

STATE OF NEW YORK
COUNTY OF ONTARIO

CITY OF CANANDAIGUA

In the Matter of the Charges Preferred by
the CITY OF CANANDAIGUA,

Employer,

-vs-

KARL S. WINTER,

Employee.

BRIEF ON BEHALF OF THE
CITY OF CANANDAIGUA

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I. STATEMENT OF THE CASE

On November 30, 1990, the City of Canandaigua ("City") preferred disciplinary charges against Police Officer Karl S. Winter, Jr. ("Officer Winter" or "defendant"), pursuant to Section 75 of the Civil Service Law. (H.O. Ex. 1)¹ On December 7, 1990, the defendant submitted an Answer through his union attorney containing a general denial of the charges. (H.O. Ex. 2) In accordance with Civil Service Law §75, the City then appointed a Hearing Officer (H.O. Ex. 3) and, thereafter, hearings were held on January 30 and January 31, 1991.

Throughout the course of the above-noted hearing, both the City and the defendant, through their respective counsel, were given a full and fair opportunity to present witnesses and documentary evidence. In addition to the three Hearing Officer exhibits, the City submitted eight exhibits and presented eight witnesses to substantiate the charges of misconduct and incompetency. The defendant submitted two exhibits and chose to offer only his own testimony to refute the charges. At the close of the proceeding, the parties elected to submit post-hearing briefs.

¹ References to Hearing Officer Exhibits will be prefaced by "H.O. Ex."; references to Exhibits submitted by the City will be prefaced by "C. Ex."; and references to the hearing transcript will be prefaced by "TR".

This brief will review each disciplinary charge, referencing the testimonial and documentary evidence elicited in support thereof. Following this analysis of the evidence presented, the argument will show that Officer Winter is guilty of misconduct and incompetency, and that dismissal of his services is the appropriate penalty.

II. DISCIPLINARY CHARGES

A. Charge One -- Unlawful Dealing With A Child: Providing Alcohol To A Person Less Than Twenty-One Years Old.

During the early part of September, 1990, Officer Winter noticed a young woman walking in the City of Canandaigua, stopped his patrol car and engaged her in a conversation. (C. Ex. 3; TR. 30; TR. 58; TR. 327). This young woman--[REDACTED]--testified that the defendant spoke to her for approximately one-half hour, drove away, but returned a short time later to engage in further conversation. (C. Ex. 3; TR. 30; TR. 59). During this second encounter, Officer Winter invited [REDACTED] out for drinks, and, upon being informed by her that she was only twenty years old, told her "not to worry" because he could arrange for her to drink at a bar. (C. Ex. 3; TR. 30; TR. 64). [REDACTED] then agreed to this invitation and provided the defendant with her home telephone number. (C. Ex. 3; TR. 30).

Over the course of the next several weeks, Officer Winter called [REDACTED] residence, left several messages with her roommates, but did not receive a return response from [REDACTED] (C. Ex. 3; TR. 30). Finally, one evening in mid-to-late September, 1990, Officer Winter called [REDACTED] [REDACTED] from the Niagara Bar, spoke to her and invited her out for drinks on that evening. (C. Ex. 3; TR. 31; TR. 64). Before leaving the restaurant to pick up [REDACTED], the defendant spoke to [REDACTED]-the bartender on duty that evening. (C. Ex. 4; TR. 100; TR. 377-378). [REDACTED] testified, and the defendant admitted, that he (the defendant) told [REDACTED] that he (the defendant) would be returning to the bar with a young woman who was from Massachusetts and was looking to meet people. (C. Ex. 4; TR. 100; TR. 378). [REDACTED] further testified that Officer Winter informed him that this woman had just turned twenty-one years old. (C. Ex. 4; TR. 100).

Following this conversation, Officer Winter left the bar and picked up [REDACTED] at her residence. [REDACTED]. [REDACTED] testified that on the way to the bar, the defendant instructed her not to tell anyone about where they were going because he would lose his job. (C. Ex. 3; TR. 32; TR. 67). [REDACTED] further testified that Officer Winter asked her if she had a fake ID and, after informing the defendant that she

did not, he told her that he had already set it up for her to drink. (C. Ex. 3; TR. 32; TR. 67).

After arriving at the bar, Officer Winter ordered and purchased at least two "Midouri Sours"² for [REDACTED] and beer for himself. (C. Ex. 3; C. Ex. 4; TR. 34; TR. 35; TR. 104). [REDACTED] testified that when [REDACTED] excused herself to go to the ladies' room, he asked the defendant if he was sure she was 21 years old. (C. Ex. 4; TR. 105; TR. 112-113; TR. 379). Officer Winter responded to this question by informing [REDACTED] that he had checked [REDACTED] license and that she was. (C. Ex. 4; TR. 105; TR. 113).

When [REDACTED] returned from the ladies' room, she and the defendant continued to drink at the bar until midnight. (C. Ex. 3; C. Ex. 4; TR. 35; TR. 68; TR. 105).³ [REDACTED] testified that after leaving the bar, Officer Winter drove to a local convenience store, purchased a four-pack of wine coolers as well as a six-pack of beer, and then proceeded to his friend's apartment. (C. Ex. 3; TR. 36; TR. 70). Once inside this apartment, [REDACTED] testified that

² A "Midouri Sour" is an alcoholic beverage consisting of vodka, orange juice and the Midouri liqueur. (TR. 102).

³ In total, [REDACTED] drank five drinks while at the Niagara Bar, all of which were purchased by Officer Winter. In addition to the Midouri Sour, Officer Winter ordered and paid for at least two "Fireballs"--shots of alcohol consisting of cinnamon schnapps and Tabasco. (C. Ex. 3; C. Ex. 4; TR. 35; TR. 103).

the defendant gave her one of the wine coolers, tried to kiss her, made other advances of a sexual nature, and, at one point, even offered to get her pregnant and send her money as long as she did not tell his wife. (C. Ex. 3; TR. 37-39). After resisting these advances for approximately 45 minutes, Officer Winter finally agreed to take M [REDACTED] home. (C. Ex. 3; TR. 37-39). On the way home, however, Officer Winter again insisted that [REDACTED] refrain from telling anyone about the events which had transpired on that evening. (C. Ex. 3).

Based on the foregoing conduct, Officer Winter was arrested on November 21, 1990, and charged with two counts of unlawfully dealing with a child--a class B misdemeanor--in violation of New York Penal Law §260.20(4). (C. Ex. 6; C. Ex. 7; TR. 262; TR. 285). Lieutenant Jon Wittenberg testified that when he informed the defendant that he was to be arrested, Officer Winter responded by asking "for unlawfully dealing"--to which Lt. Wittenberg responded "yes"; and then asked: "for the girl at the Niagara"--to which Lt. Wittenberg also responded "yes." (TR. 262; TR. 290).

B. Charge Two -- Harassment Of [REDACTED]

On October 31, 1990, Officer Winter telephoned [REDACTED] at her place of employment at approximately 3:30 p.m.

and told her that he needed to speak with her because she was in trouble. (C. Ex. 3; TR. 42; TR. 75). After refusing this request, Officer Winter then told [REDACTED] that [REDACTED], her boyfriend, was "trying to set her up", in legal trouble, and advised her not to "sleep with", call or see her boyfriend. (C. Ex. 3; TR. 42; TR. 76). [REDACTED] testified that when she asked Officer Winter to explain the basis for these statements, he refused to do so and insisted that he needed to speak with her in person because the telephone might be tapped. (C. Ex. 3; TR. 43).⁴

Notwithstanding the fact that [REDACTED] refused these requests, Officer Winter entered the YMCA at approximately 4:00 p.m., went down to the pool area where [REDACTED] was on duty and insisted that she speak to him. (C. Ex. 3; TR. 43). He then directed [REDACTED] into the lifeguards' room, displayed a tape recorder and asked [REDACTED] if she would allow him to tape record their conversation. (C. Ex. 3; TR. 43; TR. 78-79). After [REDACTED] stated that "she had nothing to hide", the defendant proceeded to record a conversation in which he asked her: (1) to explain the nature of

⁴ [REDACTED] testified that in response to Officer Winter's claim concerning the telephone, she stated that the lines were not tapped. Officer Winter responded to this statement by informing [REDACTED] that he was a cop and knew these things. (C. Ex. 3; TR. 43).

her relationship with her boyfriend, [REDACTED]; (2) whether she slept with her boyfriend; (3) to identify the place where she slept with [REDACTED]; (4) to identify who her boyfriend lived with; (5) whether [REDACTED] was married or had a girlfriend; (6) whether her boyfriend stole or was involved in drugs; (7) whether her boyfriend ever mentioned his (Officer Winter's) name; (8) whether she had done anything wrong; (9) whether she had made love to him (Officer Winter); (10) whether she wanted to make love to him; (11) whether she was going to repeat any part of the taped conversation to any other individual; and (12) whether she voluntarily allowed the defendant to tape record the conversation. (TR. 44-45; TR. 81-86).

After completing the foregoing interrogation, Officer Winter turned the tape recorder off, told [REDACTED] to leave the room and remained in the room with the door closed for approximately two minutes. (C. Ex. 3; TR. 46). [REDACTED] testified that when Officer Winter came out of the room, he informed her that neither she nor [REDACTED] were in any trouble. (TR. 46; TR. 88). She further testified that the defendant asked her if she intended on telling anyone about this incident. (C. Ex. 3; TR. 90). After she responded, "I don't know", the defendant told [REDACTED] that he would "get in trouble" if she did. (C. Ex. 3; TR. 90).

Shortly after leaving the YMCA, Officer Winter called [REDACTED] at work approximately five more times on October 31, 1990. (C. Ex. 3; TR. 47). [REDACTED] testified that Officer Winter repeatedly asked her not to tell anyone about his conduct on that afternoon because he would get in trouble. (TR. 47; TR. 89-90). She also testified that Officer Winter refused to explain the reason for his conduct, referring--once again--to the possibility of a phone tap. (TR. 47). Although [REDACTED] informed the defendant she did not want to talk to him, Officer Winter called [REDACTED] on November 1, asked her if she knew a person by the name of Chuck Bardeen and informed her that Mr. Bardeen was in a lot of legal trouble. (C. Ex. 3; TR. 47-48). Once again, [REDACTED] told the defendant she did not want to talk to him and hung up the phone. (C. Ex. 3; TR. 47-48).

Based on the nature of foregoing conduct, [REDACTED] contacted the Canandaigua Police Department on November 1, 1990, informed them about Officer Winter's conduct and asked whether she could press charges against the defendant for harassment. (TR. 49; TR. 91; TR. 95). Although [REDACTED] was advised by Lt. Wittenberg that the defendant's conduct on October 31 constituted "harassment", he also advised her "to think it over." (TR. 49; TR. 91; TR. 95; TR. 260). On November 6, 1990, [REDACTED] contacted Lt.

Wittenberg and requested that a harassment charge be brought against the defendant. (TR. 260). Despite being advised, once again, to "think about it", and further advice as to the possible repercussions in the event the charges were dropped or dismissed against the defendant, [REDACTED] remained adamant in her decision to file a complaint against Officer Winter. (TR. 50; TR. 91-92; TR. 95; TR. 260-261). As a result, Officer Winter was arrested and charged with the offense of harassment on November 21, 1990. (C. Ex. 2; C. Ex. 8; TR. 50; TR. 261-262).

C. Charge Three -- Unlawful Possession Of A Controlled Substance: Cocaine.

In April, 1989, [REDACTED] resided in Rochester, New York and, at that time, engaged in prostitution as well as illicit drug use. (TR. 129-130). [REDACTED], who is now trying to put her life back together in another community and is no longer involved in either drugs or prostitution, testified that she met Officer Winter while residing in Rochester through his sister, [REDACTED]--an individual who also engaged in prostitution and drug use. (TR. 127; TR. 129-130).

One evening in April, 1989, [REDACTED] was returning to a house on Lake Avenue where she worked as a prostitute and engaged in drug use. (TR. 131). Before

entering the house, however, she heard the defendant's sister call out to her from a car. (TR. 131). [REDACTED] testified that she went over to the car, greeted [REDACTED] and spoke to Officer Winter who was seated on the driver's side of the car. (TR. 131). While engaged in this conversation, [REDACTED] testified that [REDACTED] lit a pipe in the car and passed it to her through an open window. (TR. 131-132). [REDACTED] further testified that the pipe contained cocaine and that both she and [REDACTED] smoked the cocaine in full view of Officer Winter. (TR. 131-132).⁵

**D. Charge Four -- Conduct and Association With
[REDACTED]: A Known Prostitute.**

In August, 1990, [REDACTED] moved to Canandaigua and resided at [REDACTED] (TR. 133; TR. 173). [REDACTED] testified that she supported herself by working as a prostitute and conducted some of her activities out of the Sheraton Inn. (TR. 127; TR. 133; TR. 173). One evening in early August, 1990, [REDACTED] picked up a "date" at the Sheraton and, after agreeing to perform sex for this gentle-

⁵ In New York, a person is guilty of, at a minimum, a class A misdemeanor, when he "knowingly possesses" cocaine. N.Y. Penal Law § 220.03. The presence of cocaine in an automobile is presumptive evidence of "knowing possession" by every occupant in that automobile. N.Y. Penal Law § 220.05.

man, left the bar and proceeded to his boat. (TR. 128; TR. 133-134; TR. 150-151).

After arriving on the boat, [REDACTED] testified that she and the gentleman walked to the rear of the vessel and entered into the cabin area. (TR. 134; TR. 152). At this time, they agreed that [REDACTED] would perform oral sex for \$25.00 (TR. 152). [REDACTED] testified that the gentleman then paid her the money, laid down on the bed and she removed her shirt. (TR. 134; TR. 152). While laughing and joking around in this state, the gentleman abruptly sat up and stated: "the police are here." (TR. 134; TR. 152). [REDACTED] testified that when she looked up, she noticed Officer Winter standing on the boat and stated to her customer: "it's just Karl." (TR. 134; TR. 159; TR. 161). As she proceeded to put her shirt on, [REDACTED] said hello to the defendant, informed him where she was living in Canandaigua and invited him to stop over. (TR. 134-135; TR. 152; TR. 160; TR. 161).

Following this conversation, Officer Winter and the gentleman started to talk amongst themselves. (TR. 135). Although [REDACTED] had not yet performed oral sex for her customer, she decided to leave the boat. (TR. 135; TR. 152). As she proceed to do so, however, the gentleman, who was standing next to Officer Winter, asked M [REDACTED] "What

about my money?" (TR. 135). [REDACTED] responded to this question by informing the gentleman "I been here long enough" and then left the boat. (TR. 135).

On August 9, 1990, Officer Winter called Lt. Wittenberg at 2:00 p.m. from the Niagara Restaurant and informed him that on the previous evening, he and a friend by the name of [REDACTED] were at the Sheraton Inn and that there appeared to be a prostitute working the bar. (TR. 263-264). The defendant also advised Lt. Wittenberg that [REDACTED] had received oral sex from this prostitute for \$25. (TR. 264). After listening to Officer Winter's story, Lt. Wittenberg asked him if he (Officer Winter) could provide any additional information. (TR. 264). Lt. Wittenberg testified that the defendant then provided him with the prostitute's name-- [REDACTED], her date of birth, social security number, a physical description of the individual--including the presence of a tattoo on her chest, and stated that [REDACTED] was dealing drugs. (TR. 264). When asked how he came upon all of this information, Officer Winter told Lt. Wittenberg that on the prior evening he: (1) wrote down the personal information after viewing it in [REDACTED] wallet; (2) observed the tattoo on her chest because of her low-cut clothing; and (3) was informed by [REDACTED] that she had just sold some cocaine. (TR. 264-265).

After providing the foregoing information, Officer Winter insisted that Lt. Wittenberg run a criminal history check on [REDACTED] immediately. (TR. 266-267). Lt. Wittenberg testified that it was unusual for an officer to call from a bar that was within a stone's throw from the Police Department to report suspicious activity that took place on a prior evening and even more unusual that Officer Winter knew so much about a prostitute who he allegedly had met only the night before. (TR. 265-266; TR. 291-292). Although Lt. Wittenberg ran the criminal history check on [REDACTED] and learned that she had several prior arrests for prostitution, assaults and robberies, he did not reveal this information to Officer Winter when he (the defendant) called him back approximately one hour later. (TR. 266). Lt. Wittenberg testified, and Officer Winter admitted, that he (the defendant) had contacted the Rochester Police Department in the interim and learned that [REDACTED] record showed several arrests for prostitution, assaults, burglary and larceny. (TR. 266; TR. 349-350).⁶

Despite his knowledge of [REDACTED] prostitution activities on the evening of August 8, 1990, as well as his

⁶ Lt. Wittenberg testified that the defendant's conduct prompted him to begin an investigation of [REDACTED], and further testified that he did not assign any part of this investigation to Officer Winter. (TR. 267).

knowledge of her arrest record, Officer Winter visited [REDACTED] in her room at [REDACTED] approximately one week later. (TR. 135-136; TR. 152; TR. 179). [REDACTED] testified that on this afternoon, she asked the defendant if there was prostitution in Canandaigua, and, if so, the location where prostitutes conducted their activities. (TR. 136-137; TR. 153). Officer Winter informed [REDACTED] that the prostitutes "he knew of" conducted their activities at the Colonial Inn and further advised her that Wednesday and Thursday nights were "good nights for getting dates." (TR. 136; TR. 137-138; TR. 152-153).

[REDACTED] also testified that as she and the defendant were laying on the bed in her room on that afternoon, they began to engage in "touching" of a sexual nature. (TR. 153; TR. 160). [REDACTED]

[REDACTED], [REDACTED] offered to perform oral sex for Officer Winter. (TR. 153; TR. 160). [REDACTED] testified that Officer Winter accepted her offer and further testified that she gave him these services, free of charge, "because I figured I could get in good with him because I wanted to work in Canandaigua." (TR. 137; TR. 154; TR. 160). Before leaving her room on that afternoon, Officer Winter wrote the telephone number of the Canandaigua Police Department on a slip of paper and told [REDACTED] to let him know if she

ever needed anything or "got into any trouble." (TR. 138; TR. 154).

Subsequent to the foregoing encounter, Officer Winter continued to visit [REDACTED] in her room at [REDACTED]. (TR. 138; TR. 155). The manager of the Motel, [REDACTED], testified that on two occasions between August and October, 1990, he observed Officer Winter enter [REDACTED] room. (TR. 174-175). On one occasion, [REDACTED] walked by [REDACTED] room and observed, through an open door, the defendant touching [REDACTED] in or about her vagina. (TR. 175; TR. 179-180). [REDACTED] further testified that because of [REDACTED] prostitution activities, he evicted her [REDACTED] in October, 1990. (TR. 176-177). When [REDACTED] informed [REDACTED] of this decision, she told him that "she had friends in the Police Department" and specifically referred to Officer Winter by name. (TR. 141-142; TR. 177).

On October 26, 1990, Lt. Wittenberg arrested [REDACTED] for prostitution. (TR. 139; TR. 267). While en route to the police station, [REDACTED] asked for Officer Winter. (TR. 139). After arriving at the police station, [REDACTED] again asked for the defendant. (TR. 140; TR. 267-268; TR. 295; TR. 296). When questioned about these requests at the hearing, [REDACTED] explained that "I asked

them where Karl was because I figured here I'm getting arrested, I might as well see if he can help me"

(TR. 139).

E. Charge Five -- Association and Fraternization With [REDACTED].

Starting in the summer of 1989, the Ontario County Sheriffs' Department suspected that [REDACTED] was dealing cocaine from his boat in Canandaigua. (TR. 216; TR. 219; TR. 229). Deputy Sheriff William Reeser, a Navigation Officer with the Sheriffs' Department, testified that individuals would visit [REDACTED] on his boat, remain there for no more than five minutes and then leave. (TR. 220-221).⁷ [REDACTED] also would take his boat out, park it at Kershaw Park and make a call on his cellular phone; shortly thereafter, a boat would pull up, remain there for three to four minutes and then leave. (TR. 221).

The foregoing activities also prompted an investigation by the Federal Drug Enforcement Agency (DEA) as well as an investigation by the Canandaigua Police Department. (TR. 219; TR. 299). In the course of conducting its investigation, the Canandaigua Police Department learned that Officer Winter was a frequent companion of M [REDACTED] (TR.

⁷ [REDACTED] boat was docked directly behind the Sheriffs' boat in Canandaigua. (TR. 220).

268-269; TR. 299-300). Deputy Reeser testified that on one occasion between August 16 and August 31, 1989, he and a fellow Navigation Officer, Deputy Brooks, transported Officer Winter to Saiger's Marina. (TR. 219). While on board the Sheriffs' boat, the defendant questioned both Officers about the possible outcome of two tickets which had been issued to [REDACTED] on August 16. (TR. 219-220; TR. 229-230).⁸ Deputy Reeser testified that the defendant said:

' . . . he ([REDACTED]) is a friend of mine, I don't want to see him lose his privilege on the water here and I don't want to see him have to go off the lake.'

(TR. 220). When asked to explain the basis for this concern, Deputy Reeser testified that Officer Winter once again referred to his friendship with [REDACTED] and further stated that he (Officer Winter) was aware that [REDACTED] was "an idiot" and was "going to kill somebody someday" but "he's also a friend of mine." (TR. 220).

On August 31, 1989, Deputy Reeser learned that the ticket he had issued to [REDACTED] had been dismissed and that Officer Winter had been instrumental in obtaining this disposition. (TR. 221-223; TR. 225). Approximately one month

⁸ One ticket was issued by Deputy Brooks for [REDACTED] conduct in connection with a near-boating accident and the other ticket had been issued by Deputy Reeser for [REDACTED] reckless boating. (TR. 216-218).

later, Deputy Reeser confronted the defendant and conveyed his displeasure about the defendant's intercession on [REDACTED] behalf. (TR. 226; TR. 234). Deputy Reeser testified that although Officer Winter initially denied interceding on [REDACTED] behalf, he (the defendant) eventually admitted to this conduct. (TR. 226; TR. 234). In doing so, Officer Winter again referred to his friendship with [REDACTED] (TR. 226; TR. 234).

[REDACTED], the manager of the Thendara Inn and Restaurant, also had an opportunity to observe [REDACTED], his activities and his association with Officer Winter. [REDACTED] testified that throughout the summer of 1990, [REDACTED] was a frequent patron--"a regular customer"--at the Boathouse and that Officer Winter was one of [REDACTED] "core" companions. (TR. 240; TR. 241; TR. 242). While on duty, [REDACTED] observed [REDACTED] enter and exit the Boathouse at a steady rate. (TR. 242). On some occasions, [REDACTED] would take three to four people with him to his boat, remain on the dock for ten to fifteen minutes, and then return to the bar. (TR. 243; TR. 248). [REDACTED] testified that Officer Winter often accompanied [REDACTED] on these short trips to his docked boat and would return with him to the bar. (TR. 243; TR. 248).

After returning to the Boathouse, [REDACTED] observed a marked difference in the appearance and conduct of [REDACTED] and his companions, including Officer Winter. (TR. 243; TR. 244-245; TR. 252). [REDACTED] testified that their eyes were extremely bright and their actions became increasingly loud and boisterous. (TR. 243; TR. 244-245). She further testified that [REDACTED], Officer Winter and any other individual who returned from the dock after visiting [REDACTED] boat were able to consume great amounts of alcohol without appearing to become intoxicated, yet, at the same time, maintain a very high level of intensity. (TR. 245; TR. 250).⁹ Based on these observations, [REDACTED] suspected that [REDACTED] and his companions had been engaged in drug use. (TR. 244).

Prior to close of summer, 1990, [REDACTED] was arrested for driving while intoxicated (DWI) in the Town of Gorham. (TR. 270; TR. 359). Shortly after receiving this ticket, [REDACTED] contacted Officer Winter and asked for his "advice" as to the outcome on these charges. (TR. 360; TR. 408). At this time, Officer Winter advised [REDACTED] of the

⁹ [REDACTED] also testified that on occasions, [REDACTED] would leave the bar, take his companions out into the middle of Canandaigua Lake, and return within the same ten to fifteen minute time span. (TR. 243). On their return to the Boathouse, [REDACTED] observed the same marked difference in the appearances and actions of these individuals. (TR. 243; TR. 244-245).

"practice" to reduce DWI charges to driving while impaired and further advised him to plead guilty if his charge was reduced. (TR. 360).

On September 25, 1990, [REDACTED] again sought assistance from Officer Winter with respect to his DWI charge. On this date, [REDACTED] contacted the Canandaigua Police Department and left a message with the dispatcher for Officer Winter to meet "[REDACTED]" at Ross Marina. (TR. 271; TR. 408). Although the defendant alleges that [REDACTED] did not know that "[REDACTED]" was [REDACTED], he admitted that he went to the Marina, met [REDACTED] there and subsequently provided him with directions to Gorham town court because he [REDACTED] was scheduled to appear in court on his DWI charge. (TR. 271-272; TR. 408-409).

A short time later, [REDACTED] appeared in Gorham town court and engaged in unruly and suspicious conduct. (TR. 200-201). Assistant District Attorney John Polimeni testified that [REDACTED], while in the courtroom, repeatedly referred to himself as "the Mayor of the Boathouse" and consistently stated the only reason he was arrested "was because he was trying to save the Boathouse." (TR. 201). [REDACTED] also was wearing a baseball cap with a Canandaigua Police Department patch embroidered on it, and refused to

remove the cap despite being ordered to do so by the Court. (TR. 202).

Mr. Polimeni also testified that when the Judge asked him (Mr. Polimeni) to remove [REDACTED] from the courtroom, he (Mr. Polimeni) spoke to [REDACTED]. (TR. 201). During the course of this conversation, [REDACTED] repeated the above-noted statements to him (Mr. Polimeni). (TR. 201). Mr. Polimeni further testified that he spoke closely with Mr. [REDACTED]--within three to four feet, did not detect any odor of alcohol, but noticed that his [REDACTED] speech was slurred. (TR. 201). Mr. Polimeni also testified that the Judge was quite upset about [REDACTED] behavior and instructed him (Mr. Polimeni) to notify the Canandaigua Police Department that a person who was wearing their hat engaged in such unruly and obnoxious behavior in the courtroom. (TR. 202-203).

F. Charge Six -- Failure to Follow Department Practices Regarding Communications With Other Police Agencies Or Individuals Concerning Police Matters: Dismissal of Boating Infraction.

As noted above, [REDACTED] received two tickets on August 16, 1989--one of which had been issued by Deputy Reeser for reckless operation of a boat. After learning on August 31, 1989 that this ticket had been dismissed, Deputy

Reeser contacted ADA Polimeni and discovered that Officer Winter had interceded on [REDACTED] behalf. (TR. 225). When the Canandaigua Police Department became aware of the defendant's conduct, Lt. Wittenberg contacted ADA Polimeni and asked him to explain the circumstances giving rise to the dismissal of [REDACTED] ticket. (TR. 191; TR. 272-273; TR. 299-300).

In response to this request, Mr. Polimeni advised Lt. Wittenberg that Officer Winter had contacted him and represented that [REDACTED] was a responsible citizen as well as his friend. (TR. 273).¹⁰ Mr. Polimeni further advised Lt. Wittenberg that the defendant asked him to dismiss the ticket issued by Deputy Reeser in return for [REDACTED] guilty plea on the second ticket. (TR. 225; TR. 273; TR. 299). Based on the information provided by the defendant, Mr. Polimeni dismissed one ticket. (TR. 225; TR. 273; TR. 299).

Lt. Wittenberg testified that the practice of the Canandaigua Police Department with respect to an officer who wishes to intercede on behalf of a citizen who has been charged by another officer or another police agency with

¹⁰ Although Mr. Polimeni could not recall the exact details of the conversation he had with Officer Winter, Mr. Polimeni testified that he did discuss this incident with Lt. Wittenberg and provided Lt. Wittenberg with his best recollection of the conversation at that time. (TR. 171).

violating any law or ordinance is for the officer to notify his supervisor before engaging in such conduct. (TR. 272). Lt. Wittenberg further testified that this practice applies to an officer's contact with an assistant district attorney and is to be followed by all officers in order to maintain the integrity of the Department. (TR. 272). Although ADA Polimeni noted that it is not unusual for a police officer to contact him about the possibility of reducing a charge, he testified that such contact is generally made by the arresting officer. (TR. 209).

G. Charge Seven -- Failure To Follow Department Practices Regarding Communications With Other Police Agencies Or Individuals Concerning Police Matters: Attempted Reduction And/Or Dismissal of DWI Charge.

On September 2, 1990, [REDACTED] was arrested for DWI. When Lt. Wittenberg learned of [REDACTED] arrest, he spoke to Mr. Polimeni and requested that he contact him in the event he (Mr. Polimeni) received any contact from Officer Winter concerning [REDACTED] pending DWI charge. (TR. 273). Sometime after September 25, 1990, Officer Winter contacted Mr. Polimeni and advised him that [REDACTED] was a "known cocaine dealer." (C. Ex. 5; TR. 193; TR. 198-199). Officer Winter then suggested that he might be able to get some drug

information from [REDACTED] in return for a reduced plea to the DWI charge. (C. Ex. 5; TR. 193; TR. 273).

On October 10, 1990, ADA Polimeni contacted Lt. Wittenberg and informed him of his conversation with Officer Winter. (TR. 273). When Lt. Wittenberg learned that the defendant suggested a reduction on [REDACTED] DWI charge in return for some information on drug dealings, Lt. Wittenberg explained to Mr. Polimeni that Officer Winter had no authority to be making such deals with cocaine dealers and further explained that the defendant was not in charge of setting up cocaine buys. (TR. 274).¹¹

Although the defendant admitted that he contacted ADA Polimeni and advised him of [REDACTED] drug-related activities, he denied that he suggested a reduction on the DWI charge in return for some drug information from Mr. [REDACTED] (TR. 362-363; TR. 414). When asked to explain why his testimony differed from the information conveyed by ADA Polimeni to Lt. Wittenberg, Officer Winter simply stated "I can only tell you what I told Mr. Polimeni." (TR. 414).¹²

¹¹ Although the defendant claims that he has been involved in drug investigations in the past (TR. 352), Lt. Wittenberg testified that a patrol officer's duties do not include the making of drug deals nor the authority to initiate any drug buys. (TR. 274).

¹² It is interesting to note that on direct examination, Officer Winter, in the course of explaining what he told Mr.

Notwithstanding this evasive answer, Officer Winter admitted that he did not speak to any member of the Canandaigua Police Department before contacting Mr. Polimeni. (TR. 413-114; TR. 415).

H. Charge Eight -- Failure To Report Information Of A Police Nature To The Chief Of Police: Knowledge of [REDACTED] Drug-Related Activities.

Article V, Rule 28 of the Rules and Regulations of the Canandaigua Police Department states that an officer must "report to the Chief of Police any information of a police nature" Officer Winter admitted that he failed to inform any member of the Department about his knowledge of [REDACTED] drug-related activities. (TR. 413; TR. 415). The defendant also acknowledged that he is responsible for knowing and abiding by the rules and regulations of the Police Department. (TR. 419).

III. ARGUMENT

A. THE CITY HAS PROVEN BY SUBSTANTIAL CREDIBLE EVIDENCE THAT THE DEFENDANT IS GUILTY OF MISCONDUCT AND INCOMPETENCY

After examining the record in this case, it is clear that there is substantial credible evidence that

Polimeni, testified: "I told him, I said, maybe the guy will talk to you, make some kind of deal" (TR. 362).

Officer Winter is guilty of misconduct and incompetency. The detailed testimony provided by both [REDACTED] and [REDACTED], together with their sworn depositions (C. Ex. 3; C.Ex. 4), clearly shows that Officer Winter: (1) knew [REDACTED] was only 20 years old; (2) assured her of his ability to bypass the laws prohibiting the provision of alcohol to persons under the age of 21; (3) ordered and purchased several for her at the Niagara Bar; (4) lied to [REDACTED] about [REDACTED] age; and (5) purchased and provided [REDACTED] with additional alcohol after leaving the Niagara Bar.

In an attempt to escape a finding of guilt, Officer Winter alleged that [REDACTED] informed him she was 21 and assured him she had ID to substantiate this claim. (TR. 334). The defendant also alleged that he had no reason to doubt her age and that "she look(ed) 21 to me." (TR. 379). This allegation, however, is belied by the defendant's admission that Mr. Pontera later questioned him about [REDACTED] age. (TR. 378-379). This allegation is further undermined by the fact that a fellow police officer who was present at the bar on the evening in question also doubted [REDACTED] age. (TR. 106). Indeed, the uncontroverted testimony of Lieutenant Wittenberg shows that when he informed the defendant that he was to be arrested, Officer Winter knew that it

was for "unlawfully dealing" as well as for "the girl at the Niagara." (TR. 262; TR. 290).

Notwithstanding the above, the defendant would like the Hearing Officer to disregard the detailed and specific testimony offered by both [REDACTED] and [REDACTED] and accept his version of the "story." Although Officer Winter claims that his friend, [REDACTED], was present when [REDACTED] allegedly entered the convenience store and also present in the apartment thereafter, the defendant failed to produce this "corroborating" witness to substantiate his story. (TR. 337-338; TR. 379-380). Given the absence of any motive on the part of either [REDACTED] or [REDACTED] to fabricate their testimony, Officer Winter's conclusion that these witnesses are "incorrect" defies all logic.

Similarly, defendant's explanation as to why he visited [REDACTED] at her place of employment on October 31, 1990 and subsequently recorded a conversation in which he repeatedly questioned her about her sex life strains credulity. Notwithstanding [REDACTED] specific and detailed recollection of the defendant's conduct on that day, Officer Winter would like the Hearing Officer to believe that he was simply "following up" on an "anonymous phone call" in which he was advised that [REDACTED] and Chuck Bardeen were trying to "set him up" (TR. 340). However, when asked on

cross-examination to explain why he chose to investigate this "tip" by interrogating [REDACTED] about her sex life, Officer Winter admitted that he was just "fishing" for evidence. (TR. 384).¹³ The defendant also testified that he asked [REDACTED] if she intended on telling anyone about the taped statement "for no particular reason." (TR. 387-388). Despite this attempt to escape a finding of guilt on the second disciplinary charge, Officer Winter admitted that he knew of no reason why [REDACTED] would lie about his conduct nor any motive she would have to fabricate evidence against him. (TR. 387).

That the defendant is guilty of misconduct and incompetency is further evidenced by his conduct and association with [REDACTED]. The credible evidence in this case demonstrates that Officer Winter: (1) witnessed his sister and [REDACTED] smoke cocaine in Rochester; (2) was aware that [REDACTED] had been engaged in an act of prostitution when he arrived on his friend's boat in August, 1990; (3) visited [REDACTED] in her room at [REDACTED] and, on one such occasion, received oral sex from [REDACTED].

¹³ It should be noted that in response to further questioning, the defendant suddenly remembered that the "anonymous caller" also advised him that [REDACTED] and Chuck Bardeen were having an affair. (TR. 384). However, nowhere in the taped statement does the defendant refer to "Chuck" as "Chuck Bardeen." (TR. 81-86).

██████████ (4) provided ██████████ with sufficient information so as to enable her to continue to engage in prostitution while residing in Canandaigua; and (5) provided her with the telephone number of the Canandaigua Police Department and the advice to call him if she got in any trouble. The record in this case also establishes that when ██████████ was arrested on October 26, 1990, she decided to hold Officer Winter to his "offer of assistance."

Similar to his attempts to escape guilt on the first two disciplinary charges, Officer Winter would like the Hearing Officer to believe, yet again, that two of the City's witnesses--namely, ██████████ and ██████████--are simply incorrect. According to Officer Winter, he gathered all of the information on ██████████ through his brief encounter with her on August 8, 1990 and his brief visit to her motel room the next day. The purpose of this "investigation", if one is to believe the defendant, was two-fold--to accommodate a request of an investigator employed by the Ontario County Sheriffs' Department and to further his chances to obtain a detective's position. (TR. 351).¹⁴

¹⁴ It should be noted that like ██████████, Investigator McCaigh was not called as a witness to corroborate defendant's version of the story.

Contrary to the foregoing explanation, the record in this case shows that defendant's testimony is fraught with inconsistencies and strains credulity. For example, Officer Winter testified on direct examination that he contacted Lt. Wittenberg on August 9, 1990 and provided him with the information concerning [REDACTED] in order to "make him (Lt. Wittenberg) aware (that) a known felon was working in the area" (TR. 349). However, on cross-examination, the defendant testified that when he contacted Lt. Wittenberg, he had no concrete information that [REDACTED] had any criminal record. (TR. 399). Similarly, Officer Winter initially testified that Investigator McCaigh asked him to "locate the exact address where ([REDACTED]) lived", whereas on cross-examination the defendant testified that the Investigator asked him "to find out what (he) could about the girl." (TR. 394). Furthermore, the fact that the defendant chose to relay all of the information on [REDACTED] by telephone to Lt. Wittenberg, rather than by a personal visit, undermines the claim that he commenced this "investigation" to further his chances of obtaining a detective's position.

As to the fifth disciplinary charge--namely, Officer Winter's association and fraternization with [REDACTED] [REDACTED] the record clearly shows that the Ontario County Sheriff's Department, the DEA, the Canandaigua Police Depart-

ment as well as various citizens suspected that [REDACTED] was dealing cocaine from his boat. The credible evidence also demonstrates that Officer Winter was a frequent companion of [REDACTED] at the Thendara Boat House. (TR. 270). In an attempt to escape a finding of guilt, Officer Winter simply claims that whenever he (the defendant) visited the boat house, [REDACTED] "happened to be there." (TR. 402). This explanation is simply not credible.

Defendant's testimony concerning his failure to suspect that [REDACTED] might be involved in drug activities similarly strains credulity. Officer Winter admitted that his contact with [REDACTED] in 1989 and 1990 provided him with the opportunity to observe [REDACTED] activities and demeanor. (TR. 403). Defendant also claimed that as a part of his duties, he has been involved in drug investigations. (TR. 352; TR. 403). Yet, Officer Winter would like the Hearing Officer to believe that he failed to detect the same conduct on the part of [REDACTED] as observed by [REDACTED]. (TR. 403). This testimony, when viewed in conjunction with his prior admissions as well as the defendant's ability to distinguish between alcohol intoxication and substance impairment, defies all logic and reasoning. (TR. 403-404).

That Officer Winter is guilty of misconduct and incompetency is further demonstrated by his actions with

respect to the two boating tickets issued to [REDACTED] in August, 1989. The evidence in this case shows that Officer Winter acted contrary to the practices of the Canandaigua Police Department when, in August, 1989, he contacted ADA Polimeni, advised him that [REDACTED] was a responsible citizen as well as his friend, and convinced the Assistant District Attorney to dismiss the ticket issued to [REDACTED] by Deputy Reeser. The record also demonstrates that prior to contacting ADA Polimeni, the defendant was well aware that [REDACTED] conduct was anything but responsible. (TR. 220).

Despite the foregoing testimony, Officer Winter claimed that he contacted ADA Polimeni simply "to convey a concern" on behalf of [REDACTED], denied that he suggested a possible disposition of the tickets, but could not recall the "exact terminology" he used when describing his relationship with [REDACTED] to the Assistant District Attorney. (TR. 357-358; TR. 404-405). When asked on cross-examination to explain why his recollection of the incident differed markedly from the testimony offered by the City's witnesses, Officer Winter evaded the question and simply stated that "I can only tell you what (I) told Mr. Polimeni." (TR. 405).

Lastly, but by no means least, is the issue of defendant's conduct with respect to [REDACTED] arrest for DWI on September 2, 1990. The record in this case

demonstrates that prior to September 25, 1990, [REDACTED] contacted Officer Winter about the DWI charge and, on this occasion, the defendant provided advice to this "casual acquaintance" of his regarding the possible outcome of this criminal matter. (TR. 360; TR. 405-406; TR. 408; TR. 409). On September 25, 1990, this "casual acquaintance" again contacted Officer Winter--this time by leaving a message with the police department dispatcher "to meet [REDACTED] at Ross Marina." (TR. 271; TR. 361; TR. 408). Although Officer Winter claims that when he received this radio transmission he did not know who "[REDACTED]" was, the defendant does not deny that he: (1) responded to this call by proceeding to the Marina; (2) met [REDACTED] at this location; and (3) provided him with directions to Gorham Town Court. (TR. 361; TR. 408-409; TR. 411).¹⁵

The record in this case further demonstrates that when Officer Winter met [REDACTED] on September 25, 1990, he was aware of the suspicious concerning [REDACTED] dealing of cocaine. (TR. 411). Yet, when Officer Winter contacted ADA Polimeni shortly thereafter, he informed Mr. Polimeni that

¹⁵ It is interesting to note that despite the foregoing testimony, as well as the testimony offered by [REDACTED], Deputy Reeser and ADA Polimeni concerning the defendant's contacts and relationship with [REDACTED], Officer Winter consistently characterized [REDACTED] as merely an "acquaintance."

██████████ was a known cocaine dealer and suggested that he (Officer Winter) might be able to persuade ██████████ to set up some cocaine buys in return for a break on the pending DWI charge. (C. Ex. 5; TR. 193; TR. 273). Although the defendant does not deny contacting Mr. Polimeni, he claims that he did not ask the ADA to reduce the DWI charge. (TR. 363). When asked on cross-examination to explain why his testimony differed from that of the City's witnesses, Officer Winter evaded this question and merely stated: "I can only tell you what I told Mr. Polimeni." (TR. 414). Once again, the defendant would like the Hearing Officer to disregard the overwhelming record evidence in this case and accept his "version of the story."

As to the failure to speak with his superior before contacting ADA Polimeni on behalf ██████████ it is undisputed that Officer Winter did not adhere to this departmental practice. It is also undisputed that the defendant failed to reveal his knowledge of ██████████ drug-related activities to any member of the Canandaigua Police Department, including the Chief of Police, either before or after his conversation with Mr. Polimeni. (TR. 415). In an attempt to justify this misconduct and incompetent behavior, the defendant testified that he did not reveal this information to his Department because he had no direct knowledge of ██████████ activities.

(TR. 415). A short time later, Officer Winter then claimed that he did not provide this information to his Department because "it wasn't within the city's jurisdiction." (TR. 416). Finally, after acknowledging that [REDACTED] docked his boat within the City of Canandaigua and being reminded of his previous testimony concerning the nature of his information (i.e., "indirect" knowledge), Officer Winter admitted, albeit begrudgingly, that [REDACTED] may have been dealing cocaine within the jurisdiction of the Canandaigua Police Department. (TR. 433-434).

B. IN LIGHT OF THE MULTIPLE INSTANCES OF DEFENDANT'S MISCONDUCT AS WELL AS THE EGREGIOUS NATURE OF HIS ACTIONS, DISMISSAL IS THE ONLY APPROPRIATE PENALTY.

No one can deny that police officers serve as role models, as well as law enforcement officials, in their community. Because of this unique position, police officers are held to a higher standard of conduct than other citizens. See, e. g. Schembeck v. Village Board of the Village of Dolgeville, 110 A.D.2d 1047, 488 N.Y.S.2d 904 (4th Dep't 1985); Kenny v. Connelie, 88 A.D.2d 682, 450 N.Y.S.2d 908 (3d Dep't 1982); Morrisett v. Dilworth, 59 N.Y.2d 449, 456 N.Y.S.2d 894 (1983); Baron v. Meloni, 602 F.Supp. 614

(W.D.N.Y. 1985); Civil Service Commission of the City of Tuscon v. Livingston, 22 Ariz. App. 183, 525 P.2d 949 (1974); Hamman v. City of Omaha, 227 Neb. 285, 417 N.W.2d 323 (1987). The reason for this is quite simple; a police officer's conduct must be above and beyond reproach because the public's respect and confidence in its police department is gained through their observations of individual police officers.

Where, as here, an officer has engaged in the type of conduct which tends to destroy not only the public's respect and confidence in a police department, but also their confidence in the individual officer's integrity and honesty, courts have consistently upheld the penalty of dismissal. For example, in Baron v. Meloni, supra., the court upheld the discharge of a deputy sheriff who associated and fraternized with a person of ill-repute, noting that such association placed the defendant in a position which invited exploitation and brought discredit upon the department. Similarly, in Livingston, supra., the court upheld the dismissal of an officer who associated with and engaged in sexual relations with a prostitute, finding that such conduct "cannot and

should not be condoned." 525 P.2d at 954; see also Schembeck, supra;¹⁶ Hamman, supra.,¹⁷.

In the case at bar, the record clearly demonstrates that Officer Winter has engaged in the type of misconduct and incompetency which warrants his dismissal from employment. The credible evidence establishes that the defendant engaged in outright criminal conduct by purchasing and providing alcohol for [REDACTED] --a 20 year old girl; lied about her age on two separate occasions to a bartender; and repeatedly assured this young woman of his ability to bypass the laws prohibiting the provision of alcohol to minors. The evidence in this case also establishes that Officer Winter harassed [REDACTED] on October 31, 1990 by insisting that he needed to speak with her, informing her that she was in trouble when she refused to speak to him and, thereafter, interrogated her about her sex life for no legitimate reason.

There is also no question that Officer Winter engaged in misconduct and incompetency by failing to report the incident where he witnessed his sister and [REDACTED]

¹⁶ Penalty of dismissal upheld where the officer, in the course of conducting an investigation, provided less than forthright information to his employer.

¹⁷ Termination of 18-year veteran of police force upheld where the evidence established that the plaintiff associated with a suspected drug dealer and failed to take appropriate police action while in plain view of a controlled substance.

█████ smoke cocaine. The evidence in this case also establishes that Officer Winter was aware that █████ was engaged in the profession of prostitution when he visited his friend "Del" on his boat. Notwithstanding this knowledge, the evidence shows that the defendant visited █████ on at least two occasions, received oral sex from her, and furthered her "career" by informing her of the places where prostitutes conduct their activities in Canandaigua and advising her to call him if she got in any trouble.

Moreover, the credible evidence in this case demonstrates that Officer Winter: (1) was a friend of █████--an individual who the record establishes to have been involved in drugs; (2) interceded on █████ behalf on two separate occasions with ADA Polimeni in order to influence the dispositions of a DWI charge and a boating infraction; and (3) failed to reveal his knowledge of █████ drug-related activities--information which unquestionably is of a police nature--to any member of his Department. The record similarly establishes that Officer Winter failed to notify his superior before contacting the Assistant District Attorney.

Given the foregoing evidence, one need not ponder for any appreciable length of time before concluding that

Officer Winter's conduct created, if not conveyed, the impression that he would disregard the laws of this State as well as the departmental standards which govern his conduct. Knowing that [REDACTED] was aware of his position as a police officer, the defendant nevertheless informed her that he could arrange for her to drink at a bar, made good on this "assurance" and purchased alcohol for this under-aged woman. In similar fashion, Mr. Pontera relied on the defendant's position as a police officer when accepting his (the defendant's) assurances concerning [REDACTED] age. (C. Ex. 4; TR. 103; TR. 105; TR. 113). Clearly, the foregoing conduct would cause any individual to question the defendant's integrity and honesty as a police officer as well as the integrity of the entire Police Department.

One also need not ponder for any appreciable length of time before concluding that Officer Winter's conduct and association with [REDACTED] would tend to erode the public's respect and confidence in its police department. Any reasonable constituent of the City would not only find the defendant's association and conduct with [REDACTED] to be in violation of all accepted standards of decency, but also the type of conduct which discredits the position he holds. Indeed, one need look no further than [REDACTED] requests for Officer Winter on the night of her arrest to conclude

that the defendant brought discredit upon himself as well as the Department. (TR. 138; TR. 139-140; TR. 268).

When viewed in conjunction with the remainder of the record, it is clear that Officer Winter has abused his position of trust and has engaged in a pattern of conduct which warrants his dismissal from employment. Aside from the defendant's denials, there is simply no evidence to support Officer Winter's "version of the story." Although the defendant alleged that the disciplinary charges were politically motivated and represent the culmination of a "Get Karl Winter" campaign, the only evidence offered to support this belief was Officer Winter's narration of the events giving rise to the withdrawal of his nomination for the position of County Coroner. (TR. 370-371).

Despite the defendant's attempts to characterize his decision to withdraw from this election as one which was made under the threat of discharge, and his further attempt to paint Chief McCarthy as a man who harbored ill-feelings towards him, Officer Winter admitted that Chief McCarthy's directive to withdraw from the race was based on a State Attorney General Opinion which holds that such dual employment is inappropriate. (TR. 371-373; TR. 421). The defendant also acknowledged that he did not pursue this issue of dual employment after being advised of the Attorney General

Opinion, did not obtain a copy of the Opinion, did not ask his union or an attorney to review the Opinion and did not file a grievance over any alleged violation of his rights. (TR. 422-423).

Indeed, when all is said and done, there can be no doubt that the record fails to support defendant's allegations that the disciplinary charges are politically motivated or represent the culmination of a vendetta against him. The record similarly fails to support defendant's allegation that the charges are unfounded. One need only review the overwhelming amount of detailed testimony offered by the City's witnesses to see that Officer Winter is "grasping at straws" in order to escape a penalty of dismissal. This same review also shows that the City did not prefer disciplinary charges based on a single, impulsive act of misconduct, but several separate acts performed over a period of time. Under these circumstances, a penalty short of termination would send an inappropriate message to other officers--namely, that one can disregard the laws which they swore to uphold as well as Departmental rules, regulations and procedures without fear of reprisal.

More important than the message that would be sent to other officers by a penalty short of dismissal is the message that it would send to the City and its constituents.

The City has the right to demand for itself, and the obligation to secure for its citizens, law enforcement personnel whose conduct is above and beyond reproach. The City and its citizens also have the right to expect that an officer will conduct himself lawfully and properly while on duty as well as in his private life. A penalty short of dismissal would not only impair the City's ability to maintain the respect and confidence of its citizens, but also cause these same citizens to question the integrity and trustworthiness of each and every officer employed by the Department.

IV. CONCLUSION

Based on the record as a whole, it is clear that the City has proven by substantial credible evidence that Officer Winter is guilty of misconduct and incompetency. The nature of defendant's misconduct, as evidenced throughout the record, demonstrates that his integrity, honesty and judgment has been called into serious question. Under these circumstances, there can be no doubt that termination of Officer

Winter's services as a police officer is the only penalty appropriate in this case.

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Respectfully submitted,
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