

CITY OF NEW ORLEANS

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Monday, April 14, 2025

VIA EMAIL (hessler.law@gmail.com; paul@paulcmitchell.com)

Eric Hessler PANO 320 N. Carrollton Avenue #202 New Orleans, LA 70119

Paul C. Mitchell, III 1615 Poydras St Ste 900 New Orleans, LA 70112

Re: Civil Service Commission Investigation of

Promotions to Police Captain and Police Major from July 16, 2024, Civil Service Eligible List

(Department of Police)
Docket Number: 9672

Dear Mr. Hessler and Mr. Mitchell:

Attached is the decision of the Civil Service Commission following its investigation of promotions by the Department of Police as requested by the Police Association of New Orleans and the Black Organization of Police.

This is to notify all parties 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 - 4/14/2025 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If any party chooses 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,

Stacie Joseph

Stacie Joseph

Management Services Division

cc: William R. H. Goforth (via email)

Elizabeth Robins (via email) Edward Castaing, Jr (via email)

Mark Surprenant, Acting Chairperson (via email)

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CIVIL SERVICE COMMISSION CITY OF NEW ORLEANS

IN RE: INVESTIGATION OF DEPARTMENT OF POLICE'S PROMOTIONS TO POLICE MAJOR AND POLICE CAPTAIN FROM JULY 16, 2024, CIVIL SERVICE ELIGIBLE LISTS

DOCKET NO. 9672

RULING ON MOTION FOR ADVERSE INFERENCE AND DECISION REGARDING INVESTIGATION

On March 14, 2025, the Commission conducted an evidentiary hearing to investigate the Police Association of New Orleans's (PANO) and the Black Organization of Police's (BOP) allegation that the Mayor of the City of New Orleans improperly interfered in the recent promotion process for Police Captain and Police Major in violation of the Louisiana Constitution's requirement of merit-based promotions and proscription of political discrimination. The Commission exercised its investigatory power under La. Const art. X, § 10(B) by holding an evidentiary hearing to determine whether Mayor Cantrell violated Louisiana Constitution, art. X, §§ 7, 8(b). *Achord v. Dep't of Fire*, 2018-0635 (La. App. 4 Cir. 12/27/18), 318 So. 3d 816, 820, *writ denied*, 2019-0506 (La. 6/17/19), 274 So. 3d 1261 (holding that Commission was "properly exercising its investigatory authority into alleged violations of the Louisiana Constitution").

The City had filed a Motion to Dismiss challenging whether this Commission had jurisdiction to conduct this investigation. The Commission issued an Order on January 27, 2025, denying the City's Motion. On February 6, 2025, the Louisiana Fourth Circuit Court of Appeal denied the City's writ application which unsuccessfully urged the Court to overturn the Commission's Order dismissing the Motion to Dismiss.

PANO and BOP alleged in their October 22, 2024, Petition that the Department of Police failed to promote candidates from the NOPD September 23, 2024, ranked composite scored lists for Police Captain and Police Major for non-merit/political reasons. Petitioners specifically alleged in the prayer for relief that the Mayor engaged in "blatant [political] infringement into the civil service process of promotion" and "improperly . . . interfere[d] with the promotional process and the list {sic} therein created." Petitioners also alleged that the City violated La. Const. art. X, § 7, requiring merit-based promotions, and La. Const., art. X, § 8(B), proscribing political discrimination against classified employees.

I. MOTION FOR ADVERSE INFERENCE AGAINST MAYOR CANTRELL IS GRANTED

At the evidentiary hearing, the Commission sought to determine whether Mayor Cantrell, starting in September 2024, contrary to the applicable provisions of both the Louisiana Constitution and the New Orleans Civil Service Rules, illegally interfered with and prohibited the Superintendent of Police from promoting candidates from the September 23, 2024, NOPD composite scored promotional lists for non-merit reasons.

Toward that end, the Commission subpoenaed Mayor Cantrell to testify at the March 14, 2025, hearing. Mayor Cantrell appeared at the hearing with her counsel in compliance with the subpoena, but she asserted her Fifth Amendment constitutional right against self-incrimination in response to all substantive questions posed to her at the hearing by the Petitioners and the Commission. The Mayor refused to testify whether she had received any complaint from anyone as to the promotion process; if so, when each complaint was made and by whom; what each complainant told the Mayor; what the Mayor told Superintendent Kirkpatrick about each complaint; which NOPD officer or officers were being adversely or beneficially affected by each complaint

made; whether the Mayor prohibited Superintendent Kirkpatrick from making any promotions from the lists; and whether that instruction to Superintendent Kirkpatrick from the Mayor to halt all promotions was politically motived. (Tr. pp. 25-35, 45-46). As a result of the Mayor's refusal to answer any questions at the heart of this investigation, the Petitioners made a motion that an adverse inference be entered against Mayor Cantrell. The Commission took the Motion under advisement, allowing each party an opportunity to brief the issues contained therein.

Demonstrating the importance the City of New Orleans places on cooperation with Civil Service Commission investigations, the Home Rule Charter authorizes a penalty more severe than an adverse inference or presumption when an employee of the City invokes her Fifth Amendment privilege against self-incrimination in a proceeding before the Commission:

If any member of the Commission or any employee in the City Service shall willfully refuse or fail to appear before the Commission or any officer authorized to conduct any hearing of inquiry, or having appeared shall refuse to testify or answer any question relating to the affairs or government of the City or the conduct of any officer or employee of the City on the ground that the testimony or answers would tend to incriminate the party called to appear or testify . . . the party shall forfeit office or position and shall not be eligible thereafter for appointment in any position in the City Service.

City of New Orleans Home Rule Charter, Section 8-113(2).

Louisiana courts have recognized a civil service commission's authority to make an evidentiary adverse inference or presumption in the context of its proceedings *Harris v. Dep't of Public Safety & Corrections – Dixon Correctional Institute*, 2022-1188 (La. App. 1 Cir. 6/2/23), 370 So.3d 43, 54.

In addition, the New Orleans Civil Service Commission is a Louisiana quasi-judicial body which follows Louisiana law regarding all its proceedings, including the March 14, 2025, hearing. (Civil Service Rule II, § 4.11(b)). Louisiana law clearly permits the entry of an adverse inference

in a situation such as that presently before the Commission.

The purpose of an adverse inference or presumption is to "restore footing to the party who has unfairly borne the risk of missing evidence and an erroneous judgment." *Sayre v. PNK (Lake Charles), LLC*, 2015-859 (La. App. 3 Cir. 3/23/16), 188 So. 3d 428, 444. "It is true that under a long line of jurisprudence, the failure of a litigant to produce evidence within his reach raises the presumption that the evidence would have been detrimental to his case." *McElroy v. Allstate Ins. Co.*, 420 So. 2d 214, 216 (La. App. 4 Cir. 1982). Superintendent Kirkpatrick testified Mayor Cantrell failed to share the identity of the complainant, assuming the existence of one or more complainants, and failed to share the substance of the complaint(s). (Tr. pp. 60-61, 75). No complainant was identified as a potential witness by the City in the Pre-Hearing Order, and no complainant testified at the hearing. The Mayor's decision not to testify and the City's failure to call any of the alleged complainants to testify at the March 14, 2025, hearing prevented crucial evidence from being provided to the Commission. However, despite that, there was a preponderance of evidence in the record from which the Commission could reach the factual findings set forth herein.

The United States Supreme Court has held that an adverse presumption or inference may be drawn in civil proceedings when a party or interested witness, such as Mayor Cantrell, asserts the Fifth Amendment privilege. *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976).

Considering the totality of the important questions which Mayor Cantrell refused to answer, the Commission enters the following adverse inference against Mayor Cantrell: If Mayor Cantrell had answered the questions posed to her by the Petitioners and the Commission at the March 14, 2025, hearing, her testimony would have been adverse to her; namely, that the September 2024 promotional freeze put in place by Superintendent Kirkpatrick, as mandated to her by the Mayor, was without legal justification and was done for impermissible, politically

motivated reasons to the attempted benefit of Lt. Sabrina Richardson in violation of the applicable provisions of the Louisiana Constitution and the New Orleans Civil Service Rules designed to protect against non-merit based interference in the promotion process involving classified employees. In addition, as set forth below in the Timeline and Findings of Fact section of this Decision, the Commission finds there are sufficient corroborating facts in the record to support this adverse inference against Mayor Cantrell.

II. TIMELINE OF PERTINENT EVENTS AND FINDINGS OF FACT

The Department of Police requested that the Department of Civil Service administer tests in 2024 for Police Captain and Police Major to make promotions to Police Major and Police Captain. (Ex. Joint-1 at 3). At great expense to the taxpayers of New Orleans, the Department of Civil Service administered the tests for Police Captain and Police Major on July 16, 2024. (Ex. Joint-1 at 3). Because Lt. Sabrina Richardson's appeal of NOPD's October 2022 discipline of her was pending, the Civil Service Commission allowed Lt. Richardson to sit for the Police Major and Police Captain exams. (*See* Exs. C-2, C-3). The Fourth Circuit Court of Appeal ruled against Lt. Richardson regarding her disciplinary appeal on July 10, 2024, with writs denied by the Louisiana Supreme Court on November 14, 2024. *Richardson v. New Orleans Police Dep't*, 2023-0757 (La. App. 4 Cir. 7/10/24), 399 So. 3d 449, *writ denied*, 2024-01001 (La. 11/14/24), 396 So. 3d 62.

Following the objective testing examination taken by all candidates for promotion scored by outside assessors, the Department of Civil Service released the July 16, 2024, eligible lists for Police Captain and Police Major on July 29, 2024, to Superintendent Kirkpatrick and the candidates. (Ex. Joint-1 at 3; Exs. C-2, C-3). Lt. Sabrina Richardson ranked third on the Civil Service July 16, 2024, eligible list for Police Captain. (Ex. C-2). Lt. Samuel Palumbo ranked first on that same eligible list for Police Captain. (Ex. C-2). The Civil Service eligible list for Police Major listed Lt. Richardson

as "[n]ot currently eligible for promotion." (Ex. C-3).

Under Civil Service Rules, NOPD may make promotions in an order differing from the ranked order on the Civil Service eligible lists. (See Civil Service Rule VI, § 2.5(d) ("the appointing authority shall appoint one of those whose names are certified to each vacancy which is to be filled"). In accordance with the City of New Orleans's CAO Policy Memorandum 143(R), a panel of Deputy Superintendents rated candidates on the Civil Service eligible lists based on performance history, disciplinary history, and job history. (Ex. C-9 at 2). The Deputy Superintendents consider discipline within the last three years. The rubric used by the Deputy Chiefs for discipline is "purely objective," according to the federal Consent Decree monitors. (Ex. City-1, Attachment A at 4). "[T]he rubric dictates the Discipline score based on the number of sustained disciplinary violations and the level of each violation." (Ex. City-1, Attachment A at 4). The panel of Deputy Superintendents prepared ranked composite scored lists for the positions of Police Captain and Police Major after application of CAO Policy Memorandum 143 and NOPD Operations Manual Chapter 34.2. (Ex. Joint-1 at 3). The ranked composite scored lists prepared by the Department of Police for Police Captain and Police Major incorporated the July 16, 2024, Civil Service eligible lists for Police Captain and Police Major as 50% of each candidate's final score. (Ex. Joint-1 at 3).

Internally, NOPD had the ranked composite scores for Police Major and Police Captain on or before September 16, 2024. (Ex. C-11 (September 16, 2024, email from Nicholas Gernon to Superintendent Kirkpatrick)). Lt. Richardson was ranked eighth on the NOPD ranked composite scored list by NOPD for Police Captain promotion. (Ex. C-4). On September 16, 2024, Superintendent Kirkpatrick sent a text message to Deputy Superintendent Nicholas Gernon, stating, "Just to confirm, she is eligible for a captain promotion," apparently referring to Lt. Richardson. (Ex. C-11).

According to the privilege log provided by Superintendent Kirkpatrick's Special Counsel, which was introduced into evidence at the hearing, between September 18, 2024, and September 23, 2024, Superintendent Kirkpatrick had four separate email communications with her Special Counsel about Lt. Sabrina Richardson. (Ex. C-11).

Nicholas Gernon emailed the "final list post association review" on September 19, 2024, at 4:41 P.M. (Ex. C-11 (September 19, 2024, email from Nicholas Gernon to Superintendent Kirkpatrick, Stephanie Landry, and Lawrence Dupree)). Superintendent Kirkpatrick forwarded this email to Mayor Cantrell on September 20, 2024, at 2:44 P.M. On September 21, 2024, Superintendent Kirkpatrick informed Mayor Cantrell that she intended to promote two candidates to Police Major and two candidates to Police Captain. (Ex. C-11).

On September 23, 2024, Mayor Cantrell requested a meeting with the Superintendent of Police by text message "to discuss lists." (Ex. C-11, Text Message #2078). Later that same day, in a text message to the Mayor, the Superintendent referred to "our collective opinion about promotions." (Ex. C-11, Text Message #2076).

NOPD provided the final NOPD composite scored ranked lists to the candidates, including Sabrina Richardson, on September 23, 2024. (Ex. C-11(Email from NOPD Promotions to Samuel P. Palumbo, Jr., *et al*)).

The Mayor and the Superintendent planned a meeting for September 24, 2024, by text. (Ex. C-11, Text Message ## 2073-76). The parties stipulated that the Superintendent of Police had inperson meetings with Mayor Cantrell about promotions to Police Captain and Police Major. (Ex. Joint-1 at 3). During these meetings, Mayor Cantrell expressed concern about "institutional bias" affecting the Deputy Chiefs' rating of candidates for Police Captain, specifically mentioning Lt. Sabrina Richardson as an example of a candidate who was adversely affected by this alleged bias.

(Tr. pp. 71,72, 106, 110, 111, and 115). Illustrating the tenuous relationship between the alleged bias and the evaluation of candidates, Superintendent Kirkpatrick testified that Mayor Cantrell was also concerned about bias in the underlying discipline against Lt. Richardson from October 2022:

A No, the issue was the discipline, that [Lt. Richardson] had received the discipline, and that based on that discipline, and the discipline that was the basis for her points that she got, that the discipline could have been bias.

Q That the discipline could have been bias?

A Right. The investigation and the discipline that she received that impacted her level of points that she received; that that -- that discipline could have been a bias situation.

Q What did you do about that?

A Well, that was a historical situation. I had nothing I could do about that. The history of the discipline was way before I ever got there.

(Tr. pp. 107-08).

The Mayor's suggestion to Superintendent Kirkpatrick in September/October 2024 that Lt. Richardson's October 2022 discipline was the result of bias must be viewed against a background of Commission decisions upholding some of the discipline and a Fourth Circuit decision upholding *all* of the discipline. *Richardson*, 2023-0757, 399 So. 3d 449.

Notably, this complaint of historical bias against Lt. Richardson by the Mayor directly contradicts the position of the attorneys representing the City in Lt. Richardson's appeals, who, at each stage, argued that NOPD had sufficient cause to discipline Lt. Richardson and that the penalty imposed was commensurate with the violation. The Fourth Circuit's decision on March 31, 2025, rejecting Lt. Richarson's claim that NOPD's removal of her from the position of Captain was motivated by sex discrimination further shows the lack of factual support for this claimed bias. *Richardson v. New Orleans Police Dep't*, No. 2024-CA-0556 (La. App. 4 Cir. 3/31/25).

To the extent Mayor Cantrell alleged institutional bias on the part of the Deputy Chiefs when evaluating Lt. Richardson for promotion in 2024, the structure of the evaluation itself provided protections against bias, especially the score on discipline. Each candidate received a rating on (1) performance evaluations, (2) discipline, and (3) job history. (Ex. City-1, Attachment A at 4). The Consent Decree monitors noted in their report that "[t]he first two, Performance Evaluations and Discipline, are purely objective." (Ex. City-1, Attachment A at 4). "[T]he rubric dictates the Discipline score based on the number of sustained disciplinary violations and the level of each violation." (Ex. City-1, Attachment A at 4).

Superintendent Kirkpatrick testified that the Mayor told her that she had received complaints about bias, but did not mention the source or any details regarding those complaints. (Tr. p. 64). The Mayor never expressed any concerns as to bias regarding the rankings as to Police Major, even though those rankings were made by the exact same Deputy Superintendents who made the rankings for Police Captain. (Tr. p. 57). Furthermore, the Mayor had never expressed to Superintendent Kirkpatrick any concern as to bias relative to the recently concluded Sergeants' promotion process which had been performed following the same procedure as the Majors' and Captains' promotions process at focus herein. (Tr. p. 56). The Mayor's allegation of bias was limited to the Deputy Chiefs' evaluation of candidates for Captain.

On September 25, 2024, at 9:16 A.M., Mayor Cantrell texted Superintendent Kirkpatrick, prohibiting Superintendent Kirkpatrick from promoting from the NOPD ranked composite scored lists: "Also, I do not wish to use the final lists provided. I can only stand by the civil service exam list at this time given the existing conditions. The CAO is changing the policy to reflect this on today." (Ex. C-11, Text Message #2046). The Mayor prohibited Superintendent Kirkpatrick from promoting from the NOPD ranked composite scored lists which had Lt. Richardson ranked eighth

on the Captain's list.

A comparison of the July 16, 2024, Civil Service eligible list and the September 23, 2024, NOPD ranked composite score list for Police Captain shows that the top two candidates, Lt. Rebecca Gubert and Lt. Samuel Palumbo, had the same rank on both lists. (Ex. C-4). Both of these candidates were eventually promoted in February 2025 after a five-month delay. However, use of the Civil Service list would have inappropriately benefited some candidates – Lt. Sabrina Richardson, who would have moved up five places, and Lt. Hudson Cutno, who would moved up six places (from fifteenth to ninth). (Exs. C-4, C-5). Two other candidates on the bottom half of the Captain's list would have moved up four places. (Ex. C-4). Had the Civil Service list been used, instead of the ranked composite score list, Lt. Richardson would currently be number one on the Captain promotion list.

On September 25, 2024, at 10:51 A.M., Superintendent Kirkpatrick responded to the Mayor's text message, "Mayor, I have new information that may impact your thinking. I have confirmed that the Civil Service list is good only for one year . . . This list officially expires July 16, 2025." (Ex. C-11, Text Message #2044). Pushing the date of the Civil Service test and the NOPD evaluation of candidates from 2024 into late 2025 by allowing the Civil Service eligible lists to expire would have benefitted Lt. Richardson, the focus of Mayor Cantrell's concern. Because of the three-year lookback for the objective discipline score, Lt. Richardson's October 2022 discipline would not be considered by NOPD, even if CAO Memorandum 143(R) remained in effect. However, as indicated above, the discipline part of the overall scored evaluation of the candidates was an objective, not subjective, determination. It is very difficult to insert bias into an objective process. (Tr. p. 152). With the rescission of CAO Policy Memorandum 143(R), the City could make any number of changes to the procedure, which could work to the benefit of specific candidates.

On September 25, 2024, at 10:32 A.M., Mayor Cantrell emailed Superintendent Kirkpatrick, suggesting that Lt. Palumbo should have been ranked lower on the NOPD ranked composite scored Captains' list because of his disciplinary history and other questions raised therein. (Ex. C-11). Lt. Palumbo was competing against Richardson for one of the two captains' promotions, and he was ranked ahead of Lt. Richardson on both the NOPD September 23, 2024, ranked composite scored list and on the Civil Service July 16, 2024, eligible list.

On October 2, 2024, and October 3, 2024, the Superintendent of Police met with the candidates on the eligible lists for Police Captain and Police Major and informed the candidates she intended to allow the Civil Service July 16, 2024, eligible lists to expire on July 16, 2025, without making any promotions. (Ex. C-5, C-6). At the March 14, 2025, investigatory hearing, she testified she was really referring to the expiration of both the NOPD ranked composite scored lists and the Civil Service lists. (Tr. pp. 98-99, 136). This was Superintendent Kirkpatrick's apparent initial intent after conferring with the Mayor. However, at the subsequent meeting with the NOPD officers, she was presented with an alternative to just re-do the second part of the promotion process, using outside evaluators to eliminate any potential bias. (Tr. pp. 65-66, 77, 140).

Chief Kirkpatrick testified that the Mayor improperly wanted her to promote solely from the Civil Service eligible lists. (Tr. p. 70). Disregarding the NOPD composite score ranking would have been clearly in violation of the federal court's Consent Decree; something Kirkpatrick stated she refused to do. (Tr. p. 77) and (Ex. Joint-1 at 3).

When Superintendent Kirkpatrick told the NOPD officers on October 2-3, 2024, that she was not going to make any promotions for Major or Captain from the NOPD composite scored lists, she said Mayor Cantrell was the boss and she was going to do what her boss wanted. (Ex. C-7). Superintendent Kirkpatrick said that she was not in control of the situation. (Ex. C-7). Thus, it was

clearly conveyed to the NOPD officers that the Mayor was in charge of the promotions and that the Mayor, not Superintendent Kirkpatrick, was calling the shots as to the promotions.

On October 3, 2024, Superintendent Kirkpatrick emailed Nicholas Gernon, the Consent Decree monitors, and the lawyer for the Department of Justice seeking permission to engage outside assessors to apply the same rubrics and standards applied by the Deputy Chiefs to check for any bias on the part of the Deputy Chiefs. (Ex. C-11). The Department of Justice approved the plan for outside assessors, and Judge Morgan directed the Consent Decree monitors to investigate the allegation of bias: "At the same time the outside assessors were conducting their evaluations, the Court directed the Monitors to conduct their own review of the NOPD Deputy Chiefs' results on Part 2 of the promotions examination." (Ex. City-1, Attachment A at 2).

The plan of letting the Civil Service lists expire on July 16, 2025, without making any promotions and thus starting the entire process anew was dealt a fatal blow when the Civil Service Director decided on November 11, 2024, to extend the Civil Service July 16, 2024, eligible lists for Major and Captain for two additional years beyond July 16, 2025. Operationally, NOPD could not wait three years to promote candidates to Captain, and Civil Service Rule VI, section 5.3, allowing provisional appointments pending the creation of an eligible list, would not have provided authorization to place candidates in these positions temporarily because of the existence of an eligible list.

On November 18, 2024, Superintendent Kirkpatrick emailed the Inspector General requesting that he investigate bias, *inter alia*, related to the Captains' and Majors' promotional exam. (Ex. C-11). Both Superintendent Kirkpatrick and the federal Consent Decree monitors opined that the alleged complaint of bias by the panel of Deputy Superintendents as vaguely expressed by the Mayor to Superintendent Kirkpatrick was unfounded. (Ex. A to NOPD-1 and Tr. pp. 75, 116). Judge

Ultimately, following Judge Morgan's Decision on February 7, 2025, the Superintendent of Police promoted Lt. Rebecca Gubert and Lt. Samuel Palumbo to Police Captain on February 13, 2025. Lt. Palumbo and Lt. Gubert had been ranked first and second on the NOPD ranked composite scored list released on September 23, 2024. (Tr., pp. 8-9; Ex. City-1).

III. CONCLUSION

Based upon the preponderance of the evidence presented in this matter, the Commission finds that Mayor Cantrell engaged in improper infringement into the civil service process of promotion for Police Major and Police Captain after she learned in September 2024 of the final NOPD composite scored ranking of eligible candidates for promotion to Major and Captain with the specific intent to benefit Lt. Richardson. The Mayor's actions violated the applicable provisions of the Louisiana Constitution and New Orleans Civil Service Rules, which require merit-based promotions and proscribe political discrimination and interference against classified employees.

The Commission further finds that Mayor Cantrell improperly instructed Superintendent Kirkpatrick to promote Majors and Captains using solely the Civil Service eligible lists without any consideration for the evaluation and scores provided by the Deputy Superintendents as required by the federal court Consent Decree, CAO Policy Memorandum 143(R), and NOPD Operations Manual Chapter 34.2. Superintendent Kirkpatrick refused to follow this instruction, but she did decide to follow her boss's other mandate to freeze or halt making any promotions for Major or Captain, starting in September 2024, based on the Mayor's vaguely expressed concern about bias regarding the Captains' promotion process alone, which concern turned out to be totally unfounded.



MARK C. SURPRENANT, ACTING CHAIRPERSON

JOHN KORN, VICE-CHAIRPERSON

Andrew Monteverde (Apr 11, 2025 12:56 CDT)

ANDREW MONTEVERDE, COMMISSIONER