

Docket No. 2153/2164

Respondent testified that he and [REDACTED] were one block south of Cermak on East Avenue in Berwyn. (R. 315, 316). They were in the area to pick up [REDACTED] from [REDACTED]. (R.325). Since they had arrived early to pick up the [REDACTED], Respondent decided to get a haircut about four blocks away from the [REDACTED]. (R. 324). Respondent and [REDACTED] gave conflicting testimony regarding what happened after Respondent left the barber shop to return to his car. Respondent testified that he saw [REDACTED] in a BMW, blocking Respondent's vehicle. (R. 325-326). Respondent testified that he got into his truck, and [REDACTED] told him that [REDACTED] had tried to open the door to Respondent's vehicle, and that he was swearing at and trying to take pictures of [REDACTED]. (R. 327). At that point Respondent was able to pull out and both vehicles traveled in the same direction, until [REDACTED] crashed into an elevated curb. (R. 328). Respondent got out of his own car and punched the window of [REDACTED] car. (R.33). Respondent kicked the car and screamed that the Respondent was going to kill [REDACTED]. (R. 33, 34). Respondent initially told Berwyn police that he witnessed [REDACTED] walking around outside the vehicle in an "aggressive stance," yelling profanities and waving his arms. (R. 429-430). However, the video of the incident shows that neither [REDACTED] nor his vehicle were anywhere near Respondent's vehicle when he exited the barber shop. (R. 435). Seven months later, Respondent was arrested in relation to this incident and charged with reckless conduct and assault. (R. 334-335, 437). The charges were still pending at the time of the hearing. (R. 335). Respondent did not report this incident to the CCSO. (R. 231). While Respondent claims that he was calm the entire time and denies screaming, threatening, and kicking [REDACTED] car, we do not find his testimony to be credible.

On November 13, 2016, Respondent and [REDACTED] were at the [REDACTED] in Berwyn at approximately 2:00 a.m. (the [REDACTED] incident"). (R. 443). [REDACTED] and [REDACTED], [REDACTED], were also patrons at the [REDACTED] that morning. (R. 154). Respondent and [REDACTED] had a "shoulder to shoulder" confrontation, and exchanged words. (R. 160). Respondent claims that [REDACTED] asked to buy Respondent's [REDACTED] a drink, and then became verbally abusive when he was rebuffed. (R. 446-447). Eventually, the Respondent approached [REDACTED] and [REDACTED]. A video of the incident shows Respondent and [REDACTED] having a verbal conversation, though it is unclear what they are saying. (Exhibit 13, R. 173-182). [REDACTED] is seen drinking his beer, and not threatening Respondent in any way. (Id). Respondent then strikes [REDACTED] in the [REDACTED] with a glass or bottle. (Id.). The video shows [REDACTED] while one of the club's owners comes over to assist him. (Id.). Respondent admits that he could have done a lot of things differently and tried to de-escalate and defuse the situation. (R. 451). He admits that he did not try to engage with the [REDACTED] security during the confrontation. (R. 451). He admits that he struck [REDACTED] first, and that [REDACTED] never struck him at all. (R. 451). While Respondent claims that he was not holding anything in his hand when he struck [REDACTED], the video footage establishes that he hit [REDACTED] with a glass or bottle.

Also on November 13, 2016, [REDACTED] arranged to drop three of [REDACTED] with [REDACTED] in the parking lot of a [REDACTED] on Cermak Road. (the [REDACTED] incident). (R. 37). In addition to the minors, two other men were accompanying [REDACTED], including Cook County Sheriff's Deputy [REDACTED] (no relation to Respondent). (R. 38, 107, 108). After allowing his children to exit the car, Respondent aggressively approached [REDACTED], screaming "keep my name out of your mouth, I'll kick your old ass, I'm tired of what is going on here." (R. 112). Respondent repeatedly grabbed something near his own waist, made gestures, and took an aggressive posture. (R. 113). Respondent got within inches of [REDACTED] face. (R. 115). The incident ended when a North Riverside police vehicle entered the parking lot. (R. 115). [REDACTED] pressed assault charges against Respondent, and the court entered a protective order that Respondent was not to have contact with [REDACTED]. (R. 117, Sheriff's Exhibit 4). Respondent

violated this order and the criminal judge ordered a violation of Respondent's bail. (R.228).¹

On or about November 17, 2016, the Respondent was arrested by the Berwyn Police Department and charged with aggravated battery/great bodily harm with respect to the [REDACTED] incident. (R. 224, Exhibits 17 and 18). Thereafter the CCSO's Office of Professional Review ("OPR") began investigating Respondent. (R.215). After investigating the [REDACTED] incident, OPR began looking into Respondent's other arrests, including the June 2 incident and the [REDACTED] incident (R.222-224). OPR also learned that Respondent was arrested on April 5, 2017 by the Cicero Police Department when Mr. [REDACTED] alleged that Respondent hit one of [REDACTED] after the [REDACTED] had moved Respondent's handgun and handcuffs off of a table. (R. 225).

CCSO employees are required to notify the CCSO if they are arrested within five days of the arrest. (R. 231). Respondent did not report any of these arrests to his supervisor, nor did he write any reports to OPR notifying them of the arrest. (R. 231). Further, Respondent failed to cooperate in OPR's investigation. OPR tried to interview Respondent three times. The first time, Respondent refused to give a statement. (R.233). For the second and third times, after he was ordered to attend meetings with OPR, Respondent did not appear at the scheduled dates and times. (R.233).

IV. Rules and Policies.

The CCSO alleges that the Respondent violated the following rules and policies. The relevant language is included herein.

a. CONDUCT - SHERIFF'S ORDER 11.2.20.1 (effective March 12, 2015)

...

II. POLICY

Members of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions, but they do identify many of the important matters concerning member conduct. Every member is also subject to the provisions contained throughout this policy and applicable written directives, as well as any additional guidance on conduct that may be disseminated by the CCSO or the member's supervisors.

III. APPLICABILITY

This policy is applicable to all CCSO members. Any member found in violation of this policy may be subject to discipline, up to and including termination of employment, in accordance with any applicable collective bargaining agreements and state and federal statutes. Any conflict with existing collective bargaining agreements shall be resolved in favor of the applicable collective bargaining agreement.

IV. COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Members shall respect and protect the civil and legal rights of all individuals; uphold the constitution of the United States and the State of Illinois; obey all applicable federal, state and local laws; comply with

¹ The record contains other incidents between Respondent and [REDACTED] where [REDACTED] was arrested. While it is clear that both men behaved badly toward one another, the Board is tasked with determining the effect of Respondent's actions on his employment. The other incidents with [REDACTED] are not pertinent to that decision.

court decisions and orders of courts having jurisdiction; and comply with lawful rules, written or verbal orders, SEAM articles, policies and procedures issued by the CCSO or by any supervisor.

V. CONDUCT POLICY

A. The continued employment or retention of every CCSO member shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any member to meet the guidelines set forth in this policy, whether on-duty or off-duty may be cause for disciplinary action, up to and including termination.

B. A member's off-duty conduct shall be governed by this policy to the extent that it is related to act(s) that may affect or arise from the member's ability to perform official duties, or to the extent that it may be indicative of unfitness for his/her position.

VI. CONDUCT WHICH MAY RESULT IN DISCIPLINE

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of the CCSO. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient service. Conduct which may result in discipline includes but is not limited to the following:

B. Conduct

a. Unauthorized or unlawful fighting, threatening, attempting or actually inflicting unlawful bodily injury on another.

...

f. Failure to report activities on his/her own part or the part of any other member where such activities may result in criminal prosecution or discipline under this policy.

g. Failure to immediately report, as soon as practicable, to the respective department head or authorized designee via the chain of command, activities that have resulted in official contact by any other law enforcement agency, investigative body or charging authority.

k. Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of the CCSO.

l. Inappropriate language or gestures directed at any person that are abusive, harassing, or insolent.

r. If a member is arrested, indicted or convicted of a felony or misdemeanor, he shall:

i. Make verbal notification as soon as practical via telephone to the Cook County Communications Center at (847) 294-4731; and

ii. Submit a written report as soon as practical upon return to work, or within 48 hours if off work via the chain of command to the respective department head or, the authorized designee, and to the Office of Professional Review ("OPR"); and

iii. The report shall specify the facts forming the basis for the arrest, indictment or conviction, and outline the specifics of the case.

28. Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship (including applicable members) whether on-duty or off-duty.

43. Any other on or off duty conduct which a member knows or reasonably should know is unbecoming a member of the CCSO; which is contrary to good order, efficiency or morale; or which tends to reflect unfavorably upon the CCSO or its members.

b.

~~(08/2018)~~ CUSTODY MANUAL – POLICY 1101

(reissued December 3, 2018)

101.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Cook County Sheriff's Office and are expected of all department members. This policy applies to all Sheriff's Office members.

101.1.1 ISSUANCE/EFFECTIVE DATE

This policy was re-issued on Dec. 3, 2018 and shall become effective upon issuance (operational updates).

101.2 POLICY

Members of the Sheriff's Office shall conduct themselves in a professional and ethical manner, both on- and off-duty. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions, but they do identify many of the important matters concerning member conduct. Every member is also subject to the provisions contained throughout this policy and applicable written directives, as well as any additional guidance on conduct that may be disseminated by the Sheriff's Office or the member's supervisors.

101.3 COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Members shall respect and protect the civil and legal rights of all individuals; uphold the constitutions of the United States and the State of Illinois; obey all applicable federal, state and local laws; comply with court decisions and orders of courts having jurisdiction; and comply with lawful rules, written or verbal orders, Sheriff's Office Employment Action Manual (SEAM) articles, and policies and procedures issued by the Sheriff's Office or any supervisor.

101.4 CONDUCT POLICY

The continued employment or retention of every Sheriff's Office member shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any member to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action, up to and including termination.

A member's off-duty conduct shall be governed by this policy to the extent that it is related to any act that may affect or arise from the member's ability to perform official duties, or to the extent that it may be indicative of unfitness for his/her position.

V. Analysis

CCSO Order 11.2.20.1 and Policy 1101.1.1 requires CCSO employees to comply with all laws, ordinances, and regulations, and sets forth the applicable code of conduct. Order 11.2.20.1 specifically holds that employees shall not fight, threaten, attempt or actually inflict unlawful bodily injury on another. (11.2.20.1(VI)(B)(a)). It is uncontested that Respondent fought with and inflicted bodily injury on [REDACTED] during the [REDACTED] incident. Further, this Board finds that Respondent used inappropriate language and gestures directed at [REDACTED] during the [REDACTED] incident when he told [REDACTED] he would "kick [his] old ass" and made threatening gestures and got very close to [REDACTED] face. While Respondent largely denies the incident, it was witnessed by CCSO Deputy [REDACTED], who supported [REDACTED] testimony. Further, the Board gives credence to the testimony and evidence that Respondent unnecessarily followed [REDACTED] punched [REDACTED] car during the June 2 incident.

The failure to report an arrest, indictment, or conviction of a felony or misdemeanor also directly violates Order 11.2.20.1(g) and (r). It is uncontested that Respondent did not report his arrests to the office, either by verbal notification or submitting a written report.

The behavior engaged in by Respondent during all three of the incidents described in Section II above violates both Order 11.2.20.1 and Policy 1101. As set forth in sections IV, above, CCSO Order 11.2.20.1 and Policy 1101 both apply to CCSO employees while they are off duty. (Order 11.2.20.1 (V)(b); Policy 1101.4). As such, the fact that Respondent was off duty during the incidents described above does not shield him from liability.

The Board has fully considered the record, including all testimony, exhibits, and arguments of the parties. The Board has determined that termination is the appropriate sanction for his violations. While all three incidents discussed above are disturbing and show a disregarding for the law and the safety of others, the [REDACTED] incident is particularly troublesome for a CCSO employee and would in and of itself require termination. It would be a detriment to the entire CCSO who lashes out with anger and violence to maintain employment.

VI. Conclusion.

The Merit Board has carefully considered the evidence presented in this case and finds that Respondent Noel Cuellar violated CCSO Order 11.2.20.1 and Policy 1101.1.1 and that termination is the appropriate sanction for Respondent's violations. Respondent is terminated as of March 8, 2019.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIMBERLY PATE GODDEN, Board Member
TERRENCE J. WALSH, Board Member
MARLA M. KAIDEN, Board Member
WADE INGRAM SR., Board Member
JAMES J. SEXTON, Board Member



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COOK COUNTY
SHERIFF'S MERIT BOARD
69 West Washington - Suite 1100
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Noel Cuellar
Correctional Officer
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This Remand Decision is adopted and entered by a majority of the Members of the Merit Board:

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Terrence J. Walsh, Wade Ingram Sr.
and James J. Sexton

Not Present: Kimberly Pate Godden and Marla M. Kaiden

DISSENT

The following Members of the Merit Board dissent from the Findings and Decision of the majority of the Board.

[NONE]

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 25th DAY OF MAY, 2023.

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County

vs.

Correctional Officer

Noel Cuellar

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Docket No. 2153, 2164

DECISION

This matter coming on to be heard pursuant to notice, on the following dates, October 7, 2019, December 2, 2019, January 27, 2020, February 3, 2020, before John J. Dalicandro, Board Member, the Cook County Sheriff's Merit Board finds as follows.

Jurisdiction

Noel Cuellar, hereinafter Respondent, Respondent was appointed a Correctional Officer on December 27, 2004.

Respondent's position as a Correctional Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.")).

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The original Complaints in this matter were filed with the Merit Board's administrative staff on March 8, 2019 and March 25, 2019. Regardless of whether Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaints filed on March 8, 2019 and March 25, 2019 commenced the instant action, were properly filed, and will be accepted as the controlling document for calculating time in this case.

Background

Sheriff's complaints dated March 8, 2019 and March 25, 2019 in which the Petitioner (Sheriff) sought, upon a finding of guilt, the removal of the Respondent from duty with the Cook County Sheriff's Department.

The complaint alleged, in summary, that the Respondent on or about November 13, 2016, while off duty, at the Perception Lounge located in Berwyn, Illinois, the Respondent was involved in a fight and identified by witnesses as the individual who hit Mr. [REDACTED] in the face.

That on or about November 17, 2016, the Respondent was arrested by the Berwyn Police Department and charged with aggravated battery/great bodily harm.

Respondent was also arrested on November 18, 2016 by the North Riverside Police Department.

That on or about January 20, 2017, Respondent was arrested by Berwyn Police Department for one count of Assault and three counts of Reckless Conduct in relation to the incident that occurred on June 2, 2016 involving Mr. [REDACTED].

That the Respondent failed to make verbal notification via telephone to the Cook County Communications Center at [REDACTED] to report the specifics of any of these cases.

That the Respondent failed to submit a written report specifying the facts forming the basis for his arrest on November 17, 2016 by the Berwyn Police Department, via the chain of command to the respective department head or the authorized designee, and to the Cook County Sheriff's Office of Professional Review ("OPR").

That the Respondent failed to submit a written report specifying the facts forming the basis for his arrest on November 18, 2016 arrest by the North Riverside Police Department, via the chain of command to the respective department head or the authorized designee, and to the Cook County Sheriff's Office of Professional Review ("OPR").

That the Respondent has failed to cooperate with OPR or submit to an interview.

That Respondent failed to conduct himself off duty in such a manner to reflect favorably on the Cook County Sheriff's Office ("CCSO") and failed to maintain a professional demeanor.

Findings of Fact

██████████ testified, in March and April 2015, he noticed that his wife was communicating extensively with the Respondent. (R. 21) In 2016, he was heading to pick up his children from school and was going to head back to his store, and he noticed his wife with the Respondent. (R. 21-23) After he started driving away and did a U-turn, his son told him that there was a vehicle coming up behind him. It was the Respondent who was trying to ram his car from behind. (R. 31) The Respondent attempted to block his path of his car and so all he could do was jump the curb to get out of the way. At that point, the Respondent came running and punching the window of the car ██████████ was driving. (R. 33) The Respondent was kicking the car and screaming that Respondent was going to kill him. (R. 33, 34) ██████████ filed a police report and a criminal case against the Respondent which is still pending. (R. 37)

On November 13, 2016 he was again arranging to drop off his kids to his wife in a public place at a Toys R Us on Cermak. (R. 37) In the car with him at this time was ██████████ and ██████████, who was an employee of his. (R. 38) He also had his son ██████████, ██████████ and ██████████. (R. 39) He opened up the doors to let the boys out so that they could go with their mom. At that time, the Respondent jumped out of the car with a rage, came at the witness very fast and actually bumped against him. The Respondent started screaming to get his F'in name out of his mouth and Respondent was going to kick the shit out of his old ass. (R. 40) ██████████ again filed a police report and believed the Respondent was arrested. ██████████ appeared in court regarding this case. (R. 44) ██████████ stated that while doing the custody exchange, Cuellar jumped out of his car and attempted to assault ██████████. (R. 40). ██████████ asserts that in the car with him was ██████████, ██████████, and ██████████, because they were dropping off a sofa on the way back, along with his two other children. (R. 40). However, Officer Cuellar, along with ██████████, state that there was no altercation in that Toys "R" Us parking lot. (R. 345, 525). Officer Cuellar absolutely does not agree with the way that ██████████ depicted that day. (R. 344). There was no exchange of words, no threats, no chest bump, or interaction. (R. 345) ██████████ stated they went to the police station to report this incident only after they dropped off the sofa, showing this gave them time to fabricate a story to tell the police. (R. 70) Further, the States Attorney dropped the case. (R. 345)

██████████ testified ("██████████") is with the Cook County Sheriff's Office and has been there for 27 years he is the Deputy Director working in the Inspector General's Office. (R. 107) He was present when they were dropping off ██████████ kids in a public lot at a Toys R Us in Riverside in November 2016. (R. 109) ██████████ opened up the car door for his children to get out and the next thing you saw was the Respondent exit the vehicle and approach them starting a verbal confrontation. (R. 111) The Respondent approached ██████████ very rapidly and aggressively screaming keep my name out of your mouth, I'll kick your old ass, I'm tired of whatever is going on. (R. 112) Nothing prevented him from seeing or hearing what was going on. (R. 112)

██████████ testified, ("██████████") is 26 years old and works for his father at the furniture store in Cicero. (R. 133, 134) He remembers being in the Toys R Us parking lot on November 13, 2016 with ██████████, ██████████, ██████████ and ██████████. (R. 135) His father's wife

arrived. They were there in a Black Range Rover and his Dad got out to give the kids to his wife and in the middle of the exchange the Respondent jumped out of his car and started screaming at everybody and wanted to fight. (R. 136, 137) Respondent put his hand behind his back around his waist at one point. [REDACTED] jumped out to try and intervene because he had actually had an altercation on the phone the day before. (R. 137) The Respondent chest bumped his Dad and was screaming at him that he was going to kick ass old man. (R. 137) [REDACTED] could kiss the Respondent on the nose that is how close they were. [REDACTED] saw the Respondent reach behind his back and that is the reason why he jumped out and that his Dad's ex-wife tried to break up the fight, but the respondent pushed her back. (R. 137) They then went to the Police Department after they dropped off the sofa and filed a report. [REDACTED] went to court and he was outside in the hallway at court when they saw the Respondent. The Respondent was giving them looks and trying to intimidate them. (R. 140)

[REDACTED], testified ("[REDACTED]") is a chef, married with children. Back in 2016 working at a restaurant called Nick's Fish Market located in Chicago and he was living in Cicero. (R. 151, 152) On November 12, 2016, [REDACTED] remembers on November 12, 2016 he was working Saturday night and he got home around 11:30 pm. (R. 153) [REDACTED] decided to go out that night. He and [REDACTED] were getting ready to go out just past midnight and went to a place called the Perception Lounge in Berwyn. (R. 154) [REDACTED] was finishing his last drink and he was going to make his way to the bathroom and then he noticed the Respondent confronted [REDACTED] and was doing a shoulder to shoulder confrontation. (R. 160) The Respondent did not say anything to him, but he seemed to be staring directly at him and he had a demeanor about him that just did not seem right like he was upset with me or something. (R. 162) [REDACTED] became uncomfortable because of the Respondent staring at him and finally said something along the lines of excuse me, why are you staring at me and the Respondent did not say anything. (R. 163) [REDACTED] continued to say please don't stare at me, why are you looking at me. (R. 164) He saw that the Respondent had a drink in his hand. At that point, [REDACTED] came back. (R. 165) The Respondent then said Oh, the two of you are together and proceeded to come towards [REDACTED] pointing his finger at him and saying something along the lines of you ain't shit. At that point he was struck by a glass because shards of glass were shattered all over his face and he knew he was cut. (R. 166) [REDACTED] was struck in the left part of his face, in the left eye area just above his eyebrow, his inner eyelid, left eye and the bridge of his nose. He had numerous cuts on his forehead, right side of his eye, his lip and his chin. (R. 167) He went to the hospital immediately and was treated for his injuries. He had lacerations to his left eyebrow, inner eyelid fracture and the bridge of his nose and various cuts. He had approximately 30 stitches. (R. 168) Sheriff's Exhibits 5 through 12 were marked for identification and these are pictures of him in the emergency room when he arrived in November. (R. 168, 169)

Exhibit 13 was marked for identification which is the video of the incident. (R. 173) In the video, it depicts his cousin and the Respondent having words, a verbal conversation and you could not hear what they were saying. (R. 175, 176) The video then shows the Respondent striking [REDACTED] and the video clearly shows that [REDACTED] did not threaten him, and that [REDACTED] was just standing there drinking his beer. (R. 179) [REDACTED] ducks down after being hit with the glass and turns away

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to try to get out of there. (R. 179, 180) The video shows [REDACTED] dripping with blood profusely from his face and one of the club owners comes over to him. (R. 182)

[REDACTED] testified, (" [REDACTED] ") has been with the Sheriff's Office of Professional Review for six years and she investigates misconduct by Sheriff employees. (R. 213) She was assigned to investigate the Respondent sometime after November 16th when Respondent was arrested for aggravated battery in Berwyn where the allegation was that he had struck someone in the face with a bottle while at the Perception Lounge. (R. 215) She reviewed all of the Berwyn police reports, photographs, witness statements, spoke to witnesses and attempted to interview the accused. (R. 215) The video clearly shows that he had something in his hand when he struck [REDACTED] and that he dropped it afterwards. (R. 219, 220) The Respondent did not report any of these arrests to a supervisor. He did not write any reports to OPR notifying of what had occurred. In addition, he was ordered to appear for a second case regarding reckless conduct and domestic battery and did not show up for his OPR interview. (R. 231) 190. All Sheriff's employees are required to make notification of an arrest within 5 days at the longest. (R. 231) As of October 2018, the Respondent had still not reported any of the arrests for any of the incidents to his supervisors. (R. 232) The first time OPR tried to interview him he declined to give a statement. In the second case, OPR could and did give him an order to come in and he did not appear. (R. 233) [REDACTED]'s sustained findings that he had violated the conduct policy in multiple areas. (R. 233, 234) That policy governs both on duty and off duty and engaging in a fight and threatening and inflicting bodily harm on another is a violation of the conduct policy. (R. 234) The case involving the Perception Lounge altercation would have been a violation of policy. (R. 234) The failure to report this incident was also a violation. (R. 234-35) The Merit Board Rules and Regulation also require the Respondent to abide by state and federal and local laws. (R. 236)

Noel Cuellar, the Respondent testified, his last day at the Cook County Sheriff's Office on active duty was November 2016. (R. 278) He is currently in a relationship with [REDACTED]. (R. 280) He began dating her in 2015 and knows her ex-husband [REDACTED]. (R. 281) Respondent admits that he had criminal complaints filed against him by Mr. [REDACTED]. (R. 310) There was an incident in June 2016 where he had a confrontation with [REDACTED] and was arrested. (R. 315-317) Respondent admits he was arrested during the incident near the barbershop. (R. 334) Respondent admits that being charged with assault regarding the Toys R Us incident in November 2016. (R. 343) Respondent admits to being arrested for the incident regarding the altercation with [REDACTED]. (R. 345) Respondent admits striking [REDACTED] in the face. (R. 358) Respondent admits he had a criminal trial case regarding the incident where he punched or hit [REDACTED] in the face. (R. 382) Respondent admits he was arrested by the Berwyn Police Department. (R. 384) Respondent admits that he did not show up for OPR interviews with Investigator [REDACTED]. (R. 407) Respondent claims his attorney told him not to show up for his OPR interviews. (R. 408) Respondent claims that there is no General Order or Sheriff's Order that required him to report any of these incidents while he was on non-duty status. (R. 409) Respondent claims that he got no call, email or other contact by the Sheriff's Office during this time. (R. 410)

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Noel Cuellar

Respondent admits that the police report regarding the barbershop incident is different than what his testimony was at the hearing. (R. 429, 430) Sheriff's Exhibit 3, the video of the barbershop incident was played for the hearing officer and Respondent identifies Mr. [REDACTED] car. (R. 431) Respondent identifies himself on the video tape and it shows that [REDACTED] car is not even in the video frame. (R. 434) Respondent again had to admit that his previous testimony on direct was incorrect and that [REDACTED] was not out of his car waving his arms, screaming and yelling. He was actually in his car when he came out of the barbershop. (R. 435) The video of the incident, Exhibit 3, was admitted into evidence without objection. (R. 435) Respondent admits that during this incident he was arrested and charged with reckless conduct and assault and the case is still pending. (R. 437)

Respondent admits that he went to the Perception Lounge after 2:00 a.m. and that [REDACTED] was still married at this point. (R. 443) Respondent admits to being trained in de-escalation tactics at the Cook County Sheriff's Office. (R. 449) Respondent admits that he never walked away from the altercation with the two gentlemen. (R. 450) Respondents admits that he could have done a lot of things different and try to de-escalate and defuse. (R. 450) Respondent admits that he did not reach out to security when he was having this confrontation with these two gentlemen at the Perception Lounge. (R. 451) Respondent admits that [REDACTED] did not punch at him at all. (R. 451) Respondent admits that he did not go over and talk to the police who were present at the Perception Lounge about what happened. (R. 452)

Since their relationship began, [REDACTED] has been arrested approximately two times in relation to incidents with Cuellar and pled guilty for them. (R. 87, 292-296) After those two arrests, [REDACTED] began making false police reports about Cuellar in efforts to get back at him. (R. 314) The first incident that Officer Cuellar was arrested for and used to support his termination in the complaint is an incident that occurred in Berwyn, Illinois after he was leaving his barber shop. (R. 315) [REDACTED] just conveniently happened to be in the same area as [REDACTED] and Cuellar at this time. (R. 24-27) Cuellar walked out of the barber shop, heard shouting, and ran to the vehicle. (R. 324) He got into the vehicle and began to reverse, and then began driving in the same direction as [REDACTED] because it was the only way to travel down that street. (R. 324-28) Officer Cuellar, fearful for the children, gets out of his vehicle and confronts [REDACTED] to get the children back. [REDACTED] then puts the car in reverse, and attempts to run him over, accelerates, and then drives away with the children. (R. 333) Cuellar and [REDACTED] then call the police, who met them at her children's school, and a police report was made. (R. 522)

A second incident occurred on November 13, 2016. (R. 342) This alleged incident occurred in the parking lot of a Toys "R" Us. Id. [REDACTED] and [REDACTED] had an arrangement per court recommendation to do the exchange of custody of their children in a public place. (R. 19-20, 37) According to [REDACTED], there was an altercation at this point. (R. 37-44) However, Officer Cuellar, along with [REDACTED], state that there was no altercation in that Toys "R" Us parking lot. (R. 345, 525) Officer Cuellar absolutely does not agree with the way that [REDACTED] depicted that day. There was no exchange of words, no threats, no chest bump, or interaction. (R. 345) Further, the States Attorney dropped the case. (R. 345)

██████████ testified, she is living with Mr. Cuellar, the Respondent, for over two years. (R. 552) She was living with him at the time of the Perception Lounge incident. (R. 525) which involved individuals named ██████████ and ██████████. On this night, Officer Cuellar, ██████████, and some friends went out to celebrate ██████████'s birthday. Officer Cuellar was not drinking prior to arriving at Perception Lounge. In the bar, Cuellar noticed ██████████ because he came up to ██████████ and asked to buy her a drink. (R. 352) Cuellar responded that he was her boyfriend. A few minutes later, ██████████, ██████████'s cousin got involved. ██████████ came from behind and "body checked" ██████████, and then danced in a disrespectful and sexual manner. (R. 355) ██████████ stated that he even grabbed her butt. (R. 533-34) ██████████ believed that ██████████ may have sent them. The cousins then began yelling something about "kings", which Cuellar understood to be a gang affiliation. He then struck ██████████ in the face with his fist, and not a glass bottle. (R. 358)

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff's Office and the Cook County Department of Corrections, specifically:

SHERIFF'S ORDER 11.2.20.1 (effective March 12, 2015)

CONDUCT POLICY, in its entirety, including but not limited to the following subparts:

II. POLICY

Members of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions, but they do identify many of the important matters concerning member conduct. Every member is also subject to the provisions contained throughout this policy and applicable written directives, as well as any additional guidance on conduct that may be disseminated by the CCSO or the member's supervisors.

III. APPLICABILITY

This policy is applicable to all CCSO members. Any member found in violation of this policy may be subject to discipline, up to and including termination of employment, in accordance with any applicable collective bargaining agreements and state and federal statutes. Any conflict with existing collective bargaining agreements shall be resolved in favor of the applicable collective bargaining agreement.

IV. COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Members shall respect and protect the civil and legal rights of all individuals; uphold the constitution of the United States and the State of Illinois; obey all applicable federal, state and local laws; comply with court decisions and orders of courts having jurisdiction; and comply with

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lawful rules, written or verbal orders, SEAM articles, policies and procedures issued by the CCSO or by any supervisor.

V. CONDUCT POLICY

A. The continued employment or retention of every CCSO member shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any member to meet the guidelines set forth in this policy, whether on-duty or off-duty may be cause for disciplinary action, up to and including termination.

B. A member's off-duty conduct shall be governed by this policy to the extent that it is related to act(s) that may affect or arise from the member's ability to perform official duties, or to the extent that it may be indicative of unfitness for his/her position.

VI. CONDUCT WHICH MAY RESULT IN DISCIPLINE

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of the CCSO. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient service. Conduct which may result in discipline includes but is not limited to the following:

B. Conduct

a. Unauthorized or unlawful fighting, threatening, attempting or actually inflicting unlawful bodily injury on another.

f. Failure to report activities on his/her own part or the part of any other member where such activities may result in criminal prosecution or discipline under this policy.

g. Failure to immediately report, as soon as practicable, to the respective department head or authorized designee via the chain of command, activities that have resulted in official contact by any other law enforcement agency, investigative body or charging authority.

k. Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of the CCSO.

l. Inappropriate language or gestures directed at any person that are abusive, harassing, or insolent.

r. If a member is arrested, indicted or convicted of a felony or misdemeanor, he shall:

i. Make verbal notification as soon as practical via telephone to the Cook County Communications Center at (847) 294-4731; and

ii. Submit a written report as soon as practical upon return to work, or within 48 hours if off work via the chain of command to the respective department head or

the authorized designee, and to the Office of Professional Review ("OPR"); and

iii. The report shall specify the facts forming the basis for the arrest, indictment or conviction, and outline the specifics of the case.

E. Performance

26. Any knowing or negligent violation of the provisions of policy, operating procedures or other written directive of an authorized supervisor. Members are responsible for reading and becoming familiar with the contents of applicable policies and procedures and are responsible for compliance with the content contained therein.

28. Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship (including applicable members) whether on-duty or off-duty.

43. Any other on or off duty conduct which a member knows or reasonably should know is unbecoming a member of the CCSO; which is contrary to good order, efficiency or morale; or which tends to reflect unfavorably upon the CCSO or its members.

COOK COUNTY DEPARTMENT OF CORRECTIONS CUSTODY MANUAL
POLICY 1011 (reissued December 3, 2018)

CONDUCT, in its entirety, including but not limited to, the following subparts:

101.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Cook County Sheriff's Office and are expected of all department members. This policy applies to all Sheriff's Office members.

101.1.1 ISSUANCE/EFFECTIVE DATE

This policy was re-issued on Dec. 3, 2018 and shall become effective upon issuance (operational updates).

101.2 POLICY

Members of the Sheriff's Office shall conduct themselves in a professional and ethical manner, both on- and off-duty. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions, but they do identify many of the important matters concerning member conduct. Every member is also subject to the provisions contained throughout this policy and applicable written directives, as well as any additional guidance on conduct that may be disseminated by the Sheriff's Office or the member's supervisors.

101.3 COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Members shall respect and protect the civil and legal rights of all individuals; uphold the constitutions of the United States and the State of Illinois; obey all applicable federal, state and local laws; comply with court decisions and orders of courts having jurisdiction; and comply with lawful rules, written or verbal orders, Sheriff's Office Employment Action Manual (SEAM) articles, and policies and procedures issued by the Sheriff's Office or any supervisor.

101.4 CONDUCT POLICY

The continued employment or retention of every Sheriff's Office member shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure of any member to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action, up to and including termination.

A member's off-duty conduct shall be governed by this policy to the extent that it is related to any act that may affect or arise from the member's ability to perform official duties, or to the extent that it may be indicative of unfitness for his/her position.

Noel Cuellar the Respondent violated the General Orders and Regulations of the Sheriff's Department and Merit Board by his numerous activities. He was arrested several times. He was involved in an altercation that an individual was injured. Clearly conduct that cannot be tolerated. The fact that a criminal case moves forward or does not move forward, or a person is found guilty or not does not matter in the determination of a case before the Merit Board. The Merit Board looks at the conduct separately from what a criminal case would look at and we are looking at policy violations. The burden of proof here is not beyond a reasonable doubt, it's not criminal standards, but a preponderance of the evidence. Noel Cuellar also misrepresented facts and made false statements.

Order

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to terminate and remove Noel Cuellar, Respondent, from the Cook County Sheriff's Office is granted effective March 8, 2019.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIM R. WIDUP, Board Member
JUAN L. BALTIERRES, Board Member
KIMBERLY PATE GODDEN, Board Member
ELENI P. SIANIS, Board Member



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COOK COUNTY
SHERIFF'S MERIT BOARD
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Chicago, IL 60602

Noel Cuellar
Correctional Officer
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This Final Order is adopted and entered by a majority of the Members of the Merit Board:

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Kim R. Widup, Juan L. Baltierres, Kimberly Pate Godden and Eleni P. Sianis.

Not Present: None

DISSENT

The following Members of the Merit Board dissent from the Findings and Decision of the majority of the Board.

[NONE]

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY OF APRIL, 2020.