



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Mark Washington, Director of Civil Service

FROM: Art Acevedo, Chief of Police

DATE: March 19, 2012

SUBJECT: Agreed Temporary Suspension of Detective Michael Zeniecki #2970
Internal Affairs Control Number #2011-1281

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 Detective Michael Zeniecki #2970 from duty as a City of Austin, Texas police officer for a period of twelve (12) days. The agreed temporary suspension is effective beginning on March 20, 2012, and continuing through March 31, 2012.

I took this action because Detective Zeniecki 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 Detective Zeniecki in violation of Rule 10:

During late September and early October, Detective Zeniecki was assigned two cases that had occurred at the same location. In mid-October, Detective Zeniecki was contacted by the victim and advised that two suspects had been arrested on October 14 for a Burglary of Vehicle at the same location. The victim implied that the two suspects were also possibly involved in his burglary and based solely on that statement, Detective Zeniecki began to suspect a subject's involvement in the burglary. Detective Zeniecki then located a potential witness and created a photo line-up which was presented to the witness on January 20, 2012. The witness picked the subject as the person that he believed that he saw trying to break into the apartment on October 6, 2011.

Without conducting any additional investigation, Detective Zeniecki completed an affidavit charging the subject with Attempted Burglary of a Habitation. On October 31, 2011, Detective Zeniecki presented the affidavit to a Municipal Court magistrate who approved the affidavit and issued a warrant of arrest. As part of the requirements for submitting an arrest warrant to the fugitive section, Detective Zeniecki compiled a warrant packet consisting of several items, including the subject's criminal history. Although Detective Zeniecki printed out the criminal history, he admitted that he never read it. The subject's criminal history revealed that he was in custody from August 3, 2011 until October 7, 2011 and therefore could not have committed the crime on October 6 for which he was charged. Detective Zeniecki admitted that if he had read that entry, he would no longer have considered the subject a suspect in the case and the charge would not have been filed.

By these actions, Detective Zeniecki 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 403.3(c): Follow-up Investigations: Case Assignment and Responsibility**

403.3 Case Assignment and Responsibility

- (c) When assigned to a case for followup investigation, investigators shall proceed with due diligence in evaluating and preparing the case for appropriate clearance or presentation to court personnel for the filing of criminal charges.

➤ **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.

In determining discipline, I took into consideration the potential negative consequences that the subject could have suffered had the charge been prosecuted. Additionally, prosecution of the charge would have damaged the reputation of the Austin Police Department. Further, I also considered Detective Zeniecki's prior disciplinary history.

By copy of this memo, Detective Zeniecki 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, Detective Zeniecki 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.


ART ACEVEDO, Chief of Police

03/19/2012
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 demote 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.


Detective Michael Zeniecki #2970

3/19/2012
Date