

# **City of Miami**

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



## **Meeting Minutes**

**Tuesday, May 17, 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 10:00 a.m. The roll call for the Board Members at the commencement of the meeting was as follows:*

**Present:** Chief Examiner Kaplan, Member Dames, Member Silverman and Member Moy

**Absent:** Chairperson de la O

**Chief Examiner Kaplan presided over today's meeting due to the absence of the Chairman.**

**A. APPROVING THE MINUTES OF:**

Regular Meeting of April 19, 2011.

**Motion by Member Silverman, seconded by Member Dames, to APPROVE.**

**PASSED by the following vote.**

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

**Absent:** de la O

**B. PERSONNEL MATTERS**

- B.1** Copy of a memorandum from Chief Maurice Kemp, Director, Department of Fire-Rescue, requesting an extension of probationary period of Heather Perales, Fire Fighter, for six (6) additional months beyond June 14, 2011. (DISCUSSION)

*Acting Chairman Kaplan asked Fire Fighter Perales if she was in agreement with the department's request to extend her probationary period. Heather Perales, Fire Fighter, appeared before the Board and responded in the affirmative. There being no other questions or discussion on this matter, the Board entered a motion to APPROVE the department's request to extend Fire Fighter Heather Perales' probationary period an additional six months beyond June 14, 2011 which resulted as follows:*

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

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

**Absent:** de la O

**C. MILITARY LEAVES OF ABSENCE****D. DISCIPLINARY MATTERS**

- D.1** Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Kelvin Harris, Police Officer, of his five (5) hour forfeiture of earned time and three (3) month suspension of take home vehicle, effective April 15, 2011. (NOTIFICATION)

**NOTIFIED**

- D.2 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Daniel Ubeda, Police Officer, of his 10-hour suspension, effective April 22, 2011. (NOTIFICATION)

**NOTIFIED**

- D.3 Copy of a letter from Chief Miguel Exposito, Director, Department of Police, notifying Michael Bode, Police Officer, of his 10-hour forfeiture of earned time and one (1) month suspension of take home vehicle, effective April 16, 2011. (NOTIFICATION)

**NOTIFIED**

## **E. GENERAL ITEMS**

- E.1 Copy of Findings of Fact in the hearing of appeal on behalf of Daylet Diaz, Litigation Assistant, relative to her termination, effective August 17, 2010. (DISCUSSION)

Deferred from the meeting of April 19, 2011.

*Following consideration of the findings of fact and discussion by the Board, Member Silverman stated that in light of the tie (2-2) vote on the proposed changes to paragraphs 6, 9, 10, on page 3, under the topic, Findings of Fact, he would suggest deferring this item to the next meeting so that a full Board could reconsider the matters for which the Board could not reach a consensus and to also approve the findings. Without objection from other Board Members, Acting Chairman Kaplan instructed the Executive Secretary to carry this matter over to the May 31, 2011 meeting for Board consideration.*

**DEFERRED**

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

- E.2 Notice of a Request for a continuance from Ronald J. Cohen, Attorney, Ronald J. Cohen, P.A., on behalf of Carlos Antunez, Police Officer, relative to his 40-hour suspension, effective June 1, 2009. (DISCUSSION)  
Hearing of Appeal is scheduled for today.

*Ronald J. Cohen, Attorney at Law, stated that Officer Antunez' case should not have been scheduled because Attorney Rind who was with his office at the time, asked for and the Board approved a joint motion to put off scheduling this case until the conclusion of Officer Antunez' federal civil trial that was expected to be held in the "Spring of 2011". The trial is now set for some time in January 2012.*

*Acting Chairman Kaplan asked for the department's position on the continuance request. Janeen Richard, Assistant City Attorney (ACA) responded that she has no objection to the continuance. Attorney Cohen asked if this case could be set after the trial is over so as to avoid having to keep coming back before the Board concerning continuances. Acting Chairman Kaplan responded in the affirmative. Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance which resulted as follows:*

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

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

**Absent:** de la O

**E.3**

Notice of a Request for a continuance from Osnat K. Rind, Attorney, Phillips, Richard, & Rind, P.A., on behalf of Deborah Hudson, Typist Clerk III, relative to her 80-hour suspension, effective January 31, 2011. (DISCUSSION)  
Hearing of Appeal is scheduled for today.

*Holly Van Horsten, Attorney, Law Firm of Phillips, Richard, Rind, PA, appeared on behalf of Attorney Rind in the matter of Debra Hudson. She went on to say that she is requesting to continue Ms. Hudson's appeal hearing as they are no longer retained as counsel for the AFSCME-Local 1907 Union and because they are stepping down, a new attorney would be in place to handle this matter.*

*Acting Chairman Kaplan asked for the department's position on the continuance request. ACA Richard responded that she has no objection. Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance which resulted as follows:*

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

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

**Absent:** de la O

**E.4**

Notice of a Request for a continuance from Teri Guttman-Valdes, Attorney, on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 3-day suspension, effective February 9, 2009. (DISCUSSION)  
Hearing of Appeal is scheduled for May 31, 2011.

*Teri Guttman-Valdes, Attorney at Law on behalf of Manuel Lucena, stated that her client is not back at work due to medical reasons which is the reason she asked for a continuance of both (Items E.4 and E.5) of his cases.*

*Acting Chairman Kaplan asked for the department's position on the employee's request for a continuance. ACA Richard responded that she objects to the continuance request only because this case has been pending for over two years, six continuances were already granted, and it is her understanding that Mr. Lucena is on light duty with restrictions, which she believes would not prevent him from coming to the meeting and having his appeal heard by the Board. Acting Chairman Kaplan asked Attorney Guttman-Valdes if she had a response to ACA Richard's objection. Attorney Guttman-Valdes responded that it is her understanding that Mr. Lucena is not able to be physically present for his hearing due to medical reasons. ACA Richard stated that it is true that Mr. Lucena is on light duty and not back at work and that is because of the nature of his position. She went on to say that Mr. Lucena is a Heavy Equipment Mechanic and there is no light duty position in which to place him; therefore, the department cannot bring him back to work.*

*Member Dames asked ACA Richard if she was prepared to go forward with her case. ACA Richard responded that Mr. Lucena's cases are set for May 31, 2011 and she is prepared to go forward on that date. Attorney Guttman-Valdes stated that the City has taken the position that because of the medical restrictions, Mr. Lucena cannot perform his duties and therefore cannot be at work since no accommodations were made for him to do his work. Member Dames stated that based upon what he has heard thus far, he*

*is of the opinion that Mr. Lucena can be present for his hearing. He went on to say that this case has been pending for a long time and needs to be heard. Member Moy stated that he is in agreement with ACA Richard that Mr. Lucena, although in a light duty status, could physically appear for his hearing.*

*Following discussion, the Board entered a motion to DENY the employee's request for a continuance which resulted as follows:*

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

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

**Absent:** de la O

**E.5**

Notice of a Request for a continuance from Teri Guttman-Valdes, Attorney, on behalf of Manuel Lucena, Heavy Equipment Mechanic, relative to his 5-day suspension, effective August 20, 2009. (DISCUSSION)  
Hearing of Appeal is scheduled for May 31, 2011.

*Following discussion, the Board entered a motion to DENY the employee's request for a continuance which resulted as follows:*

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

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

**Absent:** de la O

**E.6**

Notice of a Request for a continuance from Teri Guttman-Valdes, Attorney, on behalf of Jeffrey Locke, Police Lieutenant, relative to his 20-hour suspension, effective February 25, 2009. (DISCUSSION)  
Hearing of Appeal is scheduled for June 14, 2011.

*Attorney Guttman-Valdes stated that her client is asking for a continuance of his hearing because he will be representing the City of Miami at the Police Olympics. Acting Chairman Kaplan asked for the department's position on the continuance request. ACA Richard stated that she objects to the continuance request because this is a two-year old case that was scheduled in January to be heard on June 14, 2011; it puts the department at a disadvantage the more time passes because she loses witnesses, so she prefers that it goes forward on the 14th of June as scheduled or an earlier date if possible.*

*Member Dames stated that he agrees with ACA Richard that this case should go forward as scheduled especially since the Police Olympics is something that police officers volunteer to participate in. Attorney Guttman-Valdes responded that Lt. Locke is part of a City team for which he received approval from the Police Department to attend. She went on to say that it defies logic that the Police Department would approve her client's leave request to participate at the olympics and to now object to the leave. Member Dames stated that Lt. Locke needs to make up his mind as to whether he is going to attend his hearing or participate at the olympics.*

*For clarification purposes, Acting Chairman Kaplan asked Attorney Guttman-Valdes if she was saying that Lt. Locke cannot be present for his hearing on June 14 because he would be representing the City of Miami at the Police Olympics. Attorney Guttman-Valdes responded in the affirmative. Member Silverman asked Attorney Guttman-Valdes if she was willing to hold the hearing on June 28th. Attorney*

*Guttman-Valdes responded that she is available on this date and would be willing to have a hearing. Acting Chairman Kaplan asked opposing counsel for her position on continuing Lt. Locke's case to June 28th. ACA Richard responded that there are three other cases scheduled on June 28th and she does not know the order in which the cases would be heard, so her concern is if this case does not go on the 28th because the other cases were scheduled ahead of Lt. Locke's case, then it would be continued again until probably December since cases are already scheduled through November.*

*Acting Chairman Kaplan asked ACA Richard what is the next meeting date after June 14th that she would be available. ACA Richard responded that she is always available because she presents all of the City's cases before the Board; however, she would be available for this case on May 31st. Attorney Guttman-Valdes clarified that she would not be ready to hear this case on May 31st because she already has three cases scheduled for that date.*

*Member Moy stated that the Board cannot continue to reschedule this case especially since it is already two years old. He went on to say that he thinks Lt. Locke needs to reorganize his priorities by deciding whether it is more important to have his case heard or attend the Police Olympics and as far as he is concerned, hearing the case is more important. Acting Chairman Kaplan stated that a reasonable compromise would be to continue Lt. Locke's hearing to June 28th.*

*Following discussion, the Board entered a motion to DENY the employee's request for a continuance which resulted as follows:*

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

**Aye:** Moy, Silverman and Dames

**No:** Kaplan

**Absent:** de la O

*Following the vote to deny Lt. Locke's request for a continuance of his hearing, Acting Chairman Kaplan stated that the only reason he opposed the motion was because there was an agreement from Attorney Guttman-Valdes that her client would be back in town and available for his hearing two weeks from June 14th.*

**APPROVED**

**E.7**

Copy of a Settlement Agreement between the City of Miami and Jacqueline Mesidor, Police Sergeant, relative to her 10-hour suspension, effective December 7, 2008.

Case will be closed and removed from the Board's docket.

**NOTIFIED**

**F. REPORTS**

**F.1**

Pending Hearings as of May 17, 2011. (NOTIFICATION)

**PRESENTED**

**G. REQUESTS FOR HEARINGS**

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

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.

*ACA Richard stated that this case is settled; however, she is waiting for signatures on the final document. Member Dames asked Attorney Cohen how long he had been waiting for the signatures. Attorney Cohen responded that he has been waiting for the signatures for approximately three weeks. He went on to say that he prepared substantive language; however, he thinks the format was changed which may be okay with him and his client, but he had not seen exactly which document the City is signing.*

*Acting Chairman Kaplan stated that based upon what he heard from Attorney Cohen, there is no agreement at this time. Attorney Cohen responded that they have an oral agreement. Acting Chairman Kaplan asked Attorney Cohen if he has seen the agreement. Attorney Cohen responded in the negative. Acting Chairman Kaplan reiterated that there is no agreement if the parties have not seen the agreement and then suggested to ACA Richard that she provide the Board a copy once she gets all of the signatures.*

*Member Dames asked what happens if the settlement is not signed within the time frame the Board asked that it be completed. Member Silverman responded that in such case, the Executive Secretary would schedule the employee's hearing.*

**NO ACTION TAKEN : 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.2**

Hearing of Appeal on behalf of Dashon Yearby, Police Officer, relative to her 10-hour suspension, effective February 14, 2010.  
Continued from the meeting of April 19, 2011.

*Attorney Cohen stated that he is awaiting settlement terms from the City with regards to Officer Yearby's case. He went on to say he could prepare the settlement, but the City Attorney's Office prefers to prepare the settlements.*

*Acting Chairman Kaplan asked opposing counsel for her position on the settlement issue. ACA Richard responded that the case was just settled so she will prepare the settlement document. Acting Chairman Kaplan asked Attorneys Richard and Cohen if they were in agreement with the terms of the settlement. Both attorneys responded in the affirmative.*

*Following discussion, Acting Chairman Kaplan stated that in order to remove this case from the Board's docket, a copy of the settlement needs to be presented to the Board within 30 days.*

**NO ACTION TAKEN : 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.3**

Hearing of appeal on behalf of Carlos Antunez, Police Officer, relative to his 40-hour suspension, effective June 1, 2009.

*The Board took no action on this case because a continuance was granted at today's*

*meeting.*

**CONTINUED**

- H.4** Hearing of Appeal on behalf of Deborah Hudson, Typist Clerk III, relative to her 80-hour suspension, effective January 31, 2011.

*The Board took no action on this case because a continuance was granted at today's meeting.*

**CONTINUED**

- H.5** 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 August 24, 2010.

*Attorneys Richard and Guttman-Valdes agreed that a settlement was reached in this case; however, they need to obtain signatures from appropriate individuals.*

**NO ACTION TAKEN : 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.6** Hearing of Appeal on behalf of Jeffrey Jans, Police officer, relative to his 80-hour suspension, effective April 13, 2010.

Rescheduled pursuant to continuance policy; pending settlement since April 19, 2011.

*Acting Chairman Kaplan stated that as he understands it, a settlement has been reached in this case, but he wished to hear from the attorneys involved. ACA Richard clarified that a settlement was reached between the employee and the City, that she has received signatures from Attorney Cohen and his client, and that she is now waiting for signatures from the Police Department. Acting Chairman Kaplan asked Attorney Cohen if he was in agreement with the settlement. Attorney Cohen responded in the affirmative.*

*Following discussion, Acting Chairman Kaplan stated that since both attorneys have agreed to a settlement, this matter will be placed on the June 14 agenda for notification purposes.*

**NO ACTION TAKEN : 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.7** Hearing of appeal on behalf of Rameses Rengifo, Police Officer, relative to his 10-hour suspension, effective April 25, 2009.

Rescheduled pursuant to continuance policy; pending settlement since March 8, 2011.

*ACA Richard stated that an agreement has been reached by the department and the*



employee. She went on to say that she received signatures from Attorney Cohen and his client and that she has since forwarded the settlement to the Police Department for signatures.

Acting Chairman Kaplan stated that this matter of the settlement will be placed on the Board's next agenda for notification purposes.

**NO ACTION TAKEN :** 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.

**ADJOURNMENT:**

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

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

**Aye:** Moy, Kaplan and Silverman

**No:** Dames

**Absent:** de la O

*The meeting adjourned at 10:47 a.m.*

**SIGNATURE:**

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

**ATTEST:**

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**Tishria L. Mindingall, Executive Secretary**