



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: September 27, 2012

SUBJECT: Temporary Suspension of Police Officer Jay Derby #5187
Internal Affairs Control Number 2012-0676

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighter's and Police Officers' Civil Service Commission, I have temporarily suspended Police Officer Jay Derby #5187 from duty as a City of Austin, Texas police officer for a period of one (1) day. The temporary suspension is effective on September 28, 2012.

I took this action because Officer Derby 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 Derby in violation of Rule 10:

On May 22, 2012, Officer Derby, worked secondary employment as an off-duty funeral escort. Officer Derby did not have an approved secondary employment application on file, failed to record the hours he worked as LEH on his timesheet, and failed to take an appropriate amount of leave or vacation.

By these actions, Officer Derby 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 949.4: Secondary Employment: Applying For Secondary Employment**

949.4 Applying For Secondary Employment

Employees desiring to engage in secondary employment will have the following forms completed, approved, and on file with APD-HR as applicable.

- (a) *Application for Secondary Employment (PD0036)* - All secondary employment requires an *Application for Secondary Employment (PD0036)* to be completed and signed by each employee wishing to work in a secondary employment capacity. All "Initial" secondary employment applications are valid for a maximum of two (2) years from the date issued, with all related documents and "Subsequent" applications for that same employment expiring simultaneously.

1. LERE Applications:

- (a) One employee shall complete the *Application for Secondary Employment* as the "Initial" applicant holder when attempting to establish a new secondary employment agreement with a business or prospective employer, or when taking over the initial application from another APD employee.
- (b) All additional employees wishing to work for an employer or business where an initial application is established shall complete the *Application for Secondary Employment* as a "Subsequent" applicant.

➤ **Austin Police Department Policy 949.5.2: Secondary Employment: Limitation on LERE Hours Worked**

949.5.2 Limitation on LERE Hours Worked

- (b) Sworn employees shall not work in excess of 76 combined regular duty, Department overtime, and LERE hours per work week without approval from their commander.
- 2. Employees will record LERE hours on the last line of their timesheet as follows:
 - (a) The earnings code of LEH will be used and the employee will document the number of LERE hours worked each day.
 - (b) Employees will add the number of LERE hours worked and indicate it on the right hand Total column at the end of the LEH line to reflect the total number of LEH hours worked each week. The Total row on the bottom of the timesheet will not include LEH hours.
 - (c) Employees are required to include the estimated hours worked per week as a LERE Courtesy Officer.

➤ Austin Police Department Policy 955.2.1: Attendance and Leave: Timesheets

955.2.1 Timesheets

In order for the Department's payroll records to be properly and accurately maintained it is necessary that weekly timesheets be submitted to APD HR for each employee. Employees are responsible for the accurate recording of their own time on the weekly timesheet.

- (a) Attendance records will be based on a work week that begins at 12:00 am on Sunday and ends at midnight on Saturday.
- (b) Within each section, an employee may be designated as timekeeper to ensure completion and proper submission of weekly timesheets.
- (c) All timesheets shall be:
 - 1. Completed in ink; and
 - 2. Signed and dated by the employee to attest to accuracy; and
 - 3. Signed by a supervisor to indicate timesheet approval.

- (d) Completed and signed timesheets must be turned in to APD HR no later than 4:00 pm on Thursday of each week. In the event the City calls for an earlier payroll deadline, APD HR will send notification to all sections on the deadline to turn in timesheets.
- (e) Employees are responsible for submitting a corrected timesheet to the immediate supervisor if work hours or leave type changes after a signed timesheet has been submitted. Failure to do so may be considered falsification of an official City document. Any corrections to a timesheet must be initialed by an employee's supervisor.

By copy of this memo, Officer Derby is hereby advised of this temporary suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Derby is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.

In addition, if this disciplinary suspension is for three (3) days or less, Officer Derby is advised of the following provisions of Article 18, Section 1, of the Meet and Confer Agreement:

The parties agree that when an officer is suspended for 1, 2, or 3 days the officer may choose one of two methods of dealing with the suspensions as listed below.

- a) **Suspensions that may not be appealed.** *The officer may choose to use vacation or holiday time to serve the suspension with no loss of paid salary and no break in service for purposes of seniority, retirement, promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.*

- b) **Suspensions that may be appealed.** The officer may appeal the suspension to arbitration or the Civil Service Commission. If the officer chooses to appeal the suspension, the arbitrator or Civil Service Commission's authority is limited to ruling on whether or not the charges against the officer are true or not true. If the arbitrator or Civil Service Commission finds the charges to be true, there is no authority to mitigate the punishment. If the arbitrator or Civil Service Commission finds the charges to be not true, the officer shall be fully reinstated with no loss of pay or benefit.

Arbitration Costs on Appealable Suspensions

In the event that an officer appeals a 1, 2 or 3 day suspension to arbitration, it is agreed that the party that loses the arbitration shall be responsible for all costs of the arbitrator, including travel and lodging if necessary.

To facilitate such payment on the part of the officer he shall submit, at the time of appeal, a signed payroll deduction agreement that if the arbitrator rules in favor of the City he authorizes up to one hundred dollars (\$100.00) per month to be deducted from his regular pay until such time as what would usually be the City's portion of the arbitrator's costs have been satisfied.

Asst Chief Patrick Klutse 1290
ART ACEVEDO, Chief of Police for Chief Art Acevedo

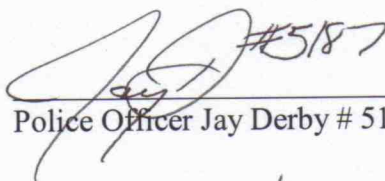
9/27/12

Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of temporary suspension and I have been advised that if I desire to appeal that I have ten (10) days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code. I also acknowledge the options set forth in this memorandum of temporary suspension, including my right to waive an appeal of a suspension of three (3) days or less, and my

financial and contractual obligations under the Meet and Confer Agreement if I elect to appeal a suspension of three (3) days or less and do not prevail.

 #5187

Police Officer Jay Derby # 5187

9/27/12

Date