



POLICE DEPARTMENT

February 22, 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Matthew Randlov
Tax Registry No. 943718
17 Precinct
Disciplinary Case No. 85574/09

The above-named member of the Department appeared before me on January 28, 2010, charged with the following:

1. Said Police Officer Matthew Randlov, while on-duty and assigned to the 17th Precinct, on or about November 16, 2008, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that he affixed his signature to a Criminal Court complaint that he did not correctly review and which indicated that he had received the information he was swearing to from the complainant, when in fact he did not speak with the complainant. (*As amended*)

P.G. 203-10, PAGE 1, PARAGRAPH 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT – GENERAL
REGULATIONS

2. Said Police Officer Matthew Randlov, while on-duty and assigned to the 17th Precinct, on or about November 16, 2008, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that he wrongfully caused an inaccurate instrument to be filed with the New York County Criminal Court.

P.G. 203-10, PAGE 1, PARAGRAPH 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT – GENERAL
REGULATIONS

The Department was represented by Pamela J. Naples, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent having pleaded Guilty is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent testified in his own behalf.

The Respondent

The Respondent was appointed to the Department on January 10, 2007. After the Police Academy, he was assigned to the Impact Unit in the Midtown South Precinct, where he was placed on foot posts in high activity locations. There were about 60 or 70 other officers assigned to the Impact Unit at the time.

As of November 16, 2008, he had made about 19 or 20 arrests. Up until that day, he never been assigned to an arrest that he hadn't taken part in. The Respondent had not even gotten to Roll Call when he was notified that he was going to take the arrest in question. He recalled, to the best of his recollection, that he was assigned the arrest by Sergeant Faria, who was his squad sergeant at the time. Faria told the Respondent to take an arrest that had just been brought in of a man [REDACTED], who turned himself in on a hit and run. The Respondent along with Faria and a detective spoke to the man.

The Respondent did not know about an accident that had occurred earlier in day and only learned of it after the arrest. The Respondent stated that Faria had told him about the accident. He believes that he had obtained the police accident report and the complaint report about the leaving the scene incident from Faria also. These reports had been filled out by Police Officer Alexandra Paquette. The Respondent knew Paquette from the Impact unit but she did not work in his squad at the time of this incident. The Respondent did not speak to [REDACTED] who was listed as the complainant/victim on the paperwork.

The Respondent then began drafting the complaint. He explained that in New York County, after an arrest is processed, the paperwork is faxed over to the District Attorney's office, which he did in this case. After that, he spoke to the assistant district attorney on the telephone and he explained the situation. They then sent over a complaint and he stated that he signed the affidavit, not the complaint.

The Respondent reviewed the complaint and agreed that he had an opportunity to read it. He noted that nowhere in the complaint did it say that he was at the scene. He said he spoke to the assistant district attorney, whose name he believed was Salvey, and he explained to him that he was not "at the scene at all." The Respondent asserted that he did not tell Salvey that he had never spoken to [REDACTED] but he also noted that he was never asked if he had. The Respondent agreed that once the report was faxed back, he signed the complaint.

The Respondent noted that in his other arrests, he had actually observed the incident which was the subject of the complaint he signed. This was the first time he was handling a case where he did not see the incident because it was an assigned arrest. The

Respondent noted that Faria did not review or approve the complaint before he signed it. Faria had approved the arrest paperwork; the On-Line Booking Sheet and the arrest report.

After the complaint was signed, he had no further contact with Salvey, nor did he have any further contact with the person who was arrested. The Respondent stated that he did not work past the end of his tour on processing this arrest. He did not have an opportunity to speak to Paquette during that tour about the incident. He did speak to her the next day and explained to her that the male had turned himself in and then he asked her to confirm all the information on the report.

A few weeks later, he was contacted by Assistant District Attorney (ADA) Lauren Angelo about the case against [REDACTED]. She asked him to sign a corroborating report because the complainant had stated that what was on the original affidavit wasn't what happened. The Respondent told her to speak to the officer who was on the scene, which was Paquette. The Respondent was notified to come down to the District Attorney's office a couple of days later. At that time, he explained to Angelo that he did not have any contact with the complainant at all. He told her that he had gotten all of the information from the paperwork and that he later confirmed it with Paquette after the complaint had been signed. He indicated that Angelo redrafted the affidavit with Paquette and he had no further paperwork to sign.

The Respondent was not charged with any crime for what happened. He was interviewed by ADA Cuevas. He was later interviewed by the Internal Affairs Bureau (IAB). The IAB sergeant explained that he was not exactly sure where the assistant district attorney wanted to go with the matter and that they were trying to further

investigate the matter. He believed the assistant district attorney they were in contact with was Cuevas.

On cross-examination, the Respondent agreed that he had made approximately 19 to 20 arrests prior to November 16, 2008, and that he had dealt with criminal court paperwork including affidavits and complaint reports. He agreed that he was familiar with the language that "gets included" in an affidavit. He agreed that he did not ask for assistance from the squad sergeant who was present while he was preparing the paperwork. The Respondent noted that the detective who had interviewed the arrestee had explained some of the paperwork to him.

The Respondent said that he believed he reviewed the paperwork carefully. He did not, at that time, note anything that was inaccurate. The Respondent asserted that it wasn't until he spoke to ADA Angelo that he realized that the information he had signed was inaccurate.

The Respondent agreed that when he spoke with the assistant district attorney on the telephone on November 16, 2008, he told him that he was not present at the scene of the incident. He agreed that he was not asked if he ever spoke to the complainant nor did he offer that information. He did not think it was pertinent at that time.

On questioning by the Court, the Respondent indicated that he did not draft the complaint in longhand for the assistant district attorney. He explained that he simply faxed over the arrest paperwork, the OMNI form arrest report (which was received as Court Exhibit [CX] 1) as well as the Complaint Report containing the worksheets that Paquette had filled out (CX 2).

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Department on January 10, 2007. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

On November 16, 2008 at about 5:20 am, a pedestrian, [REDACTED] was struck by a motor vehicle which then left the scene. The original officer who dealt with the matter was Alexandra Paquette. Sometime after Paquette went off-duty, the driver of the vehicle appeared at the 17th Precinct with his lawyer and surrendered. Through his lawyer, he admitted that he was the driver who had left the scene of the earlier accident.

The Respondent, who had no prior involvement with the matter, was assigned to handle the arrest. The Respondent, a relatively new officer, having been appointed on January 10, 2007, had made a number of arrests previously but he had never been assigned to handle an arrest where he was not personally involved.

Using the complaint report prepared by Paquette and information provided by his sergeant, the Respondent communicated with ADA Salvey by telephone regarding the preparation of charges. The Respondent testified that he told Salvey that he was not present at the scene of the accident but he was never asked and he never volunteered the fact that he did not speak to the complainant/victim, [REDACTED]. Salvey faxed a

¹ This name is variously spelled as [REDACTED]. The last spelling appears on the corrected complaint prepared by ADA Angelo after she spoke with the complainant and is probably the correct spelling.

complaint to the Respondent which stated that he, as the deponent, was informed by

[REDACTED], that,

informant was [sic] suffered substantial pain to informant's head and leg when a 2000 Honda struck a taxi cab that informant was exiting. Deponent is further informed by informant that the driver of said Honda exited said Honda and ran away from the accident.

The Respondent admits that he signed the complaint and faxed it back to Salvey. He testified that he read and reviewed it before signing and did not see a problem.

Some time later, he was contacted by ADA Angelo who had been assigned the case. Angelo asked if the Respondent could sign a corroboration affidavit for a corrected complaint that he had prepared and the Respondent immediately let Angelo know that he had not spoken to [REDACTED] and referred Angelo to Paquette, who he said had spoken to [REDACTED]

Angelo contacted Paquette, who signed the new complaint (DX 2). There was apparently no adverse impact to the prosecution of the criminal case against the driver.

The Advocate has asked for a penalty involving the loss of 30 vacation days and one year of dismissal/probation. Counsel for the Respondent asserts that there was no malicious motive on the part of the Respondent, that he was not avoiding work, cutting corners or seeking overtime and that the matter involved what was essentially an error. He asks for a penalty of no more than 15 days.

In this case, the imposition of a penalty involving dismissal/probation is inappropriate. Such a penalty is ordinarily reserved for cases where additional monitoring is required. The two cases relied upon by the Department for their recommendation appear to be materially different than the instant case. For instance in

Disciplinary Case No. 82558/07, signed February 11, 2008, the Respondent appears to have willfully lied about the facts of the case but persisted in doing so by lying at his Official Department Interview. Disciplinary Case No. 82080/06, signed September 10, 2008, also appears to involve a willful falsehood along with additional misconduct.

Moreover, there are numerous cases of similar misconduct where dismissal/probation was not part of the penalty.

Setting an appropriate penalty in terms of the loss of vacation days in this case is a more difficult matter. Certainly, most of the cases have established a baseline of thirty days as an appropriate level of penalty for similar misconduct, (see for example, Disciplinary Case No. 78778/03, signed January 19, 2004, Disciplinary Case No. 83630/08, signed October 7, 2008, Disciplinary Case No. 84027/08, signed March 10, 2009, Disciplinary Case No. 84026/08, signed March 30, 2009, Disciplinary Case No. 84029/08, signed August 4, 2009 and Disciplinary Case No. 83519/07, signed November 23, 2009).

In this case, however, there is another factor to consider. In the closing report of the Internal Affairs investigation (RX 1), the author notes that after speaking to the assistant district attorneys involved,

All of the ADA's interviewed were in agreement that there was no malicious intent on the part of the S/O (subject officer). The investigation infers that there was some type of miscommunication between the S/O reporting the facts of the incident and the Complaint Room ADA drafting the affidavit.

It seems to this Court that an attorney preparing a legal document has a responsibility to see to it that the document is accurate. This is not the first time this Court has observed instances in which charges of this type, involving Criminal Court

complaints, were brought against a member of this service where the error was at least in part attributable to the manner in which the case was handled by the drafting authority, (see Disciplinary Case No. 82154/06, signed November 23, 2009 and Disciplinary Case No. 83519/07, signed November 23, 2009). Nor is this issue limited to one county as those cases make clear.

It is as incumbent upon the attorney drafting a sworn legal document as it is on the affiant signing the document to insure that it is accurate. It is incumbent upon the drafter to insure that the person signing a document understands that the phrase “informed by” means directly informed by such person as opposed to informed via documents or third parties. This is particularly critical where the signer told the attorney that he was not present at the scene and where the complaint and accident report regarding the incident with the complainant/victim contain the name of another officer, (see CX 2). Of course, it is also incumbent upon the person signing the document to question what she or he is being asked to sign.


Further, it is certainly possible that at the time the complaint was drafted the assistant district attorney and the Respondent were more focused on getting the facts right, than on the directness of the source of the information. Indeed, when the Respondent saw Paquette again, he went over the facts of the case with her.

If Criminal Court complaints are to achieve the level of reliability that is expected of them, then both the drafters and the signers need to be mindful of the issues of exactitude. It also must be borne in mind that Criminal Court complaints are preliminary documents often drawn in haste with less than adequate opportunity for careful proofreading and review. An example of this can be seen in the complaint in

question here (DX 1), where there is an obvious grammatical error that was missed or ignored by both the assistant district attorney who drafted the document and the Respondent who signed it.

This Department can only address the issue as it applies to its members and there is no question that the Respondent should have questioned the document and refused to sign it without appropriate correction. While 30 days might ordinarily be an appropriate penalty, under the unique circumstances of this case, the loss of 20 vacation days seems more appropriate and thus that is the recommendation of this Court.

Respectfully Submitted,



Martin G. Karopkin
Deputy Commissioner Trials

APPROVED
JUN 08 2010

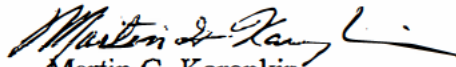
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MATTHEW RANDLOV
TAX REGISTRY NO. 943718
DISCIPLINARY CASE NO. 85574/09

The Respondent, appointed to the Police Department on January 10, 2007, received a rating of 3 "Competent" on both his 10-month and 16-month probationary performance evaluations and 3.5 "High" [REDACTED] month probationary performance evaluation. [REDACTED] and has no prior formal disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trial