

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA**

KEITH VIDLER,

Petitioner,

Case No.: 2021-CA-011377

vs.

L.T. Case No. 2021-V-00184 -
Sheriff's Decision to Terminate
Plaintiff

JOHN W. MINA, in his official
capacity as ORANGE COUNTY
SHERIFF,

Respondent.

_____ /

AMENDED PETITION FOR CERTIORARI REVIEW

KEITH VIDLER ("Vidler") hereby requests that this Court issue a writ of certiorari quashing the Sheriff's decision to terminate him based upon a quasi-judicial hearing before a Disciplinary Appeals Board ("DAB") and reinstate Vidler's employment. This Court has original jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(c)(2) and (3) to 9.100(f).

BACKGROUND

Vidler was terminated from his employment as a Deputy Sheriff after receiving notice of discipline and a hearing pursuant to Chapter 89-507, Laws of Florida. Vidler utilized the Orange County Sherrif's Office ("OCSO") appeal procedure to review the ultimate decision to terminate. The OCSO

violated Vidler's due process rights, and termination was not supported by competent substantial evidence.

STATEMENT OF FACTS

Vidler was a Deputy Sheriff in the rank of Sergeant at the Orange County Sheriff's Office since September 1988. At the time of the facts contained herein, Vidler was assigned to the Motors Unit. The Sheriff was sworn in as Orange County Sheriff on December 4, 2018, and currently holds the office of Orange County Sheriff. In approximately September 2021, Vidler was given notice of intent to terminate his employment.

Discipline and Appeal Procedure

Chapter 89-507, Laws of Florida, established career service status for Orange County Deputy Sheriffs employed at the OCSO. (App. 3-5). The statute required that the OCSO have cause to discipline career service personnel, like Vidler. Chapter 89-507(1)(4). The statute required the OCSO to establish a disciplinary procedure that required an administrator to conduct a factual review prior to the imposition of discipline. Chapter 89-507(2)(2). Likewise, the statute required that, after discipline was imposed, a deputy sheriff was entitled to a hearing by a disciplinary appeal board. Chapter 89-507(2)(3).

The Sheriff implemented a procedure intended to comply with chapter 89-507. (App. 6-30). Following a hearing, the statute requires that the DAB “shall report to the sheriff via the employee relations director or the equivalent specifying whether the appeal is with or without merit. The sheriff shall render a decision in writing that shall be final and dispositive of the matter.” Chapter 89-507.

Vidler was charged with abuse of power, and termination was the recommended discipline. Pursuant to statute and policy, Vidler appealed the charge to the Administrative Review Captain (“ARC”) for review.

On or about October 4, 2021, the ARC denied the appeal, and Plaintiff received a notice of termination. (App. 31). The Plaintiff appealed to the DAB, and the DAB denied Plaintiff’s appeal. (App. 32-34). On November 1, 2021, the Sheriff concurred with the DAB’s decision and upheld Plaintiff’s termination. (App. 35).

Events Precipitating Termination

In September 2019, the OCSO began investigating whether convicted felon Jeremy Dewitte’s (“Dewitte”) activities met the elements to charge Dewitte with a Florida Racketeer Influenced and Corrupt Organizations Act (“RICO”) violation, among other crimes. The OCSO tasked Vidler with investigating Dewitte and, his organization, Metro State’s

attempts to impersonate police officers while they illegally and without a license performed funeral escort and other security services.

As Vidler's investigation intensified leading to signed arrest and search warrants, the OCSO shut down the investigation. On or about December 16, 2019, Captain Carpenter ordered Vidler to stop his investigation on December 20, 2019. At the time, there was evidence obtained from a search warrant that had not yet been processed. When Vidler questioned ceasing the investigation of a known convicted felon, Vidler was threatened with discipline if he became a "whistleblower" about the OCSO ceasing the investigation of Dewitte. Fearing for his job, Vidler ceased investigating Dewitte. Plaintiff returned to his regular enforcement duties in the Motor Unit where he was told that he could perform lawful traffic stops on Dewitte and Metro State and charge anyone Vidler witnessed committing a crime.

On March 23, 2021, while performing motor patrol specifically to combat aggressive driving, Vidler witnessed Dewitte riding on a Metro State motorcycle and carrying what appeared from plain sight to be a Glock firearm in a gun belt holster. Plaintiff pulled Dewitte over and charged Dewitte with violating section 790.23, Fla. Stats. (2021), prohibiting a convicted felon from carrying a concealed weapon or firearm. The weapon

was in fact a pepper ball gun that was not detectable as such except upon close inspection. Plaintiff also had probable cause to arrest Dewitte for violating section 790.053. The next day, the OCSO unarrested Dewitte and warned the Motors Unit not to stop Dewitte, unless he was committing “a capital crime.”

A request for text messages revealed that on March 26, 2021, the Undersheriff and the Sheriff communicated via text message about Vidler’s DROP date. (App. Ex. HH). DROP, Deferred Retirement Option Program, is a program within Florida’s Retirement System. Upon the completion of DROP, Vidler would retire. The communication indicated that OCSO administration was discussing Vidler’s termination.

At the same time, the OCSO was conducting an investigation of Vidler on the charge of abuse of power when he arrested Dewitte. The OCSO called Dewitte for an interview to talk about Vidler. Dewitte did not make a complaint about the March 23, 2021 arrest. OCSO cleared Vidler of any wrongdoing alleged by Dewitte. OCSO general order prohibited an “abuse of power” as follows: “Personnel shall not use their official position, authority, title, or identification for personal or financial gain for themselves or their associates. Exceptions are agency pay and benefits and off-duty employment that is conducted consistent with GO 4.3.1. Personnel shall

not use their official position, authority, title, or identification to infringe upon a person's civil rights or to otherwise violate the law.”

ARGUMENT

A. The Circuit Court Has Jurisdiction to Review the Sheriff's Final Decision.

Certiorari review is available for orders of local agencies and boards that are quasi-judicial and not subject to direct review under the Administrative Procedure Act. *Broward County v. G.B.V. Int'l, Ltd.*, 787 So. 2d 838, 843 (Fla. 2011). “Where one holds office at the pleasure of the appointing power and the power of appointment is coupled with the power of removal contingent only on the exercise of personal judgment by the appointing authority, then the decision to remove or dismiss is purely executive and not subject to judicial review. If removal or suspension of a public employee is contingent upon approval by an official or a board after notice and hearing, then the ultimate judgment of such official or board based on the showing made at the hearing is subject to appropriate judicial review. *DeGroot v. Sheffield*, 95 So. 2d 912, 915 (Fla. 1957).

A decision is quasi-judicial when the administrative agency's judgment is contingent on evidence and argument made at a hearing for which notice is required. *Id.* Certiorari review is unavailable for executive

decisions because “when an executive makes a decision without conducting a hearing, there is nothing for the circuit court to review.” *Lee County v. Harsh*, 44 So. 3d 239, 242 (Fla. 2nd DCA 2010). If the sheriff’s decision was under the “sole discretion” of the Sheriff, then the Sheriff’s decision was executive and not reviewable. *Id.* See also *Payne v. Wille*, 657 So. 2d 964 (Fla. 4th DCA 1995) (wherein the court found that the sheriff’s decision was executive based upon the wording of chapter 93-367, Laws of Florida). “In determining whether an act is quasi-judicial or not, Florida courts have ‘examined the underlying statute to determine if it has any requirement of a quasi-judicial hearing.’” *Miami-Dade County v. City of Miami*, 315 So. 3d 115, 120 (Fla. 3rd DCA 2020). When the final decision-maker’s decision is “inextricably intertwined with the quasi-judicial proceedings...his action was in response to a quasi-judicial proceeding” and reviewable by the circuit court’s appellate division. *Id.* at 122. In *Johnson v. Beary*, the court held that, pursuant to chapter 89-507, Orange County Deputy Sheriffs are entitled to certiorari review of the sheriff’s decision to terminate a deputy sheriff. 665 So. 2d 334, 335-336 (Fla. 5th DCA 1995).

In this case, the Sheriff did not have sole discretion, pursuant to chapter 98-507, to terminate Vidler. Chapter 98-507 required notice and

hearing upon Vidler’s appeal of the notice of intent to terminate his employment. Chapter 89-507 required the DAB, after the hearing, to report to the Sheriff whether the appeal was with or without merit. After the DAB reports to the Sheriff, the Sheriff renders a decision that is final and dispositive. *Id.* The Sheriff’s decision to terminate Vidler was inextricably linked to the DAB’s report following a hearing. See *Miami-Dade County*, 315 So. 3d at 120. The Sheriff’s decision was quasi-judicial and subject to review by the circuit court.

B. Standard of Review

In a challenge to a quasi-judicial decision, this court conducts a first-tier review and considers (1) whether the decision-maker observed the essential requirements of the law; (2) whether the decision is supported by competent substantial evidence; and (3) whether the parties were accorded procedural due process. *Miami-Dade Cnty. v. City of Miami*, 315 So. 3d 115, 120 (Fla. 3rd DCA 2020); *Miami-Dade Cnty. v. Omnipoint Holdings, Inc.*, 863 So. 2d 195, 198-99 (Fla. 2003).

C. The Sheriff’s Decision was not supported by Competent Substantial Evidence.

The DAB’s decision, adopted by the Sheriff, was not supported by competent substantial evidence. “Competent, substantial evidence is ‘such

evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred' or such evidence as is 'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'" *Bill Salter Advert., Inc. v. Dep't of Transp.*, 974 So. 2d 548, 550–51 (Fla. 1st DCA 2008). The circuit court on certiorari review should review the factual determination made by the agency and determine whether there is substantial competent evidence to support the agency's conclusion. *City of W. Palm Beach Zoning Bd. of Appeals v. Educ. Dev. Ctr., Inc.*, 504 So. 2d 1385, 1386 (Fla. 4th DCA 1987).

There was insufficient evidence to support that Vidler committed an abuse of power. As stated above, "abuse of power" was defined as personnel using their "official position, authority, title, or identification for personal or financial gain for themselves or their associates." Additionally, "personnel shall not use their official position, authority, title, or identification to infringe upon a person's civil rights or to otherwise violate the law."

First and foremost, the OCSO did not sustain Dewitte's allegations against Vidler. Next, the DAB cited six specific facts that "strongly influenced" the DAB's decision. App. 32-34. The facts cited however are

merely the DAB's conclusions. They do not contain facts to support its conclusions. For example, the DAB found that Vidler incorrectly interpreted the law but failed to state what facts supported that conclusion. However, even if Vidler incorrectly interpreted the law, this fact does not support that Vidler abused his power. The only evidence presented at the hearing was that there was a disagreement about whether a pepper ball gun carried on a gun belt to look like a firearm was a concealed weapon as defined by Chapter 790, Fla. Stats. There has been no definitive judicial determination of whether a pepper ball gun disguised to look like a firearm met the definition of "concealed" or is otherwise a violation of Chapter 790.

Vidler arrested Dewitte on a good faith belief that Dewitte violated the law. Since the OCSO unarrested Dewitte, there was no determination by the State Attorney about whether the charge was able to be prosecuted. Reasonable minds differ on legal interpretations. Ultimately, it is for the courts to interpret the law to determine whether a criminal charge fits the definition in the statute. It is not a reason for a 30-year veteran to Deputy Sherriff lose his job, and it is not an abuse of power.

The second and fourth reasons are similar and unsupported by competent substantial evidence. In both points, the DAB suggested that Vidler was required to check in or clear it with OCSO prior to arresting

Dewitte. The DAB found that Vidler dismissed legal direction and guidance. However, there was no such guidance. The OCSO relied upon a general discussion about pepper ball guns that occurred in 2019 in a different context. There was no discussion about the legality of a convicted felon openly carrying a pepper ball gun that was concealed to look like a firearm. Vidler did not receive clear direction in these circumstances, nor was he required to, prior to making the arrest that occurred on March 23, 2021. On the contrary, Vidler had been told to continue performing traffic stops if he witnessed the commission of a crime.

As to the DAB's "fact" three, the DAB did not identify the commentary from the custodial interrogation that evidenced Vidler's abuse of power. There was none. In fact five, the DAB stated that Vidler failed to provide a "more complete disclosure of the history between Vidler and Dewitte" and failed to seek guidance prior to arresting Dewitte. It is not reasonable or a standard operating procedure that law enforcement officers consult with the agency prior to making an arrest. If the OCSO required that, it should have explicitly instructed Vidler to consult with his supervisor prior to arresting Dewitte. The OCSO cannot make up a rule after the fact and then rely on it to terminate Vidler, but that is what occurred in this case.

Finally, there was insufficient evidence that Vidler's tone during the arrest evidenced an abuse of power. Dewitte had a history of impersonating a police officer. There are videos of Dewitte on youtube.com behaving and sounding like a police officer. Vidler was aware of Dewitte's modus operandi and used an appropriately commanding tone during Dewitte's arrest. A reasonable viewer of the video would not conclude an abuse of power based upon the video. There was insufficient evidence to support that Vidler was abusing his power when he charged Dewitte with a crime.

D. Vidler's Due Process Rights were Violated.

Vidler was prejudiced by the OCSO's failure to afford him adequate due process protections. As discussed above, OCSO implemented ex post facto rules and then terminated Vidler based upon those rules. Due process requires that Vidler be provided with notice of the rules prior to finding that he violated them. There is no OCSO policy, general order, bulletin or standard operating procedure requiring a deputy sheriff to seek guidance prior to making an arrest. However, Vidler was terminated for an abuse of power for failing to seek guidance prior to making an arrest.

Second, during the DAB hearing, Vidler relied upon a packet of documents that was submitted to the Administrative Review Captain during

the pre-termination review meeting. Vidler believed, based upon the OCSO's usual procedure, that the packet Vidler submitted to the ARC would be transmitted to the DAB. However, Captain Joe McCollom, the DAB Chairperson, would not accept the documents because they were not submitted by Vidler to the DAB in advance of the hearing. The DAB should have received and considered Vidler's submission, consistent with its usual practice.

Finally, there is evidence of bias in the decision to terminate Vidler from the supervisor level to the Sheriff. "An impartial decision-maker is a basic component of minimum due process in an administrative proceeding." *Charlotte Cty. v. IMC-Phosphates Co.*, 824 So. 2d 298, 300–01 (Fla. 1st DCA 2002). During the 2019 investigation of Dewitte, Vidler was threatened with termination if he blew the whistle on the OCSO's efforts to steer Vidler away from pursuing leads to further the investigation of Dewitte and Metro State. On March 26, 2021, there was a text exchange between the Sheriff and Undersheriff Canty that clearly indicates that the final decision-maker was discussing Vidler's employment and termination. The text message was a message identifying Vidler's DROP date. The Sheriff was not impartial. The OCSO was waiting for the first opportunity to fire

Vidler. Vidler was not supposed to arrest Dewitte for committing crimes, but he was the last to know.

CONCLUSION

WHEREFORE, Vidler requests that this Court issue a writ of certiorari and quash the Sheriff's decision, reinstating Vidler's employment.

DATED: December 7, 2021

Respectfully submitted by:

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Certificate of Compliance

I HEREBY CERTIFY that this petition complies with the computer-generated rule from Florida Rule of Appellate Procedure 9.100. It is double spaced, in Arial 14-point font, and has 1-inch margins and contains 2,664 words.

/s/ Heidi B. Parker
Heidi B. Parker

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Decision to Terminate Plaintiff

APPENDIX

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Section 3. This act shall take effect upon becoming a law.

Became a law without the Governor's approval June 29, 1989.

Filed in Office Secretary of State June 29, 1989.

CHAPTER 89-507

House Bill No. 1666

An act relating to Orange County; providing career service status for certain members of the Orange County Sheriff's Office; specifying rights of members; providing promotional procedures and career service positions; specifying a disciplinary policy and providing procedures of appeal and complaint handling; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Members of the Orange County Sheriff's Office; applicability of the act; career service of agency members; transition; and administration.—

(1) APPLICABILITY.—The provisions of this act shall apply to all appointed sworn law enforcement deputy sheriffs of the Orange County Sheriff's Office. The provisions of this act shall not apply to the sheriff nor to special deputy sheriffs appointed pursuant to s. 30.09(4), Florida Statutes, members of the sheriff's reserve, auxiliary, posse units, volunteers, task force members, and individuals appointed as part-time deputy sheriffs, as defined by the Criminal Justice Standards and Training Commission. As used in this act, the terms "member," "personnel," "employee," "employ," and "employment" shall refer to all persons whether employed or appointed, to whom the act applies. It is not, however, the intent of this act to grant the right of collective bargaining to members of the Orange County Sheriff's Office who do not otherwise have that right pursuant to law.

(2) CAREER SERVICE POSITIONS.—

(a) Nothing herein shall prohibit the sheriff from creating career service staff positions, subject to the provisions of subsection (4).

(b) Promotions above deputy sheriff to and including the rank of lieutenant shall be made by content-valid competitive examinations according to the agency's promotional system. All promotions made after the effective date of this act must be as a result of said competitive examinations.

(3) CAREER SERVICE STATUS.—

(a) After a member of the sheriff's office, to whom the provisions of this act apply, has served for a period of 1 calendar year, such member shall have attained career service status, unless the member is placed upon extended probation.

(b) Effective upon this act becoming law, all current nonprobationary members of the rank of lieutenant or below of the sheriff's office will be granted career service status at the rank which they currently hold. All members of the rank of captain, their equivalent, or higher shall be granted the career service rank of lieutenant.

(c) If a member is separated but later rejoins the sheriff's office, said member shall be required to complete 1 further calendar year of service before being granted the right of appeal provided in section 2.

(d) Any member who is required to serve a probationary period attendant to a promotion shall retain career service status with the sheriff, but may be demoted to his or her prior rank during such probationary period without the right of appeal as provided in section 2.

(4) TRANSITION OF CAREER SERVICE MEMBERS.—

(a) When a newly elected or appointed sheriff assumes office, the new sheriff shall continue the career service status of current career service personnel unless cause for dismissal or demotion exists.

(b) Cause shall be misfeasance, nonfeasance, or malfeasance of office or for any just cause for which certification may be revoked pursuant to s. 943.1395, Florida Statutes.

(c) Said career service members shall retain their career service ranks up to and including the rank of lieutenant or the equivalent.

(d) If the incoming sheriff fills positions with new personnel, the current occupants of those positions may be demoted provided that said demotion shall be no lower than to the rank of career service lieutenant or the equivalent, and their salaries may be reduced accordingly.

(5) ADMINISTRATION.—The sheriff has and shall continue to have the authority to adopt such rules, regulations, and procedures as are necessary for the implementation and administration of this act; however, nothing in this act shall be construed as affecting the budgetary powers of the Orange County Commission.

Section 2. Complaints against members; standards of conduct; discipline; disciplinary appeals.—

(1) STANDARDS OF CONDUCT AND COMPLAINT PROCEDURE.—The sheriff shall establish general rules and standards of conduct for all personnel and a complaint receipt and processing procedure in order to adequately provide for the prompt receipt, investigation, and disposition of complaints against personnel of the Sheriff of Orange County.

(2) DISCIPLINARY PROCEDURE.—A disciplinary procedure shall be established which contains provisions for a factual review of each disciplinary action by the employee relations director or the equivalent and an opportunity for the accused to respond to the charges and request a meeting with the appropriate administrator prior to the imposition of the action. A decision by an administrator to impose a disciplinary action shall result in the completion of a notice of disciplinary action form by the administrator.

(3) DISCIPLINARY APPEAL PROCEDURE.—

(a) An appeal of a notice of disciplinary action must be made in accordance with the sheriff's disciplinary procedure and shall result in a hearing by a disciplinary appeal board as specified in said procedure. The sheriff shall appoint the chairperson, and the board shall serve as specified in the disciplinary procedure.

(b) Following the hearing, the board shall report to the sheriff via the employee relations director or the equivalent specifying whether the appeal is with or without merit.

(c) The sheriff shall render a decision in writing that shall be final and dispositive of the matter.

Section 3. All persons to whom this act applies as specified in section 1 who have served for a period of 1 calendar year or more as of the effective date of this act shall be career service members subject to the provisions of this act. All other members shall become career service members subject to the provisions of this act upon reaching their 1 calendar year service anniversary date.

Section 4. The provisions of this act shall be severable and, if any of the provisions shall be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions. It is hereby declared to be the intent of the Legislature that this act would have been adopted had such unconstitutional provision not been included therein.

Section 5. This act shall take effect October 1, 1989.

Became a law without the Governor's approval July 6, 1989.

Filed in Office Secretary of State July 6, 1989.

CHAPTER 89-508

House Bill No. 1673

An act relating to Charlotte County; amending chapter 86-349, Laws of Florida, relating to the career status of all persons appointed or employed by the office of the county sheriff; providing definitions; providing disciplinary proceedings and provisions with respect to reappointment of personnel; providing appeals procedures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Chapter 86-349, Laws of Florida, is amended to read:

Section 1. Employees of Charlotte County Sheriff; applicability of act; career status of employees; administration.—

(1) **APPLICABILITY.**—The provisions of this act shall apply to all certified and noncertified persons appointed or employed by the Office of the Charlotte County Sheriff, including deputy sheriffs and correctional officers, except those identified as "Exempt Persons." It is not, however, the intent of this act to grant the right of collective bargaining to persons appointed or employed by the Office of the Charlotte County Sheriff who do not otherwise have that right pursuant to law.

(2) **DEFINITIONS.**—As used in this chapter:

(a) "Appointee" means a person selected by the sheriff to serve in the position of deputy sheriff or correctional officer who is a certified person as defined herein.

ORANGE COUNTY SHERIFF'S OFFICE



GENERAL ORDER

Effective Date: January 3, 2014	<input checked="" type="checkbox"/> Amends - GO 5.1.0 (May 17, 2010)	Number: 5.1.0
Distribution: All Personnel	Review Month: January	Reviewing Authority: HRD / Employee and Labor Relations
Subject: Discipline		
CALEA Standards: 26.1.4, 26.1.5, 26.1.6, 26.1.7, 26.1.8, 52.2.7		
CFA Standards: 7.07		

This order consists of the following:

1. Purpose
2. Policy
3. Definitions
4. Procedures

1. Purpose

The purpose of this policy is to promote organizational efficiency by encouraging personnel to comply with agency policies and procedures and by providing an appropriate review of disciplinary actions.

2. Policy

The primary goals of disciplinary action are to educate personnel to proper professional conduct, deter violations of agency policy, and punish policy violations in an appropriate manner.

The agency's disciplinary appeals process is designed to comply with the Orange County Sheriff's Office Career Service Act (Chapter 89-507), which applies in various respects to full-time deputies who are not on probation. The Sheriff hereby extends the agency's disciplinary appeals process as a privilege, not a right, to all full-time civilian personnel who are not on probationary status. A Special Order of the Court Services Section specifies disciplinary appeal procedures for special process servers consistent with FS [48.021](#). All other persons, including but not limited to recruits, part-time agency members, career change personnel, volunteers, and newly hired probationary personnel, serve at the pleasure of the Sheriff and may be disciplined or terminated without an appeals process.

The Sheriff expressly reserves the right to change the agency's disciplinary appeals process, make exceptions to existing policy, and make definitive interpretations of policy at any time consistent with the Orange County Sheriff's Office Career Service Act and other applicable law. These policies and procedures will not be construed to expand or abridge the rights of any person under the Constitutions or statutes of the United States of America or the State of Florida.

3. Definitions

- A. Appeal With Merit - a decision in favor of an employee's appeal.

- B. Appeal Without Merit - a decision against an employee's appeal.
- C. Appellant - the agency member appealing a disciplinary action.
- D. At-Will – dismissal of a probationary employee with or without stated cause.
- E. At-Will Personnel - persons who may be summarily disciplined or terminated without cause and without appeal, including but not limited to recruits, part-time agency members, career change personnel, volunteers, and newly hired probationary personnel.
- F. Business Days - Monday through Friday, excluding holidays.
- G. Career Change Personnel - agency members who change from sworn to non-sworn or vice versa, and who have not completed their designated probationary period for the new position.
- H. Exempt Personnel - persons performing certain functions (e.g., professional, managerial) who receive a flat salary, instead of being paid on an hourly basis, in accordance with the Fair Labor Standards Act.
- I. Name Clearing Meeting - a meeting conducted by the Human Resources Director or designee to allow terminated at-will personnel to supplement potentially stigmatizing information in the agency's public records. This proceeding is not an appeal.
- J. New and Material Evidence – relevant information that is substantial enough to alter the outcome of the disciplinary appeal, that is supported by proof, and that was not available earlier through the exercise of due diligence.
- K. Newly Hired Probationary Personnel - persons who have been hired by the agency for full-time work, but who have not completed their designated probationary period.
- L. Part-Time Agency Members - persons who are employed by the agency on a part-time basis (work less than 40 hours per week and are compensated for services rendered).
- M. Recruits - persons hired by the agency who are in the process of obtaining law enforcement certification (e.g., attending police academy). Their probationary period commences when they obtain law enforcement certification. At that point, they are considered newly hired probationary personnel.
- N. Volunteers - persons who donate time and effort to the agency (are not compensated for services rendered but may receive reimbursement for expenses) including but not limited to, Auxiliary deputies, Reserve deputies, Volunteer Parking Enforcement Unit members, Task Force members, and Chaplains.

4. **Procedures**

- A. Administrative Actions Not Constituting Formal Discipline

Certain administrative actions do not constitute formal discipline, though they may negatively impact employees. There is no appeal for these actions, which include but are not limited to the following:

1. Relieving an employee from duty pending an investigation or in response to fitness for duty concerns.
 2. Transferring or reassigning employees.
 3. Eliminating positions.
 4. Withdrawing, or limiting the use of, an agency-issued vehicle.
 5. Delaying or disapproving a merit increase.
 6. Extending probationary period.
 7. Suspending or prohibiting participation in the agency's off-duty employment program.
- B. Other Non-Appealable Personnel Actions
1. Voluntary written resignation.
 2. Voluntary demotion, voluntary reduction in pay, or a requested transfer that is accompanied by a signed statement.
 3. Voluntary retirement.
 4. Abandoned position (e.g., left job without the required notice).
 5. Reclassifying a deputy from a Lieutenant or above position to his or her career service rank without citing the deputy for a policy violation.
 6. Reclassifying a deputy from a probationary promotion to his or her career service rank without citing the deputy for a policy violation. (For example, a Corporal promoted to Sergeant who is then returned to the rank of Corporal during his or her probationary period as a Sergeant.)
 7. Reclassifying a civilian supervisor or manager without citing him or her for a policy violation.
 8. Terminating at-will personnel.
 - a. Newly hired probationary personnel and career change personnel who have not yet completed their new employee probationary period, and obtained their career service status as defined under GO [4.4.1](#) are subject to at-will termination from employment with the agency.
 - b. Before termination of at-will personnel is imposed, the Director of Human Resources or designee shall review the proposed actions for administrative and legal sufficiency.

- c. At-will personnel who have been terminated may request a name-clearing meeting. This request must be in writing and delivered to the Director of Human Resources or designee. The supervisor who serves the person with termination shall inform him or her of the opportunity for a name-clearing meeting.
- d. The Director of Human Resources or designee shall determine the location for the meeting, and he or she shall contact the person whose employment was terminated (“the subject”) to schedule it. The meeting is not open to the general public. The Director of Human Resources or designee shall have wide latitude to run the meeting as he or she deems appropriate to support its efficiency and effectiveness. Any person who disrupts the proceedings may be ejected. If the subject, or his or her representative, fails to personally appear for the scheduled meeting, any further proceedings are deemed waived.
- e. The Director of Human Resources or designee shall convene the meeting, identify him or herself, identify the person who requested the meeting, identify all other persons attending, and explain the purpose of the proceedings. He or she shall confirm the meeting is audio taped in its entirety and all tapes are appropriately marked.
- f. The subject may be accompanied by an attorney or other representative, who may consult with and speak for him or her during the proceedings. Alternatively, the person’s representative may appear in his or her place. The subject, or his or her representative, may present a written statement detailing relevant information and the subject’s position. He or she may also present written materials that support assertions in that statement. The subject, or his or her representative, may make a verbal statement not exceeding twenty (20) minutes. All audio recordings and documentation resulting from the meeting will be included in his or her personnel file or in a Professional Standards file, as appropriate.
- g. As an alternative to a meeting, the person whose employment was terminated may choose to forward a written statement detailing relevant information and his or her position, along with written materials that support assertions in that statement, to the Director of Human Resources, who shall include the material in the individual’s personnel file or forward it to Professional Standards for filing, as appropriate. The statement may be written by the person whose employment was terminated or by his or her representative.
- h. *Garrity* use immunity does not apply to name clearing proceedings.

C. Alternatives to Formal Discipline

The agency encourages supervisors to explore alternatives to formal discipline with the goal of improving employee productivity. These alternatives include but are not limited to the following:

- 1. Verbal or Written Counseling by the Supervisor
 - a. Supervisors are responsible for reviewing the work performance of their subordinates and providing appropriate counseling as needed.

Effective counseling provided in a timely manner may prevent future situations requiring formal disciplinary action. Supervisors are not required to initiate formal discipline for every policy violation; they may use counseling when appropriate. Examples of situations that require discipline (instead of simply counseling a person) include but are not limited to illegal discrimination, improper pursuits, excessive force, and criminal violations.

- b. Supervisors are encouraged to appropriately document all verbal counseling that is significant or repeated. By creating this record, supervisors support future disciplinary action that may be required. They are responsible for maintaining the documentation in a file and for forwarding the file to the appropriate supervisor upon the employee's transfer, promotion, etc.
- c. Supervisors may counsel in writing by using the appropriate counseling form. This record will support future disciplinary action that may be required. Supervisors are responsible for maintaining the documentation in a file and for forwarding the file to the appropriate supervisor upon the employee's transfer, promotion, etc.

2. Remedial Training

- a. Remedial training may be provided at the request of the supervisor or employee. Supervisors may request remedial training for an employee who fails to successfully complete other remedial training, fails to achieve minimum standards in any training program, is identified by Staff Inspections or Training personnel as needing remedial training, is required to receive remedial training as the result of formal discipline, or as the supervisor otherwise deems appropriate.
- b. Supervisors referring employees for remedial training shall schedule the training at the earliest possible date.
- c. Employees shall not be released from remedial training until they have acquired the minimum skill levels required by the agency. Failure to achieve these minimum skill levels will be reported to the employee's immediate supervisor for action.

3. Professional Counseling

A supervisor may perceive that an employee is experiencing stress, emotional difficulties, etc., that are negatively affecting the employee's work performance. The supervisor may refer the employee to a contract psychologist or Employee Assistance Program (EAP) for professional counseling. Referrals to a contract psychologist will be coordinated through the Director of Human Resources or designee. See GO [4.6.6](#) for additional information.

D. Types of Formal Discipline

- 1. Verbal Reprimand - a verbal admonition by which a supervisor orders inappropriate behavior corrected. A verbal reprimand is less severe than a written reprimand.

If an employee is not disciplined for one (1) continuous year from the date the [“Notice of Disciplinary Action”](#) is served, he or she may request that a verbal reprimand be removed from his or her personnel file. This request must be in writing and forwarded via chain of command to the Director of Human Resources. However, the reprimand will be included in records maintained by Professional Standards, and it may be considered for purposes of progressive discipline.

2. Written Reprimand - a written admonition by which a supervisor orders inappropriate behavior corrected. A written reprimand is less severe than a suspension without pay.

If an employee is not disciplined for one (1) continuous year from the date the [“Notice of Disciplinary Action”](#) is served, he or she may request that a written reprimand be removed from his or her personnel file. This request must be in writing and forwarded via chain of command to the Director of Human Resources. However, the reprimand will be included in records maintained by Professional Standards, and it may be considered for purposes of progressive discipline.

3. Suspension Without Pay - suspending a person's employment status so he or she does not report to work for the specified time and does not receive compensation for those hours. Suspension without pay is less severe than demotion. Consistent with federal law, exempt personnel shall not serve actual suspensions without pay, but their vacation accruals may be docked and their assignments may be changed as described in Section 4(D)(3)(b). If an employee is suspended without pay, he or she may choose to serve the suspension by one of the following methods:

- a. Do not report to work for the specified time and do not receive compensation for those hours.

1. The employee shall promptly surrender the following agency-issued equipment: vehicle, e-pass, gas card, mobile telephone, weapons, badges, credentials, and any other identification. The employee shall not wear any part of an agency uniform and shall not exercise the authority of his or her office.

2. Depending on the length of the suspension, the employee shall pay the entire premium for enrolled Beneflex options he or she chooses to continue while suspended. The employee shall contact the Human Resources Risk Management Unit for additional information. The check will be made payable to the Orange County Sheriff's Office and sent to Fiscal Management.

There is no coverage if the employee chooses not to pay the premium. If coverage lapses because the employee failed to pay the premium, he or she must complete new Beneflex paperwork when he or she returns to work. The employee may re-enroll in the same Beneflex options that he or she had prior to the suspension without pay. The Beneflex paperwork is

- available in Risk Management.
- 3. The employee is prohibited from engaging in enforcement related off-duty employment during this period.
- b. Report to work as usual and surrender accrued vacation time to satisfy the suspension.

The disciplined employee’s chain of command shall notify Fiscal Management to deduct the surrendered vacation time from the employee’s balance.

- 4. Disciplinary Probation - a period of close supervision, critical examination, and evaluation which may be imposed for a specified period of time, not to exceed one year. The supervisor shall review specific and written performance standards with the employee at the beginning of the probation period. The supervisor shall complete special performance evaluations at the mid-point and conclusion of the probationary period. If the employee does not adhere to agency policy or meet the specified performance standards, he or she may be subject to additional adverse personnel actions, progressive discipline which may result in deviation outside the normal parameters of discipline, up to and including termination.
 - a. Persons on disciplinary probation are prohibited from the following: enforcement related off-duty employment, participation in promotional testing process, promotion, participation in the individually assigned vehicle program, voluntary transfer from their current positions, and participation in specialized functions (including but not limited to SWAT and ERT).
 - b. The disciplining authority shall confirm the [Disciplinary Probation Statement](#) Form is attached to the employee’s [Notice of Disciplinary Action](#) Form.
- 5. Demotion - a reduction in rank, job classification, or pay grade and/or step. Demotion is only exceeded by termination in its severity.
- 6. Termination - dismissal or revocation of appointment or employment. In all cases that result in demotion or termination, except at-wills, a complete copy of the case report will be sent to Legal Services. The agency attorney reviewing the case shall return it with his/her comments and/or opinions to the investigating authority within seven days from receipt of the case. An extension may be requested through the Undersheriff if extenuating conditions exist which would justify the extension. This process will be done prior to serving a [“Notice of Intention to Discipline.”](#) At-will terminations will be forwarded to the Human Resources Director for review and processing.

E. Categories and Classes of Discipline

CLASSES	CATEGORIES	RECOMMENDED DISCIPLINE
A	1	Verbal or written reprimand

CLASSES	CATEGORIES	RECOMMENDED DISCIPLINE
A	2	4 to 10 hours of suspension
A	3	11 to 20 hours of suspension
B	4	21 to 30 hours of suspension
B	5	31 to 40 hours of suspension
B	6	41 to 80 hours of suspension
C	7	81 to 120 hours of suspension
C	8	Suspension of more than 120 hours, and/or demotion, and/or termination
D	9	Termination
E	10	Includes all ranges of discipline, from verbal reprimands up to and including termination

1. Supervisors are encouraged to follow the categories when specifying the level of discipline. However, if they justify their reasons in writing, supervisors may choose discipline from within a class. For example, a supervisor may wish to give twenty-one (21) hours suspension for a Category five (5) violation. The supervisor may do so, because Categories four (4) and five (5) are in the same class. Similarly, a supervisor may wish to award eighty (80) hours for a Category four (4) violation. He or she may do so, because Categories four (4), five (5), and six (6) are in the same class.
2. Supervisors shall employ progressive discipline for repeated violations of agency policies and procedures. The repeated violations need not involve the same standard of conduct. Progressive discipline allows a supervisor to choose a tougher penalty from within a class. Progressive discipline also allows a supervisor to request an upward deviation outside the class which must be approved by the Undersheriff.
3. A supervisor may request a downward deviation outside a class, but only for a category eight (8) or nine (9) violation. This request must be in writing and must detail reasons. Supervisors shall forward these requests via chain of command to the Undersheriff for approval.
4. In determining an appropriate discipline, supervisors shall consider the severity of the offense, whether the action was malicious, the applicable category and class, the employee's disciplinary history, the employee's position within the agency (e.g., supervisor), pertinent counseling and/or training received by the employee, extenuating circumstances directly related to the violation, and the best interests of the agency.
5. When awarded discipline includes the mandatory completion of drug/alcohol testing, credit report checks, or training, the following procedures will be followed:
 - a. Professional Standards shall be responsible for maintaining a record

- of the required drug/alcohol testing, credit report checks or training and a record of when it has been completed.
 - b. Upon receipt of a [Notice of Disciplinary Action](#) Form that requires drug/alcohol testing or credit report checks, the commander of Professional Standards shall notify the Human Resources Director, in writing, of the nature and conditions of the requirement. The Human Resources Director, or designee, shall facilitate the completion of the drug/alcohol testing or credit report check and notify the Lieutenant of Professional Standards, in writing, when the requirement has been satisfied.
 - c. Upon receipt of a [Notice of Disciplinary Action](#) Form that mandates training, the commander of Professional Standards shall notify, in writing, the Training Lieutenant. The Training Lieutenant, or designee, shall be responsible for coordinating with the Chain of Command the appropriate training and notifying the Lieutenant of Professional Standards, in writing, when the training has been completed. In accordance with GO [4.6.1](#), Human Resources shall be responsible for coordinating all remedial training that is required as a result of a discrimination, e.g. sexual harassment, complaint.
 - d. Failure of an employee to complete the mandated testing or training may result in progressive discipline.
 - 6. A supervisor's record in awarding discipline must be documented and evaluated in his or her annual performance evaluation.
- F. Authority to Serve Discipline
 - 1. The appropriate administrator from an employee's chain of command is responsible for serving discipline upon the employee, i.e., personally delivering the applicable paperwork to the employee. The appropriate chain of command is where the employee was assigned at the time the violation occurred.
 - 2. There are four (4) levels of administrators, as follows:
 - a. Level 1 - persons holding the rank of Major, equivalent or above. They may impose discipline of any severity, up to and including termination. Level 1 administrators may delegate Level 2 authority to a Captain, or equivalent, who is in charge of a section or unit.
 - b. Level 2 - persons holding the rank of Captain, or equivalent. They may impose discipline up to and including one-hundred twenty (120) hours suspension.
 - c. Level 3 - persons holding the rank of Lieutenant, or equivalent. They may impose discipline up to and including forty (40) hours suspension.
 - d. Level 4 - persons holding the rank of Sergeant, or equivalent. They may impose discipline by verbal and written reprimands.
- G. Initiating Formal Discipline by Drafting and Serving a "[Notice of Intention to Discipline](#)" Form
 - 1. When a supervisor decides to impose discipline, he or she shall complete a

"[Notice of Intention to Discipline](#)" form. The supervisor shall obtain the employee's disciplinary history from Professional Standards. The supervisor shall consider the following in determining an appropriate level of discipline: the severity of the offense, whether the action was malicious, the applicable category and class, the employee's disciplinary history, the employee's position within the agency (e.g., supervisor), pertinent counseling and/or training received by the employee, extenuating circumstances directly related to the violation, and the best interests of the agency.

2. The "[Notice of Intention to Discipline](#)" will state the reason for, and effective date of, the proposed discipline. The specified effective date must be at least twenty-four (24) hours after service of the "[Notice of Intention to Discipline](#)."
3. The "[Notice of Intention to Discipline](#)" must be signed by each supervisor in the employee's chain of command, up to and including the Division Commander or manager, before it is served.
4. The appropriate administrator shall serve the "[Notice of Intention to Discipline](#)" on the employee. The administrator shall give one (1) complete copy of the investigative report and supporting documentation (e.g., transcripts) to the employee at no cost.
5. The "[Notice of Intention to Discipline](#)" form includes spaces for requesting an appeal or for accepting the charges and discipline. If the agency member accepts the charges and discipline, he or she should mark and sign the form and then give it to the administrator who served it (or his or her designee) within twenty-four (24) hours of service. In that case, or if the agency member fails to take any action, all further administrative appeals are deemed waived. The appropriate administrator shall serve the employee with a "[Notice of Disciplinary Action](#)."
6. If the agency member who has been served with a "[Notice of Intention to Discipline](#)" wishes to appeal the charges and/or level of discipline, he or she must mark the appropriate spaces, sign the form, and return it to the administrator who served it (or his or her designee) within twenty-four (24) hours of service.
7. Personnel that are served with a [Notice of Intention to Discipline](#) resulting in termination shall surrender their sworn agency identification, badge, firearms, Electronic Control Device (ECD), vehicle, and radio to their immediate supervisor. The Division Commander or designee shall confirm that these items are transported to Material Control/Supply for safekeeping and storage. The vehicle will be inventoried at Supply and returned to the division. All other equipment, uniforms, and assigned property will be taken to Material Control/Supply for storage until the completion of their appeals process. The Division Commander may exercise discretion in allowing the employee to retain the proximity card and/or MDC while he or she is reassigned until completion of the first level of the appeals process. The agency Security

Administrator shall be contacted to determine the appropriate level of access to network resources and facilities.

H. Discipline Dispute Resolution Process

1. A formal investigation and disciplinary appeal can consume considerable time and resources. In some situations, the employee may wish to acknowledge having violated agency policy and then accept discipline, rather than proceeding with a formal investigation and disciplinary appeal. These situations may be appropriate for a Discipline Dispute Resolution Process (DDRP). A DDRP affords the employee and agency an opportunity to negotiate a mutually acceptable resolution to policy violations.
2. Anytime prior to receiving a [Notice of Intention to Discipline](#) applicable to the case, an employee may request DDRP by submitting a [Request to Initiate the Discipline Dispute Resolution Process](#) Form to the Labor Relations Manager (LRM) in Human Resources. If the LRM is unavailable, he or she may assign a designee to handle the employee's request to initiate the DDRP. The LRM's designee shall hold the rank of Captain who is familiar with the process.
3. The [Request to Initiate the Discipline Dispute Resolution Process](#) Form must be delivered directly to the LRM or designee, with a copy delivered to the investigating authority at the time the employee informs the investigating authority of their intent to initiate DDRP. The employee is responsible for confirming delivery to and receipt by the investigating authority and the LRM or designee. An investigation will continue and no meeting will be scheduled unless the investigating authority and LRM or designee has received the employee's [Request to Initiate the Discipline Dispute Resolution Process](#) Form.
4. When an employee initiates the DDRP by submitting the [Request to Initiate the Discipline Dispute Resolution Process](#) Form, the employee agrees to toll the limitations period specified in the Law Enforcement Officers Bill of Rights for the applicable case during negotiations. If the agency postpones the DDRP in writing or no agreement is reached between the parties, the limitations period specified in the Law Enforcement Officers Bill of Rights will resume.
5. The LRM or designee shall review the case to determine if it is appropriate for DDRP and reserves the right to deny an employee's request to meet and resolve the allegations pursuant to this process. If the LRM or designee decides the case is not suitable for the DDRP, the employee shall be notified of the decision and the investigation will continue. Nothing in this policy will preclude an employee from submitting another request at the conclusion of the investigation but before being served with a [Notice of Intention to Discipline](#).
6. In the event of an investigation involving more than one employee, the

investigation and interviews will continue unless all accused employees sign a waiver tolling the limitations period referenced above.

7. If the LRM or designee decides the case is appropriate for DDRP, he or she may contact the employee or the employee's representative in writing to set up a meeting no later than five business days (Monday thru Friday) following receipt of the employee's request to initiate the DDRP.
8. The LRM or designee may postpone any meeting in writing pursuant to the provisions of this policy if, due to the seriousness or nature of the allegations, interviews of witnesses or accused employees should occur first. The LRM or designee may also postpone the meeting until the completion of the investigation to determine if this process is appropriate. This includes, but is not limited to, situations involving complex investigations or when multiple employees are involved in the investigation.
9. The purpose of the meeting is to discuss potential discipline and administrative charges and to determine if a proposed consensus can be reached on the appropriate charge and discipline, if any.
10. The LRM or designee shall consult with the investigating authority and review past violations and discipline awarded for similar facts and circumstances prior to the meeting with the employee. The employee's performance history and previous discipline with the agency will be considered.
11. The employee must attend the meeting. The employee's representative and counsel may also attend at the employee's request. If requested, the employee's supervisor, the investigating authority, and any other agency employee deemed necessary by the LRM or designee may be consulted at any time during the DDRP.
12. If the parties reach a proposed agreement, it will be reduced to writing by the LRM or designee. The employee and the LRM or designee shall sign the agreement. If the signed agreement involves discipline of an oral reprimand through 120 hours suspension, it will be implemented. If it involves discipline of 121 hours or more, up to and including demotion or termination/resignation, the agreement is subject to approval by the Sheriff or designee. If the Sheriff or designee approves the proposed agreement, it will be considered final and implemented.
13. If the Sheriff or designee does not approve the agreement, the matter will progress back to the investigation as if no meeting had been conducted.
14. For alleged violations of agency policy for which intended discipline will not exceed a written reprimand, including standards of conduct set forth in GO [5.1.3](#), subparagraphs (4) Leaving Duty Post, (8) Courtesy and Respect, (10) Personal Appearance, (18) Posting of Bonds, (20) Reporting for Duty, (24) Legal Involvement, (32) Damage or Loss of Property, (34) Misuse of

Breaks/Meals, (44) Operating Vehicles, (47) Telephones, (49) Identification, the employee's Lieutenant, equivalent, or designee (approved by the employee's chain of command), may conduct an inquiry regarding the alleged violation. The alleged policy violation may be resolved by the employee's Lieutenant, equivalent, or designee (approved by the employee's chain of command) prior to initiating a formal investigation if the employee chooses to utilize the DDRP process. If so, the employee must complete the [Request to Initiate the Discipline Dispute Resolution Process](#) Form and submit it to his/her Lieutenant, equivalent, or designee when requesting the DDRP. The LRM or designee shall deliver a copy to Professional Standards. By submitting the form the employee is acknowledging that they do not wish to contest the preliminary findings from the inquiry. If the employee agrees to resolve the matter utilizing the DDRP process, the Lieutenant, equivalent, or designee shall obtain a tracking number from Professional Standards and follow the procedures outlined in this policy. If a tentative agreement is reached between the parties, the Lieutenant, equivalent, or designee must complete the Agreement Pursuant to Discipline Dispute Resolution Process Form and forward it to the appropriate Division Commander and the LRM or designee for review and final approval.

- I. General Provisions for Discipline Dispute Resolution Cases
 1. By signing an agreement reached pursuant to this policy, the employee waives all further appeals pursuant to policy or law, including contractual grievances concerning the investigation and discipline.
 2. Any employee who signs an agreement pursuant to this policy must still participate in a witness interview concerning the same investigation involving another employee.
 3. Nothing in this policy precludes the agency from pursuing additional violations gleaned from a DDRP meeting, whether an agreement is reached or not.
 4. If an agreement is reached, the investigating authority shall complete the Investigative Report and forward it to Professional Standards to close out the tracking number. All original DDRP documents will be included in the investigative file and forwarded to Professional Standards for records retention purposes.
 5. Nothing discussed at any meeting held pursuant to this policy will be binding upon any party until a final agreement is approved by the Sheriff or designee.
 6. An agreement reached between the employee and the agency will not establish binding precedent on the Sheriff in other cases. Discipline imposed as a result of any agreement between parties pursuant to this policy may be used for purposes of progressive and cumulative discipline for future disciplinary action.

7. The union shall be notified in writing of the final resolution in all cases handled pursuant to this policy in which the employee was represented by the union.
- J. **Managerial Appeal Process**
All supervisory personnel, and particularly managers above the rank of Lieutenant or equivalent, are held to a higher standard of conduct. All personnel holding the rank of Captain, equivalent, or above are afforded the following appeal process:
1. The appropriate manager is responsible for administering discipline (e.g., Major to a Captain). The Sheriff may designate a manager to administer discipline to the Undersheriff.
 2. If the person wishes to appeal, a Division Commander designated by the Undersheriff shall be the first level of appeal. The Sheriff may designate a manager to provide the first level of appeal for the Undersheriff.
 3. If the person wishes to carry the appeal to a board, two persons named by the Sheriff shall constitute the board. The final decision rests with the Sheriff.
- K. **Verbal and/or Written Reprimand Appeal Process**
Employees served with a "[Notice of Intention to Discipline](#)" specifying a verbal and/or written reprimand shall be afforded an appeal to an Administrative Review Captain upon request. The result of the ARC proceeding is final. There is no appeal to a disciplinary appeals board for verbal and/or written reprimands unless the Administrative Review Captain increases the discipline to suspension, demotion, or termination.
- L. **Disciplinary Appeal Process**
1. **Administrative Review Captain ("ARC")**
 - a. The disciplinary appeal process consists of two (2) phases. The first phase, an appeal to a Captain, occurs before discipline is imposed. The Captain performing this role is an "Administrative Review Captain," and he or she is selected by the Undersheriff or designee.
 - b. The purpose of this proceeding is to:
 1. Afford the appellant an opportunity to present his or her case.
 2. Review whether the charges are reasonable in light of the record in the case.
 3. Review whether the intended discipline is reasonable in light of the record in the case.
 - c. The Administrative Review Captain shall note the date that he or she received the notice of appeal; the hearing will be conducted within seven (7) calendar days of that date. The Administrative Review Captain shall determine the location for the hearing and contact the appellant to schedule it. The Administrative Review Captain shall also contact the investigating and the disciplining authority when scheduling the hearing to confirm availability. The Administrative Review Captain may approve extensions of time. The hearing is not open to the general public.

- d. The appellant may present a statement detailing his or her argument and specifying the remedy sought. The appellant must swear to any factual assertions in the statement that are based upon his or her personal knowledge. If the appellant wishes to submit relevant factual testimony from other witnesses, he or she may do so by providing affidavits from those witnesses. The affidavits will be excluded from consideration if they fail to specify that the witnesses' testimony was freely given (i.e., no threats, intimidation, compensation, benefit, promise of compensation or benefit), and the witnesses are willing to be interviewed by the investigating authority. An address and/or phone number where a witness may be easily contacted must be included. If a witness refuses at any time to be interviewed by the investigating authority, his or her statements shall be excluded from consideration. An appellant or ARC cannot compel potential witnesses to provide affidavits. The appellant may submit other written materials that support assertions in his or her statement. He or she must demonstrate the charges and/or level of discipline are unreasonable in light of in the record in the case. In arguing against the level of discipline, the appellant shall suggest an alternative discipline that he or she considers to be appropriate. No character references will be submitted or considered. Indication that a person elected or declined the opportunity to participate in a voice stress analysis or a polygraph test will not be submitted or considered. Likewise, the result of such test will not be submitted or considered. The appellant must deliver the originals of this material to the Administrative Review Captain, and copies to the investigating and disciplining authorities or their designees, at least two (2) business days before the scheduled hearing. Failure to meet this deadline will result in the documents being excluded from consideration. The investigating and disciplining authorities may respond in writing to the Administrative Review Captain, with a copy to the appellant, before the ARC hearing is convened.
- e. It is the appellant's responsibility to present all relevant issues and evidence to the Administrative Review Captain. If the Administrative Review Captain determines that additional investigation is necessary, he or she shall return the case to the investigating authority, who shall conduct the additional investigation. The Administrative Review Captain shall provide the appellant with a copy of the supplemental report at no cost. The Administrative Review Captain shall not conduct an independent investigation. Agency members are specifically informed that evidence not presented to the Administrative Review Captain shall be excluded from an appeals board (unless it is "new and material evidence" as defined in this policy). It is incumbent upon the appellant to present all relevant issues and evidence to the Administrative Review Captain.
- f. The Administrative Review Captain shall have wide latitude to exclude from consideration evidence that is irrelevant or otherwise does not meet the requirements of this policy and to run the hearing as he or

- she deems appropriate to support its efficiency and effectiveness. Any person who disrupts the proceedings may be ejected.
- g. The Administrative Review Captain shall presume the findings of the investigation are valid. It is the appellant's burden to prove the charges and/or discipline are unreasonable in light of the record in the case.
 - h. The Administrative Review Captain shall convene the hearing, identify him or herself, identify the appellant, identify all other persons attending, and explain the purpose of the proceedings. The Administrative Review Captain shall confirm the hearing is audio recorded in its entirety and all recordings are appropriately marked.
 - i. The appellant must personally appear at the scheduled hearing. Failure to do so will constitute waiver of any further administrative appeal. The appellant may be accompanied by an attorney, who may consult with the appellant during the proceedings but who cannot speak for him or her. Additionally, the appellant may be represented by a non-attorney who can speak on the appellant's behalf. The appellant may give a verbal statement not exceeding thirty (30) minutes, and the Administrative Review Captain may question him or her. The appellant must swear to any factual assertions in the verbal statement that are based upon his or her personal knowledge.
 - j. The Administrative Review Captain shall fairly evaluate the case. His or her decision shall be expressed as a simple "with merit" or "without merit."
The Administrative Review Captain may sustain the charges and discipline. He or she may also recommend to the Undersheriff that additional charges be brought, that existing charges be dismissed, that additional discipline be served, or that discipline be reduced within the specified class. This request must specify the reasons for deviating from the disciplining supervisor's decision.
 - k. The Administrative Review Captain shall render a decision in writing, or submit a request for deviation to the Undersheriff, within two (2) business days of the hearing. The Administrative Review Captain shall informally brief (e.g., telephone call) his/her Division Commander about the appeal before submitting the package. The Division Commander's responsibility is to confirm the disciplinary appeals process has been adhered to, not to determine the merits of the appeal.
 - l. The decision of the Administrative Review Captain and/or Undersheriff shall be sent to the disciplining supervisor, who shall prepare and serve the appropriate paperwork.
 - m. Employees served with a "[Notice of Disciplinary Action](#)" specifying termination are officially terminated from the agency. They may be reinstated if successful with appeal. They may elect to receive a lump sum payment of accrued compensatory time, which will not be reimbursed if they are successful with appeal. Similarly, if an employee is served with a "[Notice of Disciplinary Action](#)" specifying another type of discipline, that discipline will be

imposed, even if the employee elects to pursue an appeal to a disciplinary appeals board. If the board reduces or dismisses the charges, or reduces the level of discipline, and the Sheriff concurs, the employee's Division Commander shall confirm the employee is reimbursed for loss of pay and/or benefits by forwarding a memo to Fiscal Management.

- n. The "[Notice of Disciplinary Action](#)" form includes spaces for requesting an appeal or for accepting the charges and discipline. If the agency member accepts the charges and discipline, he or she should mark and sign the form and give it to the supervisor who served it (or his or her designee) within twenty-four (24) hours of service. In that case, or if the agency member fails to take any action, all further administrative appeals are deemed waived. The "[Notice of Disciplinary Action](#)" will specify the effective date of the discipline, which must be at least twenty-four (24) hours after service of the "[Notice of Disciplinary Action](#)."
- o. If the agency member who has been served with a "[Notice of Disciplinary Action](#)" wishes to appeal the charges and/or level of discipline to a disciplinary appeals board, he or she must mark the appropriate spaces, sign the form, and return it to the supervisor who served it (or his or her designee) within twenty-four (24) hours of service.
- p. Nothing herein will be construed as prohibiting the Administrative Review Captain from informally contacting the investigating and/or disciplining authority to review his or her reasons for the specified level of discipline.
- q. A representative of the investigating and/or disciplining authority may attend the ARC proceeding and may choose to make a 30-minute or less presentation each. The Administrative Review Captain may require attendance by a representative of the investigating and/or disciplining authority. The Administrative Review Captain may question those representatives at the hearing.

2. Disciplinary Appeals Board

- a. The second phase of the disciplinary review process involves a disciplinary appeals board. It is a post-disciplinary review (occurs after discipline is imposed). The purpose of the disciplinary appeals board is to:
 - 1. Afford the appellant another opportunity to present his or her case.
 - 2. Recommend to the Sheriff whether the charges are reasonable in light of the record in the case.
 - 3. Recommend to the Sheriff whether the level of discipline is reasonable in light of the record in the case.
- b. The disciplinary appeals board that hears the appeal of a Deputy Sheriff shall consist of one (1) Captain, one (1) Lieutenant and one (1) Deputy Sheriff. A subordinate ranking board member may not report in his or her chain of command to anyone of higher rank on the board.

For appeals involving an appellant holding the rank of Corporal or higher, the board shall consist of one (1) Captain, one (1) Lieutenant and one (1) member from a rank equal to or higher than the appellant's rank. For appeals involving an appellant holding a non-sworn position, the board shall consist of one (1) Captain, one (1) Lieutenant and one (1) non-sworn member from a non-sworn equivalent rank equal to or higher than the appellant's non-sworn equivalent rank. No member of the board shall be in the appellant's chain of command. Prior to service on the board, all members shall be appropriately trained in the procedures, duties and responsibilities of the appeals board by the agency General Counsel or designee. The Undersheriff or designee shall assign cases to the boards.

1. The disciplinary appeals board Captain shall be selected by the Sheriff every two (2) years. Up to three (3) Captains may be designated to serve as a Chairperson and as a participant for purposes of establishing up to three (3) boards.
 2. The Lieutenant shall be selected from a list of nine (9) individuals designated by the Sheriff, three (3) will be assigned to each board, one (1) as primary and the other two (2) as alternates for each board. These managers should be non-probationary personnel who hold the rank of Lieutenant and who have not received any discipline within the last twelve (12) months. Upon written request to the chairperson, the appellant may challenge a board member on grounds of substantial conflict. The board chairperson shall determine whether a substantial conflict exists. If the board chairperson determines an alternate board member should be selected, he or she shall advise the new member and the appellant of the decision.
 3. The Sheriff and FOP shall jointly select nine (9) Deputy Sheriff's with five (5) or more years of experience. Three (3) of these deputies shall be assigned to each board, one (1) as primary and the other two (2) as alternates for each board. These individuals should be non-probationary personnel who have not received any discipline within the last twelve (12) months. Upon written request to the chairperson, the appellant may challenge a board member on grounds of substantial conflict. The board chairperson shall determine whether a substantial conflict exists. If the board chairperson determines an alternate board member should be selected, he or she shall advise the new representative and the appellant of the decision.
- c. The Captain shall chair each board and be a voting member. The chairperson may select alternate members of the board as needed. As chairperson, the Captain shall have wide latitude to exclude from consideration evidence that is irrelevant or otherwise does not meet the requirements of this policy and to run the proceedings as he or she deems appropriate to support the board's efficiency and effectiveness. The board chairperson may eject any person who

- disrupts the proceedings.
- d. If the appellant discovers new and material evidence, he or she may ask the board chairperson to exercise his or her discretion to refer it to the investigating authority, disciplining authority, and Administrative Review Captain for review. If the investigating authority, disciplining authority, and Administrative Review Captain do not change their positions, they shall inform the board chairperson and appellant of such in writing, and the Disciplinary Appeal Board proceedings will continue.
 - e. The hearing will be conducted within twenty-one (21) calendar days of the signing of the notice of appeal. The board chairperson shall determine the location for the hearing and contact the appellant to schedule it. The board chairperson shall also contact the investigating authority and the disciplining authority when scheduling the hearing to confirm availability. The board chairperson may approve a reasonable extension of time.
 - f. The board chairperson shall notify the Director of Human Resources about the scheduled hearing. The Director of Human Resources shall confirm all appropriate public notices are made.
 - g. Board hearings are subject to “government in the sunshine” provisions. They are open to the public. A board member is prohibited from discussing a pending case with another member of his or her board before the hearing. Similarly, board members are prohibited from discussing a pending case with the appellant, or a representative of the appellant, before the hearing. Criminal penalties may apply to “government in the sunshine” violations. Board members with questions are encouraged to contact an agency attorney.
 - h. Suspensions of forty (40) hours or less:
 1. The appellant may submit a statement detailing his or her argument in opposition to the charges and/or level of discipline and specifying the remedy sought. In appeals involving discipline in which a suspension of forty (40) hours or less has been imposed, the appellant must demonstrate the charges and/or level of discipline are unreasonable in light of the record in the case. In arguing against the level of discipline, the appellant shall suggest an alternative discipline that he or she considers appropriate. No character references will be submitted or considered. Indication that a person elected or declined the opportunity to participate in a voice stress analysis or a polygraph test will not be submitted or considered. Likewise, the result of such test will not be submitted or considered. An appellant may call witnesses whose testimony formed the basis for the charges being appealed. The appellant must specifically identify those witnesses, fully describing how their testimony formed the basis for the charges being appealed. This document is a “witness proffer.” The board chairperson shall preclude live testimony at the hearing if the witness proffer does not meet the requirements

of this policy. The appellant is responsible for asking all witnesses to voluntarily appear before the DAB. The appellant is also responsible for notifying the witnesses of when and where the hearing will be conducted. If a witness employed by the agency refuses to testify at the hearing, the Board chairperson shall order his or her appearance at the request of the appellant. A disciplinary appeal board does not have subpoena power to compel testimony from persons not employed by the agency; however, upon written request by the appellant at least ten (10) days prior to the hearing, the board chairperson shall issue a letter to a person not employed by the agency requesting that he or she appear at the hearing as a witness. The request will include the individual's last known address. The investigating and disciplining authorities shall not be considered witnesses. Board members shall exclude from consideration any evidence that was not presented to the Administrative Review Captain, unless it is new and material evidence as defined in this policy. If during the proceedings information is proffered or submitted by the investigating and/or disciplinary authority after the appellant has presented their argument and the information was not previously addressed by the appellant, the board chairperson may grant the appellant up to fifteen (15) minutes to provide a rebuttal at the appropriate time but prior to the conclusion of the hearing. The rebuttal is limited only to the information that has not been previously addressed.

2. A minimum of five (5) calendar days prior to the scheduled board hearing, the appellant must deliver his or her original statement and/or proffer of witness testimony to the board chairperson or designee. He or she shall also provide copies of these documents to the investigating and disciplining authorities or their designees, at least five (5) calendar days before the scheduled board hearing. Failure to meet this deadline will result in the statement being excluded from consideration and/or the proposed witnesses being precluded from testifying. The board chairperson may grant a postponement of the hearing and extension of time for submission of these documents to confirm the five (5) day requirement at his or her discretion. The investigating and disciplining authorities may respond in writing to the Board chairperson, with a copy to the appellant, at least twenty-four (24) hours before the board hearing is convened.
3. Board members shall presume the findings of the investigation are valid. The burden of disproving the charges and/or level of discipline is squarely upon the appellant; he or she must demonstrate the charges and/or level of discipline are unreasonable in light of the record in the case.
 - i. Suspensions of forty-one (41) hours or more, a demotion or

termination:

The board chairperson shall convene the hearing, explain its purpose, and identify him or herself, the other board members, the appellant, and all other persons attending. The board chairperson shall confirm the hearing is audio recorded in its entirety and all recordings are appropriately marked. The board chairperson shall swear in witnesses providing live testimony.

1. For purposes of this subsection, an appellant who has received discipline for multiple violations of policy, and/or more than one (1) category of discipline, the appellant may not combine or stack the discipline imposed for each violation to reach the forty-one (41) hours necessary to invoke this subsection. The appellant may submit a statement detailing his or her argument in opposition to the charges and/or level of discipline and specifying the remedy sought. The agency must demonstrate the charges are reasonable in light of the record in the case by a preponderance of the evidence. The board shall consider all evidence presented at the hearing including, but not limited to, the investigative report, all sworn written statements, live testimony, and any other evidence determined to be relevant by the board chairperson. In arguing against the level of discipline, the appellant must demonstrate that the level of discipline is not reasonable in light of the record of the case and shall suggest an alternative discipline that he or she considers appropriate. No character references will be submitted or considered. Either the agency or the appellant may call witnesses whose testimony formed the basis for the charges being appealed. Both the agency and the appellant must specifically identify those witnesses, fully describing how their testimony formed the basis for the charges being appealed. This document is a "witness proffer." The board chairperson shall preclude live testimony at the hearing if the witness proffer does not meet the requirements of this policy. Each party is responsible for asking all of its witnesses to voluntarily appear before the DAB and notifying the witnesses of when and where the hearing will be conducted. If a witness employed by the agency refuses to testify at the hearing, the board chairperson shall order his or her appearance at the request of the appellant. A disciplinary appeal board does not have subpoena power to compel testimony from persons not employed by the agency; however, upon written request by either party at least ten (10) days prior to the hearing, the board chairperson shall issue a letter to a person not employed by the agency requesting that he or she appear at the hearing as a witness. The request will include the individual's last known address. Where a non-employee agency witness has been requested by the board chairperson to appear at the hearing and testify, and does not appear, the agency may

- submit to the board any written or transcribed statement of that witness used as part of the agency internal affairs investigation to satisfy, in whole or in part, the agency's burden of proof. The appellant may also use any such statements under the circumstances outlined. Board members shall exclude from consideration any evidence that was not presented to the Administrative Review Captain, unless it is new and material evidence as defined in this policy. If during the proceedings, information is proffered or submitted by the appellant after the agency has presented their argument and the information was not previously addressed by the agency, the board chairperson may grant the agency up to thirty (30) minutes to provide a rebuttal at the appropriate time but prior to the conclusion of the hearing. The rebuttal is limited only to the information that had not been previously addressed.
2. A minimum of five (5) calendar days prior to the scheduled board hearing, the parties must deliver their original statement and/or proffer of witness testimony to the board chairperson or designee and provide copies of these documents to the other party at least five (5) calendar days before the scheduled board hearing. Failure to meet this deadline will result in the statement being excluded from consideration and/or the proposed witnesses being precluded from testifying. Upon a showing of good cause, the board chairperson has the discretion to postpone the hearing and/or grant an extension of time for timely submission of these documents. The other party may provide a response to the original statement and/or witness list in writing to the board chairperson, with a copy to the appellant, at least twenty-four (24) hours before the board hearing is convened.
 3. If an employee receives discipline for multiple offenses in which categories 2–10 are involved and the level of discipline imposed for any offense is a suspension of forty-one (41) hours or more, or a demotion or a termination, the employee shall be entitled to a single hearing to address all issues. The employee shall bear the burden of proof for all offenses except those for which the level of discipline was a suspension more than forty (40) hours, a demotion or termination. The agency shall bear the burden of proof only for those offenses which the discipline imposed for each offense resulted in a suspension of forty-one (41) hours or more, a demotion, or termination.
- j. The appellant must personally appear at the scheduled hearing. Failure to do so will constitute waiver of any further administrative appeal. The appellant may be accompanied by an attorney who may consult with the appellant during the proceedings but who cannot speak for him or her. Additionally, the appellant may be represented by a non-attorney who can speak on the appellant's behalf. The appellant shall have up to two (2) hours in which to present his or her

- case (e.g., make a verbal statement, present live testimony from witnesses). The appellant must swear to any factual assertions in the verbal statement that are based upon his or her personal knowledge. The board members may question the appellant and all witnesses providing live testimony. The board chairperson may provide up to two (2) additional hours upon good cause shown.
- k. Agency members are expressly cautioned that they may be subject to discipline, up to an including termination, for materially changing sworn testimony for no plausible and appropriate reason. For example, an agency member provides a sworn statement to the investigator, and then becomes concerned that his or her testimony will be unpopular within a certain segment of the agency, so he or she tells a different story under oath to the DAB. A Board member may refer the matter to an appropriate authority for investigation.
 - l. Members of the general public may be present during the hearing.
 - m. The board members shall fairly evaluate the case. The majority opinion will prevail as the board's recommendation, which will be expressed as a simple "with merit" or "without merit." Each charge will receive a separate finding.
 - n. Each board member shall submit a written summary documenting his or her opinion to the board chairperson. All summaries will be attached to the final report signed by the board chairperson and submitted to the Sheriff through the Undersheriff. The final report will state the board's recommendation. The board chairperson shall forward the report to the Undersheriff within two (2) business days of the hearing.
 - o. A representative of the investigating and/or disciplining authority may attend the board hearing and may choose to make a two(2)-hour or less presentation each. The board chairperson may provide up to two (2) additional hours upon good cause shown. The board chairperson may require attendance by a representative of the investigating and/or disciplining authority. The board members may question those representatives at the hearing.
 - p. For purposes of computing the time frames in sub-paragraphs j and o, the time spent by a party eliciting testimony from a witness through that party's direct or cross-examination will be deducted from that party's allotted time.
3. Final Disposition by Sheriff
 - a. The Sheriff is the ultimate authority in all matters of discipline.
 - b. The Sheriff shall review the findings and recommendations of the disciplinary appeals board and send the appellant a decision in writing.
 - c. A copy of the Sheriff's decision and all original recordings and documents related to an appeal, will be forwarded to Professional Standards. Professional Standards shall forward a copy of the final disposition (e.g., "[Notice of Disciplinary Action](#)") to the Human Resources Director for inclusion in the employee's personnel file. A

copy of the Sheriff's decision will be forwarded to the appellant's Division Commander.

M. Miscellaneous Provisions

1. A special order of Court Services will establish and govern all disciplinary appeal procedures for special process servers.
2. In computing a period of days specified in this policy, the day of the act or event will not be included, but the last day of the specified period will be included. For example, an appellant must present his or her sworn written statement to the chairperson of a disciplinary appeals board at least five (5) calendar days before the scheduled hearing. If the hearing is scheduled for April 15th, the appellant may file his or her submission through April 10th (the 10th is not counted, the 15th is).
3. The HR Director must be notified when an agency member who is the subject of an investigation or disciplinary appeal alleges that his or her actions resulted from a medical condition. The HR Director is responsible for addressing the issue. If such an allegation is raised during an ARC or DAB hearing, ARC or DAB members shall not consider it for purposes of deciding the appeal.
4. Appellants shall perform their job duties without disrupting fellow workers, other persons, or agency activities. If deemed necessary, they may be temporarily assigned to other duties or relieved from duty with pay.
5. Appellants shall not use on-duty time to prepare disciplinary appeals. If the appellant's appeal of the policy violation and level of discipline are both found to be "with merit" by the Sheriff, resulting in dismissal of all charges, the appellant may make the following request: The appellant can make a written request to the Division Commander within seven (7) days of the Sheriff's final decision regarding their appeal to have vacation or compensatory time reinstated or compensatory time awarded up to a maximum of eight (8) hours for preparations of their appeal(s) as set forth below. If vacation or compensatory time were used to prepare the appeal, the appellant may request reinstatement of this time up to eight (8) hours total by providing a detailed memorandum with supporting documentation showing the dates working on the appeal, amount of time working on the appeal, amount of time spent and tasks completed. If the individual worked on his or her regular day off, he or she must provide the Division Commander a memorandum with the same information requesting an award of compensatory time of up to eight (8) hours for his or work on the appeal.
6. As noted in this policy, an appellant shall receive one (1) complete copy of the applicable investigative report. However, if the appellant requests a second copy of the report or supporting materials, or if he or she requests public records from the agency in preparing an appeal, the appellant is responsible for paying all related fees.

7. An appellant (or the appellant's representatives) shall not discuss the merits of his or her case with the Administrative Review Captain or with board members before the appropriate hearings. Similarly, the appellant (or the appellant's representatives) shall not discuss the merits of his or her case with the disciplining chain of command, Undersheriff or Sheriff before the entire appeal process is concluded.
8. As described herein, an Administrative Review Captain or Disciplinary Appeals Board chairperson may exclude a statement or other item from consideration. It will be placed in the case file but not considered in deciding the appeal.
9. In the event of an employee's dismissal, the "[Notice of Disciplinary Action](#)" will contain a statement citing the reason for dismissal and the effective date of dismissal.
10. Human Resources shall provide a clearance sheet to terminated employees. The clearance sheet provides information on applicable fringe and retirement benefits.
11. For purposes of this policy, "employee" includes deputies (who are considered "appointees" by law).



Notice of Disciplinary Action

ORANGE COUNTY SHERIFF'S OFFICE

Employee Name: Vidler, Keith	EID. #: 666	Present Unit Assignment: SOD / Traffic	Tracking #: 2020 2021 - V000184
Administrative Charge: GO 5.1.3 (27) Abuse of Power (Category9)			
Personnel shall not use their official position, authority, title, or identification for personal or financial gain for themselves or their associates. Exceptions are agency pay and benefits and off-duty employment that is conducted consistent with G.O. 4.3.1. Personnel shall not use their official position, authority, title or identification to infringe upon a person's civil rights or to otherwise violate the law.			
Details & Remarks: To Wit: Sergeant Vidler used his official position, authority, title and identification to actively infringe upon Mr. Dewitte's fourth amendment right against unlawful seizure and arrest. Sergeant Vidler intentionally arrested Mr. Dewitte, and took away his constitutional right to freedom, when Sergeant Vidler knew there was no probable cause to arrest.			
Disciplinary Action Served: (For Disciplinary Probation, attach supplement 10-1692) Termination			

Served on the 7 day of OCT, 2021.

Effective Date of Discipline (Must be at least 24 hours after date served): OCT 5, 2021

Disciplining Authority Signature: [Signature] Disciplining Authority (Printed Name): Major Stephen M. Garrison

Lieutenant/Cmdr Signature: [Signature] Captain Signature: [Signature]

Major Signature: [Signature]

I acknowledge that I have the right to appeal the disciplinary action pursuant to Sheriff's Office written directives.

VERBAL/WRITTEN REPRIMANDS (There is no appeal to a disciplinary appeals board for verbal and/or written reprimands.)

Acceptance of discipline imposed.

DISCIPLINARY APPEAL SELECTIONS

- Acceptance of discipline imposed. I do not wish a further appeal.
- Request for a Disciplinary Appeals Board. Appeal must be in writing and the employee must personally appear.
- Appeal administrative charge(s): ABUSE OF POWER
- Appeal severity of discipline

SUSPENSION OPTIONS (Exempt personnel must be docked vacation time.)

Accept suspension without pay. Delete time from vacation balance: _____ hours

DISCIPLINARY ACTION RESULTING IN TERMINATION

Request lump sum payment of compensatory time accrued.

Signature of Employee: [Signature] Date: 10/4/21

This will serve to notify you that any discipline resulting in suspension without pay for an entire pay period (80 hours or greater) and/or termination will affect your health insurance benefits. Upon being served your discipline, please contact the Human Resources Division, Risk Management Section (407-254-7400). Risk Management will inform you of what options are available to you. Failure to contact Risk Management will result in cancellation of your benefits.



ORANGE COUNTY SHERIFF'S OFFICE

INTEROFFICE MEMORANDUM

RECEIVED
NOV 09 2021
OCSO
PROFESSIONAL STANDARDS DIVISION

October 27, 2021

TO: Sheriff John W. Mina

VIA: Undersheriff Mark J. Canty
Office of the Undersheriff

FROM: Captain Joe McCollom *J.M.*
Operational Services Bureau
Uniform Patrol Division
Sector II

SUBJECT: Disciplinary Appeals Board Hearing #2021-V00184, Keith Vidler

I have conducted the Disciplinary Appeals Board hearing of Sergeant Keith Vidler's appeal to the charge of "Abuse of Power," and the associated discipline of "termination." The Disciplinary Appeals Board hearing was conducted on Tuesday, October 26, 2021, at 0904 hours, located at Orange County Sheriff's Office Central Operations Complex, 2500 W. Colonial Drive, Orlando, Florida 32804. The Disciplinary Appeals Board was comprised of Captain Joe McCollom as the Board Chairperson, Lieutenant Abby Hilley, and Sergeant D'Angelo Bell.

Pursuant to General Order 5.1.0, the purpose of the Disciplinary Appeals Board is to:

1. Afford the appellant, Keith Vidler, another opportunity to present his case.
2. Recommend to the Sheriff whether the charges are reasonable in light of the record in the case.
3. Recommend to the Sheriff whether the level of discipline is reasonable in light of the record in the case.

Since this matter involved the termination of Keith Vidler, the agency must demonstrate the charges are reasonable in light of the record in the case by a preponderance of evidence. In arguing against the level of discipline, the appellant must demonstrate that the level of discipline is not reasonable in light of the record of the case.

It should be noted that Keith Vidler did not submit a statement detailing his argument in opposition to the charges and/or level of discipline and specifying the remedy sought nor did he submit a witness proffer at a minimum of five (5) calendar days prior to the scheduled board hearing.

As a result, the appellant's intended 36 page statement he utilized at the Administrative Review Captain (ARC) proceeding was excluded from consideration. This was explained to the appellant and his representative, Jay Smith of the Fraternal Order of Police, despite Mr. Smith's disagreeing with this ruling as he believed since the same statement was submitted to the ARC, a submission of the same 36 page statement was not necessary to the Disciplinary Appeals Board.

I explained Training Bulletin 98-1, page 7, states if there is a failure to submit the documents (statement and witness proffer) by the deadline, "*the Disciplinary Appeals Board Chairperson should take the statement, mark the day it was delivered, write that it was received late, and place it in the file with instructions to the other board members not to consider the information for the purposes of the appeal*" which I did. However, I did exercise my "*wide latitude*" to allow the appellant to utilize his exhibits that he submitted to the ARC as he did send me an email dated October 18, 2021 (prior to the 5 calendar day requirement), asking to display the exhibits in his appeal in a Power Point presentation. Although, he again did not properly submit this and provide notice of this intent to the other party, I allowed him to present the aforementioned exhibits and an opportunity to rebut information relayed by the Agency Advocate, Captain Mariluz Santana, during the hearing.

Information and testimony provided by Captain Mariluz Santana and the Investigative Authority, Sergeant Justin Wall, did demonstrate the charges are reasonable in light of the record in the case by a preponderance of evidence. Furthermore, Keith Vidler did not demonstrate that the level of discipline is not reasonable in light of the record of the case.

Upon review and careful consideration of the information presented and provided, I respectfully convey the following decision from this Disciplinary Appeals Board:

1. On the charge of *Abuse of Power*, all three members of the Disciplinary Appeals Board find the appeal to be **Without Merit**.
2. On the appeal of the discipline imposed of *termination*, all three members of the Disciplinary Appeals Board find the appeal to be **Without Merit**.

The following facts cited in this matter strongly influenced my decision of this appeal:

1. The appellant's incorrect interpretation of the applicable Florida State Statute and Jury Instruction.
2. The dismissal of legal direction and guidance provided to the appellant by Orange County Sheriff's Office General Counsel Moore and Captain Sandy Carpenter pertaining to the matter prior to the arrest on March 23, 2021.
3. Commentary revealed during the custodial interrogation of the defendant on March 23, 2021.
4. Despite having ample time, the lack of follow up and consultation with an agency attorney of the Orange County Sheriff's Office Legal Section on his belief after watching a Dr. Phil television show that he could make an arrest for carrying a concealed weapon in holster on a gun belt as carried in this case prior to completing an arrest of the defendant.

5. The lack of a more complete disclosure of the history between the appellant and the defendant, along with the legal direction and guidance provided to the appellant by Orange County Sheriff's Office General Counsel Moore, to make his supervisors aware so that information could have been considered prior to completing the arrest in the case.
6. The personal tone of the interactions between the appellant and defendant as depicted on body worn camera recordings related to the matter.

In closing, the Disciplinary Appeals Board recommends the charges are reasonable in light of the record in the case and recommends the level of discipline is also reasonable in light of the record in the case.

Thank you in advance for your review and consideration.

Attachments



Sheriff John W. Mina
ORANGE COUNTY SHERIFF'S OFFICE
RECEIVED

NOV 04 2021
cc OCSO
PROFESSIONAL STANDARDS DIVISION

November 1, 2021

Mr. Keith Vidler
32848 Wolfs Tr
Sorrento, FL 32776

RE: Tracking #2021-V00184

Dear Mr. Vidler:

I reviewed the results of the Disciplinary Appeal Board that was convened on Tuesday, October 26, 2021, where the below administrative charge and the severity of discipline imposed was appealed:

- G.O. 5.1.3 (27) – Abuse of Power – Termination

I fully concur with the findings of the Disciplinary Appeal Board, which found your appeal of the policy violation to be **“Without Merit.”** Additionally, I agree with the Disciplinary Appeal Board, which found your appeal of the severity of discipline imposed on the administrative charge to be **“Without Merit.”**

As a result, discipline shall be imposed as follows, effective October 5, 2021:

- G.O. 5.1.3 (27) – Abuse of Power – Termination

Sincerely,

John W. Mina
Sheriff

JWM/ag

cc: Professional Standards Division
Human Resources Division
Fiscal Management

