



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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Tuesday, April 25, 2017

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Mr. Eric Hessler  
PANO 2802 Tulane Avenue #101  
New Orleans, LA 70119

Re: **John Ray VS.**  
**Department of Police**  
**Docket Number: 8110**

Dear Mr. Hessler:

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 - 4/25/2017 - 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 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: Michael S. Harrison  
Elizabeth S. Robins  
Victor Papai  
John Ray

file

**CIVIL SERVICE COMMISSION**  
**CITY OF NEW ORLEANS**

JOHN RAY  vs.  DEPARTMENT OF POLICE	DOCKET No.: 8110
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**I. INTRODUCTION**

Appellant, John Ray, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Police Department for City of New Orleans, (hereinafter “NOPD”) does not allege that the instant appeal is procedurally deficient. And, Appellant stipulated that NOPD’s investigation into Appellant’s alleged misconduct adhered to the standards required by our Rules and La. R.S. § 40:2531. Therefore, the Commission’s analysis will be limited to whether or not NOPD disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Police Officer for NOPD and had permanent status as a classified employee.

On Tuesday, April 19, 2016, a hearing examiner appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report.<sup>1</sup> Based upon our review, we render the following judgment.

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<sup>1</sup> The Commission points out that the hearing examiner who presided over the hearing, Victor Papi, did not prepare the report in this matter. Due to contractual restrictions, the Commission assigned the drafting of the report to another hearing examiner, Brendan Greene.

## II. FACTUAL BACKGROUND

### A. Procedural Background

The case before us has an unusual procedural element that the Commission must address before continuing with the remainder of our decision.

On or about December 13, 2012, Appellant was indicted on a charge of Public Bribery in violation of Louisiana Revised Statute 14:118. (H.E. Exh. 1). Shortly thereafter, NOPD placed Appellant on an emergency suspension and alleged that Appellant had “acted in a manner unbecoming an officer.” *Id.* The specific misconduct attributed to Appellant by NOPD was the receipt of “cash payments” allegedly intended to influence Appellant’s conduct in relation to his position as a police officer during 2010 and 2011. *Id.*

The Orleans Parish District Attorney’s office later altered the charge to reflect one count of “malfeasance in office.” (NOPD Exh. 2 at 2). The trial related to the criminal charge against Appellant occurred on June 19, 2013 and resulted in an acquittal.

On August 4, 2013, NOPD issued Officer Ray a document entitled “Notice to Accused Law Enforcement Officer Under Investigation of a Pre-Disciplinary Hearing or a Determination of an Unfounded or Unsustained Complaint.” (NOPD Exh. 3). In this document, NOPD, through Sergeant Daniel Wharton, notified Officer Ray of a “sustained” finding related to an allegation that Appellant had violated “Rule 3: Professional Conduct, Paragraph 4, Accepting, Giving anything of value.” There were three allegations that NOPD did not sustain against Appellant: a) Rule 2: Moral Conduct, Paragraph 1, Adherence to Law, to wit R.S. 14:118 relative to public bribery; b) Moral Conduct, Paragraph 1, Adherence to Law, to wit R.S. 14:134 relative to malfeasance in office; and c) Professional Conduct, Paragraph 1, Professionalism.

The rule at issue relative to the substantiated complaint (NOPD Rule 3, Paragraph 4) reads as follows:

Members in their official capacity as employee(s) of the City of New Orleans, shall not solicit or accept from any person(s), business(es), or organization(s) any gift, donation, goods, money, property (tangible, intangible, real or personal), loan, promise, service, or entertainment for the benefit of the employee(s) or the Department without the expressed written approval of the Superintendent of Police. Requests for such approval shall be forwarded to the Superintendent of Police through the employee's chain of command using NOPD form 105 (Interoffice Correspondence).

Under no circumstances shall a gift, donation, goods, money, property (tangible, intangible, real or personal), loan, promise, service, or entertainment be solicited or accepted by the Department or its members if it may reasonably be inferred that the person, business, or organization:

- a. seeks to influence action of an official nature or seeks to affect the performance or non-performance of an official duty, or
- b. has an interest which may be substantially affected directly or indirectly by the performance or non-performance of an official duty.

(NOPD Exh. 6).

Prior to the disciplinary hearing related to the underlying allegations, Appellant retired. NOPD chose not to conduct a disciplinary hearing following Appellant's retirement and thus effectively converted the 120-day emergency suspension into final discipline.<sup>2</sup> The Commission finds that Appellant's 120-day suspension is based upon an alleged violation of NOPD Rule 3, Paragraph 4.

### **B. Alleged Misconduct**

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<sup>2</sup> Former NOPD Deputy Chief Krik Bouyelas testified that the recommendations of the investigator contained in a disciplinary hearing notice are not binding upon NOPD and may change depending upon the results of a disciplinary hearing. (Tr. at 59:7-10). Mr. Bouyelas also testified that the Superintendent has other dispositions available to him "based on the evidence presented at the [disciplinary] hearing." *Id.* at 59:11-16. However, NOPD never held a disciplinary hearing in this matter.

Appellant served as an Officer in NOPD's towing and recovery unit at all times relevant to the instant appeal. (Tr. at 35:17-19). During Appellant's time with the towing and recovery unit, NOPD had divided the City into three "zones" and assigned each zone to a specific towing company. (NOPD Exh. 5). The towing companies had authorization to perform all "heavy-duty towing jobs" with their respective zones, but NOPD regulations prohibited the companies from performing such jobs in other zones. *Id.* As part of his day-to-day responsibilities, Appellant monitored the zones to ensure the companies complied with NOPD regulations.

On or about December 21, 2011, NOPD received a "complaint" from Robert Kingsmill, the owner of one of the tow truck companies authorized to operate in one of the three zones. *Id.* Mr. Kingsmill alleged that he "paid" Appellant approximately \$600 over the course of two years in exchange for Appellant keeping other towing companies out of Mr. Kingsmill's assigned zone. *Id.*

Appellant admitted to receiving cash gifts from Mr. Kingsmill on at least "four or five" occasions and recalled that the total value of these gifts was approximately \$600. (Tr. at 31:17-25). According to Appellant, he did not believe that there was anything wrong with accepting the gifts because it was "Christmas time" and he used the money to buy supplies for NOPD. (NOPD Exh. 2 at 4; Tr. at 28:4-14). However, Appellant did acknowledge that he was "somewhat" aware of NOPD's policy prohibiting the acceptance of gifts without the express approval of the Superintendent. (NOPD Exh. 2 at 4). Yet, at no point in time did Appellant notify his supervisors of the cash gifts, and he did not obtain authorization from the Superintendent to accept the cash.

### III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing

authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an Appointing Authority has the burden of proving, by a preponderance of the evidence; 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

#### IV. ANALYSIS

##### A. Occurrence of the Complained of Activities

There is no question that Appellant’s actions constitute a violation of NOPD Rule 3, Paragraph 4. First, Appellant admits to accepting something of value (cash payments totaling approximately \$600) from Mr. Kingsmill. Second, Appellant accepted these cash payments in his official capacity as a member of NOPD’s towing and recovery unit. Finally, Appellant did not get express written authorization from the Superintendent to accept the gift. But even if Appellant had received authorization from the Superintendent to accept the cash, NOPD’s policy prohibited acceptance anyway because the gift came from the owner of a business who was clearly and “substantially affected directly or indirectly by the performance or non-performance of an official

duty.” The fact that Officer Ray spent the \$600 entirely on office supplies for NOPD is of no moment. NOPD’s policy explicitly addresses such a scenario and forbids it.

### **B. Impact on NOPD’s Efficient Operations**

This case involved an NOPD Officer’s acceptance of a cash payment from an individual directly impacted by regulations the Officer enforced. Even if Appellant’s conduct was not influenced by the cash payments, there is an obvious and reasonable inference that the owner of the tow truck company was attempting to curry favor with Appellant and influence how Appellant did his job. The danger is two pronged and constitutes both perception and actual performance of police duties. How the public perceives NOPD can have a dramatic impact on the ability of individual Officers to efficiently and effectively interact with members of the community. Furthermore, regardless of whether or not the cash payments influenced Appellant’s work, other tow truck companies may come to believe that they need to provide similar gifts in order to guarantee enforcement of certain regulations.

Based upon the foregoing, we find that Appellant’s misconduct did adversely impact NOPD’s efficient operations.

### **C. Was the Discipline Commensurate with Appellant’s Offense**

In conducting its analysis, the Commission must determine if Appellant’s suspension was “commensurate with the dereliction;” otherwise, the discipline would be “arbitrary and capricious.” *Waguespack v. Dep’t of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehele v. Dept. of Police*, 98–0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

NOPD’s policy prohibiting Officers from accepting anything of value in their capacity as public employees is a vital protection against both the perception of undue influence over policing

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and undue influence itself. Appellant's claims that he believed his actions to be "no big deal" are very disconcerting, especially given that Appellant was generally aware of NOPD's policy prohibiting receipt of such gifts.

NOPD has both an interest and obligation to deter any type of conduct that introduces the specter of bribery and/or favoritism in any officer's execution of his/her official duties. The repetitive nature of Appellant's misconduct serves as an aggravating factor warranting a higher level of discipline. Another aggravating factor was Appellant's repeated acceptance of cash gifts from someone directly impacted by the execution of his police duties despite a "general" awareness of the policy prohibiting acceptance of gifts.

NOPD publishes a penalty matrix that puts personnel on notice that a violation of Rule 3, paragraph 4 could result in substantial discipline. While the Commission is not bound to follow the matrix, it provides a useful reference when weighing the appropriateness of discipline.

Given the brazen and repeated nature of Appellant's misconduct, the Commission finds that the 120-day suspension was appropriate.

#### **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

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**Signatures appear on the following page.**



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Judgment rendered this 14<sup>th</sup> day of April, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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MICHELLE D. CRAIG, CHAIRPERSON

4-10-2017  
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DATE

  
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RONALD P. McCLAIN, VICE-CHAIRMAN

4/10/17  
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DATE

  
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STEPHEN CAPUTO, COMMISSIONER

4-10-17  
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DATE