Dep't of Correction v. Pearson

OATH Index No. 391/14 (Dec. 18, 2013)

Correction officer failed to notify DOC about a pre-existing and on-going relationship with an inmate, brought her cell phone on post to speak with the inmate, engaged in unauthorized financial dealings with the inmate, and discussed official business with the inmate. Termination from employment recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
TASHIMA PEARSON
Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORGNIOTTI, *Administrative Law Judge*

This employee disciplinary proceeding was referred by the Department of Correction ("Department" or "DOC") pursuant to section 75 of the Civil Service Law. Petitioner alleges that respondent Tashima Pearson, a correction officer, failed to notify DOC about a pre-existing relationship with an inmate who was the father of her child, engaged in an on-going pattern of undue familiarity with the inmate, brought her cell phone on post to speak with the inmate, engaged in unauthorized financial dealings with the inmate, discussed Department business with the inmate, and engaged in undue familiarity with another inmate (ALJ Ex. 1).

At a hearing held on November 7, 2013, petitioner submitted documentary evidence and the testimony of four DOC witnesses. Respondent testified on her own behalf. The record was held open until December 13, 2013, for additional submissions.

The charges should be sustained in part and denied in part. Based on the seriousness of the misconduct, I recommend that respondent be terminated from her employment.

ANALYSIS

Respondent has been a correction officer since 2005 at the George R. Vierno Center ("GRVC"). The charges arise out of respondent's relationship with Junell Nixon and his sister, Edna Nixon. Except where noted, the facts are not in dispute.

The Department became aware of respondent's relationship with these inmates after the police department ("NYPD") contacted DOC on January 28, 2012. NYPD requested that DOC facilitate an interview with respondent because a vehicle she had rented had been used by Mr. Nixon during the alleged murder of the estranged spouse of a DOC deputy warden. Respondent was not a suspect in the crime (Tr. 17-21; Pet. Exs. 1, 2, 4).

Mr. Nixon is the father of respondent's children born in 2002 and 2011. Between 1995 and 2010 Mr. Nixon was incarcerated 13 times with DOC, two of which were while respondent was an officer (Pet. Ex. 15). Respondent did not list him on her pre-employment form as a relation who had been incarcerated (Pet. Ex. 5).

Respondent testified that she met Mr. Nixon in junior high school and that he was the father of her children. When she applied for her job in 2005 she was not in touch with Mr. Nixon and did not know that he had been incarcerated. Respondent contacted Mr. Nixon after she became employed because she wanted to have another child with him so that the children would have the same father (Tr. 125-28). However, in her Mayor's Executive Order 16 ("MEO 16") interview on April 25, 2012, respondent admitted that: she knew Mr. Nixon had been incarcerated prior to becoming an officer; she should have disclosed him on her pre-employment form; and she did not notify DOC that he was the father of her children (Pet. Ex. 3).

Mr. Nixon was incarcerated at the Eric M. Taylor Center ("EMTC") between January 13 and February 4, 2010. Respondent never notified DOC that she knew him. Petitioner alleges that during this period respondent spoke to Mr. Nixon by telephone 103 times.

In her MEO-16 interview, respondent acknowledged that: she knew Mr. Nixon had been incarcerated in 2010 at DOC while she was working there; she never notified DOC that she knew an inmate housed in EMTC; and they spoke every day (Pet. Ex. 3).

After the homicide arrest in 2012, Mr. Nixon was sent to Orange County Correction Facility. He was not housed at Rikers Island because the crime involved the spouse of a DOC deputy warden (Tr. 31-32). During his incarceration, respondent spoke to Mr. Nixon 72 times

between March 24, and April 5, 2012 (Pet. Exs. 11-14) and wrote to him 13 times between January 28, and April 5, 2012 (Pet. Ex. 9). Respondent did not submit any documentation to DOC that she wished to communicate with Mr. Nixon in Orange County.

In her MEO-16 interview and at the hearing, respondent stated that she spoke to Warden Argo in 2012 about Mr. Nixon. In the January conversation she told Argo she had rented a car that Mr. Nixon used and NYPD was calling to speak to her. At the interview respondent could not recall what the warden said but at the hearing she stated Argo told her to take some days off. Respondent also claimed that in March she asked Argo about the procedures for taking her son to visit Mr. Nixon in Orange County. Argo told her to fill out the necessary paperwork and submit it to security. Respondent never did (Pet. Ex. 3; Tr. 129-132). Warden Argo had no recollection about speaking to respondent regarding Mr. Nixon (Tr. 122-23).

In her MEO-16 interview respondent admitted that she placed $50 to $100 weekly in Mr. Nixon's commissary account in Orange County and purchased clothing for him (Pet. Ex. 3). At the hearing, respondent explained that she did not put money in his account. Rather, she pre-paid her telephone so that she could receive collect calls from Mr. Nixon (Tr. 134-35).

Ms. Nixon was incarcerated at the Rose M. Singer Center ("RMSC") between July 16, 2011 and January 9, 2012. During that period respondent spoke to Ms. Nixon by telephone on 23 occasions (Pet. Ex. 8) and took Ms. Nixon's child into her home. Respondent never notified DOC that she knew Ms. Nixon or that she had temporary custody of an inmate's child.

Respondent testified she has known Ms. Nixon since junior high school and that her son was visiting respondent when Ms. Nixon was arrested. She kept the child and spoke to Ms. Nixon about her child (Tr. 136-37). In her MEO-16 interview respondent admitted that: she knew Ms. Nixon was incarcerated at RMSC; she never sought approval to communicate with Ms. Nixon and spoke to her more than 15 times; and she had temporary custody of Ms. Nixon's son while she was incarcerated (Pet. Ex. 3).

In her interview and at the hearing respondent stated that she spoke to Deputy Warden Lemon about the situation and gave him some paperwork. Lemon gave it back to her and advised her to submit everything to security. She never did (Pet. Ex. 3; Tr. 136-37).

Deputy Warden Lemon testified that he did not know respondent and never spoke to her about custody of an inmate's child. If respondent had asked about this, he would have told her to

make a written submission to security and would have followed-up with the appropriate notifications to the investigations division (Tr. 109-13).

Petitioner "has the burden of proving its case by a fair preponderance of the credible evidence." *Dep't of Correction v. Hall,* OATH Index No. 400/08 at 2 (Oct. 18, 2007), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD O8-33-5A (May 30, 2008). Preponderance has been defined as "the burden of persuading the trier of fact that the existence of a fact is more probable than its non-existence." *Richardson on Evidence* § 3-206 (Lexis 2008).

Respondent argues that conduct relating to Mr. Nixon in 2010 and Ms. Nixon between July 2011 and January 9, 2012, is time-barred. Civil Service Law provides for an 18-month statute of limitations for the commencement of a disciplinary proceeding against a civil service employee. *See* N.Y. Civ. Service Law § 75(4). A disciplinary proceeding is commenced by service of formal disciplinary charges on the employee. *See Dep't of Correction v. Melendez,* OATH Index Nos. 237/05 & 240/05 at 2 (Aug. 25, 2005).

Here the charges were served on July 25, 2013. Thus, any charges of misconduct before January 25, 2012, would be presumably time-barred unless they fall within one of the exceptions which include a charge that constitutes: a crime; a continuing wrong; or wrongful concealment by an employee that caused the delay in bringing the charges. *See Dep't of Education v. Honan,* OATH Index No. 2231/07 at 2 (Mar. 14, 2008).

The charges relating to failure to notify and undue familiarity with Mr. Nixon are timely and should be sustained. Portions of the charges relating respondent's cell phone use on post and her disclosure of Department business should be dismissed for insufficient evidence. The charges relating to Ms. Nixon are untimely and should be dismissed.

Failure to notify prior to employment

Petitioner alleges that respondent failed to notify DOC about her relationship with Mr. Nixon prior to her employment as requested by DOC. This charge should be sustained.

As a candidate for the position of correction officer, respondent completed a Declaration of Incarcerated Associations which asked whether she is "related to or associated with anyone who has ever been incarcerated or currently incarcerated" and for the identity of those individuals (Pet. Ex. 5). On October 28, 2005, respondent completed the form and did not

disclose Mr. Nixon. Respondent signed an acknowledgement that she was advised that false information may result in criminal prosecution under Penal Law section 175.30 (offering a false instrument for filing in the second degree) and disqualification from employment.

Respondent's testimony that she did not know Mr. Nixon had been incarcerated was not credible. In her MEO-16 interview respondent admitted that prior to becoming a correction officer she knew Mr. Nixon had been incarcerated and that she should have disclosed him on her form. Whether respondent was in a relationship with Mr. Nixon at the time of her application is of no moment. As the father of her child born in 2002, Mr. Nixon should have been listed on respondent's declaration as a relation who had been incarcerated. The fact that respondent listed her children on a health benefits form and provided copies of their birth certificates listing Mr. Nixon as the father did not excuse her obligation to disclose the pre-existing relationship.

Correctly, respondent does not argue that this misconduct is time-barred. Respondent was charged with violating Penal Law section 175.30. Since a court of competent jurisdiction could have found that respondent violated the penal law this charge is not time barred. *Dep't of Correction v. Katanic*, OATH Index No. 2117/10 at 17 (Oct. 15, 2010), *appeal dismissed*, NYC Civ. Serv. Comm'n Item No. CD 11-03-D (Mar. 2, 2011).

Undue influence

Petitioner alleges that respondent failed to notify and obtain permission to: (1) speak to Mr. Nixon while he was incarcerated at EMTC in 2010; (2) speak to Mr. Nixon while he was incarcerated in Orange County in 2012; (3) purchase clothing for Mr. Nixon and have it delivered to Orange County; and (4) speak to Ms. Nixon while she was incarcerated at RMSC and failed to notify DOC that she had custody of the inmate's child. Petitioner alleges that this conduct constituted undue familiarity and unauthorized financial dealings with Mr. Nixon.

The Department prohibits officers from engaging in undue familiarity with inmates. Dep't of Correction Rule 3.25.040. Officers are on notice that "Undue familiarity":

> is a direct violation of our Rules and Regulations. It is the Department's policy to seek termination of those who violate this rule. This behavior includes any social activity with an inmate that is not directly related to one's duties. Such behavior may involve, for example, the granting of a special favor or privilege, a phone

> call, accepting of a gift, bringing in contraband, a romantic relationship or at its worst, sexual conduct.

Memorandum No. 01/08 – Undue Familiarity and Prevention of Sexual Abuse of Inmates by Staff and Other Inmates (effective date 2/7/08). An exception to this prohibition exists under DOC Rule 3.25.041 which provides:

> Members of the Department . . . 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.

As a preliminary matter I find that the 2010 charges involving Mr. Nixon are not time-barred because they fall under the continuing violation exception. Not only did respondent have an obligation to disclose Mr. Nixon prior to becoming a correction officer, she had a continuing obligation to notify DOC that she was maintaining contact with a current and former inmate who was the father of her child. Since respondent's relationship with Mr. Nixon was on-going, charges brought within 18 months of the last known communication with him are timely. *Dep't of Correction v. Walker*, OATH Index No. 1779/02 (Dec. 13, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 04-18-SA (May 19, 2004); *Dep't of Correction v. Saunders*, OATH Index No. 1694/96 (Aug. 1, 1996).

Turning to the merits, it was undisputed that respondent spoke with Mr. Nixon daily while he was incarcerated at EMTC in 2010 and that she never reported her relationship to her commanding officer. This conduct was a violation of DOC rule 3.25.041. *See also Dep't of Correction v. Jenkins*, OATH Index No. 3070/09 at 12 (Dec. 16, 2009) (respondent engaged in a continuing pattern of undue familiarity by having unauthorized contact with an inmate that resulted in her giving birth to his child and failing to timely notify DOC that the inmate had been incarcerated and of her continued association with him during subsequent incarcerations).

By maintaining contact with an inmate without notifying her command, respondent also failed to perform her duties efficiently and jeopardized the good order of the Department in violation of DOC rules 3.05.120 and 3.20.300.

Similarly, it was undisputed that between January and March 2012, respondent was in repeated contact with Mr. Nixon while he was incarcerated at Orange County and that she never reported this to her commanding officer. Respondent's testimony that she verbally told Warden Argo about Mr. Nixon in January and March was not credible. Even if respondent had spoken to the warden, she acknowledged that in 2010 and 2012 she was directed to submit paperwork to security about her inmate contacts and that she failed to do so. Accordingly, respondent is guilty of violating DOC rules 3.25.041, 3.05.120, and 3.20.300.

DOC rule 3.25.020 prohibits employees from entering into any transaction with an inmate. It was undisputed that while Mr. Nixon was incarcerated in Orange County respondent provided weekly pre-paid telephone use in the amounts of $50 to $100, purchased him clothing, and never asked DOC for authorization to do so. As such respondent is guilty of engaging in unauthorized financial dealings with an inmate. *Jenkins*, OATH No. 3070/09 at 14 (respondent engaged in unauthorized financial dealings with an inmate by depositing money in his commissary account and bailing him out of jail).

The charges involving Ms. Nixon are time-barred. It is reasonable to conclude that there was a pre-exiting relationship between respondent and Ms. Nixon prior to the latter's incarceration in July 2011. Ms. Nixon was essentially respondent's sister-in-law, their children were first cousins, her child was with respondent when she was arrested, and the child remained with respondent throughout Ms. Nixon's incarceration. Contrary to petitioner's assertion, respondent did not have an obligation to identify Ms. Nixon on her pre-employment declaration since there was no evidence that she had been previously incarcerated. While it is likely that respondent continued her association with Ms. Nixon after she was released from RMSC, there is nothing in the record showing any such contact. Since the charges were not brought within 18 months of respondent's last known dealings with Ms. Nixon on January 9, 2012, they should be dismissed. *Dep't of Correction v. Benston*, OATH Index No. 1557/05 (Nov. 7, 2005).

Cell phone on post

Petitioner alleges that between January 28 and April 5, 2012, respondent brought her cell phone on post so that she could speak with Mr. Nixon. This charge should be sustained in part and denied in part.

DOC operations order 01/05 prohibits cell phones on post. Warden Argo testified that phones are prohibited because it is contraband which poses a security risk (Tr. 119).

While respondent received numerous calls on her cell phone from Mr. Nixon during this period (Pet. Ex. 12), petitioner failed to present any proof that these calls occurred while respondent was on her post. Instead, petitioner relied on respondent's admission in her MEO-16 interview that she received one call from Mr. Nixon while on post. This admission while sufficient to sustain a finding that respondent brought her phone on post to speak to Mr. Nixon once, it is insufficient to show that she did so on more than one occasion.

Discussions involving departmental business

Petitioner alleges that during some of her 2012 calls with Mr. Nixon, respondent disclosed departmental business including: (1) slashings that occurred in her command; (2) Mr. Nixon's criminal case; and (3) the work location of the deputy warden whose spouse had been allegedly murdered by Mr. Nixon. This charge should be denied in part and sustained in part.

DOC rule 8.05.050 requires that members of the Department "treat as confidential the official business of the Department" and prohibits disclosure of such business without authorization. Warden Argo testified that officers are not to discuss DOC business with inmates such as slashings and an inmate's court cases. Moreover, the locations of staff members should not be disclosed because it poses a security threat to that individual (Tr. 119-21).

In the post-trial submission, petitioner identified specific recorded conversations for review. To the extent petitioner identified new instances of disclosure on March 2 and April 10, 2012, these allegations will not be considered because they were not pled and petitioner failed to amend the charges to conform to the proof.

The first charged disclosure involves respondent's statement about slashings at her command. Petitioner failed to identify this conversation for review. However, in her MEO-16 interview, respondent admitted that she told Mr. Nixon about slashings in GRVC (Pet. Ex. 3). At the hearing respondent testified that she was just making conversation (Tr. 146).

Without the audio or any testimony about the slashings, it is difficult to determine whether this discussion constituted "confidential departmental business" as opposed to idle

gossip about something commonly known to other individuals. Moreover, there is no evidence that the disclosure had any negative impact on the Department. This charge should be dismissed.

The second charged disclosure involves respondent's discussions with Mr. Nixon on February 26, and April 9, 2012, about his criminal case. Contrary to petitioner's assertion, there was no discussion in the February 26 conversation about Mr. Nixon's case going to the grand jury and witnesses. However, respondent is heard asking Mr. Nixon about his lawyer and whether he is going to court the next day. In the April 9 conversation respondent told Mr. Nixon that she was going to call to find out about his hearing (Pet. Ex. 10A).

Petitioner failed to explain why respondent's general conversation with the father of her children about his criminal court case constitutes "confidential departmental business." At the time Mr. Nixon was not housed on Rikers Island. There is no evidence that these conversations deal with anything substantive, let alone anything about DOC. Such a blanket prohibition also raises questions about respondent's constitutional right to association. *See Corso v. Fischer*, 2013 U.S. Dist. LEXIS 152336 (S.D.N.Y. Oct. 22, 2013). This charge should be dismissed.

The third charged disclosure involves respondent's discussions with Mr. Nixon on February 25 about the work location of the deputy warden whose spouse had been allegedly murdered by Mr. Nixon. In her MEO-16 interview, respondent admitted that she told Mr. Nixon he was going to Orange County because the spouse of the decedent was a deputy warden on Rikers Island and that warden worked in the "4" building (Pet. Ex. 3).

Although not originally pled, petitioner identified in its post-trial submission a related conversation on February 26, wherein Mr. Nixon asked respondent if she had ever heard about an inmate being moved from Rikers Island for security reasons. Respondent advised him about a time when an inmate who was accused of murdering a DOC captain and her daughter was transferred to another facility (Pet. Ex. 10A). Since respondent was on notice of this connected allegation and argued that she was merely trying to explain to Mr. Nixon why he had been moved from Rikers Island (Tr. 155-56), it will be considered.

There can be no doubt that DOC security constitutes "confidential departmental business." Here, DOC has a legitimate interest in not having an officer tell an inmate the location of an employee who is related to the victim of the crime that the inmate is accused of murdering. Moreover, it is reasonable that DOC would not want an officer to discuss the

inmate's security status and how other similarly situated inmates have been handled by DOC. Respondent's unauthorized disclosure of such information was a violation of DOC rule 8.05.050.

FINDINGS AND CONCLUSIONS

1. Petitioner demonstrated that respondent failed to disclose a pre-existing relationship with Mr. Nixon and that he was the father of her children.

2. The charges that in 2010 respondent engaged in undue familiarity with Mr. Nixon are timely and should be sustained.

3. The charges that respondent engaged in undue familiarity with Ms. Nixon should be dismissed as untimely.

4. Petitioner demonstrated that in 2012 respondent engaged in undue familiarity with Mr. Nixon.

5. Petitioner demonstrated that respondent brought her cell phone on post one time and spoke to Mr. Nixon but failed to show that this occurred more than once.

6. Petitioner demonstrated that respondent twice disclosed confidential departmental business to Mr. Nixon but failed to show that this occurred on other occasions.

7. Petitioner demonstrated that respondent engaged in unauthorized financial dealings with Mr. Nixon.

RECOMMENDATION

Upon making these findings, I obtained and reviewed an abstract of respondent's disciplinary history for purposes of recommending an appropriate penalty. Respondent was appointed as a correction officer in 2005 and has no formal disciplinary history. Petitioner seeks respondent's termination from employment. This request is reasonable under the circumstances.

Essentially, respondent has been found guilty of: failing to disclose a pre-existing relationship with an inmate who was the father of her first child prior to her employment; engaging in a continuing relationship with the inmate and having a second child with him after

he was re-incarcerated without notifying DOC; receiving calls from the inmate; disclosing confidential information to the inmate; speaking to the inmate by cell phone while on her post; and engaging in unauthorized financial dealings with the inmate.

Although respondent was honest when confronted, her relationship with Mr. Nixon would never have been discovered but for the call from the NYPD. Over the course of her entire career, respondent engaged in a pattern of undue familiarity by participating in a romantic relationship with an inmate without notifying her command. While respondent did not actively deceive, her failure to notify DOC about her intimate relationship with an inmate was a serious act of omission that constituted undue familiarity.

Undue familiarity is one of the most serious acts of misconduct that a correction officer can engage in. *See, e.g.*, *Dep't of Correction v. Lewis*, OATH Index No. 1028/01 at 12 (Jan. 11, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 03-47-SA (June 12, 2003); *Walker*, OATH No. 1779/02 at 10. Undue familiarity "compromises [the offending officer's] ability to carry out her duties and responsibilities and erodes the ability of other members of the Department to maintain security in correctional institutions." *Dep't of Correction v. Minnis*, OATH Index No. 184/82 at 16 (Mar. 25, 1982). Likewise,

> There are a host of problems that improper relationships between officers and inmates can create… the appearance that an inmate is getting preferential treatment, thereby causing dissension among inmates and placing greater security burdens on colleagues; the potential for or appearance of corruption and the implicit pressure for a return of a favor where an officer accepts or exchanges gifts with an inmate; the general undermining of an officer's authority in the prison setting and erosion of the ability to keep order strictly or effectively enforce rules; the potential for blackmail; the potential for or the appearance of smuggling contraband where packages are exchanged.

Dep't of Correction v. Flaherty, OATH Index No. 413/05 at 8 (Feb. 16, 2005), *modified on penalty*, Comm'r Dec. (Mar. 31, 2005).

Not only were there potential problems created by respondent's relationship with Mr. Nixon, she discussed sensitive security issues with him. Fortunately, nothing came of it.

Moreover, correction officers are law enforcement officials, peace officers vested with considerable authority. 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. *Dep't 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). Understandably, undue familiarity with an inmate has been found to be incompatible with the position of correction officer. *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 most common penalty imposed for undue familiarity is termination. This is particularly the case where the contacts between the correction officer and the former inmate/inmate are numerous and ongoing. *See 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); *Lewis*, OATH 1028/01 (officer terminated for receiving 201 calls from an inmate); *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).

Respondent has been found guilty of also making deposits of up to $100 a week on her telephone so that Mr. Nixon could call from jail and purchased him clothing. Unauthorized financial dealings with inmates are cause for termination. Dep't of Correction Rule 3.25.020; *see also Walker*, OATH 1779/02 (officer terminated for receiving 13 calls from an inmate, making contributions to the inmate's commissary account, and visiting the inmate on 34 occasions); *Dep't of Correction v. Barnwell*, OATH Index No. 733/02 (Apr. 24, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 03-46-SA (June 12, 2003) (officer terminated for not informing the Department that he had purchased a car from an inmate prior to her incarceration and making false statements at his MEO-16 interview).

It is important to note that what might constitute compelling mitigation in other situations is generally insufficient to avoid termination when undue familiarity is proven, such as an unblemished disciplinary history. *See Carattini*, OATH 1313/99 (nine year tenure with no disciplinary record insufficient mitigation for undue familiarity); *Lewis*, OATH 1028/01 (terminated 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) (terminated despite lack of disciplinary record). Even in instances where there was a familial relationship between the inmate and the officer, termination is still the most common penalty imposed. *Harris*, OATH 1444/97 at 15 (inmate was the father of officer's children); *Dep't of Correction v. Jackson*, 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 step-brother of officer).

In this case termination is the only appropriate penalty. The number of contacts between respondent and Mr. Nixon was substantial and ongoing. It was not until respondent was confronted after Mr. Nixon had been arrested that she disclosed her relationship with the inmate. In addition to receiving daily phone calls while Mr. Nixon was incarcerated, respondent gave him money and discussed security information about the Department. This type of undue familiarity calls into question respondent's integrity and jeopardizes security at DOC. *Jenkins*, OATH No. 3070/09 at 20.

Accordingly, I recommend that respondent be terminated from her position as a correction officer.

Alessandra F. Zorgniotti
Administrative Law Judge

December 18, 2013

SUBMITTED TO:

DORA B. SCHRIRO
Commissioner

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