

IN THE MATTER OF COMPLAINT  
AGAINST ATTORNEY GENERAL  
JOSH KAUL AND DCI ADMINISTRATOR  
TINA VIRGIL

Case No. 232-002

Respondents.

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### **PROBABLE CAUSE DETERMINATION**

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1. The Crime Victims Rights Board reviewed a complaint filed on behalf of MB<sup>1</sup> (“Complainant”) against Wisconsin Attorney General Josh Kaul and Wisconsin Department of Justice – Division of Criminal Investigation Administrator Tina Virgil (“Respondents”). The Board evaluated the Complaint and other relevant information to determine whether there is probable cause that the Respondents violated MB’s rights as a crime victim. *See* Wis. Stat. § 950.04(1v) and Wis. Const. art. I, § 9m. The Board finds no probable cause.

### **BOARD PROCEDURE**

2. MB, through his representative, filed a Complaint with the Board on December 30, 2022.

3. The Complainant was advised by the Board’s operations director that, pursuant to Wis. Stat. §950.09(2), the Board is prohibited from reviewing a complaint until a complainant has completed with the Wisconsin Department of Justice (DOJ) Victim Resource Center (VRC) the process set forth in Wis. Stat. §950.08(3), commonly referred to as the “informal complaint process.” The Complainant contacted the VRC to begin that process.

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<sup>1</sup> This probable cause determination uses the initials of the Complainant to protect his privacy.

4. On February 22, 2023, the Complainant re-submitted the complaint to the Board indicating that Complainant's December 30, 2022, filing was referred to the VRC. Following the Board's established practice, the Board's operations director contacted the VRC requesting verification that the informal complaint process had been completed and, if so, that the VRC provide information concerning its outcome.

5. On February 22, 2023, the VRC sent to the Board a copy of a letter to the Complainant indicating that, due to a potential conflict of interest, the VRC declined to address the complaint through the informal complaint process set forth in Wis. Stat. §950.08(3). The letter stated that “[d]ue to a potential conflict of interest, the VRC is declining to address your complaint through the informal complaint process set forth in Wis. Stat. §950.08 (3).”

6. On March 15, 2023, the Board met to conduct an initial review of the Complaint. The Board decided that it could not review the Complaint due to the VRC having explicitly declined to engage in the process required by Wis. Stat. §950.08(3) based upon a potential conflict of interest.

7. By a letter dated March 17, 2023, the Board provided notice to the parties of its decision, stating that that although the DOJ may choose not to further the complaint, it may not avoid the complaint altogether due to a conflict of interest and DOJ should attempt to offer an option to cure the conflict. The Board stated that “some administrative contemplation by the Department is a necessary component for board review, without which the Board has no authority to entertain a complaint by a party.”

8. On March 20, 2023, the Complainant again presented the Complaint to the VRC.

9. On March 22, 2023, the DOJ sent a letter to the Complainant indicating that the VRC reconsidered its decision and could remain neutral to address the complaint through the informal complaint process set forth in Wis. Stat. §950.08(3) and offered to mediate the matter with the consent of all the parties.

10. By a letter dated March 29, 2023, VRC advised the Complainant that the involved parties had not consented to mediation by the VRC. Consequently, the VRC deemed the informal complaint process complete.

11. On March 30, 2023, the Complainant resubmitted the complaint to the Board, including documentation concerning the matters set forth in paragraphs 9 and 10 above.

12. On May 17, 2023, the Board met and reviewed this procedural history and concluded that the VRC had completed its action under Wis. Stat. § 950.08(3). *See* Wis. Admin. Code CVRB § 1.05(1), (4). The Board gave a copy of the complaint to the Respondents and invited them to answer the Complaint. *See* Wis. Admin. Code CVRB § 1.05(5).

13. Assistant Attorney General Clayton P. Kowski filed an Answer on behalf of the Respondents on June 30, 2022. Complainant filed a Rebuttal on July 5, 2023.

14. The Board made this probable cause determination at a meeting on July 24, 2023. *See* Wis. Admin. Code CVRB § 1.05(6).

15. In making the probable cause determination, the Board considered all relevant information, including the Complaint, Respondent's Answer, Complainant's Rebuttal and the VRC letter documenting the completion of the informal complaint process. *See* Wis. Admin. Code CVRB § 1.05(7)(a)–(c).

16. The Board notifies the parties and the VRC of its conclusions through the issuance of this probable cause determination. *See* Wis. Admin. Code CVRB § 1.05(8).

## STATEMENT OF THE CASE

### I. MB's Complaint.

17. MB's son died in an officer-involved shooting in 2004. The Complaint alleges that the Respondents violated MB's rights as a victim of a crime by their refusal to respond to the Complainant's attempts to consult with them regarding "newly developed" information about the circumstances surrounding the death of MB's son. (Complaint at p. 2.) More specifically, the Complaint alleges that MB is a "victim of an ongoing and continuing series of criminal acts, **separate from the actual shooting**, at the hands of various government officials in their effort to conceal the true circumstances of the death of MB's son." (Rebuttal at p. 3 (Emphasis original).) The Complaint also alleges that the Respondents have ignored requests for information and requests to meet in violation of several victim rights, including the constitutional right "to be treated with dignity, respect, courtesy, sensitivity, and fairness."

### II. Answer by Attorney General Josh Kaul and DCI Administrator Tina Virgil.

18. The Respondents provided a written Answer to the Complaint stating that the Complaint (a) does not allege facts sufficient to establish that MB was the victim of a crime pursuant to applicable statutes, (b) is barred by the three-year limitation period in § CVRB 1.04(5), Wis. Admin. Code; and (c) does not establish probable cause for a violation of Article I, § 9m of the Wisconsin Constitution. (Answer at pp. 2-5.)

## DETERMINATIONS OF FACT

19. The Board finds no dispute of material fact between the parties.

## INTERPRETATIONS OF LAW

20. The Board employs a multi-step methodology to analyze the complaint: (1) whether the complainant was a crime victim; (2) whether the respondents are subject to the authority of the Board; (3) whether the allegations are time-barred; (4) whether the allegations implicate any constitutional or statutory victim rights; and (5) whether the respondents failed to comply with any duty imposed by a constitutional or statutory provision.

21. Whether a person is a crime victim is determined by statute. “A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both.” Wis. Stat. § 939.12. A crime victim is “[a] person against whom a crime has been committed.” Wis. Stat. § 950.02(4)(a)1.; *see also* Wis. Const. art. I, § 9m(1)(a)1. A crime victim “does not include the person charged with or alleged to have committed the crime.” Wis. Stat. § 950.02(4)(b); *see also* Wis. Const. art. I, § 9m(1)(b) (victim “does not include the accused”).

22. Whether respondents are subject to the Board’s authority is also determined by statute. The Board has authority to review complaints about “public officials, employees or agencies that violate the rights of crime victims.” Wis. Stat. § 950.09(2)(a); *but see Gabler v. Crime Victims Rights Bd.*, 2017 WI 67, 376 Wis. 2d 147, 897 N.W.2d 384 (statute unconstitutional as applied to judges).

23. Whether the allegations are time-barred is determined by the filing requirements in the administrative code. The Board may not consider allegations relating to “conduct that occurred prior to December 1, 1998 or more than 3 years before a complaint was filed with the board or the board was otherwise notified of the conduct,” except that the Board may consider

issuing a report and recommendation concerning such conduct. Wis. Admin. Code CVRB § 1.04(5).

24. Probable cause is “a reasonable basis for belief, supported by facts, circumstances, and reasonable inferences strong enough to warrant a prudent person to believe that a violation probably has been or is being committed as alleged in the complaint.” Wis. Admin. Code CVRB § 1.02(9). Probable cause is satisfied by a believable or plausible account that the respondent probably has violated or is violating the victim’s rights. *See State v. Sorenson*, 143 Wis. 2d 226, 251, 421 N.W.2d 77 (1988).

25. At the probable cause stage, the Board evaluates the limited information available to it in the light most favorable to the complainant. The probable cause determination is not the proper time to debate and resolve credibility issues if essential facts, circumstances, and reasonable inferences are strong enough to warrant a prudent person to believe a violation probably has occurred or is occurring. *See State ex rel. Huser v. Rasmussen*, 84 Wis. 2d 600, 614, 267 N.W.2d 285 (1978).

#### **PROBABLE CAUSE DETERMINATION**

26. The Board finds no probable cause of a crime victim rights violation.

27. The Board reaches this conclusion after applying its interpretations of law to the determinations of fact.

28. The Board concludes that MB does not meet the legal definition of a crime victim. The Complainant acknowledges that the Complaint does not relate to a failure to institute criminal proceedings against any party involved in the shooting death of MB’s son, nor is he asserting crime victim status concerning that tragic event. Rather, MB alleges that

Tina Virgil and Attorney General Kaul were unresponsive to his citizen complaint and thereby participated in efforts to conceal what occurred on that day in 2004. The Board does not find that the conduct alleged are crimes that confer victim status upon MB pursuant to Wis. Stat. § 950.02(4)(a)1, and Wis. Const. art. I, § 9m(1)(a)1. Per Wis. Const. art. I, § 9m(1)(a)1. “victim” means . . . A person against whom an act is committed that would constitute a crime if committed by a competent adult. The Board does not find that the alleged acts, if committed, would be committed ‘against’ the complainant. The alleged conduct is against the government and its administration, not against individual persons. While, in a practical sense, the Complainant is impacted by the alleged conduct, he is not a statutory victim of it. Therefore, the Board finds no probable cause that a crime victim rights violation occurred.

29. It is not the role of the Board to determine the relevance and veracity of the underlying grievance suggesting that public misconduct or a conspiracy occurred. The Board reviews conduct alleging victim rights violations and, in this case, cannot identify acts which constitute a crime with attendant victim rights that would reach the threshold necessary for further analysis.

30. The essence of the Complaint is that the DOJ failed to investigate a citizen claim and ignored the Complainant’s requests to meet and requests for information. The DOJ’s conduct is not reviewable by this Board as a victim rights claim. Although the Respondents did not have a duty to investigate a citizen complaint, it would have been polite to notify MB of its decision not to investigate if they made such a decision. The Respondents did not speak to this issue, nor did they provide any reason or justification for electing to not communicate with MB.

31. In all fairness to the Complainant, the DOJ may have inadvertently bolstered the Complainant's belief he was a crime victim for purposes of this rights complaint, when the VRC sought consent to mediate the complaint at the informal complaint stage as described in paragraphs 2-10. Perhaps when the informal complaint was received, the VRC, in its communications with the Complainant, could have talked to the Complainant about how to get a status update on his citizen complaint. A conversation may have provided MB with more information about his concerns or greater awareness of his options – whether or not the VRC considered him a statutory victim. There is nothing in the records submitted by DOJ to indicate if such a discussion occurred.

### **ORDER**

Based on the foregoing, it is hereby ORDERED:

1. That there is no probable cause that a victim rights violation occurred, so the complaint is dismissed. A finding of no probable cause is a final decision of the Board under Wis. Admin. Code CVRB § 1.05(8).

2. That the Board hereby provides notice to the parties of the right to seek judicial review of this final decision pursuant to Wis. Stat. § 227.52. Attached to this decision is a summary of appeal rights.

3. That judicial review of this final decision is governed by Wis. Stat. §§ 227.52–.59. *See* Wis. Admin. Code CVRB § 1.10.

4. That a copy of this probable cause determination will be provided to all parties in this proceeding and in accordance with Wis. Admin. Code CVRB § 1.05(8), as identified in the service list below.

Dated this 2nd day of November, 2023.

A handwritten signature in cursive script that reads "Jennifer Dunn". The signature is written in black ink and is positioned above a horizontal line.

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Chairperson Jennifer Dunn  
Crime Victims Rights Board

## SERVICE LIST

M.B.

[street address withheld]

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