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Tuesday, April 19, 2016

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

Re: **Sean Carrigan VS.  
Department of Police  
Docket Number: 8128**

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 - 4/19/2016 - 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 "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Michael S. Harrison  
Shawn Lindsay  
Victor Papai  
Sean Carrigan

file

CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS

SEAN CARRIGAN

vs.

DEPARTMENT OF POLICE

DOCKET NO.: 8128

### I. INTRODUCTION

Appellant, Sean Carrigan, 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. Therefore, the Commission's analysis will be limited to whether or not the Appellant was disciplined for sufficient cause. According to a letter issued to Appellant by the NOPD, Appellant received the following discipline:

- One-day suspension: Violation of NOPD Rule 2: Moral Conduct (paragraph 2 - Courtesy)
- One-day suspension: Violation of NOPD Rule 3: Professional conduct (paragraph 1 – Professionalism)
- One-day suspension: Violation of NOPD Rule 4: Performance of Duty (paragraph 2 – Instructions from an Authoritative Source)
- One-day suspension: Violation of NOPD Rule 4: Performance of Duty (paragraph 4 – Neglect of Duty)

(H.E. Exh. 1).

### II. FACTUAL BACKGROUND

Appellant, a permanent employee in the classified service, has been with the NOPD for approximately thirty-two (32) years. (Tr. at 14:20-21). On or about September 4, 2010, Appellant

reported to the scene of an alleged hit-and-run accident at the intersection of Esplanade Avenue and North Claiborne. *Id.* at 9:17-10:6. According to Appellant, upon arriving at the scene of the alleged accident, he exited his NOPD vehicle, observed damage to the driver's side of the car from the front to the rear, and spoke to the driver, Ms. L.<sup>1</sup> *Id.* at 27:9-24. Appellant alleges that when he first spoke to Ms. L, she did not indicate that she was injured, nor did she request an ambulance. *Id.* at 34:4-5. NOPD alleges that Appellant did not exit his car to investigate the alleged accident scene until Sergeant Marquez arrived. *Id.* at 56:4-21.<sup>2</sup> Appellant testified that it was NOPD protocol to check individuals for possible injuries when first arriving at an accident scene; had he observed any potential injuries on the date in question, Appellant testified that he would have contacted EMS. *Id.* at 33:21-34:3, 52:6-13. It was Appellant's supervisor, Sergeant Marquez, who requested an ambulance, however, Ms. L refused treatment.<sup>3</sup>

Based upon his experience, and the damage that he observed to the Ms. L's car, Appellant did not believe Ms. L's account of the accident. *Id.* at 19:25-20:4. Nevertheless, Appellant still wrote Ms. L's account in his report but testified that he was very skeptical of that account. *Id.* at 28:14-29:22 Part of the reason that Appellant did not believe Ms. L's account of the accident was that she was only able to provide him with limited details regarding the car – and the driver of the car – that allegedly hit her. *Id.* at 47:12-22. The entire course of Appellant's investigation into the alleged accident took four minutes to complete. (NOPD Exh. 1).

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<sup>1</sup> The record does not contain an indication as to the driver's last name. Therefore, we shall refer to the driver of the vehicle that was allegedly struck by a hit-and-run driver as "Ms. L."

<sup>2</sup> NOPD relies upon the hearsay testimony of Ms. Gesielle Roussel to establish this fact and did not choose to call Ms. L.

<sup>3</sup> There was testimony from Appellant as to the reaction of EMS personnel when they left the alleged accident scene. However, such testimony constitutes hearsay and the Commission is not inclined to give such testimony much weight since the EMS personnel were not called by either Party. Furthermore, there was hearsay testimony offered by NOPD as to the reasons that Ms. L refused treatment. NOPD did not call Ms. L as a witness and therefore the Commission will give very little weight as to such testimony. The record reflects that the driver refused treatment. Anything further with respect to the severity (or lack thereof) of Ms. L's injuries is hearsay with little to no probative value.

While Appellant was in his vehicle preparing his report, Ms. Roussel, the alleged victim's mother, approached Appellant's vehicle. Tr. at 31:4-32:1. The accounts of happened when Ms. Roussel first addressed Appellant are substantially different. Appellant testified that he was calm and professional towards Ms. Roussel but asked her to step out of the street to avoid oncoming traffic. *Id.* at 42:12-20. According to Appellant, Ms. Roussel appeared angry and confrontational. *Id.* at 32:7-9. For her part, Ms. Roussel testified that, while she was "pretty upset," her emotions were not apparent and she addressed Appellant in a calm manner. *Id.* at 64:6-24. Ms. Roussel acknowledges that she was standing in the street when she approached Appellant and that it was "not a good place to be standing." *Id.* at 65:5-12. Ms. Roussel testified that Appellant directed her to "get away from [his] car." *Id.* at 64:25-4. After which, Ms. Roussel asked Appellant "what rank was working" and Appellant replied "all of them." Ms. Roussel then commented that one should be called to the scene. *Id.* at 64:18-23

Appellant testified that, following his interaction with Ms. Roussel, he called NOPD dispatch and requested that his supervisor, Sergeant Marquez, report to the scene. *Id.* at 93:1-3. When Sergeant Marquez arrived on scene, he first approached Appellant; Appellant briefed Sergeant Marquez on his impressions of the scene, and Sergeant Marquez then approach Ms. L and Ms. Roussel to investigate further. *Id.* at 72:10-19. Based upon his conversation with Ms. L and Ms. Roussel, Sergeant Marquez returned to Appellant's car and asked him questions regarding his investigation. Specifically, Sergeant Marquez asked Appellant how he observed the damage to Ms. L's car; Appellant allegedly responded, "from across the street" and indicated that he had not interacted with the operator of the vehicle because Ms. Roussel was interfering with the

investigation. *Id.* at 73:21-74:7.<sup>4</sup> Sergeant Marquez asked several additional questions of Appellant, however, Appellant refused to provide any further details aside from what he had already told Sergeant Marquez. *Id.* at 41:13-19, 74:21-25. During his cross-examination, Sergeant Marquez offered some contradictory testimony with respect to Appellant's responses to some of his initial questions. When first questioned about Appellant's statements, Sergeant Marquez stated that Appellant told him that Ms. Roussel approached him in an irate manner but that the "driver if you will that was involved in the accident . . . did not indicate to [Appellant] that she had suffered or sustained any kind of injury." *Id.* at 78:8-12. Later in his testimony, Sergeant Marquez denied making such a statement and instead alleged that Appellant did not respond when Sergeant Marquez inquired as to whether or not Appellant had checked Ms. L's alleged injury. *Id.* at 80:13-20. Sergeant Marquez also testified that Appellant claimed to have made an attempt to obtain the insurance information from Ms. L but was "inconvenienced" by Ms. Roussel in this attempt. *Id.* at 74:23-75:3.

After his second discussion with Appellant at the scene, Sergeant Marquez returned to speak with Ms. Roussel. During the course of this conversation, Appellant "rudely and verbosely" interrupted and began requesting additional documentation. *Id.* at 76:2-5. In an attempt to deescalate the situation, Sergeant Marquez instructed Appellant to "stand down." *Id.* at 76:5-9. According to Sergeant Marquez, Appellant was "very condescending" and "very abrasive" towards Ms. Roussel. *Id.* at 76:13-18. Appellant testified that he got out of his vehicle and approached Ms. L's vehicle because he discovered that the insurance information that he originally

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<sup>4</sup> Appellant claims that Sergeant Marquez's recollection of the conversation is not accurate. According to Appellant, Sergeant Marquez asked where Appellant had first observed Ms. L's vehicle to which Appellant replied "across the street." Tr. at 95:2-7.

received from Ms. L was expired. *Id.* at 93:4-6. His purpose in speaking with Ms. L was to obtain current insurance information. *Id.* at 93:7-9.<sup>5</sup>

### III. POSITION OF PARTIES

#### *A. Appointing Authority*

NOPD asserts that it had sufficient cause to suspend Appellant due to misconduct perpetrated on September 4, 2010. Appellant's alleged failure to respond to Sergeant Marquez's questions regarding the alleged accident constitute a violation of NOPD's rule regarding instructions from an authoritative source. And, Appellant's circumspect investigation of the accident scene from his NOPD vehicle was a neglect of his duty to fully and properly investigate an accident and determine if any citizens had sustained injuries. Finally, Appellant's unprofessional responses to Sergeant Marquez and his rude interactions with Ms. Roussel violated NOPD's rules governing the conduct of employees.

#### *B. Appellant*

Appellant alleges that he was respectful and professional to Ms. Roussel at all times on September 4, 2010. And, while he admits to being short with Sergeant Marquez, Appellant qualifies this admission by pointing out that he had already provided Sergeant Marquez with all of the information he had at the time. Appellant denies that he refused to answer questions directed to him by Sergeant Marquez. Instead, Appellant testified that he declined to answer the same questions more than once. With respect to his investigation, Appellant claims that he did exit his NOPD vehicle when he arrived on the scene and did speak with the driver, Ms. L.

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<sup>5</sup> Ms. Roussel confirmed that the insurance card Ms. L initially produced for Appellant was expired, but that proof of current insurance was produced to Sergeant Marquez. Tr. at 69:24-70:6.

#### IV. STANDARD

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A), 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. *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, we 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 Commission’s analysis is a three-pronged one with the appointing authority bearing the burden of proof for each prong.

#### V. ANALYSIS

##### A. The Complained of Activity

##### *1. Rule 2: Moral Conduct-Courtesy & Rule 3: Professional Conduct – Professionalism*

Appellant received two one-day suspensions for violating NOPD’s policies governing employee conduct. The portion of Rule 2 quoted by NOPD in its disciplinary letter to Appellant reads as follows:

Employees shall be courteous, civil and respectful in their conduct toward all persons. The use of profane, vulgar or discourteous gestures or language to or in the presence of any citizen is prohibited. The use of profane, vulgar or discourteous gestures or language either verbal or written by one employee to another employee is prohibited.

(H.E. Exh. 1 at p. 3).



Appellant's interaction with Sergeant Marquez was brusque, even according to Appellant's testimony. If Appellant was in fact concerned about Ms. Roussel's allegedly confrontational behavior, he made matters worse by his abrupt and disrespectful responses to Sergeant Marquez's questions. NOPD has sustained its burden with respect to Appellant's violation of Rule 2.

NOPD also alleged that Appellant violated Rule 3, the relevant portion of which is reproduced below:

Employees shall conduct themselves in a professional manner with the utmost concern for the dignity of the individual with whom they are interacting. Employees shall not unnecessarily inconvenience or demean any individual.

*Id.*

The Commission finds Sergeant Marquez's description of Appellant's behavior during the course of Sergeant Marquez's interview of Ms. Roussel credible. According to Sergeant Marquez, Appellant rudely interrupted the interview and was "very condescending" and "very abrasive" towards Ms. Roussel. *Id.* at 76:13-18. Appellant denies that he was unprofessional or discourteous, but his account is contradicted by both Sergeant Marquez and Ms. Roussel. Appellant is a seasoned officer with a wealth of experience, but may lack some degree of perspective on how his affect and demeanor impact others. For the reasons stated above, NOPD has satisfied its burden in establishing that Appellant violated Rule 3.

### ***3. Rule 4: Performance of Duty - Instructions from an Authoritative Source***

NOPD issued Appellant a one-day suspension for violating its rule related to "Instructions from an Authoritative" source because Appellant allegedly "would not discuss [his] actions with [his] supervisor when [the supervisor] requested that [Appellant] provide [the supervisor] with information pertaining to the vehicle accident and what transpired at the scene after the accident." (H.E. Exh. 1). While Appellant was gruff and unprofessional when responding to Sergeant



Marquez's questions, Appellant did in fact provide Sergeant Marquez with information pertaining to the accident as well as his version of the interaction with Ms. Roussel. Appellant's refusal to answer further questions from Sergeant Marquez contributes to the allegations that Appellant was discourteous and unprofessional as opposed to some failure to follow instructions. From Appellant's testimony, it is clear that Appellant did not possess further information and that Sergeant Marquez took it upon himself to intervene in an attempt to deescalate the situation. Such attempts were further hampered by Appellant's rude interruptions.

Based upon the above, NOPD has failed to establish that Appellant disobeyed or refused instructions from an authoritative source.

***4. Rule 4: Performance of Duty – Neglect of Duty***

Appellant's one-day suspension for Neglect of Duty is related to the accusation that Appellant failed to get out of his vehicle to inspect the damage to Ms. L's car and failed to determine if Ms. L was injured and in need of medical assistance. (H.E. Exh. 1). Ms. Roussel testified that her daughter told her that Appellant did not get out of his car and did not ask Ms. L any questions. As noted above, Appellant's testimony stands in stark contrast to this account. The Commission finds that Appellant did exit his vehicle and did interview Ms. L prior to Ms. Roussel's appearance on scene. The Commission bases this finding on the fact that Ms. Roussel's account is based entirely on hearsay. While NOPD could have called Ms. L as a witness, it chose not to do so. And, while hearsay evidence is admissible appeal hearings, the weight the Commission gives such evidence is a matter of significant discretion. With respect to the conflicting accounts provided by Appellant and Ms. Roussel, the Commission gives more weight to Appellant's direct testimony than Ms. Roussel's hearsay. Further, Sergeant Marquez's assertion that Appellant admitted to inspecting

Ms. L's vehicle from across the street is called into question by Appellant's testimony and some inconsistencies in Sergeant Marquez's recollection of events.

Therefore, the Commission finds that NOPD failed to satisfy its burden in establishing that Appellant violated Rule 4 by failing to inspect Ms. L's vehicle or ascertain whether or not Ms. L was injured.

**B. Did Appellant's Misconduct Impair the Efficiency of the NOPD?**<sup>6</sup>

NOPD's mission is to provide professional police services to the citizens of New Orleans with a focus on "community oriented policing." In order to execute this mission it is essential that all employees, but in particular officers, commit to being courteous and respectful. Those citizens in need of service are, more often than not, dealing with tense and/or stressful situations. Rude, discourteous or disrespectful behavior on the part of an officer erodes that officer's ability to effectively address the needs of those whom he/she serves.

In the matter now before the undersigned Commissioners, Appellant's unprofessional and dismissive responses to Sergeant Marquez compromised Sergeant Marquez's ability to successfully diffuse an already tense situation. Similarly, Appellant's rude interruption of Ms. Roussel and Sergeant Marquez's conversation was unnecessary and further impaired Sergeant Marquez's performance of his duties. Therefore, the Commission finds that Appellant's violations of Rules 2 and 3 impaired the efficiency of the public service provided by NOPD.

**C. Was Appellant's Discipline Commensurate with his Offense**

In conducting its analysis, the Commission must determine if the Appellant's two one-day suspensions were "commensurate with the dereliction;" otherwise, the discipline would be

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<sup>6</sup> Given that the Commission finds that NOPD failed to satisfy the first prong of the three-prong analysis for Appellant's alleged violations of Rule 4, it need not conduct an analysis regarding whether such violations impair the ability of NOPD to deliver services to the citizens of New Orleans.

“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 *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033). Given the vital role NOPD plays and its focus on community-based policing, conduct by officers that compromises the relationship between citizens and officers must be strongly discouraged. Appellant is a good police officer with a no-nonsense approach to his job. Unfortunately, his skepticism with respect to Ms. L's account of the accident combined with Ms. Roussel's allegedly confrontational behavior led to Appellant making some poor decisions. The two one-day suspensions are commensurate with Appellant's misconduct.

#### V. CONCLUSION

Upon considering the testimony and evidence presented in connection with the instant appeal, the Commission DENIES IN PART and GRANTS IN PART Appellant's appeal. Appellant's appeal with respect to his two one-day suspensions for violation of Rules 2 and 3 are DENIED. Appellant's appeal with respect to his two one-day suspensions for violating separate provisions of Rule 4 is GRANTED. Therefore, it is ORDERED that Appellant receive full back pay and emoluments related to these latter one-day suspensions and that his record be expunged of any reference of such suspensions.

S. CARRIGAN  
No. 8128

Judgment rendered this 18th day of April, 2016

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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RONALD P. McCLAIN, VICE-CHAIRPERSON

4/18/16  
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DATE

CONCUR  
  
\_\_\_\_\_  
JOSEPH S. CLARK, COMMISSIONER

April 18, 2016  
\_\_\_\_\_  
DATE

  
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MICHELLE D. CRAIG, CHAIRPERSON

4/18/2016  
\_\_\_\_\_  
DATE