

Dep't of Correction v. Harris

OATH Index No. 2383/14 (Feb. 27, 2015), *aff'd*, NYC Civ. Serv. Comm'n
Case No. 2015-0753 (Nov. 04, 2015)

Correction officer was charged with undue familiarity, specifically, failing to notify the Department that her husband had been arrested and incarcerated on Rikers Island; bringing a cell phone onto her post and receiving telephone calls from her husband while he was incarcerated; and disclosing Department business during these calls. In addition, the officer was charged with assaulting and threatening a civilian who she believed was having an affair with her husband after his release from prison. The administrative law judge finds that the Department established the charges and recommends that respondent's employment as a correction officer be terminated.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
-against-
JANNAE HARRIS
Respondent

REPORT AND RECOMMENDATION

KARA J. MILLER, *Administrative Law Judge*

This employee disciplinary proceeding was referred by the Department of Correction pursuant to section 75 of the Civil Service Law (ALJ Ex. 1). Respondent, Jannae Harris, a correction officer, is charged with engaging in undue familiarity by failing to notify the Department that her husband had been arrested and incarcerated on Rikers Island, bringing her cell phone to her post, receiving telephone calls from her incarcerated husband while on duty, discussing Department business during the telephone calls, and assaulting and threatening to hurt and/or kill a civilian she believed was having an affair with her husband after he was released from prison (ALJ Ex. 2).

Following a two-day hearing on the charges,¹ I find that petitioner established all of the charges. I recommend that respondent be terminated from her position as a correction officer.

ANALYSIS

All of the following disciplinary charges stem from respondent's relationship with her husband, W.R.² Respondent was introduced to W.R., a parolee, by her sister, who referred him to do some handyman work in respondent's home in 2006 (Tr. 205). A romantic relationship ensued and they were engaged to be married (Tr. 206). Respondent testified that she was unaware that W.R. had been previously incarcerated until she was contacted by his parole officer in 2009. W.R. had informed his parole officer that respondent was a correction officer during a discussion about their engagement. W.R.'s parole officer had subsequently met with respondent and questioned her about their relationship (Pet. Ex. 15).

On September 11, 2009, respondent and W. R. were married and resided together in the Bronx. The New York State Division of Parole required permission from the Department for W.R. to reside with respondent after they were married (Pet. Exs. 14, 15). Respondent submitted a report to Warden Mulvey, the commanding officer of the Court Division in the Bronx, where respondent was assigned, notifying her of W.R.'s parole status (Tr. 204). The warden forwarded the report to the Investigations Division, which followed up with an investigative interview pursuant to Mayoral Executive Order 16 ("MEO-16") in January 2010 (Pet. Exs. 15, 22; Resp. Ex. A; Tr. 205). The Department found that respondent had been truthful and notified the Department of her fiancé's parole status as soon as she had been made aware of it. The Department further concluded that respondent had not met W.R. as a result of her employment as a correction officer and that she did not know him while he was incarcerated (Pet. Ex. 15; Resp. Ex. A; Tr. 206).

On September 9, 2013, respondent was arrested for assault with the intent to cause physical injury stemming from an August 28, 2013 physical altercation she had with a civilian, who she believed was having an affair with her husband. The investigation following the arrest revealed that on February 26, 2013, W.R. had been arrested for violating conditions of his parole and was incarcerated on Rikers Island until July 26, 2013 (Pet. Exs. 14, 22; Tr. 208). During the

¹ Upon notice to respondent, the record was re-opened to permit the Department to submit additional information requested by the tribunal.

² Mutual request to not reveal respondent's husband's identity was granted.

investigation, the Department interviewed the civilian and respondent, reviewed W.R.'s phone log for the five months that he was incarcerated, reviewed respondent's post phone and cell phone records for the same time period, where they obtained the records from of the calls made to each number (Pet. Exs. 10, 11, 12, 13, 18, 19, 20, 21, 24, 25; Tr. 107-08). Due to the sheer volume of the recorded calls between respondent and her inmate husband, the investigator listened to only a random sample of their conversations (Pet. Ex. 11; Tr. 169-71). On October 9, 2013, respondent was interviewed pursuant to MEO-16 (Pet. Exs. 16, 16A).

The Department determined from its investigation that respondent: did not notify the Department that W.R. violated his parole and was incarcerated; received a substantial number of calls on her post phone and cell phone from her husband while he was an inmate; spent an extensive amount of time on the telephone while on duty at the Sally Port Post and during temporary assignments at Department Academy and New York Police Department ("NYPD") range; did not receive authorization to speak to an inmate; did not receive permission to use her post telephone for personal calls; brought her cell phone on to her post; deposited money into her incarcerated husband's commissary account; and discussed details of her job during her phone conversations that revealed facility operations and other officers' names and schedules (Pet. Exs. 14, 22).

Undue Familiarity - Failure to Notify

Respondent is charged with failing to notify the Department that W.R. had been arrested and was incarcerated on Rikers Island from February 26, 2013 through July 26, 2013 (ALJ Ex. 2).

The Department asserted that once respondent's husband was placed in the Department's custody, she was obligated to notify a supervisor about his incarceration. Respondent contended that she complied with the Department's rules and regulations by putting the Department on notice in 2009 that her husband was a parolee. Consequently, she should not be charged with undue familiarity and failure to notify.

Pursuant to rule 3.25.041,

Members of the Department other than those required to do so in the performance of their regular duties shall not make or maintain contact with or in any way associate with former inmates, nor shall they make or maintain contact with or in any way associate with a

member of an inmate's family, except with the approval of the Commanding Officer. Where there is a verifiable pre-existing relationship between a member of the Department and an inmate this rule shall not apply except to the extent that the member must report the information to the Commanding Officer.

The Department acknowledged that respondent had followed the proper procedure in 2009, by notifying her commanding officer as soon as she became aware that W.R. was a parolee. Accordingly, she was not charged with misconduct at that time (Tr. 152, 155-56, 158). Instead, the Department argued that respondent violated its undue familiarity rules by not notifying the Department about the change of her husband's status when he was incarcerated in 2013 (Tr. 159, 189-90, 192). In other words, despite having a verifiable pre-existing relationship that the Department was aware of, respondent was required to report to her commanding officer that her husband had become an inmate.

Respondent testified that she did not notify the Department that her husband had been arrested for violating his parole because she did not think she was required to. She contended that she would have reported it if she knew she had to do so (Tr. 208, 219, 223). In support of her assertion that she did not have to notify the Department of her husband's arrest, respondent relied on the first sentence of rule 3.25.041, which permits contact or association with former inmates with the approval of the commanding officer. Respondent obtained permission to associate with a former inmate following her MEO-16 interview in 2010. As such, respondent contended that her duty of notification ended once she disclosed her relationship with a parolee to the Department in 2009.

Respondent has misconstrued the meaning and purpose of the rule. It is illogical to rely on one sentence in a rule without taking into consideration the entire rule. When respondent notified the Department that she was engaged to a parolee in 2009, respondent complied with the first sentence of the rule by notifying her commanding officer of her association with a former inmate. However, as soon as W.R.'s status changed from a parolee to an incarcerated inmate, respondent was obligated to comply with the second half of the rule requiring her to notify her commanding officer of a pre-existing relationship with an inmate.

Moreover, I found respondent's testimony to be disingenuous. Respondent has worked as a correction officer for close to 20 years. It is inconceivable that she would not understand the difference between a parolee and inmate. It is also difficult to believe that she would not

recognize that the Department would be interested in knowing her husband was incarcerated on Rikers Island. There was a secretiveness surrounding her contact with her husband while he was an inmate which intimated that she was aware that she should have reported to her commanding officer that he was an inmate. Her professed innocent misinterpretation of the rule is belied by the content of some of her telephone conversations with her husband while he was incarcerated.

For instance, during a telephone conversation with her husband on April 1, 2013, he complained about respondent not writing to him regularly. Respondent replied, “Yeah, because I been trying to be careful. Do you understand?” (Pet. Exs. 19, 25 - 4/1/13 at 20:00:22). Her husband later responded, “Why you think I always call the cell phone unless I have to call the house phone?” Respondent confirmed that her husband understood, by stating “Exactly. So, I, if the same goes for mail, say, the same applies to me” (Pet. Exs. 19, 25 - 4/1/13 at 20:00:22; Tr. 127-28). As reflected here, respondent was trying to be careful with her communications to her husband so that her employer would not know she was communicating with an inmate.

During another conversation, respondent directed her husband not to tell a correction officer in his housing area, with whom she had been in the academy, that he was her husband (Pet. Ex. 19 – 3/7/13 at 09:02:11). It is also of some note that she did not go to visit her husband while he was incarcerated because she admittedly recognized that it was inappropriate (Pet. Exs. 16, 16A; Tr. 162, 208).

Accordingly, I find that petitioner established that respondent failed to notify the Department that W.R. had been arrested and was incarcerated on Rikers Island during the period of February 26, 2013 through July 26, 2013.

Undue Familiarity – Deposited Funds Into Inmate’s Commissary Account

Respondent is charged with engaging in undue familiarity without permission or authority by depositing funds into an inmate’s commissary account (ALJ Ex. 2). Rule 3.25.010 prohibits employees from entering into any transaction with an inmate and rule 3.25.020 prohibits members of the Department from engaging in any business or financial dealings with any inmate.

It is undisputed that respondent deposited money into her incarcerated husband’s commissary account. During her MEO-16 interview on October 9, 2013, respondent readily admitted that she deposited funds into her husband’s account (Pet. Exs. 16, 16A). In addition,

during several of the recorded telephone conversations with her husband while he was incarcerated, she discussed depositing money into his commissary account (Pet. Exs. 18, 25). Supervising Investigator Michael Bardales testified that respondent was obligated to seek permission from her commanding officer before depositing money in her husband's commissary account. Respondent, however, never sought permission to do so (Tr. 139).

It is impermissible to engage in any sort of financial transaction with an inmate. Furthermore, respondent never requested authorization from her commanding officer to make these deposits. *See Dep't of Correction v. Pearson*, OATH Index No. 391/14 at 7 (Dec. 18, 2013), *aff'd*, NYC Civ. Serv. Comm'n Item No. 2014-0252 (July 10, 2014); *Dep't of Correction v. Jenkins*, OATH Index No. 3070/09 at 14 (Dec. 16, 2009).

Accordingly, petitioner established that respondent was engaged in financial dealings with an inmate by virtue of depositing funds in her incarcerated husband's commissary account without authorization.

Conduct Unbecoming - Bringing a Cell Phone on Post

Respondent was further charged with engaging in conduct unbecoming an officer for bringing her cell phone on the Sally Port Post, as well as temporary assignments at the Department Academy and NYPD range, from February 26, 2013 through July 26, 2013, in order to receive telephone calls from W.R. while he was incarcerated (ALJ Ex. 2). Departmental rules prohibit officers from bringing electronic/recording devices, such as cell phones, into the facilities, including the court divisions. Dep't of Correction Operations Order No. 01/05 (Apr. 3, 2005).

Assistant Deputy Warden ("ADW") Luigi Ottaviano, the highest ranking officer in the Bronx Court Division, where respondent is posted, testified that having a cell phone on post is a serious breach of security (Tr. 24). Investigator Bardales echoed ADW Ottaviano's testimony that correction officers are not permitted to have a cell phone inside any Department facility, especially on post (Tr. 113, 141). He further testified that respondent admitted to bringing her cell phone on post during her MEO-16 interview.

During the hearing respondent was forthcoming about having a cell phone on post but surprisingly resistant to the suggestion that the only reason she had her cell phone on post was to receive calls from her husband while he was incarcerated. Respondent admitted keeping a cell

phone on post when her husband was incarcerated and even prior to that time, even though she knew it was “wrong” (Tr. 230). While she acknowledged that having a cell phone on post constituted a security concern, she tried unpersuasively to justify her actions by contending that all of the officers bring their cell phone on post (Tr. 279).

Respondent defiantly disregarded the rules and regulations of the Department prohibiting electronic devices on post and although she knew it was wrong, did not appear concerned or remorseful that she had habitually violated this rule. Accordingly, I find that the Department established that respondent engaged in conduct unbecoming an officer by bringing her cell phone on post.

Undue Familiarity - Telephone Calls While on Duty – Post Phone and Cell Phone

Respondent was charged with engaging in undue familiarity for receiving telephone calls from an inmate incarcerated at Rikers Island on both her post and cell phones while she was on duty at the Sally Port Post at the Bronx Court Division. She was further charged with receiving personal calls from an inmate on her personal cell phone while she was temporarily assigned to the Department’s Academy and NYPD Range. Additionally, respondent was charged with failing to notify the Department that she was receiving telephone calls from an inmate and failing to obtain permission to receive personal calls on her post while working (ALJ Ex. 2).

After respondent was arrested for assault, the Department discovered that the altercation was precipitated by respondent’s suspicions that her husband was having an affair. As a result, the Department searched its database system for W.R.’s name and discovered that he had been incarcerated at Rikers Island between February and July 2013 (Pet. Exs. 8, 9; Tr. 107). The Department subsequently reviewed records of respondent’s home telephone, post phone, and cell phone (Pet. Exs. 10, 11, 12; Tr. 107-08). In addition to determining that her husband had been calling respondent’s home telephone number while he was incarcerated, the investigators discovered that he had called her post and cell phones while she was on duty (Tr. 108, 113).

Correction officers are prohibited from receiving personal telephone calls on their post phone while on duty without authorization. Personal telephone calls are considered a distraction from an officer’s duties (Tr. 23-24, 37, 141-42).

While her husband was incarcerated, respondent was assigned to the Sally Port gate at the Bronx Court Division, to monitor movement into and out of the facility. The Sally Port Post is a

gun post and the assigned officer has possession of keys for the two gates (Tr. 26). This post is the first checkpoint for uniformed staff entering the building. In addition, the Sally Port officer monitors buses and other vehicles transporting inmates and provides access to the facility to drop off or pick up inmates (Tr. 24-25, 217). The Sally Port officer's responsibilities include prohibiting unauthorized access and monitoring the gates to ensure that only one gate is opened at a time (Tr. 25). It is imperative on such a high security post that an officer is aware of what is going on at all times (Tr. 23-24, 123).

Respondent spent a lot of time on the phone while she was on post, which distracted her from her duties. She admitted during her MEO-16 interview that she had received telephone calls on her home telephone from her husband while he was incarcerated but that she told him to stop calling (Tr. 136). Respondent acknowledged that it was wrong for an inmate to be calling a correction officer from prison even if they were married. When asked during the interview if he called her on any other phone, she said no. After being confronted with the phone records of the Sally Port Post phone she reluctantly acknowledged he called her on the post phone. When asked for her cell phone number by the Department, she provided it and admitted that he called her on her cell phone, too, even while she was on post (Pet. Exs. 16, 16A; Tr. 136).

Respondent acknowledged that she never notified the Department that she was receiving calls from someone who was incarcerated nor did she obtain permission to receive personal calls on the Sally Port Post phone. Respondent asserted, however, that she should not lose her job because she had been on the telephone with her husband "a bit too much" while on post (Tr. 218-19).

The Department cross-referenced respondent's timecards for the period in question (Pet. Ex. 13) with the telephone calls that were placed to her cell phone and the Sally Port Post phone while respondent was on duty (Pet. Exs. 10, 12; Tr. 137-39). During W.R.'s incarceration, he placed 808 telephone calls while on Rikers Island. The records demonstrate that 631 calls were placed to respondent's cell phone. Of the 631 cell phone calls, 271 calls were received while she was on duty, totaling approximately 2,075 minutes (Pet. Ex. 12). In addition, W.R. had placed 31 calls to the Sally Port Post phone while respondent was on duty, totaling approximately 203 minutes (Pet. Ex. 10). The investigators further found that there were several PIN numbers from inmates housed in the same facility as respondent's husband that were used to call respondent while she was on duty, representing an additional 2 hours and 12 minutes of calls. After

listening to the recorded telephone calls, the Department determined that W.R. had borrowed or purchased other inmates' phone time to call his wife (Tr. 108, 112).

During some of these conversations, respondent demonstrated an awareness of how inappropriate it was for her to be on the telephone with her husband while she was on duty. For example:

- **February 28, 2013 at 10:55:41:** During a six-minute conversation on respondent's post phone, respondent and her husband discussed money in his commissary account. He expressed concern about paying for the phone calls. Respondent told him that "*While I am at work, so you know I can't talk on this post, anyway, so don't worry about it, you know during the day, it is busy on the 7 to 3 tour, I'm opening and closing the gate*" (Pet. Ex. 18).
- **March 6, 2013 at 09:38:12:** During a six-minute conversation on the Sally Port Post phone, her husband complained that she was not picking up her cell phone. She told him that it was on vibrate in her pocket because she cannot put the ringer on or "*they will hear it*" (Pet. Ex. 19).
- **March 7, 2013 at 09:02:11:** During a ten-minute conversation on the Sally Port Post phone, respondent's husband complained about her not picking up her cell phone while she was working. They discussed a variety of personal matters and then he informed her that Correction Officer Downes was assigned to his housing area. They discussed what the officer looks like, that she and respondent worked together in the past, and they had attended the academy at the same time. Her husband joked that he was going to put Officer Downes on the phone to say hello. Respondent yelled "*NO, NO!*" and he told her that he was "*just messing with you.*" Respondent replied "*You don't know who you can trust babe, for real*" (Pet. Ex. 18).
- **March 7, 2013 at 09:02:11:** During the second half of the previous conversation, respondent stated that "*I am not real comfortable with you calling this phone.*" Respondent's husband said, "*I know, but you didn't answer your phone.*" She replied, "*We have to be very careful*" because another officer answered the Sally Port phone and said that someone had called the post looking for her. Respondent was concerned about other officers talking about their situation (Pet. Ex. 18).
- **March 25, 2013 at 11:22:07:** During a six-minute conversation on her cell phone, respondent told her husband to hold on because the deputy warden was outside. She warned him that she may have to hang up the phone abruptly (Pet. Exs. 21, 25; Tr. 125).

- **March 31, 2013 at 13:58:26:** During a conversation on her cell phone, respondent explained that she would be working overtime on an escort post, so even though she had her cell phone on her, she would not be able to pull it out to answer his phone calls (Pet. Ex. 25; Tr. 126).

During other conversations, however, respondent was so self-involved she seemed oblivious that she was doing anything wrong. For instance:

- **February 27, 2013 at 11:21:19:** During a six-minute conversation with W.R. on the Sally Port Post phone, respondent was simultaneously speaking to someone else on her cell phone, who was scheduled to visit her husband the following day. After a few minutes, she told both callers, to hold on because *“I have to answer the door.”* After opening the gate for someone, she returned to both calls and apologized for the interruption. Respondent then told the person on her cell phone that she was depositing money in her husband’s commissary account the next day. She also reminded her husband not to call her at home, to only call her cell phone (Pet. Ex. 18).
- **March 4, 2013 at 10:45:10:** During a nine and a half-minute conversation on the Sally Port Post phone, they discussed her husband’s housing situation. Respondent then told her husband to hold on, she put the phone down and opened the gate for someone. When she returned to the phone, they continued discussing personal matters. After a few minutes, respondent became very emotional during the conversation recounting that someone had said to her *“your husband adores you.”* Once she recovered, the conversation continued with her husband saying, *“how many people done told you that now, and you went over there to beat somebody up and they told you.”* Respondent replied, *“cause I was going to beat her up and she knew it, too.”* She continued, *“I was gonna have to do something to her though, run her over in the car or something.”* Her husband responded that she should not be fighting, she should be talking. Respondent defensively replied, before the call was cut off, that she never got out of the car so she was not threatening (Pet. Ex. 18).³

A significant number of her telephone calls, while on duty, reflected annoyance that her job was getting in the way of her personal conversation with her incarcerated husband. For example:

- **February 28, 2013 at 11:05:14:** This eight and a half- minute call on the post phone was a continuation of a previous call. Respondent and her

³ Although they did not mention the other woman by name, it sounded as though they were talking about the civilian respondent suspected of having an affair with her husband.

husband picked up the conversation where they had left off. Respondent became annoyed at being interrupted by someone outside the gate and said, "*hold on, God damn it, hold on.*" She put the phone down so that she could open the gate. Respondent returned to the phone and they started talking about W.R.'s niece. Without, putting the telephone down, she said, "*Hi Mr. Davis, how are you today?*" Then she handed the keys to the Sally Port gate to Mr. Davis and asked him to "*Open that door right there.*" While they were discussing W.R.'s sentencing, respondent angrily said "*hold on, hold on, this asshole is on the door.*" She threw the phone down to let someone out of the gate. When she came back to the telephone, she said "*I can't stand them.*" They began discussing banking and financial matters for several minutes and then respondent's husband asked if she can do a three-way call. Respondent replied, "*No I won't try that on this phone,*" and instructed him to call her back on her cell phone (Pet. Ex. 18).

- **March 6, 2013 at 09:00:54:** During a 15-minute conversation on the Sally Port Post phone, respondent told W.R. to hold on because she had to call inside the facility to tell them that there was a delivery. However, rather than actually making this call, respondent continued talking for another minute, complaining about how sick she felt. As their conversation continued, respondent apologized to W.R. because she had to put the phone down to let someone in. When she picked up the phone, they resumed their conversation. Respondent put the phone down three more times during their conversation to let someone either in or out through the Sally Port gate. Each time, respondent apologized for having to make him hold. Following the fourth interruption, respondent said, "*Who the hell is this coming in here? These people getting on my nerves only because I don't feel good and I want to talk to you.*" When respondent returned to the telephone she and her husband continued their conversation until respondent again asked him to hold on. She put the phone down to let another person in through the gate, who asked her what was wrong. Respondent retorted, "*I am trying to talk on the phone,*" causing him to apologize for interrupting her telephone call. She resumed the conversation for a few minutes and then said, "*god damn it, hold on,*" and slammed the phone down to let someone else in through the gate. When she got back on the phone she said, "*I can't stand corny niggers that think they cool,*" and "*this guy has a Napoleon complex, hold on,*" before letting someone else out of the Sally Port gate (Pet. Ex. 18).
- **March 6, 2013 at 09:38:12:** During a six-minute conversation on the Sally Port Post phone, mentioned above, at one point respondent said, "*This faggot, he makes me sick, hold on.*" She put the phone down to let a man through the gate. When she returned to the telephone call with her husband, the person she had let in was in the background asking respondent if the post phone dials out. Respondent angrily replied, "*I'm*

on it, it is the same line.” The man said, *“Oh, you on it? No problem.”* She continued her conversation and put the phone down again to let the man out. When she got back on the phone she told her husband that *“Me and that guy are going to have a problem”* (Pet. Ex. 19).

During other calls, respondent was inexplicably apologizing to her husband because work interrupted their telephone conversations, such as:

- **May 16, 2013 at 8:22:19:** During a less than two-minute call, respondent answered the post phone, apologizing for not answering the phone earlier because she had to let a bus in. They discussed his housing area and then respondent abruptly said, *“Can you call me back on my cell phone?”* Her husband asked why and she replied, *“Because I cannot tie up this line up”* (Pet. Ex. 18; Tr. 130).
- **May 30, 2013 at 8:06:48:** During a six-minute call on the Sally Port Post phone, respondent’s husband immediately started complaining about her not answering her cell phone. Respondent apologized several times explaining that she could not pull out her cell phone because the Captain was standing next to her writing in the logbook. They discussed the weather and if it was busy on her post. After hearing knocking in the background, respondent in a very annoyed tone told him to *“hold on, that’s her banging on the door. Stupid ass”* (Pet. Ex. 18; Tr. 130).
- **June 3, 2013 at 9:45:05:** During a three and a half-minute telephone call on the Sally Port Post phone, W.R. sounded annoyed and complained that he called respondent three times on her cell phone and she did not answer. Respondent explained that she was in the bathroom and apologized for missing his calls. After discussing how he could not reach someone else on the telephone, respondent told him to hold on because *“I have to let the guys in to clean, hold on.”* When she returned to the phone, her husband told her to hang up because he was going to call her back on her cell phone (Pet. Ex. 18; Tr. 131).
- **March 19, 2013 at 14:27:26:** During a ten-minute call on the Sally Port Post phone, her husband complained about calling her twice on her cell phone. Respondent apologized three times and said that she did not feel the phone ringing. Respondent immediately told him to hold on for a minute and put the phone down while she let someone in through the gate. Respondent yelled out, *“hold on ZZ”* to her husband to let him know she needed more time. The person she had let in asked her, *“who is ZZ”* and she responded *“ZZ’s my husband.”* He asked her if her husband was outside the gate and said if he was outside he will cover her post. Respondent said *“no, he is on the phone.”* When she returned to the conversation, she apologized for being away from the phone, for so long.

Her husband said, “*I know, it is a shift change.*” They resumed their conversation, but during the remainder of the conversation she apologized several times for putting the phone down to let staff in and out of the gates (Pet. Ex. 18).

The volume of calls that respondent had received from her incarcerated husband while on duty would be sufficient on its own to establish her blatant disregard for the rules and regulations of the Department. The content of the telephone calls are outrageous at times and demonstrated disdain for her employer and position as a correction officer. Respondent did not deny any of the charges regarding bringing a cell phone on duty, receiving telephone calls on a post phone without authorization, receiving telephone calls on her cell phone, and failing to notify the Department that she was communicating with an inmate on a regular basis. Instead, she tried to minimize the seriousness of her misconduct. Respondent testified that she was on the phone “a bit too much,” which is a gross understatement given that she spent over 2,400 minutes on personal telephone calls with an inmate while on duty.

Accordingly, I find that the Department established all of the charges regarding respondent receiving telephone calls on her cell and post phones while working the Sally Port Post and other temporary posts, including the Department’s Academy and the NYPD Range. The Department further established that respondent did not obtain authorization to receive personal calls on post nor did she receive permission to speak to an inmate.

Conduct Unbecoming - Improper and Inappropriate Telephone Conversations with an Inmate

Respondent is charged with improperly and inappropriately discussing Department business with an inmate, jeopardizing the safety and security of the facility (ALJ Ex. 2).

Rule 8.05.050 states in pertinent part, “all members of the Department shall treat as confidential the official business of the Department.” They shall not, “impart information relating to the official business of the Department to anyone.” ADW Ottaviano testified that the Sally Port Post is one of the most important posts in the facility because it is the means of ingress and egress to the criminal courts (Tr. 25, 113). He further testified that providing information about the security procedures and protocols could lead to an escape or a potential act of violence (Tr. 25). The Sally Port officer has the keys to both gates and is responsible for opening the gates for the probe team should they need to respond to an incident in the Supreme Court

building across the street from the criminal courts (Tr. 26). The Department's witnesses stressed that security protocols are private and should not be discussed with anyone outside the Department, especially an inmate, because it is a breach of security and a safety risk (Tr. 38).

Respondent admitted that she discussed confidential information with her husband which could have represented a security concern and was in violation of Department rules (Tr. 223, 231). She did not appear to think that there was anything wrong with discussing her job with her husband, indicating that spouses generally talk about work and how their day went (Tr. 217-18). This displayed a remarkable lack of awareness of her obligations to the Department.

Respondent also acknowledged that she discussed with her husband specific inmates being processed through the Bronx Courts facility and an inmate, who is an acquaintance of his, who was going to be placed in the same housing area (Tr. 234). Rule 3.25.080 states in part, that "members of the Department shall not discuss with an inmate the case history of other inmates."

The following conversations are examples of respondent discussing Department business and inmates with her incarcerated husband:

- **March 19, 2013 at 8:38:19:** During this nearly eight-minute call, respondent answered the telephone yelling and complaining. She told her husband, "*Z? These two jackasses gonna try to put two vans in the fucking Sally Port at the same time, and if the gate go down and get stuck and I can't open and close the gate, someone's ass is stuck.*" She threw down the telephone, told the people in the van that they were "jackasses." She came back to the telephone and told her husband in an annoyed tone, that it was Juvenile Justice (Pet. Exs. 19, 25; Tr. 118).
- **March 22, 2013 at 08:13:09:** During a thirteen and half-minute conversation on the post phone, they discussed how to program her cell phone. Respondent told her husband "*God damn it, hold on*" and put the phone down. When she returned to the telephone call she said, "*they doin it right today, I jumped on their asses the other day.*" Her husband commented, "*Oh, so now it's not two vans, just one coming in at a time.*" Respondent replied, "*They almost broke the gate last time, that would have been my ass*" (Pet. Ex. 19).
- **March 25, 2013 at 08:54:10:** During a six-minute conversation on respondent's cell phone, she apologized for not answering her cell phone earlier. Respondent explained to her husband that the Department was transporting an inmate into the facility, who she described as "*that boy that killed that lady you knew.*" She told him that "*he was outside with rifles and shit.*" They discussed why the inmate needed such high

security. They then discussed the difference between felony murder and manslaughter and what he would be sentenced to (Pet. Ex. 20).

- **March 28, 2013 at 13:43:10:** During a fifteen-minute telephone call on the Sally Port Post phone, respondent informed her husband that “*Damon is on his way to C95.*” Respondent recounted that the officer escorting Damon on the bus got off to ask respondent if she knew him. She did not recognize Damon at first and then realized who he was. Respondent explained that after Damon left, she went inside and asked where Damon was going to be housed. She found out that he was going to be in the same housing area as her husband. Her husband replied that he would probably see Damon the next day. They then discussed whether respondent can see the prisoners as they are being loaded on the bus and what her line of vision is. Respondent confirmed that she does not watch them load the prisoners on the bus, stating “*Most of the time I am not standing there looking when they come to load up the bus but every now and again I will look to make sure that everyone is on the bus before I open the door. I can’t open the door until they load everyone in that bus and they close that door inside. That is when I supposed to open this door*” (Pet. Exs. 19, 25; Tr. 125).
- **April 11, 2013 at 10:09:35:** During a conversation on the Sally Port Post phone, respondent explained that she could not answer the telephone earlier because she was standing outside the gate. She told her husband that there was an alarm across the street at the Supreme Court building. Respondent informed him that she was responsible for opening the Sally Port gates for the probe team to leave the facility and run across the street to answer the alarm. Then, she has to wait until they get back so she can close the gates (Pet. Ex. 25; Tr. 129)
- **May 24, 2013 at 14:43:43:** During a two-minute conversation on the post phone, she directed her husband to hold on so that she could open the Sally Port door but she continued talking, telling him that there were a lot of parole violators brought in earlier. Her husband asked, “*anyone familiar came through today?*” Respondent said, “*No.*” He replied, “*I’m talking on either side of the fence?*” Respondent answered “*No.*” Her husband concluded, “*Oh that’s because today is Friday.*” Respondent’s husband then asked her, “*Are you going to let the people in or what?*” She said she would, but they agreed that he would hang up and call her back on her cell phone so she could put him on hold (Pet. Ex. 19).
- **May 30, 2013 at 8:06:48:** During a six-minute call on the Sally Port Post phone, that was mentioned above, respondent discussed with her husband that she would be switching schedules with other officers. Respondent mentioned the officers by name and stated which post they would be working and when (Pet. Ex. 18; Tr. 130)

The sampling of these calls demonstrates that in addition to discussing personal business, respondent discussed Departmental business, including security issues and the schedules and tour locations of other correction officers by name. Respondent discussed the security protocols of the probe team responding to an emergency situation in the Bronx Supreme courthouse across the street. She explained security protocols such as the mechanics of the Sally Port gates and the loading of inmates on the buses. Further, she mentioned inmates by name and indicated where they were going to be housed. Respondent is not allowed to discuss other officers with an inmate nor is she permitted to discuss other inmates with someone who is incarcerated (Tr. 109-11).

Respondent's suggestion that her conversations with her husband amounts to nothing more than pillow talk is appalling. The very nature of her job requires her to be circumspect about the operations of the Department. She should not be discussing security protocols, officers' schedules, and other inmates with anyone, let alone someone who is incarcerated on Rikers Island.

The evidence presented coupled with respondent's admissions well establish that she improperly and inappropriately discussed Department business with an inmate, jeopardizing the safety and security of the facility.

Conduct Unbecoming – Off duty Misconduct – Assault

Finally, respondent is charged with conduct unbecoming a correction officer for confronting a civilian, who respondent accused of having an affair with her husband, pushing her, and threatening to hurt or kill her (ALJ Ex. 2).

Respondent was arrested on September 9, 2013, for assaulting a civilian, Ms. M,⁴ on August 28, 2013 (Pet. Exs. 1, 3, 4, 5, 6, 22). Ms. M testified that she knew respondent's husband from work and then met respondent at a group dinner with other co-workers (Tr. 60). She recalled that respondent would contact her periodically to ask about the nature of her relationship with respondent's husband. During these telephone calls, Ms. M would tell respondent that her husband was faithful to respondent. She described the calls as nothing more than discussions about respondent's "insecurities with her husband" (Tr. 60).

⁴ The Department's request to maintain the privacy of the complaining witness was granted. She will only be referred to by the first letter of her last name.

On August 28, 2013, respondent followed her husband to Ms. M's home. According to Ms. M, respondent's husband had only stopped by her apartment to drive her to work. She told him that she needed a few more minutes to finish putting on her makeup. Ms. M testified that while respondent's husband was waiting for her to finish getting ready, he kept nervously looking out the window. Without explanation, he left her apartment and went downstairs. Ms. M heard a commotion and when she looked out the window she saw respondent arguing with her husband "at the top of her lungs" (Tr. 61). Ms. M testified that she went downstairs to see what was happening and to invite respondent and her husband upstairs to her apartment to avoid a public scene (Tr. 60-61).

When Ms. M arrived outside the building, respondent's husband drove off leaving respondent in front of the building screaming and yelling (Tr. 61). Ms. M testified that she asked respondent to come upstairs, but respondent was "all hyped up" and "the first thing she did was spit out of her mouth was 'fuck you bitch, you're disrespectful. How dare you? I knew all along you guys was having a relationship'" (Tr. 62). Ms. M denied that she was romantically involved with respondent's husband, maintaining that they were just coworkers. She told respondent that she did not appreciate being spoken to like that and turned to walk back inside. Ms. M testified that as she was leaving, respondent was walking towards her, cursing at her "calling all kind of bitches and how I wasn't shit and how she wanted to fuck me up" (Tr. 62). Respondent further yelled that she was going to bring all of her husband's clothes over to Ms. M's so that he could live with her. Respondent told Ms. M that "she can keep him" (Tr. 63).

Ms. M testified that as soon as she walked into the vestibule of her building, respondent grabbed her by the hair and attacked her. She maintained that respondent punched her in the face several times; threw her up against the wall; scratched her arm, face, neck, and ear; and pulled off her hair extension ponytail. Respondent also threatened Ms. M, who had previously served time for murder, to call her parole officer (Pet. Ex. 6; Tr. 63, 70). Ms. M further testified that when she told respondent, "this is disgusting of you," respondent said, "I don't give a fuck," threatening, "if I had a fucking gun, I'd kill you right now" (Tr. 63).

A few minutes after the physical altercation, Ms. M called the police twice because the first time they arrived they spoke with respondent and left. The police returned after the second call and told Ms. M that they left the first time because respondent had told them that everything was under control. Ms. M testified that respondent had already left the area at this point, so she

explained to the officers what had actually happened (Pet. Ex. 3; Tr. 66). The officers called for a supervisor to come to the scene and an ambulance to check her injuries (Tr. 66-67). Ms. M decided not to go to the hospital because she did not have medical coverage. After a cursory examination, the emergency medical technicians took photographs of her injuries with Ms. M's cell phone for her own records (Pet. Ex. 23; Tr. 67-68). Ms. M was worried about being late to work and possibly losing her job, so she called her supervisor who came to Ms. M's home and told her that she was in no condition to work. Because she was frightened to be at home alone, she stayed with her sister. She had to use five vacation days because she was traumatized and embarrassed to go to work with the wounds on her face. Ms. M obtained a temporary order of protection against respondent on September 9, 2013 (Pet. Ex. 7; Tr. 67).

Ms. M's interview with Investigator Lawrence Bond, from the Department of Investigation, was consistent with her testimony. During the interview, Ms. M indicated that she was a co-worker and friend of respondent's husband. Ms. M informed the investigator that respondent appeared at her apartment building on August 28, 2013, at approximately at 4:15 p.m. and started yelling and screaming at her husband, accusing him of having an affair with Ms. M. Respondent's husband left and respondent continued to yell at Ms. M, who asked respondent to come inside her building because she was making a scene. After respondent entered the hallway there was a struggle (Pet. Ex. 2; Tr. 44-45). According to the investigative report, respondent pushed the complainant, scratched her on the neck and face, pulled off her weave, and threatened to "fuck [her] up" and to "kill [her]" (Pet. Exs. 2, 22). Ms. M told Investigator Bond that she was afraid of respondent (Pet. Exs. 2, 4, 6, 22; Tr. 46).

Respondent denied following her husband. She maintained that she was on her way to the dry cleaners when she happened to drive down the block and noticed her husband's car was double parked outside Ms. M's building. She testified that she parked her car and went into the lobby of the building and "laid" on the bell for five to ten minutes (Tr. 209). Respondent's husband came downstairs and they got into a heated argument before he "ran and got in his car and drove off," leaving respondent alone in front of Ms. M's apartment (Tr. 209-10). Respondent maintained that she already knew that her husband was having an affair with Ms. M because this was not the first time that she had seen his car in front of her building (Tr. 216). Respondent testified that "he had no business" being in Ms. M's apartment so she started yelling

that she wanted to know why he had been there (Tr. 210). A crowd started to form so Ms. M came downstairs and asked respondent to come inside (Tr. 210-11).

Respondent testified that after following Ms. M into the vestibule of the building, she accused her of having an affair with her husband. She admitted calling Ms. M “a slut and a liar” (Tr. 211). Respondent contended that Ms. M started “kicking her in the thigh continuously” so she felt compelled to defend herself (Tr. 212). Respondent tried to pull Ms. M’s hair but instead grabbed a ponytail extension which came off in her hand. Respondent testified that she dropped the extension and then pushed Ms. M in the face and grabbed her neck while Ms. M was still kicking at her (Tr. 212). Respondent maintained that she suddenly realized that the situation had gone too far, so she stopped. Ms. M picked up her keys and went inside, while respondent picked up her belongings and went outside. When she got outside, the police were already present. They asked her what was going on. Respondent told them that she had just caught her husband in another woman’s apartment and informed them that she is a correction officer (Tr. 213). According to respondent, the police told her she needed to get out of there. However, when she returned to her car it would not start because she had run out of gas. She left the car, walked around the corner, and called her husband to come to pick her up (Tr. 214).

On September 9, 2013, respondent appeared at the police station to answer questions regarding the incident on August 28. Respondent was placed under arrest for assault and was released on her own recognizance (Pet. Exs. 1, 4, 5, 6, 22). Respondent pled guilty to harassment in the second degree on November 15, 2013, and was sentenced to a one-year conditional discharge and a two-year order of protection was also imposed (Pet. Ex. 17).

Investigator Bond testified that he was dispatched to the Bronx courthouse where respondent was being arraigned. He took custody of respondent’s Department identification card and shield. Investigator Bond also interviewed the complainant and obtained the arrest records and criminal complaint from the Police Department (Pet. Ex. 22; Tr. 43-44, 107).

In analyzing credibility, this tribunal may consider such factors as: witness demeanor; consistency of a witness’ testimony; supporting or corroborating evidence; witness motivation; bias or prejudice; and the degree to which a witness’ testimony comports with common sense and human experience. *Dep’t of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 5, 1998), *aff’d* NYC Civ. Serv. Comm’n Item No. CD 98-101-A (Sept. 9, 1998); *Dep’t of*

Correction v. Hansley, OATH Index No. 575/88 at 19 (Aug. 29, 1989), *aff'd*, 169 A.D.2d 545 (1st Dep't 1991).

Respondent's counsel spent a significant amount of time trying to discredit Ms. M. He pointed to inconsistencies between her testimony and information contained in the different reports from the police and district attorney's office. One of the reports indicated that Ms. M claimed respondent threatened her with a gun and another stated that Ms. M thought respondent had a gun but never displayed it. Ms. M, however, never wavered in her testimony regarding the gun despite robust cross-examination. She maintained that respondent had threatened her by indicating that if she had a gun, she would have used it. She consistently and credibly denied telling the police, the assistant district attorney, and the department investigator anything different. Indeed, she logically asserted that she did not write their reports and could not explain why they were different (Tr. 73-74, 78, 80, 91). *See, Dep't of Correction v. Parrish*, OATH Index No. 1386/03 at 5 (Aug. 6, 2003), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD04-37-SA (July 8, 2004) (respondent's attempt to discredit the complainant by noting the absence of details from official documents, such as the criminal court complaint, was unsuccessful because it was not dispositive or compelling evidence that her testimony was exaggerated).

Respondent's counsel also argued that Ms. M is a convicted murderer who served 21 years in prison and cannot be considered a reliable witness (Tr. 92). There is no basis for the assertion that a person, who has been convicted of a crime, is solely by virtue of the conviction, incredible. Nonetheless, I gave weight and considered Ms. M's conviction, but on balance her testimony regarding the physical altercation was very credible. Not only was her testimony consistent, it was corroborated by photos and the Department's investigative report. Moreover, respondent did not dispute that she physically attacked Ms. M. Respondent admitted to pushing, hitting, and grabbing at Ms. M, but qualified that she was only defending herself. *See, Police Dep't v. Zisel*, OATH Index No. 389/97 (Mar. 7, 1997), *modified on penalty*, Comm'r Dec. (Sept. 17, 1997) (a complainant's prior criminal conviction did not render his testimony unworthy of belief on matters where there was independent corroborating evidence).

Respondent's claim of self-defense, however, was far from credible. She followed Ms. M into her building and was the aggressor. Moreover, she could have retreated at any point or just followed her husband when he left. It is clear from her own testimony that she lost control of herself because she caught her husband in another woman's apartment. Moreover, she pled

guilty to harassment and an order of protection was issued against respondent to stay away from Ms. M and refrain from communicating with her for two years (Pet. Ex. 7).

Although this incident occurred while respondent was off-duty, it constituted misconduct for which respondent may be disciplined. *Triborough Bridge & Tunnel Auth. v. Francis*, OATH Index No. 825/13 at 7 (Oct. 10, 2013), *adopted*, Auth. Dec. (Dec. 9, 2013). *See also, Comwell v. Bates*, 105 A.D.2d 699 (2d Dep't 1984); *Dep't of Correction v. Griffith*, OATH Index No. 669/01 at 3 (Apr. 3, 2001), *penalty modified*, Comm'r Dec. (June 28, 2001); *Dep't of Environmental Protection v. Tosado*, OATH Index No. 311/83 at 13-16 (Sept. 2, 1983). To establish off-duty misconduct, the agency must establish some relationship between the conduct sought to be sanctioned, the agency's mission, and the employee's position. *Triborough Bridge & Tunnel Auth. v. Christiano*, OATH Index No. 493/12 at 9 (Mar. 21, 2012), *aff'd*, Comm'r Dec. (Apr. 11, 2012), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 12-34-SA (July 24, 2012), *citing Furst v. NYC Transit Auth.*, 631 F. Supp. 1331, 1338 (E.D.N.Y. 1986).

By virtue of her position as a correction officer with the Department, respondent is a peace officer. As a peace officer, she is constrained to protect the peace and order of a civil society. *Parrish*, OATH 1386/03 at 2-3. *See also, Dep't of Probation v. Dixon*, OATH Index No. 156/11 at 6 (Nov. 30, 2010). Instead, respondent initiated a physical confrontation and assaulted a civilian. This is contrary to protecting the peace and order of a civil society.

Accordingly, I find that respondent engaged in conduct unbecoming an officer and conduct of a nature to bring discredit upon the Department by confronting, assaulting, and threatening to hurt or kill Ms. M.

FINDINGS AND CONCLUSIONS

1. Petitioner established that respondent engaged in undue familiarity and conduct unbecoming an officer by failing to notify the Department that her husband had been arrested and was incarcerated on Rikers Island from February 26, 2013 through July 26, 2013.
2. Petitioner established that respondent engaged in undue familiarity by depositing funds into her inmate husband's commissary account without authorization.

3. Petitioner established that respondent engaged in conduct unbecoming an officer by regularly bringing her cell phone onto her post.
4. Petitioner established that respondent engaged in conduct unbecoming an officer by engaging in undue familiarity in that she received telephone calls from an inmate incarcerated at Rikers Island on both her post phone and cell phone while she was on duty at the Sally Port Post at the Bronx Court Division and received personal calls from an inmate on her personal cell phone while she was temporarily assigned to the Department's Academy and the NYPD Range.
5. Petitioner established that respondent engaged in conduct unbecoming an officer by failing to notify the Department that she was receiving telephone calls from an inmate and failing to obtain permission to receive personal calls on her post while working.
6. Petitioner established that respondent engaged in conduct unbecoming an officer by improperly and inappropriately discussing Department business with an inmate.
7. Petitioner established that respondent engaged in conduct unbecoming a correction officer for confronting a civilian, who respondent accused of having an affair with her husband, pushing her, and threatening to hurt or kill her.

RECOMMENDATION

Upon making the above findings and conclusions, I obtained and reviewed an abstract of respondent's personnel record provided to me by the Department. Respondent has been with the Department for 25 years. She started in 1989 as an office associate and was appointed to the position of correction officer on October 23, 1997. During her 17-year tenure as a correction officer there has been no formal discipline.

The Department requested that respondent be terminated from her position as a correction officer. Any one of the numerous sustained charges would be sufficient justification for terminating respondent's employment.

Respondent suggested that she should not be terminated for being on the telephone with her incarcerated husband. The case law is to the contrary. This tribunal has consistently recommended termination of employment where correction officers have engaged in numerous, ongoing telephone conversations with inmates. *See Dep't of Correction v. Jenkins*, OATH Index No. 3070/09 (Dec. 16, 2009) (officer terminated for receiving over 700 calls from an inmate who was the putative father of her child, depositing money in his commissary account, and bailing him out of jail); *Dep't of Correction v. Isom*, OATH Index No. 1995/01 (Oct. 23, 2001), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 03-04-SA (Feb. 5, 2003) (officer terminated for receiving over 150 calls from an inmate); *Dep't of Correction v. Lewis*, OATH Index No. 1028/01 (Jan 11, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 03-47-SA (June 12, 2003) (officer terminated for receiving 201 calls from an inmate).

Not surprisingly, the penalty for having relationships with inmates or former inmates has generally been termination of employment. *Dep't of Correction v. Baker*, OATH Index No. 556/10 (Nov. 13, 2009); *Dep't of Correction v. Hernandez*, OATH Index No. 1339/06 (Oct. 4, 2006), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 07-46-SA (Apr. 17, 2007); *Dep't of Correction v. Daniel*, OATH Index No. 1874/04 (July 20, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-46-SA (Apr. 24, 2006). Even in instances where there was a familial relationship between the inmate and the officer, termination is still the most common penalty imposed. *Department of Correction v. Harris*, OATH Index No. 1444/97 at 15 (Sept 29, 1997), *aff'd*, NYC Civ. Serv. Comm'n Item No. 98-109-SA (Oct 26, 1998) (inmate was the father of officer's children); *Dep't of Correction v. Jackson*, OATH Index No. 1346/04 (Aug. 3, 2004), *modified on penalty*, Comm'r Dec. (Jan. 4, 2005), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 06-07-SA (Jan. 9, 2006) (inmates were brother and foster brother of officer). *Dep't of Correction v. Carattini*, OATH Index No. 1313/99 (June 11, 1999), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 00-68-SA (July 6, 2000) (officer terminated for having a long term relationship with inmate whom she married).

It is important to note that even an unblemished disciplinary record, which might constitute compelling mitigation in other situations, is generally insufficient to avoid termination when undue familiarity is proven. *See Carattini*, OATH 1313/99 (nine year tenure with no disciplinary record insufficient mitigation for undue familiarity); *Lewis*, OATH 1028/01 (termination of employment despite lack of disciplinary record); *Dep't of Correction v. Huggins*,

OATH Index No. 1854/00 (Oct. 25, 2000), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 01-49-SA (July 27, 2001) (termination of employment despite lack of disciplinary record).

The Department correctly contends that undue familiarity is one of the most serious acts of misconduct that a correction officer can engage in. *Dep't of Correction v. Pearson*, OATH Index No. 391/14 at 11 (Dec. 18, 2013), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2014-0252 (July 10, 2014); *Dep't of Correction v. McFarland*, OATH Index No. 650/92 at 14 (Aug. 24, 1992), *aff'd sub nom. McFarland v. Abate*, 203 A.D.2d 190 (1st Dep't 1994). The reasoning behind the Department's policy of terminating officers who violate the undue familiarity rule is that relationships of any kind between officers and inmates undermine the security of the entire correctional system. More fundamentally, however, respondent's pattern of behavior of having extensive phone conversations while on duty shows that she was continuously negligent in doing her job as a correction officer. She was not at all focused on the mission of the Department of care, custody, control.

Finally, even though respondent's assault of a civilian and her subsequent arrest occurred while she was off duty, it is still of concern to the Department. Correction officers are law enforcement officials vested with considerable authority. As a peace officer, a correction officer's off-duty conduct reflects on her integrity and is an indispensable component of the job. As such, the Department is entitled to monitor a correction officer's off-duty activities to ensure that they comport with the requisite standards of integrity. *Harris*, OATH 1444/97 at 15.

There is significant precedent for terminating correction officers who engage in violent off-duty conduct, with or without a resulting criminal conviction. *See Parrish*, OATH 1386/03 (Aug. 6, 2003) (officer convicted of third degree assault found guilty of off-duty misconduct and failing to notify command of the arrest, termination recommended); *Dep't of Correction v. McDermott*, OATH Index No. 280/96 (June 26, 1996), *aff'd*, 250 A.D.2d 538 (1st Dep't 1998) (termination for pattern of on and off-duty harassing behavior toward Captain and his wife); *Dep't of Correction v. Islar*, OATH Index No. 321/88 (Oct. 5, 1988) (termination for conviction of third degree assault for engaging in fight with off-duty police officer, fracturing his jaw); *Dep't of Correction v. Flores*, OATH Index No. 146/82 (July 9, 1982) (termination for assaulting restaurant personnel and unholstering firearm).

This is an egregious case of undue familiarity. Respondent's nonchalance about her violation of so many Departmental rules is remarkable. In essence, respondent conducted her

personal life at the expense of her job. Despite her admissions of wrongdoing during the trial, she did not appear to truly believe that she did anything wrong. She rationalized all of her misconduct by contending that she did not have to report her husband's arrest because the Department was already on notice, many officers bring their cell phones on duty or receive personal calls on the post phone, it is customary for spouses to discuss aspects of their jobs and daily activities, and the civilian deserved being beaten because she was "a slut and a liar."

Respondent lacks the judgment, perspective, and integrity to be a correction officer. Accordingly, I recommend that she be terminated from her position with the Department.

Kara J. Miller
Administrative Law Judge

February 27, 2015

SUBMITTED TO:

JOSEPH PONTE
Commissioner

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