

**MICHAEL SAUTER C/W
MICHAEL PFEIFFER**

VERSUS

DEPARTMENT OF POLICE

*** NO. 2006-CA-1646**
*** COURT OF APPEAL**
*** FOURTH CIRCUIT**
*** STATE OF LOUISIANA**

**APPEAL FROM
CITY CIVIL SERVICE COMMISSION ORLEANS
NO. 6771 & 6766**

Per Curiam

(Court composed of Judge Patricia Rivet Murray, Judge Terri F. Love, Judge Roland L. Belsome)

Frank G. DeSalvo
DESALVO DESALVO & BLACKBURN, APLC
530 Natchez Street
Suite 305
New Orleans, LA 70130

COUNSEL FOR PLAINTIFF/APPELLEE

Joseph V. DiRosa, Jr.
Chief Deputy City Attorney
Penya Moses-Fields
City Attorney
Victor L. Papai, Jr.
Assistant City Attorney

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1300 Perdido Street
City Hall - Room 5E03
New Orleans, LA 70112

COUNSEL FOR DEFENDANT/APPELLANT

VACATED AND REMANDED

The Civil Service Commission's decision is vacated and we remand in accordance with *Marks v. New Orleans Police Dep't*, 06-0575 (La. 2006), 943 So. 2d 1028.

Regarding the interpretation of La. R.S. 40:2531B(7) as directory or mandatory, the Louisiana Supreme Court found the fact that the "legislature did not include a penalty in the statute for non-compliance with the sixty-day period to be more significant." *Id.*, at p. 10, 943 So. 2d at 1035. The Supreme Court reasoned that the "statute does not provide, nor suggest, that the remedy for non-compliance with the sixty-day period is dismissal of the disciplinary action." *Id.*

Marks held that "in the absence of prejudice," the judiciary cannot supply a penalty if the "statute does not establish a penalty for non-compliance." *Id.*, p. 12, 943 So. 2d at 1036. "A failure to comply with the sixty-day time period may impact whether discipline should be imposed or the type of discipline imposed if prejudice to the officer is demonstrated due to the delay." *Id.* Therefore, we interpret *Marks* as allowing the accused

police officer the opportunity to allege and present evidence to demonstrate whether he was prejudiced by the delay.

VACATED AND REMANDED