

Dep't of Correction v. Fernandez

OATH Index No. 1219/11 (Apr. 15, 2011)

Correction captain charged with insubordinately confronting assistant deputy warden regarding an assignment and subsequently making false statements about the incident. Administrative law judge found evidence sufficient to establish that captain was insubordinate and lied about his conduct. Penalty of 40 days' suspension recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
RAYMOND FERNANDEZ
Respondent

REPORT AND RECOMMENDATION

JOHN B. SPOONER, *Administrative Law Judge*

This disciplinary proceeding was referred to me in accordance with section 75 of the Civil Service Law. Petitioner, the Department of Correction, charged that respondent Raymond Fernandez, a correction captain, was insubordinate to an assistant deputy warden (ADW) and subsequently made false statements about the incident.

A hearing on the charges was held on February 10 and March 21, 2011. Petitioner presented the testimony of the ADW and five other staff members who saw or overheard portions of the incident. Respondent testified on his own behalf and presented the testimony of two other officers.

For the reasons provided below, I find that the evidence was sufficient to sustain the charges and recommend that respondent be suspended for 40 days.

ANALYSIS

This case concerns an incident that occurred at around 4:15 p.m. on August 4, 2010, in the punitive segregation section of the Otis T. Bantam Correctional Facility at Riker's Island.

On that date, ADW Daryl Moore was the tour commander for the 7:00 a.m.-to-3:00 p.m. tour. Respondent was assigned to supervise the lower house of dormitories (Tr. 305). According to ADW Moore, at around 3:20 p.m., two successive alarms sounded requiring probe teams to respond, one to the punitive segregation unit and another a few minutes later to the visit area (Tr. 21-23). At around the same time, Deputy Warden McCovey notified ADW Moore that the intelligence unit staff under ADW Hall would be conducting a search in the 6 upper housing area for contraband and needed a facility search team to assist them. ADW Moore assigned respondent to the intelligence unit search, telling him that he might later be assigned to investigate one of the use-of-force incidents which generated the alarms (Tr. 27-31).

After ADW Moore reported the force incident to command, he called respondent by a portable radio and asked him to call him back on a land line. When respondent returned the call some 15 or 20 minutes later, ADW Moore told respondent that he was assigned to do a use-of-force investigation, or a "package," of the incident in the visit area and instructed him to report there immediately. Respondent asked, "Why the fuck you giving me this when you got all these other fucking captains?" Respondent stated that he was "on a search." ADW Moore told respondent that he was relieved of the search assignment and should report to Captain Robertson, the visit area captain. Respondent then hung up the phone (Tr. 32-35).

Some two to three minutes later, ADW Moore saw respondent walk into the tour commander's office, located just off of the control room. Respondent immediately began trying to shut the door by removing a sheaf of papers keeping the door propped open. ADW Moore told respondent, "Do not close the door," but respondent slammed the door anyway. Once the door was closed, respondent asked ADW Moore, "You think I'm your fucking bitch? You think I'm your fucking bitch?" Respondent then used his arm to sweep most of the papers off of the desk onto the floor. ADW Moore told respondent, "I don't know why you're doing this over a package." Respondent retorted, "Now you the bitch," and punched the ADW in the forehead (Tr. 36-38).

ADW Moore grabbed respondent by the shoulders and tried to hold him, as the ADW moved toward the door to exit. Respondent also grabbed ADW Moore by the shoulders, pulling his shirt over his head, and punched him several more times. ADW Moore testified that he ordered respondent to "get out" several times. He then punched respondent twice and grabbed

respondent's wrists. At this point, ADW Moore was able to open the door and exit the office (Tr. 38-39).

With respondent still inside the office, ADW Moore asked the captain outside to page Deputy Warden McCovey and said to the staff outside his office, "I don't know what any of you heard, I don't know what any of you saw, but everybody who's here in this office is going to have to write a report" (Tr. 40-41). Deputy Warden McCovey called back and ADW Moore told him that he had just been attacked by a captain. ADW Moore realized that he had bumps and scrapes on his forehead and fingers. Deputy Warden McCovey arrived a few minutes later and went inside the office to speak with respondent. When he emerged, the deputy warden stated that respondent reported that he had fallen (Tr. 41-4). Deputy Warden McCovey then escorted respondent out of the office.

Deputy Warden McCovey relieved ADW Moore so that he could go to the clinic. The clinic examined ADW Moore and sent him to Mount Sinai Hospital due to high blood pressure and bumps on his face (Tr. 46-47, 51-52). Ultimately ADW Moore was questioned by a supervising warden and another deputy warden and returned to OBCC. There he discovered that he and respondent were both being suspended over the incident (Tr. 54-58).

Upon his return to duty ADW Moore was transferred to another facility for two months. In October he was transferred back to OBCC and had his suspension time restored (Tr. 59). He filed a criminal complaint against respondent which he later withdrew upon the advice of his command (Tr. 59-60).

ADW Andrea Hall, assigned to the integrity control division, testified that, on August 4, 2010, her unit received information that contraband was being concealed in the 6 upper housing area. She assembled a team to conduct a search and arrived at the housing area around 4:00 p.m. (Tr. 97-99). When her team arrived, ADW Hall saw respondent standing by a desk in the open housing area on the telephone. She overheard him ask why he was receiving a use-of-force package (Tr. 101-03). Later, upon learning of the incident between respondent and ADW Moore, ADW Hall told a deputy warden that respondent had appeared "a little agitated" and "angry" during the telephone call in 6 upper (Tr. 107).

Captain Briggs testified that he was outside the tour commander's office when respondent entered to speak with ADW Moore. He heard "loud voices" and saw ADW Moore

exit the office without his uniform shirt. The ADW said that he had been assaulted and asked Captain Briggs to call security (Tr. 121-22, 125). When Deputy Warden McCovey arrived and went into the tour commander's office, Captain Briggs saw respondent sitting in a chair. The left side of respondent's face was red and the captain saw "a lot of" blood (Tr. 125-26). Respondent told the captain that nothing had happened and that "he fell." Captain Briggs noticed that there were papers on the floor (Tr. 123).

Officer Madden testified that he was also in the control room when respondent entered the tour commander's office. He heard the door slam and also heard chairs or desks being pushed around (Tr. 130). Officer Abdul-Ali testified that he saw ADW Moore emerge from the office with his shirt out of his pants. The ADW spoke to Captain Briggs about "the nerve of" some subordinates doing things to supervisors. Officer Abdul-Ali heard ADW Moore direct everyone in the control room to write a report and tell Captain Briggs to contact security (Tr. 138-40).

Deputy Warden McCovey testified that, after being called to the control room by Captain Briggs, he found ADW Moore with his uniform shirt out of his pants and a couple of bruises on his head. The ADW said that he had assigned a force package to respondent and that respondent had assaulted him (Tr. 232). ADW McCovey spoke with respondent in the tour commander's office. Respondent, who had his shirt off and was bleeding from the head, said that "nothing happened" and that "he fell." He also said he did not need medical attention (Tr. 233).

Deputy Warden Newton testified that he visited ADW Moore in the clinic. There he also saw respondent, who was trying to speak with ADW Moore. ADW Moore said he did not want to speak with respondent (Tr. 256). Deputy Warden Newton also recalled being told by ADW Hall that she overheard respondent speaking on the telephone in an upper housing area (Tr. 258-59).

In his report, Officer Brown stated that he was just returning from the bathroom to the control room and heard "muffled yelling and screaming" and a voice yelling, "Get out. Get out" (Pet. Ex. 6 at 14). Officer Brown also heard ADW Moore say that everyone had to write a report "because Captain Fernandez assaulted him" (Pet. Ex. 6 at 18).

Respondent denied assaulting ADW Moore and contended instead that ADW Moore attacked him without provocation. He testified that, after the search was redirected to the 6

upper housing area, Officer Jamieson told him that ADW Moore wanted to speak with him on the telephone. ADW Moore ordered respondent to report to his office. Respondent replied that he was doing a search. The ADW told him that he was excused from the search and should report immediately to the ADW's office (Tr. 313-14).

Respondent walked down to the control room to speak with ADW Moore. On the way he ordered an officer to provide a report as to why the lights were out in a dormitory area (Tr. 314). At the ADW's office, he found ADW Moore behind his desk. The door automatically closed behind him (Tr. 315-16). ADW Moore told respondent that he was assigned to investigate a force incident which occurred on the previous tour. Respondent found this "strange," and asked ADW Moore, "Don't you have a visit captain assigned to that area?" ADW Moore replied, "I'm the fucking Dep and I'll give it to whoever I want." Respondent said, "I am just asking you. Why are you disrespecting me?" (Tr. 317).

ADW Moore came from behind his desk and said, "Get the fuck out of my office." He then pushed respondent and punched him in the face. Respondent tried to protect himself by pushing back, but ADW Moore continued to punch and push him. Respondent said that he "almost blacked out" (Tr. 317-18). Finally the ADW swept respondent to the side and walked out of the office, leaving respondent dazed and embarrassed. After the ADW left, respondent sat at the desk and tried to stop the bleeding with his shirt (Tr. 318).

Respondent went to the locker room and then to the clinic. Respondent recalled that, while in the clinic, he called over to ADW Moore in order to find out why the ADW had attacked him (Tr. 319-21).

Respondent was out on sick leave from August through March 13, 2011 (Tr. 325). In addition to a cut over his left eye, which required six stitches to mend, he injured his back, his hip, and his hand (Tr. 324). He submitted two radiology letters (Resp. Ex. J) indicating that he had herniated cervical and lumbar disks in his back.

Respondent also called two witnesses who corroborated his testimony that ADW Moore called him, not by radio, but by a land line and that ADW Hall was not close enough to have heard what was said. Captain Williams and Officer Jamieson recalled that, on the date of the incident, they were assigned to a search team with respondent to search the visit area. After the

team was redirected to search the 6 upper housing area, the other members of the team walked over to the housing area (Williams: Tr. 278-80; Jamieson: Tr. 264-66).

Captain Williams recalled that ADW Hall and three other officers were already present when he arrived (Tr. 280). After 5 to 10 minutes Officer Jamieson took a telephone call from ADW Moore, who asked to speak with respondent. She handed him the phone (Tr. 266). Neither she nor Captain Williams overheard anything that respondent said, but observed him leave the area after the call. Captain Williams recalled that, while respondent was speaking on the phone, ADW Hall was some distance from respondent assisting with the search (Tr. 292).

Investigator Askin was assigned to investigate the incident on August 9. He was directed by the Commissioner to expedite the completion of the investigation and he filed a report (Pet. Ex. 12) on September 9, 2010 (Tr. 166). Investigator Askin interviewed respondent, ADW Moore, and other eyewitnesses. Investigator Askin concluded that several of respondent's written and interview statements were inaccurate, including respondent's assertions that ADW Moore ordered him to report to the control room, that the ADW never told respondent that he was being assigned to a force investigation prior to respondent's coming to the tour commander's office, and that respondent never told Deputy Warden McCovey that he fell. Investigator Askin was unable to reach a conclusion as to who struck the first blow and therefore declined to recommend charges against either employee for the physical fight (Pet. Ex. 12 at 13).

The charges that respondent was insubordinate to ADW Moore and that he made various false statements about the incident rest primarily on the credibility of ADW Moore. ADW Moore's account that respondent furiously stormed into the office to complain about the investigation assignment was corroborated by a number of other items of proof. ADW Hall confirmed that respondent was "agitated" and "angry" when he spoke on the telephone and left immediately. Officer Madden heard the door to the office slam as respondent entered. Captain Briggs and Deputy Warden McCovey observed papers on the floor after the incident. They also confirmed that ADW Moore immediately accused respondent of assaulting him, while respondent told them that nothing had happened and that he had only fallen. Deputy Warden McCovey, Captain Briggs, and Officer Abdul-Ali saw ADW Moore with his uniform shirt off or nearly off.

ADW Moore's account of respondent being angry about the investigation assignment was confirmed in part by respondent, who admitted that he protested the assignment both because he felt that there were other captains available and because he inaccurately believed that the force incident occurred on the previous tour. Similarly, in his written statement (Pet. Ex. 9), respondent wrote that he "asked A.D.W. Moore why I was being assigned the investigation when you have a visit captain." Respondent also wrote that the ADW was "merciless and angry at me for challenging his orders" and that respondent "continued to question his authority" prior to being assaulted, confirming the ADW's version as to why respondent came to the office.

ADW Moore's testimony was contradicted by evidence other than respondent's account. Most notably, Officer Jamieson insisted that she took a telephone call from ADW Moore and relayed it to respondent. This was contrary to the ADW's contention that he first contacted respondent by radio and ordered him to call back on the telephone. The extensive injuries to respondent's face, requiring six stitches, did not seem consistent with the two defensive punches described by ADW Moore.

The severity of the injuries suffered by respondent and the lack of visible injuries to ADW Moore appeared to support respondent's account of being attacked without provocation by the ADW. Respondent's account, however, was contradicted by most of the other evidence. It was inconsistent with the testimony of other eyewitnesses, summarized above, who heard the door to the office slam, saw papers on the floor, and saw ADW Moore's uniform shirt disheveled and nearly off. The veracity of respondent's version was also undermined by his failure to accuse ADW Moore of any wrongdoing until respondent submitted a written report, several hours after the incident occurred. Respondent's description of an unprovoked attack was also inconsistent with his own statements immediately afterwards to Captain Briggs and to Deputy Warden McCovey that he had fallen.

Respondent's counsel contended that the testimony of ADW Hall, who allegedly overheard respondent speak angrily on the telephone about a force package, was contrary to the testimony of Officer Jamieson and Captain Williams. Officer Jamieson insisted that ADW Hall was too far away to have overheard what respondent said on the telephone, while Captain Williams recalled that the ADW was already in the dormitory when respondent and the other search team members arrived. ADW Hall's testimony seemed reliable in that she had no

discernable reason to testify falsely, voiced this same observation to Deputy Warden McCovey on the day of the incident, and generally offered straightforward testimony. Officer Jamieson's recollection as to the exact position of ADW Hall or her opinion of ADW Hall's opportunity to overhear respondent's telephone conversation did not impeach the otherwise credible account of the ADW. Similarly, the divergence between Captain Williams and ADW Hall's memory of who entered the dormitory first did not seem like the sort of fact either would likely falsify or, particularly in the case of Captain Williams, be certain to remember at all. In fact, it seemed conceivable that a portion of the local search team arrived before ADW Hall and others arrived later.

ADW Moore's account was more plausible than respondent's in a number of ways. It was improbable that a busy tour commander would summon a captain to his office solely to issue an investigation assignment, which would require the captain to go immediately to another part of the facility. On the other hand, where, according to respondent, he had done nothing more than ask whether there was a visit captain assigned to the area where the force supposedly occurred, it seemed improbable that ADW Moore would spontaneously erupt in anger and strike respondent. Respondent's version also failed to offer any explanation as to why, assuming the ADW attacked him for no reason, respondent told everyone immediately afterward that nothing had happened and that he had fallen. One obvious rationale for respondent to have sought to suppress the fight between the two was that he, not the ADW, was largely at fault for provoking it and he feared being disciplined.

Based upon the evidence, I find that ADW Moore assigned respondent to a use-of-force investigation over the telephone, relieving him of the search being conducted. Rather than performing this assignment, respondent went immediately to the tour commander's office to angrily and loudly protest the assignment on the grounds that it should have been assigned to another captain.

Like Investigator Askin, I find that ADW Moore's uncorroborated and highly interested statements as to who struck the initial blow was insufficient, standing alone, to establish that respondent was the aggressor. ADW Moore's apparent effort to minimize the degree of force he used against respondent also made it difficult to credit his uncorroborated account of a blistering diatribe by respondent, particularly with regard to using profanity. Thus, while I found the proof

adequate to support a finding that respondent came to the tour commander's office because he was angry about receiving the use-of-force assignment, I did not find ADW Moore's testimony alone sufficient to find that respondent used all of the profane language attributed to him by the ADW or that respondent was the first to use force. It seemed equally plausible that the physical fight was initiated by the ADW after respondent persisted in loud and insulting challenges to the ADW's authority.

Respondent's actions in declining to obey ADW Moore's order to begin an investigation into the use-of-force incident and to angrily protest this order was misconduct. In general, a subordinate is obliged to obey any lawful order and can only challenge the order later by means of a grievance. *Dep't of Correction v. Toujague*, OATH Index No. 298/10 at 7 (Jan. 21, 2010). This is especially true in a paramilitary organization such as the Department. *See Dep't of Correction v. Murchison-Hunt*, OATH Index No. 297/10 at 14 (Mar. 25, 2010). The limited exceptions to this rule involve illegal or unsafe orders, neither of which arguably existed here. *Toujague* at 7. A subordinate may disagree with an order, so far as that disagreement is articulated in a respectful manner and tone. However, where the supervisor overrules the subordinate's objections, it is misconduct for the subordinate to heatedly and loudly persist in arguing that the order is unfair. *Compare Dep't of Correction v. Martin*, OATH Index No. 431/95 (Jan. 17, 1995) (officer's remark of "we'll see" in reply to loud supervisory reprimand for making a union announcement held not to be misconduct); *Dep't of Correction v. Stokes*, OATH Index No. 663/91 (Mar. 11, 1991), *modified on penalty*, Comm'r Dec. (Jul. 3, 1991) (officer's remark of "The captains always side with the inmates," accompanied by gesture of throwing up hands, held to be misconduct).

Neither of respondent's reasons for refusing the assignment, that it had occurred on a prior tour or that the package should have gone to the visit area captain, provided a justification to refuse the order. Respondent had reason to know that, in fact, the force incident had occurred on the current tour. Furthermore, as indicated by ADW Moore, force investigation assignments were often made, pursuant to the mandates of the force directive, to captains with no connection to the area where the force incident occurred. *See Dep't Directive No. 5006R-C § (V)(H)(1)* ("If the assigned housing area Captain was involved in the incident or witnessed the incident another Captain should be assigned to conduct the investigation.").

Here, according to the largely credible account of ADW Moore, the ADW assigned respondent to the force investigation and ordered him to report to the visit area where the incident occurred. When respondent protested that he was doing a search, the ADW told him that he was relieved of this assignment. Under these circumstances, respondent's act of going to the ADW's office to complain further about the investigation assignment was insubordinate. *See* Department Rules 3.20.070, 3.20.180, and 3.20.190.

Based upon these fact-findings, several of respondent's written and interview statements were both inaccurate and false. Respondent submitted a written report (Pet. Ex. 9) on August 5, 2010. In this report he wrote that ADW Moore telephoned him, excused him from the search, and ordered him to the tour commander's office. He was told, upon arriving at the ADW's office, that he was assigned a force investigation. Respondent was interviewed on August 17, 2010. The interview was tape-recorded (Pet. Ex. 7a) and later transcribed (Pet. Ex. 7). In the interview he stated that ADW Moore ordered him to the tour commander's office without mentioning any assignment (Pet. Ex. 7 at 18, 61) and first mentioned the force investigation assignment in the office (Pet. Ex. 7 at 21).

The statements in respondent's report that he was never told about the force assignment on the telephone and did not learn of the assignment until he came to ADW Moore's office were false. Also false were respondent's similar statements in his interview that ADW Moore ordered him over the telephone to report to the tour commander's office and that the ADW did not mention the investigation assignment over the telephone. *See* Department rule 4.30.020.

Respondent suggested that, at the time of his interview on August 17, 2010, he had taken Tylenol 3 to control his pain (Tr. 336) and was therefore not fully accountable for his statements as to the events of August 4. There is no evidence to support this argument. At the time of his interview, respondent, whose attorney was also present, did not express any concern about being able to proceed. The version of the incident which respondent offered during the interview was largely identical to that in his written report. Even if respondent had taken pain medication before the interview, there is no indication that this drug affected his ability to understand the questions or to recall what occurred.

In sum, I find that the evidence was adequate to support all of the specifications.

FINDINGS AND CONCLUSIONS

1. Specification 1 of DR 295/10 should be sustained in that, on August 4, 2010, respondent challenged an investigation assignment given to him by an assistant deputy warden in violation of Department rules 3.05.010, 3.05.120, 3.20.030, 3.20.070, 3.20.180, 3.20.190, and 3.20.300.
2. Specification 2 of DR 295/10 should be sustained in that, on August 5, 2010, respondent submitted a false report with regard why he had come to the tour commander's office and when he was assigned a use-of-force investigation, in violation of Department rules 3.05.010, 3.05.120, 3.20.030, 3.20.300, and 4.30.020.
3. Specification 3 of DR 295/10 should be sustained in that, on August 16, 2010, respondent made false statements during an interview regarding being ordered to the tour commander's office by an assistant deputy warden without the assistant deputy warden giving him a specific assignment, in violation of Department rules 3.05.010, 3.05.120, 3.20.030, 3.20.300, and 4.30.020 and Mayor's Executive Order No. 16.

RECOMMENDATION

Upon making the above findings, I requested and received summaries of the respondent's personnel history in order to make an appropriate penalty recommendation. Respondent was appointed to the Department in 1990 and promoted to captain in 2003. He has one prior disciplinary matter which must increase any penalty in the instant case. In 2004, he was suspended for 10 days for using pepper spray without justification. *See Dep't of Correction v. Fernandez*, OATH Index No. 1356/06 (Sept. 21, 2006), *modified on penalty*, Comm'r Dec. (Feb. 22, 2007), *modified*, NYC Civ. Serv. Comm'n Item No. CD08-12-SA (Feb. 20, 2008). In sustaining only a portion of the charges, Judge Casey noted that respondent had received numerous awards, including being recognized as "Employee of the Month," and also that his misconduct was hasty and ill considered but not malicious. These factors should also provide some mitigation here.

In the instant case, respondent argued with his supervisor's order assigning him to conduct an investigation, first protesting on the telephone and then traveling some distance to angrily confront the supervisor in his office. Respondent then made a number of false statements

about the incident in order to shift the blame to the supervisor. Petitioner's attorney requested that respondent be suspended for 45 days for this misconduct.

Past cases of insubordination suggest a fairly broad range of penalties, but generally support a cumulative penalty close to what petitioner has requested. While employees who were loudly and flagrantly insubordinate typically receive first-time penalties of a 10-to-15-day suspension, *see Fire Dep't v. Dixon*, OATH Index No. 1758/10 (Sept. 7, 2010) (10 days for firefighter who disobeyed an order and argued with supervisor); *Transit Auth. v. Bernard*, OATH Index No. 1805/02 (Dec. 3, 2002) (15-day suspension for insubordination by worker with long tenure and unblemished record), these penalties are higher where the employees have been disciplined before. *See Health & Hospitals Corp. (North Bronx Healthcare Network) v. Wolfe*, OATH Index No. 2844/08 (Sept. 8, 2008) (25-day suspension for service aide with prior disciplinary record who was repeatedly insubordinate to supervisor); *Health and Hospitals Corp. (Woodhull Medical and Mental Health Ctr.) v. Hart*, OATH Index No. 838/99 (Jan. 8, 1999) (30-day suspension for nurse's aide with prior disciplinary record who disobeyed orders). The penalties are also higher where the employees are supervisors, who are held to a higher standard of care and deportment. *Dep't of Correction v. Scurry*, OATH Index No. 1460/08 (June 4, 2008) (captain who failed to provide medical attention to injured inmate demoted).

The penalties for officers who have made false reports or interview statements have ranged from 10 to 20 days' suspension. *Dep't of Correction v. Centeno*, OATH Index No. 2031/04 (Mar. 16, 2005) (20-day suspension for an officer with no record who made false statements during a MEO 16 interview); *Dep't of Correction v. Wells*, OATH Index No. 1421/96 (Dec. 5, 1996) (20-day suspension for an officer with no disciplinary record, who made false statements); *Dep't of Correction v. Jones*, OATH Index Nos. 1332/95, 1334/95 (Dec. 22, 1995) (10-day suspension for an officer who falsely denied knowledge of another officer's use of force); *Dep't of Correction v. Butler*, OATH Index Nos. 876/92, 877/92 & 878/92 (Dec. 3, 1992) (20-day suspensions for two officers with minor or no disciplinary records for filing false reports).

The evidence in this case indicated that respondent's prickly sense of being entitled to certain types of assignments, combined with a hot and unrestrained temper, incited this incident. Rather than accepting responsibility for his mistakes, respondent chose to lie and try to blame the

entire fight on his supervisor. These actions by a supervisor clearly warrant a severe penalty, as well as a warning that, if he does not reform his attitude and behavior, the next set of disciplinary charges may mean his dismissal. Based upon respondent's prior disciplinary record and the past penalties given for similar misconduct, I find respondent deserving of a penalty of a 20-day suspension for the insubordinate challenge to ADW Moore first on the telephone and then in his office. I also find that respondent's false statements about the incident, both in a written report and in an interview, are deserving of an additional 20 days' suspension. For all of the misconduct which was found to have occurred here, I recommend that respondent be suspended for 40 days.

John B. Spooner
Administrative Law Judge

April 15, 2011

SUBMITTED TO:

DR. DORA B. SCHIRO
Commissioner

APPEARANCES:

DAVID KLOPMAN, ESQ.
PAUL MILLER, ESQ.
Attorneys for Petitioner

FAUSTO E. ZAPATA, ESQ.
Attorney for Respondent