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## **MEMORANDUM**

### **Austin Police Department *Office of the Chief of Police***

**TO:** Mark Washington, Director of Civil Service

**FROM:** Art Acevedo, Chief of Police

**DATE:** July 30, 2013

**SUBJECT:** Non-Appealable Indefinite Suspension of Police Officer  
William Stewart #4858  
Internal Affairs Control Number 2013-0100

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 Officer's Civil Service Commission, I have indefinitely suspended, without the right to appeal for the reasons set forth herein, Police Officer William Stewart #4858 from duty as a police officer of the City of Austin, Texas, effective July 30, 2013.

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

On November 13, 2012, Officer William Stewart returned to work after a sixty (60) day agreed suspension. Having been reassigned to a new patrol shift, Officer Stewart received a written direct order from his supervisor, Sergeant Crabb, that set out the "on duty expectations" for his assignment. The November 13, 2012 order required Officer Stewart to keep his DMAV system recording throughout his entire shift to "ensure that [he] satisfactorily perform[s] [his] duties in accordance with policy." Further, Officer Stewart was advised that the "recordings will be used to support or refute any possible allegations of Neglect of Duty." Officer Stewart acknowledged receipt of the order by his signature.

In January 2013, Corporal Leija reviewed Officer Stewart's DMAV recordings to determine whether to approve an overtime slip submitted by Officer Stewart. A review of Officer Stewart's DMAV recording reflected that Officer Stewart turned off his DMAV recorder for approximately two hours while at arrest review, and did not turn it back on when finished, in violation of the November 13, 2012 order.

Internal Affairs conducted an investigation of Officer Stewart's conduct, including a review of approximately 194 of his DMAV recordings covering a period of sixteen (16) work days. A review of these recordings found approximately 58 incidents where Officer Stewart had turned off the DMAV system in direct violation of the November 13, 2012 order. Internal Affairs divided the "gaps" in DMAV recording into three groups and totaled the number of incidents: (1) 0-5 minutes: 7 incidents; (2) 5 minutes to 15 minutes: 31 incidents; and (3) 15 minutes and greater: 20 incidents. The evidence reflected that each recording was stopped by one of the "Stop" buttons being pushed in the vehicle, and Officer Stewart admitted that no one other than he ever stopped the recording.

In his Internal Affairs interview, Officer Stewart admitted that he understood the November 13, 2012 order and that he did not contest it. Officer Stewart further testified that his reasons for stopping the recordings were to classify an incident, and to add a case number or notes. The evidence, however, does not reflect that Officer Stewart stopped the DMAV only after the classification of a video. Further, Officer Stewart admitted that these actions would only take between two and ten minutes, and thus could not explain the greater than 20 incidents of gaps of longer duration. Similarly, Officer Stewart's claim of possible "malfunction" of the DMAV system is not supported by the evidence. Not only did Officer Stewart fail to justify his numerous violations of the November 13, 2012 order, but he also provided false and misleading statements which were contradicted by video and testimonial evidence.

By these actions, Officer Stewart 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 110.4.4: Organizational Structure and Responsibility: Insubordination**

**110.4.4 Insubordination**

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

➤ **Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

**900.4.3 Neglect of Duty**

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.
- (g) Written record of repeated infractions of rules, regulations, directives or orders of the Department.

➤ **Austin Police Department Policy 900.3.1: General Conduct and Responsibilities: Honesty**

**900.3.1 Honesty**

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.



- (a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":
  - 1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.
  - 2. Verbal or written statements made by an officer in connection with their official duties to:
    - (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
    - (b) A supervisor conducting an inquiry into the officer's use of force.
    - (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.
- (c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

## **AGGRAVATING CIRCUMSTANCES**

In determining the appropriate discipline, I considered the fact that Officer Stewart's misconduct occurred almost immediately on his return to work following an agreed suspension of sixty (60) days for the same or similar acts of misconduct. As detailed in the Agreed Suspension dated September 13, 2012, and attached hereto as Exhibit "A," Officer Stewart agreed to a sixty (60) day suspension and additional terms and conditions, in consideration of my foregoing my right to indefinitely suspend him for his violations of the following APD policies:

➤ **Austin Police Department Policy 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

**900.4.3: Neglect of Duty**

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.

➤ **Austin Police Department Policy 305.2: Radio and Mobile Data Computer Use: Mobile Data Computer Use Guidelines**

**305.2: Mobile Data Computer Use Guidelines**

- (c) The MDC will remain docked and the docking switch will be in the locked position when the vehicle is in motion or if the MDC is left unattended unless otherwise approved by a supervisor.
- (d) Employees will not intentionally disrupt the GPS signal.

➤ **Austin Police Department Policy 902.4.1: Administrative Investigations: Cooperating with Assigned Investigators**

**902.4.1: Cooperating with Assigned Investigators**

- (b) Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times during interviews with investigators as outlined in Policy 900 (General Conduct).
  - 2. There may be cases where officers have not been truthful but the dishonesty does not constitute a false official statement. In those situations, the Chief shall consider each case on a fact specific basis and may decide that corrective action other than indefinite suspension is warranted as outlined in the Discipline Matrix ("Neglect of Duty - Misleading Statements").

In addition to agreeing to a sixty (60) day suspension, Officer Stewart agreed to additional terms and conditions, including a probationary period of one (1) year during which Officer Stewart agreed that if he committed the same or a similar act of misconduct for which he was being suspended for sixty (60) days, that he would be indefinitely



suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, or to District Court.

Despite my agreement to forego my right to indefinitely suspend Officer Stewart, and my agreement to provide him with a "last chance" to demonstrate his ability to perform his duties in compliance with APD policy, Officer Stewart is once again before me, less than one year later, having committed the same or similar acts of misconduct in violation of several APD policies.

Officer Stewart's repeated unwillingness or inability to perform his assigned duties and failure to obey orders, would, in and of itself, warrant his indefinite suspension. Additionally, Officer Stewart has once again implicated his truthfulness and integrity by making statements during the investigation that are not truthful in an attempt to "conceal, divert, or mitigate his true culpability" in violation of APD's "Honesty" policy. Honesty is the cornerstone of the police profession, and our Discipline Matrix mandates an indefinite suspension for a violation of APD's "Honesty" policy.

For all of the above reasons, indefinite suspension is warranted in this case, and is the chain of command's unanimous recommendation to me.

Normally, by copy of this memo, Officer Stewart would be advised of this indefinite suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) calendar 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. Further, normally, by copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Stewart would be 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.

**However, the appellate rights set forth above do not apply to Officer Stewart's indefinite suspension.** As detailed above and in the attached memorandum, on September 13, 2012, in consideration of my foregoing my right to indefinitely suspend him, Officer Stewart agreed to a sixty (60) day suspension and additional terms and conditions. As authorized by Article 18, Section 7(a)(3) of the Agreement Between the City of Austin and the Austin Police Association, one of the additional terms and conditions agreed to by Officer Stewart in exchange for not being indefinitely suspended, was a probationary period of one (1) year with the additional requirement that if he

committed the same or a similar act of misconduct during the probationary period, **Officer Stewart agreed that he would be indefinitely suspended without the right to appeal.** See Exhibit "A," p. 3, Terms and Conditions No. 2. Officer Stewart's probationary period does not end until November 13, 2013.

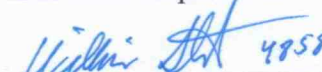
Pursuant to my authority as the Chief of Police, I am exercising my right to enforce the mutually agreed upon terms and conditions of the sixty (60) day Agreed Suspension, specifically, the "last chance" provision. I have determined that the acts of Officer Stewart set forth in this memorandum are the same or similar acts of misconduct for which Officer Stewart was suspended for sixty (60) days in 2012. Therefore, in accordance with the terms and conditions of the Agreed Suspension, Officer Stewart is hereby notified that he is being indefinitely suspended without the right to appeal to the Civil Service Commission, an Independent Third Party Hearing Examiner or to District Court. Consequently, with no right of appeal, Officer Stewart's employment is terminated effective July 30, 2013. **My decision is final and is not subject to appeal to the Civil Service Commission, to an Independent Third Party Hearing Examiner, or to District Court.**

 *Art Acevedo* Acting Chief of Police  
ART ACEVEDO  
Chief of Police

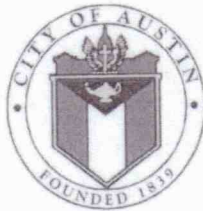
7-30-13  
Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of non-appealable indefinite suspension.

 *William Stewart* #4858  
Police Officer William Stewart #4858  
*signed as to form only.*

7-30-13  
Date



## **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 13, 2012

**SUBJECT:** Agreed Temporary Suspension of Police Officer William Stewart # 4858  
Internal Affairs Control Number 2012-0458

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 Officer's Civil Service Commission, I have agreed to temporarily suspend Police Officer William Stewart # 4858 from duty as a police officer of the City of Austin, Texas, for a period of sixty (60) days. The agreed temporary suspension is effective beginning on September 14, 2012 and continuing through November 12, 2012.

I took this action because Officer Stewart 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.

Exhibit A



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

On April 27, 2012, Officer Stewart went back in service after his lunch break and was dispatched on a call at 11:51 am. Officer Stewart remained in the restaurant for another 38 minutes after being dispatched on the call which required another officer to handle the call. Officer Stewart's actions constitute neglect of duty.

On May 4, 2012, Officer Stewart undocked his MDC for approximately 23 minutes, thereby disengaging the ability to track his vehicle through the GPS system. Officer Stewart initially provided false and misleading statements before admitting to Internal Affairs that he intentionally undocked his MDC without his supervisor's approval in violation of Austin Police Department policy.

By these actions, Officer Stewart 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 900.4.3: General Conduct and Responsibilities: Neglect of Duty**

**900.4.3: Neglect of Duty**

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.

➤ **Austin Police Department Policy 305.2: Radio and Mobile Data Computer Use: Mobile Data Computer Use Guidelines**

**305.2: Mobile Data Computer Use Guidelines**

- (c) The MDC will remain docked and the docking switch will be in the locked position when the vehicle is in motion or if the MDC is left unattended unless otherwise approved by a supervisor.
- (d) Employees will not intentionally disrupt the GPS signal.

➤ **Austin Police Department Policy 902.4.1: Administrative Investigations:  
Cooperating with Assigned Investigators**

**902.4.1: Cooperating with Assigned Investigators**

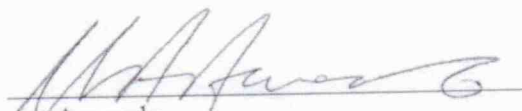
- (b) Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times during interviews with investigators as outlined in Policy 900 (General Conduct).
- 2. There may be cases where officers have not been truthful but the dishonesty does not constitute a false official statement. In those situations, the Chief shall consider each case on a fact specific basis and may decide that corrective action other than indefinite suspension is warranted as outlined in the Discipline Matrix ("Neglect of Duty - Misleading Statements").

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

1. Officer Stewart is required to be evaluated by a qualified professional designated by the Chief of Police. Should this professional recommend a program of counseling, Officer Stewart must successfully complete that program of counseling, as determined by the professional administering the program. If the evaluation and/or counseling occur during the period of suspension, Officer Stewart will not be entitled to compensation. The failure to comply with this evaluation and/or successfully complete the program of counseling will be considered an act of insubordination for which Officer Stewart agrees that he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, or to District Court.
2. Officer Stewart agrees to a probationary period of one (1) year, with the additional requirement that if, during that probationary period, he commits the same or a similar act of misconduct for which he is being suspended, he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, or to District Court. The one year period begins on the day Officer Stewart returns to duty after completing his 60 day suspension.
3. Officer Stewart is put on notice that should he commit the same or similar act of misconduct for which he is being suspended, but such conduct or failure occurs after the expiration of the one year probationary period, he will be indefinitely suspended but retains the right to appeal that suspension as provided for in Chapter 143 and the Meet and Confer Agreement.

4. Officer Stewart acknowledges that he had the opportunity to discuss this agreed suspension and the additional terms and conditions set forth herein with an attorney of his choice prior to signing his acceptance where indicated below.

By signing this agreed temporary suspension, Officer Stewart 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 Stewart waives all right to appeal this disciplinary action, including the additional terms and conditions cited herein, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, or to District Court.

  
Art Acevedo  
Chief of Police

9/13/2012  
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 or the additional terms and conditions cited herein, to the Civil Service Commission, to the District Court, or to an Independent Third Party Hearing Examiner.

  
Police Officer William Stewart # 4858

9-13-12  
Date