OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 14, 2013

CHAN

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Fizgeralda Sanchez**
Tax Registry No. 944167
30 Precinct
Disciplinary Case No. 2010-3157

The above named member of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on May 21, 2013 and June 12, 2013, and was charged with the following:

**DISCIPLINARY CASE NO. 2010-3157**

1. Said Police Officer Fizgeralda Sanchez, assigned to the 104th Precinct, on or about October 9, 2009, engaged in conduct prejudicial to the good order efficiency and discipline of the Department, to wit: said Officer took a summons out of a summons book belonging to Police Officer Rhonda Eastman without permission or authority and issued a summons to Deputy Inspector Keith Green's private vehicle.
**P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS**

2. Said Police Officer Fizgeralda Sanchez, assigned to the 104th Precinct, on or about December 2, 2010, engaged in conduct prejudicial to the good order efficiency and discipline of the Department, to wit: said Officer provided inaccurate and misleading statements during an Official Department Interview in that she repeatedly denied issuing the summons mentioned in Specification #1, when in fact a handwriting analysis came back as conclusive that she did in fact issue the summons.
**P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS**

3. Said Police Officer Fizgeralda Sanchez, assigned to the 104th Precinct, on or about and between October 25, 2009 and January 1, 2010, while on duty, on approximately twenty (20) occasions, failed to make entries in her activity log regarding summonses she issued.
**P.G. 212-08, Page 1, Paragraph 5 ACTIVITY LOGS**

**POLICE OFFICER FIZGERALDA SANCHEZ**
**DISCIPLINARY CASE NO. 2010-3157**

In a Memorandum dated October 22, 2013, Assistant Deputy Commissioner Robert W. Vinal found Police Officer Fizgeralda Sanchez Not Guilty of Specification Nos. 1 and 2, and Guilty of Specification No. 3 in Disciplinary Case No. 2010 3157. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

Police Officer Sanchez's misconduct in this matter warrants the forfeiture of thirty (30) vacation days, as a disciplinary penalty.

Raymond W. Kelly
Police Commissioner

The City of New York

POLICE DEPARTMENT

October 22, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Fizgeralda Sanchez
Tax Registry No. 944167
30 Precinct
Disciplinary Case No. 2010-3157

The above-named member of the Department appeared before me on May 21, 2013 and June 12, 2013, charged with the following:

1. Said Police Officer Fizgeralda Sanchez, assigned to the 104th Precinct, on or about October 9, 2009, engaged in conduct prejudicial to the good order efficiency and discipline of the Department, to wit: said Officer took a summons out of a summons book belonging to Police Officer Rhonda Eastman without permission or authority and issued a summons to Deputy Inspector [redacted] private vehicle.

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

2. Said Police Officer Fizgeralda Sanchez, assigned to the 104th Precinct, on or about December 2, 2010, engaged in conduct prejudicial to the good order efficiency and discipline of the Department, to wit: said Officer provided inaccurate and misleading statements during an Official Department Interview in that she repeatedly denied issuing the summons mentioned in Specification #1, when in fact a handwriting analysis came back as conclusive that she did in fact issue the summons.

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

3. Said Police Officer Fizgeralda Sanchez, assigned to the 104th Precinct, on or about and between October 25, 2009 and January 1, 2010, while on duty on approximately twenty (20) occasions, failed to make entries in her activity log regarding summons she issued.

P.G. 212-08, Page 1, Paragraph 5 ACTIVITY LOGS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through her counsel, entered a plea of Not Guilty to Specification Nos. 1 and 2. Respondent entered a plea of Guilty to Specification No. 3 and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

Respondent is found Not Guilty of Specification Nos. 1 and 2. Respondent, having pleaded Guilty, is found Guilty of Specification No. 3.

## SUMMARY OF EVIDENCE PRESENTED

### Introduction

It is not disputed that on October 9, 2009, Respondent was on duty, assigned to the 104 Precinct, performing patrol duties, in uniform, in a marked Radio Motor Patrol car (RMP) partnered with Police Officer Rhonda Eastman.

### The Department's Case

The Department called Lieutenant Ryan Dodds, Detective Joseph DeMartini, and Police Officer Rhonda Eastman as witnesses.

Lieutenant Ryan Dodds

Dodds, a 17-year member of the Department who has been assigned to the 104 Precinct since 2007 and who serves as the command's Integrity Control Officer (ICO), recalled that in January, 2010, the commanding officer of the 104 Precinct, Deputy Inspector [redacted], asked Dodds to come into his office. [redacted] pointed at his computer screen where a parking summons was displayed. The information on the parking summons indicated that it had been issued by Police Officer Rhonda Eastman on October 9, 2009, to Green's personal car, a Mercedes, for illegally parking at 80th Street and Myrtle Avenue, Queens. [Department's Exhibit (DX) 1 is a copy of the summons that was issued to [redacted]'s Mercedes on October 9, 2009]

[redacted] told Dodds that he had not found this summons on the windshield of his Mercedes and that he first became aware of its existence when he learned that the Parking Violations Bureau was increasing the fine because he had failed to respond to the summons. [redacted] also told Dodds that he had never parked his Mercedes at 80th Street and Myrtle Avenue. Since Dodds knew that a restaurant called "Juice N Stuff" was located at the corner of 80th Street and Myrtle Avenue, he asked [redacted] if he had ever eaten there. [redacted] said that he had not. Dodds asked Green if there were any disciplinary issues regarding Eastman. [redacted] told Dodds that there were no issues between him and Eastman that he was aware of. When Dodds asked [redacted] if he was at work on October 9, 2009, [redacted] confirmed that he was and that he had not lent his Mercedes to anyone that day. [redacted] asked Dodds to investigate and get back to him.

A few days later, Dodds called Eastman into his office and showed her a photocopy of the summons (DX 1). Eastman told Dodds that she had no recollection of

having issued the summons and that although it was her signature at the bottom of the summons none of the other handwriting on the summons was hers. Dodds directed Eastman to provide him with the entire packet of summonses that had included DX 1. Dodds explained that there are 20 summonses in each packet and that the officer who is issued a packet is required to retain a copy of each summons the officer serves.

When Dodds examined Eastman's 20 summons packet, there were only 19 summons copies in it. The summons issued to [redacted]'s Mercedes was the only summons missing from Eastman's packet. Dodds checked Eastman's Activity Log entries for October 9, 2009 and found no entry that she had issued a summons to a Mercedes or to any vehicle parked at 80th Street and Myrtle Avenue.

Dodds testified that he asked Sergeant Kevin Scanlon, Eastman's supervisor, whether Eastman had any disciplinary problems. Scanlon said that she did not and he described Eastman as a good worker. Scanlon told Dodds that Eastman had recently had a falling out with Respondent, with whom she had previously been partnered.

Dodds directed Respondent to provide him with copies of her Activity Log entries covering October 9, 2009 as well as several days before that date and several days after that date [DX 2 is an 11-page copy of Respondent's Activity Log entries]. When Dodds examined Respondent's Activity Log entries for October 9, 2009, he found no entry that either she or Eastman had issued a summons to a Mercedes or to any vehicle parked at 80th Street and Myrtle Avenue that day.

Dodds testified that although he is not a handwriting expert, he compared the handwriting in Respondent's and Eastman's Activity Log entries with the handwriting on the summons (DX 1) to see if he could observe any obvious similarities in the

handwriting. Dodds noticed that the 'M' in Myrtle Avenue was not capitalized on the summons and this usage of a lowercase 'm' was consistent with an instance of the word 'myrtle' that was contained in an entry in Respondent's Activity Log. It appeared to Dodds that they matched.

Dodds also noticed that the color of the car that was written on the summons had been written over and appeared to be "gray." Dodds noticed that the letter formation of the letter 'g' appeared to be unique. Dodds compared the 'g' on the summons with the 'g' written on the cover of Respondent's Activity Log. It appeared to Dodds that they matched. Based on these comparisons, Dodds suspected that Respondent may have written the words contained in the body of the summons.

Dodds directed Eastman to provide him with copies of her Activity Log entries covering October 9, 2009 as well as several days before that date and several days after that date [DX 3 is a four-page copy of Eastman's Activity Log entries]. When Dodds examined Eastman's Activity Log entries for October 9, 2009, he found no entry that either she or Respondent had issued a summons to a Mercedes or to any vehicle parked at 80th Street and Myrtle Avenue that day. Dodds also compared Eastman's Activity Log entries (DX 3) to the writing on the summons. It appeared to Dodds that the handwriting on the summons, with the exception of the signature on the bottom of the summons, did not match Eastman's handwriting.

Dodds reported his findings to [redacted] and they determined that the Internal Affairs Bureau (IAB) should be notified. Dodds provided IAB with a synopsis of his investigation and he also gave IAB DX 1, 2 and 3.

On cross-examination, Dodds testified that he had heard from another member of service that [redacted] had retired and was now living in [redacted] Dodds recalled that [redacted] had retrieved the summons (DX 1) by accessing the New York City Department of Finance website, which anyone can do by entering a vehicle registration number. Dodds agreed that he did not ascertain [redacted]'s movements on the day the summons was issued. Dodds agreed that he had accepted [redacted]'s "word for it on a lot of things." Dodds also did not check the movement log at the command. Dodds confirmed that [redacted] was not required to maintain an Activity Log. Dodds did not ask [redacted] whether he maintained a personal log of his movements and activities.

Dodds agreed that [redacted]'s duties required him to leave the precinct sometimes to go to meetings or to go to One Police Plaza. Dodds confirmed that COs commonly sign out of the command log when they leave the precinct. Dodds testified that [redacted] did not work a regular day tour of duty. Rather, [redacted] worked "when he needed to." Dodds testified that he had no reason to doubt [redacted]'s assertion that he had never been to 80th Street and Myrtle Avenue. Dodds denied that he was trying to help [redacted] out when he mentioned the "Juice N Stuff" restaurant to [redacted]. Rather, he was "trying to rule it out."

Dodds knew that [redacted] drove three vehicles: an unmarked Department Jeep, his personal Mercedes sedan, and sometimes a motorcycle. Dodds confirmed that the 104 Precinct does not have a parking lot and that [redacted] had an assigned parking spot on the corner in front of the station house. Dodds agreed that he had accepted at face value [redacted]'s claim that he had not lent his Mercedes to anyone on October 9, 2009. Dodds testified that he had heard that Green had a relationship with Police Officer [redacted], who was assigned to the 104 Precinct, that [redacted] had left the Department,

moved to [redacted], and that she is now engaged to [redacted] Dodds did not know whether [redacted] was in a relationship with [redacted] while they were both assigned to the 104 Precinct, whether [redacted] ever borrowed [redacted]'s Mercedes, or whether [redacted] and [redacted] ever commuted to work together.

Dodds agreed that if Respondent had wanted to hide the fact that she had written the words contained in the body of the summons, she could have tried to disguise her handwriting on the summons and that if she knew that she was improperly issuing a summons to her CO's private car it is likely that she would have tried to disguise her handwriting. Dodds agreed that if [redacted]'s personal vehicle had been illegally parked it would have been appropriate to issue a summons.

Dodds also agreed that it was one of Respondent's and Eastman's duties to write summonses for illegally parked vehicles and that they had an obligation to do so when they discovered an illegally parked vehicle. Dodds further agreed that if Eastman knew that a summons she had pre-signed was being issued to a car that she had personally observed illegally parked, and she had allowed her partner to fill out the information on the pre-signed summons for her, and she had read all of the information on that summons, then "that would be fine." Dodds confirmed that Eastman had told him that she "pre-signed her summonses so when she did issue the summons, it would be a little bit quicker to do." Dodds agreed that police officers share paperwork responsibilities with both partners and team members, such as fingerprinting and vouchering property in connection with an arrest.

Dodds testified that he asked [redacted] whether he had any problems with Respondent or Eastman, and [redacted] told him that he did not. Dodds confirmed that after he referred the case to IAB he did not have any more involvement with the investigation.

Detective Joseph DeMartini

DeMartini, a 25-year member of the Department who has been assigned to IAB since 1994 and to Group 26 for the past seven years, testified that he became involved in the investigation of Respondent in February, 2010, after Dodds reported to IAB that [redacted] had received a summons issued by Eastman but Eastman had denied writing this summons. DeMartini received DX 1, DX 2 and DX 3 from Dodds and forwarded these documents to the Police Laboratory for handwriting analysis.

DeMartini received a report prepared by Criminalist Patricia Zippo (DX 4) [In her report, Zippo concluded that the handwritten information in the body of the summons was written by Respondent]. After DeMartini received Zippo's report, he conducted an official Department interview of Eastman in December, 2010. Eastman stated that she did not issue the summons to [redacted]'s vehicle nor did she authorize anyone to issue a summons on her behalf. Eastman acknowledged that she pre-signed her summonses. DeMartini recalled that Eastman was issued a Command Discipline for incorrect Activity Log entries and was also given a letter of instruction that she should not pre-sign her summonses.

DeMartini conducted an official Department interview of Respondent on December 2, 2010. [DX 5 is the transcript of Respondent's official Department

interview] DeMartini testified that he did not interview [redacted] because Dodds had provided the necessary documentation for DeMartini to complete his investigation.

On cross-examination, DeMartini confirmed that ten months passed between the beginning of his investigation and the official Department interviews of Eastman and Respondent and that neither Respondent nor Eastman was placed on modified duty.

DeMartini testified that he did not speak to [redacted] but that Sergeant Cooper from IAB spoke with him. [redacted] was not subjected to an official Department interview because he was considered to be the complainant in the investigation. DeMartini testified that he believed that [redacted]'s car would normally be parked at the 104 Precinct. DeMartini clarified that he did not personally know where Green's vehicle was parked on October 9, 2009, but that he relied on [redacted]'s denial that the vehicle was parked where the summons indicated. DeMartini did not know whether anyone else assigned to the 104 Precinct had ever driven [redacted]'s vehicle. DeMartini did not ask anyone whether they had seen someone other than [redacted] driving [redacted]'s Mercedes.

DeMartini conducted his official Department interviews after he received Zippo's handwriting analysis. DeMartini did not show the handwriting analysis report to Respondent. He only told her about it during the official Department interview.

DeMartini confirmed that no DNA or fingerprints were lifted from the summons (DX 1). DeMartini acknowledged that these items were a "bluff" to try to get Respondent to explain "why there would be" her DNA or fingerprints on the summons. DeMartini explained that no such analysis had been done nor could be because the original summons was destroyed after being scanned into the New York State database. DeMartini asserted that "[b]ased on the other findings" they were "eliciting the truth."

DeMartini did not recall whether the "ruse" about the DNA and fingerprints was decided upon beforehand, or if it came up spontaneously during the interview.

DeMartini agreed that at the time of the official Department interviews, both Eastman and Respondent were subjects of the investigation because DeMartini was "trying to identify all the facets of the case." DeMartini notified both Eastman and Respondent to appear for their interviews, which both took place on December 2, 2010. DeMartini explained that members of the service "call their union[s] and arrange" for representation at official Department interviews. DeMartini did not recall ever alerting anyone that there might be a conflict of interest between Eastman and Respondent. DeMartini testified that he understood what 'conflict of interest was,' and that he had not "had too many cases where they were conflicting but it does occur." DeMartini had not had to previously cancel an official Department interview due to a conflict of interest, but he understood that it "may happen." Eastman's official Department interview began at 11:40 a.m. and ended at 12:01 p.m., and Respondent's official Department interview began at 1:02 p.m. DeMartini testified that he did not believe that Eastman and Respondent encountered one another. Both interview transcripts listed 'John McMorrow, Esquire' as attorneys, but DeMartini recalled that a discussion of a potential conflict of interest "never arose" among his team.

DeMartini did not recall speaking with either Eastman or Respondent on December 2, 2010 before their recorded official Department interviews began. DeMartini testified that before the interviews began, he would usually "give them an idea of what the allegations are," though he does not remember what was said to that effect for the interviews of Eastman and Respondent. DeMartini also testified that the subject

officers usually "have time to discuss [the allegations] with their attorney." However, DeMartini did not specifically tell Respondent at the beginning of her interview that she was accused of writing a 'phantom summons' to her Deputy Inspector. DeMartini did not recall how the allegation was described at the beginning of the interview, but maintained that Respondent and her attorney were apprised "of what the allegation [was]."

DeMartini confirmed that there were a total of four members of IAB present during the Respondent's official Department interview. DeMartini agreed that he did the 'bulk of the questioning.' DeMartini clarified that while other members of the team were allowed to ask questions, Sergeant Rusielewicz was new to IAB and "was more or less present just to witness" an official Department interview. DeMartini confirmed that it was Sergeant Kimmelman that asked Respondent about her DNA on the summons. DeMartini agreed that Kimmelman was not new to IAB.

DeMartini recalled that Respondent was shown the summons (DX 1) during her official Department interview, but did not recall whether Respondent was shown the whole summons, or only a portion of it. DeMartini believed it was "possible they blocked off the signature portion" when Respondent was shown the summons, but that Respondent would have been shown the other fields on the summons.

DeMartini testified that at some point during his investigation he checked to see if [redacted] had received other summonses on his vehicles. DeMartini discovered that [redacted] had been issued two summonses to his Mercedes from red light cameras within the 104 Precinct. DeMartini believed that [redacted] had paid these summonses. DeMartini learned

that [redacted] would leave his unmarked Department Jeep at the 104 Precinct for other members of the command to use.

DeMartini prepared a worksheet on July 6, 2010 summarizing an 'enforcer check' on [redacted]'s Mercedes and Department Jeep. DeMartini explained that an enforcer check "identifies if the license plate was queried" and might have helped determine "if someone ran [[redacted]'s plates] prior to issuing the summons." DeMartini also explained that another unit in the Department, IAB Group 7, performed the check on his behalf, and that he had worked with Group 7 in the past to perform such queries. DeMartini did not recall when he made the request for an enforcer check, as the date of his worksheet reflects when the results were returned to him. DeMartini clarified that the enforcer check was requested "in the early stages of the investigation." DeMartini testified that the enforcer check showed that [redacted]'s "private auto was run on three occasions," and his Department Jeep was run on ten occasions. The enforcer check covered a period spanning from "the beginning of 2008" through the time of the check.

DeMartini testified that Eastman was disciplined for not documenting summonses she had issued in her Activity Log. DeMartini disagreed that this was a relatively new requirement. DeMartini recalled that Eastman was issued a Command Discipline (CD) but did not recall the penalty or whether it was under schedule A or schedule B. DeMartini confirmed that the third specification against Respondent is similar to Eastman's CD and had no connection to the October 9, 2009 summons issued to [redacted]'s Mercedes. DeMartini also recalled that Eastman was issued a letter of instruction for pre-signing her summonses.

On redirect examination, DeMartini agreed that Respondent had been confronted with the handwriting analysis and had an opportunity to review the analysis. DeMartini agreed that Respondent had said that she knew of [redacted]'s Mercedes and Department Jeep in her official Department interview. DeMartini recalled that at the conclusion of Respondent's official Department interview, Sergeant Madorey asked Respondent if she had anything to add to the investigation, to which Respondent answered, "No."

On recross examination, DeMartini clarified that the handwriting analysis was "presented on the table in front of" Respondent. DeMartini did not recall whether Respondent picked up the report from the table, but that she could have if she "elected to."

Police Officer Rhonda Eastman

Police Officer Rhonda Eastman has been a member of the Department for five and a half years. She has been assigned to the 104 Precinct for five years. She is currently assigned to the Domestic Violence Unit.

Eastman testified that on October 9, 2009, she was working a 3:00 p.m. to 11:35 p.m. tour. She did not issue a summons to Green's vehicle during her tour that day. Green was Eastman's commanding officer at that time.

On or about January 23, 2010, Dodds showed Eastman a summons from her summons book (DX 1). Eastman told Dodds that the signature in the "Signature of Complainant" box on the bottom of the summons was her signature. Dodds asked Eastman to "look clearly at the summons," and when she did, Eastman saw that it was "written in handwriting that which [was] clearly not [her] handwriting." Eastman recalled that Dodds asked her to retrieve her summons book from her locker. Upon

bringing the corresponding summons book to Dodds' office, Eastman discovered that the summons Dodds had showed her was not in the book. Eastman explained that there were 28 summonses in a summons book. Eastman testified that the summons book she showed to Dodds was a "complete package," except for the summons Dodds showed her. Eastman confirmed that the summons missing from her book was the summons issued to [redacted]'s Mercedes on October 9, 2009 (DX 1).

Eastman testified that she had never lost a summons previously, and "could always account for them." Eastman also testified that it was her practice to bring approximately "five B's, five C's, and five A" pre-signed summonses in her binder while out on patrol to expedite the process of writing them.

Eastman recalled that after showing Dodds her summons book, he explained that a summons had been issued to [redacted]'s car. Eastman testified that she was familiar with the address on the summons, but she did not issue a summons to anyone at that location on October 9, 2009.

Eastman testified that she was "steady partner[s]" with Respondent in October of 2009. Eastman recalled that she would keep her summons book in her "black binder" in the RMP while on patrol. She would either leave it "by the side by the computer where we sit on the chair or sometimes on the dashboard." After her tour, Eastman would take her black binder with her. Eastman testified that nobody but her had access to her summons book. She did not give Respondent permission to use any of her pre-signed summonses. Eastman clarified that she had allowed Respondent to use summonses from her summons book, but that these summonses were "[b]lank," and not pre-signed.

Eastman testified that the only time she would leave her summons book unattended in an RMP would be when she went to "the restroom or if [she] ran back to the command."

Eastman testified that she worked with Respondent for "a little over a year." She and Respondent "were fine up until [they] ended [their] partnership." The particular incident that ended Eastman and Respondent's partnership involved an assignment from central dispatch that she and Respondent had decided not to take. According to Eastman, although she and Respondent mutually decided not to take the assignment because it was near the end of their tour, Respondent told the officer that called to offer the assignment that Eastman did not want to take the assignment because she had to "go home to her husband." Eastman recalled that she felt that Respondent "threw [her] under the bus and [she] didn't like that at all." Eastman could not recall the exact date of this incident, but estimated it took place in November or December of 2009, one or two months after the summons had been issued to [redacted]'s Mercedes. Eastman testified that in October of 2009 she knew that [redacted] drove a "silver jeep," but she did not know that his personal vehicle was a Mercedes.

Eastman testified that Respondent would allow her to use a summons from Respondent's summons book when they were issuing multiple summonses at one time, or when either of them was completing paperwork while serving as the recorder and they had to issue a summons. In those instances, Eastman would fill in the relevant information on the summons and Respondent would check the information and sign the summons. This also worked in reverse. If Eastman was issuing multiple summonses, Respondent would fill in one of Eastman's blank summonses and Eastman would check

the information and then sign the summons. Eastman asserted that Respondent only filled in blank summonses from Eastman's summons book, not pre signed summonses.

Eastman testified that she was familiar with the location of "Juice N Stuff" on Myrtle Avenue. Eastman did not recall ever issuing a summons at that location or giving Respondent permission to do so using a pre-signed summons from Eastman's summons book. Eastman recalled that she was issued a Command Discipline (CD) of two days vacation for "failing to safeguard and improper memo book entries."

On cross examination, Eastman clarified that the CD was a Schedule B CD. Eastman confirmed that when she was interviewed she was told that the procedure was to make an entry in her Activity Log detailing when a summons was issued. Eastman has been following that procedure since then, but at the time of October 9, 2009 that was not the 'common practice.' Eastman also confirmed that she was told that she should have safeguarded her summons book and that it was not a good idea to pre-sign her summonses. Eastman testified that she has followed that advice ever since. Eastman confirmed that her duty status was never changed as a result of this incident.

Eastman recalled that she asked for a new partner the day after the incident that ended her partnership with Respondent. Eastman agreed that since that incident, things have been 'fine' between her and Respondent and there had not been any further incidents or animosity between them since then. Eastman also agreed that her relationship with Respondent was 'fine' between the time the summons was issued to [redacted]'s vehicle and the incident that ended their partnership.

Eastman agreed that Respondent had access to her summons book because they were partners and trusted each other. Eastman also agreed that there were several

occasions where she could not safeguard her summons book such as when transporting a prisoner or going to the restroom.

Eastman testified that when Dodds told her about the summons issued to [redacted]'s car, she had no reason to doubt that he was telling the truth. Eastman recalled that in late 2009 she issued approximately ten summonses each month, though it varied. Eastman agreed that she would not have a specific recollection of each summons she issued to individual cars. Eastman also agreed that she would not have intentionally issued a summons to [redacted]'s car, though she did not know at that time what car [redacted] owned. Eastman confirmed that [redacted]'s Mercedes did not have any kind of police insignia.

Eastman agreed that she and Respondent helped each other with paperwork from time to time when they were partners. Eastman also agreed that the recorder in the RMP would take on more paperwork since the operator of the RMP was often driving, and that she and Respondent would switch between these two roles when they were partners.

Eastman clarified that when she prepared pre-signed summonses to bring on patrol, she would only pre-sign "a few" summonses and bring several blank ones. If another member of service needed to borrow a summons, she would give them one of the blank ones. Eastman would use a pre-signed summons only when she was issuing a summons herself.

Eastman testified that she was shown two summonses in April 2013. She confirmed that the two summonses were signed by Respondent, but that the "pedigree" information on the summonses was in Eastman's handwriting. Eastman agreed that the summonses were issued during the time that she and Respondent were partners. Eastman did not have an independent recollection of the two summonses, but agreed that it was

'fairly obvious' that she had helped Respondent fill in the summonses. Eastman did not recall Respondent ever pre-signing her own summonses.

Eastman testified that the first time she noticed that the summons issued to [redacted] was not in her summons book was in January 2010 when Dodds asked her about that summons. Eastman recalled that she had "lost track" of a copy of a summons "a couple of times" before. Eastman agreed that she was responsible for a lot of paperwork and was not given a filing system by the Department to keep track of it. Eastman has lost paperwork "[v]ery rarely" in the past.

Eastman testified that she knew [redacted] when he worked at the 104 Precinct, but did not know if he had a 'girlfriend' working at the command. Eastman clarified that she never had a conversation with [redacted], it "was always, 'Good morning,' or 'Good evening.'" She was not aware at that time of any relationship that [redacted] had with anyone in the command. She was also not aware of any female member of service driving [redacted]'s car. Eastman testified that she was familiar with [redacted], but not friendly with her. Eastman recalled that Potokin no longer worked at the 104 Precinct. Eastman testified that [redacted] was currently in a relationship with [redacted], but she did not know how long they had been involved. Eastman had "no idea" whether [redacted] and [redacted] were together as of October 9, 2009. She never saw [redacted] driving [redacted]'s vehicle.

On redirect examination, Eastman clarified that the summons issued to [redacted] was the only summons missing from the summons book she provided to Dodds.

Respondent's Case

Respondent testified on her own behalf.

Respondent

Respondent, a six-year member of the Department, has been assigned to the 30 Precinct for the past six months. Prior to her transfer, Respondent was assigned to the 104 Precinct for five years. Respondent has always been assigned to full duty. She has never been placed on modified assignment nor does she have any prior disciplinary history. Respondent has made about 150 arrests. When she was assigned to the 104 Precinct, she was partnered with Eastman on patrol for about two years.

Respondent testified that when she reported to the 107 Precinct on December 2, 2010, for an official Department interview that was to be conducted by investigators assigned to IAB, she did not know the subject matter of the interview. She did not meet with her attorney prior to arriving at the 107 Precinct. When the interview began, the interviewers told her that the allegation against her was that she had falsified a document, but they did not tell her that the document was a parking summons. Later during the interview, the interviewers told her that she had written an inspector a summons which was a phantom summons and an illegal summons. The interviewers told her that they had fingerprints and DNA evidence that proved that Respondent had written the summons but they never showed her this proof. Respondent did not receive any breaks during the interview to allow her to consult with her attorney.

During her interview, Respondent was shown the summons (DX 1) for "about five seconds." She was unable to view the whole summons because a portion of the summons was "covered so it was white from the middle down." Respondent told her

interviewers that the handwriting on the summons looked "similar" to her own, but that she "wasn't sure." The interviewers wanted her "to say yes or no." They "started getting upset" and they "started yelling" at her. Respondent "was getting nervous." After the interviewers demanded that she give a yes or no answer, Respondent told them that she did not think that the handwriting on the summons was her handwriting. Respondent "didn't want to say yes to something" that she "wasn't one hundred percent sure" about. Respondent described herself as "shaken up."

After her official Department interview, she examined the summons (DX 1) with her attorney and compared the handwriting on the parking summons with her Activity Log. Based on this comparison, Respondent concluded that she had written the information contained in the body of the summons. Respondent explained that she and Eastman would 'split' the duties of paperwork for summonses as well as "61's, DIR's, [and] stuff like that." For parking summonses, after Respondent "observed the violation, [Eastman would] sign the summons, [and Respondent would] get out of the car and write the car that was in violation." When Eastman was the operator and Respondent was the recorder in their RMP, Eastman would ask Respondent to fill in the body of her summonses because "we didn't want to sit in traffic." Respondent believed that she "partially wrote the summons (DX 1)" based on this practice with Eastman.

Respondent testified that she did not have an independent recollection of writing any summons issued to [redacted]'s personal vehicle. Respondent agreed that she would not have an independent recollection of most of the summonses she has written in her career. Respondent testified that she has never written a summons that was not valid, nor has she ever fabricated information on a summons.

At the time of this incident she and Eastman had been partners for a year and a half and had never had any problems. Based on their practice of sharing paperwork, Respondent believed that she had filled in the body of Eastman's summons and issued it to [redacted]'s vehicle because that car was illegally parked. Respondent also testified that she reviewed her Activity Log and discovered that during the "job before" issuing the summons to [redacted]s vehicle, she and Eastman were "two blocks away from where the summons was written." Respondent recalled that the summons was issued near a "health food" store where she had written summonses in the past.

Respondent testified that she never took anything out of Eastman's summons book without her permission. Although she and Eastman stopped being partners, they did not have a 'major falling out,' nor were they 'enemies' as a result. The end of their partnership had nothing to do with the summons issued to [redacted]'s Mercedes.

Respondent also testified that she had no animosity towards [redacted]. She characterized her relationship with [redacted] as "pretty good." Respondent recalled that she sat at the same table as [redacted] at "a few events" for three years in a row, including the year that the summons (DX 1) was issued to [redacted]'s personal vehicle. Some time after this incident, Respondent and [redacted] became "friends on Facebook." Respondent agreed that she was transferred out of the 104 Precinct because of the incident involving the summons (DX 1) that was issued to [redacted]'s car.

Respondent testified that she "forgot to write who was the operator and maybe a few jobs" in her Activity Log on approximately 20 occasions. At the time, Respondent was "a little new so [she] didn't know as much as [she] does now." Since those errors

were pointed out to her, Respondent has recorded such information correctly in her Activity Log.

On cross-examination, Respondent did not recall whether she said at her official Department interview that she took a summons from Eastman or anyone else's summons book because she ran out. Respondent was confronted with the transcript of her official Department interview where she answered, "No. Never."

Respondent agreed that she answered 'no' during her official Department interview when she was asked numerous times whether or not she had issued a summons to [redacted]'s personal vehicle using one of Eastman's summonses. Respondent explained that "when [she] was questioned about these summonses, [she] wasn't sure" and that she "didn't want to say yes to something [she] wasn't sure [about]." Respondent recalled that when she was asked about the summons, she told them that she "wasn't sure but it did look similar." When she was asked for a yes or no answer, Respondent "didn't want to say yes." Respondent recalled that the interviewers "were pressuring [her] to say yes and [she] told them [she was] not sure." Respondent clarified that during her interview she "was stating that it looked similar... [but her interviewers] wanted a yes or no answer and [she] couldn't provide that at the time because [she] wasn't sure."

Respondent denied ever taking a summons from Eastman's summons book. Respondent explained that if Eastman "will write a summons and she wants [Respondent] to write it for her to help her out... [she] would help her write the summons." Respondent did not offer this explanation for why her writing would be on the summons during her official Department interview because she thought that the interview was "about a summons that had nothing to do with [her]."

Respondent recalled that after her official Department interview she met with her attorneys "a few times" and had the opportunity to review the summons in DX 1 as well as her Activity Log and other summonses. Respondent recalled that she "needed more information from... Highway Safety to get summonses so [she could] see if [she and Eastman] did actually, in fact, wrote (sic) summonses before."

Upon reviewing these materials, Respondent confirmed that she and Eastman had written on each other's summonses with the other's signatures. She came to the conclusion that the summons (DX 1) was in her handwriting sometime after her interview, but Respondent did not recall if it was before or after she was served with charges and specifications on March 7, 2011.

Respondent testified that after she was shown the summons in DX 1 for "a few seconds," her interviewers "took it away." Respondent did not ask for it back to examine it more closely during the interview.

On redirect examination, Respondent clarified that when she was shown the summons in DX 1 it was folded over at the line which read "C/O 80 Street and Myrtle Avenue." The rest of the text from that fold down was not visible during her official Department interview.

On re-cross examination, Respondent clarified that the line "C/O 80 Street and Myrtle Avenue" was visible when Respondent saw the summons at her official Department interview.

FINDINGS AND ANALYSIS.

Specification No. 1

It is charged that on October 9, 2009, Respondent engaged in conduct prejudicial to the good order efficiency and discipline of the Department in that she "took a summons out of a summons book belonging to" Eastman "without permission or authority and issued a summons to Deputy Inspector [redacted]'s private vehicle."

Initially, it must be noted that this charge does not allege that Green's private vehicle was legally parked and that Respondent improperly issued a parking summons to his car. Nor does this charge allege that the summons was not placed on the windshield of [redacted]'s car or that any of the information contained in the body of the summons is inaccurate, even though [redacted] told Dodds that he first learned of the existence of this summons through NYCDOF and that he never parked his Mercedes at 80th Street and Myrtle Avenue, Queens, the location where the summons alleges it was illegally parked.

Also, because the charge specifically states that Respondent issued one of Eastman's summonses "to Deputy Inspector [redacted]'s private vehicle," the wording of this charge created an added element of proof requiring the Department to present evidence that Respondent knew on October 9, 2009, that a Mercedes bearing New York plate number "[redacted]" (DX 1) was registered to [redacted].

I find Respondent Not Guilty because the Department did not meet its burden of proving by a preponderance of the credible evidence that Respondent took a summons out of Eastman's summons book or that she "issued" this parking summons.

Since Eastman testified that the signature in the "Signature of Complainant" box on the bottom of the summons is her signature, the parking summons itself presumptively shows that Eastman was the issuing officer (DX 1). Also, Eastman corroborated

Respondent's testimony that to speed up the preparation of summonses, Respondent sometimes filled in the information on a summons that Eastman was going to issue. Thus, the handwriting analysis conducted by Zippo (DX 4) merely shows that the summons in question was one of those occasions on which Respondent wrote the information in the body of a parking summons that Eastman signed and issued.

Also, the Department insufficiently proved the element of the charge that alleges that Respondent knew on October 9, 2009, that the Mercedes bearing New York plate number "[redacted]" (DX 1) was [redacted]'s personal vehicle. Eastman, who was Respondent's regular partner at that time, testified that in October of 2009 she did not know that [redacted]'s personal vehicle was a Mercedes. Although Respondent stated at her official interview that she knew [redacted] drove a Mercedes, she always saw it parked in his reserved spot.

With regard to that part of the charge that alleges that Respondent took a summons out of a summons book that had been issued to Eastman without her permission, Eastman corroborated Respondent's testimony that Eastman carried pre-signed parking summonses with her while they were on patrol. Although Eastman asserted that she never handed Respondent pre-signed summonses to fill out, given Eastman's testimony that they would regularly write out each other's summonses, I cannot rely on Eastman's certainty that she never handed Respondent a pre-signed summons to fill out.

As to the Department's argument that the fact that the summons in question (DX 1) was the only summons missing from Eastman's summons book circumstantially proves that Respondent must have issued this summons because she was the only other

person who had access to Eastman's summons book, I would find this argument more compelling if Dodds had examined all of Eastman's summons books and had found that no other copies of her summonses were missing. However, he only asked her to provide him with the packet of summonses that had included DX 1 and before he asked her he showed her a photocopy of the summons (DX 1). Since Eastman knew which summons Dodds was looking for she had a reason to remove her copy from the packet to support her claim to Dodds that she had not issued the summons.

Finally, the Department offered no evidence that Respondent had any motive to steal a pre-signed summons and purposely issue it to a car owned by [redacted]. The Department offered nothing to disprove Respondent's claim that she liked [redacted] and got along well with him.

Based on the above, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

It is charged that during an Official Department Interview which was held on December 2, 2010, Respondent "engaged in conduct prejudicial to the good order efficiency and discipline of the Department" in that she "provided inaccurate and misleading statements" when she "repeatedly denied issuing the summons mentioned in Specification #1, when in fact a handwriting analysis came back as conclusive that she did in fact issue the summons."

I find Respondent Not Guilty because the Department's charge that Respondent's denials constituted actionable "inaccurate" statements contravenes the spirit, if not the letter, of Patrol Guide Procedure No. 203-08; because Respondent was lied to twice by Department interrogators at her Official Department Interview; because the allegation in

the charge that "a handwriting analysis came back as conclusive that she did in fact issue the summons" is factually inaccurate; and because the Department presented insufficient proof that Respondent should have been able to recall on December 2, 2010 the details surrounding a parking summons that was issued while she and Eastman were on duty on October 9, 2009.

Even though the Department alleges that Respondent made knowing "inaccurate and misleading" statements, which is to say false statements, during her Official Department Interview on December 2, 2010, the Department did not charge Respondent under Patrol Guide Procedure No. 203-08 with Intentionally Making False Statements even though this section is applicable to false statements made during an Official Department Interview. I find it significant that this Procedure specifically directs that "(T)he Department will not bring false official statement charges in situations where, as opposed to creating a false description of events, the member of the Department merely... denies... an administrative charge of misconduct." The charge here does not allege that Respondent created a false description of events at her Official Department Interview. Rather, the Department alleges the "inaccurate" statements that Respondent made during this interview were "that she repeatedly denied issuing the summons mentioned in Specification # 1." Since her allegedly "inaccurate" statements constitute no more than mere denials, I can only conclude that the Department's action of charging Respondent with engaging in conduct prejudicial to the good order efficiency and discipline of the Department by making "inaccurate" statements where the allegedly "inaccurate" statements are mere denials constitutes an attempt to circumvent the charging restriction imposed on the Department by Patrol Guide Procedure No. 203-08.

With regard to the manner in which Department interrogators conducted her Official Department Interview, the allegedly "inaccurate" denials that Respondent made during her Official Department Interview were based in part on information that was provided to her by her interviewers. Under the Patrol Guide Procedure governing "Interrogation of Members of the Service," Respondent's interrogators were required to "inform" her about "information concerning all allegations."[1] This mandate implicitly requires that the "information concerning all allegations" that Respondent was to be informed about be accurate information. Although Respondent was accurately informed during her Official Department Interview that the signature on the bottom of the summons was Eastman's, Respondent's interrogators falsely told Respondent that her fingerprints and her DNA had been recovered from the summons. One of them asked her, "Can you explain why your fingerprints would be on this summons?" (DX 5 p. 15) When Respondent's attorney asked, "You're also saying fingerprints were lifted from these summonses?" another interrogator answered, "Yes." (DX 5 p. 16) Sgt. Kimmelman told Respondent that her "DNA" was "on that summons." (DX 5 p. 16) In fact, Respondent's fingerprints and DNA were not lifted from the summons and Respondent's interrogators knew this.

This charge specifically alleges that Respondent "repeatedly denied *issuing* the summons mentioned in Specification #1, when in fact a handwriting analysis came back as conclusive that she did in fact *issue* the summons." (italics added) This allegation in the charge that the handwriting analysis conducted by Zippo (DX 4) "came back as conclusive that" Respondent "did in fact issue the summons" is inaccurate because Zippo's analysis only established that the handwriting in the body of the summons was

[1] Patrol Guide Procedure No. 206-13 (2)(g).

Respondent's. As noted above under Specification No. 1, since the signature in the "Signature of Complainant" box on the summons is undisputedly Eastman's, the parking summons itself indicates that Eastman was the issuing officer.

Finally, the Department presented insufficient proof that Respondent should have been able to recall on December 2, 2010 the details regarding a parking summons that was issued while she and Eastman were on patrol on October 9, 2009. The Department argued that since Respondent was shown a copy of the summons (DX 1) and was informed about the results of Zippo's handwriting analysis during her Official Department Interview, Respondent's repeated denials that she had personally issued the summons constituted misconduct. Respondent was confronted for the first time on December 2, 2010 with a summons dated October 9, 2009 which contained Eastman's signature as the issuing officer, and with an analysis of her handwriting that only showed that the handwriting in the body of the summons was hers. Since this was the only accurate information offered by her interrogators to refresh her recollection about a parking summons that had been issued 14 months earlier, her denials that she had personally issued this summons did not, under the circumstances, constitute inaccurate and misleading statements.

Respondent is found Not Guilty of Specification No. 2.

Specification No. 3

It is charged that between October 25, 2009 and January 1, 2010, on about 20 occasions Respondent failed to make entries in her activity log regarding summons she had issued. Since Respondent has pleaded Guilty to this charge, she is found Guilty of Specification No. 3.

## PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 23, 2007. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty, based on her plea of guilty, of having failed to make entries in her activity log regarding summonses she issued on about 20 occasions during just over a two-month period.

The Assistant Department Advocate (the Advocate) recommended that Respondent receive a penalty consisting of ten suspension days and 30 vacation days, for a total forfeiture of 40 days, and one year on dismissal probation. The Advocate did not cite any previous decisions to support this penalty recommendation. Since Respondent has only been found Guilty of failing to make entries in her activity log regarding summonses she issued on about 20 occasions during about a two-month period, a much lesser penalty is warranted.

In *Case No. 2010-1810* (Dec. 3, 2012), a 19 year officer with no prior disciplinary record forfeited 20 vacation days after he pleaded guilty to failing to make Activity Log entries documenting the issuance of summonses on 32 occasions during a five-month period. However, that officer also pleaded guilty to reporting that he wrote 144 summonses during a 10 month period when he could only provide documentation regarding 53 of these summonses.

In *Case No. 2011-5162* (April 19, 2013), a five-year officer with no prior disciplinary record forfeited 15 vacation days for failing to make Activity Log entries documenting that he had issued summonses on seven occasions. However, that officer also failed to bring a copy of each summons he issued to the Traffic Violations Bureau which resulted in not guilty dispositions in seven cases.

Therefore, it is recommended that Respondent forfeit ten vacation days.

Respectfully submitted,

Robert W. Vinal
Assistant Deputy Commissioner Trials

DISAPPROVED
NOV 14 2013
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER FIZGERALDA SANCHEZ
TAX REGISTRY NO. 944167
DISCIPLINARY CASE NO. 2010-3157

The Respondent received an overall rating of 4.0 on her 2012 performance evaluation, 4.0 on her 2011 evaluation, and 4.0 on her 2009 evaluation. She has no medals. She has no monitoring records. [redacted] She has no prior formal disciplinary record.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials