



POLICE DEPARTMENT

DISMISSAL PROBATION
0001 HRS. APRIL 21, 2008 TO
2400 HRS. APRIL 20, 2009

March 31, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Michael McGuire
Tax Registry No. 929410
110 Precinct
Disciplinary Case Nos. 81041/05, 82590/07,
82591/07 & 83029/07

The above-named members of the Department appeared before me on November 16 and December 20, 2007, charged with the following:

Disciplinary Case No. 81041/05

1. Said Police Officer Michael McGuire, assigned to the 110 Precinct, while off duty, at or about 1500 hours, on June 7, 2005, at a location known to this Department, in Suffolk County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said officer did slap an individual known to this Department causing swelling to her right eye.

P.G. 203-10, Page 1 Paragraph 5 – GENERAL REGULATIONS
N.Y.S. Penal Law Section 240.26(1) – HARASSMENT IN THE SECOND
DEGREE

Disciplinary Case No. 82590/07

1. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about June 28, 2006, did fail and neglect to safeguard properly the New York City Police Identification Card issued to said police officer, the loss of which was reported.

P.G. 203-05, Page 2, Paragraph 13 – PERFORMANCE ON DUTY – GENERAL

2. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about August 3, 2006, assigned to begin his tour of duty at 0737 hours, was absent from said assignment until 1120 hours without permission or police necessity.

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P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE ON DUTY –
GENERAL

3. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about and between February 9, 2006 and about August 7, 2006, did fail and neglect to maintain a current and valid New York State driver's license, and to notify said police officer's Commanding Officer that said police officer's license had been suspended.

P.G. 203-03, Page 1, Paragraph 5 – COMPLIANCE WITH ORDERS

4. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about August 24, 2006, assigned to begin his tour of duty at 0737 hours, was absent from said assignment until 1315 hours without permission or police necessity.

P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE ON DUTY -
GENERAL

5. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about August 24, 2006, previously having been instructed by Captain Shaun Roberts, Commanding Officer, Deputy Commissioner – Management and Budget that, if said police officer was reporting late to work, he must contact a supervisor at the Deputy Commissioner – Management and Budget, Investigations Unit, did wrongfully fail and neglect to comply with said instruction.

P.G. 203-03, Page 1, Paragraph 1 – COMPLIANCE WITH ORDERS

6. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about August 24, 2006, having been instructed at about 1055 hours by Lieutenant Sean Mason, Commanding Officer, Deputy Commissioner – Management and Budget, Investigations Unit, to report directly to the Mail and Distribution Unit, did wrongfully fail and neglect to comply with said instruction.

P.G. 203-03, Page 1, Paragraph 1 – COMPLIANCE WITH ORDERS

Disciplinary Case No. 82591/07

1. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about April 11, 2006, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said police officer, previously having been notified for an official court appearance on April 11, 2006, did wrongfully request an emergency day off by telephoning a civilian, and not a uniformed supervisor, to request said emergency day off, and without informing said supervisor about said court notification.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Michael McGuire, while assigned to the Quartermaster Section, on or about May 8, 2006, assigned to perform a tour of duty from 0705 hours through 1540 hours, was absent from said assignment without permission or police necessity.

P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE ON DUTY –
GENERAL

Disciplinary Case No. 83029/07

1. Said Police Officer Michael McGuire, assigned to the 110 Precinct, on or about October 27, 2006, assigned to begin his tour of duty at 0705 hours, was absent from said assignment until 0810 hours without permission or police necessity.

P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE ON DUTY –
GENERAL REGULATIONS

2. Said Police Officer Michael McGuire, assigned to the 110 Precinct, on or about November 2, 2006, assigned to begin his tour of duty at 0705 hours, was absent from said assignment until 0730 hours without permission or police necessity. (As amended)

P.G. 203-05, Page 1, Paragraphs 1 & 2 – PERFORMANCE ON DUTY –
GENERAL REGULATIONS

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by Stephen Worth, Esq.

The Respondent, through his counsel, entered a plea of Guilty to Disciplinary Case Nos. 82590/07 and 83029/07 and to Specification No. 2 of Disciplinary Case No. 82591/07. He entered a plea of Not Guilty to Disciplinary Case No. 81041/05 and to Specification No. 1 of Disciplinary Case No. 82591/07. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 81041/05

The Respondent is found Guilty as charged.

Disciplinary Case No. 82590/07

The Respondent, having Pleaded Guilty, is found Guilty as charged.

Disciplinary Case No. 82591/07

The Respondent is found Guilty of Specification No. 1.

The Respondent, having Pleaded Guilty, is found Guilty of Specification No. 2.

Disciplinary Case No. 83029/07

The Respondent, having Pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer William Tucker, Sergeant Todd Barone, Sergeant Stephen Dreyer, Supervisor of Stock Workers Richard Lee, and Lieutenant Joseph Bevilacqua as witnesses.

Police Officer William Tucker

Tucker is a 21-year member of the Suffolk County Police Department (SCPD). He testified that at 3:12 p.m. on June 7, 2005, he responded to a 911 [REDACTED] call involving the Respondent and his [REDACTED] at [REDACTED] in [REDACTED]. Upon his arrival at the scene, Tucker was met by [REDACTED] and another woman [subsequently identified as [REDACTED]]. Tucker arrested the Respondent for harassment in the second degree. According to Tucker the Respondent denied striking [REDACTED]. Tucker could not remember if he observed any marks on [REDACTED]'s face that day.

[Department's Exhibit (DX) 1 is a copy of a SCPD Civilian Arrest Form. Tucker explained that this form is used for violations when a civilian wishes to press charges or have someone arrested. He further explained that the form was necessary in the Respondent's case because the alleged violation was not observed by police personnel. The form consists of [REDACTED]'s signature under the statement, "I . . . have this date arrested one Michael McGuire . . . upon my charge of harassment in the second degree and demand that Officer Tucker of the [SCPD] take said arrestee into custody." DX 1 also contains a copy of the Complaint Report that was prepared for the incident, the resulting Arrest Report, and a Domestic Incident Report (DIR). On the DIR, Tucker prepared a narrative of the incident, which reads, "Complainant reports that she went to pick up their son and upon arrival an argument ensued and she was subsequently slapped during the scuffle. Complainant has swollen right eye." DX 1 also contains copies of two photographs of [REDACTED] taken on the day of the incident. Tucker testified on voir dire that the copies of the photographs are of poor quality, do not accurately depict how [REDACTED] appeared that day, and do not show any swelling, bruising, or redness.]

On cross-examination, Tucker testified that a [REDACTED] child was present at the scene. According to Tucker, the Respondent was calm and cooperative. Tucker explained that the Respondent's arrest was based on [REDACTED]'s allegation, and the Respondent's version of the incident was irrelevant. [REDACTED] did not receive medical attention at the scene.

On redirect examination, Tucker testified that one of the first things [REDACTED] told him was that the Respondent is a member of the service.

On recross-examination, Tucker stated that the Respondent was not armed at the time of the incident.

Sergeant Todd Barone

Barone, a 15-year member of the SCPD, was Tucker's patrol supervisor on June 7, 2005. He testified that he responded to [REDACTED] that day because SCPD policy requires a supervisor to respond to any job involving physical violence. Upon his arrival at the house, Barone interviewed [REDACTED]. [REDACTED] told Barone that she had gone to the house to retrieve her child, a dispute ensued, and the Respondent struck her in the side of the face. According to Barone, the side of [REDACTED]'s right eye was red and had minor swelling. It was Barone who took photographs of [REDACTED] that day. Barone explained that SCPD policy dictates that photographs be taken whenever any type of physical injury occurs during a [REDACTED] dispute. He stated that because the photocopies of the photographs (that were previously admitted into evidence as part of DX 1) are black and white, they do not depict the redness and swelling that he observed on [REDACTED]'s face. Barone spoke with the Respondent at the scene, and the Respondent informed Barone that he kept his firearm at work because of a prior incident. Barone could not recall exactly what else the Respondent told him. As far as Barone recalled, the Respondent did not have any apparent physical injury. The Respondent was placed under arrest without incident.

On cross-examination, Barone testified that he did not witness the dispute between the Respondent and [REDACTED] and it was possible that [REDACTED]'s description of the dispute was untruthful. Barone stated that he did not know if the injury to

██████'s face actually occurred in the manner that she claimed. The Respondent was calm and cooperative. The criminal case against the Respondent was ultimately dismissed.

Sergeant Stephen Dreyer

Dreyer, a ten-and-a-half-year member of the Department currently assigned to the Office of Equal Employment Opportunity, was formerly assigned to Patrol Borough Queens North Investigations (PBQNI). While at PBQNI, he investigated the ██████ incident that took place between the Respondent and ██████ on June 7, 2005. As part of his investigation, Dreyer conducted a telephone interview with ██████ on June 24, 2005. [DX 2 and 2A are copies of the tape and transcript of ██████'s interview. In the interview, ██████ stated that when she went to the Respondent's house on June 7, 2005 to pick up her son, the Respondent told her to leave. ██████ would not leave, and the Respondent became aggressive and started to curse at her. Their son was seated in the Respondent's car, and ██████ reached into the car to get him. At that point, according to ██████, the Respondent hit her twice. ██████ stated that although she did not see the Respondent's hands, it felt like the Respondent used a closed fist. She was wearing sunglasses at the time, and the impact of the Respondent's strikes forced the glasses off of her face. According to ██████ she sustained a black eye as a result of the incident. She did not go to the hospital or see a doctor about it.]

On June 27, 2005, Dreyer conducted a telephone interview with ██████ a witness to the incident. [DX 3 and 3A are copies of the tape and transcript of ██████ interview. ██████, the Respondent's downstairs neighbor, stated in the interview that she was

standing at the end of her driveway talking to a neighbor while [REDACTED] and the Respondent argued. [REDACTED] back was turned to the argument, but the neighbor with whom [REDACTED] was talking saw [REDACTED] shove the Respondent after the Respondent blocked [REDACTED] from reaching their son. At that point, as [REDACTED] started to walk up the driveway, she observed the Respondent smack [REDACTED] in the head several times. Because the child was in [REDACTED]'s arms at the time, [REDACTED] could not defend herself against the Respondent's strikes. When [REDACTED] yelled, the altercation ended.]

In October 2006, Dreyer conducted an Official Department Interview with the Respondent. In the interview, the Respondent stated that he did not assault or hit [REDACTED] in any way on June 7, 2005. Later in the investigation, Dreyer attempted to contact [REDACTED] with follow-up questions. Dreyer stated that he made several telephone calls to [REDACTED] but she called him back only once.

On cross-examination, Dreyer testified that he did not make any attempts within the last week or so to get either [REDACTED] or [REDACTED] to appear at trial. He has never subpoenaed either of them and does not know where they live.

Supervisor of Stock Workers Richard Lee

Lee, a 19-and-a-half-year member of the Department, is currently assigned to the Quartermaster Section, where he supervises approximately ten members of the service and reports directly to Lieutenant Joseph Bevilacqua. The Respondent, while on modified duty status, was assigned to Lee's command. Lee testified that he did not have the authority to authorize a day off for the Respondent and he did not have a specific recollection of speaking with the Respondent on the telephone on April 11, 2006.

According to Lee, had the Respondent called him on that day to ask for an emergency day off, he (Lee) would have passed the Respondent's request on to Bevilacqua. Had Bevilacqua then approved the day off, Lee would have prepared a Leave of Absence Report (UF-28) on the Respondent's behalf. Lee testified that he recalls neither filling out a UF-28 for the Respondent nor talking with the Respondent about taking a day off on a date that he (the Respondent) was scheduled to appear in traffic court.

On cross-examination, Lee testified that during the course of four years he handled telephone calls from command members asking for emergency days off approximately ten times.

On redirect examination, Lee testified that in addition to preparing a UF-28, he is required to change the roll call when an emergency day off is approved over the telephone. He stated that he could not recall changing the roll call on April 11, 2006.

Lieutenant Joseph Bevilacqua

Bevilacqua, a 14-and-a-half-year member of the Department, is currently assigned to the Quartermaster Section. The Respondent, who was also assigned to the Quartermaster Section in April 2006, reported at that time to Bevilacqua and a Sergeant Gary Fazah. Bevilacqua testified that he did not know if the Respondent spoke with Lee on April 11, 2006, and he had no recollection of speaking to Lee about the Respondent taking an emergency day off. Bevilacqua did know, however, that the Respondent had previously been notified by Fazah to appear in traffic court on that day.

Bevilacqua testified that because the Respondent had a court date, the Respondent's request for a day off would have been disapproved "unless it was serious

circumstances.” He explained that when he denies requests for emergency days off, he still prepares a UF-28 for the request but checks the “disapproved” box on the back of the form. According to Bevilacqua, a UF-28 was not prepared for the Respondent for April 11, 2006, and the Respondent was subsequently deemed absent without leave (AWOL) for that day. He explained that prior to deeming a member of the service AWOL, he checks to make sure that no other supervisor prepared a UF-28 for the absent member and he attempts to reach the absent member on the telephone.

On cross-examination, Bevilacqua testified that although he has no independent recollection of April 2006, he knows that he would have attempted to call the Respondent at home before deeming the Respondent AWOL. Bevilacqua has dealt with an AWOL member of his command on just a few occasions. Although Bevilacqua did not personally generate any paperwork based on the Respondent being AWOL on April 11, 2006, the Investigations Unit subsequently conducted an Official Department Interview with the Respondent and generated paperwork about the incident.

On redirect examination, Bevilacqua stated that he recalls dealing with the Respondent being AWOL on two occasions. He reiterated that he does not have an independent recollection of April 11, 2006, and he explained that his testimony on the Respondent being AWOL on that specific date is based on the paperwork that the Investigations Unit later produced.

On recross-examination, Bevilacqua testified that his testimony is based on paperwork that the Investigations Unit created regarding the Respondent’s Official Department Interview. The interview was held on July 28, 2006. Bevilacqua was not present at the interview. After being notified to appear at trial, Bevilacqua did not re-

check command records to see if a UF-28 was ever prepared for the Respondent for April 11, 2006.

The Respondent's Case

The Respondent testified in his own behalf.

Respondent Police Officer Michael McGuire

The Respondent, a six-and-a-half-year member of the Department, is currently assigned to the Queens District Attorney Squad. He testified that between February 9, 2006 and August 2006, he was dealing with the harassment case that [REDACTED] initiated against him. During the same time period, the Respondent was also going through a [REDACTED] with [REDACTED] and a [REDACTED] over their son, who was four or five years old at the time. The Respondent ultimately won full custody of the child, and [REDACTED] now lives in California. The Respondent explained that his [REDACTED] proceedings affected his ability to fully perform his police duties on many occasions. He testified that the [REDACTED] was the reason he committed the offenses to which he has pleaded guilty.

The Respondent testified that he remembers April 11, 2006. He stated that even though he was scheduled for court that day, he called into his command for an emergency day off for personal reasons. He explained that he called the command when it opened at 6:00 a.m. and spoke to Lee. He asked Lee to transfer his call to either Fazah or Bevilacqua. According to the Respondent, Lee informed him that Fazah was not at work yet and that Bevilacqua was busy. The Respondent proceeded to tell Lee that he was calling to request the day off. Lee told the Respondent to hold while he (Lee) spoke with

Bevilacqua. When Lee returned to the telephone, he told the Respondent, "Okay, give me your information." The Respondent proceeded to give Lee his tax number, social security number, and shield number. The Respondent believed that Lee was going to use this information to prepare a UF-28. The Respondent testified that he was aware of other members of the service who used this same procedure for requesting an emergency day off over the telephone, and he himself had previously used the procedure while assigned to the Quartermaster Section. The Respondent never spoke with Bevilacqua on April 11, 2006, but he believed that Lee had spoken to Bevilacqua about the matter. He stated that he would have reported to work that day had he believed his request for a day off was not approved.

The Respondent testified that he was already [REDACTED] from [REDACTED] on June 7, 2005. Although the Respondent had a visitation with their son that day, [REDACTED] arrived at the Respondent's house at approximately 3:30 p.m. and told the Respondent that she was taking their son with her. The Respondent, who was in the driveway at the time, reminded [REDACTED] that it was his visitation day. [REDACTED] became very irritated, and the Respondent asked her several times to leave the property. [REDACTED] did not comply. The Respondent had just placed the child in his car, and [REDACTED] attempted to remove the child from the vehicle. The Respondent stood in front of the car door in an effort to block [REDACTED] and [REDACTED] attempted to push past him. At one point, the child stepped out of the car. [REDACTED] proceeded to pick up the child, place him in her car, drive to the corner, and stop. The Respondent testified that he realized at that point that [REDACTED] was making a [REDACTED] incident complaint to the police. He explained that [REDACTED] had made between five and ten [REDACTED] incident complaints on previous

occasions. None of the previous complaints resulted in the Respondent's arrest. The Respondent testified that at no point during the June 7, 2005 incident did he slap, strike, or threaten [REDACTED] in any way. [REDACTED] did push into the Respondent as she tried to get her son out of the car, but the Respondent did not at any point intentionally touch her. Based on [REDACTED]'s complaint that day, the Respondent was arrested. The Respondent did not resist. According to the Respondent, [REDACTED] appeared in court once to say that she did not wish to proceed with the case against him. [REDACTED] failed to appear at subsequent court dates. The criminal case against the Respondent was ultimately dismissed.

On cross-examination, the Respondent testified that while he was going through his [REDACTED] and [REDACTED] with [REDACTED], he discussed his personal problems with his supervisors many times. He was late to work on certain occasions because he suffered with [REDACTED]. The Respondent stated that when he spoke with supervisors about being late due to personal problems, he was told that he needed to be at work on time. He was also told that he needed to call a supervisor at the Deputy Commissioner of Management and Budget (DCMB) if he was going to be late again. The Respondent testified that when he spoke with a Captain Roberts of DCMB about his [REDACTED] issues, Roberts replied that [REDACTED] issues are not an excuse for being late to work. Roberts did, however, speak to the Respondent about various support groups that were available. The Respondent was sent to counseling services. According to the Respondent, because the Quartermaster Section is open only during the day tour, his assignment to that command made his [REDACTED] issues more difficult. He explained that when [REDACTED] did not pick up their son on time in the morning, he could not leave for work on time. The

Respondent testified that his supervisors did not attempt to accommodate him. The Respondent has since rectified his personal issues and is doing better.

The Respondent testified that his driver's license was suspended because the legal fees for his criminal case cost him \$15,000, and he did not have enough money to pay for car insurance. According to the Respondent, he found out that his license was suspended on the same day that the Department found out about it. The Respondent was ordered to fix the situation. When the Respondent called in to his command the next day to say that he was running late, he was instructed to report to the Mail Distribution Unit. The Respondent testified at first that he was instructed to report "as quick as possible," but he then conceded that he could not recall the exact words that his supervisor used on the telephone. In any case, before reporting to the Mail Distribution Unit, the Respondent went to take care of his suspended license. The Respondent explained that he figured fixing his license and then driving to work would get him to work faster than taking the train into work.

The Respondent testified that he learned when he was in the Police Academy that only a uniformed supervisor could approve a request for a day off. He stated he was certain that when he spoke with Lee on the telephone on April 11, 2006, Lee told him that Bevilacqua had approved the day off. The Respondent never prepared a UF-28 for that day.

The Respondent testified that [REDACTED] was lying when she told the police that he struck her in the face on June 7, 2005. He stated that his neighbor, [REDACTED] who was standing at her door at the time, would not have been able to see the dispute taking place in the driveway. He explained that [REDACTED] was standing approximately 45 feet away and

on the opposite side of the car from where he and [REDACTED] were positioned. [REDACTED] had a cordial relationship with both the Respondent and [REDACTED]

FINDINGS AND ANALYSIS

Disciplinary Case No. 81041/05

The Respondent stands charged with engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department in that he slapped his [REDACTED] [REDACTED] causing swelling to her right eye. The Respondent and [REDACTED] clearly had an ongoing hostile relationship. [REDACTED] stated in her interview with Dreyer that on June 7, 2005 the Respondent hit her after she refused to leave his property. [REDACTED] did not appear to testify at trial, which means that the Respondent's attorney did not have an opportunity to question her on cross-examination. Hearsay, however, is admissible in administrative hearings, and a disciplinary finding may rest upon hearsay alone. People Ex. Rel Vega v. Smith, 66 N.Y.2d 130 (1982).

[REDACTED]'s interview statements were consistent with those made by [REDACTED]. Like [REDACTED], [REDACTED] did not appear at trial. Unlike [REDACTED] though, no evidence was produced to show that [REDACTED] had any sort of motive to lie about the Respondent's actions. Even the Respondent testified that [REDACTED] had a cordial relationship with both him and [REDACTED]. This fact gives credibility to [REDACTED] statement that she saw the Respondent smack [REDACTED] in the head several times.

[REDACTED]'s claim against the Respondent was also corroborated by Tucker and Barone, the two SCPD officers who responded to the scene. Although Tucker testified at trial that he could not remember if he observed marks on [REDACTED]'s face, he noted on

the DIR on the day of the incident that [REDACTED] had a swollen right eye. Similarly, Barone testified that the photocopies of the photographs that were admitted into evidence do not depict the redness and swelling that he observed on [REDACTED]'s face that day. Tucker and Barone were, of course, not present during the Respondent's dispute with [REDACTED]. Nevertheless, the testimony they provided, along with [REDACTED]'s interview statements, all combine to lend credibility to [REDACTED]'s hearsay account of the incident.

Finally, it is important to note that accepting [REDACTED]'s version of the incident as accurate is not inconsistent with the fact that the criminal case against the Respondent was ultimately dismissed. The Respondent's testimony indicates that the criminal case was not dismissed on its merits, but rather because (as in this trial) [REDACTED] did not appear in court.

Accordingly, the Respondent is found Guilty as charged.

Disciplinary Case No. 82591/07

Specification No. 1

The Respondent stands charged with engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department in that he wrongfully requested an emergency day off by telephoning a civilian, and not a uniformed, supervisor and not informing the supervisor about his court notification. The Respondent had previously been notified to appear in traffic court on April 11, 2006. The Respondent testified that when he called the command that day and asked to speak with a uniformed supervisor, Lee informed him that no uniformed supervisor was available. The Respondent stated that when he told Lee that he was calling for the day off, Lee told him to hold while he (Lee) spoke with Bevilacqua. According to the Respondent, when Lee returned to the

telephone, Lee asked for his tax number, social security number, and shield number. The Respondent believed at that point that Bevilacqua had approved his request for the day off and that Lee was going to prepare a UF-28 on his behalf.

In contrast to the Respondent's testimony, Bevilacqua testified that he had no recollection of speaking with Lee on April 11, 2006 about the Respondent taking an emergency day off. Similarly, Lee testified that he had no recollection of speaking with the Respondent on April 11, 2006 or of ever talking with the Respondent about taking a day off on a date that he (the Respondent) was scheduled to appear in court. Lee explained that had the Respondent called him on that day to ask for an emergency day off and had Bevilacqua approved the Respondent's request, he (Lee) would have prepared a UF-28 for the Respondent.

If the Respondent had not been scheduled for traffic court on April 11, 2006, this Court would probably assume that the Respondent simply remembers that day more clearly than either Lee or Bevilacqua. After all, it is entirely understandable that Lee and Bevilacqua might forget an unremarkable administrative decision made over a year and a half earlier. The fact that the Respondent was in fact scheduled for traffic court, however, makes the Respondent's version of the incident less credible. Bevilacqua testified that he knew about the Respondent's court notification, and he went on to explain that for that reason the Respondent's request for a day off would have been disapproved "unless it was serious circumstances." In other words, for the Respondent to get the day off, he would have needed to provide a compelling justification. The Respondent did not claim that he provided any sort of justification when he spoke with Lee on the telephone. Moreover, if the Respondent had provided a compelling

justification, Lee and/or Belivacqua would have likely remembered the incident. Finally, whether the Respondent's request for the day off had been approved or disapproved, a UF-28 for the request would have been prepared and filed. There is not, however, any indication that a UF-28 was ever actually prepared for the Respondent on that day.

Accordingly, the Respondent's version of the incident is inconsistent with the evidence, and he is found Guilty of this Specification.

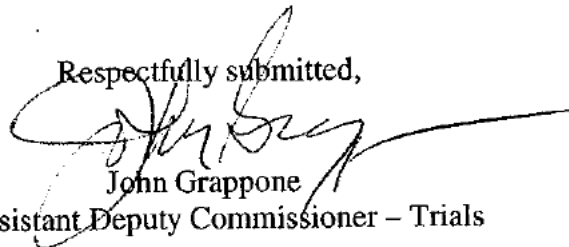
PENALTY

The Respondent has Pleaded Guilty to failing to safeguard his Department Identification Card; failing to maintain a current and valid driver's license and to notify his Commanding Officer that his license had been suspended; neglecting to comply with instruction to contact a supervisor at DCMB if he was reporting late to work; and neglecting to comply with instruction to report directly to the Mail and Distribution Unit. In addition, the Respondent has Pleaded Guilty to being absent from his assignment on five occasions. On one of these occasions, the Respondent was absent for an entire tour of duty. On the other four occasions, he reported late to work, missing a period of approximately 11 hours in total. The Respondent testified that he committed these offenses because he was going through an acrimonious [REDACTED] and [REDACTED] at the time. He was also suffering with [REDACTED] While the Respondent was certainly in a sympathetic situation, problems at home cannot excuse a uniformed member of the service in a paramilitary organization for repeatedly failing to properly perform his assigned duties over the course of a nine-month period.

In addition to the charges to which he has Pleaded Guilty, the Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency, and discipline of the Department in that he slapped his e [REDACTED] causing swelling to her eye; and he requested an emergency day off by telephoning a civilian, and not a uniformed supervisor and did not inform the supervisor about a court notification.

Accordingly, based on the number and nature of the Respondent's various acts of misconduct it is recommended that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further hearings. In addition, it is recommended that the Respondent forfeit 14 vacation days and the 16 pre-trial suspension days that he has already served.

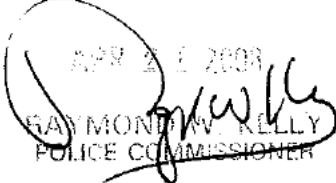
Respectfully submitted,



John Grappone

Assistant Deputy Commissioner - Trials

APPROVED



APR 21 2008
RAYMOND W. KELLY
POLICE COMMISSIONER