



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 28, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Daniel Talleyrand**
Tax Registry No. 947531
23rd Precinct
Disciplinary Case No. 2020-22919

The above named member of the service appeared before Assistant Deputy Commissioner Josh Kleiman on July 27, 2022, and was charged with the following:

DISCIPLINARY CASE NO. 2020-22919

1. Said Lieutenant Daniel Talleyrand, while assigned to the 48th Precinct, on or about and between September 1, 2019 and May 12, 2020, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by treating a Member of the Service differently than other Department employees because of her gender in violation of the New York City or New York State Human Rights Laws.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

**New York City Administrative Code
Section 8-107**

**UNLAWFUL
DISCRIMINATORY
PRACTICES
CIVIL RIGHTS
NEW YORK CITY HUMAN
RIGHTS LAW**

Executive Law Section 296

**UNLAWFUL
DISCRIMINATORY
PRACTICES
NEW YORK STATE HUMAN
RIGHTS LAW**

2. Said Lieutenant Daniel Talleyrand, while assigned to the 48th Precinct, on or about and between September 1, 2019 and March 31, 2020, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by engaging in a

continuing course of conduct of improper or inappropriate text message conversations with a subordinate.

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


**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated August 31, 2022, Assistant Deputy Commissioner Josh Kleiman found Lieutenant Daniel Talleyrand guilty of all Specifications in Disciplinary Case No. 2020-22919. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

After reviewing the facts and circumstances of this matter, I have determined that a higher penalty is warranted.

Lieutenant Talleyrand engaged in behavior towards a subordinate that was repeated and unwanted. As a supervisor, Lieutenant Talleyrand must be held to a higher standard and thus, a higher penalty and a period of dismissal probation is warranted.

Therefore, Lieutenant Talleyrand shall forfeit fifty (50) vacation days and be placed on one (1) year dismissal probation, as a disciplinary penalty.


Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

August 31, 2022

-----X

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2020-22919
Lieutenant Daniel Talleyrand	:	
Tax Registry No. 947531	:	
23rd Precinct	:	

-----X

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

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For the Respondent: Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Lieutenant Daniel Talleyrand, while assigned to the 48th Precinct, on or about and between September 1, 2019 and May 12, 2020, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by treating a Member of Service differently than other Department employees because of her gender in violation of the New York City or New York State Human Rights Laws.

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

PUBLIC CONTACT-
PROHIBITED CONDUCT
GENERAL REGULATIONS

New York City Administrative Code
Section 8-107

UNLAWFUL DISCRIMINATORY
PRACTICES
CIVIL RIGHTS
NEW YORK CITY HUMAN
RIGHTS LAW

Executive Law Section 296

UNLAWFUL DISCRIMINATORY
PRACTICES
NEW YORK STATE HUMAN
RIGHTS LAW

2. Said Lieutenant Daniel Talleyrand, while assigned to the 48th Precinct, on or about and between September 1, 2019 and March 31, 2020, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department by engaging in a continuing course of conduct of improper or inappropriate text message conversations with a subordinate.

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

PUBLIC CONTACT-
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 27, 2022.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Sazedur Rahman as its sole witness. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the

Tribunal finds Respondent Guilty of the specifications charged and recommends a penalty of 40 vacation days and the imposition of one-year dismissal probation.

ANALYSIS

On June 17, 2022, Complainant called the Department's Equal Employment Opportunity Division concerning sexual overtures made by Respondent.¹ Complainant subsequently produced text message conversations between her and Respondent, which spanned from September 1, 2019 to March 31, 2020 (Dept. Ex. 2). During this period, Complainant was her command's Explorer Program Coordinator, while Respondent was variously assigned as her command's Integrity Control Officer and as a Platoon Commander. Respondent was never complainant's direct supervisor.

In or about August 2019, Respondent and Complainant exchanged text messages concerning topics such as work, family, and exercise. At one point in a discussion about going to the gym, Respondent noted, "If I can speak frankly, working out turns me on, I always look around." After Complainant responds that she likes to keep to herself, Respondent explains, "I like to take peeks . . . I'm a dude though and I love beautiful women. Short, tall, skinny, athletic, voluptuous... I can appreciate all diff kinds."

On September 10, 2019, Respondent asked Complainant: "Did you get to see me in my uniform? . . . I think I look attractive in my uniform." Complainant responded, "Ummmmm... U do!!" Respondent replied, "See I knew it!!!" and proceeded to communicate that he liked a yellow dress Complainant was wearing that he told her he had been staring at. He continued,

¹ Complainant also claimed that she was being retaliated against by having her tour of duty changed by an Administrative Lieutenant, who she believed Respondent was friendly with; however, no retaliatory acts were charged and a Department witness tasked with investigating this allegation testified at trial that he found this allegation to be unsubstantiated. (Dept. Ex. 3A at 9-10; Tr. 46-47)

"We should have went for food today so I could take another look." Respondent continues: "u have plenty to look at . . . I feel bad that I looked (3x lol) . . . U should wear it again tomorrow . . . I like to be honest I wouldn't mind seeing it again."

On September 13, 2019, Respondent offered to buy Complainant a coffee. Complainant notes, "U look in a better mood today." Respondent replies, "Ty. Maybe I'm thinking about ur yellow dress. Ugh sry. Maybe too forward." Complainant replies, "Funny, LOL." Respondent asks, "Ok I didn't come off wrong?" Complainant replies, "Naaaa, No worries, U just being a man!!" Respondent asks, "U like honesty?" Complainant replies, "Of course."

The next day,² Respondent sent Complainant a text message stating that he would not be getting to work until 3:30 p.m. Complainant replied that she would be leaving at 3:30 p.m. The following conversation ensued:

Respondent: What are u doing when u get off

Complainant: 3:30

Respondent: I know what time lol. Was asking what are u doing at that time? Gotta run straight home or could we find a place to meet at that time?

Complainant: Meet? Aren't u going to work? I'm going home.

Respondent: I start whenever I want. If u wanna hang for 30 min I'll go in around 4, u wanna hang for an hour I'll go in around 430 or whenever

Complainant: Who has it better than u lol

Complainant: That's good tho

Respondent: Ok so u sticking around with me somewhere or u bouncing home?

Complainant: Are you hitting up on me again??

Complainant: Ha???

Respondent: Trying to get to know u

Complainant: I know but remember what i told u

Complainant: I respect my hubby

² From here forward the text messages in evidence are undated. It is clear, however, based on the conversations, that they occur close in time to the prior messages in the chain and likely over the next two days. Accordingly, it is likely that the entirety of the text messages entered into evidence by the Department occurred in August and September 2019. Complainant explained that following the text messages described here, Respondent did not text her again until April 2020, which may have caused the Department to date Specification 2 through March 31. Complainant further explained that upon Respondent sending the last text message in evidence ("I am relentless"), she took screenshots of the text messages between them and deleted the text message chain, stating that she didn't want to see his name on her phone. (Dept. Ex. 5A at 35-38, 46-48)

Respondent: How are my supposed to get to know u better if we don't hang? And what's this "again" hitting up on u. U said I wasnt flirting last time.

Complainant: Well, last time it was very clear that u wanted to get to know me because of the obvious and i said, if i was not married i would had definitely had interest to get to know u as more than a friend.

Respondent: I apologize but my interest didn't go away. What's the saying "sorry not Sorry"

Complainant: Question?? U wouldn't want ur girl to disrespect you in that sense right????????

Respondent: Of course not

Complainant: Well, My hubby either

Complainant: I hope u do understand

Respondent: What if we went to a hotel in a diff area code or diff zip code??? I hear that's not cheating then?

Complainant: Lmaooo u are silly

Respondent: I think my argument is very valid.. I've heard it from many sources

Respondent: How about if we use fake names and aliases??? Like spies

Complainant: What u mean

Respondent: Diff area codes/diff zip codes- a lot of people have mentioned it to me

Complainant: Yea that's cheating

Complainant: I still have to look at him

Complainant: I have a conscious

Complainant: I'm not like that

Respondent: Can I have a hug in my office before u leave?

Respondent: I'm alone now

Complainant: He would have to be a fuck up

Respondent: U gonna come say bye?

Complainant: Where are u

Complainant: I left

Respondent: I am wherever u would like me to be. Wanna meet in parking lot of Wendy's

Complainant: Wendy's!!! For??! I'm just getting home

Respondent: Just to meet there and we coulda car pooled to go somewhere to talk

Complainant: Question??? Talk about what??

Respondent: Any and everything, I think talking

Complainant: It's weird because ppl in the 48 don't mind their own lol

Complainant: Assholes have nothing better to do

Respondent: Plus we are both attractive so they would definitely gossip

Complainant: Oooh hellll yea

Complainant: Lol

Respondent: So that's why I would prefer to talk outside of here

Complainant: U are a man and it's obvious what u want. I totally get it!! I would never knock a man for trying. If u and i meet outside the pct u are going to be tempted to hit up on me. I can garauntee that. Lmaooo

Respondent: I will be tempted. Let's keep that our secret

Complainant: What secret

Respondent: I think u will be tempted if we meet outside of here and that's why u keep saying no

Complainant: I'm a [g]rowned ass woman. I don't get tempted.

Complainant: I think we are clear when i told u i do think u are attractive

Respondent: Everyone gets tempted even u, I'm not just attractive, I'm sexy and cool too (my mommy told me)

Complainant: Talking abt confidence

Respondent: Yup im very confident

Respondent: Ur emoji person is very cute btw

Complainant: I know lol

Complainant: Like me

Respondent: I don't remember what you look like cause u didn't come say bye to me.....Send me one

Complainant: U and this pic thing

Complainant: I see i like receiving pics from chicks

Respondent: This has nothing to do with "liking receiving pics from chicks." Ur beautiful and I wanna see u. When I think about u and it's at a time where its not a good time to text u, I would like to look at ur pic. U just want me to beg. Now send me a pic already.

Complainant: I said no picsssssss

Complainant: I don't send pics to anyone

Respondent: Omg u need a Valium over there

Complainant: Omggggg lol

Respondent: Fine

Complainant: I can tell u are use to getting ur way

Complainant: U spoiled

Respondent: Maybe a little. But maybe u could see that it's just a pic

Complainant: I understand. I'm spoiled rotten so i relate

Respondent: I'm not gonna spoil u

Complainant: I never said for u to

Complainant: I don't need to be spoiled by u

Respondent: What do u want from me then?

Complainant: Nothing

Respondent: Haha I knew that answer was coming. Very predictable over there.

Complainant: Predictable is not so bad

Respondent: Bbbboooooorrrriinnnggg. . . .

Respondent: Tell me something interesting

Complainant: Like?

Respondent: I have lots of fun questions but I'll leave it up to u

Complainant: I'm afraid to ask. Put it this way! I'm home watching tv, resting so i can feel better, while hubby is still at work. My kids are in school. There's nothing really interesting abt me and I'm not going to make shit up to impress u.

Respondent: Ok relax over there. I don't want u to impress me. I want u to peek my interest. Here are some questions...answer all or none. How long have u been married? When was the last time u were interested in someone other

than ur "hubby"? Who was ur best lover (in bed) and why? Do u like my looks or personality better? I can think of more but these are a start

Complainant: Married 20 years. Your look and as far as your personality, I can't say much bc i don't know u like that. U seemed to be cool.

Respondent: Ok u have any silly questions for me.

Complainant: Oooh ok since we work in the 48th, who u want to [penis emoji] there? Lol

Respondent: Truthfully???

Complainant: Duh yea

Respondent: Ok there were 2.5 girls I would like to slide my big hard dick in

Complainant: Lol who lol

Respondent: Wouldn't u like to know

Complainant: Sure tell me

Respondent: Ok, You and that girl FP³ who left are the 2, the .5 doesn't really matter cause I wouldn't

Complainant: Who is the other 5

Complainant: Oooh by the way i known for a fact FP would give it up to u

Respondent: Point 5 so only half as much.... I just like her body...GV.⁴ How u know that about FP?? I think she's engaged

Complainant: I don't talk abt ppl but i known for a fact. She'll do u.

Complainant: Engaged and all lmaooo.

Complainant: Trust me

Respondent: Good to know.... lol. I'll never see her again either way

Complainant: I know he very well, U want me to hook it up? Lmaoooo

Complainant: She likes getting [penis emoji] down

Respondent: Omg hysterical. I don't know her. She left right after I got here. If I hit that she will tell u how good it is.

Complainant: That would be her business and who, where how she fucks u won't be a topic lol

Complainant: Her business is her business

Complainant: Let me know

Respondent: Let u know what ??? If I want u to hook me and her up?

Complainant: Yea

Complainant: I can text her lol

Complainant: He heh he

Respondent: U trying to live vicariously through her

Complainant: Helllllll noooooo

Respondent: Who is [devil face emoji]? U, her, me? All the above?

Complainant: Most women want what i have

Complainant: I'm good

Complainant: Like i said i don't talk abt ppl

Complainant: But she will definitely take the dick

Complainant: Lol

³ This name has been anonymized but is known to the Department.

⁴ This name has been anonymized but is known to the Department.

Complainant: Remember she even saw u in Dr. with ur girl. Lmaoooo see how ppl talk.
Complainant: Is a big department but it's not.
Respondent: First off I think u are full of [poop emoji] that she would take this big juicy dick of mine. What do u have that women want? Ur body, ur man?
Complainant: Let's put it this way God has blessed me with a lot. In every sense
Complainant: I'm not full of shit. Be nice
Complainant: Btw that girl [d]oes have a nice body. She is fuckable. U should try
Complainant: I think she has a man that works at the 48
Respondent: U talking about GV now?
Complainant: Yea she's cute
Complainant: I don't know much abt her
Respondent: I don't wanna fuck her I just appreciate her body. And she's a cool chick and a good cop. I'm not into her at all though.
Complainant: Oooh I see
Respondent: U and FP though I have always found extremely sexy and have always been attracted to
Complainant: FP is a beautiful chick
Complainant: She's fun too
Complainant: Nice girl
Respondent: Why do u want me to fuck her
Complainant: Geceizzzz....I'm trying to help u. U said u find her attractive... If u do fuck her, that would be totally your business and hers, but if I can help to hook u both up I would.
Complainant: She looks like a fun fuck
Complainant: Lol
Respondent: First off I really don't need too much help. I do pretty good on my own. I 100000% agree with u that she looks like a great fuck.
Respondent: Lmao I knew u would say that.. look who turned predictable...
Complainant: The truth is the truth.
Complainant: Okayyyyyyy
Respondent: How about u? Fun fuck?
Complainant: Excuse me
Complainant: We not talking abt me
Respondent: [pill emoji] please take one
Complainant: A lady never tells
Respondent: Or 2
Complainant: Lmaoooo
Respondent: Or 3
Complainant: Lmaoooo
Respondent: Ok I got a question...which do u prefer on a guy: tighty whities, boxers, boxer briefs, thong, commando
Complainant: Commando
Complainant: Lol
Respondent: Come on
Respondent: Send me pic of ur fav underwear
Complainant: U want to see my hubby's underwear?

Respondent: U like him commando...I don't wanna see that
Respondent: I think white lace for u
Respondent: Ok I'll dial it back for ms prude... What do u sleep in?
Complainant: Lol u an ass
Respondent: Tank top and small shorts I bet
Complainant: I'm your typical woman. I wear what I want and according to the weather or occasion
Respondent: U act like there is a snow storm in ur bed
Complainant: Lmaoooooooo
Respondent: In my fantasy ur in a long T-shirt that barley covers ur ass so it pokes out a little then u lift ur arms up to give me a hug and it comes out
Respondent: I have an active imagination
Respondent: I guess that's a no lol
Complainant: I told u I wear what I wear
Respondent: So do u wanna answer the question u asked me? Who u wanna [eggplant emoji] here?
Complainant: I'm too shy to answer
Respondent: That answer was not expected
Respondent: And I don't think ur shy
Respondent: More than 3 people?
Complainant: I am very shy
Respondent: Ok I'm surprised by that. I didn't know....
Respondent: I try to not be shy. Shy guys finish last. I have seen that lots of girls like confident guys
Complainant: U think so???
Respondent: I do
Complainant: I say yes and no
Respondent: Not all girls like it. Too much is probably a turn off. I'm sure I straddle that line some times
Complainant: Exactly too much is a turn off
Respondent: Do u have me in that category?
Complainant: I think u know who to be cocky with and who not
Respondent: Sometimes I put that out as a defense mechanism.
Respondent: But overall I do think I'm a catch

Respondent: Good morning
Complainant: Good morning
Respondent: How are u
Respondent: Feeling any better
Complainant: I do feel better, but I'm not at 100%
Respondent: I'm glad ur feeling a little better. What u up to today
Complaint: I just stepped out
Complaint: Thank u
Complaint: Going to some school
Respondent: Ok... I slept good?
Respondent: U?

Complainant: When I get in come to the the youth office
Complainant: Where u at
Respondent: On my office running around. I'll come to u
Respondent: U around
Complainant: U looked at me funny. Why
Respondent: U don't wanna know
Respondent: Can I be very very blunt?
Complainant: I know you are a hornbag so....No lol
Respondent: Haha
Complainant: Lol
Respondent: Ok then I can't answer
Complainant: Dios mio
Respondent: How did I look today?
Complainant: How did u look?? As always clean and nice
Respondent: I can't get my mind off u
Complainant: May I ask whyyyy
Respondent: I find u sexy
Complainant: Well I have always been told i am so there has to be some truth to it.
Respondent: I'm not sure I can text u all day every day and not wanna.....
Complainant: Get your mind off that then
Respondent: I'm torturing myself.
Complainant: So u have to stop being my friend
Respondent: Or be one better friends [winky face emoji]. We should stop texting and "hang out" like I want or maybe take a step back....
Complainant: I like chatting with u, but I do understand if u don't want to anymore bc u want more than what I can give u. U know why!
Complainant: I'm married and I don't want to disrespect what I have
Complainant: Do u understand
Respondent: Yes....
Respondent: I have mixed feelings cause I wanna smash u like crazy, but I don't want u to cheat on ur husband
Complainant: U making me sad
Respondent: I dont know what to do. If I can be honest, I think we keep texting like this that we will hook up at some point. Deny it if u want but it's what I believe
Respondent: If u want us to then obviously let's keep talking, but the ball is in ur court
Complainant: Okay, I totally understand[] where u coming from and like I said, I can't let such thing happen bc I don't want to disrespect my hubby. I like u, but that's my situation and that's that.
Complainant: I'll miss chatting with u
Respondent: If u were into just fucking I would still flirt, or we wouldn't even have to flirt we would just knock it out whenever we wanted...but u seem to wanna do the right thing so I think I should make it easier on us
Complainant: I have to do the right thing... I understand what u saying and I agree.
Respondent: I like talking to u. Ur mad cool. But this kinda friendship we are right now isn't healthy for either or us. We should straight fuck or dial it way back.

Complainant: I know... I know... Okay, It's not healthy at all.

Complainant: Okay, we gonna have to stop chatting

Respondent: I can't believe how mature and sensible I'm being.

Complainant: Why u can't believe that??

Respondent: Cause I wanna get inside u... usually I am relentless.

(Dept. Ex. 2 at 26-60).

The parties stipulated that Complainant was unavailable⁵ for trial and agreed to admission of her following prior out-of-court statements: (1) Complainant's initial complaint to EEO, received via telephone on June 17, 2020, by Sergeant Edwige Anatsui of the Equal Employment Opportunity Division (EEOD) (Dept. Exs. 3 & 3A); (2) Complainant's June 18, 2020, telephone interview, conducted by Sergeant Sazedur Rahman of EEOD (Dept. Exs. 4 & 4A), and (3) Complainant's June 29, 2020, in-person interview, conducted by Sergeants Rahman and Anatsui of EEOD (Dept. Exs. 5 & 5A).

In her initial interview, Complainant stated that she was "very nervous" about making a formal complaint against Respondent and exhibited emotional distress during portions of the call (Dept. Ex. 3A at 1-4, 8, 28). In both her initial complaint and in her interviews, she described Respondent "ask[ing] me out" in-person "back in 2019" (*Id.* at 5-6). She described her response to Respondent as follows:

At first he asked me to go out, like for a drink with him. And you know when you're just like, you, too frozen. Like, it took me like a while for me to actually like say, like I wanted to say no but like I was thinking about like alright, let me just figure out how to say no without pissing him off, without him retaliating against me. . . . And finally I told him like I was, I told him no. I was like, I don't go out with anybody.

⁵ At the time of trial, the Department represented that Complainant was in the process of retiring and was out on "Terminal Leave" (Tr. 6-7).

(*Id.* at 5). After this, Respondent began sending her text messages. Complainant explained that Respondent continued to pursue her sexually, but she had hoped it would “fade away” (*Id.* at 8). She worried about being too direct with Respondent, explaining:

[A]t some point when he told me that he was relentless, I, I told him, I was like, you know, how dare you like, you know, disrespect me and you’re going to see the messages. I basically, you know, told him like in a politely (sic) way because then he holds a supervisor position so while I want to curse him out I know not to.

(*Id.* at 15). Complaint expressed fear of Respondent now that she was making a complaint to EEOC: “I’m afraid. I’m actually like scared to go back to work because I’m doing this” (*Id.* at 15). Complainant concluded, “I want it to stop. That’s all I want. . . . I want to start feeling better” (*Id.* at 28, 30). During a follow-up telephone interview on June 18, 2020, Complainant told Sergeant Rahman that her doctor had diagnosed her with anxiety, which she stated was based on her interactions with Respondent (Dept. Ex. 4A at 3).

During Complainant’s in-person interview on June 29, 2020, Complainant described Respondent approaching her by showing more of an interest in the command’s Explorer Program she managed. She further recalled one occasion when Respondent approached her to tell her that he had been with a “young lady” “last night” and told her that he had videos. She indicated to him she didn’t want to see the videos, and he replied “no, no, I won’t show you the videos;” however, he showed her a picture of him and the young women in bed. According to Respondent, the picture was taken in a hotel room. He was covered from the waist down and the “young lady” was covered from the neck down. Following this interaction, Complainant explained that Respondent continued to approach her, mainly in her office, and eventually asked her out. Complainant hoped “to like drag it [out] and hopefully it fades away,” but Respondent “got more aggressive” (Dept. Ex. 5A at 3-10).

Respondent does not deny sending sexualized communications to Complainant. Rather, he contends that he did not engage in misconduct because he believed the messages were welcomed by Complainant and there was a mutual interest in “get[ting] to know [each other] better” (Tr. 66)

The Patrol Guide notes that “Conduct which can, in certain circumstances, be considered sexual harassment includes, but is not limited to, sexually suggestive remarks, pictures, gesturing, verbal harassment or abuse of a sexual nature, subtle or direct propositions for sexual favors, and any unnecessary or unwanted touching, patting or pinching” (P.G. 205-36, Page 3, Note [now A.G. 332-01]). All employees of the NYPD, including Respondent, receive training regarding Department policies prohibiting sexual harassment in the workplace, which include notices to supervisors, such as Respondent, that they are mandatory reporters of any observed or reported sexual harassment.

“It is the policy of the City of New York and the New York City Police Department that all employees are entitled to work in an environment free from unwanted sexual pressures and harassment” (Legal Bureau Bulletin, Vol. 48, No. 2 [February 2018]). Uniformed and civilian members of the NYPD are protected against sexual harassment in the workplace by Title VII of the Federal Civil Rights Act, the New York State Human Rights Law, the New York City Human Rights Law, and Department policy (P.G. 205-36 [now A.G. 332-01]).

While federal law requires proof that the “the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment” to establish a hostile work environment (*see Everett v. NY City Dept. of Educ.*, 2022 US Dist LEXIS 115283, at *21 [SDNY June 29, 2022] [*quoting*

Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 [1993]), New York State⁶ and City⁷ Human Rights Law do not require a showing that the alleged offending conduct was “severe or pervasive.” Rather, the State human rights law prohibits subjecting an employee to “inferior terms, conditions or privileges of employment” because of a protected status and the City human rights law prohibits differential treatment based on a protected category (“i.e. that he or she was ‘treated less well’ than other employees because of a protected characteristic”) (NY Exec. L. § 296[1][h]; NYC Admin. Code § 8-107 [1] [a]; *Pittman v. Yantiss*, 2022 NY Slip Op 31943[U], *12 [Sup Ct, NY County 2022]; *Williams v. NY City Hous. Auth.*, 61 AD3d 62, 66 [1st Dept 2009]). Under either the State or City human rights law, the allegations of sexual harassment must rise above “petty slights and trivial inconveniences” (*Black v. ESPN, Inc.*, 70 Misc 3d 1217[A], 2021 NY Slip Op 50118[U], *5 [Sup Ct, NY County 2021]).

Whether or not sexualized communications are violative of federal law, or State and/or City human rights laws, the conduct may, nevertheless, constitute a violation of Department policy, especially where the alleged offender is a supervisor. Department supervisors, managers, and executive staff, are regularly held, and reasonably so, to higher standards of conduct, in order that they may set good examples to those under their stewardship and supervision.

⁶ See *Maiurano v. Cantor Fitzgerald Sec.*, 2021 US Dist LEXIS 3762, at *10, n. 2 (SDNY Jan. 8, 2021) (“The relevant provision of the NYSHRL, § 296(1)(h), was amended, effective October 11, 2019, to eliminate the requirement that harassing or discriminatory conduct be ‘severe or pervasive’ for it to be actionable and to adopt instead a more protective standard that prohibits conduct that results in ‘inferior terms, conditions or privileges of employment.’”).

⁷ See *Watkins v. NY City Health & Hosps. Corp.*, 2018 NY Slip Op 31054(U), *15 (Sup Ct, NY County 2018) (citing *Williams v. NY City Hous. Auth.*, 61 AD3d 62, 66 (1st Dept 2009)) (“The NYCHRL hostile work environment claim[] does not require either materially adverse employment actions or severe or pervasive conduct. Rather, it requires a showing that ‘the alleged discriminatory conduct in question does not represent a ‘borderline situation’ but exceeds ‘what a reasonable victim of discrimination would consider petty slights and trivial inconveniences.’ Whether statements may have been isolated is irrelevant in analyzing the claim under the NYCHRL, as a single comment may be actionable under the statute.”) (internal citations omitted).

Here, the Department has proven by a preponderance that Respondent, a supervisor in Complainant's command, engaged in a course of sexualized conduct that was inappropriate and subjected Complainant to differential treatment based on her gender. It is undisputed that Respondent engaged in text message conversations with Complainant during which he made sexual advances that were continued after being rejected. It is also undisputed that Respondent discussed other women he would like to have sex with at his command with Complainant. These communications sexualized and objectified female members of the service. They were not *de minimis*. Rather, they constitute a violation of strict Department policies prohibiting such conduct in the workplace. Accordingly, Respondent is found Guilty of the two specifications with which he has been charged.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, 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 8, 2008, has no prior disciplinary history and has received high evaluations from his superiors. He has here been found Guilty of treating a Member of Service differently than other Department employees based on her gender and engaging in a continuing course of conduct of inappropriate text message conversations with a subordinate officer. The Department Advocate has recommended a

forfeiture of 60 vacation days and one-year dismissal probation. The Tribunal finds this penalty recommendation to be excessive and beyond that recommended by the Disciplinary Guidelines.

The Department reached its penalty recommendation by referring to both the penalties accompanying EEO-related misconduct and those accompanying abuse of authority violations, the latter of which targets misconduct involving improper interactions between members of the service and members of the public. Specifically, the presumptive penalty for subjecting a member of the public to a “sexual proposition” or “unwanted verbal sexual advances” is the forfeiture of 30 penalty days and the imposition of Dismissal Probation. In contrast, the section of the Disciplinary Guidelines targeting employment discrimination recommends a presumptive penalty of 20 penalty days for acts of verbal sexual harassment. In reaching its recommendation of 60 penalty days and Dismissal Probation, the Department has sought to aggregate both penalties and has further recommended enhancing the penalty by 10 vacation days to account for Respondent’s supervisory status.

The Tribunal agrees that Respondent is deserving of an aggravated penalty due to his supervisory status, including his service during a portion of the relevant time period as his command’s Integrity Control Officer. Among the aggravating factors noted by the Disciplinary Guidelines attendant to EEO violations are: (1) “Nature of the professional relationship between member of the service and complainant (e.g. supervisor-subordinate relationship);” (2) “Nature of Assignment;” (3) “Rank/Supervisory role of the member of the service;” and (4) “Misconduct indicative of a pattern of behavior.” Here, while Respondent was not Complainant’s direct supervisor, the facts support findings that the instant misconduct involved elements of each of these aggravating factors.

The Tribunal further agrees with the Department that Respondent is deserving of the monitoring afforded by the imposition of Dismissal Probation. At trial, Respondent failed to convince the Tribunal that he understood the nature of the misconduct in which he engaged.

Respondent testified as follows:

COMMISSIONER KLEIMAN: Lieutenant Talleyrand, do you think it's appropriate -- putting sexual harassment aside, do you believe it's appropriate for a supervisor to engage in these sorts of communications, that is, sexually suggestive communications, with a subordinate officer in the same command?

THE RESPONDENT: I would say that our communications were never about work. We never talked about work through texts or in the office. Everything what we talked about was outside. It was family. It was about working out. It was about nutrition. I believe that this relationship was -- literally had nothing to do with work, except for the fact that's where we met and initiated our mutual texting.

COMMISSIONER KLEIMAN: All right. So I take that to mean that you believe that there is nothing inappropriate with a supervisor engaging in sexually suggestive communications with a subordinate officer in the same command as long as those communications occur outside of work.

THE RESPONDENT: I would clarify. I'll say that our texting was mutual, and it started as friendship, and when friendship warped into something, it wasn't a supervisor just sending explicitly a text to somebody. This was a gradual evolved situation that we were both 50 percent each in. This wasn't a supervisor sending a subordinate a sexual text. This was about a back and forth that evolved from friendship into, as you will see when you read all of them, they were flirtatious. So I don't believe this is a supervisor sending a text. That is probably wrong, but I don't believe that's what this is. This was two people checking out to see if a relationship can bloom.

COMMISSIONER KLEIMAN: Okay. You would regard the text messages that you sent as appropriate; is that correct?

THE RESPONDENT: Yes, sir.

COMMISSIONER KLEIMAN: All right.

THE RESPONDENT: Can I add something?

COMMISSIONER KLEIMAN: Yes.

THE RESPONDENT: Whether it's appropriate or not, it's never going to happen again.

(Tr. 103-06). Respondent failed to grasp the power structures at play when an officer in a supervisory role, especially one in an ICO role who works closely with other members of a command's executive staff, engages in the behavior herein exhibited with a subordinate Member of the Service in the same command. By the conclusion of Respondent's hearing, the Tribunal remained unconvinced that Respondent would not engage in such misconduct again (despite Respondent's empty promise that he would not).

The Tribunal disagrees with the Department, however, that Respondent is also deserving of the unrelated penalty of targeting sexual propositions/advances at members of the public. The penalties contained in the abuse of authority section of the Disciplinary Guidelines are necessarily higher than those involving improper interactions between Members of the Service because they target violations of the essential function and mission of the Department to serve the public. The Patrol Guide begins by instructing officers to "protect the people" and "[m]aintain a higher standard of integrity than is generally expected of others," including "respect[ing] the dignity of each individual" in order to "render our services with courtesy and civility" (P.G. 200-02). Here, the conduct at issue did not involve an interaction with a member of the public.

Accordingly, the Tribunal finds that the presumptive penalty of the forfeiture of 20 penalty days attendant to acts of verbal sexual harassment under the Disciplinary Guidelines to apply. Given Respondent's supervisory position as an Integrity Control Officer during the relevant time period, the Tribunal deems a penalty enhancement of the forfeiture of 20 vacation

days to be appropriate. The Tribunal further finds that Respondent's actions, as validated by his trial testimony, justify a period of monitoring, one that the imposition of Dismissal Probation would provide.

Accordingly, the Tribunal recommends an aggravated penalty of the forfeiture 40 vacation days, and that Respondent 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 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,



Josh Kleiman
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT DANIEL TALLEYRAND
TAX REGISTRY NO. 947531
DISCIPLINARY CASE NO. 2020-22919

Respondent was appointed to the Department on July 8, 2008. On his three most recent annual performance evaluations, he twice received 4.5 ratings of “Extremely Competent/Highly Competent” for 2020 and 2021, and received a 4.0 overall rating of “Highly Competent” for 2019. He has been awarded nine medals for Excellent Police Duty.

Respondent has no disciplinary history.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials