



STATE OF NEW JERSEY

In the Matter of Salvatore Spilletti,
Hudson County, Department of
Corrections

**DECISION OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2023-2657
OAL Docket No. CSV 05144-23

**REMAND TO THE
OFFICE OF ADMINISTRATIVE LAW**

ISSUED: OCTOBER 16, 2024

The appeal of Salvatore Spilletti, County Correctional Police Officer, Hudson County, Department of Corrections, 90 working day suspension, on charges, was before Administrative Law Judge Julio C. Morejon (ALJ), who rendered his initial summary decision on August 1, 2024. Exceptions were filed on behalf of the appointing authority and a reply was filed on behalf of the appellant.

In his initial summary decision, the ALJ recommended dismissing the charges based on the appointing authority's failure to follow the Attorney General Guidelines on Internal Affairs Policy and Procedures (AG Guidelines), finding that it failed to forward the matter to its internal affairs division for an investigation as required. Having considered the record and the ALJ's initial decision, including a thorough review of the exceptions and reply, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of October 16, 2024, ordered that the matter be remanded to the Office of Administrative Law (OAL) for further hearing proceedings.

The crux of the ALJ's determination hinges on his finding that, at the time of the infraction in 2022, the AG Guidelines applied to county correctional personnel, and because the appointing authority did not follow those guidelines, the suspension should be overturned. The ALJ substantially relied on *O'Rourke v. City of Lambertville*, 405 N.J. Super. 8, 23 (App. Div. 2008), which held:

[W]hen a law enforcement agency adopts rules pursuant to N.J.S.A. 40A:14-181 to implement the Attorney General's Guidelines, the agency has an obligation to comply with those rules. Because it failed to do so, and because the deficiencies tainted the disciplinary

process, the City's decision to remove [O'Rourke] from his position cannot stand.

In its exceptions, the appointing authority questions whether the AG Guidelines were applicable to county correctional personnel prior to 2024, and thus at the time of this matter. In that regard, the Commission notes that another ALJ in another similar still-pending matter, determined that the AG Guidelines did not apply to county correctional personnel prior to 2024.¹ In reply, the appellant asserts that the appointing authority is estopped from raising such arguments, because it adopted its own guidelines in accordance with the 2022 AG Guidelines. However, it is unclear whether those guidelines were adopted prior to the events in this matter and thus whether those guidelines are applicable. As such, the Commission is remanding for further review and a determination on whether the AG Guidelines, or substantially similar regulations adopted by the appointing authority, were in effect at the time of this matter.

It is also noted that in many circumstances, procedural violations made by the appointing authority at the departmental level are deemed cured through the *de novo* hearing received at the Office of Administrative Law. See *Ensslin v. Township of North Bergen*, 275 N.J. Super. 352, 361 (App. Div. 1994), *cert. denied*, 142 N.J. 446 (1995); *In re Darcy*, 114 N.J. Super. 454 (App. Div. 1971). As such, while the parties are free to argue over the applicability of the AG Guidelines and whether a failure to apply those guidelines should result in reversal of the suspension here, the Commission also orders a hearing on the merits. The Commission reserves judgment on whether the appointing authority violated any procedural requirements and whether those violations may or may not be cured by the hearing now ordered before the OAL.

Accordingly, this matter is remanded to the OAL for further proceedings consistent with this decision.

ORDER

The Civil Service Commission reverses the ALJ's granting of summary decision and the recommendation to reverse the 90 working day suspension of Salvatore Spilletti. Further, the Commission remands this matter to the Office of Administrative Law for further proceedings.

¹ In that matter, the ALJ denied that appellant's motion for summary decision, finding that the AG Guidelines did not apply to County Correction Police Officers until 2024. That appellant then filed a motion for interlocutory review of the ALJ's order with the Commission. The Commission did not undertake review of that order, and the matter is proceeding at the OAL on the merits of the underlying charges.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 16TH DAY OF OCTOMBER, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MOTION SUMMARY DECISION

OAL DKT. NO. CSV 05144-23

AGENCY DKT. NO. 2023-2657

SALVATORE SPILLETTI,

Appellant,

v.

HUDSON COUNTY, DEPARTMENT

OF CORRECTIONS,

Respondent.

Michael P. Rubas, Esq., (Rubas Law Offices), attorneys for appellant

Georgina Palitto, Assistant County Counsel, (Hudson County Office of County Counsel), attorneys for Respondent.

Record Closed: June 17, 2024

Decided: August 1, 2024

BEFORE: **JULIO C. MOREJON, ALJ:**

STATEMENT OF THE CASE

Appellant, Salvatore Spilletti appeals the decision made by Respondent, Hudson County, Department of Corrections suspending him for ninety-days from employment as an Officer.

PROCEDURAL HISTORY

On February 9, 2023, Hudson County Department of Corrections and Rehabilitation (Department of Corrections) issued a Preliminary Notice of Disciplinary Action (PNDA) to Officer Salvatore Spilletti (Spilletti). The PNDA noted possible disciplinary actions of suspension or removal. The PNDA and Recommendation for Disciplinary Action (RDA), dated January 3rd, 2023, charged Spilletti with the following infractions of the N.J.A.C.:

- (1) 4A:2-2.3(a)(1) Incompetency, inefficiency, or failure to perform duties;
- (2) 4A:2-2.3(a)(2) Insubordination;
- (3) 4A:2-2.3(a)(6) Conduct unbecoming a public employee;
- (4) 4A:2-2.3(a)(7) Neglect of duty; and
- (5) 4A:2-2.3(a)(12) Other sufficient cause.

On April 24, 2023, a Departmental Hearing was held in which Spilletti was represented by counsel. Following testimony, charges were sustained, and Spilletti was suspended for ninety days, as memorialized in the Final Notice of Disciplinary Action (FNDA) dated May 16, 2023. Spilletti appealed his suspension to the Civil Service Commission on June 12, 2023.

The matter was then transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case, pursuant N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, where it was filed on June 12, 2023.

On or about January 8, 2024, Spilletti filed a motion for summary decision. On February 20, 2024, the Department of Corrections filed its opposition to the motion and on or about March 1, 2024, Spilletti filed their reply.

I closed the record on June 17, 2024.

ISSUE PRESENTED

Whether a motion for summary decision for dismissal of charges should be granted in favor of Spilletti, where the Department of Corrections did not conduct an internal affairs investigation as per the Attorney General guidelines?

FACTUAL DISCUSSION AND FINDINGS

After reviewing the parties moving papers, I **FIND** the following **FACTS** herein:

On December 23, 2022, at 2:30pm, the officer in charge sent out a radio transmission for all housing unit officers to conduct a Face-to-Card headcount of the 2-10pm shift. (Spilletti Certification, Exhibit L). In order to conduct this headcount, the officer must physically compare all inmates on the housing unit to their respective floor card photographs to verify that all inmates assigned to the housing unit are accounted for. Id. The officer must call out each inmate's name one by one from the floor cards and compare their photograph for positive identification. Id. These counts are conducted regularly every third day for each shift to ensure that all inmates are maintained and supervised appropriately. Id.

Lieutenant Jay Nejad (Lt. Nejad) was acting in the capacity of the Unit 5 Manager and was responsible for all housing units in Echo Pod, the area that Spilletti was in at the time. Id. At 2:36pm, Lt. Nejad utilized the department's surveillance camera system to check in real-time that all housing unit officers in Echo Pod were conducting the headcount as ordered. Id. Lt. Nejad saw Spilletti sitting at his desk writing in the logbook instead of conducting the headcount as ordered and was not calling out any inmate names. Id.

At 2:41pm, Sergeant John Colorado (Sgt. Colorado), who was assigned as the Echo Pod area supervisor, entered Lt. Nejad's office. Sgt. Colorado was Spilletti's direct supervisor on the floor. Id. Lt. Nejad told Sgt. Colorado that all unit officers were conducting the count except for Spilletti. Id. Sgt. Colorado called Spilletti at 2:42pm in Lt. Nejad's presence and asked Spilletti twice if he had completed the headcount of the inmates. Id. Spilletti responded both times in the affirmative, that he already completed the count. Lt. Nejad then reviewed the closed caption television footage (CCTV) from 2:30pm when the headcount was ordered, to 2:42pm, when Spilletti said he had

completed it. Id. The CCTV revealed that between 2:30pm to 2:42pm, Spilletti had not conducted the headcount Id.

At 3:04pm, Sgt. Colorado reported to Echo 600 South and conducted the headcount with Spilletti present. Id. Entries in the logbook reflect the headcount done with Spilletti and Sgt. Colorado. Prior to the submission of the incident report, Spilletti requested the presence of his PBA Union Representative, Officer Plinio Lopez (Ofc. Lopez), who was present Id. Spilletti wrote in the incident report that "he failed to conduct a proper face to card headcount." The report was dated December 23, 2022, and was attached to the PNDA. Id. Lt. Nejad then memorialized the findings of the investigation in a memo to his superior, Captain Yureko (Captain Yureko), dated December 30, 2022. Id. After review by his superior, Lt. Nejad made a recommendation for major discipline or termination. Id.

On March 8, 2019, the Department of Corrections issued an Order (ADM.25) revising its regulations concerning its Office of Internal Affairs, including the organization and duties and responsibilities therein. The Department of Corrections issued ADM.25, following a series of laws introduced in 2018, that transformed county correction officers into county correctional police officers. N.J.S.A. 40A:14-180.3. (Spilletti Certification, Exhibit C). The Department of Corrections affirmed it has adopted the Attorney General Guidelines concerning Internal Affairs Policy and Procedure that were adopted on August 28, 2020 (2020 IAPP) and updated in November 2022 (2022 IAPP), concerning employee discipline. (Spilletti Certification, Exhibit N, Interrogatory Answer No. 9).

The Department of Corrections further affirms herein that the within matter was not referred to Department of Corrections' Office of Internal Affairs; Lt. Nejad was not a member of the Office of Affairs; Department of Corrections' Office of Internal Affairs did not investigate the within allegations of misconduct against Spilletti; and Department of Corrections' Office of Internal Affairs did not prepare the charges against Spilletti. Id.

LEGAL ANALYSIS AND CONCLUSION

Legal Arguments presented

Spilletti seeks to dismiss this matter in accordance with O'Rourke v. City of Lambertville, 405 N.J. Super. 8 (App. Div. 2008) because the Department of Corrections purposefully disregarded its own Internal Affairs Rules and Regulations as well as those imposed by the Attorney General in the Internal Affairs Policies and Procedures, dated November 2022 ("IAPP 2022"). No Internal Affairs investigation was conducted in this matter. Moreover, despite being required to do so by state law and own regulations, Department of Corrections never issued or served a target letter/internal affairs complaint notification to Spilletti claiming that he committed misconduct, failed to interview witnesses or Spilletti himself and there are no recorded interviews, never issued an Internal Affairs Investigative Report or Summary and Conclusions Report, and never made factual findings, summarized the matter, or indicated the appropriate disposition (Sustained, Unfounded, Exonerated, or Not Sustained) as to each allegation of misconduct by Spilletti.

Spilletti requests that his motion for summary decision be granted dismissing the Final Notice of Disciplinary Action, issued May 16, 2023, vacating any discipline imposed, and ordering back pay, benefits and seniority required by N.J.A.C. 4A:2-2.10 together with an award of counsel fees as required by N.J.A.C. 4A:2-2.12.

The Department of Corrections argues that Spilletti's motion for summary decision should be denied because it has demonstrated that there are material issues of fact in dispute and thus the standards for a motion for summary judgment set forth in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). In support of its opposition to Spilletti's motion, the Department of Corrections argues that the investigation was not biased or tainted for the following reasons: 1) There is unambiguous, independent evidence of Spilletti's misconduct by way of the CCTV, which the Department of Corrections submits is an "exception" to the AG Guidelines and will "speak for itself", along with Spilletti's admission in the incident report as to his misconduct; 2) The Department of Corrections disputes the applicability of the IAPP

(Attorney General Guidelines concerning Internal Affairs Policies and Procedures), as Spilletti's alleged misconduct was a minor complaint; 3) There is a dispute not only as to the misconduct, but also an appeal as to the ninety (90) day sanction imposed at the departmental level.

Standards for summary decision

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id.

This rule is substantially similar to the summary-judgment rule embodied in the New Jersey Court Rules. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in deciding the motion:

[A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The "judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered

insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2.

[Citations omitted.]

In evaluating the merits of the motion, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Judson, 17 N.J. at 75. However, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b).

In the within matter, Spilletti does not dispute the facts that led the Department of Corrections’ to suspend the 90 day suspension. Spilletti makes his motion disputing the Department of Corrections failure to conduct an internal affairs investigation as required by the AG Guidelines. Specifically, Spilletti’s motion concerns an interpretation of the law, in this case the requirement that law enforcement entities abide by the AG Guidelines in conducting internal affairs investigations of serious rule infractions.

Interestingly, the Department of Corrections’ argument that there are “material issues of fact” in its effort to defeat the motion for summary decision, serves to undermine its very own investigation of Spilletti and the resultant penalty of suspension. This failed argument is further undermined by the fact that the Department of Corrections argues that a 90-day suspension is a “minor complaint”, that does not trigger an internal affairs investigation, which is refuted by the Department of Corrections requested 90-day suspension penalty.

Judged against the standards for granting a motion for summary under N.J.A.C. 1:1-12.5(a) decision, I **CONCLUDE** that there is no genuine issue as to any material fact and that the matter is ripe for summary decision.

Attorney General Guidelines

This matter concerns the New Jersey Attorney General's Guidelines (AG Guideline) concerning Internal Affairs Policy and Procedure that were adopted on August 28, 2020 (2020 IAPP) (Certification Spilletti, Exhibit E), and updated in November 2022 (Certification Spilletti, Exhibit H), (2022 IAPP), which remains the current version. IAPP November 2022 directs all law enforcement and prosecuting agencies to implement and comply with the guidelines. The Guidelines cover numerous policies and procedures, but importantly for this case, governs Internal Affairs Investigations and how to conduct allegations of misconduct of serious complaints. (Certification Spilletti, Exhibit H).

Prior to 2018, the AG Guidelines concerning Internal Affairs Investigations did not pertain to corrections facilities. County correctional facilities were not considered "law enforcement agencies" as defined in the New Jersey statutes, thus, the guidelines did not apply the same way. However, in 2018, the scope was changed to include county correctional facilities in the definition of law enforcement agencies. Titles were changed to reflect this shift, such as changing "county correction officer" to "county correctional police officer." N.J.S.A. 40A:14-180.3. Further, N.J.S.A. 2A:154-3 states that county correctional police officers have the power of arrest, as well as giving them power to act as officers for "the detection, apprehension, arrest and conviction of offenders against the law." The 2020 IAPP supersedes all prior versions of the IAPP and applied to all law enforcement agencies.

The AG Guidelines 2022 IAPP states that "[t]he policy applies to all sworn law enforcement employees ..." and that the "the purpose of Internal Affairs Policy & Procedures is to assist the State's law enforcement agencies with investigating and resolving complaints of police misconduct that...or are generated by the supervisors, officers, or employees of a law enforcement agency." (Certification Spilletti, Exhibit H, Section 1.0.1). The AG Guidelines provides that "[t]his policy contains mandates that, at the Attorney General's direction, every law enforcement agency must implement." Id., Section 1.0.7. "The purpose of the internal affairs function is to establish a mechanism for the receipt, investigation, and resolution of officer misconduct complaints. The goal of internal affairs is to ensure that the integrity of the agency is maintained through a system of internal discipline where an objective and impartial investigation and review assure fairness and justice." Id., Section, 4.1.1. "The internal affairs function or officer will investigate alleged misconduct by members

of the agency and review the adjudication of minor complaints handled by supervisors. (Id., Section 4.1.2). Specifically, the 2022 IAP provides that: "All serious complaints shall be forwarded to the internal affairs function. This includes complaints of criminal activity, excessive force, improper or unjust arrest, improper entry, improper or unjustified search, differential treatment, serious rule infractions and repeated minor rule infractions." Id.

The AG Guidelines address investigation and adjudication of serious complaints under section 6.3. It states that all "serious complaints" shall be forwarded to the internal affairs function, and a serious complaint includes criminal activity, excessive force, improper or unjust arrest, improper entry, improper or unjustified search, differential treatment, serious complaints, and repeated minor rule infractions. This section further states that for administrative complaints, such as the matter currently before the OAL, the internal affairs supervisor or law enforcement executive will direct that an internal affairs investigator begin an investigation that is thorough and objective. Specifically, section 6.3.4, provides that:

"the internal affairs supervisor or law enforcement executive will direct that an internal affairs investigator conduct an appropriate investigation. Investigators must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer. Internal affairs investigators, and anyone who may be called upon to do an internal investigation, must be thoroughly familiar with the agency's entire internal affairs policy, including the protection of the subject officer's rights and the procedures for properly investigating internal complaints."

(Id., Section 6.3.4).

The investigator must then interview the complainant, all witnesses and subject officer, review relevant reports and documents, and obtain necessary information and materials as per section 6.3.6, of the AG guidelines, 2022 IAAP. If the complaint is sustained and a determination is made by the law enforcement agency that formal charges should be made, the law enforcement agency will then serve the same upon the employee and the matter will be heard before a hearing officer. The internal affairs procedures are detailed under Section 7 of the AG guidelines, 2022 IAAP.

Department of Corrections' internal affairs rules and regulations contained in ADM.25, provides, in pertinent part, that:

The effectiveness of a law enforcement department is dependent upon public approval and acceptance of police authority. The department must be responsive to the community by providing formal procedures for the processing of complaints from the public regarding individual Officer performance. . . this policy will ensure fairness and due process ...[t]his discipline process shall be used to identify and correct unclear or inappropriate department procedures. In addition, it will highlight organizational conditions that may contribute to any misconduct.

(Spilletti Certification, Exhibit C).

Further, the duties and responsibilities of the Internal Affairs Unit are established and delineated as follows:

- A. The Office of Internal Affairs shall be responsible for the coordination and control of all complaints against department personnel and preparation of charges and specifications against personnel when warranted.
- B. The Office of Internal Affairs shall be responsible for, but not limited to, the following:
 - 1. Investigations and review of all allegations of misconduct by a member(s) of the HCDOC&R; . . .
 - 7. Preparation of appropriate reports and analysis as required in the performance of Office of Internal Affairs functions;

(Certification Spilletti, Exhibit H, page 3

As an example that the Department of Corrections recognized the law and direction of the Attorney General, Spilletti highlights that Responded implemented the 2020 IAPP by establishing regulations consistent with the same. For example, Spilletti points out that the August 2020 IAPP also codified the revisions to sections 9.11.1 and 9.11.2 implemented by AG Directive 2020-5, also known as the "Major Discipline Directive" and required that

agencies publish their first annual Major Discipline summary no later than December 31, 2020. Consistent with the new law, the Department of Corrections did publish its Major Discipline Summaries for 2020, 2021, and 2022 on its website. (Spilletti Certification, Exhibit F).

Most of the investigatory requirements hinge on whether the investigation was "thorough and impartial." Further, it requires that there be a fair and unbiased hearing. This suggests two parts to the analysis: a fair investigation, and a fair hearing. In the current matter, a fair hearing is not at issue, as Spilletti does not contest the same, and instead, challenges if Spilletti was provided a fair investigation in accordance with the AG Guidelines.

I **CONCLUDE** that the AG Guidelines apply to the Department of Corrections. I further **CONCLUDE** that the Department of Corrections adopted the AG Guidelines with its passage of ADM .25, creating the Office of Internal Affairs and its rules and regulations.

The controlling case in this matter is O'Rourke v. City of Lambertville, 405 N.J. Super 8. In O'Rourke, a plaintiff police officer had a PNDA filed against him for conducting unauthorized background investigations using the computer terminal, insubordination, and other related charges. Id. The City's civilian Police Director Bruce Cocuzza ("Cocuzza") undertook an investigation related to the plaintiff's charges, while also being a part of the initial charges against plaintiff. 405 N.J. Super 11. Cocuzza approached a sergeant who was part of the Internal Affairs Unit, but the sergeant did not feel comfortable taking on the investigation since he had known the plaintiff socially for seventeen (17) years. 405 N.J. Super 13. The sergeant suggested that the Prosecutor's Office conduct the investigation, but Cocuzza decided to undertake the investigation himself instead, without the assistance or knowledge of the Internal Affairs Unit or the Prosecutor's Office. Id.

Cocuzza wrote in the investigative report that action would not be taken without written direction from someone else in authority, as well as guidance from the City's Attorney. Id. However, that did not occur, and Cocuzza carried on independently. Id. The trial judge found that the investigation was not in conformity with the AG guidelines and City rules, and it resulted in a deprivation of the plaintiff's due process rights and therefore

reinstated plaintiff. 405 N.J. Super 17. On appeal, the court reasoned that the failure to comply with the guidelines does not rise to a level of denial of constitutional due process rights for the plaintiff. Id. Nonetheless, the court was convinced that the failure to comply with the City's rules warrants affirmance of the trial court's order reinstating the plaintiff due to the tainted investigation. 405 N.J. Super 19.

The appellate division reasoned that per N.J.S.A. 40A:14-181, every law enforcement agency in the state was required to adopt the AG guidelines. Id. Thus, every law enforcement agency must also establish an Internal Affairs Unit and refer all investigations that concerned serious complaints to the unit for investigation by an IAU investigator. Id. The court noted it was undisputed that Cocuzza failed to adhere to the City's rules when he investigated his own allegations regarding plaintiff, despite not being a part of the IAU and not authorized to investigate the matter. 405 N.J. Super 20-21. The court also reasoned that the rules required the investigation to be fair and objective, and here, it was not because of Cocuzza availing himself to the investigation without authorization. Id. Specifically, "Cocuzza could not be expected to perform the kind of objective investigation required by the Attorney General's Guidelines and City Rules." 405 N.J. Super 21. The court reasoned that Cocuzza should have either found another officer to undertake the investigation or asked the Prosecutor to investigate; two options that he declined to take. Id.

The city had argued that because there was a hearing provided by the Council, all the investigative deficiencies were cured by the hearing. However, the court rejected this reasoning because of the lack of fairness and objectivity in the investigation. Further, the Court distinguished Ensslin v. Twp. of No. Bergen, 275 N.J. Super 352, 361 (App. Div. 1994) (holding that procedural irregularities at the departmental level are considered 'cured' by a subsequent plenary hearing at the agency level) because that decision "cannot be read to mean that any irregularity in the disciplinary process, no matter how serious, can be cured by a subsequent evidentiary hearing." Id.

In essence, because Cocuzza undertook this investigation himself while also being the one who accused plaintiff of the misconduct, and neglected to involve any other objective

parties, the investigation was tainted from its inception and undermined the fairness of the whole process. Thus, reinstating plaintiff was the appropriate remedy. Lastly, the court reasoned that “when a law enforcement agency adopts rules pursuant to N.J.S.A. 40A:14-181 to implement the Attorney General’s Guidelines, the agency has an obligation to comply with those rules. Because it failed to do so, and because the deficiencies tainted the disciplinary process, the City’s decision to remove plaintiff from his position cannot stand.” 405 N.J. Super 22.

While O’Rourke is the controlling case in this matter, there are other cases that may provide insight on the issues. In re Griffin, N.J. Super. Unpub. LEXIS 82, 3 (January 18, 2024) addresses an appeal regarding the results of a urinalysis conducted pursuant to Hudson County Department of Corrections policies. The appellant contended that the urine screening failed to comply with the Attorney General’s Law Enforcement Drug Testing Policy, which then deprived her of her due process right to challenge the results of her positive sample. Id. The appellate division rejected appellant’s arguments and affirmed the lower court decision. Appellant only provided one urine sample, whereas the AG policy permitted two samples to be submitted but was not required. Id. at 6. Appellant provided one sample but did not sign a waiver of her option for a second sample, and subsequently the sample tested positive for a cocaine metabolite. Id. Appellant was then terminated, and she appealed based on the drug testing policy not following the AG guidelines which led to a deprivation of her protected property and liberty interest in her continued employment. Id.

The court reiterates the AG guidelines power, stating that “Attorney general directives have the force of law for police entities.” Id. at 17. The court also noted that it was clear that the guidelines should have been in place by the time appellant was drug tested, and it was seemingly not followed. Id. However, the court also reasoned that their failure to require two samples does not necessarily entitle appellant to relief. Id. at 18. The court determined that appellant did not have her due process rights violated, since based on the testimony given, the appellant was fully informed of her option to provide a second sample, and nevertheless refused. In essence, even though the policy should have been followed and was not, the appellant still was given the necessary information to make an informed decision and thus,

no due process rights were violated and the technical deviations from the policy did not render the process fundamentally flawed. . Id.

In the within matter, the Department of Corrections investigation of Spilletti was never referred to the Department of Corrections, Office of Internal Affairs and instead was investigated by Lt. Nejad, who recommended a discipline of suspension or termination of Spilletti. Following the departmental hearing, the Department of Corrections issued Spilletti a ninety (90) day suspension, which is greater than five-days and thus a “major disciplines” discipline. N.J.A.C. 4A:2-2.2. This penalty immediately categorizes Spilletti’s infraction as a serious complaint warranting major discipline and thus subject to the investigatory requirements of the AG Guidelines and Department of Corrections’ regulations under ADM.25.

As per the AG Guidelines, minor complaints typically result in “performance notices, oral reprimands or written reprimands.” (Spilletti Certification, Exhibit H, section 6.2.5). Serious complaints include “complaints of criminal activity, excessive force, improper or unjust arrest, improper entry, improper or unjustified search, differential treatment, serious rule infractions and repeated minor rule infractions.” Id. at section 6.3.1. Further, it states that all serious complaints “shall be forwarded to the internal affairs function.” Id.

I **CONCLUDE** that Spilletti’s conduct as alleged in the FNDA is a serious rule infraction category and comes under the serious rule infraction category of Section 6.3.1. of the AG Guidelines and Department of Corrections’ regulations under ADM.25.

In a civil service jurisdiction, a law enforcement officer gets a *de novo* appeal to the Office of Administrative Law. In a non-civil service jurisdiction, a law enforcement officer gets a *de novo* appeal to the Superior Court of New Jersey. N.J.S.A. 40A:14-150. The general rule is “that procedural irregularities at the departmental level are considered ‘cured’ by a subsequent plenary hearing at the agency level.” Ensslin v. North Bergen Township, 275 N.J. Super. 352, 361 (App. Div. 1994), cert. denied, 142 N.J. 446 (1995) (citing In re Darcy, 114 N.J. Super. 454, 461 (App. Div. 1971)).

Importantly, however, non-compliance with the New Jersey Attorney General Guidelines concerning Internal Affairs is not the equivalent of “procedural irregularities at the departmental level.” If they were, the O’Rourke case would not be governing law. The public policy evidencing non-compliance with the New Jersey Attorney General Guidelines relating to Internal Affairs is more than just “procedural irregularities” are found in the Guidelines themselves. Specifically, the 2022 IAPP declares that:

State and federal courts have emphasized the importance of the internal affairs function for protecting the constitutional rights and civil liberties of the State’s residents. Case law generally requires that law enforcement agencies do three things under the internal affairs function. First, agencies must implement an internal affairs policy that provides for a meaningful and objective investigation of complaints and other evidence of police misconduct. Second, agencies must monitor and track the behavior of police officers for incidents of misconduct. Third, when officers are found to have engaged in misconduct, agencies must correct the behavior. The courts have with increasing frequency issued decisions that set minimum standards of performance for the internal affairs function.

(Spilletti Certification, Exhibit H (2022 IAPP Section 1.0.2) (emphasis added).

The 2022 IAPP further stress the importance of Internal Affairs regulations stating that the “proper administration of internal affairs is a critical priority for the State’s criminal justice system” and that there is a need to incorporate emerging best practices into the State’s internal affairs system, and to ensure that all law enforcement agencies in the State are adhering to the guidelines.” Id. (2022 IAPP Section 1.0.4). Indeed, the Attorney General has stressed the importance of “strict adherence” to the requirements of the IAPP:

It is important for county and municipal law enforcement agencies to recognize that, as they conduct internal affairs investigations, they do so under the general supervision of the Attorney General. The Criminal Justice Act of 1970 designates the Attorney General as the State’s chief law enforcement officer. As the chief law enforcement officer of the State, the Attorney General possesses broad authority

over criminal justice matters in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. N.J.S.A. 52:17B-98. This authority includes the issuance of the IAPP, which carries the force of law. N.J.S.A. 40A:14-181. In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6, 246 N.J. 462 (2021). Subordinate law enforcement agencies, including county and municipal police forces, have a duty to cooperate with the Attorney General to improve the administration of the criminal justice system, including the efficient delivery of police services. For county and municipal law enforcement agencies, cooperation in internal affairs matters begins with strict adherence to the Attorney General's policy requirements.

Id. (2022 IAPP Section 1.0.5) (Emphasis added.)

The Department of Corrections' major argument focuses on the fact that Spilletti's failure to act was caught on CCTV, and because of that, the evidence speaks for itself, and the investigation could not have been tainted. As Spilletti discusses in their *sur reply*, there was no sound on the video, and a video of a failure to act may not always be dispositive. Further, while this may be strong evidence that Spilletti failed to act, Lt. Nejad should not have been the person to make that determination, since he was involved in the matter from the start as a superior to Spilletti. Put plainly, the person accusing Spilletti of the infraction should not also be the person investigating the incident, even if evidence is seemingly objective.

Also, as Spilletti states in their *sur reply*, there is no exception to having CCTV or video evidence in the AG guidelines that would excuse the necessity of an Internal Affairs investigation for a serious complaint. A video recording, without sound, does not automatically convert this investigation into a minor rule infraction, and certainly does not excuse the lack of internal affairs involvement.

The Department of Corrections also argues that Lt. Nejad was not biased due to his involvement, because Sgt. Colorado was actually Spilletti's direct supervisor at the time of the incident, and the ultimate decision of discipline was up to the Captain, who authorized

the PNDA. Because Lt. Nejad was one step removed from Spilletti, the Department of Corrections contends that this does not taint or bias the investigation. Further, the Department of Corrections emphasizes the fact that the infraction was minor, and minor infractions are allowed to be investigated by the officer's superiors.

However, once again, none of these circumstances excuse the fact that there was no internal affairs investigation at all. Because the discipline recommended was termination and clearly beyond a written or oral reprimand, I **CONCLUDE** this is a serious complaint and not a minor rule infraction, and serious complaints necessitate an internal affairs investigation.

Accordingly, I **CONCLUDE** the Department of Corrections will not be able to argue under the Ensslin and in re Darcy line of cases to excuse its failure to conduct an internal affairs investigation of the charges alleged against Spilletti in the FNDA as mandated by the New Jersey Attorney General Guidelines related to Internal Affairs and the Department of Corrections implementation of the same. Neither Lt. Nejad nor Sgt. Colorado were equipped to investigate this matter as a serious complaint and should have referred this to internal affairs. Just as Cocuzza was unauthorized and not equipped to investigate the matter in O'Rourke, Lt. Nejad was not equipped to handle this investigation either, making it 'tainted' from the beginning.

For the reasons stated herein, I **CONCLUDE** that Spilletti's motion for summary decision is granted, as the Department of Corrections did not refer the investigation to the internal affairs unit as per the AG Guidelines.

ORDER

It is hereby **ORDERED** that Spilletti's motion for summary decision is **GRANTED**; the charges contained in the Final Notice of Disciplinary Action, issued May 16, 2023, are **NOT SUSTAINED**; and that the Department of Corrections award Spilletti back pay, benefits and seniority required by N.J.A.C. 4A:2-2.10 together with an award of counsel fees as required by N.J.A.C. 4A:2-2.12.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 1, 2024
DATE

Julio Morejon
JULIO C. MOREJON, ALJ

Date Received at Agency:

August 1, 2024

Date E-Mailed to Parties:

August 1, 2024

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APPENDIX

EXHIBITS

For Appellant

Motion for summary decision, sur reply and certification of counsel with exhibits

For Respondent:

Brief in opposition to the motion for summary decision, certification of with exhibits.