

Ontario County Board of Supervisors
County Law §209
Investigation Committee:
Report

March 31, 2022

Chairman Todd Campbell

BACKGROUND:

In December 2020, several complaints were made to the anonymous Ontario County Compliance Complaint hotline. These complaints alleged that issues related to sexual harassment and inappropriate workplace behaviors were investigated by the Ontario County Sheriff's Office, under the leadership of former Sheriff Kevin Henderson, but had not adequately dealt with the underlying allegations or circumstances of the complaints.

In late December 2020, Sheriff Henderson made several requests to both the Department of Human Resources and the County Administration to hear audio recordings of calls to the County's anonymous compliance complaint line to discern the identity of the complainant(s). These requests were denied by both the Department of Human Resources and County Administration, but were alarming to County officials who took their concerns to the Board of Supervisors.

In early 2021, the Board of Supervisors hired outside counsel, Scott Rogoff, Esq. of Barclay Damon, LLP, to look into concerns stemming from complaints made to the compliance line and also Sheriff Henderson's requests to hear the audio recordings of those complaints. Mr. Rogoff's firm subsequently hired an independent HR Investigator to conduct a thorough investigation into the concerns that had been brought to light to that point.

Over the course of approximately five months, the independent investigator interviewed over 70 current and former employees of the Ontario County Sheriff's Office and, based upon corroboration by Sheriff's Office employees and other evidence, it was concluded that acts of inappropriate behavior in the workplace by the Sheriff and/or with his knowledge and consent, and by certain members of his administration did occur. The investigator and Mr. Rogoff kept the Board of Supervisors apprised of the ongoing investigation and verbally presented the results of these investigative efforts to the Board of Supervisors once completed.

Throughout this process, the Board of Supervisors was committed to doing what they could to improve the working environment for the employees of the Sheriff's Office and ensuring that essential public safety services continued to be provided to residents of the County without interruption.

Former Sheriff Henderson was provided multiple opportunities to be interviewed in connection with the independent investigation and to provide documents related to the investigation, but declined to do so. As the seriousness of the situation became clearer, and the number of concerning workplace issues increased through the work of the independent investigator, and because there were still relevant documents and information outstanding that were not being produced on a voluntary basis, the Board of Supervisors took the uncommon step of forming a County Law Section 209 Investigation Committee. The County Law Section 209 Investigation Committee (hereinafter referred to as the 209 Committee) was formed via Resolution #432 of 2021 with the direction to conduct an investigation pursuant to New York State County Law §209 into the aforementioned matters, including the conduct and performance of the Ontario County Sheriff and certain members of his administration, all of whom are paid from County funds. [Link to Res#432-2021](#)

The 209 Committee began meeting in September 2021 and developed written procedures and defined a scope and purpose of its investigation. [Link to 209 Committee Meeting Minutes, Sept. 23, 2021.](#) The 209 Committee focused its review on:

- 1) The Internal compliance complaints made in 2020.
- 2) Matters handled by a Special Prosecutor, which resulted in a recommendation that two Correction Officers be terminated.
- 3) Compliance with the NYS Commission on Corrections reporting requirements related to reportable incidents.
- 4) Any practices or personnel contributing to the work environment in the Sheriff's Office, which discourages cooperation with other departments, promotes a culture of silence, or creates fear of retaliation.

This report represents an update on the efforts of the 209 Committee to date.

CORRECTIVE ACTIONS TO DATE:

Since the first complaints were received by Ontario County in late 2020, significant changes have occurred within the Sheriff's Department that the 209 Committee views as positive steps toward addressing the issues that have come to light. These include:

A. Resignation of the former Sheriff and Undersheriff:

In an almost unprecedented occurrence, the former Sheriff and Undersheriff both resigned their positions.

Former Undersheriff David Frasca resigned shortly after the allegations of misconduct and the proceeding investigation became public. Several months later, former Sheriff Kevin Henderson also resigned without having appointed a new Undersheriff.

The resignation of both the Undersheriff and Sheriff was without precedent, at least in recent memory, across the state and resulted in a situation where a local County Court Judge was required to appoint a new Sheriff until the next election.

Ontario County Court Judge Brian Dennis worked collaboratively with County leadership to explore the possibility of several different candidates for appointment to the position of Sheriff and made sure to identify individuals who could help to move the Department past its recent turmoil and address the concerns of the remaining staff.

Former Sheriff Phil Povero was ultimately selected as the individual who could achieve these goals and was gracious enough to come out of retirement to serve an additional 14 months as Ontario County Sheriff following his already extended tenure in that position.

B. Resignation of former Corrections Officers:

Throughout the course of the independent investigation coordinated by the Board of Supervisors' outside counsel, three Corrections Officers at the Ontario County Jail resigned. The actions of these officers were the subject of part of the independent investigation and two of them had been recommended by a Special Prosecutor to be terminated from County employment.

C. Elimination of the Sheriff's Office Sexual Harassment Committee and Institution of County-Wide Policies and Procedures Regarding Sexual Harassment and Discrimination To Apply to Sheriff's Department Employees:

Prior to the events outlined in this report, the Sheriff's Office Manual of Instruction, a compendium of policies and operating procedures for all Departmental employees, detailed the operation of a Sexual Harassment Committee within the Department to which all complaints and allegations of sexual harassment were to be referred and investigated.

The existence of this Committee, and its apparent inactivity, was discovered during the course of the investigation. As a result of the investigation, County officials were able to examine the policies regarding sexual harassment that had been in place in the Sheriff's Office, and confirm that they had been superseded by the Ontario County Non-Discrimination and Sexual Harassment Prevention Policy, such that it would be unnecessary for the Department to continue utilizing those policies for the handling of sexual harassment matters.

Moreover, and following the resignation of former Sheriff Kevin Henderson, and before the appointment of Sheriff Phil Povero, the Sheriff's Administration took the initiative to disband the former Sexual Harassment Committee and update the Department's Manual of Instruction to indicate all Sheriff's Office employees are to follow the County's existing Non-Discrimination and Sexual Harassment Prevention Policy, including a process for filing and investigating complaints.

The 209 Committee would like to acknowledge the decisive positive action of the current Sheriff's Administration for this action and other positive changes to ensure that all employees, regardless of department, are subject to the same robust County policies and procedures.

D. Creation of Compliance Investigator Positions:

The original complaints made by Sheriff's Office employees brought to light concerns and distrust among employees regarding how internal investigations relating to policy violations were handled. One obvious issue was the appearance of either bias or lack of impartiality that could exist when co-workers were investigating and making determinations related to other co-workers. These concerns were echoed by the Sheriff's Office leadership, who expressed their preference that internal Sheriff's Office matters be investigated by individuals not employed within the Department. As the Board of Supervisors and 209 Committee delved more deeply into this matter it became clear that additional County resources were needed to investigate and recommend corrective action when policy violations were alleged to have occurred.

To accomplish this goal, the 209 Committee recommended, and the Board of Supervisors approved the creation of two completely new positions within the County. These positions have been titled Compliance Investigators. The first Compliance Investigator took office on February 14, 2022 and the second began March 28th.

The Compliance Investigators are part of the Department of Human Resources and report to the Director of Human Resources/Compliance Officer. They are charged with investigating any allegations of policy violations, reviewing existing policies and making recommendations regarding corrective action (if any) as well as working collaboratively with all Department Heads

in the County to provide training and education to employees in all departments on all policies and workplace issues. This Committee also recommends that additional training be provided on a regular basis to employees in the Sheriff's Office to provide refreshers on existing County policies and avenues of resolving issues and concerns that are outside of the Sheriff's Office.

In addition to their role across the County organization, the Compliance Investigators have been provided office space directly within the Sheriff's Office, both at the main offices at 74 Ontario St. and at the County Jail facility in Hopewell. The 209 Committee would like to commend the Sheriff's Office leadership for supporting the integration of these new positions within their operation both organizationally and by physically providing them office space. The intent behind this physical co-location of the Compliance Investigators in these areas is to be a visible reminder to employees of the resources being made available to them and for their use to resolve concerns regarding policy violations or workplace incidents.

The Sheriff's Office, in coordination with the 209 Committee has also implemented a change to the Department's internal policies to direct that all investigations, including those originating from within the Department, and from complaints of citizens or incarcerated individuals, are to be investigated by, or at least include the involvement of the Compliance Investigators.

This is a significant change to long-standing practice and the Sheriff's Office deserves considerable credit for its openness and willingness to have outside individuals investigate these situations. Both the Sheriff's Office and the 209 Committee feel strongly that having the Compliance Investigators maintain offices onsite in the Sheriff's Department and handle these investigations independently will provide increased transparency, ensure fair adjudication of complaints, and strengthen the trust that both citizens and employees have in the integrity and fairness of the Sheriff's Office.

MOVING FORWARD:

It is important to note the significant steps that have been taken by the Board of Supervisors in addressing the issues within the Ontario County Sheriff's Office that were brought to its attention. The resignation of a sitting Sheriff and Undersheriff, and the creation of the 209 Committee are all, in and of themselves, significant and rare occurrences that speak to the gravity of the situation the Board discovered and the Board's willingness to effect positive change.

Significant internal policy changes, coupled with the creation of two Compliance Investigator positions also highlight the continued work of the 209 Committee and the dedication of both the Committee and the Board to ensure that long-term meaningful and lasting changes are implemented within the Department. The Board and the current leadership of the Sheriff's Office have made it clear that cooperative work still needs to be done and will be done even following the discontinuation of the 209 Committee.

A. Further Investigation:

An important component of this ongoing work is the follow-up and further examination of claims made to the independent investigator during the original investigation commissioned by

Mr. Rogoff's firm. Given the significant concerns the Board of Supervisors had regarding the operation of the Sheriff's Office at the time, the investigation was narrowed to focus on the most serious and troubling allegations and behaviors on a Departmental level. It is important to note in that regard that the investigator was not retained to investigate each individual claim of alleged inappropriate conduct brought to light by each witness interviewed. That being said, and as set out herein, those claims will be reviewed where appropriate by the Compliance Investigators.

The decision to narrow the focus of the investigation as described above was certainly warranted given the circumstances at the time but left multiple concerns and allegations unexplored by the independent investigator. The 209 Committee has therefore recommended that the new Compliance Investigators look into other allegations that were disclosed to the independent investigator but not exhaustively examined due to them being outside the scope of the original investigation. This continued investigation by the Compliance Investigators will also allow the County to fulfill its obligation to fully investigate additional allegations of workplace misconduct that were raised during that investigation.

Both the Compliance Investigators and the current Administration of the Sheriff's Office have agreed that this is important work that needs to be continued. The work to investigate these matters fully has already begun.

B. Ongoing Cooperation and Coordination:

Through the recent events that have unfolded surrounding the Ontario County Sheriff's Office, one major theme has emerged as an underlying contributing factor to the issues that have surfaced. That theme is isolation and separation of the Sheriff's Office from the County organization.

The investigation revealed that former Sheriff Kevin Henderson took steps to disengage his Office from the County and instruct his employees not to utilize other departments within the County structure that are there to assist and help. This led to many of the problems that came to light during the independent investigation and the subsequent work of the 209 Committee.

The current Sheriff's Administration deserves considerable credit for making tremendous strides in rectifying this in a very short period of time. The Sheriff and Undersheriff have been incredibly open, honest and collaborative with all matters regarding the operation of the Department, as well as the important work of the 209 Committee and the Compliance Investigators. Through their dedication and willingness to work collaboratively with the County, progress has been both swift and significant in just a few short months.

Moving forward, a new Sheriff will take office in January of 2023. The Board of Supervisors, the members of the 209 Committee and County leadership are committed to working closely with the new Sheriff's Administration to continue effectuating positive change within the Department and expect the new Sheriff to do the same.

By working closely within the organization of the County, the Board of Supervisors and the 209 Committee can help support the new Sheriff and ensure their success as they take on the challenging but critical role of fostering a positive workplace environment and providing essential public safety services to the residents and visitors of Ontario County.