

NOPD CONSENT DECREE MONITOR NEW ORLEANS, LOUISIANA



May 4, 2021

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File Number: 37PA-191555

Deputy Superintendent Otha Sandifer
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Deputy Superintendent Sandifer:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 34.2 – Promotions and Promotion Committee. The OCDM has no objection to the policy as written.

We believe that Chapter 34.2 – Promotions and Promotion Committee, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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WASHINGTON, DC 20006

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Office of the Consent Decree Monitor

* Appointed By Order Of The U.S. District Court For The Eastern District of Louisiana



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 34.2

TITLE: PROMOTIONS AND PROMOTION COMMITTEE

EFFECTIVE:

REVISED:

PURPOSE

This Chapter establishes the minimum guidelines for promotion within the Civil Service classifications of Senior Police Officer through Police Captain and the responsibilities of the Promotion Committee as they relate to the promotion of commissioned employees within these Civil Service Classifications.

POLICY STATEMENT

1. The New Orleans Police Department recognizes that the promotional process within the organization should be one of fairness and one that truly identifies those well-rounded and qualified persons for leadership positions. Actual or perceived race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group shall not be a motivating factor to any degree in any promotion decision, including the selection or rejection of particular candidates.
2. The Department has established progressive educational and training standards for advancement. The utilization of these standards will increase the level of professionalism, both individually and collectively. The establishment of minimum qualifications for each promotional position was made with careful consideration to ensure that the required educational level matches, as closely as possible, the responsibilities incumbent to the position. By establishing these standards, the Department recognizes and supports the concept and value of lifelong learning.
3. The Department adheres to the practice of giving all qualified officers the opportunity to seek upward mobility within the organization. In assessing the aptitude and suitability of candidates for promotional consideration, a variety of methods may be utilized. These methods may vary from rank to rank and may include, but are not limited to, some or all of the following testing/assessment techniques:
 - (a) Objective Written Tests,
 - (b) Assessment Center Exercises, and
 - (c) Candidate Assessment by the Promotion Committee.

4. This Chapter only applies to the Civil Service commissioned classifications of Senior Police Officer through Police Captain. Police Recruit and Police Officer classifications are exempt from these provisions.
5. For the New Orleans Police Department, the cycle of eligible promotional lists for the classifications of Police Sergeant, Police Lieutenant and Police Captain shall allow the opportunity for commissioned members of NOPD, who meet the requirements of the classified position and successfully pass the testing process, to be placed on the promotional list every two years from the closing of the previous list for the same classification.
6. If, for any unplanned and unanticipated reason(s), beyond the control of the City of New Orleans or the NOPD, the test development process conducted by City Civil Service is hampered and a new promotional test or process cannot be completed and in place in time to meet the two (2) year requirement of the Consent Decree and this Circular Memorandum, the Personnel Director shall state the specific reasons and provide an adjusted time-line for the promotional list. This information shall be immediately conveyed to the Office of the Consent Decree Monitor, the Chief Administrative Officer, and the Superintendent of Police, in writing.
7. The Personnel Director, in agreement with the Superintendent of Police, may extend the promotional list to a maximum of three (3) years if the requirements of #6 above are met and the Civil Service Commission approve. In no cases shall the list be extended or remain in effect for more than three (3) years from the date of original establishment.

DEFINITIONS

For purposes of this Chapter, the following terms are defined as:

Candidate—An employee of the New Orleans Police Department who has successfully completed the Civil Service requirements for promotion to a commissioned classification higher than the one he/she currently fills in a permanent classification and is under review by the Promotion Committee.

Test Register - a list of employees who already have met the minimum Civil Service requirements for testing for the promotion to the classification. This may, or may not, be the final promotion roster depending on the defined testing process for the classification.

Civil Service Register—A promotional register of a list of employees who already have permanent status in a lower class of positions in the same department who have met the Civil Service requirements for promotion to the classification on the promotional register as well as any Promotion Committee evaluation process.

Deferral—The action of postponing a recommendation on a candidate for promotion by the Promotion Committee. A deferral of a candidate for promotional consideration must be based on an articulable reason.

Egregious or serious act of misconduct – Any act which has an offense range where the penalty is a **Level E** or greater as articulated in **Chapter 26.2.1 – Disciplinary Matrix**.

Pending disciplinary action—Refers to a misconduct investigation that has not been concluded because the investigation is ongoing, the disciplinary penalty has not been assessed and/or the penalty has not been served and completed.

Open investigation—A misconduct investigation that has not been concluded with a formal

disposition (see **Chapter 52.1.1 – Complaint Investigation**).

Permanent Status—An employee of the Department in a classified civil service job who is in active status for at least one year prior to the end of the annual review period and has completed the performance evaluation process becomes eligible for, and may be granted, permanent status in that job classification, provided that the appointing authority (Superintendent of Police) has determined his/her performance merits it.

Promotion—A change of an employee in the classified service from a position in one class to a position in another class for which a higher pay grade is provided in the pay plan.

Subject matter expert—A member of the New Orleans Police Department deemed to be an authority in a particular area or topic. Necessary skillsets may include, but are not limited to, education; experience; proficiency; and/or professional certifications that demonstrate the member is above average for assessing a like or similar position. The subject matter expert assists Civil Service in the background, research, preparation, evaluation, assessment or presentation of all or part of a structured promotional examination.

Sustained—The disposition of a misconduct investigation or disciplinary hearing that determines, by a preponderance of the evidence that alleged misconduct occurred. For purposes of this Chapter, a finding that a violation is sustained requires a letter confirming the disposition from the Superintendent of Police as the final, appointing authority.

SENIOR POLICE OFFICER PROMOTIONS

8. Through the Department of Civil Service, the classification of Senior Police Officer has been established within the New Orleans Police Department.
9. There shall be no supervisory authority for the Senior Police Officer class. Authority of a Field Training Officer over a trainee shall be set forth by guidelines established within the framework of the Field Training Program (see **Chapter 33.4.3 – Field Training Program**).
10. Promotions to Senior Police Officer class shall be made by the Superintendent of Police from a listing of eligible candidates published by the Department of Civil Service. Eligibility for promotion shall not be based on the assignment of the officer seeking promotion.
 - (a) Qualifications for promotion shall be based on each candidate successfully completing a training program specific to the Civil Service Class of Senior Police Officer. The training program shall be developed by the Education & Training Division. The tenure requirements must be met prior to attending a police officer promotional class. The candidate must have attained Permanent status as a Police Officer and four years of combined experience as a Police Recruit and Police Officer.

PROMOTIONAL EXAMINATIONS (POLICE CORPORAL THROUGH AND INCLUDING POLICE CAPTAIN)

11. The Department of Civil Service shall prepare and administer any required promotional examinations covering the positions of Police Corporal through Police Captain. The Department of Civil Service will announce requirements, sign-up periods, study materials, testing date(s), etc.

12. Employees of the Department of Civil Service are responsible for preparing promotional examinations for the above-listed commissioned positions. The Department of Civil Service may request permission from the Superintendent of Police to contact various ranking officers of the Police Department to obtain subject matter for inclusion in promotional testing. Ranking officers may be contacted and requested to act as subject matter experts (SME) to formulate questions for the test or explain the correct answers for questions included by Department of Civil Service employees.
13. The subject matter experts may be suggested by the Superintendent of Police and the Deputy Chiefs based on their current or past job duties, specialized training or skills and educational background. The Department of Civil Service is responsible for vetting the backgrounds, skills and knowledge base of the candidate SMEs.
14. NOPD members selected or requested to act as subject matter experts shall cooperate with the Civil Service Department, supplying all relevant information requested.
15. Members assigned to assist the Department of Civil Service in the preparation of, or reviewing of promotional examination material, **shall not** be eligible to participate in any aspect of a promotional test as a candidate for a promotion or discuss the test development with any member who does participate in the test development. (i.e. a Deputy Chief whose permanent classified rank is Police Lieutenant taking a promotional test for Police Captain or above cannot participate in any way in the development, review or discussion of the test nor speak to others, including subordinates who assisted or have knowledge of the test development process.)
16. Designated members assigned to assist the Department of Civil Service in the preparation of, or reviewing of promotional examination material, **shall not** impart any testing material, background material or knowledge of testing material to any other member of the Police Department, especially those employees who may be eligible for the promotional examination. The members shall not discuss the nature of the material, questions, examples or any information related to, discussed by or submitted to the members of the Department of Civil Service engaged in any aspect of the test preparation or validation with anyone not already involved in the test preparation or validation until the promotional process has been completed. This confidentiality must be maintained, or the testing process could be compromised and invalidated. Any breach of confidentiality may be handled as a disciplinary violation.
17. Members who have assisted the Department of Civil Service in the preparation of, or reviewing of promotional examination material, **shall not** be allowed to assist possible applicants in preparing for the examination. This includes, but is not limited to, the following:
 - (a) Holding classes or acting as instructors/tutors for possible candidates;
 - (b) Supplying study material;
 - (c) Formulating scenarios, or providing responses to scenarios submitted to them by possible candidates;
 - (d) Providing answers to questions posed by possible candidates, whether or not the question provided is part of the examination; and
 - (e) Suggesting to possible candidates that particular material be studied prior to the examination.
18. Members who have assisted the Department of Civil Service in the preparation, or reviewing, of promotional examination material, who are required to provide written correspondence covering testing material, **shall not** keep copies of the correspondence, any testing material, background material or knowledge of testing material either

electronically or printed, anywhere it may be accessible to other members of the Police Department. Security of any material or correspondence between the Department of Civil Service and the member assisting shall include maintaining the items under the member's exclusive control at all times. Any breach of security over materials attributable to the assisting member, even if unintentional or accidental shall be construed as a breach of confidentiality and subject to the disciplinary process.

PROMOTION COMMITTEE FOR POLICE SERGEANT AND ABOVE

19. The Promotion Committee will be composed of no fewer than three Deputy Superintendents. The Deputy Superintendent of Management Services shall be responsible for scheduling Promotion Committee meetings, collecting employee recommendation forms, recording the "minutes" of the Promotion Committee, and notifying the Superintendent of the recommendations made by the Committee. The Chairperson shall be named by the Superintendent of Police.
20. The promotion review process will begin with Civil Service providing the test register of candidates that pass all portions of the promotional exam to NOPD's Human Resources Department.
21. The Director of Human Resources in the Management Services Bureau will forward the names of eligible candidates to all members of the Promotion Committee. Based upon a pre-determined cut-off score, the highest performing candidates on the Civil Service examination will then be invited to submit a promotional packet, similar to the Knowledge, Skills and Abilities packets required for transfers to specialized assignments and/or units. These promotional candidates will then be invited to an in-person interview with the promotional committee. A review of each listed candidate's resume' and cover letter, latest performance evaluations and Employee Summary Report in INSIGHT will be conducted by the Promotion Committee. The results of the review will include all training, complaints, discipline, awards/commendations, secondary employment, an examination of sustained violations of misconduct and any open investigations of complaints of misconduct and all uses of force. A summary report on each candidate's review shall be documented by the Promotion Committee.
22. Once the Committee has reviewed all eligible candidates KSA-style packet and interviews are conducted, they will, as a group, assess each candidate's background and qualifications to determine the order of the promotional list, based upon the best qualified candidates. The recommendations of the Committee will be forwarded, in writing, to the Superintendent of Police for consideration.
23. Any candidates for promotion that have been deemed "ineligible" by the Committee, as a group, will be documented, in writing, indicating the reason for ineligibility and signed by the Chairman for the Committee.
24. Any candidates for promotion that have been recommended for "deferral" by the Committee, as a group, will be documented, in writing, indicating the reason for deferral and signed by the Chairman for the Committee.
25. The Committee shall meet as often as workload requirements necessitate through determination made by the Deputy Superintendent of Management Services or as directed by the Superintendent of Police.
26. The Superintendent of Police is the Appointing Authority and has the discretion to overrule any recommendations made by the Promotions Committee. No promotions are effective until approved, in writing, by the Superintendent of Police.

PROMOTION COMMITTEE FOR POLICE CORPORAL

27. The process for convening a Promotion Committee and scoring for the rank of Police Corporal will be the same as Sergeants through Captains, however, the committee will be composed of one member of the rank of Captain or above from each Bureau and three from the Field Operations Bureau, selected by the respective Bureau Chief. The Committee member assigned to Management Services shall be responsible for scheduling Promotion Committee meetings, collecting employee recommendation forms, recording the “minutes” of the Promotion Committee, and notifying the Superintendent of the recommendations made by the Committee. The Chairperson shall be named by the Superintendent of Police. The minimum number of members to constitute a quorum shall be five named members.
28. The Committee shall meet as often as workload requirements necessitate through determination made by the police Commander assigned to Management Services or as directed by the Superintendent of Police.
29. The Superintendent of Police is the Appointing Authority and has the discretion to overrule any recommendations made by the Promotions Committee. No promotions are effective until approved, in writing, by the Superintendent of Police.

FACTORS TO CONSIDER FOR PROMOTION

30. The Promotion Committee will consider the following factors when assessing a candidate's promotional eligibility:
 - (a) Effective use of community-policing strategies;
 - (b) Number of sustained and non-sustained complaints;
 - (c) Number and circumstances of uses of force, including any found to be out of policy and use of force complaints.
 - (d) Disciplinary history.
 - (e) Problem-solving skills;
 - (f) Interpersonal skills;
 - (g) Education;
 - (h) Specialized training;
 - (i) Support for departmental integrity measures.
 - (j) Attendance record for the past two years, including leave balances; and
 - (k) Annual performance evaluations for the previous two years.
31. Additional factors may be considered but must be published in writing, to all candidates at least 30 days prior to the commencement of the promotional review process by the Promotion Committee.

DEFERAL CONSIDERATIONS / INELIGIBILITY

32. Sustained complaints of misconduct that have resulted in an assessed penalty greater than a Letter of Reprimand or failure to meet or comply with departmental attendance policy, **may** be grounds for a deferral.
33. Candidates with sustained complaints of discrimination, retaliation, excessive use of force or an egregious act of misconduct shall be deemed ineligible for promotion for no less than a period of three years following the completion date of the assessed penalty.

34. Candidates with an open investigation or pending disciplinary action in a matter alleging egregious or serious acts of misconduct where the presumptive penalty is dismissal shall be ineligible for promotion.
35. Military leave will not be considered a lapse in eligibility for promotions.