

Docket No. 1883
Correctional Officer
James Nevin
Star # 10809

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County

vs.

Correctional Officer
James Nevin
Star # 10809

)
) **Docket No. 1883**
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)

DECISION

This matter coming on to be heard pursuant to notice before Patrick M. Brady, Board Member, on August 9, 2018, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

James Nevin, hereinafter Respondent, was appointed a Correctional officer on October, 13, 1998. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

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

The original Complaint in this matter was filed with the Merit Board's administrative staff

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on March 15, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court (“Administrative Staff”). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk’s office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on March 15, 2016, commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on March 15, 2016. The Sheriff is seeking a 150 day suspension. A hearing was held on August 9, 2018. At the hearing the evidence conclusively established the Respondent operated a motor vehicle in the State of Illinois with a blood alcohol level of 2.12, which is three times the legal limit. While driving the evidence presented established the Respondent was wearing his Cook County Sheriff’s uniform and had his duty weapon on his person.

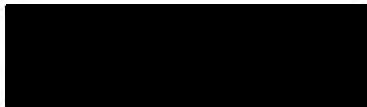
Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that Respondent did violate the Sheriff’s Orders # 3401.11, 11.2.20.0 and the Cook County Sheriff’s Department Rules and Regulations, Article X, Paragraph B.

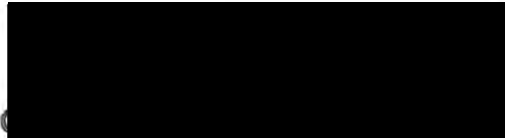
Order

Wherefore, based on the foregoing, it is hereby ordered that James Nevin be suspended for 150 days effective March 15, 2016.

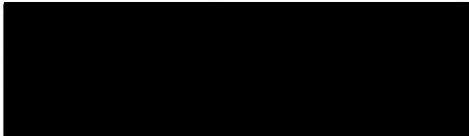
James Nevin
Deputy Sheriff
Docket # 1883



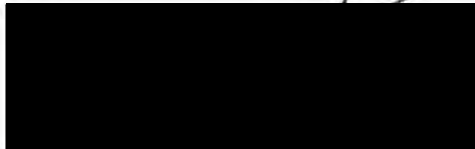
James P. Nally, Chairman



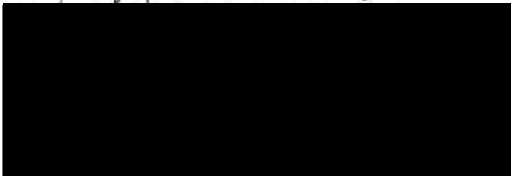
Byron Brazier, Vice-Chairman



John D'Alcandro, Secretary



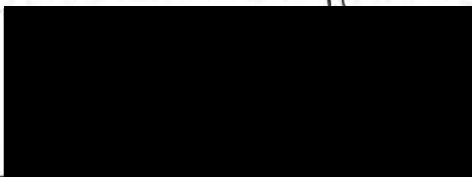
Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date December 14, 2018

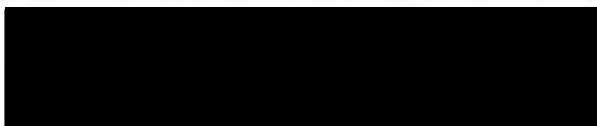
COOK COUNTY SHERIFF'S MERIT BOARD

SHERIFF OF COOK COUNTY)
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 vs.) Docket No. 1883
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 JAMES NEVIN,)
 Correctional Officer,)
 Star #10809)
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DISSENT ON DECISION

I write in dissent of the decision issued by the Board regarding Respondent James Nevin ("Respondent") as to the discipline issued. The Sheriff, in its initial complaint, requested that Respondent receive a suspension of 150 days, which the Board granted. This suspension was issued after finding, by a preponderance of the evidence, that the Respondent violated certain General Orders of the Cook County Sheriff's Office (CCSO) and Merit Board Regulations, as alleged in the initial complaint and confirmed by the final decision in the matter. The Board reached this determination based on the evidence presented, the assessment of the credibility of the witnesses, and the weight given to the evidence in the record.

I agree with the finding in this matter and dissent only as to the discipline issued. Given Respondent's poor judgment in wearing his uniform and carrying his service weapon while intoxicated; his aggressive and uncooperative behavior both at the accident site and in the hospital while receiving treatment; his general lack of candor throughout the investigation process and hearing as evidenced by his incorrect statements to OPR; and (most importantly), the pain and injury he caused an innocent civilian whose vehicle he struck as a result of his drunk driving – I recommend termination as the only appropriate discipline.



Gray I. Mateo-Harris, Board Member

12/14/18
Date