

# **City of Miami**

*City Hall  
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## **Meeting Minutes**

**Tuesday, May 11, 2010**

**10:00 AM**

**Commission Chambers**

## **Civil Service Board**

*Miguel M. de la O, Board Member  
Michael T. Dames, Board Member  
Gerald Silverman, Board Member  
Joseph Kaplan, Board Member  
Sean Moy, Board Member*

**PLEDGE OF ALLEGIANCE**

*The meeting was called to order at 10:03 A.M. The roll call for Board Members at the commencement of the meeting was as follows:*

**Present:** Chief Examiner Kaplan, Chairperson de la O, Member Silverman and Member Moy

**Absent:** Member Dames

**ELECTION OF CIVIL SERVICE BOARD MEMBERS**

*The Executive Secretary stated that in accordance with Civil Service Rule 2.1, the first order of business after the selection of the Civil Service Board Members is to elect officers, inclusive of a Chairperson and Chief Examiner. The Executive Secretary then opened the floor for nominations for the position of Chair of the Board.*

*Member Kaplan nominated Member de la O for the position of Chairperson. Upon hearing no other nominations, the Board considered a motion to ELECT Miguel M. de la O to the position of Chairperson of the Civil Service Board which resulted as follows:*

**Motion by Chief Examiner Kaplan, seconded by Member Silverman, to APPROVE. PASSED by the following vote.**

**Aye:** de la O, Moy, Dames, Kaplan and Silverman

*Subsequent to electing a Member as Chairperson of the Board, the Executive Secretary turned the meeting over to Chairman de la O, who opened the floor for nominations for the position of Chief Examiner.*

*Member Moy nominated Member Kaplan for the position of Chief Examiner. Upon hearing no other nominations, the Board considered a motion to ELECT Joseph Kaplan to the position of Chief Examiner which resulted as follows:*

**Motion by Member Moy, seconded by Member Silverman, to APPROVE. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

*Chairman de la O opened the floor for nominations for the appointment of the Executive Secretary to the Civil Service Board.*

*Member Silverman nominated Tishria L. Mindingall for the position of Executive Secretary. Upon hearing no other nominations, the Board considered a motion to APPROVE the appointment of Tishria L. Mindingall as Executive Secretary of the Civil Service Board which resulted as follows:*

**Motion by Member Silverman, seconded by Member Moy, to APPROVE. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

**ADOPTION OF CIVIL SERVICE RULES AND REGULATIONS**

*The Board considered a motion to adopt the existing Civil Service Rules and Regulations which resulted in the following vote:*

**Motion by Member Silverman, seconded by Chairperson de la O, to APPROVE.  
PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

**A. APPROVING THE MINUTES OF:**

Regular Meeting of April 20, 2010.

**Motion by Chief Examiner Kaplan, seconded by Member Silverman, to APPROVE.  
PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

**B. PERSONNEL MATTERS**

**C. MILITARY LEAVES OF ABSENCE**

**D. DISCIPLINARY MATTERS**

- D.1** Copy of a letter from Carlos Migoya, notifying Shellande Tropnas, Payroll Specialist, of her termination, effective April 23, 2010 and a copy of a request from Osnat K. Rind, Attorney, requesting a hearing of appeal on behalf of Ms. Tropnas. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

- D.2** Copy of a letter from Chief John F. Timoney, Director, Department of Police, notifying Raul Cabrera, Police Officer, of his 160-hour suspension, effective April 21, 2010 and a copy of a request from Officer Cabrera requesting a hearing of appeal relative to his 160-hr suspension. A hearing will be scheduled in accordance with the Civil Service Rules and Regulations. (NOTIFICATION)

**RECEIVED AND FILED**

- D.3** Copy of a letter from Chief Miguel A. Exposito, Director, Department of Police, notifying Katina Rush, Communications Assistant, of her 40-hour suspension, effective April 23, 2010. (NOTIFICATION)

**NOTIFIED**

- D.4** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Raul Cabrera, Police Officer, of his termination, effective April 21, 2010. (NOTIFICATION)

**NOTIFIED**

- D.5** Copy of a letter from David Hernandez, Acting Supervisor, Department of

General Services Administration, notifying Roberto Rodriguez, General Maintenance Repairer, of a 2-day suspension, effective April 28, 2010.  
(NOTIFICATION)

**NOTIFIED**

## **E. GENERAL ITEMS**

- E.1** Copy of Findings of Fact concerning the Grievance Hearing of Cornelius Pierre, Code Enforcement Inspector, regarding violation of Civil Service Rule 12.  
(DISCUSSION)

*Barnaby Min, Assistant City Attorney (ACA), stated that he made some changes to the recommendations which were not recommendations by the Board, but they do benefit the employee; however, he would ask that consideration of this item be deferred to the Board's next meeting because only two of the Members that are present today were present when this matter was considered by the Board.*

*Chairman de la O asked Attorney Rind if she had an objection to this matter being deferred. Attorney Rind responded in the negative.*

*Following discussion, the Board entered a motion to DEFER this item to the Board's next meeting for discussion which resulted as follows:*

**Motion by Member Silverman, seconded by Member Moy, that this matter be DEFERRED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

- E.2** Copy of Findings of Fact concerning the Appeal Hearing of Alice Dunn, Typist Clerk II, relative to her 40-hour suspension. (DISCUSSION)  
*Chairman de la O stated that both attorneys agreed to the amended findings and called for a motion to APPROVE the Findings of Fact as amended, which resulted as follows:*

**Motion by Member Silverman, seconded by Member Moy, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

- E.3** Copy of Findings of Fact concerning the Appeal Hearing of Alice Dunn, Typist Clerk II, relative to her 80-hour suspension. (DISCUSSION)  
**Motion by Member Silverman, seconded by Chief Examiner Kaplan, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

- E.4** Notice of a Request for a continuance on behalf of Jorge Aguilar, Police Officer, relative to his 20-hour suspension, effective October 26, 2006.

**(DISCUSSION)**

Hearing of appeal is scheduled for May 18, 2010.

*Attorney Rind stated that with regards to all of the hearings set for next week (Items E.4 through E.6), she has asked for continuances because of a scheduling conflict.*

*Chairman de la O asked the department's attorney if he had any objections to Attorney Rind's request to continue the three cases appearing in Items E4 through E6. ACA Min responded in the negative.*

*Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance of the hearings of Jorge Aguilar (E.4), Javier Gonzalez (E.5) and Gilberto Gomez (E.6) which resulted as follows:*

**Motion by Member Silverman, seconded by Chief Examiner Kaplan, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

**E.5**

Notice of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Javier Gonzalez, Police Officer, relative to his 20-hour suspension, effective June 1, 2006. (DISCUSSION)

Hearing of appeal is scheduled for May 18, 2010.

*The Board entered a motion to CONTINUE the hearing of Officer Javier Gonzalez and charge the continuance to the employee which resulted as follows:*

**Motion by Member Silverman, seconded by Chief Examiner Kaplan, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

**E.6**

Notice of a Request for a continuance from Osnat K. Rind, Attorney, on behalf of Gilberto Gomez, Police Sergeant, relative to his 40-hour forfeiture, effective January 14, 2008. (DISCUSSION)

Hearing of appeal is scheduled for May 18, 2010.

*The Board entered a motion to CONTINUE the hearing of Officer Gilberto Gomez and charge the continuance to the employee which resulted as follows:*

**Motion by Member Silverman, seconded by Chief Examiner Kaplan, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

**F. REPORTS****F.1**

Pending Hearings as of May 11, 2010. (NOTIFICATION)

**PRESENTED****G. REQUESTS FOR HEARINGS****G.1**

A copy of a Request for Grievance Hearing from Osnat K. Rind, Attorney on behalf of Melanie Ortiz, Typist Clerk II, of her layoff, pursuant to Civil Service Rule 12. (DISCUSSION)

*ACA Min stated there is a possibility of this case being resolved so he would ask that the matter be deferred.*

*Chairman de la O asked Attorney Rind if she had an objection to ACA Min's request. Attorney Rind responded in the negative.*

*Following discussion, the Board entered a motion to DEFER discussion of this matter due to a possible settlement which resulted as follows:*

**Motion by Member Silverman, seconded by Chief Examiner Kaplan, that this matter be DEFERRED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

**NOTE:** In accordance with the Board's Continuance Policy, the request for hearing in the matter of Melanie Ortiz will be scheduled for Board discussion if a written settlement is not received by the Executive Secretary within 30 days.

**H. TODAY'S HEARINGS****H.1**

Hearing of appeal on behalf of Marc Marcelin, Police Officer, relative to his 20-hour suspension, effective February 9, 2009.

*The Board entered into the scheduled hearing of Officer Marc Marcelin, the Appellant.*

*Barnaby Min, Assistant City Attorney, represented the Department.*

*Osnat K. Rind, Attorney at Law, represented the Appellant.*

*ACA Min stated that he wished to stipulate to certain facts on the record concerning Officer Marcelin's case which are as follows:*

*(1) Based upon the reprimand the alleged misconduct by Officer Marcelin occurred on February 10, 2007*

*(2) The alleged untruthfulness misconduct occurred on or about July 10, 2007*

*(3) The reprimand was not served on Officer Marcelin until January 12, 2008 and Florida Statute 112.532( 6)(a) requires that the department give written notice of its intent to proceed with the disciplinary action to the officer within 180 days of the misconduct being discovered. He went on to say that the reprimand was issued to Officer Marcelin outside of the 180-day window; therefore, the department does not have a legal basis to either toll or extend the 180-day window.*

*(4) Pursuant to Florida Statute 112.532(6)(a), Officer Marcelin should be found not guilty of the following violations cited in the reprimand: Departmental Order 1.11.6.54.1 -*

*Members to be Truthful, Departmental Order 1.11.6.17.17 - Untruthfulness, and Civil Service Rules 14.2(d) - Violation of Civil Service Rules, 14.2(e)(1) - Insubordination, 14.2(e)(2) - Breach of Proper Discipline, 14.2(i) - Offensive Conduct or Language, 14.2(k) - Incompetent/Negligent.*

*Chairman de la O asked Attorney Rind if there was anything she wished to say regarding this matter. Attorney Rind responded that she agreed there was a violation of Chapter 112 of the State Statutes. She went on to say that the basis of this reprimand is that her client went into Internal Affairs and lied about being some place where he was not and that her client would give testimony that he was not at the said place, so in addition to being not guilty [based on] the Chapter 112 violation, she also feels her client should be deemed not guilty [based on] the merits.*

*Chairman de la O asked Attorney Rind if she preferred to have a hearing and waive the violation of the 180-day Rule. Attorney Rind responded that she definitely was not waiving the violation of the 180-days, but she thought there should be a finding on the merits. Chairman de la O responded that he did not know how the Board could do what Attorney Rind was asking. Attorney Rind stated that her client could testify.*

*Member Silverman stated that to do what Attorney Rind was asking, the Board would have to hold a hearing and hear testimony from both sides.*

*Chairman de la O asked ACA Min if he rested his case. ACA Min responded in the affirmative.*

*Following discussion, the Board entered a Motion to Dismiss the charges brought against Officer Marc Marcelin based upon the 180-day Rule with the stipulation that there be an entry of not guilty which resulted as follows:*

**Motion by Member Silverman, seconded by Member Moy, that this matter be APPROVED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

*Following the Board's approved motion on Officer Marcelin's case, ACA Min stated that for purposes of expediting this matter, he prepared proposed findings but he did not know if the Board wished to consider the findings today. He went on to say that Attorney Rind reviewed and agreed to the findings with the exception of the language, "and granting the appellant's Motion to Dismiss" which he was agreeable to striking from the findings.*

*Chairman de la O asked Special Counsel Everett if she had an opportunity to review the proposed findings of fact prepared by ACA Min. Cynthia A. Everett, Special Counsel to the Board, responded in the affirmative.*

*Chairman de la O asked Attorney Rind if she had an objection to the entry of the order. Attorney Rind responded she did object given the Board's motion.*

**NOTE: Chairman de la O instructed Special Counsel Everett to review the findings of fact for consideration at the Board's next meeting.**

## H.2

Hearing of appeal on behalf of Favian Rodriguez, Police Officer, relative to his 40-hour suspension, effective January 3, 2009.

*ACA Min stated that he was under the impression that this case was resolved, but it was not. He went on to say that he apologizes for the mistake, he informed Attorney Rind of*

*the mistake, and therefore would ask that the hearing be continued since Attorney Rind had already notified her witnesses not to attend today's meeting.*

*Following discussion, the Board entered a motion to CONTINUE the hearing of Officer Favian Rodriguez and charge the continuance to the department which resulted as follows:*

**Motion by Member Silverman, seconded by Member Moy, that this matter be CONTINUED. PASSED by the following vote.**

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

### H.3

Grievance Hearing on behalf of Neal A. Muhammad, Fire Lieutenant, pursuant to Civil Service Rule 4.2, concerning the 2008 Fire Captain's Oral Board Exam.

*The Board entered into the scheduled grievance hearing of Fire Lieutenant Neal Muhammad, the Grievant.*

*Leslie Holland, Attorney at Law, represented the Grievant.*

*Barnaby Min, Assistant City Attorney, represented the Department.*

*Opening statements were presented by both attorneys.*

*The Rule of Witnesses was invoked and all witnesses were sworn in individually. Witnesses for the Grievant appeared in the following order:*

1. Neal Muhammad, Fire Lieutenant, City of Miami, Department of Fire-Rescue, testified on his own behalf.

*Questions were posed by Board Members Kaplan, de la O, and Moy during the testimony of Neal Muhammad.*

2. Alberto Gisbert, Fire Lieutenant, City of Miami, Department of Fire-Rescue.

*Questions were posed by Board Members de la O and Moy during the testimony of Alberto Gisbert.*

3. Raymond Fernandez, Fire Lieutenant, City of Miami, Department of Fire-Rescue.

*Questions were posed by Board Member Moy during the testimony of Alberto Gisbert.*

4. Billy Rodriguez, Fire Lieutenant, City of Miami, Department of Fire-Rescue.

*Questions were posed by Board Members de la O and Moy during the testimony of Alberto Gisbert.*

*The Grievant rested his case.*

*Witnesses for the Department appeared in the following order:*

1. Latanya Foster-Casills, Testing & Validations Specialist, City of Miami, Department of Employee Relations.

*Questions were posed by Board Members de la O, Silverman and Kaplan during the*



*testimony of Latanya Foster-Casills.*

*2. Qiana Sanders, Testing & Validations Specialist, City of Miami, Department of Employee Relations.*

*Questions were posed by Board Members de la O, Moy and Kaplan during the testimony of Qiana Sanders.*

*3. Eyrn Kraus, Testing Project Administrator, City of Miami, Department of Employee Relations.*

*Questions were posed by Board Members de la O, Silverman, Kaplan and Moy during the testimony of Eyrn Kraus.*

**HEARING TO BE CONTINUED -----** Chairman de la O stated that the Board would not be able to finish Lt. Muhammad's case today due to insufficient time. He asked the Executive Secretary to check with the attorneys to see if they would be available for the meeting of May 18, 2010 and if they are, the Board could continue the hearing with the department's calling of Sgt. William Scarola to testify.

#### **PRESENTATION OF CERTIFICATES:**

*The Executive Secretary presented Certificates of Appreciation to Chairman Miguel de la O and former Chief Examiner William Scarola for their services to City residents and employees during their term on the Board, April 2008 - April 2010.*

#### **ADJOURNMENT:**

*The Chairman called for a motion to ADJOURN which resulted as follows:*

**Motion by Member Moy, seconded by Chairperson de la O, to APPROVE.**

**PASSED** by the following vote.

**Aye:** de la O, Moy, Kaplan and Silverman

**Absent:** Dames

*The meeting adjourned at 1:59 P.M. Breaks were taken at 10:17-10:27 a.m.; 10:32-10:34 a.m. and 11:50-12:01 p.m.*

#### **SIGNATURE:**

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**Miguel M. de la O, Chairperson**

#### **ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**