



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

Received
City of Austin
2017 MAY 11 PM 12:05
Human Resources Dept

TO: Joya Hayes, Director of Civil Service
FROM: Brian Manley, Interim Chief of Police
DATE: May 11, 2017
SUBJECT: Temporary Suspension of Police Officer Alberto Martinez #7857
Internal Affairs Control Number 2016-1297

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Alberto Martinez #7857 from duty as a police officer for a period of ten (10) days. The suspension is effective beginning on May 12, 2017 and continuing through May 21, 2017.

I took this action because Officer Martinez violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Officer Martinez in violation of Rule 10:

On November 18, 2016, Officer Alberto Martinez, while off duty, went to the Omni hotel located at 700 San Jacinto Boulevard to socialize. Officer Martinez checked his vehicle with the valet service at 7:30 p.m. Officer Martinez also removed his personally owned handgun and police badge from his vehicle and secured the items in a hotel room closet.

Thereafter, Officer Martinez and a group of acquaintances walked downtown to the 6th Street area and went to three bars. Officer Martinez advised Internal Affairs investigators that he consumed three and a half mixed drinks after arriving at the hotel, which was in addition to a half a margarita he consumed prior to arriving at the Omni.

At approximately 2:00 a.m. into November 19, 2017, Officer Martinez returned to the Omni and retrieved his gun and badge from the hotel room. Officer Martinez then went to the lobby to get his vehicle, but was stopped by an Austin Police Department (APD) officer because the hotel staff indicated Officer Martinez was possibly intoxicated.

Several other APD officers were called to the scene and they determined Officer Martinez was intoxicated. Officer Martinez later acknowledged to investigators he was impaired and a danger to himself or others by virtue of having his handgun on his person and for seeking his vehicle when he was likely too impaired to drive.

By these actions, Officer Martinez violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 900.1.1: General Conduct and Responsibilities: Responsibility to Know and Comply**

900.1.1 Responsibility to Know and Comply

The rules of conduct set forth in this policy do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.

- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

To Wit:

Texas Penal Code Sec. 49.02. PUBLIC INTOXICATION.

- (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.
- (c) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

➤ **Austin Police Department Policy 364.3(d): Off-Duty Law Enforcement Actions: Firearms**

364.3(d) Firearms

Officers of this department may carry firearms while off-duty in accordance with federal and state law and department policy.

- (d) Firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage, or taken any drugs, that would tend to adversely affect the officer's senses or judgment.

By copy of this memo, Officer Martinez is hereby advised of this temporary suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) calendar days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Officer Martinez is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, or that the order was procured by fraud, collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.

By copy of this memo, Officer Martinez is hereby advised that this temporary suspension may be taken into consideration in my determination as to whether a valid reason may exist to bypass him for future promotion in accordance with Austin Police Department Policy 919.

Brian Manley 2246 *FOR CHIEF MANLEY*

BRIAN MANLEY, Interim Chief of Police

5/11/2017

Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of temporary suspension and I have been advised that if I desire to appeal that I have ten (10) calendar days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.

Alberto Martinez #7857

Police Officer Alberto Martinez #7857

05/11/2017

Date