

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 979-1900

Christopher Sanchez,  
*Appellant*

v.

Department of State Police,  
*Respondent*

**Case No.: D-19-200**

**DECISION**

Pursuant to G.L. c. 31, § 43 and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA) was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission and the parties had thirty days to provide written objections to the Commission. No objections were received in a timely fashion.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate thus making this the Final Decision of the Commission.

For the reasons stated in the Magistrate's Tentative Decision, the Commission voted to order the Respondent to adjust *nunc pro tunc* the three separate fifteen-day suspensions so that they will be deemed to have been served concurrently rather than separately. The Respondent is hereby ordered to restore to the Appellant all compensation and associated rights lost with respect to imposition of the second and third separate, consecutively-served, fifteen-day suspension periods following the Trial Board's disciplinary recommendation. (See Exhibit 1)

As the record here establishes, a prior 2010 request by the Appellant for approval of outside training employment had been "mired" in bureaucratic "red tape." In 2012 or so, while a subsequent approval request was pending, the Appellant's direct supervisor (Lt. Klane), and his supervisor (Major Prior), gave approval for the Appellant to teach, for remuneration, a class organized by an outside vendor utilized by the Respondent. The Appellant's direct supervisor later was well aware that the Appellant taught a class organized by this same vendor in 2014 and commended him for this activity in his performance evaluations. The Department thus sent mixed signals about the Appellant's outside activities. Nonetheless, his appeal is not allowed in full as the Appellant should have secured unambiguous advance written approval from the

Colonel for his compensated work for the outside vendor, particularly in view of the potential for conflict of interest.

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan<sup>1</sup>, Commissioners) on December 1, 2022.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Joseph P. Kittredge, Esq. and Lorena Galvez, Esq. (for Appellant)

Suzanne T. Caravaggio, Esq. (for Respondent)

Edward B. McGrath, Esq. (Chief Administrative Magistrate, DALA)

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<sup>1</sup> Commissioner Tivnan concurs with the opinion but believes that, consistent with progressive discipline, the discipline here should have been modified downward even further (i.e. – no more than a 5-day suspension) in light of the Appellant’s long and distinguished employment history with the State Police.

COMMONWEALTH OF MASSACHUSETTS

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Docket Nos. D-19-200, CS-19-0610

CHRISTOPHER SANCHEZ,  
*Appellant*

v.

DEPARTMENT OF STATE POLICE,  
*Respondent*

**Appearance for Appellant:**

Joseph P. Kittredge, Esq.  
Lorena Galvez, Esq.  
Rafanelli Kittredge, P.C.  
1 Keefe Road  
Acton, MA 01720

**Appearance for Respondent:**

Suzanne T. Caravaggio, Esq.  
Office of the Departmental Prosecutor  
Department of State Police  
470 Worcester Road  
Framingham, MA 01702

**Administrative Magistrate:**

Angela McConney Scheepers, Esq.

**SUMMARY OF TENTATIVE DECISION**

The Respondent has shown by a preponderance of the evidence that it had just cause to discipline Sgt. Christopher Sanchez by imposing a forty-five-day suspension without pay. I recommend that the decision of the Department of State Police be affirmed.

## TENTATIVE DECISION

Pursuant to the provisions of G.L. c. 31, § 43 and G.L. c. 22C, §13 as amended by Chapter 43 of the Acts of 2002, the Appellant, Sgt. Christopher Sanchez (Appellant or Sgt. Sanchez), timely appealed the Department of State Police (Department or Appointing Authority) September 17, 2019 decision to suspend him without pay for forty-five (45) days, for the period of September 18, 2019 to November 1, 2019. (Exhibit 4.)

The Civil Service Commission (Commission) held a pre-hearing conference on October 15, 2019. The Commission then assigned the matter to the Division of Administrative Law Appeals (DALA) for hearing before an administrative magistrate.

On December 20, 2019 and January 10, 2020, I conducted a hearing at the offices of the Commission.<sup>2</sup> I recorded the hearing via digital audio, which serves as the official recording of the hearing.<sup>3</sup>

I admitted eighty-eight exhibits (Exhibits 1-88) into evidence. I admitted Sgt. Sanchez's appeal to the Commission as Exhibit 89, and the Discipline Appeal Stipulated Facts as Exhibit 90. Sgt. Sanchez testified on his own behalf. The Department called Chief Legal Counsel, Michael Halpin, Esq., Cpt. James O'Leary and Lt. Andrew Klane (retired).

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<sup>2</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. §§ 1.01 (Formal Rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>3</sup> Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to use the Commission's official recording to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

I marked the Petitioner's Pre-Hearing Memorandum "A" for identification, and marked the Respondent's Pre-Hearing Memorandum "B" for identification. The parties submitted post-hearing briefs on February 24, 2020, whereupon the administrative record closed.

## FINDINGS OF FACT

From the testimony and the exhibits submitted into evidence, and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. The Appellant, Trooper Christopher Sanchez, Badge #1845, has been employed as a trooper by the Massachusetts Department of State Police since 1988. He has held the rank of sergeant since 2009. (Testimony of Appellant, Testimony of Lt. Klane.)
2. Sgt. Sanchez served eight years in the United States Marine Corps reserve unit, rising to the rank of corporal. (Testimony of Appellant.)
3. Sgt. Sanchez is the 2003 and 2018 recipient of the Massachusetts State Police Colonel's Award; he is the recipient of the 2004 and 2007 Division Commander's Award; and the 1997, 2003, 2006 and 2007 Troop Commander's Commendation. Before the subject of this appeal, he had never been disciplined. (Exhibits 1 and 5; Testimony of Appellant.)
4. At all times relevant to this matter, Sgt. Sanchez was one of the four sergeants assigned to the Division of Field Services Collision Analysis and Reconstruction Section (CARS) unit. The CARS unit was responsible for performing accident reconstructions. Since 2009, he has served as the supervisor/team leader for the Northampton-based western Mass. team. (Testimony of Appellant, Testimony of Lt. Klane.)
5. Lt. Andrew Klane and Sgt. Sanchez graduated from the State Police Academy in the 1988 class. (Testimony of Lt. Klane.)
6. Lt. Klane was Sgt. Sanchez's direct supervisor at CARS for eight years until his retirement in August 2017. Lt. Tim Dowd then became the supervisor of the CARS western Mass. Team. (Testimony of Lt. Klane.)

*Vendors Providing Instruction to Department Employees*

7. Affiliated with the University of North Florida, the Institute for Police Technology and Management (IPTM), provided training to law enforcement personnel across the country. The Department contracted with IPTM to conduct its required crash reconstruction training for troopers. The Department provided classroom space at the Massachusetts State Police Academy, and in exchange IPTM would reserve three to four seats for the Department. <https://iptm.unf.edu/default.aspx>. (Exhibit 87; Testimony of Mr. Halpin, Testimony of Lt. Klane.)

8. IPTM also hired troopers, among other law enforcement officers, to teach their programs. Sgt. Sanchez sometimes taught the Department required crash reconstruction as an IPTM instructor at the State Police Academy while his fellow troopers attended as students. (Testimony of Appellant, Testimony of Lt. Klane.)

9. The Municipal Police Training Committee (MPTC) provides training for law enforcement personnel statewide, including Department employees.<sup>4</sup> Under an exception under the state ethics laws prohibiting Commonwealth employees from receiving compensation from more than one public entity, troopers were allowed to teach MPTC classes on state time. Sometimes Department employees attended these classes taught by their fellow troopers. Before 2010, troopers wore their uniforms and operated their cruisers during MPTC teaching assignments. (Testimony of Appellant.)

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<sup>4</sup> MPTC delivers training to more than 20,000 men and women who serve as police officers throughout the Commonwealth. The training ranges from basic training for new officers to mandatory and specialized professional development training for incumbent officers. <https://www.mass.gov/orgs/municipal-police-training-committee>

10. Lt. Klane completed Sgt. Sanchez's Employee Evaluation System (EES) for the period January 1 to December 31, 2015. Lt. Klane praised Sgt. Sanchez's work; "his outstanding verbal and written skills," his promoting of "the positive image of the section and the department," his outstanding supervisory skills, "his strong leadership abilities while supervising team members and interacting with members of the MSP and outside agencies," and his ability to "motivate his subordinates through his enthusiasm for the job he does so well."

(Exhibit 88.)

11. Lt. Klane wrote under the heading *Specific Performance Factor #2*:

Sgt. Sanchez is an instructor in the field of crash investigation for the MA State Police Academy, the Municipal Training Committee (MPTC) Academies and the Institute for Police Technology and Management (IPTM). Sgt. Sanchez has provided training to these organizations several times a year.

(Exhibit 88.)

12. Lt. Klane completed Sgt. Sanchez's EES for January 1 to December 31, 2016. Under *Specific Performance Factor #2*, Lt. Klane repeated the above Finding of Fact 11, and added:

Sgt. Sanchez has developed a presentation on distracted driving as it relates to fatal collisions as well as a presentation on police officer distracted driving as it relates to fatal collisions as well as a presentation on police officer distracted driving. He has been requested by numerous agencies across the country to present on this topic. I was able to attend his presentation at the WREX Conference in Orlando this year. Sgt. Sanchez did an outstanding job.

(Exhibit 88.)

*Department Rule & Regulation Article 5.9*

13. Article 5.9 of the Department Rules & Regulations, "Employment Outside the Department," was promulgated on January 31, 2001. In accordance with the article, employees of the Department may not engage in employment outside of the Department without written



approval of the Colonel/Superintendent. Further, the article provided that “[s]uch employment shall not create any conflict of interest or violate G.L. c. 268A or any other law.” (Exhibit 6.)

14. According to Department procedure, the member’s request moved from his supervisor, up the command chain to the Division Commander, then to the Legal Department for review. The Legal Department drafted a preliminary response for the Colonel, who could then accept, deny, or ask for further information on the request. (Exhibit 15; Testimony of Mr. Halpin.)

15. While Article 5.9 mandates that the members submit the approval of off-duty employment in writing, it does not mandate the form of the approval. (Testimony of Mr. Halpin.)

16. At all times relevant to the is appeal, Michael Halpin was the Legal Department employee responsible for reviewing off-duty requests and drafting the Colonel’s letter in response. (Testimony of Mr. Halpin.)

17. On September 20, 2010, the Department issued Superintendent’s Memo 10-SM-07, “Off-Duty Outside Employment,” effective December 31, 2010. The memo announced ADM-42, a new policy and procedure concerning outside employment. The memo was intended to streamline the outside employment request system. Under the previous informal and routine-less system, requests piled up. Members received approvals after long delays or not at all. Members now had the responsibility of resubmitting all unacted upon requests or advising the Colonel of their previous approvals for off-duty (usually annual) employment by January 3, 2011. (Exhibit 25; Testimony of Mr. Halpin.)

18. Superintendent's Memo 10-SM-07 reiterated the requirements of Article 5.9 of the Department's Rules & Regulations, that members not engage in outside employment in the absence of an approval letter from the Colonel. (Exhibit 25.)

19. However, ADM-42 was never promulgated. Due to the backlog of off-duty employment requests, on December 29, 2010, the Department rescinded Superintendent's Memo 10-SM-07 with the issuance of Superintendent's Memo 10-SM-11, allowing renewals for off-duty employment to stand. The Department instead prioritized first-time requests. (Exhibit 26; Testimony of Mr. Halpin.)

20. The Legal Department or Department staff usually drafted letters on Col. McGovern's behalf. Regardless of the date on the document, it was common for her staff to stamp the memorandum with a date stamp including the word, "Approved." The stamp was intended to show that the Colonel had seen the memorandum and agreed with its content. In the matter of off-duty employment approvals, the "Approved"/date stamp only meant that the Colonel approved the letter written by the Legal Department or Colonel's staff. It did not indicate approval of off-duty employment requests. Approval of such a request would be contained within the body of the letter. (Exhibits 11 and generally 31-83; Testimony of Mr. Halpin.)

21. There was no formal mail process for troopers in barracks before 2013-2014. The members received their mail by "troop mail," where troopers traveling barracks to barracks would pick up mail and drop it off in other barracks. Troop mail was slow and could take up to a week or longer, and was the means of delivery for off-duty employment requests. Around 2013-2014, email was instituted as the means of delivery for off-duty employment requests. Members attached the request to an email addressed to the Colonel and everyone in the chain of command. (Testimony of Mr. Halpin.)

*Sgt. Sanchez's Off-duty Employment Requests*

22. One of Sgt. Sanchez's requests for off-duty employment remained mired in the request backlog in the Legal Department. Sgt. Sanchez filed a request for approval to teach his annual MPTC crash reconstruction course on October 20, 2020. He requested permission to wear his uniform and operate his cruiser. More than a year and half later, then-Col. Marian McGovern allowed his request to perform instruction in a letter dated July 9, 2012. However, she denied the request for the use of the uniform and the cruiser because the use of Department resources for outside employment constituted an ethical violation. (Exhibit 15; Testimony of Appellant, Testimony of Mr. Halpin.)

23. The Colonel's July 9, 2012 letter, drafted by Mr. Halpin, was marked with an "Approval" stamp and the date of July 10, 2012. The Approval stamp was also initialed by the Colonel. This stamp indicated that the Colonel had approved the issuance of the letter on July 10, 2012. (Exhibit 15; Testimony of Appellant, Testimony of Mr. Halpin.)

24. On May 23, 2012, Sgt. Sanchez submitted a request for off-duty employment as an IPTM crash reconstruction course instructor. (Exhibits 15 and 16; Testimony of Appellant, Testimony of Mr. Halpin.)

25. In his review of Sgt. Sanchez's IPTM request, Mr. Halpin realized that, in his opinion, there was a conflict of interest because IPTM was a Department vendor. He drafted, and Col. McGovern issued, a request for clarification, asking that the sergeant provide as much detail as possible:

Information that would allow the Department to better understand whether Massachusetts State Police or other law enforcement agencies will partner with IPTM or otherwise facilitate the offering of IPTM courses, your involvement, if any, with IPTM courses being offered at the State Police Academy or New Braintree, MA in 2013, and other additional information available that may assist the Department in better understanding and evaluating your request.

Mr. Halpin drafted the request for clarification on July 9, 2012. It was marked with an “Approval” stamp and the date of July 10, 2012. The Approval stamp was again initialed by the Colonel, indicating the correct date of issuance. (Exhibit 17; Testimony of Mr. Halpin.)

26. Mr. Halpin searched for the course schedule on the IPTM website. Seeing that it included an Advanced Traffic Crash Investigation course at the State Police Academy in New Braintree, he attached the course schedule to Sgt. Sanchez’s May 23, 2012 IPTM request. (Exhibit 18; Testimony of Mr. Halpin.)

27. It is unknown if the Department issued Col. McGovern’s July 10, 2012 clarification request to Sgt. Sanchez by USPS, fax, email or troop mail. However, copies of e letter were retained in the Colonel’s office and in the Legal Department. (Testimony of Mr. Halpin.)

28. One or two weeks later, Sgt. Sanchez contacted the Legal Department, inquiring about the status of the May 23, 2012 IPTM off-duty employment request. Mr. Halpin informed Sgt. Sanchez that a conflict of interest existed because not only was he teaching IPTM courses, he also participated in IPTM trainings (on state time) as a student. Sgt. Sanchez stated that he was good at what he did, and that his IPTM instruction was a good thing for the Department. Mr. Halpin countered that if that were the case, the Department would have engaged Sgt. Sanchez to train other officers from other law enforcement departments on state time. The conversation concluded with Mr. Halpin reminding Sgt. Sanchez that he had yet to respond to the Colonel’s request for clarification. (Exhibit 11; Testimony of Mr. Halpin.)

29. Mr. Halpin informed Lt. Klane and others that Sgt. Sanchez had been rude to him during the aforementioned exchange. When Lt. Klane advocated on Sgt. Sanchez’s behalf,

Mr. Halpin informed him that there was a possible conflict of interest. (Testimony of Mr. Halpin.)

30. Around July 10, 2012, Mr. Halpin received a media request for the résumés of CARS section troopers. After the CARS troopers submitted their résumés, Mr. Halpin met with the Department's head of Media Relations and Lt. Klane about crafting a response. Sgt. Sanchez's résumé confirmed that he had taken classes at IPTM. (Testimony of Mr. Halpin.)

31. Sgt. Sanchez never responded to the Colonel's July 10, 2012 request for clarification. (Testimony of Mr. Halpin.)

32. Nonetheless, on November 14, 2018, Sgt. Sanchez submitted another request for IPTM off-duty employment. This request, entitled "Outside Employment Expansion," sought authorization to contribute a chapter on distracted driving crash investigations for the 2019 revision of the IPTM's Training and Reference Manual in Traffic Crash Investigation (training manual). Sgt. Sanchez cited Article 5.9, Superintendent's Memo 10-SM-07, and ADM42 (rescinded Superintendent's Memo 10-SM-07.) In his request, Sgt. Sanchez stated that the Department had previously approved an off-duty employment request to serve as an IPTM adjunct instructor in 2010 (Crash Reconstruction), and had approved his national guest speaking (technology evidence in distracted driving crash investigations) since 2013. (Exhibit 12; Testimony of Appellant, Testimony of Mr. Halpin.)

33. When Mr. Halpin learned of the sergeant's November 14, 2018 request in December 2018, he reviewed Sgt. Sanchez's outside employment files again. He was cognizant that IPTM was a Department vendor, and that the sergeant had never received departmental approval for IPTM work. (Exhibit 12; Testimony of Mr. Halpin.)

34. On December 18, 2018, Col. Gilpin denied the sergeant's November 14, 2018 request based on a conflict of interest. Colonel Gilpin's letter further advised the sergeant that because he had never received approval for IPTM instruction, the instances of previous off-duty instruction employment that he had cited in the November 14, 2018 request work were violations of Article 5.9. (Exhibit 12; Testimony of Mr. Halpin.)

35. In December 2018, Lt. Dowd informed Sgt. Sanchez that "someone above" had said that the sergeant could not contribute to the training manual or conduct any further IPTM trainings. (Testimony of Appellant.)

#### *Travel Training Requests*

36. Unlike requests for off-duty employment approval, travel training requests were not reviewed in the Legal Department and forwarded to the Colonel for approval. Rather, they were processed through command channels to the Deputy Superintendent for approval. (Testimony of Mr. Halpin, Testimony of Capt. O'Leary.)

37. Using the travel training procedure, on April 13, 2018, Sgt. Sanchez sought approval to speak at IPTM's 2018 Symposium on Traffic Safety. The event would be held from May 21-May 28, 2018 in Orlando, Florida. According to the request, Sgt. Sanchez would speak on the topic of Distracted Driving Investigations. By this time, IPTM had discontinued its practice of providing instructors with a stipend or compensation. Instead, IPTM covered all expenses, including airfare, lodging, meals and waiving of the registration fee. (Exhibits 11, 14, 21 and 22; Testimony of O'Leary.)

38. In the request, Sgt. Sanchez stated that he had received previous departmental approval to attend the 2013 and 2016 IPTM Symposiums. (Exhibits 11, 14, 21 and 22; Testimony of O'Leary.)

39. Lt. Col. Barry O'Brien, the Dep. Superintendent, approved the request. Sgt. Sanchez appeared at the May 2018 Symposium as a representative of the Department. He received his regular salary in addition to two "training days" for his travel. (Exhibits 11, 14 and 24; Testimony of Sgt. Sanchez, Testimony of Capt. O'Leary, Testimony of Mr. Halpin.)

*Internal Affairs Investigation*

40. On December 21, 2018, with the assent of Lt. Col. Barry O'Brien, Dep. Superintendent, the matter of Sgt. Sanchez's November 14, 2018 request for off-duty employment proceeded to the Division of Standards and Training for review and a possible referral to the Internal Affairs Section. (Exhibit 12; Testimony of Mr. Halpin.)

41. On December 21, 2018, Cpt. James O'Leary, then Commander of the Department's Internal Affairs (IA), assigned Det. Lt. Jodi Dotolo to conduct an investigation. (Exhibit 11; Testimony of Mr. Halpin, Testimony of Capt. O'Leary.)

42. Before beginning the IA investigation, Det. Lt. Dotolo spoke with Mr. Halpin and learned that Sgt. Sanchez's previous requests for IPTM outside employment had not been approved, and that he had failed to comply with the Colonel's request for clarification on his May 23, 2012 request. Mr. Halpin recounted Sgt. Sanchez's ire during their telephone conversation to Det. Lt. Dotolo. (Exhibit 11; Testimony of Mr. Halpin.)

43. On January 6, 2019, upon her request and on behalf of the Legal Department, Mr. Halpin provided Det. Lt. Dotolo with information on Sgt. Sanchez's 2010 MPTC request and 2012 IPTM request. (Exhibit 11; Testimony of Mr. Halpin, Testimony of Capt. O'Leary.)

44. Det. Lt. Dotolo later received identical records from the Colonel's office upon her request for Sgt. Sanchez's outside employment requests. (Exhibit 11.)

45. As part of her investigation, Det. Lt. Dotolo requested Sgt. Sanchez's Travel Training requests for IPTM off-duty employment with IPTM. She received the April 13, 2018 request that had been approved by Lt. Col. O'Brien. (Exhibit 11.)

46. In Section 12 of the Travel Authorization Form which accompanied the April 13, 2018 Travel Training request, Sgt. Sanchez wrote "none," in response to the question, "relationship between [the] private party and the commonwealth." Sgt. Sanchez had attended IPTM trainings at the State Police Academy as a student. (Exhibit 14.)

47. Det. Lt. Dotolo next sought Sgt. Sanchez's IPTM off-duty employment records from IPTM. IPTM forwarded a "Vendor Activity Report," containing the courses, dates and payments made to Sgt. Sanchez to Det. Lt. Dotolo. (Exhibits 11 and 21.)

48. The "Vendor Activity Report" showed that IPTM had compensated Sgt. Sanchez for instruction on at least three occasions: (1) travel reimbursement and payment for teaching a course from October 20 to 24, 2014 in New Braintree, Massachusetts; (2) a travel reimbursement and payment for teaching a course from May 17 to 22, 2015 in Clearwater, Florida; and (3) a travel reimbursement and payment for teaching a course from May 31 to June 6, 2015 in Arden Hills, Minnesota. (Exhibits 11 and 21.)

49. IPTM had also compensated Sgt. Sanchez for teaching a 2013 IPTM course. (Exhibits 11, 21 and 22; Testimony of Appellant.)

50. Det. Lt. Dotolo obtained Sgt. Sanchez's payroll records via the Department's PayStation system. The payroll records showed that with the exception of the 2018 Symposium (approved as a travel training request), Sgt. Sanchez had used vacation/accrued time off when he taught for IPTM. The Department paid Sgt. Sanchez his regular salary for the May 21 to May 28, 2018 Symposium. (Exhibits 11 and 24; Testimony of Capt. O'Leary.)



51. On February 26, 2019, Det. Lt. Dotolo interviewed Sgt. Sanchez. Sgt. Sanchez acknowledged that he had had the opportunity to review the investigative file assembled by IA. Sgt. Sanchez acknowledged the receipt of financial compensation for teaching from October 20 to 24, 2014 at the State Police Academy in New Braintree, and for teaching from June 1 to 5, 2015, in Arden Hills, Minnesota. He acknowledged that he had been reimbursed for his travel expenses for the May 18 to 22, 2015 program in Clearwater Beach, Florida, but he could give no accounting for the additional \$300 which he received. (Exhibits 11 and 27.)

52. When asked about Col. McGovern's July 10, 2012 responses to his MPTC and IPTM off-duty employment requests, Sgt. Sanchez stated that he believed that the Colonel's letters were approvals because they had been stamped with the "Approved" stamp. (Exhibits 11 and 27.)

53. Sgt. Sanchez informed the detective that he had discussed the Colonel's request for clarification with his supervisor, Lt. Klane, and supplied him with the IPTM course schedule and course description the next day. Sgt. Sanchez identified the IPTM course schedule, procured by Mr. Halpin, as one of the documents that he had provided to Lt. Klane. Sgt. Sanchez informed Det. Lt. Dotolo that he was "a hundred percent sure" it was the exact same document, although he was not sure how exactly he had provided it to Lt. Klane. (Exhibits 11, 18 and 27.)

54. During his testimony before the Commission, Sgt. Sanchez stated he was "pretty certain" he had given Lt. Klane information on the course schedule, what the classes were or "something like that." He stated that he did not keep a copy of anything. (Testimony of Sgt. Sanchez.)

55. In the IA interview, Sgt. Sanchez acknowledged receipt of Col. McGovern's request for clarification "sometime after July 9<sup>th</sup>." He stated further that "[t]he last information I

got from Lieutenant Klane, sometime after, I can't tell you exactly, was you're all set." When asked why he believed that his IPTM request had been approved, Sgt. Sanchez replied, "this is dated July 9<sup>th</sup>, this is dated sometime after, it's stamped approved. And I was told by my supervisor, Lt. Klane, after I was asked for more information, you're all set. Fast forward two years, I teach a class in New Braintree for IPTM as a vendor and my supervisor is present, as well as [a] Trooper in the CARS Unit." (Exhibits 11 and 27.)

56. During the IA interview, Sgt. Sanchez stated he did not remember contacting Mr. Halpin after receiving the Colonel's July 10, 2012 request for clarification. He confirmed this in his testimony before Commission, stating unequivocally that he neither spoke with nor had any form of communication with Mr. Halpin about his request for IPTM off-duty employment. (Exhibits 11 and 27; Testimony of Sgt. Sanchez.)

57. Det. Lt. Dotolo interviewed Lt. Klane, now retired. As Sgt. Sanchez's supervisor at the time, he was aware Sgt. Sanchez had submitted the May 23, 2013 IPTM off-duty employment. Lt. Klane told Det. Lt. Dotolo that, to the best of his recollection, he never learned of the outcome of the request and that he was not aware the Colonel had sent the sergeant a request for clarification. (Exhibits 11 and 28.)

58. Lt. Klane recounted that while his off-duty employment requests were pending in 2012, Sgt. Sanchez told him that he was approached to teach an IPTM Pedestrian Crash course at the Academy. Lt. Klane spoke with his supervisor, Maj. Prior, and they "decided to allow him to go and teach that class, one time." Lt. Klane conveyed this "approval" to Sgt. Sanchez. (Exhibits 11 and 28; Testimony of Klane.)

59. Lt. Klane was aware that Sgt. Sanchez continued to teach for IPTM after the New Braintree course. He did not know if Sgt. Sanchez spoke to the Legal Department or had

provided a course schedule to the Legal Department or the Department. (Exhibit 87; Testimony of Klane.)

60. Lt. Klane assumed that these 2012 and later IPTM requests had been approved, and that he trusted Sgt. Sanchez to “do the right thing.” (Exhibit 87; Testimony of Klane.)

61. Lt. Klane informed Lt. Det. Dotolo that he believed Sgt. Sanchez’s instruction for IPTM was a good thing for the Department. Further, while people had been doing the same thing “under the radar” over the years, in 2012 and beyond, troopers needed to submit off-duty employment requests. (Exhibits 11 and 28.)

62. Lt. Klane testified that he was familiar with the formal off-duty employment approval request process because he had sought and received such approvals over the years from the Colonel. (Testimony of Lt. Klane.)

63. Sgt. Sanchez testified that he stopped teaching for IPTM after it stopped paying instructors in 2015, and was no longer worth the use of his vacation time. When IPTM contacted him with assignments, the sergeant cited family responsibilities. (Testimony of Sgt. Sanchez.)

64. Sgt. Sanchez acknowledged that his course remained on the IPTM website course schedule page. IPTM was also cited on Sgt. Sanchez’s LinkedIn profile. (Testimony of Sgt. Sanchez.)

65. Upon completion of her investigation, Det. Lt. Dotolo sustained the allegation that Sgt. Sanchez had engaged in unauthorized employment outside the Department on multiple occasions. (Exhibit 11.)

66. As a result of the Internal Affairs investigation, the Department issued Charge I, charging Sgt. Sanchez with violating three specifications of Article 5.9. 1 (2) (Employment

Outside the Department) of the Rules & Regulations of the Massachusetts State Police. Charge I listed three specifications, arising from his conduct, respectively, on or about October 20, 2014, on or about May 18, 2015 through May 22, 2015, and on or about June 1, 2015, through June 5, 2015.<sup>5</sup> (Exhibit 10.)

67. According to the Department's Discipline Guidelines, effective January 31, 2001, the penalty for first offense Class B violations is suspension of not less than five (5) days nor more than thirty (30) days. (Exhibit 9.)

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<sup>5</sup>

Charge I

Violation of Article 5.9 of the Rules and Regulations for the governance of the Department of State Police, to wit: **Employment Outside the Department**

**Specification I**

In that Sergeant Christopher N. Sanchez #1845, Massachusetts State Police, Division of Field Services, Collision Analysis and Reconstruction Section, on or about October 20, 2014, through October 24, 2014, in the town of New Braintree, did engage in off-duty employment without receiving prior approval from the Colonel/Superintendent. This occurred when Sergeant Sanchez received compensation for teaching a course for the Institute of Police Training and Management without approval from the Colonel. This action is in direct violation of Article 5.9.1 (2). This is a Class "B" violation. (B)

**Specification II**

In that Sergeant Christopher N. Sanchez #1845, Massachusetts State Police, Division of Field Services, Collision Analysis and Reconstruction Section, on or about May 18, 2015, through May 22, 2015, in the City of Clearwater, FL, did engage in off-duty employment without receiving prior approval from the Colonel/Superintendent. This occurred when Sergeant Sanchez received compensation for teaching a course for the Institute of Police Training and Management without approval from the Colonel. This action is in direct violation of Article 5.9.1 (2). This is a Class "B" violation. (B)

**Specification III**

In that Sergeant Christopher N. Sanchez #1845, Massachusetts State Police, Division of Field Services, Collision Analysis and Reconstruction Section, on or about June 1, 2015, through June 5, 2015, in the town of Arden Hills, MN, did engage in off-duty employment without receiving prior approval from the Colonel/Superintendent. This occurred when Sergeant Sanchez received compensation for teaching a course for the Institute of Police Training and Management without approval from the Colonel. This action is in direct violation of Article 5.9.1 (2). This is a Class "B" violation. (B) (Exhibit 10.)

68. On August 28, 2019, Col. Gilpin approved Personnel Order 19PER400 to convene a State Police Trial Board. The members were Capt. Michael J. Michno, President; Det. Lt. Gina M. Joyce, Member; and Lt. Gerard R. Mattaliano, Secretary, and scheduled a hearing for September 10, 2019. (Exhibits 1, 2 and 4.)

69. The Trial Board heard evidence on Specifications I, II and III of Charge I, three violations of Article 5.9 of the Department's Rules and Regulations. (Exhibit 4.)

70. After deliberation on September 17, 2019, the Trial Board unanimously found Sgt. Sanchez guilty of violating Charge 1: Specification I, Specification II and Specification III, all specifications for first offense Class B. (Exhibit 4.)

71. The Trial Board next considered the discipline to be meted out and heard the sergeant's counsel on the matter. After considering the Discipline Guidelines and Sgt. Sanchez's lack of disciplinary history, the Trial Board recommended a fifteen (15) day suspension without pay for each specification of the violation of Article 5.9.1 (2); the suspensions to run consecutively for a total of forty-five (45) days. (Exhibit 4.)

72. On September 17, 2019, upon adoption of the Trial Board's recommendations and findings, Col. Gilpin issued Personnel Order 19PER425. In accordance with the Discipline Guidelines for first offense Class B violations, the Order imposed discipline of fifteen (15) days suspension without pay for each specification, running concurrently for a total of forty-five (45) days. (Exhibits 1, 2 and 4.)

73. Sgt. Sanchez received a copy of Personnel Order 19PER425 on September 17, 2019. Sgt. Sanchez's loss of pay due to the Department's discipline was approximately \$20,000. (Exhibits 1 and 3; Testimony of Appellant.)

74. The Commission ordered the Department to produce all records for troopers subject to Article 5.9 disciplinary action. The Department produced three Personnel Orders for members who had waive his/her right to a hearing before the Trial Board. Those three members received discipline of (1) forfeiture of forty-five (45) vacation days; (2) suspension without pay for thirty (30) days, forfeiture of 10 days accrued time off, and the requirement to comply with stipulations; and (3) a written reprimand. (Exhibits 84-86.)

75. Sgt. Sanchez timely appealed his suspensions to the Commission on September 23, 2019. (Exhibit 89.)

#### ANALYSIS AND CONCLUSION

The Department has met its burden. It has proven that it had just cause to impose the discipline imposed on Sgt. Sanchez for violation of Department Rule & Regulation 5.9 Employment Outside the Department.

At the time of the hearing, Sgt. Sanchez had worked for the Department for 31 ½ years without blemish or previous discipline. He had received many commendations, as recently as the Massachusetts State Police Colonel's Award in 2018.

I recommend that the Commission affirm the September 17, 2019 decision of the Trial Board as adopted by the Colonel/Superintendent pursuant to Personnel Order 19PER425, and deny Sgt. Sanchez's appeal.

*A. Applicable Legal Standard*

G.L. c. 22C, § 13, provides that any uniformed member of the State police who has served for more than one year and who is charged with misconduct shall be tried by a department trial board at the direction of the colonel. The statute further provides: "Any person aggrieved by

the finding of such a trial board may appeal the decision of the trial board under sections 41 to 45, inclusive of chapter 31.” G. L. c. 22C, § 13.

G.L. c. 31, § 43 states in the relevant part:

... If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee, by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority ....

The Commission determines just cause for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *School Comm. v. Civil Service Comm’n*, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983). The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism, and bias in governmental employment decisions.’” *Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823 (2006) and cases cited.

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” *Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823 (2006) and cases cited. However, “[t]he commission’s task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether

‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’,” which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. *Id.*, quoting internally from *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983) and cases cited.

“After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. 31, § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) ... Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the ‘equitable treatment of similarly situated individuals.’ *Police Comm’r of Boston v. Civil Service Comm’n*, 39 Mass. App. Ct. 594, 600 (1996). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” *Falmouth v. Civ. Serv. Comm’n*, 447 Mass. 814, 823-825 (2006), quoting *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300,304 (1997).

“Unless the commission’s findings of fact differ significantly from those reported by the [appointing authority] or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the [appointing authority] on the basis of essentially similar fact finding without an adequate explanation.” *Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823-825, citing *Police Comm’r of Boston v. Civil Service Comm’n*, 39 Mass. App. Ct. 594, 600.



Section 5.9 of the Department of State Police Rules & Regulations provides in part:

**Article 5.9 Employment Outside of the Department**

- 5.9.1 Members may engage in off-duty employment subject to the following limitations:
  - (1) Such employment shall not interfere with the member's State Police employment;
  - (2) members shall submit a written request for off-duty employment through channels to the Colonel/Superintendent whose approval must be granted prior to engaging in any such off-duty employment.
- 5.9.2 Such employment shall not create any conflict of interest or violate M.G.L. c. 268A or any other law.
- 5.9.3 Approval may be denied at the discretion of the Colonel/Superintendent when it is determined that outside employment may present a conflict of interest, or it may:
  - (1) render the unavailable for an emergency;
  - (2) physically or mentally exhaust the member to the point that their performance may be affected;
  - (3) require special consideration be given to scheduling of the member's regular duty hours and/or court related appearances;
  - (4) bring the and/or the State Police into disrepute;
  - (3) impair the operation, efficiency, or effectiveness of the State Police.

Effective Jan. 31, 2001.

Section 6.5 of the Department of State Police Rules & Regulations provides in part:

**Article 6.5 Hearing on Charges**

- 6.5.1 A member who has served for one year or more and has been formally charged in accordance with Department Rules and Regulations shall be tried by a State Police Trial Board appointed by the Colonel/Superintendent. ...

Effective Feb. 5, 2001.

The Commission also must take into account the special obligations the law imposes upon police officers, who carry a badge and a gun and all of the authority that accompanies them, and which requires police officers to comport themselves in an exemplary fashion, especially when it comes to exhibiting self-control and to adhere to the law, both on and off duty. “[P]olice officers voluntarily undertake to adhere to a higher standard of conduct ... . Police officers must comport themselves in accordance with the laws that they are sworn to enforce and

behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel . . . they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” *Attorney Gen’l v. McHatton*, 428 Mass. 790, 793-74 (1999) and cases cited. *Falmouth* at 801-802 (2004); *Police Comm’r* at 601-602 (1996); *McIsaac* at 475-76 (1995). See also *Spargo v. Civil Service Comm’n*, 50 Mass. App. Ct. 1106 (2000), *rev. den.*, 433 Mass. 1102 (2001).

*B. Background*

On November 14, 2018, Sgt. Sanchez submitted a request to Col. Kerry Gilpin for authorization to engage in the off-duty employment of writing and submitting a chapter for the Institute of Police Technology and Management (IPTM) crash investigation training manual.

Sgt. Sanchez buttressed his November 14, 2018 request with “previously approved” IPTM teaching requests, and national speaking engagements for investigating and collecting technical information for driving crashes. However, in reviewing the request, the Department discovered that it had never authorized Sgt. Sanchez to engage in off-duty employment for IPTM. As a matter of fact, Sgt. Sanchez had failed to respond to the Department’s response to his last request (filed on May 23, 2012) for IPTM off-duty employment - the Colonel’s July 10, 2012 request for clarification.

Col. Gilpin denied the November 14, 2018 request in writing. She forwarded the matter to Internal Affairs (IA) for investigation into the instances of unauthorized off-duty employment.

*C. Internal Affairs Investigation*

The IA Commander assigned Lt. Det. Dotolo to the matter on December 21, 2018. She reviewed the relevant Department Rules & Regulations. Lt. Det. Dotolo assembled an investigative file including Sgt. Sanchez’s IPTM off-duty employment requests from the Legal

Department and the Colonel's office, copies of his training requests applications, the IPTM Vendor Activity Reports showing payments made to Sgt. Sanchez and his Department PayStation payroll records.

Lt. Det. Dotolo interviewed Sgt. Sanchez on February 26, 2019. In his interview, Sgt. Sanchez acknowledged that he had the opportunity to review the investigative file. He acknowledged that he had taught the IPTM class from October 20 to 22, 2014, but claimed that he had done so with the express authorization of Lt. Klane.

The IA investigation revealed that Sgt. Sanchez, despite no written authorization from the Department for off-duty employment, had taught IPTM classes from (1) October 20 to 24, 2014 at the Mass State Police Academy in New Braintree; (2) from May 18 to 22, 2015 at the University of North Florida, Clearwater, FL; and from June 1 to 5, 2015 in Arden Mills, MN. On each occasion, Sgt. Sanchez used vacation time, holiday pay or regular time off from his position at the Department in order to teach the classes. IPTM paid him approximately \$3,000 in total for all three classes.

Sgt. Sanchez argued that he had followed all Department procedures and that he had received verbal authorization from his supervisor because that was Department practice or due to the time sensitive deadlines.

The IA sustained three allegations against Sgt. Sanchez, and he was charged with three separate violations of Article 5.9.1 of the Department's Rules and Regulations, one for each instance of unauthorized off-duty employment.

Charge I issued after Lt. Det. Dotolo conducted a thorough IA investigation:

- Specification I – Teaching at Mass. State Police Academy, October 20-24, 2014
- Specification II – Teaching in the City of Clearwater, FL, May 18 to 22, 2015
- Specification III – Teaching in Arden Hills, MN, June 1 to 5, 2015

*D. Trial Board Findings*

A Trial Board convened pursuant to Personnel Order 19PER400, and held a hearing on September 10, 2019. (Article 6.5.1 Hearing on Charges.) On September 17, 2019, the Trial Board found Sgt. Sanchez guilty of Charge I, Specifications I, II and III respectively, when he engaged in in off-duty employment without receiving prior approval from the Colonel/Superintendent, in direct violation of Rules & Regulations Article 5.9.1 (2), a Class B violation, when he taught an IPTM course at the Massachusetts State Police Academy from October 20 to 24, 2014, when he taught a class at the University of North Florida, Clearwater, FL from May 18 to 22, 2015; and when he taught a class in Arden Mills, MN from June 1 to 5, 2015.

Article 5.9.1 has been in effect since January 31, 2001.

On September 17, 2019, the Colonel of the State Police adopted the findings and recommendations of the Trial Board pursuant to Article 6.9.5, and issued Personnel Order No. 19PER425, ordering that Sgt. Sanchez be suspended without pay for forty-five (45) days.

**CONCLUSION**

Sgt. Sanchez never received written approval for IPTM off-duty employment for the dates of October 20 to 24, 2014, May 18 to 22, 2015 and June 1 to 5, 2015. Lt. Det. Dotolo conducted a fair and objective investigation, which produced substantial evidence that the sergeant had not complied with the mandates of Article 5.9.1. The matter was referred to the Trial Board, and the members of the board found the sergeant guilty of all the specifications contained within Charge I.

Sgt. Sanchez has maintained that he performed all IPTM off-duty employment throughout his tenure with the Department, including the three specifications of Charge I, with

the express permission of his supervisor, Lt. Klane. In the 2015 and 2016 EES, Lt. Klane referenced and commended Sgt. Sanchez for his instruction at IPTM and nationally. (Exhibit 88).

It is an understatement to say that the Department was lax in its documentation of trooper off-duty employment before the promulgation of Superintendent's Memo 10-SM-07 on September 20, 2010. Although Article 5.9.1 had been in effect since January 31, 2001, it appeared that it was not enforced, and it was commonplace for troopers to receive verbal permission from immediate supervisors to perform off-duty teaching. Not only did immediate supervisors give verbal permission, they kept no record of their assent. When troopers submitted requests in writing, those requests and attendant responses were left to the vagaries of "troop mail."

When the Department tried to streamline the off-duty approval process by ordering that all troopers submit written requests up the chain of command (Superintendent's Memo 10-SM-07), the backlog was so severe that the Department allowed members to continue to perform annual off-duty employment so that it could focus on first time applications. One of Sgt. Sanchez's requests was stuck in this backlog. His October 20, 2010 request to teach his MPTC crash reconstruction class was not approved until July 10, 2012, twenty months later. While this request approved his teaching, it denied his use of the uniform and cruiser because of a conflict of interest. His May 23, 2012 request to teach an IPTM crash reconstruction course was handled in a more timely manner. In a July 10, 2012 response, the Colonel asked Sgt. Sanchez to submit further information on an apparent conflict of interest. Because Sgt. Sanchez never responded, he never had the Colonel's authorization to teach that class. I have also found, based on the credible testimony of Attorney Halpin, that Sgt. Sanchez was informed (by Mr. Halpin) that he could not

perform future IPTM off-duty employment without the removal of the apparent conflict of interest.

Put another way, by July 10, 2012, Sgt. Sanchez was aware that the Department had created a more formal procedure in the off-duty employment approval process, i.e. following the mandates of Article 5.9.1. He was aware that in all future off-duty employment requests, he could not teach without the Colonel's permission. He also could not teach in situations in which the Department concluded that it would result in a conflict of interest.

Sgt. Sanchez argues that stamps on letters from the Colonel indicated approval to his requests, although the content of the letters dictated otherwise.

I next address the issue of whether the Commission should modify the forty-five-day (45) suspension without pay.

The Trial Board and the Colonel had the option of having these three, fifteen (15) day suspensions, run concurrently (resulting in a fifteen (15) day suspension) or consecutively (resulting in forty-five (45) day suspension); they chose the latter. In making its final decision, I recommend that the Commission consider that Sgt. Sanchez has no prior disciplinary history, his supervisor at least tacitly approved his training activities; and whether the backlog, ambiguity and inconsistency on the part of the State Police should be considered as mitigating factors potentially justifying a downward modification of the penalty (e.g. – a fifteen (15) day suspension) which would have resulted if the State Police had opted to have these suspensions served concurrently.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Angela McConney Scheepers  
Administrative Magistrate

DATED: September 30, 2022