. Res ipsa loquitur - the thing speaks for itself.





Lisa Sweeney-Miran @LSweeneyMiran · Sep 6

Another day, another excuse to drive a tank down city streets.

I guess if you spend all our tax money on expensive toys you need to pretend to have reasons to take them out and show them off. #Boulder

Boulder Police Dept. @boulderpolice · Sep 6

If you're seeing a large police presence in the 3100 block of Pearl Parkway right now we just executed a search warrant. More information to come out later today. There is no threat to public safety #boulder

[Show this thread](#)



5

9

69



[Show this thread](#)



Lisa Sweeney-Miran @LSweeneyMiran · Sep 6

...

The armored vehicle and weapons ***are a threat to public safety***

This isn't a war zone, [@boulderpolicy](#), it's a busy downtown street next to several large housing complexes, restaurants, and a hotel. Do better.



Boulder Police Dept. @boulderpolicy · Sep 6

Replying to @TheCultClassics

We use our armored rescue vehicle to protect officers and the community during dangerous operations. There was no threat to public safety after the search warrant was executed

16

8

78

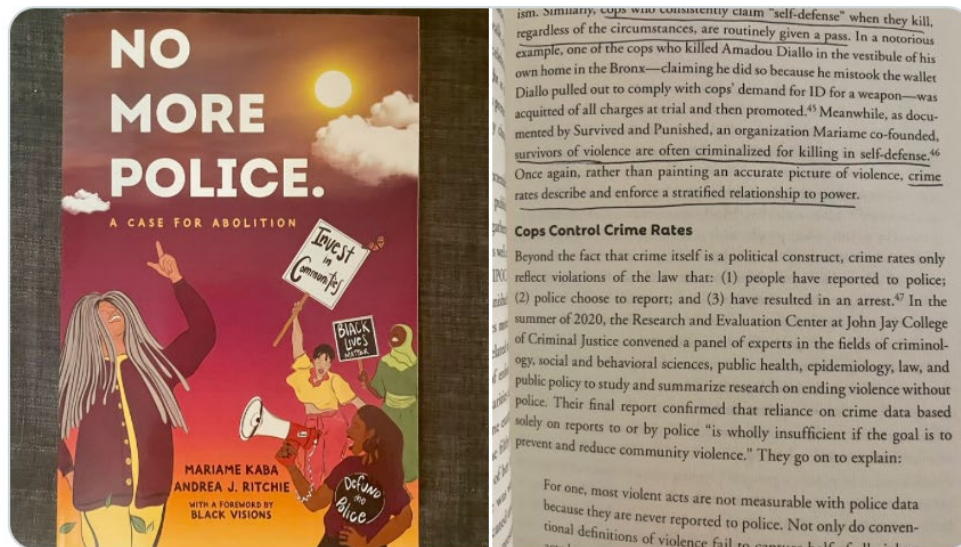




Lisa Sweeney-Miran ✓
@LSweeneyMiran



Got my copy of **No More Police: A Case For Abolition** just in time to set it aside for tonight's Boulder City Council discussion on policing the unhoused. Can't wait to dig in more - so far every page is 🔥. Incredible work from [@prisonculture](#) and [@dreanyc123](#)! Get yours today.



7:42 PM · Sep 1, 2022 · Twitter for iPhone

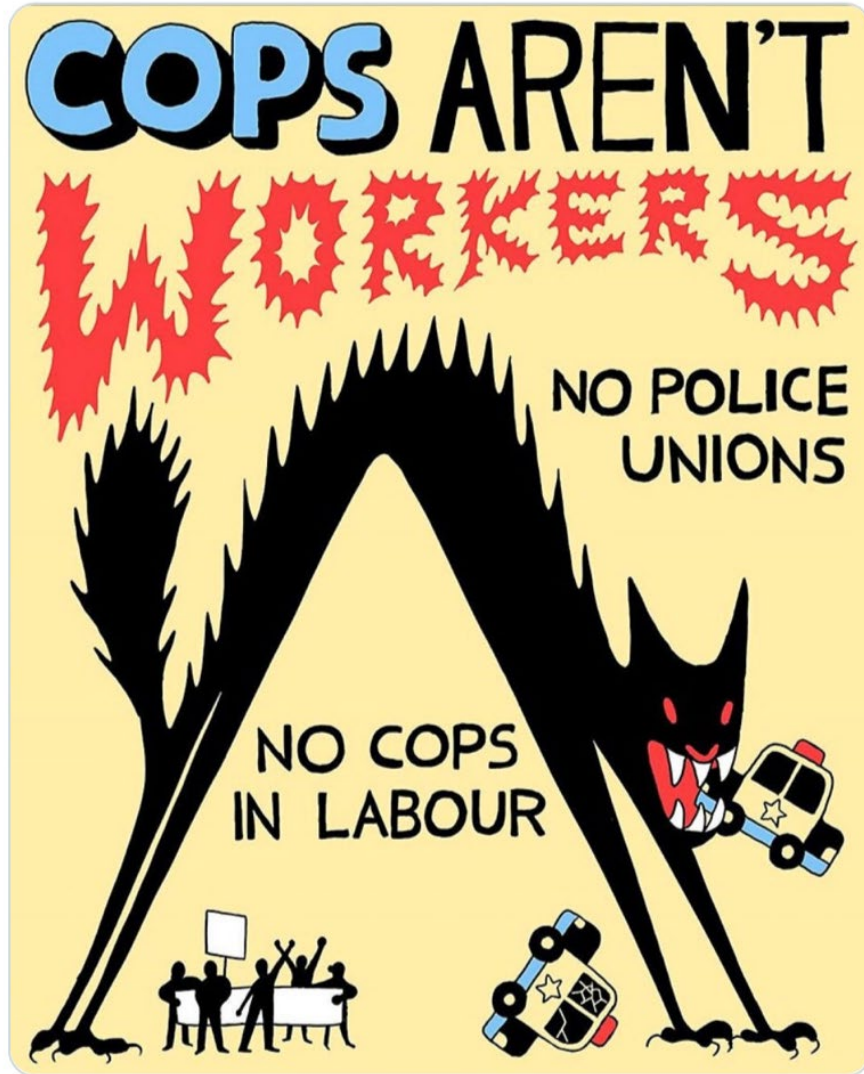
15 Retweets 2 Quote Tweets 70 Likes



↳ Lisa Sweeney-Miran Retweeted



Bloc from the Block @161_BKLYN · Sep 3



4

↳ 4,835

♥ 24.4K



[Show this thread](#)

CLAYBOURNE MURRAY "CLAY" DOUGLAS
Résumé

PROFESSIONAL EXPERIENCE:

Municipal Law

Claybourne M. Douglas, Municipal Law Consulting

Principal (July 2018-present)

Legal consulting for municipalities and municipal attorneys. Examples:

- Hearing Officer engaged for various matters, including code enforcement, land use, taxes, and elections;
- Special Counsel to Ethics Review Board on conflict-of-interest ethics complaints against City Council members;
- Special Counsel to town on reactivating its dormant municipal court; revising court ordinance, penalties, penalty assessment notices and municipal court local rules; recruiting new judge.

City of Loveland, Colorado

City Attorney and Interim City Attorney (November 2016-March 2018)

Chief legal counsel to Colorado home rule city of over 76,000 people; manage 7.5 FTE Municipal Law office, including: advice and representation on City Council matters; elections; open meetings; open records; Downtown Development Authority; Urban Renewal Authority; business improvement, metropolitan and other special districts; economic development; municipal property leases and donations; finance; home rule; immigration; municipal court; parks and recreation; intergovernmental agreements; water, power and telecommunications enterprises (including municipal broadband).

Michow Cox & McAskin LLP, Greenwood Village, Colorado

Contract Attorney (August-November 2016)

Advice, research and drafting on sign codes.

Hoffmann, Parker, Wilson & Carberry, P.C, Denver, Colorado.

Contract Attorney (January-November 2016)

Advice, research and drafting on sign codes, telecom tower height limits; sales and use tax matters.

City of Boulder, Colorado

Senior Assistant City Attorney (November 2009-March 2015)

Advised and represented departments of Planning, Development and Building Inspection; Human Resources; Open Space and Mountain Parks; Housing and Human Services; City Clerk; Municipal Court; Police; all departments on open records and open meetings; successfully represented Police Department in CORA and CCJRA actions seeking JonBenét Ramsey murder investigation records; successfully advised and represented Open Space and Mountain Parks Department in legal actions and negotiations to preserve public open space access.

Town of Lyons, Colorado

Hearing Officer, and Special Counsel (March-August 2009)

Heard, decided, and advised on code enforcement and land use matters.

CLAYBOURNE MURRAY "CLAY" DOUGLAS
Résumé

City of Longmont, Colorado

City Attorney (January 1988-December 2008)

Chief legal counsel to Colorado Home Rule City of over 85,000; managed 8.5 FTE municipal law office. Accomplishments include: Working closely with staff to write, implement and enforce: inclusionary zoning and other affordable housing measures; sexually oriented business zoning and licensing ordinances; police pay freeze (defeating federal court due process and contract claims); private utility undergrounding ordinance; nuisance (including meth lab) abatement ordinance; winning 20-year legal dispute over hunting and pedestrian access on City's water reservoir and preserve.

City of Boulder, Colorado

Special Counsel (2007)

Advised City Council whether reckless driving conviction disqualified Council Member, under city charter.

Boulder County Recycling and Composting Authority, Boulder, Colorado

Designated Attorney (1997-2002)

Advised and represented Authority on recycling and composting issues and intergovernmental contracts.

City of Littleton, Colorado

Special Prosecutor (1980-1988)

City and County of Denver, Colorado

Special Prosecutor (1986)

Prosecuted Judge for shoplifting.

City of Aurora, Colorado

Deputy City Attorney (June 1986-January 1988)

Managed seventeen-person municipal law office; handled special civil work, liquor license suspensions and revocations, drafted and implemented ordinances.

Managing Municipal Prosecutor (October 1980-June 1986)

Supervised 17-person office; handled special civil litigation. Examples: Briefing to Colorado Supreme Court in successful action to close Denver's hazardous waste dump; legislative drafting and lobbying; Federal Court litigation for NEPA violations; successfully handled numerous appeals to U.S. Supreme Court, Colorado Supreme Court, and Court of Appeals; selected, trained, and managed attorneys and support staff; prepared and managed budgets; drafted and implemented ordinances; special counsel work for other cities.

Assistant City Attorney (September 1977-October 1980)

Prosecuted ordinance violations and supervised six-person law office. Examples: Tried numerous court and jury trials; handled numerous Colorado Supreme Court appeals; established and maintained basic office systems; selected, trained, and supervised attorneys and support staff.

CLAYBOURNE MURRAY "CLAY" DOUGLAS
Résumé

Municipality of Anchorage, Alaska

Assistant Municipal Attorney (January 1976-April 1977)

Advised and represented Public Works, Planning and Zoning, Health, Collections departments and School District; prosecuted ordinance violations. Examples: litigated public works contract claims; drafted contracts, leases, and other documents; litigated equitable actions and appeals challenging zoning decisions; handled criminal trials, appeals, argument, and briefing; litigated civil collection cases.

Greater Anchorage Area Borough, Alaska

Assistant Borough Attorney (May 1973-November 1974)

Advised and represented Departments of Public Works, Planning and Zoning, Health, Collections, and School District; prosecuted ordinance violations. Examples: litigated public works contract claims; drafted contracts, leases, and other documents; litigated equitable actions and appeals challenging zoning decisions; handled criminal trials, appeals, argument, and briefing; litigated civil collection cases.

Judicial

Alaska Superior Court, Third Judicial District, Anchorage, Alaska

Standing Master (May 1972-May 1973)

Heard and decided probate matters.

Court Attorney (May 1972-May 1973)

Performed research, writing and consulting for Superior Court judges.

Other

Solo part-time private practice (1977-1981)

Mosley, Wells & Spence, Attorneys at Law, Denver, Colorado

Associate (May 1977-September 1977)

Greene and Bankston, Attorneys at Law, Anchorage, Alaska

Associate (September-December 1975)

EDUCATION:

University of Texas School of Law, Austin, Texas (JD; Top 20%)

Texas Tech University, Lubbock, Texas (B.A.; Economics/Government; Dean's List)

BAR ADMISSIONS:

U. S. Supreme Court

Colorado state courts

10th Circuit Court of Appeals

U. S. District Court for Colorado

Alaska state courts (no longer active)

9th Circuit Court of Appeals (no longer active)

U. S. District Court for Alaska (no longer active)

Texas state courts (no longer active)

CLAYBOURNE MURRAY "CLAY" DOUGLAS
Résumé

PROFESSIONAL AND COMMUNITY ACTIVITIES:

International Municipal Lawyers Association

Member (1988 to present)

10th Circuit North Regional Vice President (2006 -2008)

Colorado State Chair (2005-2006)

Colorado Municipal League

Board member and Attorneys Section President (2004-2005)

Attorneys Section Vice President (2003-2004)

Guest lecturer and panelist at conferences

Metro City Attorneys Association

Outstanding City Attorney Award (2008)

President (2004-2005)

Outstanding Deputy City Attorney Award (1987)

Special Accomplishment Award (1986)

Colorado Municipal Judges Association

Guest lecturer and panelist at seminars (1980-1988)

Longmont Rotary Club

Member (1988 to present)

Paul Harris Fellow

CONTACT INFORMATION:

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E-mail clay.douglas@comcast.

DATE COMPILED: 4/7/2022