



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
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AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Friday, July 19, 2024

Brett J. Prendergast  
4603 S. Carrollton Avenue  
New Orleans, La. 70119

Re: **Lora Johnson VS.  
City Council  
Docket Number: 9607**

Dear Mr. Prendergast:

Attached is the action of the Civil Service Commission at the Commission's meeting on Friday, 7/12/2024.

Yours very truly,

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

Stacie Joseph  
Management Services Division

cc: Paul Harang  
William R. H. Goforth  
Lora Johnson

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**LORA JOHNSON,  
Appellant**

**Docket No. 9607**

**v.**

**CITY COUNCIL,  
Appointing Authority**

**ORDER**

Ms. Johnson moved for summary disposition pursuant to Civil Service Rule II, § 6.1(f) on the basis that both the notice of pre-termination hearing and the notice of termination issued by the City Council were insufficient for due process purposes. Ms. Johnson requested oral argument, and the Commission heard this motion at its regular meeting on July 12, 2024.

Ms. Johnson argues that the following allegations set forth in the April 19, 2024, notice of pre-termination and the May 2, 2024, notice of termination are insufficient to allow her to prepare a defense:

During the second quarter of 2023, you touched Anita Bernard inappropriately on the back. Between 2016 and 2018, you touched Angela Sarker inappropriately on multiple occasions. You touched Tiffany Domino inappropriately on three occasions while she was working in the Clerk's office from 2015 to 2018, and again on February 14, 2019. Multiple times during the course of Naomi Marks' employment with the New Orleans City Council, she was the subject of inappropriate comments and physical contact by you. It is also alleged that you have intimidated these individuals in various ways, such as using demeaning language towards Angela Sarker and discouraging other departments from hiring Tiffany Domino.

(Exhibits A-B to Motion for Summary Disposition).

### Legal Standard for Motion for Summary Disposition

Civil Service Rule II, section 6.1<sup>1</sup> provides as follows:

6.1 At any time after an appeal has been docketed, a written request may be filed by any interested party for summary disposition thereof on any of the following exclusive grounds:

- (a) that the Commission lacks jurisdiction of the subject matter, or of the person against whom relief is sought,
- (b) that the appellant has no legal right of appeal,
- (c) that the appeal has not been made in the required manner,
- (d) that the appeal has not been timely filed as required by Rule II, Section 4.3 or 4.7 of the Commission's Rules,
- (e) that the appeal has become moot,
- (f) that the written notice expressing the cause for the action complained against is insufficient; or, that the cause as expressed does not constitute legal grounds for the disciplinary action. The request for summary disposition shall specifically state the subsection of this Section upon which it is based.

The Commission treats a motion for summary disposition as an exception of no cause of action: “Since the Commission treated defendants' Motion for Summary Disposition as an exception of no cause of action, all well pleaded allegations in the appeal letter are to be taken as true for the purposes of deciding whether they set forth a right of appeal.” *Bell v. Dep't of Health & Hum. Res.*, 483 So. 2d 945, 947 n.2 (La. 1986). “No evidence may be introduced to support or controvert an exception of no cause of action. La. C.C.P. art. 931.” *Legal Indus., LLC v. Dep't of Educ.*, 2023-00794 (La. 1/26/24), 378 So. 3d 3, 7. Civil Service Rule II, § 6.1(f) provides for summary disposition only when the *letter of discipline* is insufficient, not when the pre-termination

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<sup>1</sup> The Commission's Rules are available publicly at [Rules-Updated-6-7-24\\_2.pdf \(nola.gov\)](#)

procedure is insufficient. In order to evaluate whether the notice prior to the pre-termination hearing were sufficient, the Commission would be required to look beyond the appeal form and the letter of discipline. Therefore, evaluation of whether an appellant received appropriate notice in advance of a pre-termination hearing requires the taking of evidence by a hearing officer and is generally inappropriate at the summary disposition stage.

### **Sufficiency of Notice of Discipline**

Different legal standards apply to the notice of pre-termination hearing and the notice of termination. As the Commission discussed in *Carey v. Sewerage & Water Board*, No. 9407 (Civil Service Commission 3/10/23)<sup>2</sup>, the notice of discipline required by La. Const., article X, section 8(A) and Civil Service Rule IX, § 1.3 must be in writing. In addition, the appointing authority must provide the “cause” or “reasons” for the discipline. *Id.* The written notice of discipline should provide sufficient information to the Appellant so that she can prepare a defense at the post-deprivation hearing. *Id.* “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)).

In accordance with due process principles, Civil Service Rule IX, section 1.2 requires an appointing authority to conduct a pre-termination hearing and to “notify the employee of the disciplinary action being recommended prior to taking action.” Section 1.2 contains no requirement that the notice of pre-termination hearing be in writing. “The tenured public employee

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<sup>2</sup> Publicly available at [nola.gov/getattachment/02fa7209-6f7a-4eaf-a8cb-66a60c52ca66/Carey,-Carol-9407/](https://nola.gov/getattachment/02fa7209-6f7a-4eaf-a8cb-66a60c52ca66/Carey,-Carol-9407/)

is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 1495, 84 L. Ed. 2d 494 (1985). “Riggins' due process right to notice and a pre-termination hearing prior to dismissal is governed by the rules of the New Orleans Civil Service Commission. *Riggins v. Dep't of Sanitation*, 617 So. 2d 112, 114 (La. App 4 Cir. 1993), *writ denied*, 619 So. 2d 1064. In order for the pre-termination hearing to be meaningful, courts have required that the appointing authority to “fully describe the conduct complained of, setting forth the relevant dates and places and the names of the witnesses against the employee to enable the employee to fully answer and prepare a defense.” *Williams v. Dep't of Property Management*, 2002-1407 (La. App. 4 Cir. 4/16/03), 846 So. 2d 102, *writ denied*, 2003-C-1379 (La. 9/26/03), 854 So. 2d 362.

In this case, the Appointing Authority has offered documentary evidence in support of the notice provided to Ms. Johnson. The Commission’s review of this documentary evidence is premature at the summary disposition stage.<sup>3</sup> The Commission notes that when considering notice provided before a pre-termination hearing, the Fourth Circuit has looked beyond the contents of the notice of pre-termination hearing to the documents and evidence provided to an employee, such as Real Time Crime Camera video provided to a firefighter. *Ebbs v. New Orleans Fire*

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<sup>3</sup> According to the documents provided, the Council Chief of Staff provided a copy of his investigative report to Ms. Johnson on February 16, 2024, explicitly giving Ms. Johnson an opportunity to respond. The Chief of Staff and Ms. Johnson met on several occasions. The Chief of Staff conducted additional investigation and issued a supplemental report dated April 14, 2024. The supplemental report included information provided by Ms. Johnson, and the Chief of Staff emailed the report to Ms. Johnson on April 14, 2024. Again, the Chief of Staff gave Ms. Johnson an opportunity to respond to the new allegations and met with her.

The City Council issued a notice of pre-termination hearing dated April 19, 2024, and the notice of pre-termination hearing identifies the complainants, the types of complaints, and the approximate dates of the incidents. Ms. Johnson appeared at the pre-termination hearing and responded to the charges. At the time of the pre-termination hearing, the City Council had already provided Ms. Johnson with the complete investigative reports.

*Department*, 2022-CA-0185 (La. App. 4 Cir. 12/28/22), 355 So. 3d 1115, 1121. Again, the factfinding required to determine whether the notice in advance of the pretermination hearing was sufficient for due process purposes requires the consideration of evidence beyond the appeal form and the letter of discipline.

As for the May 2, 2024, Notice of Termination, the Commission declines to find the notice insufficient as a matter of law. Ms. Johnson does not allege that the May 2, 2024, notice of termination included any incidents or allegations not disclosed to her before the pre-termination hearing on April 26, 2024. *See Ebbs v. New Orleans Fire Department*, 355 So. 3d 1115 (holding that NOFD failed to provide Captain Ebbs notice of one charge in advance of the pre-termination hearing); *Regis v. Department of Police*, 2016-0821 (La. App. 4 Cir. 5/24/17), 221 So. 3d 165 (holding that NOPD failed to provide notice of one charge in letter of termination in advance of pre-disciplinary hearing). Ms. Johnson bases her motion solely on the sufficiency of the City Council's description of the allegations in the April and May letters. In this case, the four complainants have been identified by name. The City Council has provided the dates available to it. The hearing officer will restrict the hearing to the allegations contained in the May 2, 2024, Notice of Termination. *Perry*, 104 So. 3d at 457 (hearing restricted to reasons in letter of discipline). *See also 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 (reversing Commission's decision to uphold termination based on reason not in termination letter). Ms. Johnson may develop the alleged deficiencies in the Notice of Termination at the hearing and re-urge her due process concerns. At a minimum, the lack of specificity of the dates provided will ultimately be considered by the Commission when evaluating the credibility of the witnesses and the weight of the evidence in its determination of whether the City Council has carried its burden of showing cause for termination.

For all these reasons, Ms. Johnson's motion for summary disposition is denied.

*J H Korn*

J H Korn (Jul 18, 2024 17:45 CDT)

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JOHN KORN, VICE-CHAIRPERSON

*Ruth White Davis*

Ruth Davis (Jul 17, 2024 13:57 CDT)

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RUTH DAVIS, COMMISSIONER

*Mark C. Surprenant*

Mark C. Surprenant (Jul 17, 2024 11:16 CDT)

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MARK SURPRENANT, COMMISSIONER

*Andrew Monteverde*

Andrew Monteverde (Jul 17, 2024 11:13 CDT)

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ANDREW MONTEVERDE, COMMISSIONER