

# MEMORANDUM IN SUPPORT OF NYPD'S DEVIATION FROM THE DISCIPLINARY SYSTEM PENALTY GUIDELINES

**Re:** CCRB Case No. 201902705 regarding Detective Austin Denio

**Date:** June 7, 2021

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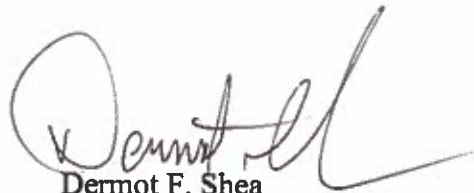
This disciplinary matter was investigated by the Civilian Complaint Review Board ("CCRB"). The CCRB substantiated a single allegation of discourtesy against Detective Austin Denio who, on March 28, 2019, used an expletive while dispersing a large group away from the scene of a fight.

During its investigation, the CCRB reviewed the facts and circumstances of the misconduct committed by Detective Denio and recommended the issuance of Command Level Instructions. Although CCRB's recommendation is below both the mitigated and the presumptive penalties prescribed in the NYPD's Disciplinary System Penalty Guidelines ("Disciplinary Matrix"), I find such penalty to be altogether appropriate in this case.

Particularly, the presumptive penalty under the Disciplinary Matrix calls for the forfeiture of five (5) penalty days for discourtesy while the mitigated penalty for such misconduct is the forfeiture of one (1) penalty day. In its penalty recommendation, CCRB utilized, as a mitigating factor, the isolated nature of the misconduct as well as the limited nature of harm caused by Detective Denio's discourtesy. Additionally, in reviewing the exceptional facts and circumstances of this case, the discourtesy occurred during an emergency response to a hostile crowd engaged in a group fight.

Furthermore, it should be noted that Detective Denio's positive employment history, including numerous Department medals, as well as his lack of prior substantiated CCRB complaints, is an additional mitigating factor in this case.

Therefore, though outside of the prescribed Disciplinary Matrix penalty, the issuance of Command Level Instructions, as recommended by the CCRB, is appropriate in this matter.

  
Dermot F. Shea  
Police Commissioner