

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

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|---------------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA | * | CIVIL ACTION |
| | * | |
| versus | * | 12-1924 |
| | * | |
| THE CITY OF NEW ORLEANS | * | SECTION "E" |
| | * | |
| | * | MAGISTRATE DIVISION "2" |
| | * | |

MOTION TO INTERVENE

NOW COME Intervenors, the Office of the Independent Police Monitor (OIPM), and Susan Hutson, appearing individually and in her official capacity as the Independent Police Monitor for the City of New Orleans, and pursuant to Rule 24(a) (2) of the Federal Rules for Civil Procedure for the following reasons:

I.

This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.

II.

Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391(b).

III.

Intervenor, the OIPM, is an independent, civilian police oversight agency which began operating in August of 2009. The mission of the New Orleans OIPM is to ensure New Orleans Police Department accountability, transparency, and responsiveness to the community it serves. The OIPM’s vision is to improve police service to the community, citizen trust in the NOPD, and officer safety and working conditions. The OIPM has a number of broad responsibilities: to ensure that all concerns regarding police misconduct are classified and investigated at the

appropriate level and that those investigations are fairly, timely and thoroughly handled; to make information about this review process available to the public; to carefully consider aggregate data from complaints, investigations, community concerns and public policy in crafting recommendations aimed toward improving the quality services of the NOPD; and to reach out to inform the community about the complaint process and OIPM activities, and to listen and respond to broader community concerns. OIPM intervenes and appears herein, through Susan Hutson, the Independent Police Monitor, who also intervenes and appears herein individually.

IV.

The OIPM was created by referendum in October, 2008. Community groups and city agencies came together to create the Office after 77% of the people of New Orleans voted in a city wide referendum to create the office. When given an opportunity to show their support for an agency tasked with monitoring the New Orleans Police Department, the people of New Orleans overwhelmingly voted to create the OIPM.

V.

The disposition of this Civil Action does as a practical matter, impair or impede the ability of the OIPM from protecting its interest. If a judgment was to be made whereby the proposed decree was accepted, it would in fact create a two tier system, whereby the local monitor would be barred from performing the functions of its office, which the people of the city of New Orleans demanded it to perform. In fact, not only has the city failed to represent the OIPM's interests in the Consent Decree but the city has violated the terms of the city ordinance and city charter that created the OIPM by largely omitting the OIPM from the Consent Decree and thereby making its mandate impossible to perform.

VI.

The parties hereto have jointly moved (Record Document 2) for the entry of a proposed Consent Decree (Record Document 2-1) which provides that it is “...to support vigorous and constitutional law enforcement” and to provide for “... the expeditious implementation of corrective measures, promotes the use of the best available policing practices and procedures...” (Record Document 2-1, page 3, paragraph 5).

VII.

The proposed Consent Decree is, by its terms, binding on not only the parties, but on their “...officials, agents, employees, and successors” (Record Document 2-1, page3, paragraph 8). The Office of the Independent Police Monitor is a city agency by virtue of its status as a division within the Office of the Inspector General, and as such, the OIPM would be bound under the proposed consent decree.

VIII.

Furthermore, the OIPM is required to perform certain functions within the consent decree. “The IPM will coordinate with the monitor and NOPD to minimize duplication of efforts, recognizing that overlapping or redundant audits may be necessary on occasion to assess the quality and reliability of various internal and external oversight mechanisms” (Record Document 2-1, page 108, paragraph 443).

IX.

Under the proposed Consent Decree, if the OIPM were to reorganize its mandates either internally or through referendum, OIPM would be required to incorporate the consent decree into its functions. The proposed Consent Decree further provides, “If the City establishes or reorganizes a government agency or entity whose function includes overseeing, regulating, accrediting, investigating, or otherwise reviewing the operations of the NOPD or any aspect

thereof, the City agrees to ensure these functions and entities are consistent with the terms of this agreement and shall incorporate the terms of this agreement into the oversight, regulatory, accreditation, investigation, or review functions of the government agency or entity as necessary to ensure consistency.” (Record Document 2-1, page 3, paragraph 8, emphasis added).

X.

The proposed Consent Decree then goes on to set forth numerous mandates that directly affect the operations of the OIPM. The New Orleans Police Department is required to integrate new training mandates through a Training Advisory Committee (Record Document 2-1, page 65, paragraph 248). Additionally, the New Orleans Police Department is required to deliberate over Use of Force Incidents through a new Use of Force Board (Record Document 2-1, page 32, paragraph 108). Additionally, the NOPD is required to create new policies. All such policies, Use of Force Incidents, and training courses will be directly monitored by the federal monitor by the terms of the decree, without any mention of the OIPM’s participation. By virtue of its city ordinance, the OIPM, is tasked specifically with monitoring the NOPD’s training, hearings, policies and uses of force. The proposed Consent Decree, however, does not mandate that the parties to this decree share any of the information with the OIPM regarding the creation and implementation of reforms and policies. Thus, the Consent Decree impairs the ability of this office to fulfill its duties and responsibilities to the New Orleans community.

XI.

The proposed Consent Decree has been agreed to between the current parties to this litigation with no opportunity for review and input by the OIPM of the NOPD with regard to its wording, mandates and provisions. On numerous occasions, the OIPM has approached the City Attorney of New Orleans, the Mayor of New Orleans and the Department of Justice, about the integral

nature of the OIPM's function, and the need for the OIPM's function to be elaborated in the consent decree.

XII.

Nowhere in the proposed Consent Decree itself, does it provide for any input or the exercise of any rights whatsoever, whether with regard to its implementation, administration, oversight or enforcement, by the OIPM, the local monitoring group. Specifically, the proposed decree states "the IPM *will* coordinate with the monitor and NOPD" (Record Document 2-1, page 108, paragraph 443). However, no such requirement is ever made upon the NOPD or the federal monitor. Specifically, "the monitor *may* coordinate and confer with the IPM", but is not required to do so. (Document 2-1, page 112, paragraph 449).

XIII.

Furthermore, the Federal Monitor and the NOPD are free to use the information and the data which the OIPM has collected, if the NOPD and the federal monitor deem it sufficiently reliable, although the NOPD and the federal monitor do not need OIPM's consent to do so, and there is no requirement to confer with the OIPM before demanding such information. "In conducting these outcome assessments the monitor may use any relevant data collected and maintained by the NOPD (e.g. crime trend pattern analysis), the Office of the Inspector General, or the OIPM, provided that it has determined, and the parties agree, that this data is reasonably reliable and complete."

XIV.

While the United States of America, the City of New Orleans and the NOPD are represented in this Civil Action and have the right to assert their positions herein, the same is not true of the local oversight agency which garnered 77% of the votes cast by the New Orleans community for

its creation. In light of the direct effect this Civil Action and the proposed Consent Decree will have on the office, the Office of the Independent Monitor has a significant, protectable interest relating to the subject matter of this Civil Action.

XV.

The disposition of this Civil Action may, as a practical matter, impair or impede the ability of the Office of the Independent Monitor from protecting its interest. If a judgment was to be made whereby the proposed decree was accepted, it would in fact create a two tier system, whereby the local monitor would be barred from performing the function of its office, as the people of the city of New Orleans demanded of it. A judgment in the absence of the OIPM will prejudice the OIPM and the people of the City of New Orleans. Without the presence of the OIPM in the legal action, the OIPM's voice will not be effectively heard, and there is no measure which will avoid the prejudice faced by both the OIPM and the people of the city of New Orleans which voted to create the OIPM.

XVI.

This Intervening Complaint is timely as this action was filed on July 24, 2012, the proposed Consent Decree has not yet been implemented and this Honorable Court has ordered that Interventions be filed by August 7, 2012.

XVII.

No party to the consent decree has adequately represented the interests of the OIPM and thus the citizens of New Orleans that created its mandate.

XVIII.

The OIPM has a right to have its views on the proposed Consent Decree presented to this Court and to have them fully considered in conjunction with this Court's decision whether or not to approve the proposed Consent Decree as is.

XIX.

The OIPM further has the right to participate in the implementation, administration, oversight and enforcement of the proposed Consent Decree.

XX.

The OIPM has the right to intervene herein as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2).

XXI.

Alternatively, OIPM and Susan Hutson should be granted permissive intervention as their allegations herein and the main action have a question of law or fact in common and granting the request for intervention will not unduly delay or prejudice the original parties in the case.

WHEREFORE Intervenors, the Office of the Independent Police Monitor and Susan Hutson, individually and in her official capacity as the Independent Police Monitor, pray that the United States of America and the City of New Orleans be served with a copy of this Intervening Complaint; that they be duly cited to appear and answer same; and that Intervenors be allowed to participate in the negotiation of any Consent Decree that may be entered into herein, and participate in its implementation, administration, oversight and enforcement.

Respectfully submitted:

/s/ John Williams

JOHN WILLIAMS (#

**Attorney for Intervenors,
OFFICE OF THE INDEPENDENT
POLICE MONITOR and
SUSAN HUTSON**

CERTIFICATE OF SERVICE

I do hereby certify that on this 7th day of August, 2012 I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

Respectfully submitted:

**Attorney for Intervenors,
OFFICE OF THE INDEPENDENT
POLICE MONITOR and
SUSAN HUTSON**

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VERIFICATION

**STATE OF LOUISIANA
PARISH OF ORLEANS**

BEFORE ME, the undersigned authority, personally came and appeared:

SUSAN HUTSON

after being duly sworn, did depose and say:

That she is the Independent Police Monitor for the City of New Orleans; that she has read the allegations of the Intervening Complaint; and, that they are true and correct to the best of her knowledge, information and belief.

SUSAN HUTSON, Affiant

**SWORN TO AND SUBSCRIBED
BEFORE ME THIS 7TH DAY OF
AUGUST, 2012.**

NOTARY PUBLIC