

July 1, 2004

James Pina, COMMANDER
Phoenix Police Department
620 W. Washington St.
Phoenix, AZ 85003

Dear Commander Pina:

On Wednesday, June 30 I was informed by Officer [REDACTED] that he was scheduled for a DRB on Thursday, July 22. This prompted me to call Pat Collay at PSB to get a DRB packet. Upon receiving this packet on Wednesday I was confused and disappointed to see that the investigation that the DRB was receiving was different than the draft investigation that I had in my possession. No changes were agreed upon (as can be seen in on the IRC form) but yet at least four pages of changes along with additional documentation was added to the DRB packet. Please allow me to share with you the differences in the post IRP draft (BLUE) and the DRB packet (YELLOW).

DRAFT - Blue	DRB PACKET - Yellow
The investigation is dated February 6, 2004	The investigation is dated February 6, 2004
The investigation is numbered from page 2 to page 21	The investigation is numbered from page 2 to page 24
Signed on page 21 by investigating sergeant on February 12, 2004	Signed on page 24 by investigating sergeant on April 2, 2004
No matrix worksheet included	Matrix work included and dated March 2, 2004
Page 2 under MISCONDUCT VIOLATION reads: “Unprofessional Conduct, Operations Order 3.18 Addendum A 3.B.(8).(a)	Page 2 under MISCONDUCT VIOLATION reads as follows: “ <u>Failure to respond to calls</u> , ‘Attention to Duty, Employees will maintain a professional approach to their duties at all times’. Operations Order 3.13.4.D. (1) <u>Responded late to call</u> , ‘Employees will respond to all radio assignments promptly and return to service as soon as possible’. Operations Order 8.3.3.A. <u>Avoiding call disposition by driving in the opposite direction of a call</u> , ‘Attention to Duty, Employees will maintain a professional approach to their duties at all

times'. Operation Order 3.13.4.D.(1)

Failure to call in Departmental Reports, 'All reports taken during a shift must be completed (dictated, handwritten, or by direct entry on PACE) prior to the end of the shift unless authorized by a sworn supervisor'. Operations Order 8.4.2.C. (1)

Failure to make backup for another officers, 'Employees will respond to all radio assignments promptly and return to service as soon as possible'. Operations Order 8.3.3.A

Using "false" MDT status, 'Employees will keep their status updated via the MDT at all times'. Operations Order 8.3.13.B. (3)

Failure to update status, 'Employees will keep their status updated via the MDT at all times'. Operations Order 8.3.13.B. (3)

Failure to properly investigate crimes (stolen vehicle not fingerprinted), 'Latent Fingerprints, Since fingerprints are extremely valuable as physical evidence, officers will make every effort to obtain them at crime scenes. Operations Order 8.1.4.C (1).

Failure to properly sign in and out of Municipal Court, 'Employees appearing in Phoenix Municipal Court will sign the Court Sign-In log located at Court Services upon their arrival at court'. Operations Order 2.9.1.D.

Failure to advise a supervisor when taking a code-7 outside the city, 'Patrol officers will not leave their squad area for a Code 7 or a 10-40, unless adequate eating facilities are unavailable, without the authorization of their supervisor' and 'On-duty employees will not leave the city limits, except when on official police business, and will advise radio of their

	<p>destination/purpose'. Operation Orders 4.1.6.D. (1) and 3.13.4.K.</p> <p><u>Failure to arrive for briefing on time</u>, 'Uniformed employees will report for duty in full uniform at times established by their assignment or as determined by their supervisor'. Operation Orders 4.1.2.A</p>
No IRP memo dated March 26, 2004	IRP memo dated March 26, 2004
No Investigative Review Control Form attached.	Investigation Review Control Form attached signed by the Commander Forster on 04-02-04 and Assistant Chief Ontiveros on 04-23-04 .
Under the work history section (page 21) there is no handwritten notation in reference to the Discipline dated as April 16 th , 2003.	Under the work history section (page 22) there is a handwritten notation in reference to the Discipline dated as April 16 th , 2003. This handwritten notation reads, "B" Violation and is initialed.
<p>The RECOMMENDATION section on page 21 reads as follows:</p> <p>Based upon the information contained in this investigation, I recommend that this investigation be reviewed through the chain of command, and routed to the Disciplinary Review Board for their analysis concerning disciplinary action. The review would be for the following policy violation; "Unprofessional Conduct, as defined in the Classification Guidance Criteria (non-criminal activity), Operations Order 3.18 Addendum A.3.B.(8).(a). Under Operations Order 3.18. Addendum A 4.B (Classification Guidance Criteria) this investigation warrants "increased severity" as it falls under, "The employee has received prior recent discipline for the same or similar violation" and "Mandatory suspension minimum of Class B Step 2, Aggravating circumstances outweigh all other factors where conduct is egregious to the extent that a suspension is prudent."</p>	<p>The RECOMMENDATION section on page 23 reads as follows:</p> <p>Based upon the information contained in this investigation, I recommend that this investigation be reviewed through the chain of command, and routed to the Disciplinary Review Board for their analysis concerning disciplinary action. The review would be for the following policy violations:</p> <ul style="list-style-type: none"> • <u>"Failure to respond to calls</u>, 'Attention to Duty, Employees will maintain a professional approach to their duties at all times'. Operations Order 3.13.4.D. (1) • <u>Responded late to call</u>, 'Employees will respond to all radio assignments promptly and return to service as soon as possible'. Operations Order 8.3.3.A. • <u>Avoiding call disposition by driving in the opposite direction of a call</u>, 'Attention to Duty, Employees will maintain a professional approach to their duties at all times'. Operation Order 3.13.4.D.(1)

	<ul style="list-style-type: none">• <u>Failure to call in Departmental Reports</u>, 'All reports taken during a shift must be completed (dictated, handwritten, or by direct entry on PACE) prior to the end of the shift unless authorized by a sworn supervisor'. Operations Order 8.4.2.C. (1)• <u>Failure to make backup for another officers</u>, 'Employees will respond to all radio assignments promptly and return to service as soon as possible'. Operations Order 8.3.3.A• <u>Using "false" MDT status</u>, 'Employees will keep their status updated via the MDT at all times'. Operations Order 8.3.13.B. (3)• <u>Failure to update status</u>, 'Employees will keep their status updated via the MDT at all times'. Operations Order 8.3.13.B. (3)• <u>Failure to properly investigate crimes (stolen vehicle not fingerprinted)</u>, 'Latent Fingerprints, Since fingerprints are extremely valuable as physical evidence, officers will make every effort to obtain them at crime scenes. Operations Order 8.1.4.C (1).• <u>Failure to properly sign in and out of Municipal Court</u>, 'Employees appearing in Phoenix Municipal Court will sign the Court Sign-In log located at Court Services upon their arrival at court'. Operations Order 2.9.1.D.• <u>Failure to advise a supervisor when taking a code-7 outside the city</u>, 'Patrol officers will not leave their squad area for a Code 7 or a 10-40, unless adequate eating facilities are
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<p><i>This section is signed by the investigating sergeant and is dated "2-12-04."</i></p>	<p>unavailable, without the authorization of their supervisor' and 'On-duty employees will not leave the city limits, except when on official police business, and will advise radio of their destination/purpose'. Operation Orders 4.1.6.D. (1) and 3.13.4.K.</p> <ul style="list-style-type: none"> • <u>Failure to arrive for briefing on time</u>, 'Uniformed employees will report for duty in full uniform at times established by their assignment or as determined by their supervisor'. Operation Orders 4.1.2.A <p>These violations have all been combined under the Matrix as "Unprofessional Conduct", as defined in the Classification Guidance Criteria (non-criminal activity), Operations Order 3.18. Addendum A 3.B.(8).(a).</p> <p>Under Operations Order 3.18. Addendum A 4.B (Classification Guidance Criteria) this investigation warrants "increased severity" as it falls under, "the employee has received prior discipline for the same or similar violation, and "Mandatory suspension minimum of Class B Step 2 , Aggravating circumstance outweigh all other factors where conduct is egregious to the extent that a suspension is prudent."</p> <p><i>This section is signed by Lt. Renteria and Commander Forster as well as the investigating sergeant and is dated "04-02-04."</i></p>
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In reference to the recommendation section, it appears that Ops Order 3.18 H.(4) was not adhered to. This policy states:

(4) If extreme mitigating or aggravating factors exist relative to the policy violation and/or the employee has a history of serious policy violations commanders/administrators may deviate from the standard recommended level of disciplinary action in the Discipline Matrix upon approval of the Executive Officer Assistant Chief (emphasis mine).

- **A memorandum will be written and forwarded** (emphasis mine) through the chain of command for the Executive Officer, Assistant Chief's consideration in order to deviate from the Matrix.
- **The affected employee will be provided a copy of the memorandum** (emphasis mine).
- The Executive Officer Assistant Chief may request that the commander/administrator and/or the employee (with association representation if desired by the employee) attend a meeting to discuss the deviation request.

Neither [REDACTED] nor I received a copy of the required memo that would support a position showing aggravating circumstances that would merit a suspension. Not only did we not receive a copy of this memo but a copy of it was not attached to the DRB packet.

Also attached to this memo is a complaint letter written to Assistant Chief Ontiveros that was sent on February 4, 2004. To date, no response concerning the alleged supervisory misconduct or the discrepancies/subjectivity of Sgt. Greenlee's notes have been addressed. This too is very disheartening.

Michelle, Jake, and I had the opportunity to have lunch with Chief Harris this week. He expressed concerns to us that he was seeing "charges being stacked" against officers in investigations instead of one single underlying charge. I replied to him that I hadn't seen this taking place but then this situation came across my desk the next day. This is an example of "stacking charges." I feel that it is an example of Commander Forster allowing supervisors to take liberty with policy, to avoid policy, and to take administrative actions from a position of bad faith which borders on deceitfulness and a dishonest manipulation of the facts. I am requesting a formal investigation be initiated as to the course of action taken by the past chain-of-command at Maryvale precinct. I am requesting another IRP take place in light of the new investigation under consideration. I am requesting compliance with policy if aggravated charges outside of the matrix are being requested.

Your input and intervention are eagerly anticipated and greatly needed in this issue.

Sincerely,

MARK SPENCER
PLEA Secretary

C: Jake Jacobsen, PRESIDENT
Michelle Monaco, VICE PRESIDENT/GRIEVANCE CHAIR
Jack Harris, INTERIM POLICE CHIEF
Sil Ontiveros, ASSISTANT POLICE CHIEF