

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER CARLOS LATIMER,) **No. 11 PB 2775**
STAR No. 17627, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
)
) **(CR No. 1009960)**
RESPONDENT.)

FINDINGS AND DECISION

On November 1, 2011, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Carlos Latimer, Star No. 17627 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 1: Violation of any law or ordinance.
- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 14: Making a false report, written or oral.

The Police Board caused a hearing on these charges against Police Officer Carlos Latimer to be had before Michael G. Berland, Hearing Officer of the Police Board, on April 3, April 4, and April 18, 2012.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer

Berland made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent's Motion to Strike and Dismiss is **denied** for the reasons set forth below. The Respondent requests that the charges filed against him be stricken and the case dismissed for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent; (b) the charges should be barred by laches; (c) the Police Department failed to follow its own General Orders and violated due process; and (d) the City failed to follow its own procedure to prosecute the Respondent.

a. Due Process. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill.App.3d 275, 871 NE2d 178 (1st Dist 2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004), the Respondent claims that the constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and

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Lyon, however, involved a delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent’s case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state’s decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their name. Here, the Respondent was working and was being paid his full salary and benefits during the entire period of the investigation and up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from “depriving any person of life, liberty or property [i.e. a public job] without due process of law.” Here, the Respondent was not suspended without pay from his job until November 3, 2011, two days after the charges against him were filed, and therefore the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent’s due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v. City of Chicago Police Board*, 11 CH 08166 (March 1, 2012) found that the protections of the Due Process clause are

triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his job, salary and benefits during the investigation. The Court cited *Stull v. The Department of Children and Family Services*, 239 Ill.App.3d 325 (5th Dist. 1992). *Stull* involved a teacher accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children sought a hearing. The *Stull* court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly “indicated” as an abuser. The *Stull* court did find that the teacher’s due process rights had been infringed, but it was not because of a delay in DCFS’s investigation of the case. The court held that due process was violated by the more than one-year delay in adjudicating the teacher’s appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, *see* 239 Ill.App.3d at 335, thus triggering the kind of deprivation that is not present in the Respondent’s case. *Cavaretta v. Department of Children and Family Services*, 277 Ill.App.3d 16 (2nd Dist. 1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The *Cavaretta* court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) “indicated” the teacher as a child abuser and placed the teacher’s name in the state’s central registry, which directly deprived the teacher of the ability to work.¹

b. Laches. In his Motion, the Respondent also argues that the delay in bringing the

¹ The Circuit Court also cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but only in general terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

charges against him resulted in prejudice to him in losing his employment and in hampering his ability to locate counter evidence years after the fact to defend against the charges. It argues further that the doctrine of laches should apply here in supporting the dismissal of charges.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. The Respondent cites in his motion *People v McClure*, 218 Ill.2d 375 (2006), to support his argument that the doctrine of laches should be applicable. In *McClure*, the Illinois Supreme Court declined to apply laches against a DUI defendant who waited a year to challenge the statutory summary suspension of his driving privileges. The court found no evidence of prejudice stemming from the delay in filing his petition.

Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1st Dist. 1992). See also *Nature Conservancy v. Wilder*, 656 F.3d. 646 (7th Cir. 2011).

The incident that gave rise to this case occurred on October 9, 2007, and the Respondent was arrested on that same day as a result of the allegations at issue. He therefore was aware that allegations were made against him, and he had ample time to locate counter evidence. In fact, he did provide IPRA with information about a witness who ultimately testified—Taryn Johnson—to

provide counter evidence. The Respondent has made no specific showing of any prejudice that resulted from a delay in bringing charges before the Police Board.

The Respondent here has not demonstrated any “compelling” or “extraordinary” circumstances warranting a dismissal of his case, and has not carried the burden of proving unreasonable delay and consequent prejudice.

c. General Order 93-03. The Respondent argues that the Police Department’s own General Order requires a prompt and thorough investigation, and that the Department failed to fully comply with the provisions of this General Order.

In fact, the General Order does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Here, the investigator regularly did seek, and was granted, extensions of time, in compliance with the General Order.

Once the investigator completed the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by the General Order.

There was no substantial violation of the General Order in this case. Even if, however, the General Order was violated, there is no provision in the General Order requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation.

d. Municipal Code Section 2-57-070. The Code provides that the Chief Administrator of the Independent Police Review Authority (IPRA) must conclude an investigation within six months or else report the reasons for not concluding it to the Mayor, the City Council, the

complainant, and the officer. The Respondent argues that IPRA did not comply with this provision of the Code.

IPRA complied with the Code with respect to the Respondent and the complainant. On or about March 26, 2008, Respondent was sent a letter by IPRA informing him that allegations made against him involved a domestic incident and that the investigation was not yet completed. IPRA notified Angela Rush, the complainant, via a letter dated March 25, 2008. There is no evidence in the record as to whether IPRA made the required notifications to the Mayor and the City Council.

In any event, neither Section 2-57-070 nor anything else in the Code states that dismissal of a Police Board case is the sanction for failing to make the report to the Mayor, the City Council, the officer, and the complainant. It is unpersuasive that such an extreme sanction would automatically follow, particularly where the alleged misconduct under investigation is as serious as it is here. Without any basis or cited authority, and none is given by the Respondent, there is no basis for the Board to dismiss the charges pursuant to Section 2-57-070, and the Board declines to extend the reach of the ordinance in this manner.

5. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that:

Count I: On or about October 9, 2007, around 0240 hours, at or about 7100 South Ellis Street, Chicago, Officer Latimer committed the offense of Violation of an Order of Protection in violation of Chapter 720 ILCS 5/12-30 when he committed an act which was prohibited by an Emergency Order of Protection, in that he caused physical abuse to Angela

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Rush, the mother of his child, when she was holding the child, in that he struck Angela Rush in or about her face and/or head with a closed fist, and/or pulled Angela Rush by her hair, and/or Officer Latimer refused to stay away from Angela Rush, and he was subsequently found guilty of the offense of Violation of an Order of Protection when he entered a plea of guilty.

The Police Board finds that Angela Rush credibly testified that Carlos Latimer physically and verbally abused her in the early morning hours of October 9, 2007, by pulling her by her hair and jacket while she was holding her son, by punching her in the nose and lip, and by calling her names such as bitch and stupid. Such conduct by Latimer clearly violates the Order of Protection issued September 27, 2007, and in effect on October 9, 2007.

The transcript of Rush's 911 call to the police completely corroborates her testimony that she was the victim of a battery by Latimer. The transcript of the 911 call reflects that Rush told the dispatcher that she had obtained an Order of Protection against her son's father, that he had just hit her in the face and busted her nose, and that he had left the area. There is no evidence in the record that Rush had an Order of Protection against anyone other than Latimer at that time. Rush also told the dispatcher that she was bleeding from the mouth and nose, and that the person who had beaten her drove off in 2001 navy blue Monte Carlo, the same type of car that Latimer admitted he was driving at the time. The perpetrator to whom Rush is referring on the 911 call is clearly Latimer.

Photographs of Rush were taken by the police and they are in evidence as Superintendent's Exhibit No. 4. Rush's face, neck and blouse show substantial evidence of blood. Rush was taken to Jackson Park Hospital, where the medical notes reflect that Rush had told medical personnel that she was assaulted by her boyfriend.

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Latimer testified that he was he was not in the vicinity of 71st and Ellis when the battery on Rush occurred, but rather was home with his then girlfriend, and now wife, Taryn Johnson, in the early morning hours of October 9, 2007. The Police Board finds not credible the testimony of Latimer and Johnson for many reasons, including but not limited to the following.

First, there are several inconsistencies in their stories as to when they were in a relationship and lived together. Latimer admitted on cross-examination that when he gave a statement to IPRA he said he did not reside with Johnson during the time in question. Latimer also testified that he and Johnson had resumed their relationship in October *or early November 2007*, and so it is not clear whether they were together as of October 9. Johnson testified that as of October 2007 they had been living together for “some months almost to a year” (Tr. 211); this testimony contradicts Latimer’s testimony that they got back together in October or November of that year. Johnson also served as an alibi witness for Latimer when Rush made allegations of physical abuse against him in July 2007. Johnson told investigators that Latimer was asleep with her during the time in July 2007 that Rush alleged the abuse occurred. Latimer testified that he and Johnson were not dating in June 2007. All in all, there is a great deal of confusion in the record as to when Latimer and Rush were in a relationship and/or living together, and their own testimony casts substantial doubt as to whether they were doing so on October 9, 2007.

Second, Latimer has a motive to fabricate an alibi, for he was already attending domestic-violence counseling as a result of previous allegations made against him by Rush, and he knew there was an Order of Protection hearing scheduled for October 12, 2007.

Third, Johnson is hardly a disinterested witness, for she is married to Latimer and has a child with him.

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The Board admitted and considered the testimony of Michael Williams, but finds that it has no probative value in connection with the charges against Latimer in this case.

(Police Board Member Susan L. McKeever dissents from the above finding, for she does not credit Angela Rush's testimony and finds that there is insufficient evidence to prove that Officer Latimer physically and verbally abused Angela Rush on October 9, 2007.)

6. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that:

Count II: On or about October 9, 2007, at or about 7100 South Ellis Street, Chicago, Officer Latimer committed the offense of Domestic Battery in violation of Chapter 720 ILCS 5/12-3.2-A-1 when he intentionally and/or knowingly without legal justification caused bodily harm to Angela Rush, the mother of his child, when she was holding the child, in that he struck Angela Rush in or about her face and/or head with a closed fist, and/or pulled Angela Rush by her hair.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Ms. McKeever dissents from the above finding for the reason set forth in paragraph no. 5 above.)

7. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

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in that:

Count I: On or about October 9, 2007, at or about 7100 South Ellis Street, Chicago, Officer Latimer struck Angela Rush in or about her face and/or head with a closed fist, and/or pulled Angela Rush by her hair, and/or called Angela Rush a “bitch,” thereby impeding the Department’s efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Ms. McKeever dissents from the above finding for the reason set forth in paragraph no. 5 above.)

8. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count II: On or about October 9, 2007, around 0240 hours, at or about 7100 South Ellis Street, Chicago, Officer Latimer committed the offense of Violation of an Order of Protection in violation of Chapter 720 ILCS 5/12-30 when he committed an act which was prohibited by an Emergency Order of Protection, in that he caused physical abuse to Angela Rush, the mother of his child, when she was holding the child, in that he struck Angela Rush in or about her face and/or head with a closed fist, and/or pulled Angela Rush by her hair, and/or Officer Latimer refused to stay away from Angela Rush, and he was subsequently found guilty of the offense of Violation of an Order of Protection when he entered a plea of guilty, thereby impeding the Department’s efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Ms. McKeever dissents from the above finding for the reason set forth in paragraph no.

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5 above.)

9. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

Count III: On or about September 27, 2007, through October 12, 2007, or on one or more dates therein, Officer Latimer had contact with Angela Rush in violation of an Emergency Order of Protection, and/or had contact with Angela Rush in violation of a direct order, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

In addition, Angela Rush credibly testified that Latimer contacted her by telephone on October 11 and 12, 2007, telling her on both occasions that if she dropped the charges against him for the violation of the Order of Protection he would give her money for the baby. Latimer's testimony that any phone calls he made to Rush in October 2007 were only to tell her that he would provide support for the baby is not credible. Also, Latimer admitted he pled guilty to making phone calls to Rush in violation of the Order Of Protection. His contact with Rush via telephone was not, as the Respondent contends, a minor or technical violation of the Order of Protection or the order of his superior.

10. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

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Rule 6: Disobedience of an order or directive, whether written or oral,

in that:

On or about September 27, 2007, through October 12, 2007, or on one or more dates therein, Officer Latimer disobeyed an order or directive when he contacted Angela Rush.

See the findings set forth in paragraph no. 9 above, which are incorporated here by reference.

11. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,

in that:

On or about October 9, 2007, at or about 7100 South Ellis Street, Chicago, Officer Latimer struck Angela Rush in or about her face and/or head with a closed fist, and/or pulled Angela Rush by her hair, and/or called Angela Rush a “bitch,” thereby engaging in disrespect to or maltreatment of any person, while on or off duty.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Ms. McKeever dissents from the above finding for the reason set forth in paragraph no. 5 above.)

12. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that:

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On or about October 9, 2007, at or about 7100 South Ellis Street, Chicago, Officer Latimer struck Angela Rush in or about her face and/or head with a closed fist, and/or pulled Angela Rush by her hair, and/or called Angela Rush a “bitch,” thereby engaging in an unjustified verbal or physical altercation with any person, while on or off duty.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

(Ms. McKeever dissents from the above finding for the reason set forth in paragraph no. 5 above.)

13. The Respondent, Police Officer Carlos Latimer, Star No. 17627, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

On or about March 18, 2009, and/or on or about November 19, 2009, during a statement given to Investigator Darren Bowens of the Independent Police Review Authority, Officer Latimer made a false report, written or oral, when he denied that he had any verbal or physical contact with Angela Rush on October 9, 2007, and/or engaged in improper verbal abuse with Angela Rush on October 9, 2007, and/or physically maltreated Angela Rush on October 9, 2007, and/or had any contact with Angela Rush on October 9, 2007, or words to that effect, when in fact he did; and/or when he stated that he was home asleep on October 9, 2007, around 0230 hours.

The Board finds that Latimer made intentional false statements to IPRA when he denied that he had contact with Angela Rush and maltreated her verbally and physically on October 9, 2007, and when he stated that he was home asleep on that date around 0230 hours. In support of this finding, the Police Board incorporates herein the findings set forth in paragraph nos. 5 and 9 above.

(Ms. McKeever dissents from the above finding for the reason set forth in paragraph no.

5 above.)

14. The Police Board has considered the facts and circumstances of the Respondent's conduct, and the evidence presented in defense and mitigation. The Police Board determines that the Respondent must be discharged from his position due to the violent and serious nature of the conduct of which it has found him guilty, including but not limited to committing domestic battery, violating a court's Order of Protection, disobeying the direct order of a superior officer, and making false official statements in an attempt to cover up his misconduct.

The Respondent exhibited violent behavior and a complete lack of respect for the orders of a court and of his superior. Such conduct is incompatible with continued service as a police officer. The Board finds that the Respondent's conduct is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for his no longer occupying his office.

BY REASON OF THE FINDINGS set forth herein, cause exists for the discharge of the Respondent, Police Officer Carlos Latimer, Star No. 17627, from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, Michael G. Berland, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts all findings herein; and, in reaching its decision as to the penalty imposed, the Board has taken into account not only the facts of this case but also the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A; and

IT IS HEREBY ORDERED that the Respondent, Police Officer Carlos Latimer, Star No. 17627, as a result of having been found **guilty** of charges in Police Board Case No. 11 PB 2775, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 31st DAY OF MAY, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ William F. Conlon

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THE FOREGOING COMMUNICATION

THIS _____ DAY OF _____, 2012.

SUPERINTENDENT OF POLICE

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IADR118

CHICAGO POLICE DEPARTMENT
Sustained Complaints History Report

25-OCT-2011 02:05:55 PM

Social Sec. # [REDACTED] Name LATIMER CARLOS A. Star # 17627 Emp. # [REDACTED] Rank 9161 Description POLICE OFFICER Unit 376

Sex M Race BLACK Birth Date [REDACTED] Appointed Date 12-JUL-1999 No. Of CR's 1 No. Of SPAR's 0

Case # C 1009632 Incident Date 26-SEP-2007 Suspension Dates [REDACTED] Disciplinary Action Taken 15 DAY SUSPENSION Final Category 05L-UNNECESSARY PHYSICAL CONTACT - ON DUTY Civil Suit # [REDACTED] Police Board # [REDACTED] Less Serious Transgression

Comments FORFEITED PD'S, BFD'S, CU

2ND HISTORY-FOR USE BY POLICE BOARD ONLY IN CR#1009632