

SAN DIEGO POLICE DEPARTMENT
PACKAGE CHECKLIST PROBATIONARY EMPLOYEE

DATE PROBATION ENDS December 23, 2023 (Probation was paused on 02/28/23)

1. **Prepared by:**
[Redacted] 5/17 06/13/23
Signature and Date Prepared
2. **Concurrence of 2nd Level**
[Redacted] 6010 06/13/23
Signature and Date forwarded to C.O.
3. **Approved by Commanding Officer**
[Redacted] 6010 06/13/23
Signature and Date Approved
4. **Human Resources:**
Date package received: 6/14/23
[Redacted] 6/14/23
Signature & Date Reviewed
Date forwarded to Legal: 6/14/23
5. **Legal Advisor:**
[Redacted]
Signature & Date Reviewed
6. **Date Returned to C.O.** 7/10/23
7. **Approved by Assistant Chief:**
[Redacted] 7/28/23
Signature & Date Approved

Modification, if any, from Recommendation:

8. **Notice of Failed Probation Signed by Chief:**
[Redacted] 8/10/23
Signature & Date Signed

9. **Chief's Appeal**
PROBATIONARY FAILURE UPHOLD
[Redacted] 8/12/24
Signature & Date

FAILURE OF PROBATION PACKAGE ROUTING:

DO NOT SEND FAILURE OF PROBATION PACKAGES THROUGH INTEROFFICE MAIL TO HUMAN RESOURCES OR LEGAL.



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 23, 2023
TO: Benjerwin Manansala, Captain, Northern Division
FROM: Daniel Brinkerhoff, Lieutenant, Northern Division
SUBJECT: Supervisor's Pre-Disciplinary Review

1. There is an IA Investigation.

[Y] [N]

If yes, see attached.

I reviewed IA # _____

[Y] [N]

2. There is an EEO Investigation.

[Y] [N]

If yes, see attached.

I reviewed EEO # 2023-004

[Y] [N]

3. I reviewed the officer's personnel files (HR and Divisional).

[Y] [N]

4. There is prior similar discipline.

[Y] [N]

I recommend appropriate discipline.

Daniel Brinkerhoff
Lieutenant

Attachments: EEO Report #2023-004



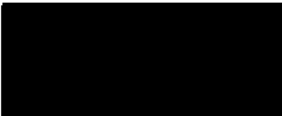
THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: 09/06/23
TO: Javier Nicholas, Police Sergeant, ID #7179
FROM: David Nisleit, Chief of Police
SUBJECT: Notice of Failed Probation



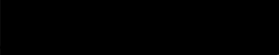
This memorandum is being hand-delivered to you to advise you that you have failed probation as a Police Sergeant with the City of San Diego Police Department, ending your Police Sergeant rank. You will return to your previous rank of Police Officer II and will be transferred to Eastern Division. This will be effective at the conclusion of any appeals or waiver of appeal rights.

You have the right to a Chief's Appeal. Your request must be in writing and submitted to the Chief of Police within ten (10) working days from receipt of this Notice of Failed Probation. Failure to request an appeal within the requisite time shall result in the waiver of your right to appeal and the forfeiture of your rights to a hearing.


David Nisleit
Chief of Police

This Notice of Failed Probation was handed to me in the presence of Captain Benjerwin Manansala on 09/06/23.

Receipt of this memorandum is acknowledged.

 # 7179
Javier Nicholas #7179

CAPT.  6010
Captain Benjerwin Manansala #6010

9/6/23
Date
09/06/23
Date



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: July 19, 2023

TO: Benjerwin Manansala, Captain, Northern Division

FROM: Daniel Brinkerhoff, Lieutenant, Northern Division

SUBJECT: Recommendation for Failure of Sergeant Probation, Javier Nicholas, ID#7179

CONFIDENTIAL: THIS REPORT IS FOR THE EXCLUSIVE USE OF THE CHIEF OF POLICE AND/OR CITY ATTORNEY.

I am recommending that Javier Nicholas be failed on his probationary period as a Police Sergeant. This recommendation is based on the following facts:

On February 23, 2023, Sergeant Javier Nicholas was the subject officer of a EEO (Equal Employment Opportunity) Investigation, EEO #2023-004. Sergeant Nicholas was removed from the field and assigned to the Telephone Report Unit in Northwestern Division pending the investigation.

Javier Nicholas was originally promoted to the rank of sergeant on December 24, 2022 and transferred to Northern Division on January 7, 2023.

On February 28, 2023, I contacted Program Manager [REDACTED] from Human Resources and requested Javier Nicholas' sergeant probation be place on hold pending the EEO Investigation.

On May 18, 2023, I received the completed EEO Investigation. Sergeant Nicholas was found in violation of the Department Procedure 5.03 – Racial and Sexual Harassment, when he told [REDACTED], she "come(s) off as a cocky, entitled, attractive, white girl." Followed by, "Okay then, I highly suggest you get on one of the dating apps, and not to find somebody, but just for you to disconnect from work and get laid."

Also, during the investigation, it was learned Sergeant Nicholas violated Department Policy 9.15 – Performance of Duty, and Department Policy 9.20 – Courtesy.

Sergeant Nicholas violated the performance of duty policy when he became concerned [REDACTED] was suicidal and he did not offer her any resources, he did not advise his lieutenant or captain, and he did not initiate a Fitness-For-Duty Evaluation.

Sergeant Nicholas violated the courtesy policy when he did not display tact, courtesy, and good judgement with his subordinates when he cursed and yelled at them during counseling sessions regarding job performance.

██████████ told Internal Affairs Investigators she felt ostracized, ridiculed, and belittled so much to the point that she did not want to come to work due to her interactions with Sergeant Nicholas. ██████████ stated she was not the only person on the squad that was belittled, told they were dumb, stupid and couldn't work.

██████████ told Investigators, his relationship with Sergeant Nicholas was strained, strictly professional and characterized by "fear." ██████████ stated during a debriefing, Sergeant Nicholas told him and the rest of the officers to "Shut the fuck up." On another occasion Sergeant Nicholas has said, "You guys are new. You don't know shit. Shut the fuck up and do what I tell you to do. And, don't have an attitude about it." ██████████ said when Sergeant Nicholas speaks with him and the rest of the squad, he "postures" and puffs his chest out, which is intimidating. ██████████ said Sergeant Nicholas does not care if you like him, but you will fear him. "You will do as he says, when he says." Sergeant Nicholas told him he likes confrontation, he invites confrontation.

██████████ told Investigators, that Sergeant Nicholas told him to be nicer to ██████████ because he was afraid she might commit suicide one day.

██████████ told Investigators, Sergeant Nicholas would cuss at his officers often and it was embarrassing and demeaning. ██████████ has witnessed Sergeant Nicholas yell at ██████████ and ██████████. Sergeant Nicholas also discussed ██████████ performance and personal issues with her.

██████████ told Investigators that Sergeant Nicholas used profanities when addressing him in a serious manner and had threatened to kick him off the squad due to his attitude. Sergeant Nicholas also discussed ██████████ performance issues with him.

Therefore, based on the information available to me, I believe Probationary Failure is appropriate for the following reasons:

Sergeant Nicholas violated Civil Service Rule XI, Section 3(a) & (b), which states in part:

The following are declared to be causes for removal or suspension from the classified service of the City, though charges may be based on causes other than those enumerated:

- (a) That the employee is incompetent or inefficient in the performance of his or her duty.
- (b) That the employee has been offensive in his or her conduct towards fellow employees, wards of the City, or the public.

Sergeant Nicholas was incompetent in his performance as a Police Sergeant. Sergeant Nicholas did not meet the General Job Performance Standards listed in the City of San Diego Employee Performance Plan for Police Sergeant. Sergeant Nicholas received and signed the Employee Performance Plan for the rank of Police Sergeant on February 13, 2023.

Sergeant Nicholas did not conform with Department Equal Employment Opportunity policies. Sergeant Nicholas had recently received Sexual Harassment Prevention training in SDPD Agency Specific New Sergeant School on January 27, 2023. Sergeant Nicholas also recently completed his annual EEO training on September 24, 2022 for Fiscal Year 2023.

Sergeant Nicholas did not demonstrate active listening skills, create an opening listening and/or learning environment with his subordinates, or display an ability to effectively facilitate group discussions. Sergeant Nicholas did not display tact, courtesy, or good judgement with his subordinates when he cursed and yelled at them during counseling session regarding job performance. Sergeant Nicholas did not make himself open and available to suggestions and comments from his subordinates when he repeatedly told them they were inexperienced and ignorant in their job knowledge. Sergeant Nicholas did not maintain effective and cooperative relationships with his personnel when he antagonized them, showed a lack of willingness to answer their questions, and did not attempt to listen or understand their viewpoints. Sergeant Nicholas did not transmit relevant information regarding his concerns for an officer's psychological welfare throughout the chain of command in a timely manner.

Sergeant Nicholas also violated Civil Service Rule XI, Section 3(d), in that he has violated the following lawful or official regulations:

1. Department Policy 5.03 – Equal Employment Opportunity, which states:

“Members shall be permitted a work atmosphere free from discrimination and sexual harassment. Members shall not discriminate against, nor sexually harass other members. It shall be the responsibility of all supervisors to assure a non-discriminatory work environment.”

Sergeant Nicholas violated this policy when he sexually and racially harassed [REDACTED] [REDACTED]. Sergeant Nicholas' comments, as noted above, regarding [REDACTED] race and gender combined with his statement regarding she engage in sexual activity constituted sexual harassment in the form of verbal harassment via sexually suggestive comments, as well as race and gender discrimination.

2. Department Policy 9.20 – Courtesy, which states:

“Members shall be courteous to all persons. Members shall be tactful in the performance of their duties, shall control their tempers, exercise the utmost patience and discretion, and shall not engage in argumentative discussion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Members shall not use insolent language or gestures in the performance of his or her duties. Members shall not make derogatory comments about or express any prejudice concerning race, religion, politics, national origin, gender (to include gender identity and gender expression), sexual orientation, or similar personal characteristics.”

Sergeant Nicholas violated this policy when he did not display tact, courtesy, and good judgement with his subordinates when he cursed and yelled at them during counseling sessions regarding job performance. During his Internal Affairs interview, Sergeant Nicholas admitted to yelling at his squad “maybe once a week” and using profanities such as “Fuck” and “Shit.”

3. Department Policy 9.15 - Performance of Duty Policy, which states in part:

"Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by, but is not limited to, a lack of knowledge of the application of laws required to be enforced, an unwillingness or inability to perform assigned tasks, or the failure to conform to work standards established for the member's rank, grade or position."

Sergeant Nicholas was deficient in the performance, as noted above, and failed to achieve a competent level as a Police Sergeant. It is my recommendation that Javier Nicholas fail his probation as a Police Sergeant.

Below is a list of all the reports and documents applicable to this recommendation:

1. EEO Investigation #2023-004.
2. Audio recorded interviews of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] and Nicholas #7179.
3. Employee Performance Plan for Rank of Sergeant, dated 02/23/23.
4. Completion Certificate for SDPD Agency Specific New Sergeant School
5. Completion Certificates for EEO/Sexual Harassment Training (2015-2023)

[REDACTED] 5717
Dan Brinkerhoff
Lieutenant



THE CITY OF SAN DIEGO

IN REPLYING
PLEASE GIVE
OUR REF. NO.
1914000001

February 12, 2024

CERTIFIED MAIL# 7000 0360 0003 9499 1721
CONFIDENTIAL

Javier Nicholas
[REDACTED]

Dear Officer Nicholas,

On January 18, 2024, I heard your Intra-Department Appeal regarding sustained findings contained within an Internal Affairs investigation and recommendation for a Failure of Sergeant Probation. At the appeal, you were represented by Attorney [REDACTED], of the [REDACTED]. The Department was represented by Northern Division, Captain Benjerwin Manansala.

The Internal Affairs (IA) investigation was conducted by Sergeant Jacob Mosteller. A recommendation for Failure of Sergeant Probation was presented to you on September 6, 2023. The recommendation for the Failed Sergeant Probation is based upon the following alleged violations related to EEO Case 2023-004:

- Civil Service Rule XI, Section 3(a) & (b)
- Performance of Duty Policy – 9.15
- Courtesy – Department Policy 9.20
- EEO Policy -Department Policy 5.03

As part of my responsibility as the Hearing Officer, I reviewed all documentation in its entirety, and listened to audio recordings of involved officers and witnesses. This disciplinary proceeding is an administrative action and therefore, involves a *preponderance of evidence*. It is important to note you were in a probationary status at the time of the incident. The probationary period is part of the testing process for the rank of Sergeant. My decision is based upon my analysis of all investigative materials submitted and the review of all testimony and exhibits presented by both sides during the Appeal Hearing.

SAN DIEGO POLICE DEPARTMENT
CHIEF'S OFFICE
1401 BROADWAY, SAN DIEGO, CA 92101
PHONE: (619) 531-2777 • FAX: (619) 531-2530

You violated Department Policy 9.20 Courtesy, which states in part:

Members shall be courteous to all persons. Members shall be tactful in the performance of their duties, shall control their tempers, exercise the utmost patience and discretion, and shall not engage in argumentative discussion even in the face of extreme provocation. Except when necessary to establish control during a violent or dangerous situation, no member shall use coarse, profane or violent language. Members shall not use insolent language or gestures in the performance of his or her duties. Members shall not make derogatory comments about or express any prejudice concerning race, religion, politics, national origin, gender (to include gender identity and gender expression), sexual orientation, or similar personal characteristics.

You violated this policy when you did not display tact, courtesy, and good judgement with your subordinates when you cursed and yelled at them during counseling sessions regarding job performance. In the Appeal Hearing, you appeared to suggest the profanity used was during simple conversations. However, several witnesses interviewed reported you talk down to officers and had heard you use the term "shut the fuck up," towards a member of the squad. This behavior is discourteous and inappropriate.

You violated Department Policy 5.03, EEO, which states in part:

Members shall be permitted a work atmosphere free from discrimination and sexual harassment. Members shall not discriminate against, nor sexually harass other members. It shall be the responsibility of all supervisors to assure a non-discriminatory work environment.

You violated this policy when you met in private with an officer and forced her into a conversation about her history. This meeting occurred because you witnessed her cry during a verbal counseling session from another sergeant. It is immature for you to believe when adults cry, they can't work and need to be sent home, or they are mentally unstable. Had you asked the officer or checked her training file you would've learned she teared up at times during stress in the Academy. However, none of that behavior means someone is unable to work, is mentally unstable, or suicidal. Additionally, telling other officers, her co-workers, to be nice because she might eat her gun is disturbing. You did not offer productive outlets such as Wellness, Focus, Psychological services or let her know that her supervisors were available to offer support and advice. You did however talk to many of your character witnesses about the problem squad you had been assigned to-again, another example of your immaturity as a sergeant. Although you may believe you were helping her find an outlet for work stress, stating she should get 'laid' is a clear violation of Department Policy 5.03.

You also violated Department Policy 5.03 when you made a comment referencing this officer as an entitled white girl. You could not explain in your testimony why



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: February 20, 2024

TO: [REDACTED], Payroll Supervisor

FROM: Benjerwin Manansala, Captain, Northern Division

SUBJECT: Notice of Failure of Sergeant Probation – Javier Nicholas,
Sergeant, ID #7179, City ID #302765

Javier Nicholas, Sergeant, ID #7179, City ID #302765, has failed Sergeant Probation effective February 13, 2024. He has been reclassified to the rank of Police Officer II. Please suspend any Sergeant pay for this employee beyond February 13, 2024. Javier Nicholas, Police Officer II, ID #7179 is currently assigned to Northwestern Division.



6010

Benjerwin Manansala
Captain
Commanding Officer –Northern Division