



November 16, 2020

Mr. Max A. Caproni  
Executive Director, Chicago Police Board  
30 North LaSalle Street, Suite 1220  
Chicago, Illinois 60602

*Via* Email and U.S. Mail

RE: Request for Review, Log #1086910

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (Department) in the above captioned matter.

As set forth in detail in COPA's Summary Report of Investigation dated June 30, 2020 (SRI)<sup>1</sup>, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation for separation based on a finding that Officer John Catanzara, Jr. engaged in misconduct when he made a series of electronic communications, in violation of General Order G09-01-06.

The Superintendent bears the affirmative burden of proof in overcoming COPA's disciplinary recommendation. COPA respectfully requests that the Board reject the Superintendent's non-concurrence in this matter for the reasons set forth below.

## **I. BACKGROUND**

### **A. Factual Background<sup>2</sup>**

On September 28, 2017, COPA received a notification from the Department's 8<sup>th</sup> District commander of possible misconduct by Officer Catanzara. The commander indicated that he was contacted from a Chicago Public Schools (CPS) official alerting him to social-media posts and emails attributed to Officer Catanzara, who at the time was assigned as CPD's school resource officer for Hubbard High School. Officer Catanzara's social-media posts and emails were identified as anti-Muslim, sexist, and biased against recipients of social programs. Officer Catanzara also identified himself as a Department member when he sent email messages to CPS administrators accusing CPS employees of improper and racially discriminatory recruiting tactics for high school athletes. COPA's investigation ultimately sustained 16 allegations related to Officer Catanzara's statements.

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<sup>1</sup> As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, the Department's September 29, 2020, non-concurrence letter, and the certificate of meeting.

<sup>2</sup> A more detailed factual summary can be found in COPA's SRI.

## **B. Legal Background**

General Order G09-01-06 governs Department members' personal use of social media, and specifically prohibits posting:

(1) any communications that discredit or reflect poorly on the Department, its missions, or goals; and

(2) content that is disparaging to a person or group based on race, religion, sexual orientation, or any other protected class.<sup>3</sup>

Additionally, G09-01-06 instructs Department members to "be mindful that their communications become part of the worldwide electronic public domain . . . and they should never assume that personal information posted on such sites is protected or secure."<sup>4</sup>

## **C. Disputed Findings & Recommendation**

As the Superintendent states in the enclosed letter, he does not concur with COPA's disciplinary recommendation to separate Officer Catanzara from the Department. After reviewing the electronic communications in question, COPA concluded that 16 of 17 Allegations against Officer Catanzara should be sustained, as his communications were in violation of Department policy under General Order G09-01-06. The Superintendent agreed with all but two of COPA's findings (Allegations #6 and #9) and suggested that a one-year suspension would be more appropriate for the proposed 14 sustained allegations.

While COPA reaffirms its findings that Officer Catanzara's conduct from Allegations #6 and #9 were contrary to policy, these two allegations are not dispositive of the recommendation to separate him from the Department. The Superintendent's own admission that *fourteen* of Officer Catanzara's communications were in violation of G09-01-06 is more than enough to warrant the recommended discipline. The fact that Officer Catanzara violated Department policy so many times, in many instances with statements that were egregiously vile and bigoted, is sufficient to warrant his discharge. The recommended discipline is appropriate whether it is the consequence of fourteen instances of misconduct, or sixteen.

## **II. ANALYSIS**

### **A. The Department Fails To Apply The Preponderance of The Evidence Standard**

This is an administrative proceeding, pertaining only to *how* Officer Catanzara should be disciplined for misconduct. It is not a criminal proceeding, which is governed by the much more stringent reasonable doubt standard. Unlike in a criminal trial, the Officers' liberty is not at stake. Thus, administrative proceedings such as this are governed by the preponderance of the evidence standard, a significantly lower standard than the reasonable doubt standard.

The preponderance standard is met when a proposition is more probably true than not.<sup>5</sup> Thus, the existence of *any* doubt in this case in no way justifies a different outcome than that reached by

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<sup>3</sup> General Order G09-01-06(V)(C)(1) & (2)

<sup>4</sup> *Id* at (V)(A)

<sup>5</sup> *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005)

COPA. The Superintendent concedes that a vast majority of Officer Catanzara's statements in question violated Department policy. Therefore, the only determination that must be made in this non-concurrence review process is whether the Department has met its affirmative burden of showing that COPA's recommended discipline is inappropriate.<sup>6</sup>

**1. The Department has Failed to Meet its Affirmative Burden of Showing that COPA's Recommended Discipline is Inappropriate.**

The Superintendent suggests that a one-year suspension is appropriate but offers no argument in support thereof. In fact, the Superintendent concedes "that the actions of Officer Catanzara are clear and egregious violations of the rules and do not reflect the goals of the Department and are certainly not in line with ... the Consent Decree."<sup>7</sup> Additionally, the Superintendent acknowledges that Officer Catanzara's statements "are obscene, disrespectful, and intended to degrade and insult," as well as "patently offensive, advocate violence and demonstrate bias."<sup>8</sup> COPA concurs with the Superintendent's characterization of Officer Catanzara's statements, and reaffirms its recommendation that separation is the appropriate discipline.

Simply put, the Superintendent failed to articulate *any* basis as to why he believes COPA's recommendation is inappropriate, and therefore has not met his affirmative burden. While the inquiry could end there, it is also instructive to note that relevant case law has consistently upheld a Department's right to dismiss officers for their statements, postings, and/or online communications.<sup>9</sup>

Indeed, "[O]ne's right to be a police officer (...) who publicly ridicules those he is commissioned to protect and serve is far from absolute. Rather, it is tempered by the (...) potential disruptive effects of the employee's conduct on the public mission of the police departments."<sup>10</sup> As summarized above, and fully articulated in the enclosed SRI, Officer Catanzara's communications directly attack those he is supposed to protect and serve in a bigoted and reprehensible manner, and clearly demonstrate the potential to be immensely disruptive to the mission of the Department. Consequently, his separation is more than justified.

**III. CONCLUSION**

Based on all of the foregoing, the Department has failed to meet its affirmative burden of showing COPA's disciplinary recommendation in this case was unreasonable. COPA correctly found that Officer Catanzara's conduct was unjustified, and recommended an appropriate discipline commensurate with the misconduct. Accordingly, COPA respectfully requests that the Chicago

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<sup>6</sup> See: Municipal Code of Chicago Section 2-78-130(a)(iii)

<sup>7</sup> See: Superintendent's Non-Concurrence with Log # 1086910

<sup>8</sup> *Id*

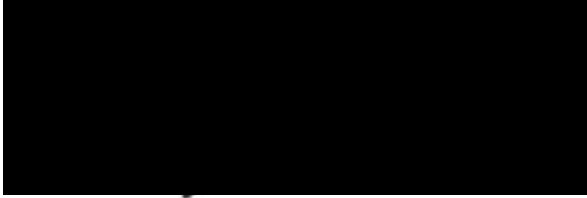
<sup>9</sup> See: *Lalowski v. City of Des Plaines*, 789 F.3d 784 (7th Cir. 2015) (affirming the termination of an officer's employment and finding that the government's "interests in running an efficient and effective police department outweighed [the officer's] speech interests, even in relation to his statements that directly addressed matters of public concern."); *Pappas v. Giuliani*, 290 F.3d 143 (2d Cir. 2002) (affirming the dismissal of an officer and finding that the officer's racist diatribes, although anonymous, had a high capacity to impair the effective functioning of the police department and to incite anger and discord among other police officers); *Eaton v. Harsha*, 505 F. Supp. 2d 948 (D. Kan. 2007) (granting summary judgment and finding that the City of Topeka Police Department did not violate the officers' First Amendment rights when it discharged them for racially offensive emails to an African-American writer).

<sup>10</sup> *Locurto v. Giuliani*, 447 F.3d 159, 179-80 (2d Cir. 2006)

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Police Board reject the Department's non-concurrence in this matter and accept COPA's recommendation to separate officer Catanzara.

Respectfully,



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Sydney Roberts  
Chief Administrator  
Civilian Office of Police Accountability

Encl:  
COPA's Final Summary Report of Investigation  
The Department's September 29, 2020, Non-Concurrence letter  
The Certificate of Meeting

cc:  
COPA General Counsel Kevin Connor  
CPD Superintendent David Brown  
CPD General Counsel Dana O'Malley