

19TH JDC JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

ROBERT BURNS

* NUMBER: C-717529

*

VERSUS

* DIVISION: "24"

*

COLONEL LAMAR DAVIS, IN HIS
OFFICIAL CAPACITY AND CUSTODIAN
OF RECORDS FOR THE LOUISIANA
STATE POLICE

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AMICUS CURIAE
BRIEF ON BEHALF OF
THE LOUISIANA STATE POLICE COMMISSION

MAY IT PLEASE THE COURT:

This *Amicus Curiae* brief is submitted on behalf of the Louisiana State Police Commission (hereafter referred to as the "LSPC") and the focus of this brief is on the narrow issue of the production of two letters of counseling/warning.

LSPC submits that Plaintiff is not entitled to production of letters of counseling/warning on the grounds that LSPC Rule 12.9 provides that such letters shall not be included in any record accessible to the public. LSPC Rule 12.9 provides in pertinent part:

(a) A letter of counseling or warning is not a disciplinary action. Such letters may be maintained in a supervisory or investigatory file, however, they shall not be included in any record which is accessible to the public.

A review of the authority of the LSPC might be helpful to the Court's understanding of the issues before it. The LSPC is a Constitutional body with authority like the State Civil Service Commission, except that its authority extends only to the classified state police service.

The LSPC was established in Louisiana Constitution Art. 10, §43, and under Art. 10, §48, "(A) (1) The Commission is "vested with broad and general rulemaking and subpoena powers for the administration and regulation of the classified state police service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions;...and generally to accomplish the objectives and purposes of the merit system of state police service as herein

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND ORDER

NOW INTO COURT, through undersigned counsel, comes the Louisiana State Police Commission (hereafter "LSPC") and seeks leave to file an *Amicus Curiae* Brief in opposition to portions of the Petition for Writ of Mandamus.

The Petition for Writ of Mandamus and Memoranda filed in support by Plaintiff argue that the LSPC has no authority to promulgate rules that govern the state police service and that one such rule, LSPC Rule 12.9 is unenforceable. LSPC submits that this argument is without merit for the reasons more fully stated in its *Amicus Curiae* Brief.

WHEREFORE, the Louisiana State Police Commission prays for leave to file the attached *AMICUS CURIAE* BRIEF in the record of this proceeding.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

By



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established... (4) Effect. Rules adopted pursuant hereto shall have the effect of law and be published and made available to the public. The commission may impose penalties for violation of its rules by demotion in or suspension or discharge from position, with attendant loss of pay.” (emphasis added).

The LSPC adopted rules pursuant to the power vested in it, and the initial set of rules that were adopted in 1991 were largely a copy of those rules that were previously adopted and promulgated by the Louisiana State Civil Service Commission, the Commission that previously maintained authority over the classified state police service. Significantly, the State Civil Service Commission has a similar rule that bears the exact same number. State Civil Service Rule 12.9 also provides that improvement letters (such as warnings, counseling, coaching, reprimands, supervisory plans, etc.) “may not be included in any publicly accessible personnel record until used to support future discipline.”

The LSPC disputes Plaintiff’s argument that the counseling/warning letters should be produced under La. R.S. 44:1, *et seq.* on the grounds that the LSPC was given authority by the Louisiana Constitution to enact rules to administer and regulate the classified state police service, and LSPC Rule 12.9 was enacted by the LSPC under that authority. When the legislature decides that it is necessary to modify the authority granted to the Commission or to make a requirement of the Commission, it does so by constitutional amendment.¹ Statutes adopted by the legislature that are intended to directly challenge or supplant the jurisdiction and/or powers of the Commission as defined in Article X, Part IV, Section 41-51 are an unconstitutional infringement on the LSPC’s authority and core purpose as defined in La. Const. Art. 10, §48. *AFSME, Council 17 v. State ex rel. Dep’t of Health & Hospitals*, 789 So.2d 1263, 1268 (La. 2001).

The LSPC has determined that letters of counseling/warning should not be contained in personnel files, but rather in supervisory files, because these letters have not been used to support appealable disciplinary actions and are meant to be private communications for the betterment of the employee. If every notation or counseling session documented in a supervisory file was made


¹ See: Acts 1997, No. 1489, §5, approved Oct. 3, 1998, eff. Nov. 5, 1998; Acts 2004, No. 930, §1, approved Nov. 2, 2004, eff. December 7, 2004; Acts 2008, No. 935, §1, eff. Approved November 4, 2008, eff. December 8, 2008; and Acts 2012, No. 870, §2, approved November 6, 2012, effective December 10, 2012.

public, it could cause embarrassment to the employee and undermine the efforts of a supervisor to instruct and develop the employee. Documentation of behavior and performance issues within the state police service is an essential personnel function and is under the jurisdiction of the LSPC. The discipline of state police service employees is also under the jurisdiction of the LSPC. Discipline requires documentation, proof and often a demonstration of repeated issues following attempts at corrective action by a supervisor and Appointing Authority. It is more likely that an employee will correct his or her behavior rather than continue down a path that could result in disciplinary action. Those corrections and corrective measures should remain private until such point disciplinary action occurs. Having letters of counseling and warning subject to exploitation in the media with one-sided commentary would greatly affect employment in civil service systems and impact the services performed by civil servants.

For these reasons, the LSPC asks the Court to deny production of the two letters of counseling/warning on the grounds that LSPC Rule 12.9 prohibits such production.

Respectfully submitted,

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- CERTIFICATE -

I certify that a copy of the foregoing was this day emailed, faxed and/or mailed via U.S. mail with proper postage affixed to:

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---and---

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Baton Rouge, Louisiana this 17th day of June, 2022.


M. Lenore Feeney

- CERTIFICATE -

I certify that a copy of the foregoing was this day emailed, faxed and/or mailed, via U.S.

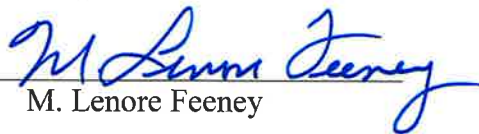
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Baton Rouge, Louisiana this 17th day of June, 2022.


M. Lenore Feeney

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ORDER

Considering the foregoing Motion for Leave to File *Amicus Curiae* Brief:

IT IS HEREBY ORDERED that the foregoing Motion for Leave to File *Amicus Curiae* Brief be GRANTED, and that the attached *AMICUS CURIAE* BRIEF be filed into the record of the above-captioned matter.


So ORDERED this ____ day of _____, 2022, at Baton Rouge, Louisiana.

DONALD R. JOHNSON
JUDGE, 19TH JUDICIAL DISTRICT COURT

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

By



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