

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

SOUTH FLORIDA POLICE
BENEVOLENT ASSOCIATION,
Plaintiff,

v.

CITY OF MIAMI POLICE DEPARTMENT,
MIAMI, FLORIDA,
Defendant.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, South Florida Police Benevolent Association, files this Petition for Declaratory Relief to declare unlawful the City of Miami Police Department's (MPD) refusal to convene a Compliance Review Panel to determine whether MPD intentionally failed to comply with the requirements of the Law Enforcement Officers' Bill of Rights, § 112.531 et seq., Florida Statutes' by:

- (1) Failing to complete an internal affairs investigation and provide notice of disciplinary action within 180 days after the date MPD received notice of the alleged misconduct;
- (2) failing to provide a law enforcement officer a complete copy of the investigative file and the opportunity to respond thereto before interrogation or imposing disciplinary action;
- (3) Threatening to discipline, discharge and/or terminate, by reason of his or her exercise of the right granted in this part; and;
- (4) Failing to provide specific intended discipline.

JURISDICTION

1. This Court has jurisdiction pursuant to Article V, § 20(c)(3), Florida Constitution and §§ 26.012(2)(a) and 86.011, Florida Statutes.

VENUE

2. Venue is appropriate in Miami-Dade County as the acts giving rise to this complaint occurred within Miami-Dade a County, Florida.

PARTIES

3. Plaintiff, South Florida Police Benevolent represents the Captain in this matter. The PBA represents several officer employees by the City of Miami Police Department, not limited to, this Captain.

4. Defendant City of Miami Police Department and Chief Manuel Morales ("City") is a municipal corporation of the State of Florida.

5. The City of Miami Police Department (MPD) is a law enforcement agency operated and administered by the City.

6. The name of the law enforcement officer subject to the internal affairs investigation referenced herein is omitted and redacted from this complaint and documents appended hereto, consistent with the Law Enforcement Officers' Bill of Rights which requires confidentiality under 5 §112.533 (2)(a) and (4) and 112.534(1)(e) throughout an active investigation including any required hearing and determination by the Compliance Review Panel.

MPD'S REFUSAL TO CONVENE A

COMPLIANCE REVIEW PANEL FOR THE CAPTAIN

7. Based on an incident alleged to have occurred between July 13, 2021, to July 31, 2021, MPD commenced an internal affairs investigation of the MPD captain who is represented by the South Florida Police Benevolent Association.

8. During the investigation, the Captain was represented by the PBA through the legal defense benefit, President Steadman Stahl and attorney Griska Mena.

9. MPD never provided the Captain the opportunity to provide a statement. MPD never interrogated the Captain.

10. On or about April 15, 2022, Captain provided identifiable witnesses to include the complainant Commissioner Joe Carollo, former Police Chief Art Acevedo and past supervisors from the section in question. The MPD refused to take their statements.

11. The Captain requested identifiable information be provide pursuant to the Law Enforcement Officers' Bill of Rights before giving his statement. The MPD refused to provide the documents.
12. On September 27, 2021, the allegations found in the reprimand were made by Commissioner Joe Carollo, and witnessed by, Chief Manuel Morales, Assistant Chief Thomas Carrollo and Commander Bradon Lanier. Commander Lanier was the section commander for the internal affairs unit at the Miami Police Department.
13. All of the individuals present had the ability to initiate discipline at the police department, on September 27, 2021, and not on October 27, 2021 as alleged by the department.
14. In July 2021, there were a series of overtime slips that were signed by Sgt. Mario Dellamico, in the capacity of acting lieutenant. The overtime was approved by the Chief Art Acevedo.
15. When the investigation commenced former Chief Acevedo provided a statement that the Captain was approved to work all grant-based overtime. MPD continued their investigation.
16. Detective Alexis Caraballo was assigned to this matter that was given an Internal Affairs case number, ADM 21-047.
17. On April 18, 2022, the captain authored an email to Major Antonio Diaz, major in command of Internal Affairs, advising of several violations of the Police Officers' Bill of rights, hereto appended as Exhibit A.
18. On or about Wednesday April 20, 2022, the Captain was served with an intent to discipline, appended hereto as Exhibit B.
19. The intent to discipline advised the captain that the internal affairs investigation was complete based on a complaint making him the principal officer and the allegations were sustained.
20. On June 5, 2022, the captain requested public records from the MPD, appended hereto as Exhibit C.
21. The MPD received an email from former Police Chief Art Acevedo, advising he approved the overtime worked by the Captain, pursuant to a grant, hereto appended as Exhibit D.

22. On July 11, 2022, the MPD served the Captain with a reprimand exonerating him for the allegations investigated by the internal affairs department, hereto appended as Exhibit E.

23. The reprimand recommends termination, on allegations that were made on September 27, 2022.

24. On July 19, 2022, the Captain, through his PBA attorney, Griska Mena, provided to Chief Manuel Morales and the City of Miami Police Department, written notice of intentional violations and demand for compliance review panel. This demand was pursuant to Florida Statute 112.534, asserting “intentional violations of F.S. 112.532, and .533, and F.S. 92.525, ‘and requesting a compliance review hearing within 10 working days, “pursuant to 112.534” and identifying as grounds, MPD’s

1. Failing to comply with the statutory requirement to discipline the captain within the codified 180 days.
2. Failing to properly investigate based on pre disciplinary statements given by the captain and additional evidence gained by the department.
3. Retaliating based on my clients request to interview individuals that were identifiable during the investigation, as guaranteed by the Police Officers’ Bill of rights.

25. A true and correct copy of the Notice of Intentional Violations and Demand for Compliance Review Hearing Pursuant to Florida Statute 112.534 (with Captain name redacted) is appended hereto as Exhibit F.

26. On July 19, 2022, Captain, though his attorney, Griska Mena informed MPD of his compliance review panel member choice, Detective Wanda Jean-Baptiste, for the 112.534 hearing and determination, appended hereto as Exhibit G.

27. On July 20, 2022, Chief Manuel Morales responded by email to Mena and stated:

Dear Ms. Mena,

After review and consideration of your correspondence dated July 19, 2022, your request for a compliance review panel in this matter is denied.

28. On that afternoon, Chief Morales sent four other emails to mirror the email in this case, all relating to different cases that raised other issues, appended hereto as Exhibit H.

29. Chief Manuel Morales and the Miami Police Department refuse to acknowledge that MPD was required to convene a Compliance Review Panel to determine whether MPD's actions violated the Police Officers' Bill of Rights, §§ 112.532 and 112.533. The MPD pronouncing it did not violate rights is insufficient to satisfy the claim.

29. Because of the uncertainty of the parties' rights, the issue is likely to recur in other internal affairs investigations and this uncertainty restricts the ability of PBA to effectively represent its clients and pursuant to alternative causes of action due to the reasonable concern that MPD will refuse to acknowledge its obligation to convene a Compliance Review Panel to determine whether its actions violated the Law Enforcement Officers' Bill of Rights §§ 112.532 and 112.533.

30. As a result of the foregoing, Captain, needs a declaration of rights with regard to MPD's obligation to convene a Compliance Review Panel to determine whether its actions violated the Law Enforcement Officers' Bill of Rights, § 112.532 and 112.533.

Wherefore, Captain, respectfully requests that this court declare that the Miami Police Department must convene a Compliance Review Panel to determine whether MPD's actions in its internal affairs investigation of this law enforcement officer, including, but not limited to, Captain, have violated the Law Enforcement Officers' Bill of Rights, §§ 112.532 and 112.533, Florida Statutes.

Respectfully submitted,

Griska Mena

South Florida PBA

10680 N.W. 25th Street, Suite #205

Doral, Florida 33172

Telephone #305-593-0044

Facsimile #305-436-0142

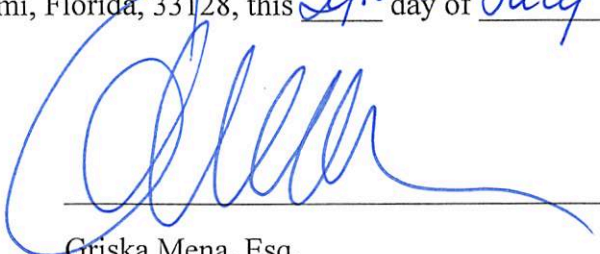
Griska@DCPBA.org

By: /s/ Griska Mena

Florida Bar No. 28136

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and forgoing was furnished by electronic mail and US mail to the Chief of Police, or his designee, City of Miami Police Department, 400 NW 2nd Avenue, Miami, Florida, 33128, this 27th day of July, 2022.



Griska Mena, Esq.

Fla. Bar No. 28136

South Florida Police Benevolent Association

10680 NW 25 Street

Doral, Florida 33172

305-593-0044

EXHIBIT A



4-15-22 meeting with IA Major and Commander (memorializing meeting)

1 message.

To: Andrew Axelrad <Andrew@dcpcb.org>, Griska Menas <griska@dcpcb.org>

Mon, Apr 18, 2022 at 12:25 PM

On April 15, 2022, I was at Internal affairs to review the overtime accusations made by commissioner Carollo.

I was shown a form stating I was being accused of official misconduct.

I stated to Sergeant Espinosa, they would need to get a statement from Commissioner Carollo. About an hour later, I'm told I am no longer being investigated for misconduct, but just for improper procedure and why sergeants signed my overtime slips, something that has been a practice since 2003.

In the case file, they have the video of the commissioner making the accusation. They were definitely need to get interviews from the chief of police as well as an assistant chief.

Their position was that they did not need a statement from him because it had nothing to do with how the overtime slips were signed. They also listed the City Of Miami as the complainant. The commissioner is obviously an employee of the city of Miami so I would argue that he is the complainant. The RF 121 complaint form state of the investigation began because of statements made at a September 27 commission meeting. Chief Morales was present at this meeting when the accusations and violations of policy were made. However, chief Morales did not conduct the investigation until October 27. It is my position that since he was in receipt of the complaint on September 27, the 180 day limitation on discipline has already been violated.

I asked to have access to my Microsoft outlook ad evidence for my case. I was denied access. I was told by the commander that while I was giving my statement, I could ask to refresh my memory and look at emails within the outlook system. I told them that if that was the case, my Pba attorney would advise them that they must provide me with all emails that I sent to supervisors and their responses for all of 2021. I respectfully advise them that is under my rights under Florida law. I told them that I had no issue if somebody looked over my shoulder while I reviewed my emails. I was trying to be as cooperative as possible.

I asked to meet Commander Joseph. When I met with her, Sergeant Espinosa and Major Antonio Fiaz were present.

I advised that according to the case file, the 180 days to discipline me were up in one week. I advised that I knew they had attempted to do the right thing and exonerate me. I advised him that I know the chief of police wants me fired but they have no cause. I asked them to respectfully speak to the chief and advise him to please close out the case without my statement.

My statement would be embarrassing to the chief of police because for three years, he was the division chief over field operations which is over Motors. overtime slips for superiors had been signed by the acting Lieutenant and Sergeant within the Motors unit while he over the division. What's even more embarrassing is the fact that presently (even this past week) the overtime slips are continuously signed and approved the same way while he is now the chief of police over the entire police department.

I advised that under the Bill of Rights I would request a copy of all overtime slips since 2003 that would show that there is a past practice of what I was being accused of as an improper procedure. They would also have to interview all those supervisors that have retired since then. I told them that there is no way that they would be able to do all of that in order to get my statement within the 180 days.

7/15/22, 2:13 PM

Gmail - 4-15-22 meeting with IA Major and Commander (memorializing meeting)

I told them that would have a rippling effect because Commissioner Carollo who wants me fired, would probably think that the chief of police allowed the 180 days to expire in order to somehow give me a reprieve. I told them that nobody would win. I told them that there was no reason for me to be relieved of duty nor have I done anything wrong..

I was told that they would speak to the chief and let me know the outcome.

Thank you

This e-mail, including attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521, is confidential, and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, and then delete it. This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. Any correspondence sent from this email address is on behalf of the Miami Fraternal Order of Police. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received the e-mail in error; please immediately notify the sender by replying to this e-mail and placing: "INCORRECT DESTINATION ADDRESS" in the the subject line.



Notification of Discipline Response - ADM 21-047

Wed, Apr 20, 2022 at 12:35 PM

To: 1441@miami-police.org, 27233@miami-police.org
Cc: griska@dcpsba.org, Andrew@dcpsba.org, 29284@miami-police.org

Dear Major Diaz,

Thank you again for giving me the opportunity to meet with you regarding the notice of discipline, which I was served today on IA Case #.

There is no question that today's action is due to retaliation for exercising my rights under FSS 113.532.) Last Friday, I was told by Sergeant Espinosa that I would solely be asked questions regarding who/why signed my overtime slips. Due to the fact that I exercised my rights and asked for missing evidence/documentation and missing complainant/witness statements, today I was given this document clearly showing retaliation to any reasonable person.

Under FSS 112.532 (4)(b), I am entitled today to the entire case file since I am subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal (which was clearly stated on the redline memorandum I was required to sign (see attachment). Soon after signing, I asked to see the case file and was denied with the reasoning that the case isn't closed until it's reviewed by everyone. This is a violation of my due process rights clearly showing the case isn't completed, yet I am being disciplined.

The worst part is my direct superior, Major Frank Fernandez specifically stated in his audio taped statement that I had not violated any departmental orders or policies. Chief Morales also made statements of why overtime slips were signed by Sergeant Dellamico because it's a common past practice on grants and on overtime in motors. This practice has been in place since at least 2003. It was also a directive by Chief Acevedo, in which the police department made no attempt to interview regarding this case. There are plenty of others that were not interviewed and this notice of discipline was given four days before the City believes it was expiring.

However, the 180 day requirement has already expired. The allegation was received by Chief Morales at a commission meeting on September 27, 2021. Under the FSS 112.532 (6)(a), Chief Morales received notice on 9/27/21 and clearly is a person authorized by the agency to initiate an investigation of the misconduct.

Overtime slips are still being signed presently by Sergeant Dellamico of commanding officers. So in all fairness, is your office going to discipline all of those commanding officers since 2003? It's quite ridiculous. It'll be hundreds of people.

I am asking for all discipline regarding this case to be halted! I didn't commit any violation of policy, just as had been stated by my direct supervisor and was directed by Chief Acevedo.

Respectfully,

112.532(6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

(a) Except as provided in this subsection, disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation or complaint of misconduct, regardless of the origin of the allegation or complaint, if the investigation of the allegation or complaint is not completed within 180 days after the date the agency receives notice of the allegation or complaint by a person authorized by the agency to initiate an investigation of the misconduct.

FSS 112.532(5) RETALIATION FOR EXERCISING RIGHTS.—*No law enforcement officer or correctional officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by reason of his or her exercise of the rights granted by this part.*

FSS 112.532 (4) NOTICE OF DISCIPLINARY ACTION; COPY OF AND OPPORTUNITY TO ADDRESS CONTENTS OF INVESTIGATIVE FILE; CONFIDENTIALITY.—

(a) A dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against any law enforcement officer or correctional officer unless the law enforcement officer or correctional officer is notified of the action and the reason or reasons for the action before the effective date of the action.

(b) Notwithstanding s. 112.533(2), whenever a law enforcement officer or correctional officer is subject to disciplinary action consisting of suspension with loss of pay, demotion, or dismissal, the officer or the officer's representative shall, upon request, be provided with a complete copy of the investigative file, including the final investigative report and all evidence, and with the opportunity to address the findings in the report with the employing law enforcement agency before imposing disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. The contents of the complaint and investigation shall remain confidential until such time as the employing law enforcement agency makes a final determination whether or not to issue a notice of disciplinary action consisting of suspension with loss of pay, demotion, or dismissal. This paragraph does not provide law enforcement officers with a property interest or expectancy of continued employment, employment, or appointment as a law enforcement officer.

EXHIBIT B

April 20, 2022

Internal Affairs Investigation
Findings

Major Antonio G. Pina
Commander
Internal Affairs Section

This memorandum is written pursuant to Section 112.532(4)(a) Florida statute for the purpose of informing you that the Miami Police Department has completed its investigation of a complaint in which you have been named a principal officer and have been Sustained. It has been determined that disciplinary action is appropriate, and the Miami Police Department intends to proceed with disciplinary action. The proposal of the specific action sought includes but is not limited to a formal record of counseling, written reprimand, and suspension from duty without pay. A recommendation of Demotion or Termination as disciplinary action may be made based on the scale of progressive penalties, depending on the totality of the circumstances, and seriousness of the incident.

APRIL 27, 2022 (PLEASE SEE ATTACHED EMAIL OF 4/18/22 MEETING AT IA)
I AM BEING ORDERED TO SIGN THIS DOCUMENT. I AM BEING TOLD IT
IS FOR INTERNAL PROCEEDURE BECAUSE OF VIOLATED MY CURRENT
SLIPS. I WAS ADVISED LAST FRIDAY THAT THE ALLEGATION OF DISOBEDIENCE
WAS BEING LOWERED TO INTERNAL PROCEEDURE, AND I WOULD BE ASKED
SEVERAL QUESTIONS FOR THAT. I HAD ASKED FOR WITNESS STATEMENTS
AS WELL AS THE COMPLAINANT (JULY CALLED) WHO MADE
ALLEGATIONS ON 9/27/21, WHICH CHIEF MORALES WAS PRESENT.
THESE OVERTIME SLIPS HAVE BEEN SIGNED THIS WAY SINCE
2003. ON TAPE, MAJOR FRANK FERNANDEZ STATED I
HAD NOT VIOLATED ANY DEPARTMENTAL POLICIES. DISOBEDIENCE
TESTIFIED THIS HAS BEEN THE POLICY FOR YEARS. CHIEF
ACEVEDO WAS NEVER INVOLVED WHO LAID THE DIRECTIVE.

EXHIBIT C



Your City of Miami public records request #22-1433 has been opened.

1 message

PublicRecords@miamigov.com <support@nextrequest.com>
Reply-To: miami_22-1433-requester-notes@inbound.nextrequest.com

Wed, Apr 27, 2022 at 11:41 AM

— Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. —

City of Miami Public Records

Your record request #22-1433 has been submitted. You can see it anytime at the link below.

The City of Miami acknowledges your public records request. The City of Miami will make a reasonable effort to determine whether such records exist and, if so, the location at which the record can be accessed or copied or if any exemptions apply. You will be notified accordingly of the availability of the records and any associated fees.

If you have any questions please do not hesitate to contact us.
Thank you.

View Request 22-1433

<https://miami.nextrequest.com/request/22-1433>

6/5/22, 2:15 PM

Gmail - Your City of Miami public records request #22-1433 has been opened.



The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Miami.

Technical support: See our help page

Too many emails? Change your email settings here

6/5/22, 2:15 PM

Skip to main content
Public Record Requests

City of Miami

Request visibility: Published

Request 22-1433 Open

Dates

Received

April 27, 2022 via web

Requester



Staff Assigned

Departments

Police

Point of contact

Ryan Steed

<https://miami.nexirequest.com/requests/22-1433>

Request

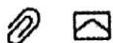
Pursuant to Article I, section 24 of the Florida Constitution, and chapter 119, F.S., I am requesting the following records in your possession. I have no issue dropping off a USB drive to make it easier for internal Affairs to fulfill my request.

-A copy of the Internal Affairs file (just the paper file contents, and audio) for Case # (Overtime complaint by Commissioner Carollo which I was exonerated and is closed.

- A copy of the entire Case # (including audio). (Lt. Simmons case, it was found inconclusive and is closed).

-A copy of the entire Case # C21-289

(including audio). (Chief Acevedo's alleged damage which I was a witness). Florida law states an investigation shall be considered active as long as it is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. An investigation shall be presumed to be inactive if no finding is made within 45 days after the complaint is filed



6/5/22, 2:15 PM

(see FSS 112.533). Seeing that the only principal is Chief Acevedo who was terminated last year, it is presumed that this case is inactive.

-A copy of any/all CJSTC-78 forms or CJSTC-61 forms completed for the entire career of _____ (IBM#5418), submitted to FDLE. I have not found any that have been sent to FDLE/CJSTC.

-Letters sent via email or by United States mail from the ACLU and/or Civilian Investigative Panel regarding _____

. I am also requesting a copy of the stamped envelope (Stamped by the Office of the Chief of Police) showing when these letters were received in July.2021. As for dates to search, the letter from the ACLU was sent and reviewed by Chief Art Acevedo in July/2021 which detailed old cases in which I was not sustained. It was then again sent to Chief Morales in October/2021. All cases are past the 180 day provision, as well as the 90 day provision on reopening old cases. Mind you, this was all reviewed by counsel exhaustively when Chief Art Acevedo was directed to have me terminated for any reason by the City Manager. These old cases were also reviewed by Chief Jorge Colina.

-An email sent by Chief Manuel Morales to Commander Brandon Lanier attaching the CIP letter (of old complaints again) to Internal Affairs directing them to attach (the CIP letter from last year) it to their investigation which is closed

EXHIBIT D

Griska Mena

From:
Sent: Tuesday, July 26, 2022 3:36 PM
To: Griska Mena
Subject: Re: Chief Acevedo

From: John R. Byrne <jbyrne@leoncosgrove.com>
Date: Thu, Apr 21, 2022 at 5:53 PM
Subject: Re: Chief Acevedo

On behalf of Art Acevedo, I can proffer the following. At the time he was Chief of Police at M.P.D., he was told by you that the practice in the Motors Unit was to have the grant coordinator review and sign overtime slips. Chief Acevedo approved of that practice.

Regards,

John R. Byrne

EXHIBIT E

DRP Date: 7/5/2022

City of Miami Police Department

DISCIPLINARY ACTION

Employee: _____ P.I.N. _____

Classification: Police Captain Assignment: SOS/Traffic Enforcement Unit**TYPE OF DISCIPLINE:**
☐ RECORD OF FORMAL COUNSELING
 ☒ REPRIMAND
NARRATIVE:

(If more space is needed, use additional pages)

On November 10, 2021, the Internal Affairs Section was made aware of Captain _____ allegedly working an excessive amount of hours. As a result of the investigation conducted by the Internal Affairs Section, the allegation of Improper Procedure was investigated and Exonerated. During the investigation, additional policy violations were discovered, relating to Captain _____ submitting overtime slips to supervisors of lower rank, failing to supervise by allowing motor sergeants to approve each others overtime slips, and failing to keep his superiors informed by not advising his direct supervisor, then Assistant Chief Manuel Morales #4886, of his hours worked.

Page 1 of 6

Distribution:		SIGN	P.I.N.	DATE
Disciplinary Detail Employee Police Personnel File Internal Affairs Employee Relations (Original) Civil Service (if applicable)	Authorized by:	A. Caraballo	28124	4/18/22
	Sergeant / Supervisor:			
	Lieutenant:			
	Captain:			
	Commander:	Bingo Joseph	27233	6/10/22
	Major:		1441	6/22/22
	Assistant Chief:	ACCPK	2302	7/5/22
	Chief of Police:			

Employee **MUST** initial his/her choice for each statement below. The employee is also forewarned that any future similar violation will result in progressive disciplinary action.

- 1) I AGREE _____ or I DISAGREE ☒ WITH THE FACTS AS STATED
- 2) I AGREE _____ or I DISAGREE ☒ WITH THE RECOMMENDED PENALTY
- 3) REBUTTAL SUBMITTED: YES or NO

DDRB HEARING REQUEST (SWORN ONLY)- To request a Departmental Disciplinary Review Board (DDRB) hearing, you must submit a written request to the Labor Relations Unit Commander within 10 working days from the date this document is received and signed. Failure to do so will constitute a waiver of this entitlement.

Employee Signature: _____ P.I.N.: _____ DATE: 7/11/22

DRP Date 7/5/2022**(Continuation)**Page 2 of 6

Employee: _____

P.I.N.: _____

Sergeant Mario Dell Amico #1465 stated in his sworn audio recorded Garrity statement that he advised Captair that overtime slips for details related to Motors are not routed through the chain; they are kept in house for purposes of checks and balances, and it has always been done that way. Captain was assigned as the Commanding Officer of the Motors Unit and he allowed the practice to continue.

Sergeant Dell Amico (in the capacity of acting lieutenant since February 2019) submitted overtime slips to Sergeant Magdiel Armenteros #0197 and Sergeant Darren Brown #27063 for approval on the following dates:

<u>Date</u>	<u>Overtime code</u>	<u>Reference/event</u>
July 13, 2021	081280	Versailles protest
July 14, 2021	081280	Versailles protest
July 17, 2021	081280	Versailles protest
July 18, 2021	081280	Versailles protest
July 21, 2021	081280	Versailles protest
July 23, 2021	030050	Surfside escort
July 23, 2021	081269	Rolling Loud
July 24, 2021	081269	HEAT/Rolling Loud
July 25, 2021	081269	HEAT/Rolling Loud
July 31, 2021	081280	Worked day off

All of this occurred while Captair was the Commanding Officer of the Motors Unit.

Captain submitted non-grant related overtime slips to Sergeant Armenteros and Sergeant Dell Amico (in the role of acting lieutenant) for approval on the following dates:

JUNE

<u>Date</u>	<u>Regular duty hours</u>	<u>Overtime hours</u>	<u>Comments</u>	<u>Project supervisor/ Commanding officer</u>
06/14/21	off	1600-2200	walkwise	Sergeant Dellamico
06/17/21	0600-1600	1600-2200	walkwise	Sergeant Dellamico
06/19/21	off	1030-1830	walkwise	Sergeant Dellamico
06/24/21	0600-1600	1600-2030	walkwise	Sergeant Dellamico
06/25/21	0600-1600	1600-2000	walkwise	Sergeant Dellamico
06/27/21	off	1000-1600	walkwise	Sergeant Dellamico
06/28/21	off	0700-1300	walkwise	Sergeant Dellamico

(Continuation)

Employee: _____

P.I.N.: _____

JULY

Date	Regular duty hours	Overtime hours	Comments	Project supervisor/ Commanding officer
07/08/21	0600-1600	1600-2100	walkwise	Sergeant Dellamico
07/12/21	off	0700-1300	walkwise	Sergeant Dellamico
07/13/21	0600-1600	1600-2330	protest	Sergeant Armenteros
07/14/21	0900-1700	1700-2400	protest	Sergeant Armenteros
07/17/21	off	1400-2400	traffic	Sergeant Armenteros
07/18/21	off	1100-2400	traffic	Sergeant Armenteros
07/21/21	0700-1700	1700-2300	protest	Sergeant Brown
07/23/21	off	1100-1600	surfside	Sergeant Armenteros
	off	1600-0400	rolling loud	Sergeant Armenteros
07/24/21	0600-1600	1600-0400	heat/rolling	Sergeant Armenteros
07/25/21	0600-1600	1600-0400	heat/rolling	Sergeant Armenteros
07/27/21	0600-1600	1700-2200	traffic	Sergeant Armenteros

However, as of July 28, 2021, Captain _____ stopped submitting his overtime slips to sergeants for approval and instead began submitting his overtime slips to Major Francisco Fernandez #1921 for approval.

Date	Regular duty hours	Overtime hours	Comments	Project supervisor/ Commanding officer
07/28/21	off	1600-2200	gun vio init	Major Fernandez
07/29/21	0600-1600	1600-2200	traffic	Major Fernandez
08/03/21	0600-1600	1600-2200	motor safety	Major Fernandez
08/04/21	0600-1600	1600-2200	demonstr	Major Fernandez
08/06/21	off	0930-1530	agg driv grt	Major Fernandez
08/07/21	off	0700-1700	atv op	Major Fernandez
08/09/21	off	0600-1200	motor safety	Major Fernandez
	off	1200-1800	agg driv	Major Fernandez
08/13/21	0600-1600	1600-2300	agg driv	Major Fernandez
08/14/21	off	0700-1300	gun vio init	Major Fernandez
08/15/21	off	1000-2100	gun vio init	Major Fernandez
08/16/21	off	0700-1300	speed enf	Major Fernandez
	off	1300-1900	motor grant	Major Fernandez
	off	1900-0300	RTR/29A	Major Fernandez
08/17/21	0600-1600	1600-2200	safety grant	Major Fernandez
08/18/21	0600-1600	1800-2300	callout	Major Fernandez
08/19/21	0600-1600	1600-2300	resubmit	Major Fernandez
08/24/21	0600-1600	1600-2300	motor grant	Major Fernandez
08/25/21	0600-1600	1600-2200	motor grant	Major Fernandez
08/26/21	0600-1600	1600-2200	motor safety	Major Fernandez
08/27/21	off	0700-1700	funeral	Major Fernandez
08/28/21	off	0700-1700	funeral	Major Fernandez
08/29/21	off	1800-2300	speed enf	Major Fernandez
08/30/21	0600-1600	1600-2200	motor safety	Major Fernandez
08/31/21	0600-1600	1600-2200	motor grant	Major Fernandez

(Continuation)

Employee: _____

P.I.N.: _____

In his sworn witness statement, Chief Manuel Morales stated he was Captain _____ direct supervisor in June and July of 2021. Captain _____ did not submit his overtime slips to him for approval. He stated he (Chief Morales) should have been listed as the approving supervisor and commanding officer for any overtime slips Captain _____ submitted at that time.

Therefore, Captain _____ is in violation of the following City of Miami Departmental Orders.

Departmental Order 1, Chapter 11, Rules and Regulations:

11.1 POLICY: The policy of the Miami Police Department is to make these Rules and Regulations, which contain information and guidance, available to all employees, including members and civilian employees of the Miami, Florida, Police Department. Each police officer's value to the City of Miami will be measured by his/her ability to exercise discretion, sound judgment, and by his/her zeal and activity in properly performing his/her duty on all occasions. (CALEA 12.2.1 f, g, h; 33.7.1 b)

As a representative of the law, police officers must fully realize that they are not THE AUTHORITY, but, instead are the VOICE OF AUTHORITY. They are given the power and responsibility by the people to protect individual rights, to preserve the public peace, to enforce the law, to protect life and property, to prevent and detect crime, and to arrest violators of the law. Neither abuse this power nor neglect this responsibility; instead, endeavor to perform your sworn duty in a manner that a citizen would expect it to be performed.

Superior officers are delegated by the Chief of Police to supervise, direct, and instruct subordinates in the proper performance of their duties. Respect for the rank held by superior officers is shown by giving unqualified obedience, promptly carrying out orders, and honestly, efficiently performing all duties that are assigned. (CALEA 11.3.2; 26.1.5)

11.2.27 Line of Authority, Communication: The lines of authority and/or communication through official channels (chain of command) are clearly set forth in the table of organization chart and shall be observed and enforced during routine operations. In cases where the efficiency, effectiveness, and reputation of the Department would be jeopardized as a result of time required to follow the lines of authority through official channels or when an emergency exists, the member or civilian employee may, with discretion, report information to the proper authority, notwithstanding the line of official channels of communication.

11.4.5.5 Commanding Officer to Set Example For Subordinates: To assure success in the performance of the basic duties of members and civilian employees, it is imperative that the commanding officer set examples for subordinates in energy, morality, sobriety, courtesy, courage, skill, discipline, and professionalism.

11.4.5.6 The Commanding Officer Must COMMAND: Commanding officers must not perform the work of subordinates. They must see that subordinates under their authority are properly instructed and supervised.

11.4.6 Superior Officers are accountable for all activities of employees under their immediate control. (CALEA 11.3.2)

(Continuation)

Page 5 of 6

Employee: _____

P.I.N.: _____

11.4.6.2 Responsible for Enforcement of Rules and Regulations: Superior officers shall be responsible for the enforcement of the Rules and Regulations, for compliance with department policies and procedures, and for the maintenance of strict discipline. They shall give close attention to this duty to render it unnecessary for a complaint to be lodged before action is taken, whenever possible. They will take suitable action on the discovery of any failure, error, violation, misconduct, or neglect of duty by a subordinate; and they shall act as promptly as circumstances will allow.

11.6.1.2 Members and Civilian Employees to Know Rules and Regulations: It shall be the duty of all members and civilian employees of the Police Department to thoroughly familiarize themselves with such provisions of the Rules and Regulations that deal specifically and generally with the duties of their rank, grade, or position. This should occur within **ten days** from the date of issuance. Within thirty days of issuance, every member and every civilian employee shall familiarize himself or herself with all the provisions of the Rules and Regulations. Failure on the part of any member or civilian employee to acquaint himself/herself with the provisions of the Rules and Regulations, as hereby directed, shall be considered negligence of duty and subject to disciplinary action.

11.6.28.3 Members and Civilian Employees to Conform: Members and civilian employees shall be required to conform to and abide by the Rules and Regulations, Departmental Orders and other directives of the Police Department, the Ordinances of the City of Miami and the County of Dade, and the laws of the State of Florida and the United States of America.

Departmental Order 6, Chapter 14, Payroll:

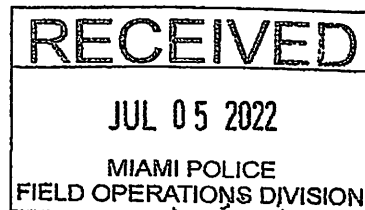
14.4.3.1 Submitting Overtime: The approving supervisor is the employee who directly supervised the OT. The Commanding Officer must be a Lieutenant or above unless they are a civilian commander. Employees of the same rank cannot approve overtime for one another.

Furthermore, _____ is in violation of the following City of Miami Civil Service Rules and Regulations:

Rule 14, Section 14.2. Grounds for Dismissal, Suspension and Demotion. The following are declared to constitute a breach of duty and to be grounds for dismissal or suspension from the classified service or grounds for demotion, though charges may be based upon causes other than those enumerated; viz, that any employee who has been guilty of conduct unbecoming any employee of the City of Miami, who:

- (e) Has violated any lawful and reasonable official regulation or order, or failed to obey any lawful or reasonable direction made and given by his/her superior, where such violation or failure to obey amounts to:

- (2) a serious breach of proper discipline.



DRP Date 7/5/2022

(Continuation)

Page 6 of 6

Employee: _____

P.I.N.: _____

DISCIPLINARY REVIEW PANEL:

The Disciplinary Review panel convened and recommended the following penalty:

STAFF MEMBER:	RECOMMENDATION:
(30) Major Chiquita Thomas-Butler #7013	Demotion Termination <i>OT</i>
Sb. 2. Major Daniel Garrido #2219	Demotion Termination <i>Sb.</i>
W.L. 3. Andy Winsor Lozano #4182	Demotion Termination <i>W.L.</i>

FINAL RECOMMENDATION:

☐ _____ hours of suspension

☐ _____ hours forfeiture of earned overtime

☒ Demotion

☒ Termination

☐ Other _____

DDRB DISCIPLINARY PROFILE

LAST NAME:

Printed on : Thursday, April 14, 2022

FIRST NAME:

3:12:54 PM

IBM:

DOI:	Discipline:	CHARGES:	Status:
7/17/2008	RFC-	Vehicle Operation of	Signed by Chain of Command - 11-10-08. Closed.

SUMMARY:

As the driver of a rental vehicle assigned to the South District Station, was observed making a right turn without signaling. Then, he refused to stop when his vehicle was pursued by another police vehicle with its lights activated and siren chirping. Then later, he voluntarily stopped the vehicle at a gas station - RFC

DOI:	Discipline:	CHARGES:	Status:
7/3/2008	RFC	Attendance	Signed by Chain of Command - 11-19-08. Closed.

SUMMARY:

Sergeant failed to attend Traffic Court - RFC

DOI:	Discipline:	CHARGES:	Status:
4/3/2014	Reprimand	Attendance	Closed-COP signed on 11-5-14.

SUMMARY:

Sergeant failed to attend court as scheduled. REP 14-131

DOI:	Discipline:	CHARGES:	Status:
2/26/2014	RFC	Attendance	Signed by chain of command. Closed.

SUMMARY:

Sergeant was scheduled to attend court on the above date and failed to advise court liaison or the SAO of his inability to attend. RFC.

DDRB DISCIPLINARY PROFILE

LAST NAME:

Printed on : Thursday, April 14, 2022

FIRST NAME:

3:12:54 PM

IBM:

DOI:

Discipline:

CHARGES:

Status:

2/3/2016

Reprimand

Commanding Officer to
Set Example For
Subordinates

Signed by COP on 11/18/16. Closed.

SUMMARY:

Lieutenant used his social media as Facebook and Twitter to post comments and images that were perceived to be unprofessional in essence. These posts were against a citizen named Claudia Castillo. REP 16-189

DOI:

Discipline:

CHARGES:

Status:

3/23/2018

RFC

Members to have
knowledge

Signed by DC Papier on 9/18/2018.
Closed.

SUMMARY:

While working an Extra Duty at the Ultra Music Festival, Captain encountered the complainant, who was operating a drone for commercial purposes. Captain : informed the complainant he would be arrested if he did not cease operating his drone, the complainant complied. Further investigation revealed that the complainant was not in violation of Florida State Statutes/City Ordinance. RFC.

EXHIBIT F



THE VOICE OF LAW ENFORCEMENT

SOUTH FLORIDA POLICE BENEVOLENT ASSOCIATION

Via Email -Manuel.Morales@miami-police.org

July 19, 2022

Chief Manuel Morales
400 NW 2nd Avenue
Miami, Florida 33128

RE: Captain Discipline - Overtime Complaint

Dear Chief Morales:

On July 11, 2022, my client received discipline from Commander Bianca Joseph for an overtime violation which recommended termination. During the course of the investigation, it was determined my client had all of his overtime approved by Chief Art Acevedo and his executive Staff. In reviewing the discipline, the following violations were immediately discovered and reported to Commander Bianca Joesph. As required by FSS 112.534 regarding the request of a compliance review board, allow this letter to serve as our formal notice of each violation with sufficient information to show a factual basis:

FSS 112.532 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

(a) Except as provided in this subsection, disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation or complaint of misconduct, regardless of the origin of the allegation or complaint, if the investigation of the allegation or complaint is not completed within 180 days after the date the agency receives notice of the allegation or complaint by a person authorized by the agency to initiate an investigation of the misconduct. If the agency determines that disciplinary action is appropriate, it shall complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action, along with a proposal of the specific action sought, including length of suspension, if applicable.

Factual Basis For Allegation:

On April 20, 2022, Captain received a letter with the subject: *Notification of Disciplinary Action* from Commander Bianca Joseph. The statutory 180 requirement had already elapsed at the time of the notice. Notice was not given to my client as to the violations of police or any specific discipline as required by the Police Officer Bill of Rights. Based on this information,

your agency failed to follow the requirements of Florida Statute 112.532 and did not recommend specific discipline within the required timeframe. There was not legally sufficient tolling during the time frame. The allegation was reported during a City Commission meeting on September 27, 2021, which is recorded and attended by several members of the command staff who had the ability to initiate discipline. On July 11, 2022, Commander Joseph served a recommendation of termination based on the investigation that clearly violated my client's rights.

FSS 112.532 (6)

(b) An investigation against a law enforcement officer or correctional officer may be reopened, notwithstanding the limitations period for commencing disciplinary action, demotion, or dismissal, if:

1. Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

2. The evidence could not have reasonably been discovered in the normal course of investigation or the evidence resulted from the pre-disciplinary response of the officer.

Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

Factual Basis for Allegation:

My client was never interviewed due to Commander Bianca Joseph's refusal to ensure that all evidence was obtained. On April 15, 2022, my client provided Commander Joseph and Major Antonio Diaz with significant new evidence that would change the outcome of the investigation. Sergeant Espinosa was also present. They were told they needed to interview Commissioner Joe Carollo, who was the complainant. asked for access to his Microsoft Outlook account to obtain evidence necessary for the case to give a statement. Commander Joseph stated he could not obtain access prior to the interview. There were other witnesses and documentation that needed to be obtained prior to giving a statement. To date, Commander Joseph refused to obtain this evidence. On April 20, 2022, was given a *Notification of Disciplinary Action* letter. At that time, put the city on notice that the statutory time had once again elapsed, and that discipline would be retaliation in contrary to 112. 532 (5). advised the department of missing evidence that was identifiable at the time the investigation was commenced.

FSS 112.532 (5) RETALIATION FOR EXERCISING RIGHTS.—No law enforcement officer or correctional officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by reason of his or her exercise of the rights granted by this part.

Factual Basis For Allegation:

On April 20, 2022, and July 11, 2022, [redacted] was retaliated against for giving a pre-disciplinary response by advising Commander Joseph of identifiable individuals that needed to be interviewed as well as identifiable evidence that had to be obtained by the agency.

We have previously requested any/all correspondence regarding this matter and draft discipline after [redacted] was advised this case was also closed. Attached to this correspondence is a Fraternal Order of Police v. City of Gainesville. The First District Court of Appeal stated:

Given the statute's remedial nature, the better reading of section 112.534 is that the compliance review process is available to adjudge claims of intentional violations if (a) they are discovered before an investigative report is released or, as is the case here, (b) they could not be discovered prior to, but surfaced and were promptly reported immediately after, the initial release of the investigative reports. The statute can serve these two remedial purposes: it can walk and chew gum at the same time.

Unless otherwise remedied within ten (10) working days of this request for a compliance review panel hearing, we are prepared to move forward. The only way to assure that my client is not negatively affected by these violations is for the department to close the investigation stating policy failures or similar findings. We are confident that the factual basis for each allegation will be sustained against the police department and their representative.

Thank you for your prompt attention to this matter.

Respectfully,



Griska Mena
Staff Counsel
GM:mr

EXHIBIT G

Griska Mena

From: Griska Mena
Sent: Tuesday, July 19, 2022 5:14 PM
To: Manuel Morales
Cc: Mendez, Victoria; JCPerez@miami-police.org; Panoff, Stephanie K.; Jones, Kevin R.; Ibalmea, Jesus (Major); Diaz, Antonio (Major); Vanegas, Yaosca; Joseph, Bianca (Commander); Gause, Cherise (Assistant Chief)- Police; 27998@miami-police.org; Martinez, Teresita; anoriega@miamigov.com; Francis X. Suarez; ARoberts@miamigov.com; Espinosa, Frank (Sgt.); Castell, Steven
Subject: Compliance Review Panel - Overtime
Attachments: - Overtime.pdf

Good Afternoon Chief Morales,

Attached please find my request for a Compliance Review Panel.

The union's selection is Detective Wanda Jean-Baptiste.

Please provide the name of the agency's selection. You have ten day to respond.

Thank you for your attention to this matter.

Should you have any questions please feel free to contact me.

Griska Mena, Staff Counsel
South Florida Police Benevolent Association
10680 PBA Memorial Blvd (NW 25th Street)
Suite 205
Doral, Florida 33172-2108
Direct 305-593-0044
Fax 305-436-0142
griska@sflpba.org



Warning: This transmission may contain confidential information intended only for the person(s) named above. It may contain information that is exempt from disclosure under applicable laws, including, but not limited to, the FOIA, Privacy Act, 5 USC 552, Ch. 119, F.S., or the Florida Rules of Evidence. Any use, distribution, copying or other disclosure by any other person is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.

EXHIBIT H

Griska Mena

From: Morales, Manuel (Chief of Police) <4886@miami-police.org>
Sent: Wednesday, July 20, 2022 4:24 PM
To: Griska Mena
Cc: Mendez, Victoria; Perez, Juan; Panoff, Stephanie K.; Jones, Kevin R.; Ibalmea, Jesus (Major); Diaz, Antonio (Major); Vanegas, Yaosca; Joseph, Bianca (Commander); Gause, Cherise (Assistant Chief); Echaburu, Alberto; Martinez, Teresita; Noriega, Art; Francis X. Suarez; Roberts, Angela; Espinosa, Frank (Sgt.); Baker, Katherine (Lt.); Lanier, Brandon (Commander); Wysong, George
Subject: Re:

Dear Ms. Mena,

After review and consideration of your correspondence dated July 19, 2022, your request for a compliance review panel in this matter is denied.

Sincerely,

Chief Manny Morales

From: Griska Mena <Griska@dcpba.org>
Sent: Tuesday, July 19, 2022 5:06 PM
To: Morales, Manuel (Chief of Police) <4886@miami-police.org>
Cc: Mendez, Victoria <VMendez@miamigov.com>; Perez, Juan <jperez@miami-police.org>; Panoff, Stephanie K. <SKPanoff@miamigov.com>; Jones, Kevin R. <krjones@miamigov.com>; Ibalmea, Jesus (Major) <3319@miami-police.org>; Diaz, Antonio (Major) <1441@miami-police.org>; Vanegas, Yaosca <27429@miami-police.org>; Joseph, Bianca (Commander) <27233@miami-police.org>; Gause, Cherise (Assistant Chief) <2302@miami-police.org>; Echaburu, Alberto <27998@miami-police.org>; Martinez, Teresita <tmartinez@miamigov.com>; Noriega, Art <anoriega@miamigov.com>; Suarez, Francis (Mayor) <fsuarez@miamigov.com>; Roberts, Angela <ARoberts@miamigov.com>; Espinosa, Frank (Sgt.) <29284@miami-police.org>; Baker, Katherine (Lt.) <0232@miami-police.org>; Lanier, Brandon (Commander) <28889@miami-police.org>
Subject:

[EXTERNAL EMAIL]

Caution: This is an email from an external source. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon Chief Morales,

Attached please find my request for a Compliance Review Panel.

The unions pick is Detective Wanda Jean-Baptiste.

Please provide the name of the agency's selection. You have ten day to respond.

Thank you for your attention to this matter.

Should you have any questions please feel free to contact me.

Griska Mena, Staff Counsel
South Florida Police Benevolent Association
10680 PBA Memorial Blvd (NW 25th Street)
Suite 205
Doral, Florida 33172-2108
Direct 305-593-0044
Fax 305-436-0142
griska@sflpba.org



Warning: This transmission may contain confidential information intended only for the person(s) named above. It may contain information that is exempt from disclosure under applicable laws, including, but not limited to, the FOIA, Privacy Act, 5 USC 552, Ch. 119, F.S., or the Florida Rules of Evidence. Any use, distribution, copying or other disclosure by any other person is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.