

Nos. 19 RR 07 & 08
Police Officers Nisivaco & Howard
Request for Review and Opinion

Allegation No. 11: On April 23, 2018, at approximately 7:47 p.m., in the vicinity of 41 West 71st Street, Chicago, Officers Nisivaco and Howard allowed Mr. [REDACTED] to drive on a suspended license, in violation of Rule 2, which prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

The Chief Administrator recommended that each officer receive a three-day suspension and training for Allegation Nos. 3 and 11, and a one-day suspension for Allegation Nos. 9 and 10.

The Superintendent concurred with the Chief Administrator's recommendations that Allegation Nos. 9, 10, and 11 be *Sustained*. The Superintendent objected to the Chief Administrator's recommendations regarding Allegation No. 3 and the penalty. The Superintendent recommended that Allegation No. 3 be classified as *Unfounded*, and recommended entry of "Sustained—Violation Noted, No Disciplinary Action" on each officer's disciplinary record.

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendation for discipline on February 27, 2019; (2) the Chief Administrator received the Superintendent's written response on April 8, 2019; (3) the Chief Administrator's designees met with the Superintendent's designees in person and discussed this matter on April 22, 2019; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on April 29, 2019.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to John P. O'Malley Jr., the member of the Police Board who was selected on a random basis, pursuant to Article VI of the Police Board's Rules of Procedure ("Reviewing Member"). The Reviewing Member considered the Request for Review pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago and Article VI of the Police Board's Rules of Procedure.

OPINION

Based on a thorough review of the Request for Review file, it is my opinion that the Superintendent has met his burden of overcoming the Chief Administrator's recommendations for discipline.

Regarding Allegation No. 3, in my opinion, the Superintendent's position that handcuffing the two passengers was justified is more reasonable and appropriate than the Chief Administrator's recommendation. While handcuffing individuals is a serious matter, officers have to use judgement based on a totality of the situation and should be able to articulate the reason for an arrest or a brief detention. I believe both officers were able to articulate their actions. In this case, while approximately 30 minutes may seem long, I find it was reasonable based on the totality of the situation. The Chief Administrator states that "a reasonable officer with police training would have simply requested backup from other police officers in the area rather than unnecessarily handcuffing the passengers." While this may be a tactic that could have been used, the reality is that in busy districts like this one, backup is often not readily available; in addition, the officers anticipated that a sergeant would soon respond.

Regarding the penalty for the sustained findings for Allegation Nos. 9-11, in my opinion, based on the officers' relatively short period on the job and their good record so far, the Superintendent's recommendation is more reasonable and appropriate. (I also believe that the officers should be given additional training in the areas related to the sustained allegations.)


For these reasons, the Superintendent met his burden of overcoming the Chief Administrator's recommendations for discipline. Therefore, pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Superintendent's response—that Allegation Nos. 9, 10, and 11 be *Sustained*, Allegation No. 3 be classified as *Unfounded*, and "Sustained—Violation

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Noted, No Disciplinary Action" be entered on each officer's disciplinary record—shall be implemented.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 07th DAY OF MAY, 2019.



JOHN P. O'MALLEY JR. 
Member
Police Board

Attested by:



MAX A. CAPRONI
Executive Director
Police Board