

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

STATE OF LOUISIANA

POLICE ASSOCIATION OF NEW ORLEANS AND MICHAEL GLASSER

V.

NEW ORLEANS POLICE DEPARTMENT

PETITION FOR INVESTIGATION AND EVIDENTIARY HEARING

RECEIVED
CIVIL SERVICE DEPT
NEW ORLEANS
2021 JUL - 7 P 2 20

Now Comes the Police Association of New Orleans (PANO), on behalf of petitioner Michael Glasser and other members of PANO, who are all police officers employed by the New Orleans Police Department (NOPD). As such, they are classified employees who are entitled to certain protections as authorized by the Civil Service Commission of the City of New Orleans. Glasser, who also holds the rank of Captain in the NOPD and is also the president of PANO, appears herein on behalf of himself and other similarly situated police officers/members who have been aggrieved by an unethical pattern and practice of the NOPD Public Integrity Bureau which results in corrupted and disparate disciplinary system, which can and has adversely affects the employment, hiring, firing, retention pay, promotion and other working conditions said employees. In light of the above, petitioner's hereby request the Civil Service Commission of New Orleans to investigate and hold an evidentiary hearing into this allegations. The following is submitted in support of this petition.

I.

The NOPD is a paramilitary organization of the City of New Orleans whose primary task is to protect and serve the citizens of New Orleans in regards to many areas, which include many important concerns, including criminal, social and other community concerns. It is imperative that such an organization earn and keep the trust of not only the citizens it protects, but also those that protect them. A fair, efficient and effective system of discipline within the NOPD is crucial in the department's efforts to achieve such a level of trust. The NOPD has historically tasked the Public Integrity Bureau with the responsibility of implementing and managing this system and gives them supervisory authority over all investigations of criminal and internal administrative investigations. The final authority on all internal investigations rests with the Superintendent of Police.

II.

While one of PANO's mandates are to represent members, who are accused of administrative violations, it is understood and supported that when competent evidence and a thorough investigation supports the imposition of discipline, such discipline should be swift, fair and impartial. The subsequent findings and any punishment handed down should be consistent, across the board, regardless of the accused's rank, position or any other factor. Unfortunately, numerous facts and circumstances indicate that the supervisory chain of command within PIB not only fail to insure such consistency, but routinely allow it.

III.

It is not uncommon for PIB personal, high ranking supervisors, and other favored officers to escape investigation and discipline entirely by the manipulation of or ignoring of NOPD policy. In doing so, the rank and file officers who are subjected to, and witness such disparate treatment, understandably question the integrity of PIB investigations and the entire system of discipline. Such a situation does not bode well for a respected and effective disciplinary system.

IV.

In an effort to address the above, PANO has initiated various complaints, requests for investigations, rule and policy changes, and even lawsuits, in an attempt to have this ongoing situation properly addressed and rectified. Attached to this petition is Exhibit 1, which is a letter dated December 18, 2020 and addressed to PIB. This letter of complaint outlines various improprieties, violations or alleged policy violations of which PANO complained of occurring. An investigation into these (4) specific allegations was requested.

V.

As of the submission of this petition, Allegation #1 has been investigated by the NOPD. The result of such investigation was that the complaint was "Unfounded" which means the investigation determined the actions complained of did not occur. PANO contested the veracity of this investigation to the Superintendent of Police (See Exhibit 2). No responses was ever received. It appears that Allegation #2 and 4 were never investigated, as repeated requests for updates have never been complied with. Finally, Allegation #3 was resolved through litigation initiated by PANO in Orleans Civil District Court. As a result of this litigation, the Court held that the NOPD must provide the accused officer the completed PIB investigative file at least 10 days prior to the disciplinary hearing, when requested.

VI.

It is submitted that investigation and final disciplinary finding was nothing more than a blatant cover up of serious wrong doing. It is further submitted that this cover up was

orchestrated by supervisory and command staff at the highest levels of the NOPD, in order to evade any disciplinary action upon a high ranking member of PIB. PANO alleges that this type of incompetent investigation, ignoring or omitting material evidence and disparate treatment is rampant among NOPD investigations. This nefarious activity seems most prevalent when the accused holds rank or political ties within the department.

VII.

In another instance, the undersigned was representing a member who was accused of violating a state criminal law. This alleged violation of law was in fact a misdemeanor offense. PIB placed the accused on administrative reassignment, which hinders his ability to work details and overtime. The undersigned attorney learned that PIB investigators had informed the NOPD criminal investigator of the administratively mandated blood/alcohol results. It was also learned that the criminal investigator used these results against the accused in his criminal investigation. Such use is prohibited by NOPD policy and state and federal law. The undersigned officially contacted PIB and made a complaint regarding this matter. A high ranking supervisor within PIB received the complaint. Some months later the undersigned contacted the PIB supervisor to inquire the status of the investigation only to be told that no investigation into the alleged wrongdoing was ever initiated.

VIII.

In another matter, a member accused a high ranking NOPD supervisor of committing a criminal felony battery upon him. Both the accused and a second, independent officer who was an eyewitness to the incident, informed the PIB intake officer of the occurrence. The accused supervisor was never reassigned during the investigation. The investigation conducted by PIB in this matter can only be described as cursory and irresponsible. While the investigator did interview the accused and the accuser, he amazingly failed to interview the independent eyewitness to the crime. Instead, the investigator simply opined, without supporting evidence that the victim officer was not credible in his statement and alluded to the fact that the officer may have fabricated physical evidence which was turned over during the investigation. It should be noted that this investigation was approved at the highest levels of PIB and the NOPD. The accusation against the high ranking supervisor was subsequently classified as being non-sustained. It is concerning to note that the failure to interview an eyewitness in such a situation is not only unusual, but also incompetent. It begs the question of "If the NOPD actually believes that these officers intentionally made a false criminal accusation against another officer, and furthermore fabricated evidence in support of such falsity, why would they not initiate any investigation or disciplinary action?"

IX.

Ironically, the same supervisor in the above matter was recently accused of criminal acts against a former NOPD civilian employee. In this instance it was alleged that the supervisor

along with a subordinate supervisor conspired with PIB to improperly force the employee to submit to an administrative drug/alcohol test against his will. The employee, who was out on leave, was told by a PIB supervisor that he was now "on the clock" and had to submit to the administrative test. The NOPD supervisors subsequently entered his home, despite being denied entry by the employee, and was placed into the backseat of a marked NOPD unit where he was transported to the testing site. One of the supervisors told him that as a courtesy, they would not handcuff him during the ride. Thankfully, the above was captured on the officer's body worn cameras. Nevertheless, even though the subsequent PIB investigation resulted in the sustaining of a felony violation of state criminal law, only the lower ranking supervisor was accused in the criminal act. The complained of activity of the PIB investigator was not sustained. Interestingly, however, is that both supervisors continued unhindered in their assignments.

X.

In another instance, a PIB sergeant assigned to investigate a criminal battery complaint against an officer verified that there was probable cause for the arrest/summons of the accused officer. The officer was directed to appear at the PIB office the following morning to be issued a summons for the offense. The summons was never issued, as the sergeant opined that the victim would not appear in court to prosecute the matter. Even more concerning is the fact that it appears as if no administrative disciplinary investigation was ever initiated or completed.

XI.

Finally, just recently The NOPD Superintendent's office publicly released a "Brady/Giglio" list. Such a list is commonly used to help prosecutors identify potential law enforcement officers whom have been deemed to have credibility issues due to sustained findings against them of certain violations. By virtue of being included on this list, the ability to testify and the integrity of such testimony may be compromised. It is easy to see how such a situation could adversely affect the career of a police officer. Despite the fact that PIB was the sole entity who investigated, stored, maintained and controlled all of the required data to compile such a list, and despite the fact that such an important list would have surely been subjected to great scrutiny and review to ensure accuracy, numerous officers were wrongly included on the list. Nevertheless, the list was published and no corrective actions were never taken.

XII.

The NOPD, and more specifically, the Public Integrity Bureau, publically and internally stress the importance of discipline, integrity and competency. NOPD Chapter 52.1.1 requires that anytime a member of the department is alerted to potential violations of policy, that member must report the potential violation for investigation. In the majority of the above cited instances, the NOPD/PIB was notified of the allegations. In most of the above cases, PIB supervisors read and approved the reports which contain the most egregious violations, such as the fabrication of evidence and the failure to interview crucial eyewitnesses. Not once did they identify, report or

investigate these occurrences on their own accord. This is a clear violation of policy and, more concerning, a serious lapse of supervision at the highest levels.

XIII.

As noted above, PANO has filed, or tried to file complaints in regards to many of the above occurrences. PANO has brought many of these allegations to the attention of high ranking members of both PIB and the Deputy Chiefs and Superintendent of Police. PANO has sued the NOPD in order to obtain fairness for officers involved in the disciplinary process. Complaints lodged against Deputy Chief or the Superintendent of Police are referred for investigation to the Office of Inspector General. Of the many complaints which have been supposedly referred to OIG, PANO witnesses have never been contacted or advised of the status of any such investigation.

XIII.

The above identified incidents reveal serious infractions of City of New Orleans policy, NOPD policy and procedure as well as civil service rules and regulations. The above is by no means an exhaustive list of malfeasant, incompetent or otherwise corrupted behavior which seems to be prevalent within certain disciplinary investigations. It is certain that an investigation and public hearing will certainly unveil more.

Disparate treatment, favoritism or malice have no place within a proper administrative investigation, and acts as a cancer to a healthy system of discipline. It has been previously demonstrated that neither the NOPD nor the OIG have any interest meaningfully addressing these issues. Meanwhile, such actions adversely affect the working conditions, pay, promotions, recruiting and retention and overall morale NOPD officers. These officers, and the city they protect, deserve nothing less than fair and equal treatment, competent and complete investigations and an efficient, effective system of discipline.

WHEREFORE, it is respectfully requested that the Civil Service Commission exercise its powers to grant this Petition for Investigation and Evidentiary Hearing in order to identify, address and correct this ongoing situation before NOPD disciplinary system is irreparably damaged.

Respectfully submitted,



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POLICE ASSOCIATION OF NEW ORLEANS

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December 18, 2020

Captain Sabrina Richardson
New Orleans Police Department
Public Integrity Bureau
Email: SRichardson@nola.gov

Dear Captain Richardson:

I am initiating this complaint on behalf of numerous members of the Police Association of New Orleans. While these members are involved in the incidents, I have personally witnessed and experienced the violations that are articulated below and I am both making these complaints, and requesting formal investigation on each. It should be noted that in instances where a specific officer or case may be mentioned, it should not be presumed that any particular officer involved in that matter has necessarily complained. Additionally, since most, if not all, of the following allegations of misconduct involve members of the New Orleans Police Department's Public Integrity Bureau (PIB) and other high ranking policy makers and supervisors, it is requested that any investigations into these matters be investigated by an entity or individual outside of PIB. Additionally, in some cases, this complaint may reference PIB policies or practices which are perceived to be a violation of officer's due process rights, state laws or simply the fundamental elements of fairness.

Allegation 1- It is alleged that there are various acts of misconduct performed by PIB members, both known and unknown, during a Use of Force investigation completed under Control No. 2020-0168-R. Originally, the Use of Force was investigated as a Level 2 Use of Force, as determined by the on-scene supervisors. Based on information and belief, the Force Investigation Team (FIT) also investigated and classified it as a Level 2 Use of Force. At a much later date, some unidentified person objected to the Level 2 classification, and members of the FIT then reclassified it as a Level 4 Use of Force and ultimately sustained such violation. It should be noted that a Level 4 Use of Force violation may result in termination of employment.

On June 2, 2020 the accused officer received a Notice of Completed Investigation and Notice of Pre-Disciplinary Hearing Form, and informed him that the charges against him were **SUSTAINED**. Shortly thereafter the officer received a Disciplinary Hearing Notification authored by FIT Lieutenant Kevin Burns. The hearing date was set for September 16, 2020. The letter detailed the facts and circumstances of the investigation which led to such a finding. One of those alleged "facts" included a quotation allegedly made by the arrested subject. That

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EXHIBIT
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quotation was "You are on my neck. I can't breathe!" For obvious reasons this quotation was very concerning to me as his attorney. One of those reasons was that my client consistently stated he never applied any type of pressure or physical strike to the subject and that the subject never made any such a statement.

Both attorney and client reviewed the body camera video/audio of the event in its entirety numerous times. No such comments were in the video/audio. It should be noted that in preparation to defend the officer at his upcoming hearing, this attorney sent in a Public Record Request for the completed report of this investigation. This request was made on June 10, 2020. On June 15, 2020, the NOPD responded with this; *"Good Afternoon, this is an open investigation and cannot be released at this time. Please try again later. Our office has responded to your request and considers this request closed."*

This response was also very concerning for several reasons. For one, this incident occurred on February 21, 2020. By both NOPD Policy and state law, the NOPD had 120 days to complete the report and close the investigation. On June 2, 2020 the PIB informed the officer that the *"The disciplinary investigation into the allegation(s) against you...has been completed."* However, on June 15, 2020 the NOPD denied a valid Public Records request by indication the investigation was still "open" and as such, the requested records could be produced. Another Public Records request was filed on Based on the above timeline; it appears that both cannot be true. The investigation cannot be both open and completed at the same time. Also, on August 25, 2020 another Public Request was made for the reports. This request was denied by the NOPD and the reason for the denial was that *"I cannot release the file until after the hearing has been completed. Our office has responded to your request and considers this request closed."*

As such, it appears that unknown NOPD personnel are violating state law as it pertains to the completion of investigations or state law regarding the providing of public records. I am aware of no legal provision that allows an investigation to be considered "open" indefinitely while awaiting a disciplinary hearing. This is concerning considering the NOPD has considered the investigation "closed" for purposes of complying with state law.

Furthermore, the refusal to provide the accused officer the completed investigative report before the pre-termination hearing is fundamentally unfair. How is it the NOPD orders an accused officer to appear at a time and place and defend his actions and yet deny him access to the very information that is to be used against him? In this case neither the officer nor his attorney would be able to effectively dispute the findings of the investigation.

Only upon arrival at the hearing, and this attorney lodging an objection to the NOPD's failure to allow the officer to inspect the report, was the report finally turned over to the officer for review. Interestingly, a quick review of the report revealed that the arrested subject was never interviewed. Therefore, the officer still did not learn of where or how such a damning quotation was alleged. The report did reveal, however, that the initial FIT review supported a Level 2 use of force classification and the more serious Level 4 allegations. The investigator, Lt. Kevin Burns, apologized for the original finding, stating that it was an oversight for which he was responsible for.

Upon returning to the hearing, this attorney explained his concern in regards to the existence of such a serious allegation, and his belief that such a statement was never actually made. This attorney asked the three Deputy Chiefs who were hearing the case to provide the evidence of the quotation being alleged. None could.

PIB Chief Arlinda Westbrook instructed Lt. Kevin Burns to find or provide any such evidence for the existence or basis for the specific quotation. Eventually Lt. Burns admitted there was no evidence that such a statement was ever actually made. This attorney pointed out his grave concern for the reliance on such an obvious false or inaccurate report. Had this attorney not diligently and carefully reviewed Lt. Burns' work, it would have been blindly accepted by the reviewing and appointing authority and likely resulted in the officer's termination.

This plea fell on deaf ears, as in spite of Lt. Burns' conceding that the events he documented did not actually occur, the officer was summarily recommended to be suspended for 80 days, which he is now serving. The disciplinary matter has been appealed. Despite the discovery of the totally inaccurate and falsified investigation by Lt. Burns, the matter has gone ignored. Despite Lt. Burns' verbally accepting full responsibility for the errors, no responsibility was ever imposed.

This attorney has represented numerous NOPD police officers who have been investigated for allegations of false or inaccurate reports, some of which have been sustained. Most of those allegations involved much less impactful matters. This attorney has also represented supervisors, and knows of others supervisors, who have been investigated for failing to properly classify a use of force incident. PIB has even gone so far as to open up investigations on supervisors who refuse to change their classification of use of force incidents. It is therefore requested that an investigation be opened into why the classification was changed, who ordered the change, and the justification, in if any, for such a change.

Lt. Burns included allegations of very disturbing statements and events which did not actually occur. Submitting these false allegations in an official report being used to determine discipline of an officer which easily could rise to termination is an incredibly serious violation of NOPD policies and state law. This is a formal complaint requesting that these actions be investigated, to determine if this was the result of bias, neglect, or an intentional act.

NOPD Chapter 52.1.1 mandates a responsibility for all members of the NOPD to report misconduct whenever they observe or become aware of such possible misconduct. Considering the above, it is both strange and concerning that such an incident was discovered and ignored when it was learned. It is therefore the intent of this correspondence that the above possible allegations of misconduct are now properly investigated.

Allegation 2- It is alleged that in addition to the above specified possible violations of state law regarding the failure to produce public records, this attorney has requested numerous other such public records on behalf of PANO members facing the very same circumstances outlined above and all have been consistently been denied on the same basis. These records request will be submitted to the proper investigators of this matter. Additionally, it is requested the NOPD

investigate the conflicting and confusing positions in regards to their policy of when an investigation is open or closed (specifically as it relates to state law). The investigations are reported to the affected officer by PIB as being "completed" in the disciplinary finding letter informing the officer of the subsequent hearing dates. PIB then tells us the investigation is still "open." It cannot be both "open" and completed at the same time, and there is no legal provision which allows the investigation to remain open indefinitely while the NOPD struggles with scheduling difficulties in arranging the requisite hearings.

Allegation 3- It is alleged that the NOPD's practice of withholding the completed report is arbitrary and capricious and is a violation of fundamental fairness and an officer's right to due process. It should be noted that this attorney cannot find any such written policy regarding this practice nor has the NOPD ever responded to his request to produce one.

Allegation 4- It is alleged that, while PIB normally tries to comply with state law regarding the time frames applicable to the completion of administrative disciplinary investigations, the same cannot be said of the NOPD's diligence in rendering the final disciplinary actions. It is not uncommon for officers to wait months and months for their final disciplinary letter and the execution of such punishment. This can be viewed as demoralizing and punitive as such can be used to hinder both transfers and promotions.

In closing, the Police Association of New Orleans understands and supports the need for a healthy, effective and respected system of discipline. It is submitted, however, that in order to achieve this goal, such a system must be fair and consistent, swift and sure, and equally applied to all. PANO looks forward to ensuring this goal is reached. Please contact me in regards to the above so that I may provide any other information relating to the allegations as outlined above.

Sincerely,



Eric J. Hessler

Legal Counsel

Police Association of New Orleans