

# BARRY SALLINGER

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November 16, 2022

Mr. Mickey Broussard  
Chairman  
Lafayette Municipal Fire and Police  
Civil Service Board  
Fire Training Center  
300 North Dugas Road  
Lafayette, LA 70507

*(via email and Hand Delivery)*

RE: Lafayette Police Department Officer Pablo Estrada  
Internal Affairs Investigation AD 2020-022

Dear Mr. Broussard:

Enclosed please find an original and six copies of a Motion to Recuse filed on behalf of Pablo Estrada. I ask that you file the original into the record of this matter.

Thank you in advance for your assistance.

With kindest regards, I am

Very truly yours,

  
ALLYSON C. MELANCON

ACM/lmd  
Enclosures

cc: Pablo Estrada *(via email only)*  
Michael Corry *(via email only)*  
Candice Hattan *(via email only)*

PABLO ESTRADA : LAFAYETTE MUNICIPAL FIRE AND  
POLICE CIVIL SERVICE BOARD

VS. : AD 2020-022

LAFAYETTE CONSOLIDATED GOV'T/ : APPEAL OF TERMINATION  
LAFAYETTE POLICE DEPARTMENT

HEARING DATE: NOVEMBER 30, 2022

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MOTION TO RECUSE

NOW COMES, through undersigned counsel, Pablo Estrada ("Estrada"), who respectfully moves Lafayette Municipal Fire and Police Civil Service Board ("the Board") member, Kenneth Boudreaux ("Boudreaux"), to voluntarily recuse himself from participating in any manner in the appeal hearing of this matter; or, alternatively for the Board to recuse Boudreaux because he is biased and prejudiced toward Estrada to the extent that he cannot serve as a fair and impartial arbiter thereby depriving Estrada of his due process rights. In support thereof, Estrada submits the following:

1.

An Internal Affairs Investigation (AD 2022-022) was ordered on December 11, 2020 by then Lafayette Police Department Interim Chief, Scott Morgan, relative to a complaint of the alleged use of excessive force. The complaint alleged that Estrada committed excessive force on Dennis Lazard during his arrest by Estrada on November 28, 2020 for battery on a pregnant dating partner, a felony, and resisting arrest.

2.

Former Chief Thomas Glover sustained the complaint and terminated Estrada on February 22, 2021.

3.

Estrada timely appealed his termination to this Board on March 1, 2021. It is set for hearing on November 30, 2022.

4.

Boudreaux was sworn in to this Board on August 10, 2022.

5.

Boudreaux hosts a radio show called “The Community Hour” that airs on KNEK Magic 104.7. Video of the show is broadcast on Boudreaux’s personal Facebook page as well as that of “The Community Hour.”

6.

On March 21, 2021, Mr Boudreaux hosted his show and entitled it “POLICING: YOU BE THE ‘WITNESS, JURY, & JUDGE.’” He had no guests on that day. See attached Exhibit A<sup>1</sup>.

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<sup>1</sup>See also <https://www.facebook.com/kenneth.boudreaux.94/videos/10215406781481127>

7.

During his show, Boudreaux showed videos of the event which serves as the underlying basis of this matter repeatedly. He also “walks” his viewers through said videos offering his personal and biased commentary regarding the dynamics of the event, law enforcement training, the presence or not of a threat to Estrada, and the propriety of the action taken by Estrada. All of his commentary was directed at and critical of Estrada, and are the very issues which this Board will be called on to decide.

8.

During the approximately 80 minutes long segment, Boudreaux, who is tasked with determining whether Estrada’s termination was in good faith for just cause, states the following, among other things:

- While showing a video of the incident at issue, “No. If this gets overturned, this is the problem family, if this gets overturned, that’s when confidence gets lost.”
- He states without equivocation that Lazard’s actions were not a threat by describing “he’s standing flat footed with his feet flat on the ground, in some instances he was leaning back, not even leaning forward. Remember his hands was [sic] cuffed securely behind his back.”
- He shows multiple slides and demonstrative aids of what he considers stances of aggression.
- He claims that because Lazard was handcuffed behind his back he could not get into an aggressive position..
- “We cannot allow them to say he was in an aggressive posture.”

- “What justifies the push against the wall, the punch to the stomach and the takedown to the bench?”
- “I am saying that not taking a verbal command does not justify that.”
- He comments that former Chief Glover is the individual “willing to do something about it, just like this chief did Chief Glover, but then you have civil service boards who are gonna over turn it.”
- He reads a viewer comment, “This is the same board that threatened to hang miss marja by a viewer,” and responds, “yep oh ya’ll remember.”
- “I am prepared and willing to take responsibility for all my actions.”
- While showing a photograph of a woman pointing at former President Barak Obama, he comments that Lazard “couldn’t point his finger at the officer because he was handcuffed behind his back.”
- “There is no indication of any chance of aggression to have taken place.”
- “They’re gonna go into the civil service board and they’re gonna argue the police bill of rights versus nothing. They’re gonna dismiss the victim. The perpetrator, the person arrested who then became a victim.”
- “We gotta stop placating and giving a free pass to behavior that is unnecessary.”
- “He never ever deserved to get punched in the gut.”
- “What civil service has been doing is undoing the rulings of chiefs and supervisors when convenient.”
- “I don’t have anything to worry about because if the chief fires me I’m gonna get my job back because I got the hook up on the civil service board.”

- “But if they start to undo his rulings, it don’t even pay to have a chief.”
- “Is no way that black men in the confinement of the booking room of the local jail with their hands cuffed behind their back with no ability to do anything, no threat, where they walk in such peace, and they didn’t even consider shackling the legs, where they didn’t even think it was necessary to be handcuffed to the table, be punched, shoved against the brick wall and slammed to the bench.”
- **Boudreaux states, without reservation, ““the chief’s position and the chief’s decision should be upheld.”**
- At various times throughout his program, the tagline #I AM PROPOLICE I AM ANTI BAD POLICE can be seen at the bottom of the screen, seemingly insinuating that Estrada is bad police.

9.

These statements are interspersed between his constant disparagement of this Board and the Police Association of Lafayette.

10.

The day before the program aired, on March 20, 2021, Boudreaux posted the following on his personal social media site. The “preview” was also posted on The Community Hour Radio Show social media site:

TOMORROW TOMORROW TOMORROW ON “THE COMMUNITY HOUR” [three microphone emotion icons]

FOR THE FIRST TIME EVER, YOU GET TO BE

WITNESS [magnifying glass emotion icon]

JURY [black male, white female, black female, white female emotion icons]

JUDGE [black judge emotion icon]

YOU GET TO SPEAK YOUR MIND [brain emotion icon] AND SAY WHAT YOU

FEEL!!! [black arm flexing muscle emotion icon]

POLICE [white police officer emotion icon] BILL OF RIGHTS VS. A PERSON [sic]

HUMAN AND CIVIL RIGHTS [black male and female emotion icons]

HOMEWORK ASSIGNMENT - LOOK UP THESE WORDS AND BE PREPARED TO

PUT THEM IN A SENTENCE .....

1. EXCESSIVE
2. FORCE
3. AGGRESSIVE
4. HANDCUFFED
5. COMPLY
6. UNNECESSARY
7. ACCOUNTABILITY
8. CHIEF
9. CIVIL SERVICE
10. CULTURAL

HAVE A GOOD BREAKFAST [pancakes and bacon emotion icons], SOME STRONG  
COFFEE [cup of coffee emotion icon], ORANGE JUICE WITHOUT PULP AND TUNE  
IN TO THE ONLY PLACE YOU ARE GOING TO GET IT LIKE IT IS [six red  
exclamation point emotion icons]

“THE COMMUNITY HOUR” [three flame emotion icons]

KEEP’EM TALKIN MEDIA GROUP [four flash bang/explosion emotion icons]

Mr Boudreaux then posted a photo of Estrada and Lazard in the Lafayette Parish

Correctional Center “cop room” where the events underlying this matter occurred, with Lazard’s

face blurred, but Estrada’s identifiable. The photos lists the credit as “TENNESSEAN.COM

Lafayette Police Officer pushes, punches detainee at jail|Video” See attached Exhibit B.

11.

As this Board is well aware, it is not expressly bound by “any legal rules of evidence.”

Rule IX, Section 6. Should there be any admissibility or foundational issues, the radio/social media broadcast and Facebook preview discussed supra remain posted on Boudreaux’s social media page to date, and Boudreaux will be readily available to authenticate his own broadcast.

12.

While circumstances presented herein do not fall into the recusal scheme set forth in LSA-R.S. 33:2501(D), as Boudreaux is not the immediate supervisor or direct work associate Estrada, nor is he Estrada’s immediate family member, review of relevant law provides the grounds for recusal applicable herein are the same as those for a trial court.

Accord: *Nunez v. Jefferson Par. Dep’t of Parks & Recreation*, 10-787 (La. App. 5 Cir. 3/29/11), 79 So. 3d 337, 342, on reh’g (Sept. 28, 2011); *Singletary v. Department of Public Works–Sewerage*, 626 So.2d 741 (La.App. 5 Cir.1993), writ denied, 630 So.2d 791 (La.1994). (The grounds for recusal before the Personnel Board are the same as those applicable in the trial court. Nunez relies on La. C.C.P. art. 151(A) which provides that a judge shall be recused when he “is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward



or against the parties or the parties' attorneys or any witness to an extent that he would be unable to conduct fair and impartial proceedings.”); *Addison v. L.S.U. Med. Ctr. in Shreveport*, 551 So. 2d 750, 754 (La. Ct. App. 1989) (The referee denied the motion, citing Civil Service Rule 13.32 which provides that recusal of a referee is governed by the grounds for recusal of a judge listed in LSA–C.C.P. art. 151. Those grounds include, inter alia, bias, prejudice, or interest in the cause or toward one of the parties or one of the parties' attorneys.); *Saacks v. City of New Orleans*, 95-2074 (La. App. 4 Cir. 11/27/96), 687 So. 2d 432, 441, as amended on denial of reconsideration (Mar. 24, 1997), writ denied, 97-0794 (La. 5/9/97), 693 So. 2d 769 (However, the Civil Service Rules of the State of Louisiana contain the following provision relating to recusal: The grounds for recusation of a Commissioner or a Referee shall be the same as the grounds for the recusation of judges of the courts of the State of Louisiana. The grounds for recusation of judges of Louisiana courts are contained in La.C.C.P. art 151, which provides in part that a judge may be recused when he: \* \* \* \* \* (5) Is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys to such an extent that he would be unable to conduct fair and impartial proceedings.)

Moreover, the due process clause provides that the right to life, liberty and property cannot be deprived except pursuant to constitutionally adequate procedures. U.S. Const., Am. XIV. A due process claim in the context of civil service employment depends upon an employee having a property right in continued comparable employment. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). It is disputed that Estrada, at all times relevant, was serving with permanent status in the classified civil service and held a

position with the Lafayette Police Department; therefore, he possesses a property right of which he cannot be deprived without cause and procedural due process. La. Const. Art. 10, Sec. 8(A).

14.

Due process requires a fair trial before a fair tribunal. A due process violation may exist even if an adjudicatory body's actual impartiality is not proven. The appearance of fairness and the absence of a probability of outside influence on the adjudication are required by due process. Furthermore, due process requires that the employee/accused be provided with a neutral and impartial referee to impart fairness. The essential guarantee of the Due Process Clause is fundamentally fair procedure for the individual in the resolution of the factual and legal basis for government actions which deprive him of life, liberty or property. Therefore, there must be some type of neutral and detached decision maker, be it judge, hearing officer or agency. This requirement applies to agencies and government hearing officers as well as judges. An impartial decision maker is essential to due process. *City of Alexandria v. Alexandria Civil Service Comm'n*, 09-484, (La.App. 3 Cir. 11/4/09), 23 So.3d 407, 413 (citations omitted). See also *Butler v. Dep't of Public Safety and Corr.*, 609 So.2d 790, 793 (La.1992) (An impartial decision maker is essential to an administrative adjudication that comports with due process).

15.

A motion to recuse a board member may be made to the Board, and a hearing by the Board may be an appropriate method to determine the motion. However, a Board member may recuse himself, without the necessity of a formal motion. La. Att'y Gen. Op. No. 18-0055 (Oct. 12, 2018)

16.

It is well documented herein that Boudreaux can be neither fair nor impartial in this matter. He has made his personal feelings known to an audience of unknown numbers through his commentary and written word. Boudreaux has decided the matter without facts and without respect for the process.

17.

It is abundantly clear and based upon his own words, there exists a substantial and objective basis that would prevent Boudreaux from participating, much less sitting in judgement, in any aspect of this cause in a fair and impartial manner. He has already adjudicated the matter - on March 21, 2021 and made his findings public. Finally, Boudreaux's stated role, along with that of his viewers on March 21, 2021, of witness, judge, and jury are so interwoven that they are indistinguishable and create, at the very minimum, the appearance of impropriety and deprive Estrada of the imperative of fairness. The objective bias presented is too high to be constitutionally tolerable and warrants recusal.

18.

The only remedy for the protection of Estrada's due process rights, and maintenance of the integrity of the appeal process and this Honorable Board, is for Boudreaux to recuse himself from this proceeding; or, alternatively, for the Board to recuse him.

WHEREFORE, premises considered, Mover, Pablo Estrada, prays that Lafayette Municipal Fire and Police Civil Service Board member Kenneth Boudreaux be recused from participating in the appeal hearing of this matter, either voluntarily or by order of the Board.

Respectfully Submitted:



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ATTORNEYS FOR PABLO ESTRADA

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing Pleading was this day forwarded to all counsel of record and the Lafayette Municipal Fire and Police Civil Service Board via email transmission and hand delivery.

Lafayette, Louisiana this 16<sup>th</sup> day of November, 2022.

  
ALLYSON C. MELANCON