

Officer Caesar Goodson,

*

IN THE

Sergeant Alicia White,

*

Lieutenant Brian Rice

*

CIRCUIT COURT

Petitioners

*

V.

*

FOR

BALTIMORE POLICE DEPARTMENT

*

Respondent

*

BALTIMORE CITY

*

*

SERVE ON:

*

Case No.: **24-C-17-004957**

Commissioner Kevin Davis

*

242 W. 29th Street

Baltimore, Maryland 21401

*

* * * * *

COMPLAINT AND PETITION TO SHOW CAUSE AND MOTION TO STAY

Officer Caesar Goodson, by his attorneys, Sean Malone and Harris Jones & Malone, LLC, Sergeant Alicia White, by her attorneys, Tony Garcia, and Bates and Garcia, PC, and Lieutenant Brian Rice, by his attorneys, Michael E. Davey and Schlachman, Belsky and Weiner, P.A., files this Petition to Show Cause and Motion to Stay and states as follows:

1. The Petitioners, Officer Caesar Goodson, Sergeant Alicia White and Lieutenant Brian Rice are sworn members of the Baltimore Police Department and are law enforcement officers within the definition contained in Md. Code Ann., Public Safety, §3-101(e)(ii)(11), (Law Enforcement Officers' Bill of Rights(LEOBR)).

2. Md. Code Ann., Public Safety, §3-105 states the following:

§3-105. Application for show cause order

In general

(a) A law enforcement officer who is denied a right granted by this subtitle may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted.

Conditions

(b) The law enforcement officer may apply for the show cause order;

- (1) Either individually or through the law enforcement officer's certified or recognized employee organization; and
- (2) At any time prior to the beginning of the hearing board.

3. Subsequent to an internal investigation conducted by the Montgomery County Police Department, on May 18, 2017, Officer Goodson, Sergeant White and Lieutenant Rice were administratively charged with violating Baltimore Police Department policies and procedures related to an incident involving Mr. Freddy Gray, on April 12, 2015.

4. The Baltimore Police Department has recommended that if the Petitioners are found guilty of these administrative charges, their employment should be terminated.

5. Md. Code Ann., Public Safety, §3-107 states the following:

§3-107. Hearing by hearing board

Right to hearing

(a)(1) Except as provided in paragraph (2) of this subsection, and §3-111 of this subtitle, if the investigation or interrogation of a law enforcement officer results in the recommendation of demotion, dismissal, transfer, loss of pay, reassignment or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.

6. The LEOBR also dictates how the membership of the hearing board will be selected.
7. Md. Code Ann., Public Safety, §3-107(c) states the following:

Membership of hearing board

(c)(1) Except as provided in paragraph (4) of this subsection and in §3-111 of this subtitle, the hearing board authorized under this section shall consist of at least three members who:

- (i) are appointed by the chief and chosen from law enforcement officers within the law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency; and
- (ii) Have no part in the investigation or interrogation of the law enforcement officer.

8. On July 17, 2017, Michael Davey, attorney for Lieutenant Rice, received a letter from Police Commissioner Davis of the Baltimore Police Department indicating the chairpersons for Officer Goodson's, Sergeant White's and Lieutenant Rice's administrative hearing boards would be selected from a pool of command level personnel from outside the Baltimore Police Department, pursuant to §3-107(c)(1)(i). (EXHIBIT 1).

9. On September 12, 2017, Michael Davey, attorney for Lieutenant Rice received an email from Lieutenant Stephanie C. Lansey, Baltimore Police Department, Office of Administrative Hearings, identifying the command level personnel from outside the Baltimore Police Department who will sit, if selected, as the chairperson of the administrative hearing boards. (EXHIBIT 2).

10. The email identified the following individuals who were selected by the Baltimore Police Department to be included in the pool of outside command personnel to sit as chairperson of the administrative hearing boards;

Captain Cynthia Ruff, Prince George's County Police Department
Major Irene Burks, Prince George's County Police Department
Major Robert Clark, Prince George's County Police Department

Captain Peter Spaulding, Maryland State Police

11. It should be noted that Major Burks and Captain Spaulding are the permanent chairpersons for all administrative hearing boards in their respective law enforcement agencies.

12. Additionally, it should be noted that the Police Commissioner of the Baltimore Police Department is a retired member of the Prince George's County Police Department where three of the four command level personnel were selected from.

13. Based on information and belief, on Tuesday, October 3, 2017, command staff from the Baltimore Police Department made a request to meet and did meet with all four of the selected outside chairpersons at the Baltimore Police Department Headquarters Building to discuss these very important and high profile administrative hearing boards.

14. It is also our understanding that the outside chairpersons met with representatives of the Baltimore Police Department, who is a party in each contested case involving Officer Goodson, Sergeant White and Lieutenant Rice, to discuss matters related to the scheduled proceedings and received some form of training despite their extensive experience in chairing administrative hearing boards.

15. There is no indication the four selected outside chairpersons requested to meet with the command staff of the Baltimore Police Department or requested any type of training.

16. None of the attorneys representing Officer Goodson, Sergeant White or Lieutenant Rice were notified by the Baltimore Police Department about this ex parte meeting or were present during this ex parte meeting with the command personnel from outside agencies who have been selected to sit as chairperson/trier of facts of these very important and high profile administrative hearings.

17. The case law is clear, the requirements of due process as guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article 24 of the Maryland Declaration of rights apply to an administrative agency exercising judicial or quasi-judicial functions. *Travers v. Baltimore Police Department*, 115 Md. App. 395, 693 A.2d 378 (1996). Furthermore, well-established principle dictates that ex parte contacts by one party with the fact finder during an adjudicatory proceeding raises the specter of a violation of the other party's due process rights. See *Chessman v. Teets*, 354 U.S. 156, 162 (1957); *Haller v. Robbins*, 409 F.2d 857,859 (1st Cir. 1969).

18. As a result of the Baltimore Police Department's ex parte meeting and providing undisclosed training to the four selected chairpersons/trier of facts, the Baltimore Police Department has now brought into question the fairness of any administrative hearing board in which these four potential chairpersons from an outside agency might chair.

19. As a result of this ex parte meeting, Officer Goodson's, Sergeant White's and Lieutenant Rice's rights under the LEOBR and Due Process as guaranteed by the Fourteenth Amendment of the U.S. Constitution have been violated.

20. A stay in the administrative hearing boards is appropriate. They are currently scheduled as follows:

Officer Goodson – October 30, 2017
Sergeant White – December 5, 2017
Lieutenant Rice – November 13, 2017

21. In *Mass Transit Administration v. Hayden*, 141 Md. App. 100, 784 A.2d 627 (2001), the Maryland Court of Special Appeals stated:

Although the LEOBR does not contain a provision that the administrative proceeding must be automatically stayed pending resolution of the section 734 appeal, we agree

with the MTA that Hayden could have requested the circuit court to stay the administrative proceedings pending resolution of the section 734 appeal. Indeed seeking a stay is a preferred approach. The circuit court had equitable authority to grant a stay, in accordance with established principals and procedures governing judicial review of administrative decisions.

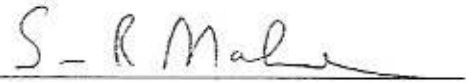
The Court also stated:

We hold that when the MTA elected to proceed in the face of the circuit court's order to show cause, it did so at the risk of the court vacating any administrative decision resulting from the challenged proceedings.

22. As this Compliant and Petition to Show Cause directly relates to the selection of the Chairperson/trier of facts for each of the pending administrative hearings, a stay is clearly appropriate in each of the above pending administrative hearings.

WHEREFORE, the Petitioners requests that:

- A. The Baltimore Police Department be required to show cause why the Petitioners should not be afforded their rights under the Fourteenth Amendment to the United States Constitution, Article 24 of the Maryland Declaration of Rights and Maryland Law Enforcement Officers' Bill of Rights;
 - B. That the four command level personnel from outside agencies who are currently selected to sit as chairpersons for the administrative hearings of Officer Caesar Goodson, Sergeant White and Lieutenant Rice by the Baltimore Police Department be excluded from the pool of potential officers to chair or act as a trier of facts in these administrative hearing boards;
 - C. That the currently scheduled administrative hearing boards be stayed for each Petitioner pending the resolution of this Petition and Complaint to Show Cause.
-



Sean R. Malone
Harris Jones & Malone, LLC
2423 Maryland Ave.
Suite 100
Baltimore, Maryland 21218
410-366-1500

Attorney for Officer Goodson



Tony N. Garcia
Bates and Garcia, P.C.
201 North Charles Street
Suite 1900
Baltimore, Maryland 2120
410-814-4600

Attorney for Sergeant White



Michael E. Davey ^{TS}
Schlachman, Belsky & Weiner, PA
300 E. Lombard Street
Suite 1100
Baltimore, Maryland 21202
410-685-2022

Attorney for Lieutenant Rice