



POLICE DEPARTMENT

December 12, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-24142
Police Officer Alvin Martinez	:	
Tax Registry No. 949888	:	
66 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Alvin Martinez, while assigned to the 66 Precinct, while on duty, in Kings County, on or about and between October 20, 2017 through May 2, 2021, did wrongfully on seven (7) separate occasions post pictures, comments, and videos to his personal Facebook and Instagram social media pages while in uniform disclosing confidential Department business, conducting personal business, making crude statements about the Department, unnamed supervisors, and colleagues.

P.G. 203-32

PERSONAL SOCIAL MEDIA
ACCOUNTS AND POLICY

2. Police Officer Alvin Martinez, while assigned to the 66 Precinct, while on duty, in Kings County, on or about and between October 20, 2017 through May 2, 2021, did wrongfully on seven separate occasions conduct personal business while on duty.

P.G. 203-05, Page 1, Paragraph 1

PERFORMANCE ON DUTY –
GENERAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 31, 2023. Respondent, through his counsel, entered a plea of Guilty to the subject charges 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. Having evaluated all of the evidence in this matter, I recommend the forfeiture of thirty (30) vacation days and one year dismissal probation for Specification 1, to run concurrently with forfeiture of ten (10) vacation days for Specification 2, as discussed below.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent was appointed to the NYPD in July 2011 and has worked in various commands, including his current assignment at the 66 Precinct. Respondent has pled guilty to the charged misconduct, admitting that while on duty and in uniform, he created and published

various videos, photographs, and written posts on social media on seven occasions from 2017 through 2021.

Respondent explained that he made two of the social media posts in order to share information about issues he has personal experiences with, specifically domestic violence and suicide prevention. (Tr. 18, 22-23) In October 2017, Respondent streamed a live video on his Facebook page. (Dept. Exs. 1 and 2; Tr. 18) In that video, Respondent shared information about services for victims of domestic violence, detailed warning signs of abusive behavior, and explained the cycle of domestic violence. (Tr. 20) Respondent testified that he made the video because “we had a bunch of flyers all over the precinct for domestic violence awareness, and [he has] a lot of friends that reach out about DV issues ... asking for advice and tips.” (Tr. 18-19) In September 2019, Respondent posted a photograph of himself in uniform, on duty, standing on the roof of a New York City Housing Authority building. His reason for sharing the picture was to honor two friends who died by suicide on Suicide Prevention Day. The post included the phone number of a suicide prevention hotline in the caption. (Tr. 23; Dept. Ex. 4) He explained his hope that posting the photo of himself in uniform would encourage people to pay attention because they would view him as an “authority figure.” (*Id.*) Respondent did not obtain authorization from the Department to make either post, and stated that he was unaware of the process to request such permission. (Tr. 25) He acknowledged to the Tribunal that he had another motive for creating the post on domestic violence: he hoped his superiors in the command would see it and designate him as one of the precinct domestic violence officers. (Tr. 31)

On November 26, 2018, Respondent made a lengthy post on Facebook in which he wrote that he “heard a few people in my precinct were talking shit about me, as high as the rank of

lieutenant.” (Dept. Ex. 5) Respondent described feeling “a little upset at that time” because individuals were saying he was not an active cop and he was trying to show that it is “not all about activity.” The post was his way of “venting” about the situation. (Tr. 22) He conceded that he “definitely should not have went about [venting] that way.” (*Id.*)

On February 2, 2019, Respondent shared a photo of an NYPD off-duty employment application on Facebook which he had submitted to the Department. While the image was partially redacted, his identifying information, as well as the signature of the executive who signed off on the application, were visible. (Dept. Ex. 6) He stated the reason he posted the photo was that some of his co-workers were saying his off-duty occupation was a “scam.” He wanted to show that it was legitimate, and that “it got approved by the main guy in the precinct.” He said that “looking back, I definitely shouldn’t have done that.” (Tr. 27-28)

Respondent also acknowledged that he published two videos of himself in a patrol vehicle, while on duty, discussing investments and stocks on two separate dates. In the first video, police radio transmissions can be heard in the background as Respondent narrates the trades on his computer screen. In the second, columns of numbers can be seen, and the caption, “Made more than my cop weekly salary in 33 mins of trading” is written over the image. (Dept. Exs. 1, 3) Respondent admitted that he created and transmitted the content while he was assigned to his meal break. (Tr. 29)

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines (“Disciplinary Matrix”), considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s employment history also was examined. *See* 38 RCNY § 15-07.

Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 6, 2011, has pleaded guilty to posting content to his personal Facebook and Instagram accounts on seven occasions while on duty, in violation of the Department's guidelines regarding personal use of social media.

Respondent, through his attorney, has argued for a mitigated penalty of forfeiture of between ten (10) and twenty (20) days. Respondent's counsel points out that for younger generations, social media is part of their everyday lives, and that instead of going out with a colleague to complain about their boss, they do so in a post online. Additionally, he argues that with regard to the domestic violence and suicide prevention posts, Respondent had the best intentions, he simply failed to follow procedure. In sum, Respondent argued that the damage suffered by the Department as a result of the misconduct was limited.

The Department Advocate has recommended a penalty of thirty (30) vacation days and for Respondent to be placed on dismissal probation for one year. In making this recommendation, the Department Advocate argued that the specifications in this case encompass seven separate incidents. They also pointed out Respondent's prior charges for the same type of misconduct, which resulted in a fifteen (15) day penalty pursuant to a negotiated plea agreement. For the reasons set forth below, I concur with the penalty recommendation made by the Department Advocate.

With respect to Specification 1, in order to determine an appropriate penalty, the Tribunal considered several factors, including Respondent's prior discipline. In 2016, Respondent pled guilty to posting photographs of a prisoner on Snapchat, asking mutual acquaintances to persuade that prisoner not to go forward with a complaint, as well as posting a video of himself

discussing the prisoner on the social media platform "Snapchat." The current charges encompass seven incidents spanning from October 2017 through May 2021. The Disciplinary Matrix sets forth a framework for progressive discipline to be followed when the current act of misconduct is the same as a prior act. In cases where the earlier misconduct resulted in a penalty of five (5) to fifteen (15) days, the time limitation will be five years, with the second incident resulting in a penalty increase of ten (10) to twenty (20) days. (Disciplinary Matrix, p. 12) The following guidance is provided with respect to calculation of time limitations: "If the current act of misconduct involves multiple violations on separate dates, the date of the first violation chronologically shall be the date upon which the progressive penalty escalation is computed." (Disciplinary Matrix, p. 11)

The Police Commissioner approved the penalty on Respondent's prior discipline on October 20, 2016, approximately one year before the current misconduct began, placing it within the five year time limit and making it subject to the framework described above. Respondent's previous misconduct resulted in the loss of fifteen (15) vacation days. I find that the fact that the posting of multiple social media posts over a lengthy period of time constitutes an aggravating factor that warrants both a forfeiture of penalty days and a period of monitoring. As such, I recommend the loss of thirty (30) days and placement on Dismissal Probation for a period of one-year.

With respect to Specification 2, the presumptive penalty for conducting personal business on duty is ten (10) days with a range from five (5) to fifteen (15) days depending on mitigating or aggravating factors. I find the presumptive penalty to be appropriate here. While Respondent's counsel emphasized that although Respondent made these posts on duty, any harm to the Department as a result of him being distracted by the posts was minimal because many of the

posts were made quickly while Respondent was on his meal break, the volume of incidents argues against mitigation, therefore I recommend the presumptive penalty of the loss of ten (10) vacation days to run concurrently with the thirty (30) days for Specification 1, as the two specifications are borne out of identical incidents¹.

Forfeiture of thirty (30) vacation days is a significant penalty on its own, and the addition of one year of probationary monitoring will hopefully serve as a deterrent to future misconduct of any type, and in particular further violations of the Department's social media policy, which has clearly been an issue for Respondent over the past several years.

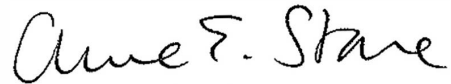
Recognizing that its members will utilize social media, the Department has created straightforward rules surrounding personal use of social media by its employees. The rules have evolved, but have consistently prohibited members of service from posting photos and videos of themselves in uniform, in Department facilities or vehicles, or images of "non-public" items, such as official Department documents on their personal accounts. (P.G. 203-28; A.G. 304-20) I believe that Respondent sincerely wishes to help people by posting about issues he feels strongly about; I also believe that Respondent utilizes social media to promote himself and his personal businesses. Respondent is not prohibited him from continuing to have an online presence. He simply may not do so while on duty, wearing his uniform in violation of Department guidelines.

Based on the foregoing, I recommend that Respondent forfeit a total of thirty (30) vacation days and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of

¹ Page 13 of the Disciplinary Matrix states that when analyzing separate charges which are based upon the same underlying acts of misconduct, a single penalty will be applied.

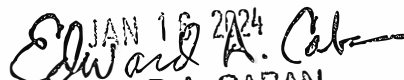
the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings.

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials

APPROVED



JAN 16 2024
EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ALVIN MARTINEZ
TAX REGISTRY NO. 949888
DISCIPLINARY CASE NO. 2021-24142

Respondent was appointed to the Department on July 6, 2011. On his three most recent annual performance evaluations, he received ratings of “Exceeds Expectations” for 2020 and 2021, and “Meets Standards” for 2019. He has been awarded one medal for Commendation – Community Service, two medals for Meritorious Police Duty, and two medals for Excellent Police Duty.

In 2016, Respondent negotiated a penalty of 15 vacation days for (i) posting on Snapchat photographs of a prisoner in the holding area of a police facility, (ii) asking two mutual acquaintances to persuade that prisoner not to pursue a complaint against him, and (iii) taking a video of himself briefly discussing a prisoner he just arrested while in an RMP, and posting that video on Snapchat.

In connection with the instant case, Respondent was placed on Level 2 Discipline monitoring on April 3, 2022; that monitoring remains on-going. He has previously been on Level 2 Performance Monitoring from April 2014 through March 2017.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials