

Received

City of Austin

2014 NOV 19 PM 12: 49

Human Resources Dept



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: November 19, 2014

SUBJECT: Temporary Suspension of Officer Michael Castillo #7051
Internal Affairs Control Number 2014-0959

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 Michael Castillo #7051 from duty as a City of Austin, Texas police officer for a period of three (3) days. The temporary suspension is effective beginning on November 23, 2014, and continuing through November 25, 2014.

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

On October 31, 2014, the Austin Police Department validated the authenticity of a YouTube video portraying a conversation between Officer Lytle and Officer Castillo, and initiated an Internal Affairs complaint to investigate the incident. On May 24, 2014, Officers Lytle and Castillo were working a collision, and engaged in an unprofessional and inappropriate conversation in violation of APD policy. During his Internal Affairs interview, Officer Castillo admitted that the conversation was unprofessional, and was not appropriate in the workplace. Despite comments made regarding the legitimacy of the crash, Officer Castillo told Internal Affairs that the actual investigation and crash report were handled in a professional manner, and were not influenced by any of the comments. Further, Officer Castillo stated that the "unrape" comments in the video are not reflective of either his belief regarding the heinous nature of the crime of sexual assault or of his compassion for the victims of sexual assault. Officer Castillo regretted the comments and apologized for any harm caused by his participation in the conversation.

By these actions, Officer Castillo 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 900.3.2: General Conduct and Responsibilities: Acts Bringing Discredit Upon the Department**

900.3.2 Acts Bringing Discredit Upon the Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.
- (b) Employees will refrain from being a party to any malicious gossip, rumor, report or activity, whether written or oral, that would tend to bring discredit to the Department or any member thereof.
 - 1. "Malicious gossip, rumor, report or activity" includes statements made with knowledge of their falsity or made without regard to whether the statements are true or false.
- (c) Employees will not engage in any activity in which there is a potential for conflict of interest or the appearance of a conflict of interest with the lawful duties of the employee.

1. "Conflict of interest" includes any activity which would tend to influence a decision, create a bias or prejudice, or create a gain or loss for any person or agency which would favor one side or the other in conflict with the employee's official duties, or which conflicts with the accomplishment of the Department's mission or goals.
- (d) Employees will not congregate or loiter in any place or in any manner as to bring discredit to the Department.
1. No more than four (4) officers, uniformed or plainclothes, who are identifiable as officers by the display of badges, police radios, insignias, or any articles of clothing identifying them as police officers, will congregate in a public place except when required by official police duties or as authorized by a supervisor.
 2. Except as necessary to perform assigned tasks or as authorized by a supervisor, the following restrictions apply to the number of marked APD police units parked in a parking lot or near a public place at any one time:
 - (a) No more than two (2) between the hours of 6:00 am and 10:00 pm, daily; or
 - (b) No more than four (4) between the hours of 10:00 pm and 6:00 am, daily.

➤ **Austin Police Department Policy 900.3.4: General Conduct and Responsibilities: Personal Conduct**

900.3.4 Personal Conduct

- (a) Employees will not knowingly enter a location engaged in prostitution, illegal gambling, or any establishment wherein laws are being violated.
- (b) Supervisors will not place themselves under financial obligation to a subordinate.
- (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.
3. Indulge in "horseplay."
4. Produce or display graffiti of any nature.
5. Post or display derogatory, offensive or lewd pictures which degrade or lower the self esteem of fellow employees and would undermine the goal of professionalism within APD.
6. Engage in any sexual conduct including lewd acts or solicitation for sex.

In determining the appropriate discipline, I took into consideration the fact that Officer Castillo's participation in an unprofessional and inappropriate conversation was not reflective of his total work performance or work product.

By copy of this memo, Officer Castillo 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 Castillo 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 Castillo 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,*

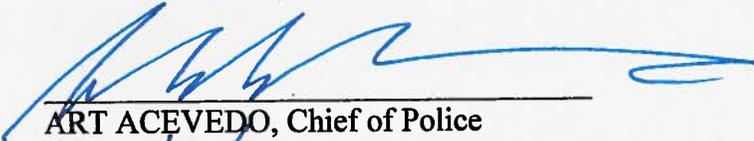
promotion, or any other purpose. The officer must agree that there is no right to appeal if this method of suspension is chosen.

- 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.


ART ACEVEDO, Chief of Police

11/19/2014
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

M. Castillo #7051
Police Officer Michael Castillo #7051

11/19/14
Date