



POLICE DEPARTMENT

March 25, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer David Perez  
Tax Registry No. 949900  
68 Precinct  
Disciplinary Case No. 2012-8592

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The above-named member of the Department appeared before me on January 13, 2015 charged with the following:

1. Said Probationary Police Officer David Perez, while assigned to the 68th Precinct, on or about August 10, 2012, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer David Perez made an inaccurate entry on a Firearm Transaction Record form regarding whether or not he was the subject of an order of protection. (*As amended*)

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

The Department was represented by Marissa Gillespie, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of guilty and testified in mitigation of the penalty. A stenographic transcript of the mitigation hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

Introduction

Respondent and Person A are the parents of Minor B who was born in 2010. On April 9, 2012, Person A filed a petition under Article 8 of the Family Court Act seeking a Temporary Order of Protection (TOP) against Respondent. The Family Court Attorney Referee (the Referee) granted Person A's petition and issued a TOP against Respondent. On August 2, 2012, the Referee renewed the TOP and ordered that it remain in force until October 12, 2012. The TOP ordered Respondent to refrain from engaging in certain actions against Person A including "stalking, harassment" and "threats."

[Department's Exhibit (DX) 1]

Also on August 2, 2012, the Referee issued an All Purpose Short Order under Article 6 of the Family Court Act which granted Respondent "parenting time" with Minor B on specific dates. This order states that "Mr. Perez will keep his firearm at his place of employment on dates when he is parenting Minor B." [Respondent's Exhibit A]

On August 10, 2012, Respondent purchased a Glock 26 as an off-duty firearm from a licensed gun dealer [REDACTED] County. He displayed his Department ID to the seller and, as required, he signed a federal Firearms Transaction Record form and certified that his answers to the questions on the form were "true, correct and complete." Question "11 h." on this form asks "Are you subject to a court order restraining you from harassing, stalking or threatening your child or an intimate partner or child of such partner?" Respondent checked the "No" box next to this question. (DX 2)

On August 22, 2012, Respondent was contacted by an agent from the federal Bureau of Alcohol, Tobacco and Firearms (ATF) who informed him that he "wasn't



allowed to have the gun.” He turned the Glock 26 over to officers assigned to the Internal Affairs Bureau (IAB). Respondent was never arrested.

Respondent’s testimony in mitigation

Respondent testified that under the TOP that was issued on April 9, 2012, he was only allowed to possess his firearm while on duty and that when his tour ended he had to “lock the gun” up and “leave it at work.” On August 2, 2012, the restrictions on carrying his firearm changed when he appeared in Family Court and the Referee issued the All Purpose Short Order allowing him to have Minor B visit him at his house once a week. Since this order only required him to keep his firearm at his workplace on days when he was parenting Minor B, it was his understanding that he could bring his firearm home on days when he was not parenting Minor B.

Since it was his understanding that the TOP’s firearm restriction had been “lifted” by the All Purpose Short Order, when he left Family Court on August 2, 2012, he believed that the TOP was no longer in effect. He testified he checked the “No” box next to the question on the federal Firearms Transaction Record form which asked if there was a TOP in effect against him “because I assumed from the orders the court gave me that that part was lifted.” He followed Department procedure by bringing the firearm to his command to be inspected and by completing the required firearm acquisition form.

On cross-examination, he agreed that before he purchased the Glock 26 he “should have looked into it further” to ascertain whether his belief that the TOP had been lifted by the All Purpose Short Order was correct. He agreed that the All Purpose Short Order contains no statement that the TOP was no longer in effect.

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 July 6, 2011. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate (the Advocate) recommended that Respondent forfeit 20 vacation days as a penalty. The Advocate did not cite any specific prior disciplinary decisions to support this recommendation. Rather, the Advocate argued that the forfeiture of 20 vacation days was warranted here because 30-day penalties have been imposed in cases where officers have made inaccurate entries on "a mortgage application or some other form that was filed with an effort to get a financial gain." Since the Advocate agreed that Respondent did not make the inaccurate entry on the Firearm Transaction Record form to obtain any financial gain, the Advocate asserted that a 20-day forfeiture was the appropriate penalty here.

In *Case No. 2011-4533* (Oct. 15, 2013), a seven-year officer, who had a previous disciplinary record for having improperly adjudicated summonses, received a penalty of the forfeiture of 15 vacation days after he pleaded guilty to having committed three acts of misconduct: he failed to notify his commanding officer (CO) that an order of protection had been filed against him; he failed to prepare a "Acknowledgement of Responsibilities Concerning Court Order Limiting Firearms Possession;" and he failed to secure his firearm at his assigned command at the end of each of his tours of duty.

Unlike the officer in that case, Respondent here committed only one act of misconduct and Respondent has no formal disciplinary record.

In *Case No. 2010-1861* (Jan. 7, 2013), an 18-year detective who had no prior disciplinary record pleaded guilty to illegally possessing a Colt AR-15 rifle at his residence in [REDACTED]. At his mitigation hearing, the detective testified that he was not aware that possessing an AR-15 rifle violated a New York City ordinance since he had purchased the rifle from a retired sergeant and had mistakenly relied on the seller's assurance that he could lawfully possess the rifle within the City of New York. In that case, the Police Commissioner disapproved the trial commissioner's recommended penalty of the forfeiture of ten vacation days and imposed a five-day penalty.

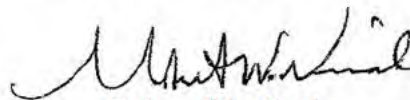
Finally, it is not disputed that Respondent properly followed Department procedures with regard to notifying his CO about the TOP and, after his purchase of the Glock 26, by bringing the firearm to his command for inspection and by completing the required firearm acquisition form.

Therefore, it is recommended that Respondent forfeit five vacation days as a penalty.

**APPROVED**

MAY 01 2015  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

Respectfully submitted,



Robert W. Vinal  
Assistant Deputy Commissioner Trials

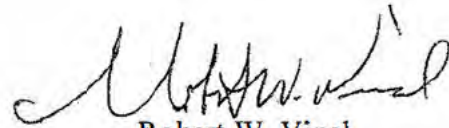


POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER DAVID PEREZ  
TAX REGISTRY NO. 949900  
DISCIPLINARY CASE NO. 2012-8592

Respondent received an overall rating of 3.5 on his 2014 performance evaluation, 3.0 on his 2013 evaluation, and 3.0 on his 2012 evaluation. He has no medals. [REDACTED]  
[REDACTED] He has no monitoring records and no formal disciplinary record.

For your consideration.



Robert W. Vinal  
Assistant Deputy Commissioner – Trials