

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

VICENTE TORRES,
Appellants
v.

D1-16-181

CITY OF CHICOPEE,
Respondent

Appearance for Appellant:

Douglas A. Hall
NAGE / IBPO
346 Main Street
Cromwell, CT 06416

Appearance for Respondent:

Thomas J. Rooke, Esq.
Associate City Solicitor
City of Chicopee
73 Chestnut Street
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

Shortly after being criminally charged with domestic assault and battery regarding a female companion and being placed on a sixty (60)-day suspension, Mr. Torres visited the home of this female over her objection, resulting in a 911 call, the dispatch of multiple police officers and the issuance of a no trespass order against him. The seriousness of these offenses, which occurred within three (3) years of his appointment, provided the City of Chicopee with just cause to terminate him as a police officer.

DECISION

On October 31, 2016, the Appellant, Vicente Torres (Mr. Torres), pursuant to the provisions of G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Respondent, the City of Chicopee (City) to terminate his employment as a police officer from the City's Police Department. On December 14, 2016, I held a pre-hearing at the Springfield State Building in Springfield, MA. I held a full hearing at the same location over a period of two (2) days on April 12, 2017 and May 10, 2017.¹ As no written notice was received from either party, the hearing was declared private. All witnesses, with the exception of the Appellant and the Police Chief, were sequestered. Two (2) CDs were made of the hearing.² The Appellant submitted a post-hearing brief on July 14, 2017. The City opted not to submit a post-hearing brief.

FINDINGS OF FACT:

Based upon the documents entered into evidence (Respondent Exhibits R1-R20 and Appellant Exhibits A1-A9), stipulated facts, the testimony of:

¹ The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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. If such an appeal is filed, these CDs should be used to transcribe the hearing.

Called by the City³:

- Captain Daniel Sullivan, Chicopee Police Department;
- A.W., Licensed Clinical Social Worker [at a counseling center in Springfield; hereafter “Springfield Center”]
- Chief William Jebb, Chicopee Police Department;

Called by the Appellant:

- Vicente Torres, Appellant;

and taking administrative notice of all matters filed in the case, pertinent statutes, regulations, policies, stipulations and reasonable inferences from the credible evidence, a preponderance of the evidence establishes the following:

1. Mr. Torres is a resident of Chicopee, MA. He graduated from high school and has completed some college courses. He served in the United States Marine Corps for eight (8) years and was deployed on four (4) combat missions. He is fluent in English and Spanish and can read and write Italian. (Testimony of Mr. Torres)
2. On February 2, 2013, Mr. Torres was appointed as a police officer with the City’s Police Department. (Stipulated Fact)

Facts Related to Prior Suspension

3. On the night of July 17, 2015, Mr. Torres was a patron at a local restaurant that offers entertainment and dancing. He acknowledges that he was drinking heavily.

(Testimony of Mr. Torres)

³ The City was also authorized by the Commission to subpoena the following other witnesses who did not appear: 1) Jane Doe, a female party who filed a complaint with the Chicopee Police Department against Mr. Torres. Ms. Doe failed to appear and I gave the City the opportunity to enforce the subpoena and compel her appearance. Since Ms. Doe is a resident of Connecticut, and given the challenges associated with enforcing a subpoena in another state, the City opted not to file an action in Superior Court to enforce the subpoena. 2) M.W., a social worker at the Springfield Center. He was no longer employed at the Springfield Center at the time the Springfield Center received the subpoena. The Director of the Springfield Center reported to counsel for the City that no current contact information was available for him; 3) S.T., a counselor at the Greenfield Program. He failed to attend the first day of hearing and the City did not attempt to have him appear for the second day of hearing before the Commission.

4. While at the local restaurant, a physical altercation occurred between Mr. Torres and “Jane Doe”, a female acquaintance who Mr. Torres has known for some time.

(Testimony of Mr. Torres)
5. As part of the altercation with Ms. Doe, Mr. Torres acknowledges that he “shoved her or pushed her in the head.” (Testimony of Mr. Torres)
6. On July 18, 2015, Mr. Torres and Ms. Doe exchanged a series of text messages that Ms. Doe would later provide to the City’s Police Department over one (1) month later.⁴
7. As part of the text messages between Ms. Doe and Mr. Torres, they traded accusations about who initiated physical contact, but Mr. Torres acknowledges hitting Ms. Doe. (Exhibit R8)
8. Among the text message exchanges on July 18, 2015 is the following:

“Ms. Doe: I don’t hit you in the face? u hit me and pushed my head in the wall.

Mr. Torres: You slap me in the face [Ms. Doe].

Mr. Torres: N now I might lose my job for this shit.

Ms. Doe: I walked away from u and U pushed open the bathroom door yelling crazy shit at me calling me names and lost ur shit.

Mr. Torres: You slap me that’s y.

Mr. Torres: I was so mad cuz you slap me but I shouldn’t hit you n I’m sorry for that cuz I love you.” (Exhibit R8)

⁴ The Commission was not provided with copies of the actual text messages. Rather, the text messages are referenced in an “Investigative Report” initiated by Captain Daniel Sullivan of the City’s Police Department in August 2015. The Investigative Report references a text message from Ms. Doe that contains an image “showing injury to [Ms. Doe]’s right forehead.” The actual text messages, including this image, were not provided to the Commission..

9. Ms. Doe did not immediately file a complaint with the City's Police Department regarding the altercation at the local restaurant on July 17, 2015. (Testimony of Captain Sullivan and Exhibit R8)
10. Approximately one (1) week after July 17th, Mr. Torres and Ms. Doe began dating again. (Exhibit R8)
11. On August 22, 2015, Ms. Doe slept over at Mr. Torres's house in Chicopee. (Exhibit R8)
12. While at Mr. Torres's house on the night of August 22nd and the early morning hours of August 23rd, Ms. Doe noticed a text message from another female on Mr. Torres's cell phone. Unbeknownst to Mr. Torres, Ms. Doe used Mr. Torres's phone to send several text messages to the other female, including a photograph of Mr. Torres partially undressed. (Exhibit R8)
13. Ms. Doe and the other female subsequently contacted each other and concluded that they were both dating Mr. Torres at the same time. (Exhibit R8)
14. On August 27, 2015, Ms. Doe came to the City's Police Department to file a complaint against Mr. Torres regarding the incident at the local restaurant that occurred on the night of July 17th. Captain Daniel Sullivan, the Captain in charge of Internal Affairs, conducted a recorded interview with Ms. Doe. (Testimony of Captain Sullivan and Exhibit R8).⁵
15. During the August 27th interview, Ms. Doe did not disclose to Captain Sullivan that she had resumed dating Mr. Torres after July 17th or that she had used Mr. Torres's phone on August 23rd to communicate with another female that Mr. Torres was dating. (Testimony of Captain Sullivan and Exhibit R8)

16. In regard to what occurred at the local restaurant on the night of July 17th, Ms. Doe reported to Captain Sullivan that she and Mr. Torres had a verbal argument which escalated to a point where Ms. Doe grabbed a drink from Mr. Torres's hand, crushed the cup and proceeded to leave the restaurant. (Exhibit R8)
17. Captain Sullivan's summary of his interview with Ms. Doe then states in part that Ms. Doe reported the following to him:
- “[Ms. Doe] proceeded to leave the bar. As she was walking down the stairs, Vinny was following her and yelling at her. She went into the Ladies bathroom to get away from Vinny. Vinny tried to follow her into the Ladies bathroom. [Ms. Doe] tried to prevent Vinny from getting into the bathroom by pushing against the door but Vinny forced the door open and went into the bathroom.
- Once he was in the bathroom, Vinny slapped [Ms. Doe] in the face. [Ms. Doe] said she slapped Vinny in the face. [Ms. Doe] said that Vinny then became enraged – she described it like he turned into a different person. Vinny slapped [Ms. Doe] two more times in the face. [Ms. Doe] described the final blow from Vinny as a slap/push which forced her head against the bathroom wall. [Ms. Doe] slumped to the bathroom floor. A bouncer from the [local restaurant] had to pull Vinny off of [Ms. Doe].
- Vinny ran out of the [local restaurant] and drove off in his car.”
(Exhibit R8 and Testimony of Captain Sullivan)
18. During the August 27th interview, Ms. Doe provided the name (T.W.) of a female witness that was in the restaurant bathroom on July 17th. (Testimony of Captain Sullivan & Exhibit R8)
19. At the conclusion of the August 27th interview, Captain Sullivan advised Ms. Doe of her right to file for a restraining order and told her that she should seek such an order in the district court in Connecticut where she resides. (Testimony of Captain Sullivan and Exhibit R8)

⁵ The CD of the recorded interview was not introduced as an exhibit.

20. One (1) day later, on August 28, 2015 at 7:45 A.M., the mother of the other female that Mr. Torres was dating came to the Chicopee Police Department to file a complaint against Mr. Torres. According to Captain Sullivan's report, the mother reported to a sergeant that Mr. Torres was dating her daughter; that she discovered that Mr. Torres was dating another woman at the same time; and that her daughter wanted Mr. Torres to return a glass figurine that she had given him as a gift. (Exhibit R8)
21. That same day (August 28th) at 3:00 P.M., Captain Sullivan contacted Ms. Doe to inquire about whether she had obtained a restraining order in the district court in the town in CT where she resides. Ms. Doe told Captain Sullivan that she was advised to go to Chicopee District Court or a court house in Hartford, CT. Captain Sullivan advised Ms. Doe to contact the Chicopee District Court which, to Captain Sullivan's knowledge, referred her back to CT. (Testimony of Captain Sullivan and Exhibit R8)
22. While the exact date and time is not clear, either from Captain Sullivan's testimony or his investigative report (Exhibit R8), it appears that, also on August 28th, Captain Sullivan spoke to Ms. Doe about the new information the Department had received from the mother of the other female that had been dating Mr. Torres. (Exhibit R8)
23. During this conversation, Ms. Doe acknowledged to Captain Sullivan that she had resumed dating Mr. Torres after July 17th; that she was at his house on the night of August 22nd; and that she had viewed text messages on his phone and sent text messages from his phone to the female who she believed that Mr. Torres was dating. Captain Sullivan asked Ms. Doe if she had ever sent text messages using Mr. Torres's cell phone before and she said she had not. (Exhibit R8)

24. Captain Sullivan, concerned that Ms. Doe was being treated like a “ping-pong ball” regarding how to initiate a restraining order, decided to issue his own internal order to Mr. Torres ordering him to stay away from Ms. Doe. (Testimony of Captain Sullivan)

25. On August 28, 2015 at 3:40 P.M., Captain Sullivan handed Mr. Torres an email which stated:

“To: Officer Torres
From: Captain Sullivan
CC: Chief Jebb

As you know, you are the subject of an investigation. The victim in this investigation is [Jane Doe]. Until this matter is resolved, I am ordering you not to contact [Jane Doe] either directly or through a third party and I am also ordering you to stay away from [Jane Doe].

Furthermore, I am suspending your licensing to carry a firearm.

Captain Daniel P. Sullivan ...” (Exhibit R11)

26. That same day, on August 28th, Captain Sullivan placed Mr. Torres on paid administrative leave. (Exhibit R8)

27. On August 31, 2015, Captain Sullivan interviewed T.W., the other female that Ms. Doe reported was in the bathroom that night. T.W. identified Mr. Torres from an array of photographs. Captain Sullivan’s summary of his interview with T.W. states in part:

“In our interview [T.W.] said that in late July 2015, she went to the [local restaurant] with her friend [name redacted]. They got to the [local restaurant] about 11:30 P.M. T.W. said that she only had a couple of beers that night and by the time the incident happened, he head was clear. At around 1:00 A.M., [T.W.] was in the Woman’s Bathroom on the first floor. She just finished going to the bathroom and she was washing her hands when she heard yelling. The girl came in the bathroom first. She was yelling something like stay away from me and trying to push against the door to keep the man out. The man eventually got in the bathroom. Once he stepped foot in the bathroom he slapped the girl in the face. The girl immediately slapped him back.

He then slapped her again. When he slapped her the second time, her head hit a piece of maroon colored molding that was eye level on the bathroom wall. [T.W.] doesn't believe the man hit the girl hard enough to knock her to the ground but the girl ending up sitting on the ground. [T.W.] also doesn't believe the man was going to hit the girl again.

[T.W.] said she made eye contact with her and immediately turned and left the bathroom. A bouncer came into the bathroom about a minute after the incident.”
(Exhibit R8)

28. On September 3, 2015, Captain Sullivan interviewed B.O., the bouncer on duty at the local restaurant on July 17th. B.O. and Mr. Torres are both on the local restaurant's softball team. (Testimony of Captain Sullivan)

29. Captain Sullivan's report states the following regarding his interview with B.O.:

“[B.O.] was standing in the ... bar .. area, behind a glass door, when he heard them yelling at each other. They both looked upset. Vinny was red in the face. [B.O.] wasn't sure what was going on between them. He sees Vinny with different girls all the time and he sees her with different guys all the time. [B.O.] thought she's one of the girls Vinny hooks up with.

[B.O.] said the girl that Vinny was yelling at went into the Girl's bathroom. Vinny tried opening the door of the bathroom but she held the door closed. Vinny pushed the door open and she appeared to fall into the corner behind the door into the makeup station.

[B.O.] said that once he saw the girl fall he rushed towards the girls bathroom. He had to push five people out of the way to get to the bathroom. He saw her feet on the floor and Vinny was yelling over her. He grabbed Vinny by the back of his shirt and pulled him out of the bathroom. [B.O.] said he never stepped foot in the bathroom; it was just a matter of grabbing Vinny by the back of his shirt and pulling him out of the bathroom.

[B.O.] yelled at Vinny 'What are you doing.' 'Think before you do anything stupid' and 'Get the fuck outta here.' Vinny then ran from the restaurant and toward the parking area.

[B.O.] said that there is no way that Vinny and the girl could have hit each other in the short period of time that it took him to get from the glass door to the girl's bathroom. [B.O.] said the bathroom door was pushed pretty hard by Vinny. He believes the way Vinny opened the door, Probably caused her to fall pretty hard.

After he saw Vinny leave the restaurant, [B.O.] went into the girl's bathroom. The girl was still sitting on the floor. He asked her if she was okay and she shook her head yes. [B.O.] said there were two or three other girls in the bathroom with her."

(Exhibit R8)

30. Captain Sullivan discounted B.O.'s statements in part because he (Captain Sullivan) didn't believe that B.O., based on his location at the time, could have known one way or another whether Mr. Torres struck Ms. Doe. (Testimony of Captain Sullivan)
31. Captain Sullivan never visited the restaurant but viewed photographs taken of the area. No video of the relevant areas of the restaurant were available. (Testimony of Captain Sullivan)
32. Captain Sullivan requested a criminal complaint in Chicopee District Court against Mr. Torres for Domestic Assault and Battery. (Exhibit R8 and testimony of Captain Sullivan)
33. On November 9, 2015, Chicopee District Court Clerk Clark Kozikowski held a show cause hearing and found probable cause for charging Mr. Torres with Domestic Assault and Battery. He continued the case for one year to be dismissed pending no further charges. Ms. Doe was present and indicated that she did not want to pursue the matter. (Exhibit R8)
34. On or about November 12, 2015⁶, as part of his internal investigation, Captain Sullivan concluded that Mr. Torres violated Department Rules relating to Internal Affairs, General Considerations and Guidelines by "damag[ing] his reputation, the reputation of the Chicopee Police Department" and "violated this Policy and Procedure by assaulting and battering [Jane Doe], in front of witnesses, in the

women’s bathroom of a crowded nightclub.” Captain Sullivan also concluded that these actions were a violation of the Department’s Rules prohibiting criminal conduct. (Exhibit R8)

35. In his “Recommendation for Disposition”, Captain Sullivan stated in part:

“The wish of the victim in this case that she does not want to pursue charges in court does not mitigate the fact that Officer Torres committed an assault and battery against her. Officer Torres acted in an absolute reckless manner in this incident and the victim is fortunate that her injuries weren’t more severe.

....

Officer Torres’s outrageous and inexcusable conduct in this incident leads me to the conclusion that he does not have the fitness or suitability to be a Chicopee Police Officer. My recommendation is that Officer Vicente ‘Vinny’ Torres be terminated from employment with the Chicopee Police Department.” (Exhibit R8)

36. On November 23, 2015, Chief Jebb, Captain Sullivan and Captain Lonny Dakin met with counsel for the City to discuss internal investigations. (Exhibit R20)

37. According to a written timeline prepared by Captain Dakin: “Captain Sullivan had completed his investigation with recommendation to the Chief.” Yet, he goes on to state:

“It was decided that Officer Torres would be required to write a ‘to from’ explaining the incident prior to closing this internal investigation. Since Captain Sullivan was going on vacation, I was assigned to complete this aspect of the investigation.” (Exhibit R20)

38. On November 25, 2015, Captain Dakin ordered Mr. Torres to respond to a series of questions regarding the altercation with Ms. Doe at the local restaurant including: “If there was a physical altercation did you strike [Ms. Doe] – if so, how and how many times.” (Exhibit R20)

⁶ I have inferred that Captain Sullivan wrote this on November 12, 2015 based on a review of his report and his testimony. While it is possible that he wrote this sometime before November 12th, it could not have

39. On December 4, 2015, Mr. Torres submitted an email response which did not specifically respond to the above-referenced question by Captain Dakin. Rather, Mr. Torres stated in his response: “ ... An apology was given to [Ms. Doe] for my behavior that night and we continue to be friends after that night ...”. (Exhibit R12 & R20)
40. Upon receiving the email response from Mr. Torres, Captain Dakin informed Chief Jebb that Mr. Torres had violated his direct order by refusing to answer all the questions posed to him. (Exhibit R20)
41. On December 4, 2015, Chief Jebb and Captain Dakin met with Mr. Torres and the local union president at which time Chief Jebb informed Mr. Torres that he had failed to follow Captain Dakin’s order to provide answers to each of the questions posed to him. (Testimony of Chief Jebb)
42. At the December 4th meeting, Mr. Torres cited his Fifth Amendment right against self-incrimination and the fact that the criminal charges in court had been continued for a year. (Testimony of Chief Jebb)
43. According to the written timeline provided by Captain Dakin, Chief Jebb then:
- “ ... explained to Torres that the ‘to from’ was not for criminal purposes but for the administrative investigation. Chief Jebb explained to Officer Torres that he is required to answer the questions fully and truthfully. Officer Torres stated that he wasn’t going to answer the questions. Chief Jebb paused and told Officer Torres that’s fine.” (Exhibit R20)
44. On December 17, 2015, Chief Jebb hand-delivered a letter to Mr. Torres notifying him that he was being suspended for five (5) days. The letter stated in part:

been written after November 12th.

“The specific reason for this suspension is as follows: On Thursday, August 27, 2015 [incorrect date]⁷ you were involved in an incident (15-3563-OF), which resulted in the issuance of a criminal complaint (15-687-AR) for Domestic A&B. Your conduct on this day in question is a result of poor judgment, which demonstrates your lack of suitability for the position of police officer for the City of Chicopee.”
(Exhibit R1)

45. On February 10, 2016, the parties reached a settlement agreement in which Mr.

Torres agreed to accept the already-imposed 5-day suspension in addition to an additional fifty-five (55)-day suspension, plus an additional thirty (30) days which would be held in abeyance for two (2) years and, “if no further disciplinary issues arise in those two years, those thirty days would be vacated.” (Exhibit R2)

46. The remainder of the City’s February 10, 2016 letter to Mr. Torres states the following:

“You further agreed to be evaluated by a professional / therapist to determine if you would benefit from alcohol counseling and/or anger management. If said professional/therapist determines that you are not in need of any counseling for these issues, then you do not need to participate in any counseling. However, if the professional/therapist determines that you would benefit from either alcohol counseling and/or anger management, you shall participate in said treatment program as recommended by the professional / therapist until such time as you are successfully discharged from the treatment program(s).

Your attorney, Michael Clancy, and the city attorney, Thomas John Rooke, will work with you to determine the appropriate designated medical/counseling facility to undergo said evaluations, with your input, in an attempt to identify a facility that either accepts your health insurance coverage or Veterans Administration benefits.

In consideration of the above discipline, Police Chief Jebb had agreed to release you from ‘administrative duties’ upon your successful completion of the fifty-five (55) working-day suspension. Furthermore, he has agreed to return your license to carry (LTC) at the same time and restore you to your normal working duties, as Police Chief Jebb deems most appropriate for the needs of the Chicopee Police Department.

Your additional fifty-five days of suspension will commence on February 14, 2016 and end on May 6, 2016, when you should return/report for duty on that date.”
(Exhibit R2)

⁷ It is undisputed that the alleged misconduct took place on July 17 and 18th, 2015, not August 27th. I infer this was a scrivener’s error.

47. Mr. Torres, his counsel at the time and counsel for the City all signed the February 10, 2016 letter with Officer Torres acknowledging that he agreed to meet the terms and conditions stated in the letter. (Exhibit R2)
48. There is no reference in the February 10, 2016 letter regarding Captain Sullivan's August 28, 2015 order to Mr. Torres to have no contact with Ms. Doe "until this matter is resolved." (Exhibits R2 & R11)
49. On Monday, February 15, 2016, Mr. Torres contacted the VA to inquire about alcohol counseling and anger management counseling. (Testimony of Mr. Torres)
50. Mr. Torres subsequently learned that there was a "big waiting line" at the VA and notified his then-counsel of this. It is Mr. Torres's understanding that his counsel at the time conveyed this information to counsel for the City. (Testimony of Mr. Torres)
51. Sometime near the end of February 2016, Ms. Doe visited the home of Mr. Torres for a social visit. (Testimony of Mr. Torres)
52. On March 6, 2016, at approximately 1:30 A.M., while on suspension, Mr. Torres was leaving the Foxwoods Resort Casino in Mashantucket, CT. (Testimony of Mr. Torres)
53. Upon leaving Foxwoods, Mr. Torres sent a text message to Ms. Doe and asked if he could stop by her home in Enfield, CT on his way home. She told him he could. Enfield, CT is an approximately 1 ½ hour drive from Foxwoods. (Testimony of Mr. Torres)⁸
54. Just before 3:00 A.M., Ms. Doe sent Mr. Torres a text message telling him *not* to come to her home because her roommates were now home. At the time Mr. Torres

⁸ I asked Mr. Torres if he preserved these text messages and he said he had not.

received this text message, he was approximately “two minutes” away from Ms. Doe’s home. (Testimony of Mr. Torres)

55. Despite receiving this text message, Mr. Torres went on to Ms. Doe’s property in Enfield, CT at approximately 3:00 A.M. and began knocking on her bedroom window, asking her to let him in the house. (Testimony of Mr. Torres)

56. Ms. Doe called 911 and the Enfield, CT police responded to the property. By the time police arrived, Mr. Torres had left the property and driven away. (Exhibit R15)

57. One of the responding Enfield, CT police officers completed an incident report stating the following:

“On 03/06/16 at about 0300, I responded to [address redacted] on a 911 complaint from [Ms. Doe] reporting that her ex boyfriend Vincent (sic) was trying to get into the house. Upon our arrival, [Ms. Doe] told us that Vicente had already left in his silver Honda. The area was checked with negative results.

[Ms. Doe] said she had dated Vicente for about 11 months but broke up with him after he assaulted her in Massachusetts in November 2015. Chicopee police were notified of that incident and investigated the complaint. Vicente is a Chicopee police officer. [Ms. Doe] said she went to a court hearing and spoke with Chicopee Police but no orders were issued by the court. She did not seek a restraining order in Massachusetts or Connecticut. She had not spoken with him since. Vicente has come over to her house around 8am a few times during the last couple of weeks, knocking at her door. She did not answer the door and he left each time. This morning around 3am he texted her⁹, knocked at both her door and her bedroom window. That is when she called the police. He did not try to force his way into her house. [Ms. Doe] did not want to have to go to any courts but agreed to fill out a Trespass Warning Statement and a written statement about not wanting any contact including by phone with Vincent (sic). Vincent (sic) was contacted using her phone and given both warnings. A victims card was given to [Ms. Doe].

⁹ I am aware that there is a conflict between Mr. Torres’s live testimony before the Commission that he texted Ms. Doe at 1:30 A.M. and initially received her consent to come visit her when compared to the statement, as reported by the Enfield, CT police, by Ms. Doe. I did not have the benefit of Ms. Doe’s live testimony. While I have credited Mr. Torres’s testimony regarding the 1:30 A.M. text, I have also credited his testimony that, shortly prior to arriving at Ms. Doe’s house, he received a text message from her telling him not to visit her.

A MDT message was sent requesting extra patrol. I notified Headquarter Commander Lt. S. ... I called and spoke with Chicopee Police Sgt. Godere about the incident.

No RO's, PO's or wants (sic) for [Ms. Doe] or Vicente were found.

Vicente called the Enfield Police later in the morning saying he wanted to file a harrassment (sic) complaint against [Ms. Doe] for continuing to call and text him and make false complaints against him. I told him to come to the police department but as of this report he has not shown up.

(Exhibit R15)

58. On March 7, 2016, Captain Sullivan sent an email to the Enfield, CT Police Department asking them to forward to him any information regarding the above-referenced incident. (Exhibit R13)
59. Also on March 7, 2016, Captain Sullivan sent an email to Sgt. Godere asking him (Godere) to submit a detailed report regarding his communication with the Enfield, CT Police Department, which he did. (Exhibit R14)
60. On April 5, 2016, Ms. Doe rescinded the no trespass order. (Exhibit R15)
61. On April 13, 2016, Mr. Torres attended a substance abuse evaluation at the Springfield Center in Springfield, MA. (Exhibit R17)
62. Prior to meeting with A.W., a Licensed Clinical Social Worker (LCSW) at the Springfield Center, Mr. Torres was required by the Springfield Center to fill out an "Audit C" form and a "Patient Health Questionnaire." According to A.W., the Springfield Center does not release the actual forms, but, rather, references them in a "summary" prepared by the counselor. (Testimony of A.W.)
63. On May 3, 2016, Mr. Torres attended a "domestic violence evaluation" at the Springfield Center. (Exhibit R17)

64. Prior to meeting with M.G., a counselor at the Springfield Center, Mr. Torres completed a release of information form on May 3rd authorizing the Springfield Center to receive and release various information, including the receipt of police reports, CORI, etc. The contact person on that authorization form was counsel for the City. (Exhibit R17)

65. Also, prior to meeting with M.G., Mr. Torres completed a nine (9)-page “Domestic Violence Program Intake and Evaluation Form” (Intake Form) which includes seventy-eight (78) questions and a “Violent and Controlling Behavior Checklist” (Checklist) which includes twenty-one (21) entries with instructions to: “Check off each type of abuse (circle and specific behavior) that you have done.” (Exhibit R17)

66. The City entered the intake form as Exhibit R17, with seven questions highlighted in yellow. Those questions are as follows, with the answers provided by Mr. Torres in *bold italics*:

Question 20:

Describe the violent incident that led to your referral to this program. Do not detail the other person’s actions. Date Occurred: ***July 2015***. Charges _____

Question 21:

To who (sic) was your behavior directed. **No one.**

Question 22:

Did you hit your partner, grab, threatened (sic), or restrain her in some way. Were there any weapons used. DESCRIBE YOUR ACTIONS:

I push (sic) her away. _____

Question 23:

What were your reasons for choosing those actions? What did you want to happen?

Get her away from me. No I didn't want it to happen.

Question 25:

Describe your actions, reasons and why you chose those actions? (sic)

I couldn't tell you I don't know. I'm not a violent person.

Question 57:

Do you currently drink? Yes X No _____ If yes, how much per week?

Glass of wine once or twice a week.

Question 74:

Do have any weapons? Yes _____ No: X

67. The Checklist completed by Mr. Torres is also part of Exhibit R17. Similar to the Intake Form, the City submitted this Checklist with four entries highlighted. As referenced above, the Checklist Instructions state: "Check off each type of abuse (circle each specific behavior) that you have done." (Exhibit R17)

68. Mr. Torres did not check the following entries on the Checklist, highlighted by the City:

___ Slap, punch, grab, kick, push, finger poking, pull hair, pinch, bite, twist arm.

___ Intimidation (blocking her¹⁰ exit, threatening or scary gestures, use of size to intimate, standing over her, driving recklessly, outshouting, punching walls,

¹⁰ The use of the pronoun "her" in all of the Springfield Center forms when referring to a domestic violence victim would appear to be an administrative oversight.

banking (sic) the table, knocking things around).

(Exhibit R17)

69. Mr. Torres did check the following entries on the Checklist, highlighted by the City:

X Yelling, swearing, being lewd, using angry expressions or gestures, outshouting.

X Lying, withholding information, being untruthful.

(Exhibit R17)

70. After completing the above-referenced forms, Mr. Torres met with M.G., the Certified Batterer's Counselor at the Springfield Center. (Testimony of Mr. Torres and Exhibit R17)¹¹

71. On May 4, 2016, shortly before his scheduled return to work (post-suspension), Mr. Torres called and left a message for Captain Sullivan to inquire about picking up his gear. Mr. Torres received a reply message from Captain Sullivan stating that his gear was ready for pick-up. (Testimony of Mr. Torres)

72. Also on May 4, 2016, Mr. Torres completed an "Authorization to Obtain / Release Medical Record Information" at the Springfield Center at the request of A.W., the counselor who had completed the substance abuse evaluation approximately three (3) weeks prior. That form lists Captain Sullivan as the contact person for the Chicopee Police Department. (Exhibit R17)

73. On what I infer (from the documents and testimony) was May 4th, A.W. received "collateral information" from the "criminal justice" division at the Springfield Center, which had been provided by the Chicopee Police Department. (Testimony of A.W.)

¹¹ As previously referenced, M.G. did not testify before the Commission.

74. On May 5, 2016, Sgt. Godere sent an email to Captain Sullivan, stating: “Here you go sir, still working on the 911 tapes.” Attached is an internal email from an employee of the Records Division of the Enfield, CT Police Department stating:
- “I did not find any contacts, since March 6, 2016, regarding [Ms. Doe] and Vicente Torres. I checked both CT Chief and [illegible] using their names and her last known address of [redacted]. I did, however, find that [Ms. Doe] came to the PD on April 5, 2016 at approximately 452 hours and gave a written statement to [police officer] rescinding the trespass order against Torres ... “ (Exhibit A4)
75. Sometime in May 2016, which I infer was shortly after receiving the above-referenced report from the Enfield, CT Police Department, Captain Sullivan had a phone conversation with Ms. Doe at which time she confirmed that she had dropped the no trespass order against Mr. Torres. (Testimony of Captain Sullivan)
76. On May 6, 2016, when Mr. Torres reported for work at the Chicopee Police Station, he was told by the Captain on duty that he was still on “desk duty”. (Testimony of Mr. Torres)
77. In documents dated May 12, 2016, both A.W. (the substance abuse counselor at Springfield) and M.G. (the domestic violence counselor) completed an evaluation summary regarding Mr. Torres. (Exhibit R17)
78. A.W.’s substance abuse summary evaluation is in memorandum format addressed “TO: Captain Daniel Sullivan, Chicopee Police Department.” The summary evaluation references the “Audit-C” and “PHQ-9” evaluations completed by Mr. Torres which A.W. indicated cannot be released by Springfield because of privacy

issues.¹² I give no weight to any reference to these two (2) evaluations as I have no information upon which to assess their validity. (Exhibit R17)

79. The majority of A.W.'s substance abuse summary relates to an interview that A.W. had with Mr. Torres three weeks' prior to writing the summary. A.W. could not provide a list of the exact questions that she asked of Mr. Torres during the interview. Further, although A.W. took notes regarding Mr. Torres's responses, she did not retain them. (Testimony of A.W.)

80. The primary purpose of A.W.'s evaluation was to assess Mr. Torres for substance abuse and mental health issues, not issues related to domestic violence. (Testimony of A.W.)

81. Prior to completing her substance abuse evaluation summary, A.W. spoke to M.G.'s supervisor regarding the interview that took place later between Mr. Torres and M.G. regarding domestic violence-related issues. (Testimony of A.W.)

82. During A.W.'s interview with Mr. Torres, Mr. Torres acknowledged that he was "more drunk than usual" at the local restaurant on July 17, 2015 and that he made mistakes. (Testimony of A.W.)

83. A.W. stated in her evaluation summary that: "[Mr. Torres] omitted all accounts that were reported in police records regarding any violent allegations and impulsive angry behavior that are being investigated at this time." (*emphasis added*) (Exhibit R17)

84. As part of her testimony before the Commission, A.W. stated that Mr. Torres didn't provide enough "details" about such things as the content of text messages that she later reviewed as part of the police investigation records. When asked if she asked

¹² The release signed by Mr. Torres explicitly allows for the Springfield Center to release "psychological testing and results."

Mr. Torres for such details, she stated: "I always do" and then stated that "the client can say whatever he wants." (Testimony of A.W.)

85. In regard to whether Mr. Torres was in need of substance abuse counseling, A.W.

wrote:

"... client does not meet criteria for a substance abuse disorder presently, however he does have an alcohol use disorder. It is recommended that he continue monitoring his intake of alcohol and seek help for clinical intervention should his use of alcohol increase ..." (Exhibit R17)

86. The evaluation summary prepared by M.G. (the domestic violence counselor at

Springfield) and also dated May 12, 2016 was also in memorandum format. It was addressed "TO: Asst. City Solicitor – Atty. Thomas Rooke." (Exhibit R17)

87. In a section titled "Findings and Recommendations", M.G. wrote:

"Vicente Torres presented the facts included in this evaluation. He was cooperative and engaged during the evaluation. He appeared sincere in his presentation of the facts. A partner contact was conducted and police reports were obtained. After reviewing victim statements, copies of text messages, witness statements and police reports, it clear that the facts were withheld as reported by Vicente Torres and he had minimized his physically (sic) abuse. The witness statements place the assault in the women's bathroom and not at an exit as he reported. His contact with the victim after the alleged and continued contact put him at risk of continued progressive violence. Based on the information provided, Vicente Torres is a candidate for certified batterer's intervention services and is recommended to attend 40 weeks of group sessions." (emphasis added)

(Exhibit R17)

88. Neither Captain Sullivan or Chief Jebb ever spoke with A.W. or M.G. before

reaching their subsequent conclusions that Mr. Torres had been untruthful as part of the evaluation process at the Springfield Center. Rather, Chief Jebb relied on the credibility "of the institution" (the Springfield Center). (Testimony of Chief Jebb and Captain Sullivan)

89. On Tuesday, May 17, 2016, counsel for the City wrote an email to Chief Jebb, Captain Sullivan and then-counsel for Mr. Torres stating: “Attached please find a domestic violence summary evaluation concerning Officer Vincent (sic) Torres that I just opened from an email that came into my office Friday afternoon ... Please review and call me to discuss.” (Exhibit A5)
90. On May 19, 2016, Chief Jebb sent a “reply to all” email stating: “After reviewing this document, I have decided to keep Officer Torres on administrative duties until he successfully completes this 40 week program.” (Exhibit A5)
91. Mr. Torres subsequently spoke to the director at the Springfield Center and they discussed his concerns about attending group sessions in Springfield, which is in close proximity to Chicopee, where he serves as a police officer. (Testimony of Mr. Torres)
92. Mr. Torres was informed by the Director that a counseling program in Greenfield (hereafter “Greenfield Program”), offered the same services, including the group sessions. (Testimony of Mr. Torres)
93. Chief Jebb was aware that Mr. Torres would be attending the Greenfield Program and had no objection to this. (Testimony of Chief Jebb)
94. On July 19, 2016, Mr. Torres met with S.T., a counselor at the Greenfield Program, to go through an intake process, similar to the intake process he had already completed at the Springfield Center. (Testimony of Mr. Torres and Exhibit R18)
95. As part of the intake process on July 19th, Mr. Torres was asked to complete another checklist, placing a number from 1 to 4 next to each question, with 1 equal to “never;

2 equal to “once or twice”; 3 equal to “sometimes”; and 4 equal to “frequently.”

(Exhibit R18)

96. The City submitted this checklist as part of Exhibit R18 and highlighted four (4) of Mr. Torres’s responses. These questions and Mr. Torres’s response regarding these questions is as follows:

A. Have you ever pushed, restrained, grabbed and/or wrestled your partner? **2**

B. Have you ever slapped, punched or kicked your partner? **1**

C. Have you ever called / texted / messaged your partner repeatedly at inappropriate times when she did not want you to? **2**

D. Have you ever said the abuse didn’t happen when it did or denied using abusive or controlling behaviors when you really do? **1**

(Exhibit R18)

97. Also on July 19, 2016, Mr. Torres and an “intake clinician” at the Greenfield Program signed a “Program Agreement” agreeing to make a 40 week commitment “to the group”. The Program Agreement states in part: “I understand that if I miss any session, I will have to make them up and pay for both the missed and make-up sessions to hold my space in the group ... I understand that I am expected to attend every meeting and that if I miss more than 3 meetings in a 20 week period, I be at risk for termination from the group. The maximum number of absences allowed for the 40 week program is 6 ... If I am unable to attend group, I will leave a message before the group starts with my assigned group leader.” (Exhibit A7)

98. On July 22, 2016, counsel for the City sent an email to the Program Coordinator at the Springfield Center asking for a detailed timeline regarding Mr. Torres's contact with the Springfield Center to enroll in the batterers' program. (Exhibit R10)
99. Sometime between July 22nd and August 5th, 2016, counsel for the City sent the Springfield Center Program Coordinator a follow-up email seeking a response to the July 22nd email. (Exhibit R10)
100. On or around August 5, 2016, the Program Coordinator at the Springfield Center forwarded an email to counsel for the City stating:
- “Good Morning, Mr. Rooke: The evaluation was completed, faxed to your officer around 4/16/16, days later Mr. Torres came in person to start the intake process to enroll in the program, paperwork was handed and minutes later he returns papers without completing it as he stated per his attorney not to complete the intake yet. That was the last time Mr. Torres was at the Springfield Center no contact after that.” (Exhibit R10)
101. On August 11, 2016, Captain Sullivan completed an “investigative report” regarding Mr. Torres visiting the home of Ms. Doe in Enfield, CT on March 6, 2016 as well as Mr. Torres's intake evaluation at the Springfield Center. (Exhibit R10)
102. Captain Sullivan's August 11, 2016 investigative report summarizes the Enfield, CT Police Department reports regarding what occurred on March 6th, including that Ms. Doe obtained a trespass order and then rescinded it. (Exhibit R10)
103. Captain Sullivan's August 11, 2016 Investigative Report cites Chicopee Police Department Policy and Procedure 4.01. I. INTERNAL AFFAIRS, GENERAL CONSIDERATIONS AND GUIDELINES which states in part: “All police employees are expected to conduct themselves, whether on or off duty, in such a manner as to reflect favorably upon themselves and the department.” Immediately

after citing this Department Policy and Procedure, Captain Sullivan states in his August 11th report:

“On March 6, 2016, Officer Torres damaged his reputation, the reputation of the Chicopee Police Department and violated this Policy and Procedure by going, unwanted and uninvited, to the home of [Ms. Doe] in Enfield, CT at around 3 o’clock in the morning on March 6, 2016 ...” (Exhibit R10)

104. Captain Sullivan’s August 11, 2016 Investigative Report also cites Rule and Regulation 300:23 INSUBORDINATION and states the following regarding the Enfield, CT incident:

“Officer Torres violated my direct order by going, unwanted and uninvited, to the home of [Ms. Doe] ... at around 3 o’clock in the morning on March 6, 2016. The unwanted arrival of Officer Torres at [Ms. Doe]’s home necessitated a 9-1-1 call, the subsequent response of several Enfield Police Officers to the scene and a trespass order being taken out against Officer Torres.

On March 6, 2016 Officer Torres certainly should have known that the ‘matter’ with [Ms. Doe] was not ‘resolved’ because on November 9, 2015 the Clerk Magistrate stated that the case was continued for one year. Also, Officer Torres had just started his 55 work-day suspension on February 16, 2016. Further, Officer Torres wasn’t even evaluated by a Certified Batterer’s Counselor until two months later on May 3, 2016.

...

[Ms. Doe] eventually rescinded the trespass order that she took out against Officer Torres. Officer Torres clearly has influence over [Ms. Doe]. Unfortunately, she is influenced by a liar, a batterer and someone that does not take responsibility for his conduct.” (Exhibit R10)

105. In regard to Mr. Torres’s evaluation at the Springfield Center, Captain Sullivan’s August 11, 2016 report, after citing Rules and Regulations regarding truthfulness, states in part:

“As of August 5, 2016, Officer Torres has refused to enroll in 40 weeks of mandated counseling for Domestic Batterer’s.

...

Officer Torres was sent to Domestic Violence Evaluation as part of an Agreement for Suspension. Officer Torres certainly did not cooperate in the evaluation. Officer Torres willfully lied to the counselor about the details of the incident that I investigated.” (Exhibit R10)

106. As previously referenced, Captain Sullivan never spoke with A.W. or M.G., the counselors who conducted the intake sessions at the Springfield Center. (Testimony of Captain Sullivan)

107. Captain Sullivan concluded his August 11th investigative report by writing:

“Officer Torres’s shameless and repeated violations of the Rules and Regulations of the Chicopee Police Department lead me to the conclusion that he does not have the fitness or suitability to be Chicopee Police Officer. My recommendation is that Officer Vicente ‘Vinny’ Torres be terminated from employment with the Chicopee Police Department.” (Exhibit R10)

108. By letter dated August 16, 2016, Chief Jebb notified Mr. Torres that he was suspended for five (5) days effective August 19th – August 25th, 2016. The suspension letter stated that the suspension was for: 1) violating a direct order by visiting the home of Ms. Doe on March 6, 2016; and 2) willfully lying to the domestic violence counselor at the Springfield Center “about the details of the domestic incident.” Chief Jebb’s letter specifically references Captain Sullivan’s report, which was attached. (Exhibit R3)¹³ As referenced above, Captain Sullivan’s investigative report stated that Mr. Torres, by visiting the home of Ms. Doe on March 6th, had also

¹³ The August 16, 2016 suspension letter informs Mr. Torres that he can request a hearing to contest the 5-day suspension and that, at the hearing, the Mayor, who is the appointing authority, can increase the discipline up to and including termination. Thus, according to the plain language of the letter, there would be no hearing, a prerequisite under G.L. c. 31, s. 41 for issuing discipline more than five days, unless Mr. Torres contested the 5-day suspension. The City was required to notify Mr. Torres, independent of the five-day suspension, that the Mayor intended on holding a hearing to consider a greater penalty, independent of any appeal of the 5-day suspension by Mr. Torres. Since Mr. Torres never contested this procedural error (i.e. – did not indicate on his appeal form to the Commission that he wanted to file a procedural error claim under Section 42), this issue is moot.

violated Department Policy and Procedure 4.01. I. INTERNAL AFFAIRS,
GENERAL CONSIDERATIONS AND GUIDELINES. (Exhibit R10)

109. On August 18, 2016, the City's Mayor, serving as the Appointing Authority, sent a letter to Mr. Torres acknowledging receipt of Mr. Torres's appeal of the 5-day suspension and notifying him of a hearing to be held on August 25, 2016 at which time he could "sustain, overrule or impart a more severe form of discipline up to and including termination." The Mayor's August 18th letter re-stated the reasons for discipline as: 1) violating a direct order by visiting the home of Ms. Doe on March 6, 2016; and 2) willfully lying to the domestic violence counselor at the Springfield Center "about the details of the domestic incident." (Exhibit R4)
110. By letter dated August 22, 2016, Mr. Torres was provided with a start date of August 30, 2016 to attend his first group counseling session. (Testimony of Mr. Torres and Exhibit R9)
111. On August 24, 2016, counsel for the City forwarded an email to Captain Sullivan with an attached confirmation form from the Greenfield Program indicating that Mr. Torres had enrolled in and was scheduled to begin group counseling sessions on August 30th. (Exhibit R9)
112. The local hearing scheduled to occur before the Mayor on August 25, 2016 was postponed by agreement of the parties. (Exhibit R6)
113. On August 30, 2016, Mr. Torres failed to attend his first counseling session at the Greenfield Program. (Testimony of Mr. Torres)
114. Asked during his testimony before the Commission whether he attended the first group session on August 30, 2016, Mr. Torres stated:

- “I didn’t but if you’re aware, if you look at the date, the first date of the group meeting, it’s, uh, I was meeting with the Mayor or I had been suspended the day before or the day after, so I was distraught, but according [to] the program, I [can] miss six times. It’s the only one I’ve missed. I’ve been thirty-three (33) times. I’m almost done with the program.” (Testimony of Mr. Torres)
115. Mr. Torres did not meet with the City’s Mayor on August 30, 2016.
116. On September 1, 2016, counsel for the City forwarded “collateral documentation” to the Greenfield Program including the recent notice of suspension dated August 16, 2016 and Captain Sullivan’s investigative report dated August 11, 2016, in which Captain Sullivan had concluded that Mr. Torres was: “a liar, a batterer and someone that does not take responsibility for his conduct.” (Exhibits R9 & R10)
117. Beginning September 6, 2016, Mr. Torres began attending the weekly group sessions at the Greenfield Program. At the beginning of each month thereafter, beginning on October 4, 2016, the Program Director at the Greenfield Program completed “Monthly Status Reports” confirming that Mr. Torres was attending the weekly sessions. As of October 4, 2016, they reported that Mr. Torres had attended four (4) sessions and been absent for one (on August 30th). (Exhibit A9) Exhibit A9 also contains status reports completed during the first week of November & December 2016 and January, February and March 2017 confirming that Mr. Torres had attended all weekly sessions with no absences. As of March 2017, he had attended 27 weekly sessions. (Exhibit A9)
118. On September 6, 2016, A.M., the Program Director at the Greenfield Program, forwarded an eleven (11)-page fax to counsel for the City including an un-signed “intake summary”. (Exhibit R18)

119. The intake summary states, in part, that there are “inconsistencies” between the narrative reported at intake and the collateral documents provided. Specifically, one portion of the unsigned intake summary, which appears to be written by the Program Director, states in part:

“These [collateral] documents were reviewed by the Program Director. There are inconsistencies between the narrative reported at intake and the collateral documents provided. There was no mention during Vicente’s intake of a second incident with [Ms. Doe] which occurred on March 6, 2016 in Enfield, CT. Neither did Vicente state that his altercation with [Ms. Doe] occurred in the women’s restroom at the [local restaurant]. Vicente indicated that the incident occurred as he was attempting to exit the building. The victims who gave statements per the collateral information were not discussed at intake. The level of violence reported in collateral information is also inconsistent with the narrative given at intake. The intake narrative did not include any mention of injury to [Ms. Doe], nor did Vicente report slapping her.”

...

Vicente was given a group start date of August 30, 2016. A notification of group start was mailed to him, and he was verbally notified. The facilitators of the group indicated that Vicente did not attend on August 30, 2016.” (Exhibit R18)

120. There is no evidence that the Program Director at the Greenfield Program attended the Intake Session. I infer that she did not.

121. Captain Sullivan never spoke with the intake worker who met with Mr. Torres at the Greenfield Program. (Testimony of Captain Sullivan)

122. Captain Sullivan is not certain who wrote the un-signed Intake Summary from the Greenfield Program but he speculates that portions of it were written by the intake worker and portions of it, including the above, were written by the Program Director, writing in the third person. (Testimony of Captain Sullivan)

123. On September 14, 2016, Captain Sullivan completed another investigative report in which he concluded that Mr. Vicente engaged in insubordination by failing to attend the group therapy session at the Greenfield Program on August 30th and that

Mr. Torres was untruthful during the intake process because of inconsistencies between the “collateral” documents and what Mr. Torres reported to the intake counselor. Captain Sullivan concluded in this report that his most recent findings only confirm his prior recommendation that Mr. Torres be terminated. (Exhibit R9)

124. In regard to both the August 11, 2016 and September 14, 2016, investigative reports, Mr. Torres was never asked to participate in an interview or answer questions about the allegations. Asked why Mr. Torres was not given an opportunity to respond to the allegations during the investigation, Chief Jebb indicated that: a) If you need your suspect to testify, your case is weak; b) Mr. Torres had already admitted to engaging in domestic abuse via his text messages to Ms. Doe and to the Court as evidenced by the Court’s decision to find probable cause; and c) his answers would likely be “much of the same” and “deceptive”. (Testimony of Chief Jebb)

125. By letter dated October 6, 2016, Chief Jebb notified Mr. Torres that he was being suspended for an additional five (5) days for “willfully lying” during his intake process at the Greenfield Program and for failing to attend the first session of the group counseling sessions on August 30, 2016. (Exhibit R5)

126. By letter dated, October 11, 2016, the City’s Mayor notified Mr. Torres that the Mayor had received Mr. Torres’s appeal of the five-day suspension and that a hearing would be held the next day, October 12, 2016. The Mayor’s letter cited the same reasons as contained in Chief Jebb’s October 6th letter and contained the same language as the prior letter from the Mayor regarding his authority to increase the penalty. (Exhibit R6)

127. On October 12, 2016, the Mayor conducted a local appointing authority hearing pursuant to G.L. c. 31, s. 41 regarding the charges associated with both of the 5-day suspensions that had been imposed by Chief Jebb. (Exhibit R7)
128. At the October 12, 2016 hearing, the City's witnesses were limited to Chief Jebb and Captain Sullivan. The Mayor, serving as the hearing officer, did not hear from any percipient witnesses from the Springfield Center or the Greenfield Program. (Exhibit R7)
129. Mr. Torres did not testify at the local hearing. His reason for not testifying was based on advice from his then-counsel not to testify based on the fact that the criminal matter had been continued. At the local hearing, the Mayor told Mr. Torres words to the effect that he should take his lawyer's advice on this. (Testimony of Mr. Torres) The local hearing was not recorded.¹⁴
130. By letter dated October 28, 2016, the City's Mayor notified Mr. Torres that he had decided to terminate Mr. Torres from his position as police officer. Among the findings in the Mayor's October 28th termination letter are the following:¹⁵
- a) " ... I ordered you to undergo an evaluation for alcohol / substance abuse and anger management. I find that you failed to initiate the evaluations at the Veterans Administration as you had requested and you were not evaluated until April 13, 2016 for alcohol abuse and May 3, 2016 for domestic violence. These two evaluations were arranged by Chicopee Law Department Associate City Solicitor, Thomas John Rooke, after you failed to undergo the evaluations at the

¹⁴ Chief Jebb and Captain Sullivan do not recall hearing the Mayor stating words to this effect. Although their statements are not testimony, both representatives for Mr. Torres, who were present at the local hearing, recall the Mayor stating words to that effect, while counsel for the Respondent does not. Absent a recording of that hearing, I cannot be certain what verbal exchange took place at the local hearing regarding whether Mr. Torres would testify and, more specifically, whether the Mayor directly or indirectly encouraged him not to testify. Based on the lack of a recording, and based on what appears, to me, to be the most logical explanation of what happened, I credit Mr. Torres's testimony regarding this exchange. Whether, and how, this impacts the City's right to draw an adverse inference from the fact that Mr. Torres did not testify, is discussed in more detail in the analysis.

¹⁵ The nine (9)-page letter is somewhat repetitive / duplicative. My summary here attempts to eliminate any duplication / overlap, but still capture all of the findings relevant to this termination.

Veterans Administration, on your own, as you committed to do on February 10, 2016.

- b) I find that you either deliberately lied, omitted pertinent facts or distorted the facts about the [local restaurant] incident with [Ms. Doe] to both counselors during the intake evaluation at the Springfield Center ... I find the conclusions by two separate counselors to be credible and I conclude that you were untruthful during your intake evaluations with both counselors. (emphasis added)
- c) I also reviewed the domestic violence program intake and evaluation form [from the Springfield Center] completed by you, which was dated May 3, 2016, and signed as ‘truthful and accurate.’ In reviewing this form and the violent and controlled behavior checklist, I found numerous instances of you being untruthful.
- d) I further find that you failed to follow-up with the counselor’s recommendation [at the Springfield Center] to attend the forty week certified batterers intervention program.
- e) I find that you were untruthful and deceptive in your intake interview for the domestic violence evaluation at the Greenfield Program.
- f) I further find that you failed to attend your first group session on August 30, 2016.
- g) I find that you violated a direct order given to you by Captain Sullivan via in-hand and email, on August 28, 2015 to stay away from [Ms. Doe].
- h) I further find that your appearance at the home of [Ms. Doe] at 3:00 A.M. on March 6, 2016 is further evidence of gross misconduct involving the very same victim that resulted in your initial sixty-day (60) suspension and an order to undergo an evaluation for alcohol / substance abuse and domestic violence.”

(Exhibit R7)

Applicable Civil Service Law

G.L. c. 31, § 43 provides:

“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.”

An action is “justified” if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law;” Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

The Commission determines justification 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 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof by a preponderance of the evidence is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there;” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

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, op.cit. 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; Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006), quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

Analysis

The Commission is once again faced with a case involving the issue of domestic abuse, the seriousness of which cannot be understated. As the Commission recently stated in Lavery v. North Attleborough, 30 MCSR 373 (2017):

“The Commonwealth’s policies against domestic violence are evident across all three branches of government. The legislature has repeatedly enacted legislation to respond to domestic violence. Governor Baker’s Executive Order No. 563, “Re-Launching the Governor’s Council to Address Sexual Assault and Domestic Violence”, dated April 27, 2015, affirms and furthers the state’s long-standing commitment to addressing domestic violence. It states, in pertinent part,

... Whereas, ... the Governor’s Office also acknowledges that sexual assault and domestic violence often go unreported ...;
Whereas, acknowledging the progress made by previous administrations, important work remains to be done to improve safety in our homes and throughout the Commonwealth;
...

Section 4. ... the Council shall be charged with assessing the implementation of those parts of Chapter 260 of the Acts of 2014 that establish new programs and introduce training and education targeted at reducing sexual assault and domestic violence in the Commonwealth ...

...4. Determine and report on the progress made by the Massachusetts District Attorneys’ Association in commencing a course of training on the issues of domestic violence and sexual assault violence for all district attorneys and assistant district attorneys ...;

5. determine and report on the progress made by the trial court department in implementing a training program on domestic violence and sexual violence for trial court employees

(Id.)

The Executive Office of Public Safety & Security (EOPSS) issued the revised “Domestic Violence Law Enforcement Guidelines” in 2017 pursuant to Chapter 260 of the Acts of 2014, An Act Relative to Domestic Violence¹⁶.

<http://www.mass.gov/eopss/docs/eops/2017-dv-law-enforcement-guidelines-final-07-06-2017.pdf> These lengthy and detailed Guidelines provide, in pertinent part,

... anyone can be a victim; anyone can be an offender regardless of gender and/or sexual orientation. Always consider who is the dominant aggressor and make that determination based on the totality of the facts and circumstance, not on the victim/offender’s gender, size etc. ...

Many victims of domestic violence never file a report with law enforcement, get a restraining order/injunction, or connect with a domestic violence program. ...

Furthermore, many victims may regret calling 911 once they are thrust into the criminal justice system, which can bring increased financial burdens due to lost income, defense attorney fees, embarrassment for having to publicly testify to the abuse, and pressure to recant. ...

Be aware that trauma may influence a victim’s interactions with law enforcement officers responding to domestic violence calls. Do not assume a victim is uncooperative

(*Id.* at pp. 16-17)(emphasis added)

...

On its website, the Massachusetts District Attorneys Association notes, in pertinent part,

Prosecutors who handle domestic violence cases know that very few go to trial. There are many obstacles that confront prosecutors trying domestic violence cases; including, trial delays, Fifth Amendment claims by the victim, and accord and satisfactions on the day of trial. ...

<http://www.mass.gov/mdaa/trainings-and-conferences/obstacles-in-trying-domestic-violence-cases.html> (emphasis added)

The domestic abuse incident here occurred on the night of July 17, 2015 at a local restaurant / dance club in Chicopee and involved Mr. Torres and Ms. Doe. After receiving a complaint from Ms. Doe approximately one month later, the Chicopee Police Department investigated and charged Mr. Torres with Domestic Assault and Battery.

While the criminal complaint was pending, Captain Sullivan issued an order to Mr.

Torres. While the order clearly stated that Mr. Torres was to have no contact with Ms.

¹⁶ Pursuant to Chapter 260 of the Acts of 2014, all municipal police departments within Massachusetts are required to adopt the EOPSS DV Guidelines or establish and implement specific operational guidelines

Doe, the order also contained ambiguous language regarding how long the order was in effect “until this matter is resolved.” As discussed in more detail later, even Captain Sullivan struggled to define the meaning of “until this matter is resolved.”

At a Show Cause Hearing in Chicopee District Court on November 9, 2015, the Clerk Magistrate found probable cause and continued the case for one year to be dismissed pending no further criminal charges. As referenced in the Trial Court’s *Standards of Judicial Practice, Complaint Procedures*, for the Magistrate to find probable cause,

“The complainant need only present a statement of accusation which in the eyes of the magistrate is complete in terms of the elements of the crime and reasonably believable in terms of its allegations.” *Commonwealth v. DiBennadetto*, 436 Mass. 310, 314, 764 N.E.2d 338, 342 (2002), quoting the 1975 version of these Standards. “Probable cause exists where . . . the facts and circumstances within the knowledge of the [magistrate] are enough to warrant a prudent person in believing that the individual . . . has committed . . . an offense . . . Probable cause is a relatively low threshold, requiring only sufficiently trustworthy information to instill in a reasonable person the requisite belief of criminality.” *Paquette v. Commonwealth*, 440 Mass. 121, 132, 795 N.E.2d 521, 531-532 (2003). This is the same probable cause standard that the police must apply in making an arrest, and it “is lower than that for submitting a criminal case to a jury (facts warranting a finding of guilt beyond a reasonable doubt)” at trial. *Commonwealth v. Lent*, 420 Mass. 764, 765 n.2, 652 N.E.2d 140, 140 n.2 (1995). This standard is also lower than the probable cause standard that is applied by a judge in a bind-over hearing. *Paquette, supra; Commonwealth v. McCarthy*, 385 Mass. 160, 430 N.E.2d 1195 (1982); *Myers v. Commonwealth*, 363 Mass. 843, 850, 298 N.E.2d 819, 823-824 (1973).

After this show cause hearing, Captain Sullivan completed his internal affairs investigation, in which he concluded that Mr. Torres assaulted Ms. Doe on July 17, 2015 and he recommended that Mr. Torres be terminated as a Chicopee Police Officer.

For whatever reason, the City’s Mayor, serving as the Appointing Authority, chose not to go forward with a local civil service hearing and not to terminate Mr. Torres. If a local hearing had gone forward, the Mayor, or his designated hearing officer, could have made findings, including but not limited to, whether he found that Mr. Torres had engaged in

consistent with the EOPSS DV Guidelines.

the alleged domestic abuse. Rather than go forward with a local hearing and make such findings, the Mayor entered into a settlement agreement with Mr. Torres in which Mr. Torres would serve a sixty (60) working-day suspension, with an additional thirty (30) days held in abeyance. As part of the settlement agreement, the parties also agreed that Mr. Torres would be evaluated by a professional / therapist to determine if he would benefit from alcohol counseling and/or anger management. If said professional/therapist determined that he was not in need of any counseling for these issues, then he would not need to participate in any counseling. However, if the professional/therapist determined he would benefit from either alcohol counseling and/or anger management, Mr. Torres was required to participate in the treatment program. This settlement agreement did not include any deadlines for meeting with a therapist / counselor and/or starting or completing any counseling program, if necessary. Rather, the settlement agreement includes open-ended language indicating that counsel for both parties would work to arrange the counseling intake, with Mr. Torres allowed to first explore going through the VA.

Between February 10, 2016 and October 28, 2016, the date of his termination, Mr. Torres had: a) explored using the VA's services; b) undergone two intake evaluations at the Springfield Center in Springfield; c) undergone a second domestic violence-related counseling session at the Greenfield Program in Greenfield; and d) enrolled in and completed seven (7) of forty (40) weekly counseling sessions. He did not attend the first session on August 30th.

The City ultimately terminated Mr. Torres for: violating the terms of the settlement agreement by failing to undergo the evaluations in a timely manner; being untruthful

during the intake processes associated with these evaluations; and failing to begin the counseling sessions. The City also determined that a visit to Ms. Doe's house in March 2017 was conduct unbecoming a police officer and a violation of Captain Sullivan's August 28th no contact order. I address each of the City's charges, and whether or not they have been proven by a preponderance of the evidence below.

Failure to undergo evaluations in a timely manner

In regard to this charge, the City's Mayor found that:

- a) “ ... I ordered you to undergo an evaluation for alcohol / substance abuse and anger management. I find that you failed to initiate the evaluations at the Veterans Administration as you had requested and you were not evaluated until April 13, 2016 for alcohol abuse and May 3, 2016 for domestic violence. These two evaluations were arranged by Chicopee Law Department Associate City Solicitor, Thomas John Rooke, after you failed to undergo the evaluations at the Veterans Administration, on your own, as you committed to do on February 10, 2016.”

The City has not proven this charge by a preponderance of the evidence. The settlement agreement does not require Mr. Torres to attend an intake session at the VA. Rather, it requires Mr. Torres to provide input to his attorney in regard to attending a counseling session at the VA or another facility that accepts his insurance. Based on Mr. Torres's unrefuted testimony before the Commission, he complied with the settlement agreement by contacting the VA and notifying his then-counsel that the wait for services was too long. He then learned from his counsel at the time that the City had facilitated intake sessions at the Springfield Center, to be held on April 13th and May 3rd, 2016. He attended both sessions.

Further, the settlement agreement did not set any deadline for completion of the evaluation process. Even if it did, the City did not provide sufficient evidence to show

that any delay was solely attributable to Mr. Torres, as opposed to logistical / scheduling issues associated with either the Springfield Center and/or counsel for the City.

Failure to Follow Recommendation of Springfield Center

In regard to this charge, the City's Mayor found that:

- d) "I further find that you failed to follow-up with the counselor's recommendation [at the Springfield Center] to attend the forty week certified batterers intervention program."

The City has not proven this charge by a preponderance of the evidence. Again, based on Mr. Torres's unrefuted testimony before the Commission, he met with the Program Director at the Springfield Center to discuss his concerns about attending group counseling sessions in Springfield, due to its close proximity to Chicopee where he was serving as a police officer. The Program Director at the Springfield Center told him about the Greenfield Program in Greenfield, MA. As noted in the findings, Mr. Torres attended another intake session at the Greenfield Program in Greenfield and enrolled in a forty-week program there.

Even Chief Jebb acknowledged during his testimony before the Commission that he was aware that Mr. Torres would be attending the Greenfield Program and that he (Chief Jebb) had no objection to it.

Failure to Attend First Counseling Session at the Greenfield Program

In regard to this charge, the City's Mayor found that:

- f) "I further find that you failed to attend your first group session on August 30, 2016."

Mr. Torres acknowledges that he did not attend the first group session at the Greenfield Program on August 30, 2016. The record shows, however, that the contract that he signed with the Greenfield Program allowed him to miss and then make-up six (6)

counseling sessions. Further, the documents from the Greenfield Program show that Mr. Torres began attending counseling sessions the following week and, as of the date of his termination on October 28, 2016, Mr. Torres had attended weekly counseling sessions for seven (7) consecutive weeks, after having missed the August 30th session.

When asked if he was aware of Mr. Torres's subsequent attendance record at the Greenfield Program (post August 30th), Chief Jebb testified that he was unaware of Mr. Torres's status at the Greenfield Program as Mr. Torres is no longer a Chicopee Police Officer. While true, that ignores the fact that, *as of the date of the local appointing authority hearing before the Mayor*, Mr. Torres had attended counseling sessions for seven (7) consecutive weeks. Similarly, the summary from the Greenfield , dated September 6th, states that Mr. Torres failed to attend the August 30th session, but fails to mention that up to six (6) absences are allowed and/or that Mr. Torres was scheduled to attend a session that night (September 6th).

Unfortunately, I do not have the benefit of a transcript of the local appointing authority hearing, as it was not recorded. Thus, I am unable to determine if the Mayor: a) was unaware that Mr. Torres had attended counseling sessions for seven (7) consecutive weeks at the time of the local appointing authority hearing; or b) was aware of this and chose not to include that information in the termination letter. I also do not know if the Mayor understood that Mr. Torres was allowed six (6) absences and whether he considered this, along with Mr. Torres's seven (7) weeks of participation, before determining that Mr. Torre's failure to attend the August 30th counseling session constituted misconduct which forms, in part, the basis for Mr. Torres's termination.

When asked during his testimony before the Commission why he failed to attend the August 30th counseling session, Mr. Torres referenced a meeting with the Mayor that day. There was no meeting between Mr. Torres and the Mayor on August 30th. While I am troubled that Mr. Torres would make such an erroneous statement during his sworn testimony before the Commission, and I considered this when assessing his overall credibility, it did not change my conclusion that the City's charge of misconduct regarding the August 30th absence appears to be somewhat overstated given the overall context of what actually took place in this regard.

Untruthful Verbal Statements to Three (3) Counselors

In regard to this charge, the City's Mayor found that:

b) "I find that you either deliberately lied, omitted pertinent facts or distorted the facts about the [local restaurant] incident with [Ms. Doe] to both counselors during the intake evaluation at the Springfield Center ... I find the conclusions by two separate counselors to be credible and I conclude that you were untruthful during your intake evaluations with both counselors.

...

e) I find that you were untruthful and deceptive in your intake interview for the domestic violence evaluation at the Greenfield Program."

An appointing authority is well within its rights to take disciplinary action when a police officer has "a demonstrated willingness to fudge the truth in exigent circumstances" because "[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or embarrass a fellow officer," Falmouth v. Civil Service Comm'n at pp. 796, 801 citing Cambridge v. Civil Service Comm'n, at 303.

The Commission has recognized that a police officer must be truthful at all times and that failure to do so constitutes conduct unbecoming an officer. MacHenry v Wakefield, 7

MCSR 94 (1994). Lying in a disciplinary investigation alone is grounds for termination. LaChance v. Erickson, 118 S. Ct. 753 (1998), citing Bryson v. United States, 396 U.S. 64 (1969). The Commission has stated that “it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.” Garrett v. Haverhill, 18 MCSR at 381, 385 (2005). Specifically, there “is a strong public policy against employing police officers who are untruthful.” Royston v Billerica, 19 MCSR 124, 128 (2006). Therefore, “a police officer that has lost his credibility can no longer effectively perform the duties of the position.” Pearson v. Whitman, 16 MCSR 46, 50 (2003). Consequently, the discharge of police officers based upon their dishonesty have often been upheld by the Commission.

The Commission has also consistently held, however, that an allegation of untruthfulness, particularly when made against a law enforcement officer or candidate, should be made with an appropriate level of seriousness and due diligence. (See Morley v. Boston Police Department, 29 MCSR 456 (2016).

The City has not proven this charge (untruthful verbal statements to three (3) counselors) by a preponderance of the evidence. As part of the local hearing, the Mayor did not hear directly from any of the three (3) intake counselors to whom Mr. Torres allegedly made untruthful statements. As stated in the introduction, I only heard from one (1) of these counselors: A.W. from the Springfield Center. I carefully listened (and re-listened) to A.W.’s testimony about her interview with Mr. Torres and also reviewed the written summary that she prepared weeks after the interview was completed. For the following reasons, this was not sufficient to show, by a preponderance of the evidence, that Mr. Torres was untruthful during his interview with A.W.

First, based on A.W.'s testimony, I am unsure what questions she actually posed to Mr. Torres during the intake session. While A.W. testified that she has a set of questions that are usually asked, she was unable to provide a copy of any of the questions, let alone those questions that corresponded with Mr. Torres's allegedly untruthful answers.

Second, A.W. wasn't able to say with certainty exactly how Mr. Torres answered these undocumented questions. Rather, she spoke in more general terms about Mr. Torres's untruthfulness. For example, A.W. testified that Mr. Torres didn't tell her about the "details" contained in the text messages between Mr. Torres and Ms. Doe that were later provided by the Chicopee Police Department. When I asked A.W. if she asked Mr. Torres for such details, she stated words to the effect that she "always does" but then stated that the client "can say whatever he wants." Later, she testified that her intake is focused on substance abuse and mental health, as opposed to domestic violence, leaving me to question whether A.W. actually asked Mr. Torres to provide details about the domestic abuse that occurred. Her testimony that her interview was more focused on substance abuse and mental health issues is also consistent with Mr. Torres's testimony before the Commission.

Third, some of the examples cited by A.W. during her testimony don't actually show untruthfulness. For example, when pressed about actual questions she asked of Mr. Torres, she stated that she would have asked Mr. Torres about his alcohol consumption on the night when the domestic abuse occurred. According to A.W., Mr. Torres replied by stating that he was "more drunk than usual" that night. Setting aside the propriety of being "more drunk than usual", that statement, which paints Mr. Torres in a bad light,

does not show untruthfulness, but, rather, a candid assessment on his part of his alcohol intake on the night in question.

Fourth, A.W.'s written summary was not prepared until approximately one (1) month after she conducted the interview. A.W. was not able to produce any hand-written notes of the interview with Mr. Torres; she did not have any personal recollection of the interview at the time she testified before the Commission; and she had completed a large number of interview of other clients in the interim.

Fifth, the intake evaluation completed by A.W. appeared to become more of an extension of an investigation by the City against Mr. Torres as opposed to an independent evaluation of whether Mr. Torres was in need of substance abuse and mental health services at the Springfield Center. At a minimum, there appears to have been some tacit coordination between the City and the Springfield Center to ensure that allegations of untruthfulness were documented in their reports. For example, A.W.'s summary, written in May 2016, talks about the City's "ongoing investigation" of Mr. Torres. She appears to be referencing the Enfield, CT incident that occurred in March 2016, an incident that occurred after the settlement agreement in February 2016 and for which there was no evidence of substance abuse. Further, even though the City forwarded documents (emails, etc.) to the Springfield Center about this incident, those documents don't establish that the City had an "ongoing investigation" against Mr. Torres. I infer that A.W.'s conclusion about an ongoing investigation was based on a verbal conversation that she or others at the Springfield Center had with City officials.

That turns to the alleged untruthful statements that Mr. Torres allegedly made to two (2) other counselors: M.G., a Certified Batterer's Counselor at the Springfield Center;

and S.T., a counselor at the Greenfield Program. Neither M.G. or S.T. testified before the Commission.

“Under G.L. c. 30A, agencies are not required to follow the rules of evidence observed by courts. Evidence may be admitted and given probative effect if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The decision must still be supported by substantial evidence. Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, *supra* at 474.

There are multiple reasons that weigh against relying on the written reports by M.G. and S.T. to determine whether or not Mr. Torres made untruthful statements. First, as referenced above, neither of these witnesses testified before the Commission. Second, neither of these witnesses testified before the Mayor at the local appointing authority hearing. Third, nobody from the City, including Chief Jebb or Captain Sullivan, who was responsible for conducting the internal investigations against Mr. Torres, ever met or spoke with M.G. or S.T. Rather, Captain Sullivan spoke to the *Program Directors* who apparently did not participate in the intake sessions where the alleged untruthfulness occurred; and Chief Jebb relied on the “credibility” of the programs themselves. Fourth, Captain Sullivan couldn’t confirm who actually authored the unsigned intake summary from the Greenfield Program. He *speculated* that it *appeared to* have been written by both the Program Director and S.T., but wasn’t certain. Similarly, Captain Sullivan wasn’t certain who actually authored the statements attributed to Mr. Torres with quotation marks and he appears to concede that he (Captain Sullivan) has never seen any notes or other material from S.T. to verify that such statements were made by Mr. Torres. Fifth, there appears to have been an initial report by the Greenfield Program that was

never provided to the Commission as evidenced by the statement in the intake summary that: “This report has been amended to include the collateral information which was sent to the Greenfield Program on September 1, 2016 by the Associate City Solicitor of Chicopee ...”

Finally, even if I were to give these written statements any weight (which I don’t), some of the statements in the intake summaries cited by the City do not show untruthfulness by Mr. Torres. For example, the City alleges that the portion of the intake summary from the Greenfield Program which states “Vicente reported that he was attending this session voluntarily in agreement with a superior” shows that Mr. Torres was being untruthful to the counselor. According to the City, Mr. Torres was not attending voluntarily, but rather, was required to do so by the City. This argument seems to ignore that the parties *voluntarily* entered into a settlement agreement which was agreed to and signed by both parties.

Untruthful Written Statements

In regard to this charge, the City’s Mayor found that:

c) I also reviewed the domestic violence program intake and evaluation form [from the Springfield Center] completed by you, which was dated May 3, 2016, and signed as ‘truthful and accurate.’ In reviewing this form and the violent and controlled behavior checklist, I found numerous instances of you being untruthful.

I also infer that the Mayor was referencing, at least in part, the intake and evaluation forms from the Greenfield Program when he wrote that a “review of the records” from the Greenfield Program showed that Mr. Torres was untruthful, even though he doesn’t specifically reference the “Violent and Controlling Behavior Checklist” that was submitted by the City as an exhibit.

The City has not proven this charge by a preponderance of the evidence. As noted in the findings, the questions from the Intake Form cited by City, along with the answers provided by Mr. Torres that have been deemed untruthful by the City are in ***bold italics***:

Question 20:

Describe the violent incident that led to your referral to this program. Do not detail the other person's actions. Date Occurred: ***July 2015***. Charges _____

Question 21:

To who (sic) was your behavior directed. **No one.**

Question 22:

Did you hit your partner, grab, threatened (sic), or restrain her in some way. Were there any weapons used. DESCRIBE YOUR ACTIONS:

I push (sic) her away. _____

Question 23:

What were your reasons for choosing those actions? What did you want to happen?

Get her away from me. No I didn't want it to happen.

Question 25:

Describe your actions, reasons and why you chose those actions? (sic)

I couldn't tell you I don't know. I'm not a violent person.

Question 57:

Do you currently drink? Yes X No _____ If yes, how much per week?

Glass of wine once or twice a week.

Question 74:

Do you have any weapons? Yes _____ No: X

Some of these alleged untruthful answers can be disposed of fairly quickly:

- At the time Mr. Torres answered these questions, his Department-issued firearm had been taken from him and there is no evidence that he “[had] any weapons.” His answer that he didn’t have any weapons was not untruthful.
- Mr. Torres acknowledged in these answers that he “currently drink[s]” and stated that he has a “glass of wine once or twice per week.” The question explicitly asks about current consumption and there was no evidence presented that Mr. Torres’s answer here regarding current alcohol consumption was not accurate and thus, his answer cannot be shown to be untruthful.
- Question 25 is a compound, somewhat confusing question subject to interpretation. That notwithstanding, Mr. Torres’s statement that he didn’t know why he chose his actions seems plausible given that he was being screened for a program that purportedly is geared toward answering that very question.

The remaining questions cited by the City are also somewhat vague and/or open to interpretation and the City has not shown that the answers to these questions, given as part of an intake process at a counseling center, are untruthful.

The intake checklist from the Springfield Center had similar problems regarding confusing and subjective questions. Further, some of the answers, under any

interpretation, don't appear to show untruthfulness. Again, as noted in the findings, the Springfield checklist had instructions stating: "Check off each type of abuse (circle each specific behavior) that you have done." The entries cited by the City to show untruthfulness by Mr. Torres are as follows:

- Mr. Torres did not check the following entries on the Checklist, highlighted by the City:

Slap, punch, grab, kick, push, finger poking, pull hair, pinch, bite, twist arm.

Intimidation (blocking her¹⁷ exit, threatening or scary gestures, use of size to intimidate, standing over her, driving recklessly, outshouting, punching walls, banking (sic) the table, knocking things around).

- Mr. Torres did check the following entries on the Checklist, highlighted by the City:

Yelling, swearing, being lewd, using angry expressions or gestures, outshouting.

Lying, withholding information, being untruthful.

The instructions themselves are perplexing. If the client is supposed to "check" any "abuse" and "circle" the "behavior" that applies to him, how is the client to know which of these items are considered "abuse" and which are considered to be a "behavior"? For example, if Mr. Torres had *ever* (no time limits are stated) withheld information from someone, is that "abuse" that should be "checked" or a "behavior" that should be circled? What if the "withholding of information" related to an innocuous failure such as not telling a loved one about a planned surprise party? Is that still a type of "behavior" that should be circled as part of a domestic abuse questionnaire? The point here is that the City has relied upon a confusing and vague questionnaire with highly subjective

¹⁷ The use of the pronoun "her" in all of the Springfield Center forms when referring to a domestic violence victim would appear to be an administrative oversight.

questions, which is used as part of a *counseling intake session*, to show that Mr. Torres has been untruthful. Also, it is worth noting that the Springfield Center, although highly protective of other intake documents, appears more than willing to require clients to make potentially incriminating statements and then turn those incriminating statements over to the local police department. Given the tacit coordination that appears to have existed between the counseling centers and the Chicopee Police Department, any person completing these intake forms would be well advised to consult with a criminal defense attorney beforehand. In this context, and because some of the answers (or checks or non-checks) haven't been shown to be untruthful, the City has not proven this charge as relate to the Springfield Center.

The level of confusion is compounded regarding the checklist at the Greenfield Program that contains a numerical rating system that is also highly subjective and open to interpretation. The responses on that checklist do not show that Mr. Torres was untruthful.

Misconduct Related to the Enfield, CT Incident

In regard to this charge, the City's Mayor found that:

- g) "I find that you violated a direct order given to you by Captain Sullivan via in-hand and email, on August 28, 2015 to stay away from [Ms. Doe]; and
- h) "I further find that your appearance at the home of [Ms. Doe] at 3:00 A.M. on March 6, 2016 is further evidence of gross misconduct involving the very same victim that resulted in your initial sixty-day (60) suspension and an order to undergo an evaluation for alcohol / substance abuse and domestic violence."

The City has not shown, by a preponderance of the evidence, that Mr. Torres violated a direct order of Captain Sullivan by visiting the home of Ms. Doe on March 6, 2016.

That order was not indefinite. Rather, Captain Sullivan's August 28, 2015 order for Mr. Torres stated:

"As you know, you are the subject of an investigation. The victim in this investigation is [Jane Doe]. Until this matter is resolved, I am ordering you not to contact [Jane Doe] either directly or through a third party and I am also ordering you to stay away from [Jane Doe]." (emphasis added)

The "investigation" that was open or unresolved as of August 28th was the Police Department's investigation related to what occurred between Mr. Torres and Ms. Doe on July 17th. Even the City's witnesses acknowledge that this investigation was completed in December 2015 and the City's Mayor relied on this completed investigation to initially schedule a local appointing authority hearing. The City now argues that, when the Clerk Magistrate continued the criminal proceedings for one (1) year on November 9, 2015, that Captain Sullivan's August 28, 2015 order was also effectively extended for one (1) year from November 9, 2015. Captain Sullivan's own testimony before the Commission does not support this argument. Rather, Captain Sullivan acknowledged that the order would no longer be effective if Ms. Doe chose to visit with Mr. Torres, which did occur in late February 2016 when Ms. Doe visited the home of Mr. Torres. Further, this charge of insubordination appears to be more of an "add-on" by the City as opposed to a good faith determination that insubordination occurred here. The City became aware in March 2016 that Mr. Torres visited the home of Ms. Doe in Enfield, CT. Mr. Torres was allowed to return to duty in May 2016 and was not charged with insubordination until August 2016. The City's argument that an ongoing investigation was the reason for a delay in charging Mr. Torres with insubordination rings hollow. If, as argued by the City, that Captain Sullivan's order not to contact Ms. Doe was extended by one (1) year in November 2015, there was nothing further to investigate. It was undisputed, in March

2016, Mr. Torres had visited the home of Ms. Doe and the City, if it sincerely believed that this constituted insubordination, could have charged Mr. Torres at that time, or in May 2016 when Mr. Torres returned to duty. Further supporting the conclusion that this charge was more of an add-on, is Chief Jebb's candid testimony that he and Captain Sullivan were "keeping a list" of things over a period of months to present to the Mayor.

Although Mr. Torres's March 2016 visit to Ms. Doe's home was not insubordination, it did constitute misconduct in violation of the Police Department's Policy and Procedure 4.01. I. INTERNAL AFFAIRS, GENERAL CONSIDERATIONS AND GUIDELINES. Based on Mr. Torres's own testimony before the Commission, Ms. Doe told Mr. Torres, via text message not to come to her home. Yet, shortly after receiving that text message from Ms. Doe, Mr. Torres, at approximately 3:00 A.M., proceeded to walk onto Ms. Doe's property and knock on her bedroom window. This is unacceptable behavior under any circumstances, but is particularly egregious when, as here, it involves a police officer who was on suspension for charges related to domestic abuse against this very person. In fact, the criminal charges against Mr. Torres had been continued for one (1) year in November 2015 with the charges to be dismissed "pending no further charges". Similarly, an additional thirty (30) days of suspension against Mr. Torres had been held in abeyance by the City for two years (from February 2016) "... if no further disciplinary issues arise ...". Yet, Mr. Torres chose to ignore Ms. Doe's text message telling him not to come to her home, prompting a 911 call to the Enfield, CT Police Department, the dispatch of multiple police officers and the issuance of a no trespass order against Mr. Torres.

Having determined that Mr. Torres did engage in some misconduct, the Commission must now determine whether the level of discipline (termination) was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814 (2006):

“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], s. § 43 (‘The commission may also modify any penalty imposed by the appointing authority.’) Here 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.’” Id. citing Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983).

“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.’ citing Police Comm’r of Boston v. Civ. Serv. 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.’” Id. (citations omitted).

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“Unless the commission’s findings of fact differ significantly from those reported by the town 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 town on the basis of essentially similar fact finding without an adequate explanation.” Id. (citations omitted).

“Moreover, in determining 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,’ the commission .. [must] account for the negative inference that the .. [appointing authority] ... [is] permitted to draw from the refusal of [the Appellant] to testify [at the local appointing authority hearing.]” Id. (citations omitted).

Right of the City to Draw an Adverse Inference Against Mr. Torres

In reaching my conclusions here, I have considered that the City was able to draw an adverse inference from Mr. Torres's silence at the local appointing authority here. I have also, however, considered the context in which this silence came about. First, the Police Department, as part of the investigations into the charges relevant to the instant appeal, never spoke with Mr. Torres and/or gave him an opportunity to respond to the charges referenced in the internal investigation. As Chief Jebb testified, that decision was made in part because Chief Jebb (and presumably Captain Sullivan) had already pre-determined that Mr. Torres's answers would likely be "much of the same" and "deceptive". Second, the City's Mayor, is the appointing authority, stated words to the effect that Mr. Torres should take his counsel's advice and not testify at the local hearing. This notwithstanding, Mr. Torres, with the advice of counsel, chose to remain silent at the local hearing.

Even after accounting for Mr. Torres's silence at the local hearing, my conclusions remain the same regarding whether the charges were supported by a preponderance of the evidence. The evidence before the Mayor on many of the charges was weak. He never heard from any of the percipient witnesses related to the charges of untruthfulness and relied heavily on the investigative reports of Captain Sullivan, who also never spoke with the counselors who alleged untruthfulness by Mr. Torres. Also, the Mayor relied on reports, some of which were unsigned and for which there were questions about who actually wrote them.

After remaining silent at the local appointing authority hearing, Mr. Torres chose to testify before the Commission, raising the question of what, if any weight, I should give

to his testimony when reaching my conclusions. Ultimately, I did give some weight to his testimony before the Commission, while always considering that he failed to offer that same testimony at the local hearing. Even without Mr. Torres's testimony before the Commission, however, most, if not all, of my conclusions would have been the same, based on the unreliable evidence and testimony presented. For example, the City's argument that Mr. Torres violated Captain Sullivan's order was disproved by the plain language of the order and Captain Sullivan's own testimony before the Commission.

Ironically, Mr. Torres's testimony before the Commission was a significant factor in my conclusion that his visit to Ms. Doe's home in Enfield, CT constituted misconduct. For the first time, he acknowledged during his testimony before the Commission that Ms. Doe had texted him shortly before his arrival at her home and told him not to visit her.

Political Considerations, Favoritism or Bias

In regard to the issue of personal bias, Mr. Torres alleged during his testimony before the Commission that, in 2013, while serving as a Police Captain, now Chief Jebb stated words to effect: "If I was Chief, you never would have passed my Field Training Officer (FTO) Program" and that Jebb was going to "have my [Torres's] badge." Chief Jebb adamantly denied that he ever made these statements and pointed out that the FTO was not created until he became Police Chief in 2015. I credit Chief Jebb's testimony. While there was, arguably, some indications that Captain Sullivan, who had already recommended that Mr. Torres be terminated for his prior misconduct, I didn't consider this to rise to the level of personal bias that played a role in the Mayor's decision to terminate Mr. Torres from his employment.

Differing Findings of Fact

My findings differ significantly from those of the City as summarized below:

CHARGE	CITY	COMMISSION
Failure to Undergo Evaluations in a Timely Manner	SUPPORTED	NOT SUPPORTED
Failure to Follow Recommendations of Springfield Center	SUPPORTED	NOT SUPPORTED
Failure to Attend First Counseling Session at the Greenfield Program	SUPPORTED	SUPPORTED IN PART
Untruthful Verbal Statements to Three (3) Counselors	SUPPORTED	NOT SUPPORTED
Untruthful Written Statements	SUPPORTED	NOT SUPPORTED
Insubordination Related to Enfield, CT Incident	SUPPORTED	NOT SUPPORTED
Violation of General Considerations and Guidelines Related to Enfield, CT Incident	SUPPORTED	SUPPORTED

Given the context of the charge related to the failure to attend the first counseling session at the Springfield Center, including that Mr. Torres had attended the next seven (7) consecutive weekly sessions at the time of his termination, and that the contract he signed allowed for six (6) absences, that charge does not warrant termination, or even a long-term suspension.

That leaves the issue of whether Mr. Torres's conduct in Enfield, CT justifies the City's decision to terminate Mr. Torres. It does. His conduct during the early morning hours of March 6, 2016 cannot be viewed in a vacuum. Within three (3) years of being appointed as a police officer, Mr. Torres was criminally charged with domestic assault and battery against Ms. Doe for an incident at a local restaurant in July 2015. Even relying solely on Mr. Torres's version of events that night, he acknowledges pushing or shoving Ms. Doe in the head and then rushing out of the restaurant while highly intoxicated.

In November 2015, a Clerk Magistrate continued those charges for one year to be dismissed pending no further charges. Captain Sullivan, after completing an internal investigation, concluded that Mr. Torres had engaged in domestic abuse and bluntly recommended his termination. Although the City opted not to go forward with a local hearing, the parties did agree to a significant penalty of a sixty (60) day suspension, with an additional thirty (30) days held in abeyance. Mr. Torres signed the settlement agreement on February 10, 2016 and agreed to be evaluated by substance abuse and domestic abuse counselors. It is an understatement to say that Mr. Torres was facing a precarious moment in his life and his career as a police officer.

Yet, less than thirty (30) days later, while on suspension, and during a period of time where criminal charges had been continued for one year, Mr. Torres decided to visit the home of Ms. Doe while driving home from the Foxwoods Casino, *despite the fact that Ms. Doe had explicitly told him not to visit her home*. He proceeded to knock on her bedroom window which precipitated a 911 call, the dispatch of multiple police officers and the issuance of no trespass order. By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. "Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question, their ability and fitness to perform their official responsibilities." Police Commissioner of Boston v. Civil Service Commission, 22 Mass.App.Ct. 364, 371 (1986).

Mr. Torres's actions in Enfield, CT, which were preceded by engaging in domestic abuse only months early, call into his question his ability and fitness to perform his duties

as a police officer and provided the City of Chicopee with justification to terminate him from his employment as a police officer, based on the serious misconduct on that one occasion and based on the principles of progressive discipline following his recent, prior acts of misconduct.

Conclusion

For all of the above reasons, Mr. Torres's appeal under Docket No. D1-16-181 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 7, 2017.

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)(I), 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:
Douglas A. Hall (for Appellant)
Thomas J. Rooke, Esq. (for Respondent)