



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

July 14, 2023

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Marlon Contreras**
Tax Registry No. 938258
Housing PSA 8, Viper 4
Disciplinary Case No. 2018-19526

The above named member of the service appeared before Assistant Deputy Commissioner Paul M. Gamble on October 18, 2022, and was charged with the following:

DISCIPLINARY CASE NO. 2018-19526

1. Said Police Officer Marlon Contreras, while assigned to the 61st Precinct, on or about June 17, 2018, at about 1310 hours, while off-duty and at his residence in [redacted] New York, wrongfully engaged in a physical altercation with his wife, New York City Police Sergeant [redacted]

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Said Police Officer Marlon Contreras, while assigned to the 61st Precinct, on or about June 17, 2018, while off-duty, having been involved at about 1310 hours in a physical altercation with his wife, New York City Police Sergeant [redacted] involving a police response, wrongfully failed to notify the Department's Operations Unit, as required.

P.G. 212-32, Page 1, Paragraphs 1-2, Note

**OFF DUTY INCIDENTS
INVOLVING
UNIFORMED MEMBERS
OF THE SERVICE**

P.G. 208-37, Page 4, Additional Data


**FAMILY OFFENSES AND
DOMESTIC VIOLENCE
INVOLVING
UNIFORMED MEMBERS
OF THE SERVICE**

In a Memorandum dated November 4, 2022, Assistant Deputy Commissioner Paul M. Gamble found Police Officer Marlon Contreras guilty of both Specifications in Disciplinary Case No. 2018-19526, after Police Officer Contreras entered a plea of guilty to all Specifications. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty for Police Officer Contreras.

The incident occurred more than five (5) years ago and at the time Police Officer Contreras was not suspended. Furthermore, Police Officer Contreras was not arrested as a result of his involvement in the underlying incident as he was determined to not have been the primary aggressor. Therefore, based on the totality of the circumstances, the interests of justice would not be served by now suspending Police Office Contreras from duty.

Instead, based on the foregoing, an *immediate* post-trial settlement agreement will be implemented in which Police Officer Contreras shall forfeit thirty-six (36) vacation days and cooperate with counseling through the 24-week OASAS program, as a disciplinary penalty.

If Police Officer Marlon Contreras does not agree to the terms of this post-trial negotiated settlement as noted, this Office is to be notified without delay.


Edward A. Caban
Acting Police Commissioner



POLICE DEPARTMENT

November 4, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2018-19526
Police Officer Marlon Contreras	:	
Tax Registry No. 938258	:	
PSA 8, VIPER 4	:	

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

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

To:

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

CHARGES AND SPECIFICATIONS

1. Said Police Officer Marlon Contreras, while assigned to the 61st Precinct, on or about June 17, 2018, at about 1310 hours, while off-duty and at his residence in [REDACTED] New York, wrongfully engaged in a physical altercation with his wife Anna¹.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Marlon Contreras, while assigned to the 61st Precinct, on or about June 17, 2018, while off-duty, having been involved at about 1310 hours in a physical altercation with his wife Anna, involving a police response, wrongfully failed to notify the Department's Operations Unit, as required.

P.G. 212-32, Page 1, Paragraphs 1-2, Note

OFF DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE
COMMAND OPERATIONS

P.G. 208-37, Page 4, Additional Data

FAMILY OFFENSES AND
DOMESTIC VIOLENCE
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE
ARRESTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 18, 2022. 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 reviewed all of the evidence in this matter, I find that mitigation is warranted, and recommend that Respondent be suspended for 30 days, forfeit an additional six (6) vacation days and that he attend a 24-week OASAS counseling program.

¹ The Tribunal knows the identity of Respondent's former wife: she is an active Member of Service.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent is the father of three daughters, who at the time of the incident, were 14, 13 and 12 years old; Respondent's son² was seven years old. On June 17, 2018, Respondent had planned to celebrate Father's Day with his children at his mother's home; his former wife Anna did not plan to attend. According to Respondent, he and Anna were experiencing difficulties in their two-year marriage. Respondent testified further that his youngest daughter, from a previous relationship, and Anna did not get along (T.15-16, 28-29).

While trying to leave, Respondent explained how his three daughters got into his car. He believed Anna was deliberately delaying his departure by taking her time getting their son ready. As his son exited the home, he tripped down a set a cement steps and injured his knee. Respondent exited his car and Anna ran out of the house, both approaching the boy at the same time. They brought the boy into the home, where they attended to his injury. As they were cleaning the wound, Respondent and Anna began arguing over the best treatment. Respondent disagreed with Anna's use of rubbing alcohol on the scrapes and went to place bacitracin on the wound. Anna then grabbed the back of his shirt, ripping it; in response, Respondent turned and pushed Anna off him (T. 16-18, 29-33).

According to Respondent, he went outside to smoke a cigarette by his car "to cool off." His son remained in the house with Anna. After a few minutes, Respondent asked his daughters, who were still sitting in the car, to bring their brother outside. Respondent had a clear view of the threshold of the home from his vantage point. Respondent testified that as his daughter approached Anna at the door and asked for her brother, he saw Anna push the girl to the ground (T. 19, 37-38).

² Respondent's son is the only child he shared with Anna.

Respondent went to the door, placing himself between Anna and his daughter to prevent his daughter from pushing Anna back. Respondent “mushed” his palm into Anna’s face, pushing her back into the house. He testified that it is possible, when he pushed Anna’s face, his palm hit her lip, causing it to make contact with her tooth and bleed (T. 20, 39-41, 43).

Anna then called 911 in Respondent’s presence, telling the operator that her husband had assaulted her. Respondent remained outside until officers from the local police department arrived, while Anna remained inside. When the officers arrived, Anna immediately identified herself as the complainant. Both Respondent and Anna identified themselves as Members of the Service to responding officers. Respondent testified that he was cooperative throughout the interaction (T. 20, 44-46).

After taking statements from both Respondent and Anna, as well as Respondent’s youngest daughter, an officer advised Respondent to leave the premises. His son stayed with Anna, and Respondent left immediately with his three daughters for his mother’s house. During the ride, his youngest daughter complained that her elbow hurt. Respondent explained the only thing on his mind in the moment was getting his daughter taken care of in case she was hurt from being pushed to the ground (T. 21, 27, 47).

While driving to his mother’s house in heavy traffic, Respondent received a call from the Duty Captain instructing him to call Operations. Following his call to Operations, the Duty Captain directed Respondent to report to the 115th Precinct. Respondent dropped off his daughters with his mother and asked her to take the youngest to seek medical attention; he then went to the 115th Precinct, where he was placed on modified duty (T. 22, 50-51).

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 record was also examined (*see* 38 RCNY §15-07). Information from his personnel record that was considered in making this penalty recommendation is in an attached memorandum.

Respondent, who was appointed to the Department on July 11, 2005, has pled guilty to engaging in a physical altercation with his former wife and failing to notify the Operations Division that he had been involved in a domestic incident. The Department Advocate has recommended a penalty of 45 penalty days, dismissal probation and counseling. Based upon the record before me, I find that a lesser penalty is warranted.

I note that Respondent served in the U.S. Marine Corps for five years before becoming a Member of Service. While not explicitly named as a mitigating factor under the Guidelines, I find that such service may be evidence of Respondent's potential for rehabilitation.

The presumptive penalty for engaging in an act of physical domestic violence is 30 suspension days, dismissal probation and a 24-week counseling program.

The presence of children is an aggravating factor, which increases the penalty by an additional ten days.

Failure to notify the Operations Division regarding involvement in a domestic incident is an aggravating factor and increases the penalty by five days. Since Specification 2, to which Respondent has plead Guilty, encompasses the same misconduct, I will apply the guidelines for an off-duty incident which carry the same presumptive penalty of five days but also permits the imposition of a mitigated penalty of one day.

This case presents an unusual fact pattern among domestic violence cases heard by this Tribunal. I find that the primary aggressor in this incident was Anna, who initiated the altercation by grabbing Respondent by his shirt and tearing it while they were both attending to

their son. I further find that Anna was the initial aggressor in the second altercation with Respondent's twelve-year old daughter. Based upon the facts in this record, while Respondent engaged in a physical act of violence against Anna, he did so in response to witnessing her push his daughter to the ground. It may be argued that his actions approach an imperfect third-party defense of a vulnerable victim. Accordingly, I find Anna's precipitating actions to be mitigating.

I further note that the incident occurred more than four years ago. Since that time, Respondent and his former wife have divorced and he has not had any further instances of misconduct. Had this case been adjudicated earlier, Respondent could have served at least two one-year periods of disciplinary probation, not counting the time he was on limited duty due to health issues. In the view of this Tribunal, having heard Respondent testify while observing his demeanor, he did not attempt to equivocate and I find his acceptance of responsibility to be genuine. On these facts, therefore, I do not believe the imposition of a one-year period of monitoring now is consistent with the Disciplinary Guidelines' goal of deterring future misconduct.

As a Member of Service, Respondent is required to behave professionally during stressful and emotional situations involving members of the public. He is required to exercise the same degree of forbearance in his personal life, even in the midst of a deteriorating marriage. The presence of his children during these events required him to be even more circumspect about his actions, even if provoked.

While the presence of Respondent's children in both altercations is ordinarily an aggravating factor, I find Anna's acts of initiating both altercations in the presence of children to mitigate the aggravating factor. For Specification 1, I therefore recommend a penalty of 30 suspension days, an additional five (5) vacation days and counseling.

Respondent admitted that he did not notify the Department in the immediate aftermath of the physical altercation with Anna but offered that he was in an agitated state of mind thereafter. In addition, he was growing increasingly concerned about whether he should seek medical treatment for his twelve-year old daughter, all while being stuck in holiday traffic. While he certainly had sufficient time to make a telephonic notification to the Operations Division once he began operating his car, his explanation that he was dealing with several concerns simultaneously is reasonable. Therefore, I find a mitigated penalty of (1) vacation day appropriate for to Specification 2.

Based on the record, I recommend that Respondent be suspended for 30 days, forfeit an additional six (6) vacation days, and attend a 24-week OASAS counseling program.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MARLON CONTRERAS
TAX REGISTRY NO. 938258
DISCIPLINARY CASE NO. 2018-19526

Respondent was appointed to the Department on July 11, 2005. On his three most recent annual performance evaluations, he was twice rated “Meets Standards” for 2020 and 2021, and rated “Exceeds Expectations” for 2017. He has been awarded one medal for Excellent Police Duty and four medals for Meritorious Police Duty.

Respondent has no formal disciplinary history. In connection with the instant matter, he was placed on Level 1 Discipline Monitoring in August 2018; monitoring remains ongoing.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials