



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

BRITTNEY RICHARDSON,  
CHAIRPERSON  
CLIFTON J. MOORE, JR, VICE-  
CHAIRPERSON  
JOHN KORN  
MARK SURPRENANT  
RUTH WHITE DAVIS

Monday, September 13, 2021

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Mr. Donovan A. Livaccari  
101 W. Robert E. Lee, Suite 402  
New Orleans, LA 70124

Re: **Calvin Rogoff VS.**  
**Department of Police**  
**Docket Number: 9084**

Dear Mr. Livaccari:

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 - 9/13/2021 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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 "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Shaun Ferguson  
Michael J. Laughlin  
Alexandra Mora  
Calvin Rogoff

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**CALVIN ROGOFF,  
Appellant**

**Docket No. 9084**

v.

**DEPARTMENT OF POLICE,  
Appointing Authority**

**DECISION**

Appellant, Calvin Rogoff, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his four-day suspension beginning September 15, 2019. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Officer. (Tr. at 74). A Hearing Examiner, appointed by the Commission, presided over a hearing on May 27, 2020. 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 13, 2021, and controlling Louisiana law.

For the reasons set forth below, Rogoff's appeal is GRANTED.

**I. FACTUAL BACKGROUND**

The facts are largely undisputed. On May 12, 2016, Officer Rogoff responded to a complaint from a citizen that a trespasser had urinated in the citizen's yard and a second trespasser had climbed on his roof, damaging a gutter. (Tr. at 12-15, 74; Ex. NOPD-2). The citizen had video of the trespassers and offered to burn a CD for Rogoff. (Tr. at 11-12). The citizen showed Rogoff the video, and the face of one of the trespassers was captured by the video. (Tr. at 12-13). The

citizen believed the trespassers had participated in a second line at the bar across the street, and the citizen asked Rogoff to ask the bar owner if he recognized the trespasser. (Tr. at 12-14). Rogoff informed the citizen that the offenses were minor, and that NOPD would not conduct any follow-up or investigation of the matter. (Tr. at 15). Rogoff did not submit a report about the incident or collect the evidence. (Tr. at 17, 22). Two years later, the citizen mentioned this incident in the context of a complaint about vehicles parked illegally in front of his house. (Tr. at 75).

The Public Integrity Bureau began a formal investigation on November 13, 2018. (Ex. NOPD-3). The investigator requested additional time to complete the investigation on November 26, 2018. (Ex. NOPD-4). On December 18, 2018, the Civil Service Commission ratified the hearing officer's grant of an additional 60 days to complete the investigation. (Ex. NOPD-5). On February 11, 2019, NOPD informed Rogoff that the investigator recommended that Rogoff be exonerated of both disciplinary charges, but that this recommendation was subject to approval by the administration. (Ex. NOPD-1). The February 11, 2019, letter set a pre-disciplinary hearing date of April 3, 2019, although NOPD does not hold hearings on exonerated cases. (Tr. at 36, 63). Deputy Superintendent Paul Noel disagreed with the investigator's recommendation, and instead recommended to the Superintendent that the disciplinary charges be sustained through a cover letter. (Tr. at 27). On April 25, 2019, NOPD informed Rogoff that Deputy Superintendent Noel had overturned the investigator's recommendation, and that the new recommendation was that the charges be sustained. (Ex. NOPD-2). The April 25, 2019 notice set a new hearing date of April 30, 2019. (Ex. NOPD-2).

## II. ANALYSIS

As a threshold matter, NOPD must comply with the Police Officer Bill of Rights, La. R.S. 40:2531, when investigating a police officer. This statute provides as follows:

When a formal, written complaint is made against any police employee or law enforcement officer, the superintendent of state police or the chief of police or his authorized representative shall initiate an investigation within fourteen days of the date the complaint is made. Except as otherwise provided in this Paragraph, each investigation of a police employee or law enforcement officer which is conducted under the provisions of this Chapter shall be completed within sixty days. However, in each municipality which is subject to a Municipal Fire and Police Civil Service law, the municipal police department may petition the Municipal Fire and Police Civil Service Board for an extension of the time within which to complete the investigation. The board shall set the matter for hearing and shall provide notice of the hearing to the police employee or law enforcement officer who is under investigation. The police employee or law enforcement officer who is under investigation shall have the right to attend the hearing and to present evidence and arguments against the extension. If the board finds that the municipal police department has shown good cause for the granting of an extension of time within which to complete the investigation, the board shall grant an extension of up to sixty days. Nothing contained in this Paragraph shall be construed to prohibit the police employee or law enforcement officer under investigation and the appointing authority from entering into a written agreement extending the investigation for up to an additional sixty days. *The investigation shall be considered complete upon notice to the police employee or law enforcement officer under investigation of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint.* Nothing in this Paragraph shall limit any investigation of alleged criminal activity.

La. R.S. 40:2531(B)(7) (emphasis added). In this case, the investigation began on November 13, 2018, and, because the Civil Service Commission granted an extension of 60 days, NOPD was required to complete the investigation in 120 days. One hundred twenty days from November 13, 2018, is March 13, 2019. The February 11, 2019, notice that the investigator recommended that Rogoff be exonerated falls within the 120 days. The April 25, 2019 notice that the Deputy Superintendent recommended that the disciplinary charges be sustained is outside the 120 days.

The undersigned Commissioners find that a notice of recommendation of exoneration by the investigator is insufficient to give an officer sufficient notice of discipline. The Police Officer Bill of Rights provides that NOPD must provide notice of a pre-disciplinary hearing or a determination of an unfounded or unsustained complaint. La. R.S. 40:2531(B)(7). In short, at the

conclusion of an investigation, NOPD must inform the officer whether the matter is concluded with no discipline or whether NOPD plans to impose discipline. NOPD may not comply with this requirement by give a police officer notice of an unsustained complaint and simultaneously setting a hearing date. This notice does not inform a police officer of the outcome of the investigation.

When analyzing the sufficiency of notice when the Superintendent added discipline for use of alcohol off-duty, the Fourth Circuit Court of Appeal has held that notice clearly identifying the sustained violations was sufficient to provide notice to the police officer. *Hurst v. Dept. of Police*, 2014-0119 (La. App. 4 Cir. 7/23/14), 146 So. 3d 857, 861. Relying on *Hurst*, the Fourth Circuit held in 2015 that notice “that the complaint was sustained, that the investigation was complete, and provid[ing] a hearing date” was sufficient to provide “meaningful notice that the charges against [the police officers] had been sustained and that a pre-disciplinary hearing had been scheduled in compliance with La R.S. 40:2531(B)(7).” *Abbott v. New Orleans Police Dept.*, 2014-0993 (La. App. 4 Cir. 2/11/15), 165 So. 3d 191. Unlike the situation in *Hurst* and *Abbott*, Rogoff received no notice that the charges had been sustained within 120 days. Therefore, under La. R.S. 40:2531(C), the four-day suspension is an absolute nullity.

Alternatively, when NOPD provided notice of the recommendation that Rogoff be exonerated, the investigation was complete, and NOPD cannot thereafter wholly reverse the conclusion of the investigation. *See, e.g., Dupree v. New Orleans Police Dept.*, No. 9114 (12/18/20), No. 2021-CA-0134 (La. App. 4 Cir.)(currently pending), relying on *Pozzo v. Dept. of Police*, 2018-0832 (La. App. 4 Cir. 4/3/19), 267 So. 3d 1148, 1155. In *Dupree*, the Commission decided that Commander Sabrina Richardson’s untimely cover letter expanding the counts against Dupree, providing additional analysis, and giving Richardson’s own reasons for Dupree’s discipline and ultimate termination constituted a continuation of the investigation, as NOPD relied

upon the untimely cover letter in the ultimate notice provided to Dupree. In the same way, the ultimate notice to Rogoff informing him of his four-day suspension necessarily relied on Deputy Superintendent Noel's analysis and conclusions, as the notice was a complete reversal of the February 11, 2019, notice provided to Rogoff. Under this analysis, the discipline is a complete nullity under La. R.S. 40:2531(C).

. The undersigned Commissioners also take notice of NOPD's policy manual, which requires approval of discipline "at every level" within 120 days.<sup>1</sup> Under NOPD's own policy manual, the notice was untimely.

Rogoff's appeal is GRANTED. NOPD shall remove the four-day suspension from Rogoff's record and reimburse Rogoff for four days of back pay and other emoluments of employment.

This the 13<sup>th</sup> day of September, 2021

WRITER:

  
CJ MOORE (Sep 13, 2021 12:24 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

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<sup>1</sup> Every investigation must be completed within 60 days of the Classification Date unless an extension of 60 days is granted by Civil Service. The Civil Service extension extends the final due date to 120 days from the classification date. Within that time frame, the investigator's written investigation (accompanied by exhibits), the various levels of supervisory review which may necessitate corrections/additions/clarifications, the final approvals at every level, and the verbal and/or written "Notice to Accused Law Enforcement Officer Under Investigation of a Pre-Disciplinary Hearing or a Determination of an Unfounded or Not Sustained Complaint" (NOPD Form 308) must be completed. (NOPD Policy Manual Chapter 52.1.1, ¶ 110 (formerly ¶ 83), available at <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-52-1-1-Misconduct-Intake-and-Complaint-Investigation-EFFECTIVE-6-27-21.pdf/?lang=en-US>). See Hearing Officer's Report attached to *Dupree* at 5.

CONCUR:

Mark C. Surprenant  
Mark C. Surprenant (Jul 14, 2021 11:19 CDT)

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MARK SURPRENANT, COMMISSIONER

Ruth White Davis  
Ruth Davis (Jul 16, 2021 13:04 CDT)

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RUTH DAVIS, COMMISSIONER