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Human Resources Dept



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Interim Director of Civil Service
FROM: Art Acevedo, Chief of Police
DATE: July 14, 2016
SUBJECT: Agreed Suspension of Police Officer Steven Martinez #4052
Internal Affairs Control Numbers 2016-0511; 2016-0607; 2016-0682

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 Steven Martinez #4052 from duty as a City of Austin, Texas police officer for a period of 20 days. The agreed suspension is effective beginning on July 16, 2016 and continuing through August 4, 2016.

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

On January 17, 2016 Officer Martinez became involved in a pursuit on a Robbery Urgent call. Officer Martinez pursued the suspect vehicle for approximately 9 minutes and 25 seconds trying to catch up to the vehicle. Officer Martinez reached a speed of 105 miles per hour during the pursuit, while traveling as fast as 79 miles per hour within a 25 mile hour residential area. The video evidence shows both vehicles traveled through stop signs, red lights, outside of their respective lanes, amongst other infractions and hazards.

Officer Martinez and another officer drove the wrong way on the southbound frontage road of IH-35 going north during this pursuit. Officer Martinez acknowledged the suspect vehicle also traveled the wrong way during the pursuit and the suspect vehicle nearly collided with at least two vehicles during early portions of the pursuit. After traveling the wrong way, the pursuit continued for an additional 3 minutes before coming to an end.

Officer Martinez assisted another officer with arresting the driver of the suspect vehicle. During the course of the arrest, the driver suspect stated he was "*sorry, dumb and stupid*", to which Officer Martinez agreed and stated "*yeah, you are stupid.*"

While two other officers had the passenger of the vehicle cuffed and face down on the ground, the passenger attempted to speak to the suspect driver. Officer Martinez then told the passenger to "*shut up*" and walked over to the passenger and grabbed his head and held him on the ground, placing his knee on the back/neck of the passenger. At that point Officer Martinez asked the passenger if he thought he was a "*badass throwing gang signs.*"

Officer Martinez than transported the driver suspect to the Austin Police Main Headquarters ID Section to be processed. When the subject refused to get out of the patrol vehicle, Officer Martinez advised him, "*you're either gonna get out or you're gonna fly out*" The suspect re-asserted his refusal, prompting Officer Martinez to forcefully remove him from the vehicle. Officer Martinez did not document or report this portion of the incident.

Lastly, this is not Officer Martinez's first disciplinary action and I have also considered his prior history.

By these actions, Officer Martinez 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 211.4: Response to Resistance Inquiry, Reporting and Review: Employee Responsibilities for all Force Level Incidents**

211.4 Employee Responsibilities for all Force Level Incidents

The following outlines the required responsibilities of involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

- (a) Involved employees shall notify their supervisor as soon as practicable of any force incident or allegation of use of force.

➤ **Austin Police Department Policy 214.3.4(d)2,3: Vehicle Pursuits: Pursuit Driving Considerations and Restrictions**

214.3.4(d)2,3 Pursuit Driving Considerations and Restrictions

The decision to use specific driving tactics requires the same assessment of factors to be considered concerning pursuit initiation and termination. The following driving tactics apply to units involved in a pursuit:

- (d) Officers will not pursue a vehicle driving the wrong way on a:
 - 1. Highway or Freeway,
 - 2. Highway or Freeway frontage / service roads, or
 - 3. any roadways that are:
 - (a) directly connected to highway/freeway entry or exit ramps, or
 - (b) adjacent to or running parallel to a highway or freeway.

➤ **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, 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 900.3.4: General Conduct and Responsibilities: Personal Conduct**

900.3.4 Personal Conduct

- (c) While on-duty or on the premises of City facilities, employees will not:
1. Use loud, indecent, profane, harsh, derogatory language, or use belittling term in any communications.
 2. Ridicule, mock, taunt, embarrass, humiliate, or shame any person, nor do anything that might incite that person to violence.

In addition to this agreed suspension, Officer Martinez agrees to the following additional terms and conditions:

- 1) Officer Martinez shall attend any training specified by his chain of command.
- 2) Officer Martinez agrees to a one (1) year probationary period to begin on the day he returns to duty after serving this agreed suspension. Officer Martinez agrees that if during that one year period the Chief of Police sustains another violation involving the same or similar conduct (Officer Martinez agrees that the Chief of Police has the final decision whether the conduct is the same or similar and that decision is not subject to review or appeal), he will be indefinitely suspended without the right to appeal that indefinite suspension to the to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.
- 3) Officer Martinez 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 Martinez may not appeal this agreed suspension or any of these additional terms and conditions to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.

By signing this Agreed Discipline, Officer Martinez 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 Martinez waives all right to appeal to this disciplinary action, as well as the additional terms and conditions included herein, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, to District Court, and he may not file a grievance under Article 20 of the Meet and Confer Agreement.



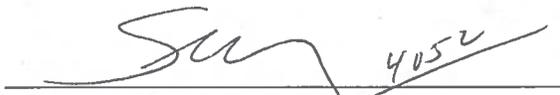
ART ACEVEDO, Chief of Police

7/14/2016

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.



Police Officer Steven Martinez #4052

7-14-16

Date