



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE JR.  
MARK SURPRENANT  
RUTH WHITE DAVIS

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Friday, March 10, 2023

Ms. Carol Carey

Re: **Carol Carey VS.  
Sewerage & Water Board  
Docket Number: 9407**

Dear Ms. Carey:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 3/10/2023 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Stacie Joseph".

Stacie Joseph  
Management Services Division

cc: Ghassan Korban  
Ashley Ian Smith  
Imtiaz A. Siddiqui  
file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**CAROL CAREY,  
Appellant**

**Docket No. 9407**

**v.**

**SEWERAGE & WATER BOARD,  
Appointing Authority**

**DECISION**

Appellant, Carol Carey, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from a five-day suspension communicated by letter dated September 22, 2022. (Ex. HE-1). At all relevant times, Appellant had permanent status as an Operator I in the Water Filter Gallery. (Tr. at 43). A Hearing Examiner, appointed by the Commission, presided over a hearing on December 2, 2022. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated January 30, 2023, and controlling Louisiana law.

The Commission grants Ms. Carey's appeal, as the letter of discipline fails to comply with the written notice requirements of the Louisiana Constitution, article X, § 8(A) and Civil Service Rule IX, § 1.3.

**I. PERTINENT FACTUAL BACKGROUND**

The September 22, 2022, letter of discipline sets forth the departmental and Civil Service rule violated by Ms. Carey. (Ex. HE-1). The Sewerage & Water Board informed Ms. Carey that she violated "SWBNO's Policy #6 Professional Conduct, Section III and CS Rule IX –

Maintaining Standards of Service.” (Ex. HE-1). Ms. Carey’s supervisor testified that the factual basis for the suspension was based on Ms. Carey’s early departure from work (5:09 AM) on February 4, 2022, when her shift ended at 7:00 AM. (Tr. at 76). In answer to the question of whether Ms. Carey was disciplined for falsifying records, the Assistant Water Purification Superintendent testified, “We don’t think so.” (Tr. at 154).

Ms. Carey testified that she participated in an interview with Sewerage & Water Board security on May 17, 2022, about leaving her post early on February 4, 2022. (Tr. at 15-16).

## II. ANALYSIS

### A. The Louisiana Constitution and Civil Service Rules Require Written Notice

The Louisiana Constitution requires that an appointing authority provide written notice of disciplinary action to a classified employees in advance of the hearing:

**Disciplinary Actions.** No person who has gained permanent status in the classified state or city service shall be subjected to disciplinary action except for cause expressed *in writing*. A classified employee subjected to such disciplinary action shall have the right of appeal to the appropriate commission pursuant to Section 12 of this Part.<sup>1</sup>The burden of proof on appeal, as to the facts, shall be on the appointing authority.

La. Const., art. X, § 8(A) (emphasis added). Likewise, Civil Service Rule IX, § 1.3 requires written notice within five (5) days of disciplinary action:

In every case of termination, suspension, reduction in pay, letter of reprimand, or fine of any employee in the classified service or of involuntary retirement or demotion of the employee, within five (5) working days of the effective date of the action, the appointing authority shall furnish the employee and the Personnel Director *a statement in writing of the reasons therefore*. The notification must

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<sup>1</sup> “Each city commission established by Part I of this Article shall have the exclusive power and authority to hear and decide all removal and disciplinary cases, with subpoena power and power to administer oaths. It may appoint a referee to take testimony, with subpoena power and power to administer oaths to witnesses . . . ” La. Const., art. X, § 12.

advise the employee of the possible right of appeal, which must be exercised within thirty (30) calendar days of the date of the disciplinary letter.

(emphasis added). The rules of the Civil Service Commission have the effect of law. *Civil Service Commission of City of New Orleans v. City of New Orleans*, 2002-1812 (La. 9/9/03), 854 So. 2d 322, 328 (citing *New Orleans Firefighters Ass'n Local 632 v. City of New Orleans*, 590 So. 2d 1172, 1175 (La. 1991)). See also *Thoreson v. Dep't of State Civil Service*, 433 So. 2d 184, 190 (La. 1983) (holding that State Civil Service Rules have the effect of law).

### **1. Content of written notice**

The written notice should describe the “cause” or the “reasons” for the discipline. “Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Cause” includes proof of “improper conduct” or the “complained-of activity.” *Whitaker*, 863 So. 2d at 575; *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), Therefore, to inform the employee of the “cause,” the letter should describe facts -- the underlying “conduct” or “complained of activity.”

### **2. Policy reasons for written notice**

In addition to compliance with procedural due process under the state and federal constitutions and the explicit constitutional requirement of notice in La. Const., art. X, § 8(A), the Commission’s requirement of written notice serves public policy purposes. The time period for filing an appeal begins to run on the date of the written notice to the employee. *Green v. New Orleans Recreation Dep't*, No. 2016-1122 (La. App. 4 Cir. 5/10/17), 220 So. 3d 165, 175 (citing

Civil Service Rule II, § 4.3). Hearing officers appointed by the Commission limit the evidence at the hearing to the reasons for discipline in the disciplinary letter. *Montgomery v. Dep't of Streets*, 593 So. 2d 1352, 1354 (La. App. 4 Cir. 1992).”The purpose of requiring cause expressed in writing is to apprise the employee of the grounds upon which the dismissal is based and to limit any subsequent proceedings to the stated grounds.” *Perry v. City of New Orleans*, 2011-0901 (La. App. 4 Cir. 2/1/12), 104 So. 3d 453, 457 (quoting *Allen v. Dep't of Police*, 2009-0589 (La. App. 4 Cir. 11/12/09), 25 So. 3d 966, 969, *writ denied*, 2009-2714 (La. 2/26/10)). Following the full administrative hearing after the imposition of discipline, the panel of Commissioners assigned to the appeal then considers whether the reasons for discipline given by the appointing authority were for cause. *See* Civil Service Rule II, § 4.16. The Commission may not base discipline on a reason outside the reasons given by the appointing authority: “The Commission was also arbitrary and capricious and abused its discretion when it upheld Mr. Matusoff’s termination *for reasons not contained in the termination letter.*” *Matusoff v. Dep't of Fire*, 2019-0932 (La. App. 4 Cir. 5/20/20), *writ denied*, 2020-00955 (La. 10/20/20), 303 So. 3d 313 (emphasis added).

**B. Exhibit HE-1 Fails to Inform Ms. Carey of the Cause or Reasons for her Suspension**

In the instant case, the letter of discipline sets forth the departmental and Civil Service rules violated by Ms. Carey, but wholly fails to provide notice to Ms. Carey of the underlying conduct at issue. The Sewerage & Water Board informed Ms. Carey only that she violated “SWBNO’s Policy #6 Professional Conduct, Section III and CS Rule IX – Maintaining Standards of Service.” (Ex. HE-1). Although the Sewerage & Water Board did provide the (broad) policy/rule violations at issue, the letter fails to inform Ms. Carey that her discipline is based on leaving work almost two hours early without permission, as her supervisor testified at the hearing of this matter. (Tr.

at 76). During the hearing there was significant discussion of potential falsification of records. (*See* Tr. at 34-35, 88-89, 91, 146). In answer to the question of whether Ms. Carey was disciplined for falsifying records, the Assistant Water Purification Superintendent testified, “We don’t think so.” (Tr. at 154). Therefore, the hearing of this matter was unnecessarily expanded to include evidence of misconduct for which Ms. Carey was not disciplined, confusing the issue before the decisionmakers.

**C. Oral Notice is Insufficient to Comply with the Written Notice Requirements of La. Const., art. X, § 8(A) and Civil Service Rule IX, § 1.3**

The Sewerage & Water Board provided additional oral notice to Ms. Carey in advance of her suspension. Ms. Carey testified that she participated in an interview with Sewerage & Water Board security on May 17, 2022, about leaving her post early on February 4, 2022. (Tr. at 15-16). Therefore, Ms. Carey received oral notice of the underlying conduct. Even if this oral notice meets due process requirements, an appointing authority’s failure to provide written notice interferes with the Commission’s duty to manage the hearing process in a fair, efficient, and meaningful manner.

The Fourth Circuit has recognized that oral notice may supplement the factual description in the written notice for purposes of state and federal due process. *Plains v. Sewerage & Water Board*, No. 2021-0086, 2021 Westlaw 7162229 (La. App. 4 Cir. 12/15/21). Therefore, because she received oral notice of her February 4 departure from work early, Ms. Carey received procedural due process. In *Plains*, the court relied on *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985) for the “expanded notice.” *Plains*, 2021 Westlaw 7162229 at \*7. *Loudermill* concerns are only present in termination cases, and, when implicated, concern only the notice and opportunity to be heard in advance of termination. *Cleveland Bd. of Education v.*

*Loudermill*, 470 U.S. 532, 542 (1985); *Bell v. Dep't of Health and Human Resources*, 483 So. 2d 945, 951 (La. 1986). *See also Hampton v. Dep't of Fire*, 2016-1127 (La. App. 4 Cir. 5/3/17), 220 So. 3d 111, 114. The Sewerage & Water Board failed to comply with La. Const., art. X, § 8(A) and Civil Service Rule IX, § 1.3, even if its actions provided due process to Ms. Carey.

Further, in *Plains*, the letter provided to the employee stated that he “continuously engaged in harassing conduct toward a co-worker.” *Plains*, 2021 Westlaw 7162229 at \*3. This factual description provided Plains notice of the “underlying conduct” and the “complained-of behavior.” In the instant appeal, the Sewerage & Water Board has wholly failed to identify the factual basis for the suspension.

### III. CONCLUSION

Because the Sewerage & Water Board failed to comply with La. Const., art. X, § 8 and Civil Service Rule IX, § 1.3, Ms. Carey’s appeal is GRANTED. The Sewerage & Water Board shall rescind the suspension and reimburse Ms. Carey’s lost wages and emoluments of employment for five days.

This the 10<sup>th</sup> day of March, 2023

WRITER:

Mark C. Surprenant  
Mark C. Surprenant (Mar 9, 2023 12:13 CST)

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MARK SURPRENANT, COMMISSIONER

CONCUR:

J H Korn  
J H Korn (Mar 9, 2023 17:26 CST)

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JOHN KORN, VICE-CHAIRPERSON

CJ Moore  
CJ MOORE (Mar 9, 2023 19:28 CST)

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CLIFTON J. MOORE, JR., COMMISSIONER