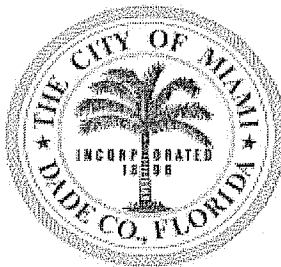


# **City of Miami**

*City Hall  
3500 Pan American Drive  
Miami, FL 33133  
[www.miamigov.com](http://www.miamigov.com)*



## **Meeting Minutes**

**Tuesday, April 5, 2011**

**10:00 AM**

**Commission Chambers**

### **Civil Service Board**

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

**PLEDGE OF ALLEGIANCE**

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

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

**A. APPROVING THE MINUTES OF:**

Regular Meeting of March 22, 2011.

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

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

**B. PERSONNEL MATTERS****C. MILITARY LEAVES OF ABSENCE**

- C.1 Genesis Troutman, Park Ranger, requests re-employment as a Park Ranger following her return from military leave. A copy of her DD214(honorable) submitted. (DISCUSSION)

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

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

**D. DISCIPLINARY MATTERS**

- D.1 Copy of a letter from Larry Spring, Interim Director, Department of Employee Relations, notifying Meredith Nation, Procurement Supervisor (unclassified), of her termination, effective March 23, 2011 and a request to appeal from Meredith Nation. (NOTIFICATION)

See Item G.1- Requests for Hearings

**RECEIVED AND FILED**

**E. GENERAL ITEMS**

- E.1 Notice of a Request for a continuance from Osnat K. Rind, Attorney on behalf of Nicole Sweet, Communications Operator, concerning her 16-hour suspension, effective October 30, 2010. Janeen Richard, Assistant City Attorney, expressed no objection to opposing Counsel's request. (DISCUSSION)

Hearing of appeal is scheduled for May 3, 2011.

*Attorney Rind stated that she requested a continuance of both of her client's cases (Items E.1 and E.2) due to a conflict she has on May 3, 2011. Chairman de la O asked opposing counsel if she had an objection to the continuance requests. Janeen Richard, Assistant City Attorney (ACA), responded in the negative.*

*Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance of both cases (Items E.1 and E.2) which resulted as follows:*

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

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

- E.2** Notice of a Request for a continuance from Osnat K. Rind, Attorney on behalf of Nicole Sweet, Communications Operator, concerning her 24-hour suspension, effective November 1, 2010. Janeen Richard, Assistant City Attorney, expressed no objection to opposing Counsel's request.  
(DISCUSSION)  
Hearing of appeal is scheduled for May 3, 2011.

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

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

## **F. REPORTS**

- F.1** Pending Hearings as of April 5, 2011. (NOTIFICATION)  
**PRESENTED**

## **G. REQUESTS FOR HEARINGS**

- G.1** Copy of a request for an Appeal hearing from Meredith Nation, Procurement Supervisor (former), regarding her termination, effective March 23, 2011.  
(DISCUSSION)  
*Teri Guttman-Valdes, Attorney at Law on behalf of Meredith Nation, stated that her client was terminated while in an unclassified position and filed an appeal because she has prior Civil Service status in a former position. Chairman de la O asked Attorney Guttman-Valdes if she was seeking to have Ms. Nation reinstated to her last classified position. Attorney Guttman-Valdes responded in the affirmative. Chairman de la O stated that he had not seen a case like the one before the Board today and asked if Ms. Nation would be entitled to her former classified position if she was terminated for cause from her unclassified position. Attorney Guttman-Valdes responded in the affirmative.*  
  
*Chairman de la O asked for the department's position. ACA Richard stated that Ms. Nation was terminated from an unclassified position; however, her termination was with cause. She went on to say that it is the department's position that Ms. Nation is not entitled to any position in the City regardless of whether the position is classified or unclassified. Chairman de la O asked if Ms. Nation was entitled to a hearing on whether the termination was with or without cause. ACA Richard responded in the affirmative. She went on to say that in the termination letter issued to Ms. Nation, it sets forth various Civil Service Rules that she violated. Chairman de la O asked if the department objected to Ms. Nation's request for a hearing. ACA Richard responded in the negative.*

*Following discussion, the Board entered a motion to grant the employee's request for a hearing.*

*Under discussion on the motion, Member Silverman stated that he was unclear with*

regards to the department's position, but it seemed to him that the department is saying that if Ms. Nation did a lousy job in her unclassified position that she loses her rights to return to her classified position. He went on to say that if his understanding is correct, he would like to hear the department's rationale. ACA Richard responded that the department has taken the position that Ms. Nation loses her right to return to her former classified position because the egregious conduct she committed in the unclassified position extinguishes any future employment with the City of Miami.

Member Silverman stated that Ms. Nation is not entitled to a hearing concerning her unclassified position. Attorney Guttman-Valdes responded that if Ms. Nation wins her case she would be returned to her classified position. For clarification purposes, Member Silverman inquired if it is the department's position that Ms. Nation did such a terrible job in her unclassified position that she is not entitled to return to her classified position. ACA Richard responded that the department's position is that Ms. Nation would not be entitled to any job within the City of Miami.

Following discussion, the motion on the floor to grant the employee's request for a hearing which resulted as follows:

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

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

## G.2

Copy of a request for a Grievance hearing from Teri Guttman-Valdes, Attorney, on behalf of Ariel Coll, Sanitation Inspector (former), pursuant to Civil Service Rule 16.1 and 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement, regarding his layoff. (DISCUSSION)

Attorney Guttman-Valdes stated that Ariel Coll was laid off with a number of other employees during the early part of 2010. Subsequently a settlement agreement was entered into by the City of Miami and AFSCME Union-Local 1907 thereby reinstating a number of employees, but Mr. Coll was not included in that settlement. She went on to say that based upon the procedures implemented to effectuate the resolution, Mr. Coll was not reinstated thereby the (Memorandum of Understanding or MOU) is in violation of the Civil Service Rules. Attorney Guttman-Valdes further stated that they are asking for a hearing pursuant to Rules 16.1 and 16.2 concerning a violation of Rule 12. Chairman de la O asked Attorney Guttman-Valdes to explain why she feels her client should have been reinstated. Attorney Guttman-Valdes responded that her client should have been reinstated based upon his seniority rights.

Chairman de la O asked for the department's position on this matter. ACA Richard responded that the department's position is two-fold. She went on to say that she acknowledges that (requests for) Rule 16 hearings do not have a time limit, but to wait over a year to come before the Board she believes is unreasonable and prejudicial to the department. ACA Richard further stated that the second issue is whether Mr. Coll was subject to the MOU; however, this issue is not for this Board to decide, but a decision between the City and the Union once that matter was settled. She stated that with regards to the layoffs, Mr. Coll had the least seniority of all the Sanitation Inspectors in the Solid Waste Department so there were no vacancies available to him and his name was placed on a layoff register for up to three years. ACA Richard stated that the layoff procedures were followed with regards to Rule 12 and AFSCME-Local 1907 Union contract; therefore, Mr. Coll will be considered for reemployment according to his seniority should a vacancy become available.

Chairman de la O asked Attorney Guttman-Valdes which Rule was she contending that the City violated. Attorney Guttman-Valdes responded Rule 12 with regards to the

*calculating of seniority points.*

*Cynthia Everett, Special Counsel to the Board stated that Rule 12 is broad; therefore, she would like to know what section(s) of Rule 12 is being alleged by the employee to have been violated. Attorney Guttman-Valdes responded Rules 12.1 and 12.2 which governs the reinstatement of employees that were laid off.*

*Following discussion, the Board entered a motion to grant the employee's request for a hearing pursuant to Rules 16.1 and 16.2 concerning a violation of Rules 12.1 and 12.2.*

*Under discussion on the motion, Member Dames stated that he thinks this case will boil down to the calculation of the seniority points; therefore, he would like to know if the issue of how to calculate seniority points to determine an employee's layoff score was ever finalized. ACA Richard stated that she was not exactly clear on what Member Dames was asking, but she could offer that of all the Sanitation Inspectors in the City of Miami, Mr. Coll was the last to be hired into this position which meant he had the least amount of seniority. Chairman de la O asked was there an issue of seniority credits with regards to Mr. Coll's complaint. ACA Richard responded in the negative. Chairman de la O stated although the MOU was not done until the Fall, it seemed that Attorney Guttman-Valdes was trying to challenge Mr. Coll's layoff, which took place over a year ago. Attorney Guttman-Valdes responded that the City decided to rescind the layoffs and afterwards brought some individuals back to work and Mr. Coll should have been included in that group based upon the method used by the City; so it is really what transpired after the rescinding of the City's decision on the layoffs, which is actually contained in the MOU, however, but they are not challenging the MOU. For clarification purposes, Chairman de la O asked Attorney Guttman-Valdes whether she was challenging the MOU that was prepared a year ago, because when she was asked what section of the Rule she was alleging to have been violated, she stated Rule 12.1 which has to do with layoff procedures. Attorney Guttman-Valdes responded that based upon the way the employees were reinstated to their jobs, she believes that Mr. Coll should have been included; therefore she is compiling the documents to support her claim which is the reason they asked for a hearing. She went on to say that the way that the department decided to undo its decision (on the layoffs) and the calculations of seniority scores is where Rule 12.1 ties in.*

*ACA Richard clarified that there was no rescinding of the layoffs rather there was a grievance filed and a settlement agreement (the MOU) was entered into between the parties. She went on to say that individuals remained laid off and she knows this to be a fact because there were employees in the City Attorney's Office that were laid off at that time and have not been brought back to work. ACA Richard further stated that some employees affected by the layoff had rollback rights and were returned to their former classification, while others were brought back under the terms of the MOU.*

*Chairman de la O asked Attorney Guttman-Valdes why wasn't her argument against the Union (AFSCME-Local 1907) since the Union negotiated the MOU but did not include her client. Attorney Guttman-Valdes responded that she was not retained to make a claim against the Union. Chairman de la O stated that did not mean Mr. Coll's complaint should not be against the Union, because as he understands this matter, there was a settlement between the Union and the City and Mr. Coll was left out of that settlement. Attorney Guttman-Valdes responded that the City was a party to the agreement and they have a problem with the City and the MOU as to how individuals were brought back to work. Chairman de la O stated that as long as Attorney Guttman-Valdes can prove the way the City brought back individuals violated the Civil Service Rules, she would have standing to complain, and asked Attorney Guttman-Valdes if she agreed that if she is unable to prove her claim, this would mean that it is just a settlement and tough luck to her client. Attorney Guttman-Valdes responded in the affirmative.*

*Member Moy stated that regardless of the (layoff) calculations, every Sanitation Inspector was brought back to work so he did not understand how one employee of the same classification could be left out of the settlement, which is the reason he believes the Board should grant a hearing.*

*ACA Richard stated that in response to Member Moy's comment about Mr. Coll not being brought back to work, she would offer that some individuals were reinstated because they worked for the City 10 years or more (referring to the AFSCME Contract) and she believes that Mr. Coll was hired in 2005 as a Sanitation Inspector so he did not have as much seniority as the other Sanitation Inspectors. She went on to say that Mr. Coll was laid off in February 2010 and to come back after over a year to complain about the layoff calculations is unfair. Chairman de la O interceded and stated that the employee was not complaining about the layoff itself, which is an issue he established earlier on with Attorney Guttman-Valdes because he agrees that at some point there has to be finality and there is also a layoff that has to be challenged if it was done wrong, although the Rules do not seem to place a deadline on (Rule 16) hearing requests. He went on to say that Attorney Guttman-Valdes' complaint is whether the MOU itself violates the Civil Service Rules and if it does, he does not think the City can get around the Civil Service Rules by entering into an understanding with the Union. ACA Richard stated they believe the Civil Service Rules were complied with and the case was resolved; therefore, she does not think the employee's issue is with the City, but the Union. Chairman de la O asked ACA Richard if the City can violate the Rules by entering into a MOU. ACA Richard responded she had not heard there being a violation of the Civil Service Rules. Chairman de la O stated this would be the point of having a hearing to determine whether entering into the MOU violated the Civil Service Rules, which he thinks is the only area that the Board would have jurisdiction.*

*Special Counsel Everett stated that the Board should have an indication of at least which rule has been violated. She went on to say that Attorney Guttman-Valdes alleged there was a violation of Rule 12.1 (Layoff Procedures), but she heard the Chair say that is not the issue so she would like to know what the alleged Rule violation is before the Board grants a hearing since it is not the responsibility of the Board to fish and figure out the Rule violation, but the responsibility of the employee. Attorney Guttman-Valdes responded that they are alleging a violation of Rule 12.1. Chairman de la O asked Attorney Guttman-Valdes to explain why she feels that Rule 12.1 was violated. Attorney Guttman-Valdes responded she believes the City violated Rule 12.1 because of the procedure by which the City selected the individuals to return to work. Chairman de la O stated that he must be misreading Rule 12.1 because this rule is only about laying off and not about bringing employees back to work. He asked Attorney Guttman-Valdes if she was saying that essentially the City rescinded the layoff of the employees and then decided who would be laid off again, and the ones who would not be laid off were the ones who were reinstated. Attorney Guttman-Valdes responded in the affirmative. She went on to say that the effect of the MOU was to undue the layoffs of certain individuals and reinstate others. Chairman de la O asked Attorney Guttman-Valdes if she was now saying that the City did away with the original layoffs, did another layoff of which her client should not have been laid off. Attorney Guttman-Valdes responded in the affirmative. Chairman de la O stated that the City's argument is that Mr. Coll was the last Sanitation Inspector to be hired so what is her reason that Mr. Coll should not have been on the layoff list. Attorney Guttman-Valdes responded that it is the way the City selected the individuals and that she would bring this information to the Board. Chairman de la O asked Attorney Guttman-Valdes if she really knew at this time whether her client was last to be hired. Attorney Guttman-Valdes responded that she has a portion of the documents, but not the full plethora of them (to make that determination) so as the Chairman stated this is a complicated matter and she needs time to review the documents.*

Member Kaplan stated that it is his position that the MOU is not subject to the Board's review. He went on to say that if in fact by the Board voting on a hearing they are going to in any way raise the MOU for adjudication by this Board, he is opposed to it. Member Kaplan further stated that he thinks all the Board needs to know is what role the MOU is going to play in the hearing request that the Board is about to vote on. Chairman de la O asked Attorney Guttman-Valdes if she was challenging the City and the Union's ability to enter into a MOU. Attorney Guttman-Valdes responded in the negative. She went on to say that her best case scenario would be for the Board to determine whether Mr. Coll should have been included in the group that was not laid off and a recommendation would be made that his layoff be rescinded. Chairman de la O stated that would be based upon the MOU itself and asked Attorney Guttman-Valdes if she was saying that the MOU was invalid. Attorney Guttman-Valdes responded in the negative.

Member Kaplan stated there are ways in which actions of the Union can be addressed (i.e., arbitration). He went on to say that if the Board is going to discuss Rule 12, he is in favor of holding a hearing but if it is going to make the bringing of any discussion pertaining to the MOU rights, privileges, actions, reactions, or consequences, then he would be opposed to it.

Following discussion, the motion on the floor to grant the employee's request for a grievance hearing resulted as follows:

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

**Aye:** Silverman, Dames and Moy

**No:** Kaplan and de la O

## **H. TODAY'S HEARINGS**

**H.1** Hearing of appeal on behalf of Daylet Diaz, Litigation Assistant, relative to her termination, effective August 17, 2010.

*The Board entered into the scheduled appeal hearing of Daylet Diaz, the Appellant.*

*Janeen Richard, Assistant City Attorney (ACA), represented the Department.*

*Teri Guttman-Valdes, Attorney at Law, represented the Appellant.*

*ACA Richard presented opening statements which was followed by a request from opposing counsel asking that the Board consider her Preliminary Motion for Summary Judgment. She went on to say that she would move to dismiss the charges brought against her client based upon the department's failure to give her client proper notice of her dismissal by not having the signature of either the City Manager or Department Director affixed to the dismissal letter. Attorney Guttman-Valdes cited a portion of the City Charter and case law 330 So.2d 825, City of Hialeah vs. Frank D. Stola, in support of her position. After hearing argument from both attorneys, testimony from Maria Chiaro who signed in the absence of the Department Director, and the Members respectively, the Board entered a motion to DENY the employee's motion which resulted as follows:*

**Motion by Member Silverman, seconded by Chairperson de la O, that this matter be APPROVED. PASSED by the following vote.**

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

*Guttman-Valdes presented opening statements.*

*All witnesses were sworn in individually. Witnesses for the Department appeared in the following order:*

- 1. Derrick Arias, Assistant Director, City of Miami, Department of Information Technology. Questions were posed by Board Members de la O, Kaplan, and Dames during the testimony of witness Derrick Arias.*
- 2. Iliana Forte, Assistant City Attorney, City of Miami, Office of the City Attorney. Questions were posed by Board Members de la O, Moy, and Kaplan during the testimony of witness Iliana Forte.*
- 3. Khadijah Dean-Williams, Law Office Manager, City of Miami, Office of the City Attorney. Questions were posed by Board Members Moy, de la O, Dames and Kaplan during the testimony of witness Khadijah Dean-Williams.*
- 4. Maria Chiaro, Deputy City Attorney, City of Miami, Office of the City Attorney. Questions were posed by Board Members Kaplan, de la O, Dames, and Moy during the testimony of witness Maria Chiaro.*

*The Department rested its case and witnesses for the Appellant appeared in the following order:*

- 1. Daylet Diaz, Litigation Assistant, City of Miami, Office of the City Attorney. Questions were posed by Board Members de la O, Kaplan, Moy, and Dames during the testimony of the Appellant, Daylet Diaz.*

*The Appellant rested her case, the Department waived rebuttal, and the Board proceeded to closing arguments that were presented by both attorneys. Following final argument, Member Kaplan stated that as one Member of this Board who has in the past been eagerly involved in contract negotiations and other types of negotiations with public employers all over the country, he could say that confidentiality in his office was extremely important. He went on to say that he listened to what both the Department and the Appellant produced and it was clear to him that the testimony about accessing, printing, and taking home a highly sensitive document for any reason is a breach of confidentiality. Member Kaplan further stated that he did not know whether the discharge was excessive for the Appellant who had 10 years of service and a great employment history, but if he balanced this against the act itself, the act was so bad that a discharge makes him a little nervous, but it is appropriate.*

*Following discussion, the Board entered a motion to find the Appellant GUILTY of all three charges. Under discussion on the motion, Chairman de la O stated that in isolation, accessing the document in this case would not be a violation of confidentiality, but he thinks it should be and he would treat it that way in his office. He went on to say that he thinks the City Attorney's Office needs to have very clear rules because accessing is different, but he could certainly see many situations where a person could access a document which would violate another person's confidentiality. Chairman de la O further stated that if the issue was just accessing the document, he would be hard pressed to find a violation of confidentiality without clear rules, but that is not what is at issue. He went on to say that at the end of the day what this all boils down to is whether the Board believes the testimony of Deputy City Attorney (DCA) Chiaro or Ms. Diaz. Chairman de la O further stated that he did not see any motive for DCA Chiaro to lie, it was clear that everyone that testified personally liked the Appellant and the work she did. He stated that there were a lot of embarrassed people so it did cross his mind that maybe the Appellant was used as a scapegoat, but even when he tried to come up with*

such reasons, he could only reason that DCA Chiaro would not have been embarrassed because she did not generate the document nor was she involved with the task according to the testimony presented. Chairman de la O went on to say that if it was ACA Forte that had the discussion with the Appellant and it was now ACA Forte's word against the Appellant, and this is not to say that he would believe ACA Forte any less, but at least he would have seen some credibility to the accusation that Assistant City Attorneys Forte, Vizcaino, and Turin were trying to save themselves because they all worked on the document and it somehow got out, but it was none of them. He further stated that it was DCA Chiaro, however, who had no involvement with the document and she did have the discussion with the Appellant; which is to say that he would have to reject everything DCA Chiaro stated and at the same time accept the Appellant's testimony, and that frankly requires the willful suspension of disbelief. He went on to say that to believe the Appellant had a need to be "at the ready" just in case someone asked her to edit the document just did not make any sense and it hurt her credibility. Chairman de la O stated that if the Appellant's only story had been she became curious about the document because as a City employee she wanted to know what was going on, that would have had the ring of truth, but she did not stop at that. He went on to say there was no doubt the document was confidential because not only did the Appellant admit she shredded it, her admission showed that she knew how confidential the document was. Chairman de la O further stated he also was disturbed by the fact that when ACA Forte was asked how the Appellant knew about the document, she responded that the Appellant heard her discussing the document with another attorney while in the office kitchen, however, the Appellant mentioned a second meeting when she was at ACA Forte's desk and the Appellant was looking over ACA Forte's shoulder at the computer screen and memorized the 6-digit number, which tells him one of two things - that either the Appellant did not tell the truth, meaning that she did not instantly memorize the number or she did, which shows that the Appellant had an inordinate interest and focus on the document, which only lends credibility to the fact that she took it home and shared it with someone. Chairman de la O further stated that he was not ready to discount DCA Chiaro's testimony and say she made up everything and if she had, then DCA Chiaro owes the Appellant an apology, and she will have to live with it, and deal with her Maker. He stated that he has to believe DCA Chiaro over the Appellant because the evidence compels him to do so.

Member Moy stated the document was delivered to the Union (AFSCME Local-1907) and supposedly distributed throughout the City, but the Board had not heard testimony from any parties of that Union about having received the document. He went on to say that the document was printed at least 8 times and there was testimony from the Assistant Director of Information Technology who said that sensitive documents are usually saved to a USB flash drive, but that did not happen in this case. Member Moy further stated that the Appellant is not incompetent, disgraceful, and she has been a good employee; however, he believes that she was curious. He stated DCA Chiaro testified about the need for trust, but he wished the employees had trust at the time layoffs were taking place because all that was heard was a lot of rumors. Member Moy went on to say that the manner in which the City handled the layoffs was horrible and that he was in agreement with the Appellant's Attorney that she was used as a scapegoat. He further stated that the Appellant had been employed for 10 years, had no discipline history, and should not be terminated.

Member Dames stated that he agreed with Member Moy. He went on to say that he was wrestling with the motive and he reached a somewhat plausible reason that the Appellant took the document home. Member Dames further stated the word "confidentiality" was used a lot; however, there was no evidence produced that the Appellant signed a document concerning confidentiality so in his opinion, it is an unwritten rule. He stated that the Appellant worked for a private law firm so she does have experience and she was employed in the City Attorney's Office for 10 years and

held a managerial-confidential position which provided for no protection under a union. Member Dames went on to say that with regards to the confidential document concerning layoffs, he thinks perhaps the name of the Appellant's friend was included and she wanted to advise her friend. He further stated that his mind continued to reflect back to the department's motive to terminate the Appellant especially when she had a sterling record. Member Dames stated, there were 45 employees housed in the City Attorney's office, there was a copier machine, so anyone could have seen the document in the copier, made a copy, and placed the document back in the copier machine which is the reason he could not understand why DCA Chiaro did not ask the Appellant who did she share the document with when she took it home.

Chairman de la O stated that he wanted to say something about the unwritten rule because he thinks there is a distinction at least as he heard the testimony, there was no rule about accessing the document but he believed the testimony was the Employee Handbook contained a rule about confidentiality in the office which only stands to reason. He went on to say that another thing he wished to point out was the City Attorney's Office handled this matter correctly because he kept going back to another case for which an employee was terminated, but the department never interviewed the employee; however, in this case, the employee was called in and asked what happened with the document so he thinks the department deserves credit for its actions. Chairman de la O further stated that there is an issue of possibility versus probability. He stated it is possible that anything happened but the thing the Board does know is the Appellant accessed the document, printed it, took it home, and DCA Chiaro admitted that the Appellant shared the document with someone that did not work in their office. Chairman de la O went on to say that he surely wished and he is also sure DCA Chiaro wishes today that she would have asked the name of the third party but he thinks the fact she did not ask does not change the fundamental point that the Appellant admitted that she did those things.

Following discussion, the motion on the floor to find the Appellant GUILTY of all three charges which resulted as follows:

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

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

**No:** Dames and Moy

Having found the Appellant guilty of the charges, the Board entered into the penalty phase, wherein neither attorney presented witness testimony or entered exhibits into evidence. Arguments were presented by both attorneys. Following penalty arguments, Member Kaplan stated that he is really offended by the breach of confidentiality since he knows the absolute need of having confidentiality in negotiations of this sort.

Following discussion, the Board entered a motion to recommend to the City Manager that the Appellant be suspended for 3 months in lieu of termination.

Under discussion on the motion, Chairman de la O stated he thought the Appellant had rotten luck and that her luck turned a little better since Member Kaplan did not move for termination, but the fact there are three lawyers on the Board, he think is bad luck (for the Appellant) and he could think of nothing worse other than stealing from a client. He went on to say that he thinks stealing from your boss who is a lawyer is probably not as bad as breaching the confidentiality of a client so he is not going to support anything short of termination as much as it hurts him to say this to the Appellant.

Member Dames stated that he understands a breach of confidentiality touches attorneys deeply but as a Fire Fighter, he could only equate the Appellant's action to a "kitty"

which is money that is dropped in a jar in exchange for snacks at a fire station. He went on to say that it is okay for a Fire Fighter to take a snack if he/she does not have money, but because there is a honor system, such employees would make a notation on a sheet when this occurs; however, he thinks the worst thing a person could do is put their hand in the "kitty" and steal the money which is what the matter before the Board borders on. Member Dames further stated that he recalled a case before the Board that involved an employee who had an excellent record and that person was given a second chance (and was not fired). He stated that he understands the circumstances of what happened in this case and he knows the attorneys are all taking it personally as to what happened, but he is looking at the fact that the Appellant had no discipline history so he is asking the Board Members to dig deep (when voting on the penalty). Member Dames went on to say that the witnesses testified as to how great an employee the Appellant was and how they hated to terminate her, but the call to terminate came from the City Manager and City Commission who care nothing about progressive discipline. He further stated that he understands that the City Manager and Commissioners were embarrassed and hurt, but this is a 10-year employee who needs to be given another opportunity for employment.

Member Kaplan stated that he would like to make it clear in his motion for the 3-month suspension, that with the penalty the City would have the right to deduct any monies that would otherwise be paid to the Appellant because of her unemployment after the 3 months. Member Moy asked for clarification on Member Kaplan's explanation of his motion. Chairman de la O responded that Member Kaplan does not want the Appellant to receive double recovery when she is paid back wages and that anything she received from unemployment should be deducted, but it was his guess that this would be done automatically or the Appellant would have to repay unemployment if she receives back pay.

Chairman de la O stated that he wanted to now go back to the comments made by Member Dames and see if he could help him to see why termination is the only remedy in this case. He went on to say that the City Attorney's Office cannot trust the Appellant anymore and worse their client, which is the City cannot trust the Appellant any more and provided an example in support of his position. Chairman de la O further stated if a office worker working for a divorce lawyer leaked the terms to the other side while in the draft stage, even if the client wanted to change some of the terms due to unaffordability etc., it changes the entire negotiation posture because the other side now knows what the first side is willing to do, and in such instance the client would never hire that attorney or law firm again because of breach of trust, which is what happened in this case. He stated while he does not believe the Appellant directly distributed the document because he did not see any testimony to that fact, her negligence and actions appeared to lead to that by at least a preponderance of the evidence. Chairman de la O went on to say he does not know what the department would do with her if her job is reinstated so he was sure this was the reason DCA Chiaro felt there was no other remedy than to fire the Appellant. He further stated that he was also sure the City Manager was seeing red, but he was not sure he could blame the City Manager for being upset.

Member Silverman stated whatever recommendation this Board comes up with is a recommendation to the City Manager and the City Manager has authority to follow or not follow the Board's recommendation. He went on to say that there are certain things that are zero tolerance and breach of confidentiality falls in this category. Member Silverman further stated that a person can be the greatest employee, but there are certain things individuals cannot do and breach of confidentiality falls within this list. He stated the Appellant's explanation made absolutely no sense and no matter what the Board's recommendation is in this case, he thinks the City Manager will terminate the Appellant.

*Following discussion, the Board's motion on the floor to recommend a 3-month suspension in lieu of termination resulted as follows:*

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

**Aye:** Kaplan, Dames and Moy

**No:** Silverman and de la O

## H.2

Hearing of appeal on behalf of David Valentin, Police Officer, relative to his termination, effective November 9, 2010.

**Motion by Member Dames, seconded by Member Moy, that this matter be CONTINUED : Continuance charged to the department for failure to timely respond to employee's public records request. PASSED by the following vote.**

**Aye:** Kaplan, Silverman, Dames and Moy

**No:** de la O

## H.3

Hearing of appeal on behalf of Daniel Fernandez, Police Officer, relative to his termination, effective November 6, 2010.

**Motion by Member Dames, seconded by Member Moy, that this matter be CONTINUED : Continuance charged to the department for failure to timely respond to employee's public records request. PASSED by the following vote.**

**Aye:** Kaplan, Silverman, Dames and Moy

**No:** de la O

## H.4

Investigation hearing on behalf of Teresa Borkowski, Police Sergeant, pursuant to Rule 16.1, Abuse of Power.  
Rescheduled pursuant to continuance policy; pending settlement since 11/16/10.

*Ronald J. Cohen, Attorney on behalf of Sgt. Teresa Borkowski, stated that he believes a settlement was reached in this case and that he also believes the City has the paperwork that will be signed once they receive the document.*

*Member Dames stated that he recalled at some meeting some time ago discussion took place about the Board receiving copies of settlements and that he has not received a copy yet. Chairman de la O asked if there had been any settlements. ACA Richard responded that she prepared some settlements, but they need to be signed.*

**SETTLED : Case will be closed and removed from the Board's Docket upon receipt of written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.**

## H.5

Hearing of appeal on behalf of Gerardo Quinones, Police Officer, relative to his 20-hour suspension, effective December 19, 2008.  
Rescheduled pursuant to continuance policy; pending settlement since 12/14/10.

*Osnat K. Rind, Attorney at Law on behalf of Gerardo Quinones, stated that a settlement was reached and her client is present to sign the document.*

**SETTLED : Case will be closed and removed from the Board's Docket.**

H.6

Hearing of appeal on behalf of Greicy Lovin, Crime Prevention Specialist, relative to her 5-hour forfeiture, effective March 5, 2009.

Rescheduled pursuant to continuance policy; pending settlement since 1/11/11.  
*Attorney Rind stated that the case was settled and her client, Greicy Lovin, just signed the settlement document.*

**SETTLED : Case will be closed and removed from the Board's Docket.**

H.7

Hearing of appeal on behalf of Eddy Rodriguez Jr., Police Officer, concerning his 40-hour forfeiture, effective February 4, 2010.

Rescheduled pursuant to continuance policy; pending settlement since 8/24/10.

*Attorney Guttman-Valdes stated that the department reduced the penalty to a reprimand so this action took away the Board's jurisdiction on this case. She went on to say that she is still waiting for the department to produce a document to show the removal of the penalty (40-hour forfeiture of earned overtime).*

*Chairman de la O asked ACA Richard when did she think she could have this document ready. ACA Richard responded that the department prepares this document and that it is being worked on and hopefully ready by the Board's next meeting (2 weeks).*

**SETTLED : Board will go forward with Officer Rodriguez' hearing on April 19 if the written settlement is not forwarded within two weeks.**

#### **ADJOURNMENT:**

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

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

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

*The meeting adjourned at 2:28 p.m. Breaks were taken at 10:39-10:44 a.m., 11:43-11:54 a.m., and 12:54-1:03 p.m.*

#### **SIGNATURE:**

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

#### **ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**