

CIVIL DOCKET NO. 242,214 A
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

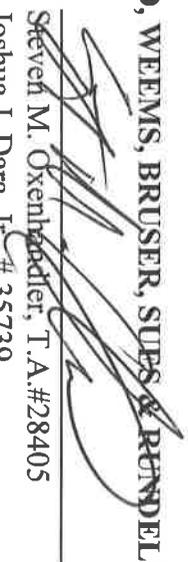
Defendant, **The City of Alexandria** (the “City”), hereby files this Motion in Opposition to plaintiff’s Petition for Temporary Restraining Order, pursuant to Louisiana Code of Civil Procedure article 3607.

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, SUSS & RENDLELL

By


Steven M. Oxenhandler, T. 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**

FILED & RECORDED
ROBIN L. HOOTER
CLERK OF COURT

018 JUN 14 PM 3:59

BY CLERK & RECORDER
RAPIDES PARISH LA.

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

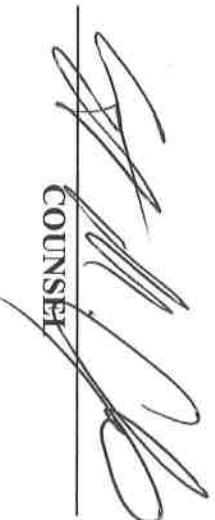
Dan Broussard

Broussard, Halcomb, and Vizzer

912 5th 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. Derider*, 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. 2nd 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. 2nd Cir. 1990); *Hobbs v. Gorman*, 595 So.2d 1264, 1265-66 (La. App. 4th Cir. 03/17/92); *Camp, Dresser - McKee, Inc. v. Steinle & Associates, Inc.*, 94-547 (La. App. 5th Cir. 2/15/95), 652 So.2d 44, 47-48; and *Galle v. Coile*, 556 So. 2d 957 ,959 (La. App. 3rd 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.

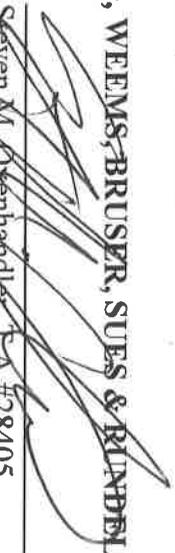
C. CONCLUSION

For the reasons outlined above, Plaintiff's attempt to obtain injunctive relief is 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 & RINDRELL

By


Steven M. Oxenhandler, T.A. #28405

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

FILED & RECORDED
ROBIN L. HOOPER
CLERK OF COURT

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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 15th day of

~~June~~ 2018, at Alexandria, Rapides Parish, Louisiana.



HONORABLE DISTRICT JUDGE
NINTH JUDICIAL COURT

BY
DY CLERK & RECORDER
RAPIDES PARISH LA

2018 JUN 15 AM 11: 05

FILED & RECORDED
ROBIN L. HOOTER
CLERK OF 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 5th 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.



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