

**COURT OF APPEAL**

**THIRD CIRCUIT**

**STATE OF LOUISIANA**

**DOCKET NUMBER: \_\_\_\_\_**

---

**ALAN W. STOKES**

**Plaintiff/Respondent**

**VERSUS**

**CITY OF ALEXANDRIA AND JACQUES ROY**

**Defendants/Applicants**

---

**PARISH OF RAPIDES, STATE OF LOUISIANA**

**CIVIL SUIT NO.: 262,214 "A"**

**NINTH JUDICIAL DISTRICT COURT**

**HONORABLE MONIQUE F. RAULS, JUDGE PRESIDING**

---

**ORIGINAL APPLICATION FOR SUPERVISORY WRITS  
BY DEFENDANTS/APPLICANTS, CITY OF ALEXANDRIA  
AND JACQUES ROY**

---

**REQUESTED FOR EXPEDITED CONSIDERATION**

---

Respectfully submitted,

**GOLD, WEEMS, BRUSER, SUES & RUNDELL**

**Steven M. Oxenhandler (#28405)**

**Joshua J. Dara, Jr. (#35739)**

2001 MacArthur Drive

P. O. Box 6118

Alexandria, LA 71301

(318) 445-6471 - Telephone

(318) 445-6476 - Facsimile

**ATTORNEYS FOR DEFENDANTS/APPLICANTS,  
CITY OF ALEXANDRIA AND JACQUES ROY**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

REQUEST FOR EXPEDITED CONSIDERATION..... 1

I. GROUNDS FOR INVOKING SUPERVISORY JURISDICTION ..... 5

II. STATEMENT OF THE CASE ..... 6

    A. Status of the Case ..... 6

    B. Background ..... 6

    C. Action of the Trial Court ..... 8

III. ASSIGNMENTS OF ERROR ..... 9

    A. Assignment No. 1..... 9

    B. Assignment No. 2..... 9

    C. Assignment No. 3..... 9

IV. ISSUES PRESENTED FOR REVIEW ..... 9

    A. Can the trial court assume jurisdiction of a civil service matter through the injunctive process, and thereby disrupt and effectively eliminate the civil service discipline and appeal process provided by La. R.S. 33:2500 and La. R.S. 33:2501(E)? ..... 9

    B. Can the trial prohibit the Appointing Authority from conducting a civil service Pre-Disciplinary Hearing through the issuance of a TRO that effectively prevents the Appointing Authority from asking questions and presenting evidence crucial to the Appointing Authority’s case involving a civil service employee? ..... 9

    C. Can the trial court prohibit the Appointing Authority’s administration of a second polygraph examination that is reasonable under the circumstances, and therefore allowable by Louisiana law, and which prohibition will prevent the supplementation of any investigation within the 60-day period allowed by La. R.S. 40:2531(B)(7) ..... 10

V. STATEMENT OF FACTS RELEVANT TO ASSIGNED ERRORS..... 10

VI. SUMMARY OF THE ARGUMENT..... 11

VII.	LAW AND ARGUMENT .....	11
A.	Assignment of Error No. 1 .....	11
B.	Assignment of Error No. 2 [Improper Preclusion of Evidence at Pre-Disciplinary Hearing Through Issuance of TRO] .....	15
C.	Assignment of Error No. 3 [Erroneous Prohibition of Polygraph Examination] .....	16
VIII.	CONCLUSION AND PRAYER FOR RELIEF .....	17
IX.	CERTIFICATION AND VERIFICATION AFFIDAVIT.....	18
X.	UNIFORM RULE 4-4(C) NOTICE AFFIDAVIT .....	19
EXHIBITS:		
1.	Temporary Restraining Order and Rule for Preliminary Injunction.....	20
2.	Pre-Disciplinary Hearing Letter.....	22
3.	Petition .....	29
4.	Memorandum in Support [by Plaintiff] .....	37
5.	Motion in Opposition to Petition for Temporary Restraining Order .....	40
6.	Memorandum in Support of Motion to Deny [TRO] .....	42
7.	Notice of Intention to Apply for Supervisory Writs .....	49
8.	Motion to Fix Time for Application for Supervisory Writs.....	51
9.	Order Fixing Time for Application for Supervisory Writs .....	53

## TABLE OF AUTHORITIES

### CASES

<i>City of New Orleans v. Louisiana Gaming Control Bd.</i> , 97-2219 (La. App. 1 Cir. 9/30/97), 707 So.2d 1261 .....	6
<i>Eubanks v. City of Opelousas</i> , 590 So.2d 740 (La. App. 3 Cir. 1991).....	14
<i>Evans v. DeRidder Municipal Fire and Police Civil Service Board</i> , 2001-2466 (La. 4/3/02), 815 So.2d 61.....	8, 17
<i>Ferguson v. Progressive Acute Care Avoyelles, LLC</i> , 2017-563 (La. App. 3 Cir. 1/4/18), 237 So.3d 533 .....	5, 6
<i>Foreman v. Falgout</i> , 503 So.2d 517 (La. App. 1 Cir. 1986) .....	13, 14
<i>Herlitz Const. Co., Inc. v. Hotel Investors of New Iberia, Inc.</i> , 396 So.2d 878 (La. 1981)(per curiam).....	6
<i>Hillard v. Housing Authority of New Orleans</i> , 436 So.2d 685 (La App. 4 Cir. 1983) .....	13
<i>In re Hickman</i> , 2012-1360 (La. App. 3 Cir. 4/3/13), 113 So.3d 1163 .....	3
<i>Johnson v. Board of Supervisors of Louisiana State University &amp; Agricultural &amp; Mechanical College</i> , 45, 105 (La. App. 2 Cir. 3/3/10), 32 So.3d 1041 .....	15
<i>Lepine v. Lepine</i> , 17-45 (La. App. 5 Cir. 6/15/17), 223 So.3d 666. ....	6
<i>McCain v City of Lafayette</i> , 98-1902 (La. App. 3 Cir. 5/5/99), 741 So.2d 720, writ denied, 1999-1578 (La. 9/17/99) .....	14
<i>Myers v. Ivey</i> , 635 So.2d 632 (La. App. 3 Cir 1994).....	14
<i>Newton and Associates, Inc. v. Boss</i> , 00-889 (La. App. 5 Cir. 10/18/00), 772 So.2d 793 .....	6
<i>Pearson v. Municipal Fire and Police Civil Service Board for City of Shreveport</i> , 609 So.2d 1038 (La. App. 3 Cir. 1992 .....	13
<i>Woods v. City of Shreveport</i> , 40, 393, 40,394 (La. App. 2 Cir. 10/26/05), 914 So.2d 635 .....	16

### STATUTES

La. R.S. 14:122.....	8
----------------------	---

La. R.S. 14[:]122A(1).....	8
La. R.S. 33:2500.....	10, 13-15
La. R.S. 33:2500(A)(3)(4)(5)(14) and (15) .....	12
La. R.S. 33:2500(D) .....	12
La. R.S. 33:2501.....	12-14
La. R.S. 33:2501(A).....	12
La. R.S. 33:2501(A)-(D) .....	12
La. R.S. 33:2501(B)(3).....	4
La. R.S. 33:2501(E) .....	5, 10, 12
La. R.S. 33:2501(E)(1).....	5
La. R.S. 33:2562.....	3, 11, 16
La. R.S. 40:2531(B)(7).....	2, 9, 10

**OTHER AUTHORITIES**

Art. X, Sec. 12(B) of the Louisiana Constitution .....	14
--	----

## REQUEST FOR EXPEDITED CONSIDERATION

This important matter arises in the course of an ongoing civil service investigation of plaintiff, Alexandria police officer Alan W. Stokes (“Stokes”), conducted by defendant, City of Alexandria (the “City”), which cries out for this Court to intervene. A brief description of how we arrived at this point is essential.<sup>1</sup>

For the past several months, the City and Mayor have been engaged in choosing a new Police Chief, one of the most important positions in City government. Unbeknownst to the City at the time, sometime around the end of April 2018, while on-duty as a police officer, Stokes approached two (2) of the candidates for the City’s vacant Chief of Police position and began questioning them about why it is taking so long to appoint a new Police Chief. At the May 2, 2018, Alexandria Police and Fire Civil Service Board (the “Board”) meeting (the “Meeting”), Stokes, Chairman of the Board, announced for the first time, he personally spoke to two (2) of the Police Chief candidates, whom he said stated “they want the job but they say it’s time for the City to name somebody.”<sup>2</sup> Significantly, the Board never authorized an investigation about the length of time to choose a new Police Chief and never authorized Stokes to question anyone or otherwise act on behalf of the Board, individually.

The Board adjourned around 5:50 p.m. Later in the evening on May 2, 2018, after the Meeting, around 7:00 p.m., the City’s Commissioner of Public Safety Neal Bates (“Bates”) called Stokes at home and asked Stokes the names of the two (2) candidates Stokes mentioned at the Meeting. Stokes not only refused to answer a

---

<sup>1</sup> Please see Ex. 2, Stokes’s Pre-Disciplinary Hearing letter, which sets forth the civil service investigation and facts in great detail.

<sup>2</sup> During the civil service investigation, both Police Chief candidates denied stating what Stokes quoted at the Meeting. Equally important, the Police Chief candidates were prohibited from talking to anyone about the selection process in order to preserve the process’s competitive integrity - an agreement made by the candidates.

direct order from a higher ranking police officer, but began cursing at Bates and cursed other higher-ranking officers, as well. Shortly thereafter, Bates and the Mayor, who under the City's Charter is the Chief Executive Officer of all City Departments, called Stokes at home and asked Stokes to name the two (2) individuals - Stokes refused, over and over, while admitting the Mayor's directive was clear.

The same evening, a short time later, Stokes called the APD and made a report of threatening phone calls, and an APD officer responded at Stokes's residence, recording the response with the aid of the police officer's body camera. Significantly, Stokes admitted on tape, the Mayor never threatened to fire him. The police officer later submitted the Incident Report to the APD.<sup>3</sup>

A few days later, Stokes, while on-duty, obtained a copy of the Incident Report and wrongly made an additional four (4) copies of the Incident Report. Disregarding Alexandria Police Department ("APD") Rules and Regulations ("Rules"), Stokes then impermissibly gave the four (4) additional, incorrect Incident Report copies to others - none of whom made the required public records request to obtain the copies.

The following day, May 3, 2018, the City initiated a civil service investigation into Stokes's insubordination, discourteous behavior towards other police officers, and improper disregard of APD Rules concerning distribution of police reports to the public. On June 7, 2018, Stokes was given and failed a polygraph examination as part of the 60-day investigation allowed by La. R.S. 40:2531(B)(7); thereafter, on June 15, 2018, the City attempted to schedule a second polygraph examination at the behest of the City's polygraph expert to test new issues related to but arising out of

---

<sup>3</sup> The Body Camera footage shows the police officer embellished Stokes's comments, which caused the Incident Report to be inaccurate.

the first, deceptive polygraph examination.<sup>4</sup>

On June 14, 2018, Stokes filed a Petition for Temporary Injunction and Preliminary and Permanent Injunction in order to stop the second polygraph examination and prohibit the City from questioning Stokes in his role as Chairman of the Board. The following day, on June 15, 2018, as shown by Ex. 1, a Temporary Restraining Order (“TRO”) was issued against defendants, the City and Alexandria Mayor Jacques Roy (“Mayor Roy”):

. . . restraining, enjoining and prohibiting them from proceeding with a second polygraph examination and from conducting any investigations into petitioner’s activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board ...

(Ex. 1, p. 20, emphasis added). The TRO also contained an Order setting a preliminary injunction – “in the form and substance of the temporary restraining order” – for hearing on June 25, 2018. (*Id.*). As further shown by Ex. 2 (“Pre-Disciplinary Hearing Letter”), Stokes has been ordered to attend a Pre-Disciplinary Hearing on June 28, 2018 (*Id.*, p. 22). The Pre-Disciplinary Hearing will address all subjects of the civil service investigation into plaintiff’s alleged improper activities (*Id.*, pp. 22-28), and at which Hearing the City is legally authorized to present evidence and question witnesses – including plaintiff – regarding plaintiff’s challenged conduct. See La. R.S. 33:2562, which, as this Court noted in *In re Hickman*, 2012-1360 (La. App. 3 Cir. 4/3/13), 113 So.3d 1163, 1167, “refers to a civil service board’s power to administer oaths, subpoena witnesses, and compel the production of books and papers pursuant to any investigation or hearing ... an employee’s refusal to appear for a hearing or inquiry or refusal to testify or answer

---

<sup>4</sup> Polygraph tests are designed to test for one issue at a time. For example, if a public employee breaks into a co-employee’s office and steals money, the first test may focus on the issue of whether the public employee actually took the money him/herself, while the second polygraph focuses on whether the public employee assisted someone else to break into the office to steal the money.

relevant questions shall forfeit his position and not be eligible for appointment to another position in the classified service for six years.” As shown by Ex. 3 (Petition), plaintiff’s primary defense to the City’s investigation of plaintiff’s improper conduct is that “at all times herein he has acted as an elected member of the Alexandria Fire and Police Civil Service Board as Chairman,” and is thus purportedly immune from any inquiry into his behavior. (*Id.*, p. 31, ¶ 14, emphasis added).

The trial court’s TRO and its expected preliminary injunction (which impermissibly infringe on the civil service board’s statutory power to “have complete charge of any ... hearing and investigation,” as per La. R.S. 33:2501 (B)(3)), will prohibit the City’s questioning of Stokes at the June 28, 2018 Pre-Determination Hearing [insofar as such questioning can be considered part of the City’s “investigations into petitioner’s activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board”]. The TRO and expected preliminary injunction will also prohibit the City’s questioning of other witnesses, and its presentation of other evidence relating to plaintiff’s improper conduct for the same reason, *i.e.*, “investigations into petitioner’s activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board.” (Ex. 1, p. 20). Unless expedited consideration is granted, and the TRO and preliminary injunction hearing are terminated/dismissed, the City will be precluded from presenting evidence vital to its case involving Stokes. Further, any attempt by the City to present evidence (on proffer) at the Pre-Determination Hearing that is deemed in furtherance of “investigations into petitioner’s activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board” will subject the City to potential liability for violation of a Court Order, and sanctions for Contempt of Court. Plaintiff’s injunction proceedings effectively turn the Civil Service System on its

head – here, the district court is the trier of fact in the first instance – with a different standard of proof, and no review function whatsoever – rather than an appellate court addressing the determinations of a Civil Service Board, as mandated by La. R.S. 33:2501(E)(1) [“Any employee under classified service and any appointing authority may appeal from any decision of the board, of from any action taken by the board ... This appeal shall lie directly to the court of original and unlimited jurisdiction in civil suits of the parish wherein the board is domiciled”]. Accordingly, defendants pray that expedited consideration be given to this Writ Application, and that a determination be made by this Court on or before Monday, June 25, 2018, at 9:30 a.m. (the date and time set for hearing on plaintiff’s request for preliminary injunction).

**I. GROUND FOR INVOKING SUPERVISORY JURISDICTION**

The instant matter involves an erroneously granted Temporary Restraining Order and a pending Preliminary Injunction relating to matters within the exclusive jurisdiction of a Municipal Fire and Police Civil Service Board, as per La. R.S. 33:2501(E). As this Court stated in *Ferguson v. Progressive Acute Care Avoyelles, LLC*, 2017-563 (La. App. 3 Cir. 1/4/18), 237 So.3d 533:

A court of appeal has plenary power to exercise supervisory jurisdiction over trial courts and may do so at any time, according to the discretion of the court. When the trial court’s ruling is arguably incorrect, a reversal will terminate the litigation, and there is no dispute of fact to be resolved, judicial efficiency and fundamental fairness to the litigants dictate that the merits of the application for supervisory writs should be decided in an attempt to avoid the waste of time and expense of a possibly useless future trial on the merits. *Herlitz Const. Co., Inc. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878 (La. 1981)(per curiam).

(*Id.*, at 536-537). As shown below, the ruling at issue is incorrect; there are no fact issues to be resolved; and a ruling by this Court will terminate the injunction proceedings, Further, the jurisprudence recognizes supervisory writs may be sought

to address the improper granting of a TRO. *See Newton and Associates, Inc. v. Boss*, 00-889 (La. App. 5 Cir. 10/18/00), 772 So.2d 793, 796 (“A party may seek review of a TRO by way of an application for supervisory writs to the Court of Appeal”); *City of New Orleans v. Louisiana Gaming Control Bd.*, 97-2219 (La. App. 1 Cir. 9/30/97), 707 So.2d 1261 (“the trial court signed a temporary restraining order ... The Board applied for supervisory writs, contesting the issuance of the TRO on the basis that the City ... has no right of action in this matter. We agree. \*\*\* Temporary Restraining Order Dissolved; Suit Dismissed ...”); *Lepine v. Lepine*, 17-45 (La. App. 5 Cir. 6/15/17), 223 So.3d 666, 672 (“In the event a party is aggrieved by the granting of a TRO, that party may seek review by way of an application for supervisory writs to the Court of Appeal”). Accordingly, supervisory jurisdiction is properly sought in this matter.

## II. STATEMENT OF THE CASE

A. Status of the Case - The 10-day TRO at issue herein was issued June 15, 2018; a hearing date of June 25, 2018, at 9:30 a.m., is set on plaintiff’s request for a preliminary injunction. (Ex. 1, pp. 20-21). Although not a part of the injunction proceeding (and not pending at the time the TRO was issued), a Pre-Disciplinary Hearing on plaintiff’s alleged improper actions – which form the basis of the TRO’s prohibited “investigations” – is set for June 28, 2018. (Ex. 2, pp. 22-27). (Defendants’ Ex. 2 is not part of the TRO record, but is submitted herewith as part of the Request for Expedited Consideration, and to fully reflect the status of this matter).

B. Background - In order not to be repetitive, defendants incorporate herein by reference the facts stated above at pp. 1-3 of the Request for Expedited Consideration and those stated in Ex. 2, Pre-Disciplinary Letter, pp. 22-28. In addition to the facts incorporated herein by reference, defendants note the second

polygraph examination would focus on whether plaintiff made copies of the Incident Report with the intention of having someone else distribute the Incident Report to persons outside the APD. (See Ex. 6, email attachment to Memorandum, at p. 47). Instead of complying with the order for a second polygraph, plaintiff sought intervention of the district court – through the injunctive process – to circumvent the Appointing Authority’s civil service investigation by preventing a further polygraph examination. (See Ex. 3, Petition for Temporary Restraining Order and Preliminary and Permanent Injunction, pp. 29-36). **Plaintiff’s Petition omits any reference to the unexplained appearance of the Incident Report outside the APD;** Stokes instead cites his refusal to answer questions by Mayor Roy and acting Police Chief Neil Bates as to the identity of individuals Stokes claimed had complained to him regarding length of the selection process for appointing a new Police Chief. (*Id.*, pp. 29-30, ¶¶ 4-7). Stokes alleged Mayor Roy “said he was going to consider petitioner’s withholding the requested information as an act of insubordination and it would be dealt with accordingly.” (*Id.*, p. 30, ¶ 7). Stokes thereafter filed an Incident Report regarding the above cited statement (*Id.*, p. 30, ¶ 8). Plaintiff alleged, among other things, he is “the elected employee police representative” of the Board; that he is the “Chairman of the Board for three (3) years,” and that “at all times herein he has acted as an elected member of the Alexandria Fire and Police Civil Service Board as Chairman.” (Ex. 3, pp. 29 and 31, ¶¶ 3 and 14). Plaintiff further alleged the second polygraph examination “constitutes harassment and intimidation of petitioner in his role as Chairman” of the Board (*Id.*, p. 31, ¶ 15); that “the subject matter of the examination is non work related and constitutes retaliation for petitioner denying the MAYOR request ... for the identity of the two (2) Police Chief candidates that he talked to” (*Id.*). Stokes further alleges:

It is necessary that the CITY be enjoined not to require petitioner to undergo a second polygraph examination and not to conduct further investigation in petitioner's activity as Chairman of the BOARD. Said conduct constitutes intimidation of an elected public official in violation of the provisions of Louisiana law R.S. 14[:]122A(1).

(Ex. 3, p. 32, ¶ 17, emphasis added). Of note, La. R.S. 14:122 is the Louisiana criminal law provision defining and stating criminal penalties for "Public intimidation and retaliation," providing, in part, "Public intimidation is the use of violence, force, or threats upon any of the following persons, with the intent to influence his conduct in relation to his position, employment, or duty ..." (La. R.S. 14:122(A)(1), emphasis added).

C. **Action of the Trial Court** – Notwithstanding the fact that the polygraph of a police officer is specifically allowed by *Evans v. DeRidder Municipal Fire and Police Civil Service Board*, 2001-2466 (La. 4/3/02), 815 So.2d 61, and the fact that Stokes' proposed polygraph, as well as the City's investigation, both address Stokes' *past conduct* and are not even *alleged* to have – ***and do not have*** – any bearing on *influencing Stokes' conduct*, the trial court nevertheless accepted plaintiff's "Public intimidation" argument. It further accepted Stokes' claim he was at all times acting in his capacity as Board member (and, presumably, was therefore immune from the City's actual investigation of plaintiff's actions as a police officer). Accordingly, the trial court issued a TRO against defendants, "restraining them from proceeding with a second polygraph examination and from conducting any investigations into petitioner's activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board..." (Ex. 1., pp. 20-21). Stokes' requested Preliminary Injunction was set for hearing on June 25, 2018, at 9:30 a.m. (*Id.*). Defendants' Notice of Intention to Apply for Supervisory Writs was filed June 20, 2018 (Ex. 7, p. 49); on consideration of defendants' Motion to Fix Time for Application for

Supervisory Writs, filed the same day (Ex. 8, pp. 51-52), the trial court Ordered defendants to file their Writ Application in this Court on or before July 20, 2018. (Ex. 9, p. 53).

### III. ASSIGNMENTS OF ERROR

- A. Assignment No. 1: The trial court erred in issuing a TRO – and thereafter setting a hearing on a preliminary injunction – in a matter within the exclusive jurisdiction of the Alexandria Municipal Fire and Police Civil Service Board.
- B. Assignment No. 2: The trial court erred in issuing a TRO that will effectively preclude the Appointing Authority from conducting a Pre-Disciplinary Hearing as allowed by Louisiana law.
- C. Assignment No. 3: The trial court erred in prohibiting the City from administering a second polygraph examination of plaintiff, which examination was reasonable under the circumstances, and allowed by Louisiana law, and which prohibition prevents the City from supplementing any investigative findings within the 60-day period allowed for police officer investigations by La. R.S. 40:2531(B)(7).

### IV. ISSUES PRESENTED FOR REVIEW

- A. **Can the trial court assume jurisdiction of a civil service matter through the injunctive process, and thereby disrupt and effectively eliminate the civil service discipline and appeal process provided by La. R.S. 33:2500 and La. R.S. 33:2501(E)?**
- B. **Can the trial prohibit the Appointing Authority from conducting a civil service Pre-Disciplinary Hearing through the issuance of a TRO that effectively prevents the Appointing Authority from asking**

questions and presenting evidence crucial to the Appointing Authority's case involving a civil service employee?

C. Can the trial court prohibit the Appointing Authority's administration of a second polygraph examination that is reasonable under the circumstances, and therefore allowable by Louisiana law, and which prohibition will prevent the supplementation of any investigation within the 60-day period allowed by La. R.S. 40:2531(B)(7)?

V. STATEMENT OF FACTS RELEVANT TO ASSIGNED ERRORS

The relevant facts are set forth in defendants' Request for Expedited Consideration and Ex. 2, pp. 22-28, Stokes' Pre-Disciplinary Hearing Letter (which Stokes signed). These facts are incorporated herein by reference. The record citation to additional facts stated above would be defendants' Memorandum to the trial court, attached hereto as Ex. 6, pp. 42-48. With regard to those facts stated above, defendants reiterate (1) plaintiff's status as a civil service employee (Ex. 6, p. 42); (2) the City's investigation of plaintiff in his capacity as a civil service employee (*Id.*, p. 42); (3) plaintiff's obtaining and improperly distributing copies of an Incident Report and the appearance of the Incident Report outside the confines of the Alexandria Police Department (*Id.*, p. 42); (4) the City's taking of plaintiff's first polygraph to inquire whether plaintiff himself gave the Incident Report to a City councilman, and the City's need to take a second polygraph to question whether plaintiff made copies of the Incident Report *with the intent* for others to disseminate the Incident Report (*Id.*, pp. 43 and 47); (5) plaintiff alleges retaliation by defendants (Ex. 3 Petition, p. 31, ¶15). Defendants further note the fact that plaintiff can lawfully be questioned during his Pre-Determination Hearing, as per La. R.S. 33:2562, but the

City is precluded from doing so (and from questioning other witnesses) to the extent such questions could be considered “investigations into [Stokes’] activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board.” (Ex. 1, TRO at p. 20).

## **VI. SUMMARY OF THE ARGUMENT**

This matter involves an ongoing civil service matter which is wholly within the jurisdiction of the Alexandria Municipal Fire and Police Civil Service Board. The trial court therefore has no jurisdiction to interfere in this employer-employee matter through plaintiff’s attempt to couch his claim as a demand for injunctive relief. Moreover, plaintiff failed to exhaust his administrative remedies through seeking relief before the Civil Service Board. The TRO issued herein will impermissibly prohibit the City from exercising its legal right to question plaintiff and other witnesses at plaintiff’s Pre-Disciplinary Hearing, inasmuch as such questioning could be seen as constituting “investigations into petitioner’s activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board.” Louisiana law specifically allows the City to do that which the TRO forbids. The polygraph examination prohibited by the TRO is authorized by Louisiana Supreme Court jurisprudence, and the trial court erred in prohibiting the City from administering the polygraph.

## **VII. LAW AND ARGUMENT**

### **A. Assignment of Error No. 1 [Trial Court’s Lack of Jurisdiction]**

La. R.S. 33:2501, titled “Corrective and disciplinary action for maintaining standards of service,” provides the procedure for disciplinary actions involving Fire and Police Civil Service Employees. *See* La. R.S. 33:2501(A)-(D), beginning with fifteen (15) enumerated reasons for an Appointing Authority “to take ... disciplinary

action as the circumstances warrant in the manner provided below,” and which enumerated reasons include an employee’s “commission or omission of any act to the prejudice of the departmental service or contrary to the public interest or policy ... Insubordination .... Conduct of a discourteous or wantonly offensive nature toward the public, any municipal officer or employee ... The willful violation of any provision of this Part or of any rule, regulation, or order hereunder ... Any other act or failure to act which the board deems sufficient to show the offender to be an unsuitable or unfit person to be employed ... (La. R.S. 33:2500(A)(3)(4)(5)(14) and (15). The statute’s concluding paragraph requires:

In every case of corrective or disciplinary action taken against a regular employee of the classified service, the appointing authority shall furnish the employee and the board a statement in writing of the action and the complete reasons therefor.

(La. R.S. 33:2500(D)). With regard to such disciplinary actions, La. R.S. 33:2501, titled “Appeals by employees to the board,” allows Fire and Police Civil Service Employees to appeal corrective or disciplinary actions to the Municipal Fire and Police Civil Service Board (the “Board”) (See La. R.S. 33:2501(A)). The statute further allows the employee and the Appointing Authority to appeal the Board’s action directly to the district court, which sits as an appellate tribunal. (See La. R.S. 2501(E) (“Any employee ... and any appointing authority may appeal any decision of the board or from any action taken by the board ... direct to the court of original and unlimited jurisdiction in civil suits of the parish wherein the board is domiciled”). The City’s investigation of plaintiff’s actions forms part of an inquiry regarding potential disciplinary action as per La. R.S. 33:2500. Whatever action the City takes in relation to plaintiff’s conduct would then be appealed by Stokes to the Board, and thereafter, by either party to the district court as per La. R.S. 33:2501. Stokes is required to exhaust his administrative remedies within the Civil Service System (as

set out above) before he can appear in the district court. See *Hillard v. Housing Authority of New Orleans* 436 So.2d 685 (La App. 4 Cir. 1983) and *Foreman v. Falgout*, 503 So.2d 517 (La. App. 1 Cir. 1986) (requiring that a civil service employee first exhaust his remedies by appealing an employment dismissal to the Civil Service Commission before bringing an action for damages under state law in state district court). Here, plaintiff is appealing the City's investigation of him directly to the district court in the guise of an injunction proceeding, in direct contravention of the statutory scheme outlined above. The Board – not the district court – has jurisdiction of this matter. In *Pearson v. Municipal Fire and Police Civil Service Board for City of Shreveport*, 609 So.2d 1038 (La. App. 3 Cir. 1992), the Second Circuit ruled the district court – in a mandamus action – lacked authority to rule on whether a police officer's letter of retirement was coerced, finding instead this was a matter for the Civil Service Board:

... the question before the district court was not whether Pearson was coerced into signing the retirement letter, but rather whether a writ of mandamus should be granted ordering the Board to conduct a hearing into that question. ... Irrespective of the district court's statements about coercion, the district court did not have authority to rule on this question. The Board is the body charged with taking evidence and making this determination, subject to review by the courts. LSA-R.S. 33:2500 et seq.

(*Id.*, at 1043, FN1, emphasis added). In *McCain v City of Lafayette*, 98-1902 (La. App. 3 Cir. 5/5/99), 741 So.2d 720, *writ denied*, 1999-1578 (La. 9/17/99), the Third Circuit affirmed the district court's ruling it lacked subject matter jurisdiction to hear the plaintiff's age discrimination claim, inasmuch as exclusive jurisdiction over civil service employment matters was vested in the Civil Service Board. (*Id.*, at 724-725).

As quoted by this Court, the trial judge ruled:

The Court finds that it lacks the jurisdiction to hear the instant suit. Under Art. X, Sec. 12(B) of the Louisiana Constitution ... a city civil service board has exclusive original subject matter jurisdiction over all

removal and disciplinary cases. *Myers v. Ivey*, 635 So.2d 632 (La. App. 3 Cir 1994); *Eubanks v. City of Opelousas*, 590 So.2d 740 (La. App. 3 Cir. 1991). Plaintiff's case involves his alleged wrongful removal from a position with the CITY OF LAFAYETTE; therefore, the Lafayette Municipal Government Employees Civil Service Board has exclusive jurisdiction over his case. Since plaintiff failed to raise the issue of age discrimination in front of the Civil Service Board he cannot be allowed to now raise it for the first time in front of this Court.

(*Id.*, at 724-725, emphasis in original). Although La. Const. art. X, Sec 12(B) deals specifically with the grant of exclusive jurisdiction of City Civil Service Boards, and does not address Fire and Police Civil Service Boards, the provisions of La. R.S. 33:2500 and La. R.S. 33:2501 serve the same jurisdictional purpose, and produce the same practical effect of the referenced constitutional provision. Pertinent to this point, the *McCain* Court quoted *Myers v. Ivey*, 93-1166 (La. App. 3 Cir. 4/6/94), 635 So.2d 632, 633, wherein the Court said (in part):

Myers attempts to circumvent the exclusive jurisdiction of the City Civil Service Commission by filing this tort action against his supervisors and the department alleging a conspiracy to intentionally inflict emotional distress. Myers has cited no cases, nor have we found any, which allow such an independent action in district court. The entire thrust of the exclusive jurisdiction grant is to preclude district courts from having concurrent jurisdiction with the Civil Service Commissions over classified civil service employer-employee disputes that are employment related. *Foreman v. Falgout*, 530 So.2d 517 (La App. 1<sup>st</sup> Cir. 1986).

(*Id.*, at 726, emphasis added). The exact principle is applicable here; there is no reason why the Alexandria Municipal Fire and Police Civil Service Board should not be recognized as having the same jurisdiction over plaintiff's claims in the instant matter. In *Johnson v. Board of Supervisors of Louisiana State University & Agricultural & Mechanical College*, 45, 105 (La. App. 2 Cir. 3/3/10), 32 So.3d 1041, the Second Circuit reached an identical lack of subject matter jurisdiction finding as to a civil servant's retaliatory discharge claim. The Court said:

The thrust of the grant of exclusive jurisdiction over employment-related disputes between employers and employees in civil service is to preclude the district court from having concurrent jurisdiction with the

[Civil Service Commission] ... \*\*\* The fact that Johnson styled her suit as one for retaliatory discharge does not end the inquiry into whether the district court has subject matter jurisdiction over her claim.

(*Id.*, at 1047, emphasis added). Again, the same is true here; Stokes cannot circumvent the Board's jurisdiction over the subject of his complaints by styling his claim as an injunction proceeding. Despite defendants' jurisdiction argument to the trial judge, the TRO was granted. That ruling should now be reversed.

**B. Assignment of Error No. 2 [Improper Preclusion of Evidence at Pre-Disciplinary Hearing Through Issuance of TRO]**

The trial court's TRO prohibits defendants from "conducting any investigations into petitioner's activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board" (Ex. 1, p. 20). Plaintiff's Pre-Disciplinary Hearing (scheduled for June 28, 2018)(Ex. 2, p.22) will involve questioning of witnesses – including plaintiff – as to the matters that are the subject of the City's investigation of Stokes. To the extent the trial court's TRO embraces any questions of any witness that could be considered "investigations" into Stokes' activity as a member of the Board, the City is precluded from presenting evidence in accordance with La. R.S. 33:2500, which (as noted above) sets forth reasons for an Appointing Authority to discipline civil service employees. Further, the questioning of witness at a civil service hearing is allowed by La. R.S. 33:2562, which provides penalties for "[a]ny ... employee in the classified service who ... refuses to testify or answer any relevant question relating to ... the conduct of any officer or employee ... except on the ground that his testimony or answers would tend to incriminate him..." The TRO at issue herein would clearly prohibit relevant questions at the Pre-Disciplinary Hearing scheduled in this matter; as such, the TRO violates the City's statutory rights to present its case. Further, plaintiff's claim the was acting in his capacity as a Board member does not shield him from liability for violation of employment rules. In

*Woods v. City of Shreveport*, 40, 393, 40,394 (La. App. 2 Cir. 10/26/05), 914 So.2d 635, a civil service employee, John Walter Ivory, argued his status as a “civil service representative of the Board” (*Id.*, at 640), allowed him to disregard a direct order by his superior. His argument was rejected; as stated by the Second Circuit:

Ivory ... maintains that he went to the City Council partially as a service-member representative of the Board ... Ivory asserts that Cochran had no authority to compel the Board or any of its members to divulge information about complaints ... According to the plaintiffs, their refusal to comply with Cochran’s order did not impair the operations of the department. .... The plaintiffs disregarded a direct order by a superior... The Board was not manifestly erroneous or arbitrary or capricious in finding that the plaintiffs’ failure to comply with the order constituted insubordination requiring the imposition of suspensions. The district court correctly upheld that determination.

(*Id.*, at 640-641). The trial court in the instant matter should likewise have rejected Stokes “Board member” argument, such that a TRO relating to such alleged conduct shields plaintiff from all liability for his improper actions.

**C. Assignment of Error No. 3 [Erroneous Prohibition of Polygraph Examination]**

The TRO at issue prevents the City from administering a second polygraph examination to Stokes. As stated in *Evans v. DeRidder, supra*, the Louisiana Supreme Court noted, “Louisiana courts have long recognized that a civil service employee may be ordered to take a polygraph, and that the employee can be suspended or discharged for failing to take a polygraph.” (*Id.*, 815 So.2d at 66-67). As also noted above, the Supreme Court additionally said, “police officers can be fired for failing to submit to a polygraph when ordered to do so if the request is reasonable under the circumstances.” (*Id.*, at 68). The City’s reasons for taking the second polygraph were submitted to the trial court in defendants’ Memorandum (Ex. 6), and show the need to clarify issues relating to Stokes’ intent in providing of the Incident Report to others. The request for a second polygraph was entirely reasonable, and should not

have been prevented through the issuance of a TRO. The Court is asked to consider *how* a second polygraph of Stokes – focusing on Stokes’s improper release of an inaccurate Incident Report – can ever be retaliation, when Stokes’s release of the Incident Report is a violation of APD Rules. Simply put, Stokes seeks to avoid a civil service investigation by the proper judicial body that should take evidence - the Alexandria Police and Fire Civil Service Board. This Court should prevent Stokes’s improper use of the judicial system to circumvent the Civil Service System. This Court should dissolve the TRO and dismiss Stokes’s Petition in its entirety, thereby sending this matter to the Board for review. Accordingly, the ruling at issue should be reversed.

**VIII. CONCLUSION AND PRAYER FOR RELIEF**

The trial court had no jurisdiction to interfere in an ongoing civil service matter through the issuance of a TRO. Moreover, the TRO violates established legal rights of defendants in relation to civil service matters. Defendants ask this Court to reverse the grant of the trial court’s TRO, and dismiss plaintiff’s Petition for injunctive relief in its entirety.

Respectfully submitted,

**GOLD, WEEMS, BRUSER, SUES & RUNDELL**

By: 

**Steven M. Oxenhandler (#28405)**

**Joshua J. Dara, Jr. (#35739)**

2001 MacArthur Drive

P. O. Box 6118

Alexandria, LA 71301

(318) 445-6471 - Telephone

(318) 445-6476 - Facsimile

**ATTORNEYS FOR DEFENDANTS, CITY OF  
ALEXANDRIA AND JACQUES ROY**

**IX. CERTIFICATION AND VERIFICATION AFFIDAVIT**

**PARISH OF RAPIDES**

**STATE OF LOUISIANA**

**BEFORE ME**, the undersigned Notary, personally came and appeared STEVEN M. OXENHANDLER, who, being duly sworn did depose and say that he is counsel fo record for the CITY OF ALEXANDRIA and JACQUES ROY, and that all allegations of the Application for Supervisory Writs to the Third Circuit Court of Appeal are true and correct, and that a copy of the foregoing Writ Application has been submitted, via hand delivery, to the respondent judge and to all counsel as follows:

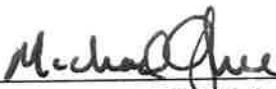
Honorable Monique F. Rauls  
9<sup>th</sup> Judicial District Court Judge, Division "A"  
701 Murray Street  
Alexandria, Louisiana 71301  
Telephone: (318) 443-6893  
Facsimile: (318) 484-2704

Daniel E. Broussard, Jr.  
429 Murray Street, Suite Three  
Alexandria, Louisiana 71301  
Telephone: (318) 487-4589  
Facsimile: (318) 445-8502  
**Counsel for Plaintiff/Respondent Alan W. Stokes**

Alexandria, Louisiana, this 21<sup>st</sup> day of June, 2018.

  
\_\_\_\_\_  
STEVEN M. OXENHANDLER

**SWORN TO AND SUBSCRIBED BEFORE ME**, Notary Public, this 21<sup>st</sup> day of June, 2018, at Alexandria, Rapides Parish, Louisiana

  
\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: Michael J O'Shee  
La. Notary/Bar Roll Number: 10268  
My commission expires: at death

**X. UNIFORM RULE 4-4(C) NOTICE AFFIDAVIT**

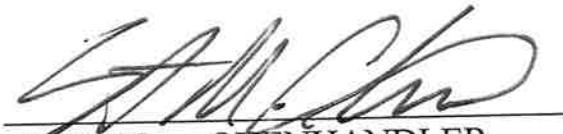
**PARISH OF RAPIDES**

**STATE OF LOUISIANA**

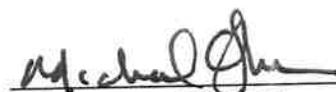
**BEFORE ME**, the undersigned Notary, personally came and appeared  
STEVEN M. OXENHANDLER, who, being duly sworn, did depose and say:

1. He is counsel of record for defendants/applicants City of Alexandria and Jacques Roy;
2. That the trial court, HONORABLE MONIQUE F. RAULS, was told in person on June 20, 2018 (at the time the Order Fixing Time for Application for Supervisory Writs was signed by Judge Rauls) that defendants/applicants were that date preparing and would immediately file their Application for Supervisory Writs to the Third Circuit Court of Appeal seeking Expedited Consideration;
3. That DANIEL E. BROUSSARD, JR., counsel for plaintiff/respondent Alan W. Stokes, was contacted via telephone on June 20, 2018, and was told that defendants/applicants would file – on June 20, 2018 – their Application for Supervisory Writs to the Third Circuit Court of Appeal seeking Expedited Consideration; defendants were delayed in their efforts to complete the Writ, and are filing the Writ Application on June 21, 2018;
4. That a copy of defendants/applicants' Writ Application will also be hand delivered to the HONORABLE MONIQUE F. RAULS and DANIEL E. BROUSSARD, JR. on June 21, 2018.

Alexandria, Louisiana, this 21<sup>st</sup> day of June, 2018.

  
\_\_\_\_\_  
STEVEN M. OXENHANDLER

SWORN TO AND SUBSCRIBED before me, Notary Public, this 21<sup>st</sup> day of  
June, 2018, at Alexandria, Rapides Parish, Louisiana.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: Michael J. O'Shea  
La. ~~Notary~~ No./La. Bar Roll No. 10268  
My Commission Expires: at death

CIVIL SUIT NUMBER 262.214 A

DIVISION "\_\_\_"

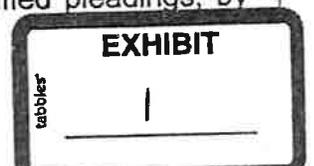
**ALAN W. STOKES** : 9<sup>TH</sup> JUDICIAL DISTRICT COURT  
**VERSUS** : PARISH OF RAPIDES  
**CITY OF ALEXANDRIA, ET AL** : STATE OF LOUISIANA

**TEMPORARY RESTRAINING ORDER  
AND RULE FOR PRELIMINARY INUNCTION**

It appearing from the verified petition in this case that immediate and irreparable injury, loss or damage will result to petitioner by virtue of his undergoing to a second polygraph examination of petitioner and from conducting any investigations into petitioner in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board before notice can be served and a hearing held on petitioner's application for a preliminary injunction;

**IT IS ORDERED** that a temporary restraining order be issued herein, on the petitioner's furnishing security in the amount of \$ - 0 -, directed to defendants, **CITY OF ALEXANDRIA** and **MAYOR JACQUES ROY**, restraining, enjoining and prohibiting them from proceeding with a second polygraph examination and from conducting any investigations into petitioner's activity in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board, and similarly restraining, enjoining and prohibiting any persons acting or claiming to act on defendants' behalf. This temporary restraining order expires at the end of ten (10) days from its date, unless extended by this Court prior to its expiration, for good cause shown and the reasons entered of record;

**IT IS FURTHER ORDERED** that defendants, **CITY OF ALEXANDRIA** and **MAYOR JACQUES ROY**, show cause on the 25<sup>th</sup> Day of June, 2018, at 9:30 o'clock 9 .m., at Rapides Parish Courthouse, Alexandria, Louisiana, why a preliminary injunction in the form and substance of the temporary restraining order above should not be issued, to be effective during the pendency of these proceedings. On the hearing of this rule, proof may be adduced in accordance with La. C. C. P. Art, 3609 by verified pleadings, by

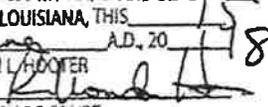


supporting affidavits, or by proof as in ordinary cases, or by any or all such methods, at the election of the party offering the proof.

**THUS DONE AND SIGNED** at Alexandria, Rapides Parish, Louisiana, on this 15<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
DISTRICT JUDGE

FILED & RECORDED  
ROBIN L. HOOTER  
CLERK OF COURT  
2018 JUN 15 AM 10:06  
BY   
DY CLERK & RECORDER  
RAPIDES PARISH LA.

STATE OF LOUISIANA, PARISH OF RAPIDES  
I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS  
A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE  
AND OF RECORD IN THIS OFFICE.  
IN FAITH, WHEREOF, WITNESS MY HAND AND SEAL OF  
OFFICE, AT ALEXANDRIA, LOUISIANA, THIS  
DAY OF June A.D., 2018  
BY   
DY. CLERK OF COURT



June 18, 2018

Corporal Alan Stokes  
Alexandria Police Department  
1000 Bolton Avenue  
Alexandria, Louisiana 71301

RE: Pre-Disciplinary Hearing Letter

Dear Cpl. Stokes:

You are hereby ordered to attend a pre-disciplinary hearing on Thursday, June 28, 2018, at 10:00 a.m. in the Police Chief's administrative conference room on the second floor of the Public Safety Complex, 1000 Bolton Ave., Alexandria, Louisiana (the "Hearing"). **Disciplinary action is being contemplated against you for the reasons outlined in this letter. You may bring counsel or a representative to the Hearing, if you so choose. You are allowed to explain why you believe disciplinary action should not be taken against you.** The following events and/or series of events committed by you beginning after the adjournment of the May 2, 2018, Alexandria Police and Fire Civil Service Board meeting and continuing until June 15, 2018, have prompted the Hearing, including insubordination, being discourteous to and cursing at superior police officers, violating numerous Alexandria Police Department Rules and Regulations (the "Rules"), including, but not limited to, violating the Rules relating to copying and releasing Incident Reports, and failing a polygraph examination – all of which have impaired the efficient and effective operation of the Alexandria Police Department (the "APD"):

1. You are the internally elected APD police representative appointed by the City of Alexandria City Council to the Alexandria Police and Fire Civil Service Board (the "Board"). Currently, you are the Chairman of the Board. On or about Wednesday, May 2, 2018, at 5:00 p.m., the Board convened a public meeting (the "Meeting"). As a member of the Board, you attended and participated in the Meeting. A number of items were on the Meeting agenda, including, among other items, the appeal of a previously disciplined firefighter and an update by the City of Alexandria (the "City") on the selection of a candidate for the vacant Chief of Police. (See attached official Agenda and minutes of the 5-2-18, Board meeting as well as other official Meeting Agendas and Minutes, Bates Stamp Nos. 00001 - 00099).

Jacques M. Roy  
Mayor



Jerrod D. King  
Chief of Police  
Post Office Box 7627  
Alexandria, Louisiana 71306  
Tel (318) 441-6401 · Fax (318) 441-6520  
e-mail: jerrod.king@cityofalex.com



At no time during the Meeting did the Board exit regular, open session and convene in executive session – the entire meeting was conducted in regular, open session and open to the public to attend, and all statements made by you, other Board members, and members of the public or other City officials were made in open, regular session for everyone to hear.

2. During the meeting, sometime around 5:15 p.m., the agenda item relating to receiving an update from the City's attorney, Chuck Johnson, about the Chief of Police selection occurred, once again, in complete open, regular session. During the discussion, you stated, among other things, the following:

“I've spoken to two (2) of the applications and they say, they want the job but they say its time for the City to name somebody; now, that's two (2) of your applications (applicants) and that's how I feel; you all have had ample time.” (See attached CD containing the statements made at the 5-2-18, Meeting, Bates Stamp No. 00200).

Your statement referenced a previous conversation you had with two (2) of the Police Chief candidates, when the Board was not in session, and you engaged the two (2) candidates on your own time. Before the 5-2-18, Board meeting, the City did not know, you approached and questioned two (2) of the Chief of Police candidates. Further, a review of all Board agendas and minutes between September 2017 and June 2018 reveals the Board never authorized you to conduct an independent or ad hoc investigation or interview of the Police Chief candidates, and the Board never voted collectively or otherwise to conduct an investigation into or otherwise concerning the length of the Police Chief selection process.

3. At the Meeting, after you made the above statement, Mr Rodney Jones (“Jones”) made a motion to provide the City until 5-23-18, to appoint a Police Chief and, if not, to come back before the Board and explain further. The Board passed Jones's motion. (See Bates Stamp No. 00200);
4. Shortly after the Board passed Jones's motion, the Board adjourned the Meeting. Subsequently, sometime around 7:00 p.m. on 5-2-18, Commissioner of Public Safety, Neal Bates (“Bates”), a higher-ranking police officer than you, called you on your while you were at home. Bates asked you, among other things, to identify the two (2) candidates for Police Chief you spoke with before the 5-2-18, Meeting convened. You refused to answer Bates's simple question. During the same conversation with Bates, you cursed at and used the “F-word” to describe Assistant

Chief Bordelon and Deputy Chief Green. Likewise, you addressed and cursed at Bates improperly. Bates's report is attached as Bates Stamp Nos.00100 - 00101;

5. Next, a few minutes after your conversation with Bates ended, the City's Mayor, Jacque Roy (the "Mayor") and Bates called you. The Mayor asked you the same question Bates asked but you refused to answer. The Mayor explained, he, as the Appointing Authority and chief executive of all City employees had a right to ask you the names of the two (2) candidates for Police Chief, who you approached before the 5-2-18, Board meeting. The Mayor also explained to you, his request was lawful and clear, and your refusal to answer could be considered insubordination. You still refused to answer the Mayor's question.
6. A few minutes after you finished speaking with the Mayor, while still at home, you called the APD and asked APD dispatch to send a unit to your residence because you wanted to make a report of threatening phone calls (See attached CD of your phone call to APD dispatch, Bates Stamp No. 00201);
7. Sometime around 8:00 p.m., on 5-2-18, Cpl. Dupuy ("Dupuy") arrived at your residence to take your report. Dupuy recorded your conversation relating to your complaint of threatening phone calls on his body camera, which is attached as Bates Stamp No. 00202. During your conversation with Dupuy, you stated the Mayor never threatened to discharge you but did tell you he considered your failure to answer his question to be insubordination, and you believed the Mayor would want to discharge you from employment because you didn't answer his question. During Lt. Evans's IA investigation, Dupuy admitted the Incident Report, which he created and wrote, was inaccurate and contained language, you never used.
8. The same evening on 5-2-18, after Dupuy took your information and created an Incident Report, you called the APD from your residence and asked Sgt. Daniels to make you a copy of the Incident Report and place the Incident Report in your box at the APD. Sgt. Daniels complied with your request, and you picked up a copy of the Incident Report on Saturday, May 5, 2018, during your next regularly scheduled shift;
9. After picking up the copy of the Incident Report, you made four (4) additional copies and distributed the copies, as follows: (1) one copy to your wife; (2) one copy to the Board attorney, Brian Cespiva; and (3) two

(2) copies to your private attorney, Dan Broussard. You made and distributed the copies of the Incident Report in violation of the APD's Rules and Regulations, which report was inaccurate. Dupuy's Incident Report is attached as part of the APD Internal Affairs Investigation ("IA") file as Bates Stamp Nos. 00176 - 00181;

10. Shortly after May 2, 2018, Lt. Evans began an IA investigation into your actions and inactions, and Lt. Evans's IA report and all statements and CDs (previously identified) are attached as Bates Stamp Nos. 00102 - 00181; 00189 - 00195. Lt. Evans found you violated numerous APD Rules, and I incorporate Lt. Evans's report and findings in this pre-disciplinary hearing letter. During the IA investigation, when Lt. Evans asked you the same question Commissioner Bates and the Mayor asked, you decided to answer and named the two (2) Chief of Police candidates you spoke to outside the confines of a Board meeting: Lt. Van Dyke and Sgt. Windham. When Lt. Evans interviewed Lt. Van Dyke and Sgt. Windham, they testified they never told you they wanted the City to make a decision and, importantly, you approached them during a time while you were either on-duty or going on/coming off a shift, while you were in full APD uniform;
11. Next, on Thursday, June 7, 2018, as part of the City's work-related investigation, you took a polygraph examination. You were asked the following, three (3) relevant questions: (1) Did you give a copy of the Incident Report to City Councilman Larvadain; (2) do you know who gave a copy of the Incident Report to City Councilman Larvadain; and (3) Did your wife give a copy of the Incident Report to City Councilman Larvadain. The polygraph examiner, Cecil Carter ("Carter"), found your answer to Question No. 2 to be Deceptive and your answers to Questions 1 and 3 to be Inconclusive. (See Carter's 6-14-18, Polygraph Report and video attached as Bates Stamp Nos. 00182 - 00183, and the CD of the video of the polygraph test is also attached);
12. After Carter completed the polygraph test, the City sent Carter's polygraph information and video to the City's polygraph analysis expert, Nate Gordon ("Gordon"), for further review, analysis, and verification. On Friday, June 15, Gordon issued his expert report, which found you failed the polygraph report by answering deceptively on the first two (2) relevant questions. (See Gordon report attached as Bates Stamp Nos. 00184 - 00188).

As outlined in this letter, your action and/or inactions may have violated State of Louisiana laws, Alexandria Police Department Rules and Regulations, City of Alexandria policies/procedures and rules/regulations, and other civil service rules, which are listed below:

APD Rules and Responsibilities/Regulations

- A. APD Rule #101 – Shall not comrait or omit any acts, which constitute a violation of the rules, regulations, directives or orders of this Department. Employees shall not interfere with or counsel other employees to interfere with the efficient operation of the Department’s employees;
- B. APD Rule #118 – Employees shall promptly obey all orders of a superior given in person, via police radio, written and/or by electronic means. This shall include orders relayed from a superior to an employee of the same or less rank. It is the duty of the employee to make inquiries, if the employee does not understand;
- C. APD Rule #124 – Employees shall be courteous to the public and fellow employees. Employees shall be tactful, control their tempers, exercise patience and discretion and shall not engage in argumentative discussions. In the performance of their duties, employees shall maintain a neutral attitude without indicating disinterest or that the matter is petty or insignificant. Employees shall not use coarse, profane, or degrading language or gestures and shall not express any prejudice concerning race, religion, politics, national origin, or personal characteristics;
- D. APD Rule #155 – Employees shall not publicly criticize or ridicule the Department, its policies, or officers by speech, writing, or expression in any other manner when such speech, writing, or other expression is defamatory, obscene, unlawful, or made with reckless disregard for its truth or falsity; or, when such interferes with efficient operation of the Department;
- E. APD Rule #161 - Employees shall study and understand the Departmental regulations, procedures, training bulletins, duties, and responsibilities, general orders, City and Parish Ordinances, State and Federal Laws and other official documents.
- F. APD Rule #s 165.2, 167, and 168, which are attached as Bates Stamp Nos. 00196 - 00199.

Fire and Police Civil Service Law: Corrective and Disciplinary Action for Maintaining Standards of Service

La. Rev. Stat. 33:2500 provides, in pertinent part, the following:

A. The tenure of persons who have been regularly and permanently inducted into positions of the classified service **shall be during good behavior. However, the appointing authority may remove any employee from the service . . . for any one of the following reasons:**

(2) The deliberate omission of any act that it was his duty to perform.

\* \* \*

(3) The commission or omission of any act to the prejudice of the departmental service or contrary to the public interest or policy.

\* \* \*

(4) Insubordination.

\* \* \*

(5) Conduct of a discourteous or wantonly offensive nature toward the public, any municipal officer or employee; and, any dishonest, disgraceful, or immoral conduct.

\* \* \*

(14) The willful violation of any provision of this Part or of any rule, regulation, or order hereunder.

\* \* \*

(15) Any other act or failure to act which the board deems sufficient to show the offender to be an unsuitable or unfit person to be employed in the respective service.

City of Alexandria Workplace Conduct Policy (a copy of your signed acknowledgment form of the City's Workplace Conduct Policy is attached as Bates Stamp No. 00003)

- (1) Violations of the directives, policies, procedures, or practices governing the operations of the department to whom the employee reports that have been approved by the appointing authority;
- (2) Any act which endangers the safety, health, or well-being of another person, or which is of sufficient magnitude that the consequences cause or potentially cause disruption of work or gross discredit to the City;
- (3) Other such actions, offenses, or incidents deemed sufficient reason to justify dismissal;

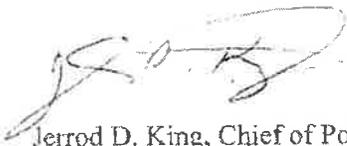
- (4) Insubordination;
- (5) Disorderly, abusive, or indecent conduct that causes disruption of the work environment, including fighting, verbal abuse, or excessive arguing before seeking supervisory intervention.

Importantly, your statements made at the duly scheduled and convened 5-2-18, Board meeting are neither contested nor the subject of any disciplinary action. Instead, as explained in detail above, your actions and/or inactions between, before, and after convened and adjourned Board meetings are the subject of this pre-disciplinary letter. Here, the Board never voted or otherwise decided to conduct an investigation concerning the length of time it took for the City to appoint a Police Chief. Similarly, the Board never authorized you to act alone or to investigate and/or approach and interview Police Chief candidates on behalf of the Board. The Board never authorized you to make copies of APD Incident Reports and then improperly distribute the Incident Reports.

On the basis of your improper conduct described above, your suitability to continue as an APD Police Officer is in question. Your conduct reveals you disregarded well-established rules and regulations to the detriment of the department and the public you serve.

As I stated above, I will consider any statements or evidence you make or present during the Hearing before making a decision on discipline, if any.

Sincerely,



Jerrod D. King, Chief of Police  
Alexandria Police Department

cc: Captain Gaspard, Field Services Bureau Commander  
Personnel File  
HR

On 06-18-18 I, Corporal Alan Stokes did receive this Pre-Disciplinary Hearing Letter and accompanying exhibits, Bates Stamp Nos. 00001 – 00202, plus the CD of the polygraph examination.

  
\_\_\_\_\_  
Signature of Cpl. Stokes

6-18-18  
\_\_\_\_\_  
Date

 4/19/18

CIVIL SUIT NUMBER \_\_\_\_\_

DIVISION "\_\_\_\_"

**ALAN W. STOKES** : 9<sup>TH</sup> JUDICIAL DISTRICT COURT  
**VERSUS** : PARISH OF RAPIDES  
**CITY OF ALEXANDRIA, ET AL** : STATE OF LOUISIANA

**PETITION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY AND PERMANENT INJUNCTION**

The Petition of **ALAN W. STOKES**, a resident and domiciliary of Rapides Parish, respectfully represents that:

1.

Made defendant herein are:

- a. **THE CITY OF ALEXANDRIA**, a municipal corporation existing under and by virtue of the Constitution and laws of the State of Louisiana (hereinafter referred to as "CITY"); and,
- b. **JACQUES ROY**, the duly elected Mayor of the City of Alexandria, who is sued in his official capacity (hereinafter referred to as "Mayor").

2.

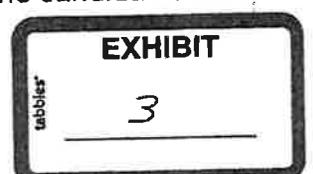
Petitioner shows he is a twelve (12) year member of the Alexandria Police Department (APD), having attained the rank of Corporal.

3.

Petitioner is also presently the elected employee police representative serving on the Alexandria Municipal Fire and Police Civil Service Board (BOARD) for four (4) years. Prior to being employed by the APD, petitioner was employed by the Alexandria Fire Department and serves as elected fire representative for over fifteen (15) years. Petitioner is the elected Chairman of the BOARD for three (3) years.

4.

At a meeting of the BOARD on May 2<sup>nd</sup>, 2018, petitioner made the statement that prior to the meeting he had talked to two (2) of the candidates for



the position of Police Chief of APD. A dispute had arisen between the CITY and the BOARD concerning the CITY timely complying with the law in making its selection for the Police Chief.

5.

Petitioner asked the two (2) candidates if they had heard anything concerning the MAYOR's selection of a Police Chief and they replied they were ready for some decision to be made.

6.

Subsequent to the BOARD meeting being adjourned at 5:49 p.m., petitioner was called by Neil Bates, Acting Police Chief of APD at 7:14 p.m., seeking the identity of the two (2) candidates that petitioner had talked to. Petitioner refused Bates' request.

7.

At 7:42 p.m., petitioner received a call from the MAYOR who inquired as to the identity of the two (2) candidates for Police Chief that petitioner had talked with. Petitioner told the MAYOR he could not disseminate that information at that time. According to petitioner, MAYOR said that he was going to consider petitioner's withholding the requested information as an act of insubordination and it would be dealt with accordingly.

8.

Later that night, petitioner contacted APD and he filed an incident report regarding the MAYOR's call.

9.

Subsequently, petitioner's CITY domain and e-mail accounts were terminated on May 3<sup>rd</sup>. They were reinstated the next day.

10.

On Wednesday, May 30<sup>th</sup>, the MAYOR announced the appointment of Jerrod King as Police Chief of APD.

Part of inw

11.

On June 1<sup>st</sup>, 2018, petitioner was ordered to appear for an Internal Affairs (IA) interview at the Alexandria Police Station. He was asked the name of the two (2) candidates during that interview. Because the selection of the Police Chief had already occurred, petitioner complied with the request and revealed the name of the two (2) candidates during the IA interview.

12.

On June 6<sup>th</sup>, 2018, petitioner was ordered to take a polygraph examination which he took on June 7<sup>th</sup>, 2018.

13.

Subsequently, the CITY has ordered petitioner to appear and take a second polygraph examination on Friday, June 15, 2018 (see attached e-mail from Attorney Steven Oxenhandler marked as Exhibit A, representative of the CITY).

14.

Petitioner shows that at all times herein he has acted as an elected member of the Alexandria Fire and Police Civil Service Board as Chairman.

15.

Petitioner shows that the second polygraph examination constitutes harassment and intimidation of petitioner in his role as Chairman of the Alexandria Fire and Police Civil Service Board. Moreover, the subject matter of the examination is non work related and constitutes retaliation for petitioner denying the MAYOR request of May 2<sup>nd</sup> for the identity of the two (2) Police Chief candidates that he talked to.

16.

Petitioner shows as the elected police representative on the BOARD, pursuant to Louisiana Constitution §10 Secs. 16-20 and LSA-R.S. 33:2476 C(3), he is an elected public official as defined by LSA-R.S. 14:2(9).

17.

It is necessary that the CITY be enjoined not to require petitioner to undergo a second polygraph examination and not to conduct further investigation in petitioner's activity as Chairman of the BOARD. Said conduct constitutes intimidation of an elected public official in violation of the provisions of Louisiana law R.S. 14122 A(1).

18.

Petitioner requests a temporary restraining order (TRO) be issued restraining the CITY from requiring petitioner to undergo a second polygraph examination and not to continue investigating any activity of petitioner as Chairman of the BOARD and not related to his official duty as a APD officer.

19.

A temporary restraining order should issue without prior notice to defendants as immediate relief is necessary to prevent damage to petitioner.

20.

This temporary restraining order should issue without security, as the defendants will not be harmed by delay pending a hearing. In the alternative, security should be minimal in amount.

**WHEREFORE PETITIONER, ALAN W. STOKES, PRAYS:**

1. That a temporary restraining order issue herein, according to law and without bond, directed to the defendants, restraining, enjoining and prohibiting them for requiring petitioner to submit to a second polygraph examination and for them to not investigate the activity of petitioner in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board;
2. That defendants be ordered to show cause on the date and time fixed by this Court why a preliminary injunction in the form and substance of the temporary restraining order prayed for should not be issued;
3. That certified copies of this petition, together with citation, be issued and served according to law on the defendants as follows:

- A. **CITY OF ALEXANDRIA**, through MAYOR JACQUES ROY, at 915 3<sup>RD</sup> Street, Alexandria, Louisiana; and,
- B. **MAYOR JACQUES ROY**, at 915 3<sup>RD</sup> Street, Alexandria, Louisiana;
4. After the lapse of all legal delays and proceedings had, there by judgment against defendants **CITY OF ALEXANDRIA** and **JACQUES ROY**, permanently restraining, enjoining and prohibiting them from proceeding with a second polygraph examination and from conducting any investigation into petitioner's activities in his capacity as Chairman of the Alexandria Municipal Fire and Police Civil Service Board;
5. For all costs of these proceedings; and,
6. For all necessary orders and decrees as may be required or proper in the premises and for full, general and equitable relief.

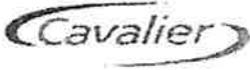
Respectfully submitted,

By:   
DANIEL E. BROUSSARD, JR.  
La. Bar Roll #3510  
P. O. Box 13016  
Alexandria, LA 71315  
Phone: (318) 487-4580  
Fax: (318) 445-8502  
E-Mail: [deb@bhvlaw.com](mailto:deb@bhvlaw.com)

ATTORNEY FOR PLAINTIFF,  
ALAN W. STOKES

**PLEASE SERVE:**  
**CITY OF ALEXANDRIA**  
through MAYOR JACQUES ROY  
at 915 3<sup>RD</sup> Street  
Alexandria, Louisiana; and,

**MAYOR JACQUES ROY**  
915 3<sup>RD</sup> Street  
Alexandria, Louisiana



Daniel Broussard <deb@bhvlaw.com>

**Cpl. Alan Stokes 2nd polygraph exam**

Steven Oxenhandler <soxenhandler@goldweems.com>  
To: "deb@bhvlaw.com" <deb@bhvlaw.com>

Wed, Jun 13, 2018 at 7:53 AM



Good morning, Dan:

This email is provided as a follow-up to our telephone conversation, yesterday, where you asked me to explain to you the reasons the City is requiring a second polygraph exam for Cpl. Stokes. As I stated yesterday, under Evans v. Deridder, and its progeny, the Appointing Authority has the absolute right to require a police officer to submit to a polygraph examination. Further nothing limits the number of polygraphs, which an Appointing Authority may require of the same police officer. Also, as I explained and you already know, each polygraph exam can examine one (1) particular issue with three (3) relevant questions.

In Cpl. Stokes's first polygraph exam, the issue and 3 (three) relevant questions focused on whether Cpl. Stokes gave or knew who gave Ofc. Dupuy's Incident report to City Councilman Larvadain. The issue and three (3) relevant questions in the polygraph exam scheduled for Friday, 6-15-18, focus on an entirely different issue: whether Cpl. Stokes made the additional 4 copies of Ofc. Dupuy's Incident Report with the intent for someone else to provide the Incident Report to City Councilman Larvadain. Cpl. Stokes will be asked the following three (3) questions:

1. Did you purposely give copies of that Incident Report to anyone in order to provide a copy to City Councilman Larvadain?
2. Did you knowingly give a copy of that Incident Report in order for City Councilman Larvadain to obtain a copy?
3. Did you knowingly release a copy of that Incident Report for the purpose of providing it to City Councilman Larvadain?

By requiring Cpl. Stokes to sit for a second and final polygraph examination, Cpl. Stokes does not suffer any irreparable harm; to the contrary, case law requires Cpl. Stokes to do so. Here, a TRO is inapplicable. If, however, you do file a TRO, I ask you to do it tomorrow morning, Thursday, 6-14-18, because I am unavailable to attend today, and I expressly want to be present with you and the Court, when you present the Petition. Tomorrow is one (1) day before Cpl. Stokes's polygraph exam. Again, there is no reason not to wait until tomorrow morning, if you still plan to file a Petition for TRO.

On the other hand, I hope you simply advise Cpl. Stokes to sit for the second and final polygraph exam, which Cpl. Stokes is required to comply with as a matter of law.

If you have any questions, I will be on the road in just a little while, and you can call me on my cell phone.

Thank you.

[https://mail.google.com/mail/u/0/?ui=2&ik=9c9cf5be37&jsver=k8XTJOJ1kuE.en.&cbl=gmail\\_fe...](https://mail.google.com/mail/u/0/?ui=2&ik=9c9cf5be37&jsver=k8XTJOJ1kuE.en.&cbl=gmail_fe...) 6/14/2018

**WEEMS**

**Steven M. Oxenhandler**  
Gold Weems Bruser Sues & Rundell  
2001 MacArthur Drive  
P.O. Box 6118  
Alexandria, LA 71307-6118  
P 318.445.6471 / F 318.445.6476  
[soxenhandler@goldweems.com](mailto:soxenhandler@goldweems.com)  
[www.goldweems.com](http://www.goldweems.com)

This e-mail is from a law firm, Gold Weems Bruser Sues & Rundell ("GW") and is intended solely for the person addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail and do not copy or disclose it to anyone. If you are not an existing client of GW, this e-mail does not make you a client unless it specifically says so, and you should not disclose anything to GW in reply that you expect to be held in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of GW, please maintain its contents in confidence to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

STATE OF LOUISIANA

PARISH OF RAPIDES

VERIFICATION

BEFORE ME, a Notary Public of and for the Parish of Rapides, State of Louisiana, personally came and appeared, **ALAN W. STOKES**, who, upon oath, acknowledged himself to be the petitioner in the above and foregoing petition; that he has read all the allegations contained in the above and foregoing petition; and, they are true and correct to the best of his knowledge, information and belief.

*Alan W. Stokes*

ALAN W. STOKES

SWORN TO AND SUBSCRIBED before me this 14<sup>th</sup> day of June, 2018, at Alexandria, Rapides Parish, Louisiana.

*Daniel E. Broussard Jr.*

(SIGNATURE)

Daniel E. Broussard Jr.

(PRINTED NAME)

LA Notary ID# 3510

My Commission is for Life

CIVIL SUIT NUMBER \_\_\_\_\_

DIVISION "\_\_\_\_"

**ALAN W. STOKES** : 9<sup>TH</sup> JUDICIAL DISTRICT COURT  
**VERSUS** : PARISH OF RAPIDES  
**CITY OF ALEXANDRIA, ET AL** : STATE OF LOUISIANA

**MEMORANDUM IN SUPPORT OF  
PETITION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY AND PERMANENT INJUNCTION**

**MAY IT PLEASE THE COURT:**

Petitioner, **ALAN W. STOKES**, is an elected employee police representative serving on the Alexandria Municipal Fire and Police Civil Service Board (BOARD) for four (4) years. Pursuant to LSA-R.S. 14:2(9):

- (9) "Public officer", "public office", "public employee", or "position of public authority" means and applies to any executive, ministerial, administrative, judicial, or legislative officer, office, employee or position of authority respectively, of the state of Louisiana or any parish, municipality, district, or other political subdivision thereof, or of any agency, board, commission, department, or institution of said state, parish, municipality, district, or other political subdivision.

LSA-R.S. 122:

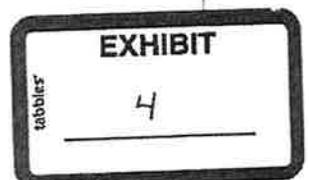
§ 122. Public intimidation and retaliation

A. Public intimidation is the use of violence, force, or threats upon any of the following persons, with the intent to influence his conduct in relation to his position, employment, or duty:

- (1) Public officer or public employee.

Petitioner shows he is a twelve (12) year member of the Alexandria Police Department (APD), having attained the rank of Corporal. Petitioner is also presently the elected employee police representative serving on the Alexandria Municipal Fire and Police Civil Service Board (BOARD) for four (4) years.

At a meeting of the BOARD on May 2<sup>nd</sup>, 2018, petitioner made the statement that prior to the meeting he had talked to two (2) of the candidates for the position of Police Chief of APD. A dispute had arisen between the CITY and the BOARD concerning the CITY timely complying with the law in making its selection for the Police Chief.



Petitioner asked the two (2) candidates if they had heard anything concerning the MAYOR's selection of a Police Chief and they replied they were ready for some decision to be made.

Subsequent to the BOARD meeting being adjourned at 5:49 p.m., petitioner was called by Neil Bates, Acting Police Chief of APD, seeking the identity of the two (2) candidates that petitioner had talked to. Petitioner refused Bates' request.

At 7:42 p.m., petitioner received a call from the MAYOR who inquired as to the identity of the two (2) candidates for Police Chief that petitioner had talked with. Petitioner told the MAYOR he could not disseminate that information at that time. According to petitioner, MAYOR said that he was going to consider petitioner's withholding the requested information as an act of insubordination and it would be dealt with accordingly.

Later that night, petitioner filed an incident report with the APD regarding the MAYOR's call.

Subsequently, petitioner's CITY domain and e-mail accounts were terminated on May 3<sup>rd</sup>. They were reinstated the next day.

On Wednesday, May 30<sup>th</sup>, the MAYOR announced the appointment of Jerrod King as Police Chief of APD.

On June 1<sup>st</sup>, 2018, petitioner was ordered to appear for an Internal Affairs (IA) interview at the Alexandria Police Station. He was asked the name of the two (2) candidates during that interview. Because the selection of the Police Chief had already occurred, petitioner complied with the request and revealed the name of the two (2) candidates during the IA interview.

On June 6<sup>th</sup>, 2018, petitioner was ordered to take a polygraph examination which he took on June 7<sup>th</sup>, 2018.

Subsequently, the CITY has ordered petitioner to appear and take a second polygraph examination on Friday, June 15, 2018 (see attached e-mail from Attorney Steven Oxenhandler marked as Exhibit A, representative of the CITY).

Petitioner shows that at all times herein he has acted as an elected member of the Alexandria Fire and Police Civil Service Board as Chairman.

Petitioner shows that the second polygraph examination constitutes harassment and intimidation of petitioner in his role as Chairman of the Alexandria Fire and Police Civil Service Board. Moreover, the subject matter of the examination is non work related and constitutes retaliation for petitioner denying the MAYOR request of May 2<sup>nd</sup> for the identity of the two (2) Police Chief candidates that he talked to.

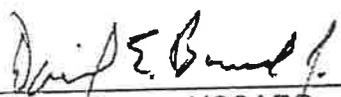
On June 6<sup>th</sup>, 2018, petitioner was ordered to take a polygraph examination which he took on June 7<sup>th</sup>, 2018.

In this case, the MAYOR contacted petitioner and asked him to identify the candidate for Police Chief that he referred to in the Civil Service meeting. It should be noted that the City attorney, Chuck Johnson, attended that meeting.

Petitioner refused the MAYOR's request. The MAYOR then threatened petitioner with insubordination. That was a clear violation fo the provisions of 14:122.

In *State v. Godfrey*, 08-828, 4 So. 3<sup>rd</sup> 265 (La. App. 3 Cir. 2009) reversed and remanded on other grounds 25 So. 3<sup>rd</sup> 756 (La. 2009), the Court outlined the element of public intimidation. (1) this should be a threat. In this case, the MAYOR threatened petitioner. (2) the petitioner was a public official; and, (3) in threatening petitioner the MAYOR had specific intent to influence petitioner's conduct in relation to his position as Chairman of the BOARD. The entire investigation of the CITY regarding petitioner is in retaliation for his activity as Chairman of the Board.

Respectfully submitted,

By: 

DANIEL E. BROUSSARD, JR.  
La. Bar Roll #3510  
P. O. Box 13016  
Alexandria, LA 71315  
Phone: (318) 487-4580  
Fax: (318) 445-8502  
E-Mail: [deb@bhvlaw.com](mailto:deb@bhvlaw.com)

ATTORNEY FOR PLAINTIFF,  
ALAN W. STOKES

CIVIL DOCKET NO. \_\_\_\_\_  
DIVISION \_\_\_\_\_

ALAN STOKES

9TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

THE CITY OF ALEXANDRIA

STATE OF LOUISIANA

MOTION IN OPPOSITION TO PETITION  
FOR TEMPORARY RESTRAINING ORDER

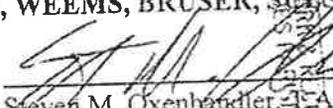
Defendant, **The City of Alexandria** (the "City"), hereby files this Motion in Opposition to plaintiff's Petition for Temporary Restraining Order, pursuant to Louisiana Code of Civil Procedure article 3607.

For the reasons outlined in the Memorandum in support of the Motion ("the Memorandum") filed contemporaneously herewith, the City moves to deny the temporary restraining order.

Respectfully submitted,

**GOLD, WEEMS, BRUSER, SUTS & RICHARD**

By

  
Steven M. Oxenhandler, #2845  
Joshua J. Dara, Jr., #3573  
2001 MacArthur Drive  
P. O. Box 6118  
Alexandria, LA 71307-6118  
Telephone: (318) 445-6471  
Facsimile: (318) 445-6476

**ATTORNEY FOR DEFENDANT, THE CITY OF  
ALEXANDRIA**

FILED & RECORDED  
ROBERT L. HOOPER  
CLERK OF COURT  
2018 JUN 14 P 5:4:00  
BY  
DY C. G. RICHARD  
RAPIDES PARISH, LA

EXHIBIT  
5

CERTIFICATE

I HEREBY CERTIFY, on June 14, 2018, a copy of the foregoing Motion and Memorandum was filed with the Clerk of Court and a copy was hand-delivered to the following:

Cpl. Alan Stokes  
*by and through his attorney of record*  
Dan Broussard  
Broussard, Halcomb, and Vizzer  
912 5<sup>th</sup> Street, Alexandria, LA 71301

by hand-delivery.

Alexandria, Louisiana this 14th day of June 2018.

  
COUNSEL

CIVIL DOCKET NO. \_\_\_\_\_  
DIVISION \_\_\_\_\_

ALAN STOKES

9TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

THE CITY OF ALEXANDRIA

STATE OF LOUISIANA

---

MEMORANDUM IN SUPPORT OF MOTION  
TO DENY TEMPORARY RESTRAINING ORDER

*May it Please the Court:*

Defendant, the City of Alexandria (the “City” or “Appointing Authority”), respectfully moves this Honorable Court to deny plaintiff’s Petition for Temporary Restraining Order, and all other equitable relief pursuant to Louisiana Code of Civil Procedure articles 3607 and 3608.

A. BACKGROUND

The City of Alexandria Police Department (“APD”) employs Plaintiff, Alan Stokes (“Stokes”), as a police officer. On or around May 2, 2018, Plaintiff made a complaint to the APD, which resulted in an Incident Report being filed within the APD. Stokes requested that a copy of the Incident Report be left in his APD mailbox. Stokes made four (4) copies of the Incident Report, giving two (2) his attorney, Dan Broussard, one (1) to his wife, and one (1) to Brian Cespiva, the lawyer for the Police and Fire Civil Service Board. On or about May 15, 2018, a City of Alexandria councilman and/or the media obtained a copy of the Incident Report. Notably, however, the APD did not receive a public records request for the Incident Report.

The Appointing Authority initiated an investigation into whether Stokes, among other things, played a role in the media and/or the councilman obtaining the Incident Report. The Appointing Authority ordered Stokes to sit for a polygraph examination on June 7, 2018, where the three (3) relevant questions focused on whether Stokes actually gave the Incident report to the city councilman and whether Stokes knew, who gave the Incident Report to a city councilman.

Later, on June 12, 2018, the Appointing Authority ordered Plaintiff to submit to a second polygraph examination on June 15, 2018, concerning whether Plaintiff made copies of the Incident Report with the specific intent of having someone else distribute the Incident Report to persons outside of the APD. Now, instead of complying with the order for polygraph, however, Plaintiff is asking the Court to help him avoid submitting to a polygraph examination.



**B. LAW AND ARGUMENT**

The issuance of a temporary restraining order and/or preliminary injunction is warranted when an applicant makes a *prima facie* showing of the following elements: (1) the likelihood to prevail on the merits; (2) irreparable injury; and (3) the entitlement of relief sought. *Voicestream GSM 1 Operating Co., LLC v. La. PSC*, 05-2578 (La. 11/29/06), 943 So. 2d 349, 356. Here, injunctive relief is clearly inappropriate because (1) Plaintiff cannot show there is any chance he will prevail on the merits; and (2) submitting to a polygraph examination does not constitute irreparable harm.

1. **Plaintiff cannot show he has any possibility of prevailing against the City on the merits of the case.**

The Plaintiff cannot show the Appointing Authority acted inappropriately. The Appointing Authority possesses the absolute right to order the Plaintiff, or any of its officers, to submit to a polygraph examination. In *Evans v. Deridder*, 2001-2466 (La. 4/3/02), 815 So.2d 61 the Louisiana Supreme Court expressly held (1) a police officer could be ordered to submit to a polygraph examination to determine whether there was cause for disciplinary action; and (2) an officer can be disciplined, up to and including discharge, for failing to take a polygraph examination. Specifically the court explained:

Police officers throughout the land are routinely subjected to polygraph tests, in both the pre-employment screening process and in investigatory actions involving official misconduct. In fact, the Employee Polygraph Protection Act of 1988, which generally prohibits private employers from using polygraphs in the workplace, contains an exception for federal, state and local government employees. See 29 U.S.C. §§ 2001–2008. Further, Louisiana courts have long recognized that a civil service employee may be ordered to take a polygraph, and that the employee can be suspended or discharged for failing to take a polygraph.

*Id.* at 66-67. (Internal citations omitted)(Emphasis added).

Here, the Appointing Authority is merely exercising its authority to investigate allegations of misconduct within its police department. As an employee of the APD, Plaintiff is required to cooperate with the City's investigation, including submitting to polygraph examinations. Further, the two (2) polygraph examinations test different issues. The first polygraph tested whether Plaintiff himself gave the Incident Report to the city councilman, and the second polygraph seeks to test made copies with the intent for others to give the Incident Report to the city councilman.

Plaintiff cannot cite any authority showing the Appointing Authority's testing is improper. Further, Plaintiff cannot cite any authority limiting the Appointing Authority to only one (1) polygraph examination per investigation. Clearly, Plaintiff's attempt to avoid his polygraph

examination will fail and plaintiff cannot show there is any likelihood otherwise.

**2. Plaintiff did not, and cannot, show he suffered an irreparable injury entitling him to any injunctive relief.**

Plaintiff is not suffering any irreparable harm by undergoing a polygraph examination connected to the City's investigation. A court may grant injunctive relief only if the Plaintiff shows by clear and convincing evidence, absent such relief, Plaintiff will suffer irreparable harm. *Prakasam v. Popowski*, 566 So.2d 189, 191 (La. App. 2<sup>nd</sup> Cir. 1990). Irreparable harm occurs in those rare cases in which Plaintiff cannot be made whole by an award of compensatory damages. *Terrebone Parish Police Jury v. Matherne*, 405 So.2d 314, 319 (La.1981). Moreover, Louisiana courts establish a plaintiff who suffers mental anguish, emotional distress, damage to reputation, loss of income, harassment or defamation has not suffered irreparable injury. See *Prakasam v. Popowski*, 566 So.2d 189, 191 (La. App. 2<sup>nd</sup> Cir. 1990); *Hobbs v. Gorman*, 595 So.2d 1264, 1265-66 (La. App. 4<sup>th</sup> Cir. 03/17/92); *Camp, Dresser - McKee, Inc. v. Steimle & Associates, Inc.*, 94-547 (La. App. 5<sup>th</sup> Cir. 2/15/95), 652 So.2d 44, 47-48; and *Galle v. Coile*, 556 So. 2d 957 ,959 (La. App. 3<sup>rd</sup> Cir. 1990).

Nothing about Plaintiff's claims exempt him from the requirement of proving irreparable injury. And the types of "injuries" Plaintiff alleges do not rise to the level of irreparable harm, as a matter of law. As discussed above, Plaintiff is simply being required to submit to a lawful directive from his superiors. Having failed to allege or demonstrate any irreparable injury in this case, Plaintiff cannot satisfy the legal standard required for the issuance of injunctive relief.

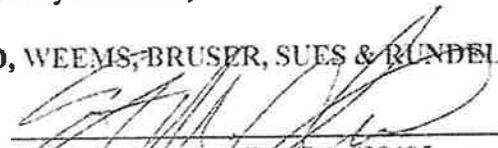
**C. CONCLUSION**

For the reasons outlined above, Plaintiff's attempt to obtain injunctive relief in this routine employment investigation must be denied. Nothing alleged by Plaintiff suggests injunctive relief is warranted. Plaintiff cannot show he will succeed on the merits and further, Plaintiff cannot show he suffered irreparable harm. Accordingly, Plaintiff's TRO should be denied.

Respectfully submitted,

**GOLD, WEEMS, BRUSER, SUES & RUNDELL**

By



---

Steven M. Oxenhandler, F.A.#28405  
Joshua J. Dara, Jr. # 35739  
2001 MacArthur Drive  
P. O. Box 6118  
Alexandria, LA 71307-6118  
Telephone: (318) 445-6471  
Facsimile: (318) 445-6476

**ATTORNEY FOR DEFENDANT, THE CITY OF  
ALEXANDRIA**

CIVIL DOCKET NO. \_\_\_\_\_  
DIVISION \_\_\_\_\_

ALAN STOKES

9TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

THE CITY OF ALEXANDRIA

STATE OF LOUISIANA

ORDER

Considering the foregoing Motion:

**IT IS HEREBY ORDERED** that the Temporary Restraining Order issued on behalf of Plaintiff, Alan Stokes, is hereby denied.

**THUS DONE AND SIGNED** on this \_\_\_\_\_ day of

\_\_\_\_\_ 2018, at Alexandria, Rapides Parish, Louisiana.

\_\_\_\_\_  
**HONORABLE DISTRICT JUDGE  
NINTH JUDICIAL COURT**

PLEASE SERVE THE SIGNED ORDER UPON THE FOLLOWING:

Cpl. Alan Stokes  
*by and through his attorney of record*  
Dan Broussard  
Broussard, Halcomb, and Vizzer  
912 5<sup>th</sup> Street, Alexandria, LA 71301

PLEASE FORWARD A COPY OF THE SIGNED ORDER TO THE FOLLOWING:

The City of Alexandria  
*by and through its attorney of record*  
Steven M. Oxenhandler  
P.O. Box 6118  
2001 MacArthur Drive  
Alexandria, LA 71301-6118

**Steven Oxenhandler**

---

**From:** Steven Oxenhandler  
**Sent:** Wednesday, June 13, 2018 7:53 AM  
**To:** 'deb@bhvlaw.com'  
**Subject:** Cpl. Alan Stokes 2nd polygraph exam  
**Importance:** High

Good morning, Dan:

This email is provided as a follow-up to our telephone conversation, yesterday, where you asked me to explain to you the reasons the City is requiring a second polygraph exam for Cpl. Stokes. As I stated yesterday, under Evans v. Deridder, and its progeny, the Appointing Authority has the absolute right to require a police officer to submit to a polygraph examination. Further nothing limits the number of polygraphs, which an Appointing Authority may require of the same police officer. Also, as I explained and you already know, each polygraph exam can examine one (1) particular issue with three (3) relevant questions.

In Cpl. Stokes's first polygraph exam, the issue and 3 (three) relevant questions focused on whether Cpl. Stokes gave or knew who gave Ofc. Dupuy's Incident report to City Councilman Larvadain. The issue and three (3) relevant questions in the polygraph exam scheduled for Friday, 6-15-18, focus on an entirely different issue: whether Cpl. Stokes made the additional 4 copies of Ofc. Dupuy's Incident Report with the intent for someone else to provide the Incident Report to City Councilman Larvadain. Cpl. Stokes will be asked the following three (3) questions:

1. Did you purposely give copies of that Incident Report to anyone in order to provide a copy to City Councilman Larvadain?
2. Did you knowingly give a copy of that Incident Report in order for City Councilman Larvadain to obtain a copy?
3. Did you knowingly release a copy of that Incident Report for the purpose of providing it to City Councilman Larvadain?

By requiring Cpl. Stokes to sit for a second and final polygraph examination, Cpl. Stokes does not suffer any irreparable harm; to the contrary, case law requires Cpl. Stokes to do so. Here, a TRO is inapplicable. If, however, you do file a TRO, I ask you to do it tomorrow morning, Thursday, 6-14-18, because I am unavailable to attend today, and I expressly want to be present with you and the Court, when you present the Petition. Tomorrow is one (1) day before Cpl. Stokes's polygraph exam. Again, there is no reason not to wait until tomorrow morning, if you still plan to file a Petition for TRO.

On the other hand, I hope you simply advise Cpl. Stokes to sit for the second and final polygraph exam, which Cpl. Stokes is required to comply with as a matter of law.

If you have any questions, I will be on the road in just a little while, and you can call me on my cell phone.

Thank you.

**GOLD WEEMS**

BRUSER SUES & RUNDELL

**Steven M. Oxenhandler**  
**Gold Weems Bruser Sues & Rundell**  
2001 MacArthur Drive  
P.O. Box 6118  
Alexandria, LA 71307-6118  
P 318.445.6471 / F 318.445.6476  
[soxenhandler@gkwweems.com](mailto:soxenhandler@gkwweems.com)  
[www.gkwweems.com](http://www.gkwweems.com)

This e-mail is from a law firm, Gold Weems Bruser Sues & Rundell ("GW") and is intended solely for the person addressed. If you believe you received this e-mail in error, please notify the sender immediately, delete the e-mail and do not copy or disclose it to anyone. If you are not an existing client of GW, this e-mail does not make you a client unless it specifically says so, and you should not disclose anything to GW in reply that you expect to be held in confidence. If you properly received this e-mail as a client, co-counsel or retained expert of GW, please maintain its contents in confidence to preserve the attorney-client or work product privilege that may be available to protect confidentiality.

CIVIL SUIT NUMBER: 262,214 "A"

ALAN W. STOKES

NINTH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

CITY OF ALEXANDRIA, ET AL

STATE OF LOUISIANA

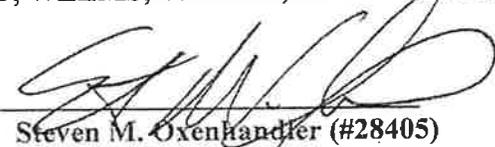
NOTICE OF INTENTION TO APPLY FOR SUPERVISORY WRITS

NOW INTO COURT, through undersigned counsel, come defendants herein, CITY OF CITY OF ALEXANDRIA and JACQUES ROY, who hereby give notice, in accordance with Rule 4-2 of the Uniform Rules for Louisiana Courts of Appeal, that the aforesaid defendants intend to apply to the Louisiana Third Circuit Court of Appeal for Supervisory Writs to review the June 15, 2018 Judgment of the trial court, granting a Temporary Restraining Order against defendants, and setting a Preliminary Injunction hearing for June 25, 2018.

Respectfully submitted,

GOLD, WEEMS, BRUSER, SUES & RUNDRELL

BY:



Steven M. Oxenhandler (#28405)  
Joshua J. Dara, Jr. (#35739)  
2001 MacArthur Drive  
P. O. Box 6118  
Alexandria, LA 71301  
(318) 445-6471 - Telephone  
(318) 445-6476 - Facsimile

ATTORNEYS FOR DEFENDANTS, CITY OF ALEXANDRIA AND JACQUES ROY

FILED & RECORDED  
ROBIN L. HOOTER  
CLERK OF COURT  
2018 JUN 29 AM 9:21  
CLERK & RECORDER  
RAPIDES PARISH LA.  
*Rundrell*

EXHIBIT  
7

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing has been served on all counsel of record  
via facsimile transmission and e-mail this 20<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
OF COUNSEL

1cc entire handed

CIVIL SUIT NUMBER: 262,214 "A"

ALAN W. STOKES

NINTH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

CITY OF ALEXANDRIA, ET AL

STATE OF LOUISIANA

**MOTION TO FIX TIME FOR APPLICATION FOR SUPERVISORY WRITS**

NOW INTO COURT, through undersigned counsel, come defendants herein, CITY OF ALEXANDRIA and JACQUES ROY, who respectfully state:

1.

Defendants intend to apply to the Louisiana Third Circuit Court of Appeal, for Supervisory Writs in the above numbered and entitled cause, to review the judgment of the Court, rendered on June 15, 2018, which granted a Temporary Restraining Order against Defendants and set a Preliminary Injunction Hearing for June 25, 2018.

2.

It is necessary that this Court fix a reasonable time within which Defendants may file their application in the Louisiana Third Circuit Court of Appeal, pursuant to Rule 4-3 of the Uniform Rules for Louisiana Courts of Appeal.

WHEREFORE, DEFENDANTS PRAY that the Court fix a reasonable time within which they must file their Application for Supervisory Writs in the Louisiana Third Circuit Court of Appeal.

Respectfully submitted,

GOLD, WEEMS, BRUSER, SUES & BRUNDELL

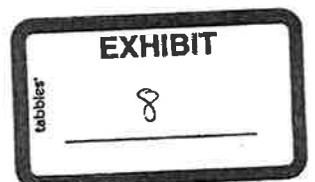
BY:

*[Signature]*  
Steven M. Oxenhandler (#28405)

Joshua J. Dara, Jr. (#35739)  
2001 MacArthur Drive  
P. O. Box 6118  
Alexandria, LA 71301  
(318) 445-6471 - Telephone  
(318) 445-6476 - Facsimile

ATTORNEYS FOR DEFENDANTS, CITY OF ALEXANDRIA AND JACQUES ROY

FILED & RECORDED  
ROBIN L. HOOPER  
CLERK OF COURT  
2018 JUN 20 AM 9:22  
BY CLERK & RECORDER  
RAPIDES PARISH LA



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been served on all counsel of record via facsimile transmission and e-mail this 20<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
OF COUNSEL

CIVIL SUIT NUMBER: 262,214 "A"

ALAN W. STOKES

NINTH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF RAPIDES

CITY OF ALEXANDRIA, ET AL

STATE OF LOUISIANA

ORDER FIXING TIME FOR APPLICATION FOR SUPERVISORY WRITS

On consideration of the foregoing Motion, it is

**ORDERED** that the Application for Supervisory Writs of the City of Alexandria and Jacques Roy in the above numbered and titled cause be filed in the Louisiana Third Circuit Court of Appeal on or before the 20 day of ~~June~~ July, 2018.

**THUS DONE AND SIGNED** in Alexandria, Louisiana, this 20 day of June, 2018.

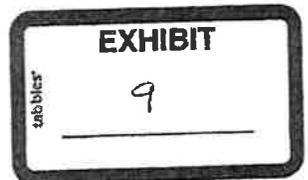


DISTRICT JUDGE  
NINTH JUDICIAL DISTRICT COURT  
RAPIDES PARISH, LOUISIANA

FILED & RECORDED  
ROBIN L. HOOPER  
CLERK OF COURT  
2018 JUN 20 AM 9:30  
BY Robin L. Hooper  
RAPIDES PARISH LA.

Please provide all counsel  
of record with a certified  
copy of the signed Order :

Mr. Daniel E. Broussard, Jr.  
429 Murray Street  
Suite Three  
Alexandria, LA 71301



STATE OF LOUISIANA, PARISH OF RAPIDES  
I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS  
A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE  
AND OF RECORD IN THIS OFFICE.

IN FAITH, WHEREOF, WITNESS MY HAND AND SEAL, OF  
OFFICE, AT ALEXANDRIA, LOUISIANA, THIS 20  
DAY OF June A.D., 2018

BY Robin L. Hooper  
DY. CLERK OF COURT

LEO GOLD (1907 - 1987)  
GEORGE B. HALL (1924 - 1971)  
PEGGY D. ST. JOHN (1953 - 2017)

CHARLES S. WEEMS, III<sup>1</sup>  
EUGENE J. SUES  
EDWARD E. RUNDELL<sup>2</sup>  
SAM N. POOLE, JR.  
RANDALL L. WILMORE  
DORRELL J. BRISTER<sup>1,2,3</sup>  
GREGORY B. UPTON  
RANDALL M. SEESER  
MICHAEL J. O'SHEE  
BRANDON A. SUES  
TREVOR S. FRY<sup>2</sup>  
BRADLEY L. DRELL<sup>4</sup>  
STEVEN M. OXENHANDLER  
STEPHEN A. LAFLEUR  
HEATHER M. MATHEWS  
SARAH SPRUILL COUVILLON  
B. GENE TAYLOR, III  
JONATHAN D. STOKES<sup>5</sup>  
LESLIE E. HALL<sup>3</sup>  
EVELYN I. BREITHAAPT<sup>2</sup>

**GOLD WEEMS**  
BRUSER SUES & RUNDELL

A Professional Law Corporation  
2001 MacArthur Drive  
Post Office Box 6118  
Alexandria, Louisiana 71307-6118  
Tel: (318) 445-6471 Fax: (318) 445-6476  
Toll free: (866) 302-6283  
[www.goldweems.com](http://www.goldweems.com)

Writer's E-Mail: [soxenhandler@goldweems.com](mailto:soxenhandler@goldweems.com)

KAY H. MICHIELS  
MARTHA R. CRENSHAW<sup>6</sup>  
JOSHUA J. DARA, JR.  
M. ALLISON JOHNSON  
LORI R. DOWELL  
CHELSEA M. TANNER<sup>2</sup>  
KATILYN M. HOLLOWELL

OF COUNSEL:  
CAMILLE F. GRAVEL (1915 - 2005)  
HENRY B. BRUSER, III  
ROBERT G. NIDA  
F. A. LITTLE, JR., U.S. Dist. Judge (Ret.)

<sup>1</sup> SPECIALIST IN TAXATION, CERTIFIED BY LA BOARD OF LEGAL SPECIALIZATION  
<sup>2</sup> ALSO ADMITTED IN TEXAS  
<sup>3</sup> SPECIALIST IN ESTATE PLANNING & ADMINISTRATION, CERTIFIED BY LA BOARD OF LEGAL SPECIALIZATION  
<sup>4</sup> SPECIALIST IN BUSINESS BANKRUPTCY, CERTIFIED BY LA BOARD OF LEGAL SPECIALIZATION  
<sup>5</sup> ALSO ADMITTED IN KANSAS  
<sup>6</sup> ALSO ADMITTED IN TENNESSEE

June 21, 2018

Honorable Charles K. McNeely, Clerk of Court  
Third Circuit Court of Appeal  
Post Office Box 16577  
Lake Charles, LA 70616

*Via Hand Delivery*

RE: *Alan W. Stokes v. City of Alexandria and Jacques Roy*  
Docket No. \_\_\_\_\_  
Third Circuit Court of Appeal

Dear Mr. McNeely:

Enclosed for filing please find one (1) original and four (4) copies of the Original Application for Supervisory Writs by Defendants/ Applicants, City of Alexandria and Jacques Roy, which we ask that you file in the above captioned matter on behalf of the Defendants/ Applicants, City of Alexandria and Jacques Roy. Please time-stamp the extra copy and return same to our office for our files.

Our check is enclosed to cover the cost of this request.

With kind regards, I remain

Respectfully yours,

**GOLD, WEEMS, BRUSER, SUES & RUNDELL**

By:

  
Steven M. Oxenhandler

SMO/evg  
Enclosures

**FILE COPY**

**GOLD, WEEMS, BRUSER, JONES & RUNDELL**

Honorable Charles K. McNeely

June 21, 2018

Page 2

---

cc: Daniel E. Broussard, Jr.  
*Attorney at Law*  
201 Johnston Street, 4<sup>th</sup> Floor  
Alexandria, LA 71301

*Via Hand Delivery*

Honorable Monique Rauls  
*Judge - Ninth Judicial District Court*  
701 Murray Street, Ste. 501  
Alexandria, LA 71301

*Via Hand Delivery*