



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

Received
City of Austin
2018 OCT 11 PM 2:29
Human Resources Dept

TO: Joya Hayes, Director of Civil Service

FROM: Brian Manley, Chief of Police

DATE: October 10, 2018

SUBJECT: Agreed Temporary Suspension of Police Officer Mario Aquino #7402
Internal Affairs Control Numbers 2018-0399

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Mario Aquino #7402 from duty as a City of Austin, Texas police officer for a period of twenty (20) days. The agreed temporary suspension is effective beginning on October 11, 2018 and continuing through October 30, 2018.

I took this action because Officer Aquino violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Officer Aquino in violation of Rule 10:

On April 17, 2018, Officer Mario Aquino, while on duty in downtown Austin, engaged in an argumentative discussion with a subject that ended in a Response to Resistance incident in the 6th Street area. Officer Aquino's chain of command initiated an investigation into the incident. During his Internal Affairs interview, Officer Aquino accepted responsibility for his actions by admitting he was not tactful in the performance of his duty, did not exercise patience, and was not courteous or respectful as required by his training and general orders.

Officer Aquino specifically admitted that he violated the Austin Police Department's Impartial Attitude and Courtesy general order by conducting himself in an *"unprofessional manner"* by allowing his *"personal face"* to come out due to his *"frustration with being cursed at and berated"* by the subject. Officer Aquino elaborated, *"I disappointed myself and I think I let a lot of people down..."* by retorting the subject in a *"derogatory way."*

By these actions, Officer Aquino violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 301.2: Responsibility to the Community: Impartial Attitude and Courtesy**

301.2 Impartial Attitude and Courtesy

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

- (b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.
- (c) Employees will make every effort to be courteous and respectful toward all persons.

➤ **Austin Police Department Policy 200.2: Response to Resistance: De-escalation of Potential Force Encounters**

200.2 De-escalation of Potential Force Encounters

When safe and reasonable under the totality of circumstances, officers shall use de-escalation techniques to reduce the likelihood for force and increase the likelihood of voluntary compliance. Nothing in this de-escalation policy requires an officer to place themselves in harm's way to attempt to de-escalate a situation. Recognizing that circumstances may rapidly change, officers may need to

abandon de-escalation efforts after they have commenced. Understanding that no policy can realistically predict every situation an officer might encounter, the Department recognizes that each officer must be entrusted with well-reasoned discretion in determining the reasonable de-escalation techniques to use in a situation. This de-escalation policy is intended to complement, not replace or supersede, other portions of the APD Policy Manual or specific officer training that addresses de-escalation.

In addition to this agreed temporary suspension, Officer Aquino agrees to the following terms and conditions:

1. Officer Aquino shall attend any counseling and/or training specified by his chain of command.
2. Officer Aquino agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, he commits the same or a similar act of misconduct for which he is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one year period begins on the day Officer Aquino returns to duty after completing his agreed suspension. Should Officer Aquino commit the same or similar violation outside the one year period, he will be indefinitely suspended but retains the right to appeal that suspension.
3. Officer Aquino understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.
4. Officer Aquino agrees that he, and all others claiming under him named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind or nature whatsoever that he now has, or may have in the future, including without limitations, claims arising under any federal, state or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.

5. Officer Aquino acknowledges that he had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with a representative of his choosing prior to signing his acceptance where indicated below.

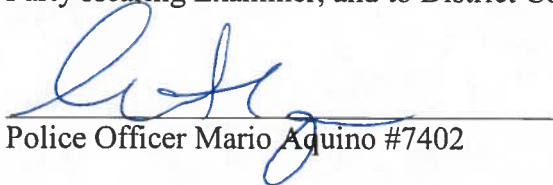
By signing this Agreed Discipline, Officer Aquino understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Officer Aquino waives all right to appeal to this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.


BRIAN MANLEY, Chief of Police

10-10-18
Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above and that by agreeing to the suspension, I have no right to appeal this disciplinary action, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.


Police Officer Mario Aquino #7402

10/10/18
Date