



**GENERAL INFORMATION**

Supervisor: TTUR TURNER                      Dispatcher: SPLU PLURETTI                      Call Taker: SPLU PLURETTI  
 Date/Time: 06/20/15 18:42                      Reported Signal: POLICE INFORMATION 04  
 Actual Signal: POLICE INFORMATION 04                      Received By: OTHER  
 Received: 18:42:33  
 Cleared: 18:43

Vehicle Description:

Plate No.:    State: NY  
 Disposition: P                                      Disp. Date: 06/20/15 18:42                      Report Taken: NO  
 Action Taken:  
 Reference No. 1:                                      Reference No. 2:

**LOCATION**

Location Name: GENEVA POLICE DEPT.                      Zone: GV7  
 Address: 255 EXCHANGE ST  
 Alt. Address:    Direction:  
 Apt. No.:    City: GENEVA                                      Intersection:  
 Phone No.: (315) 789-1111

**CALLER INFORMATION**

Last Name: TURNER                      First Name: SGT                      Middle Name/Suffix:  
 Alias/Maiden Name:                      DOB:  
 Address: GPD  
 City: GENEVA                      State: NY                      Zip: 14456-\_\_\_\_  
 Phone: (315) 789-1111                      Anonymous: NO

**RESPONDING UNITS/OFFICERS**

<u>Unit/Officer</u>	<u>Dispatched</u>	<u>En Route</u>	<u>Arrived</u>	<u>Cleared</u>
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**ASSOCIATED PERSONS**

<u>OR</u>	<u>Address</u>	<u>Phone</u>	<u>Sex</u>	<u>Inv</u>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**NOTES**

PERSONEL COMPLAINT FORM PROVIDED TO SUB.



To: Chief Jeffrey Trickler

From: Lt. Eric Heieck

Date: 8.6.2015

Subject: Internal Investigation – Sgt. Turner & Officer Cole [REDACTED]  
(PROCEDURAL)

### **Introductory Paragraph**

On 7.02.2015, I received a copy of Citizen Complaint Form from a [REDACTED]. The Complainant and I have been using email and the phone to communicate the status of this case.

Sgt. Turner and Officer Cole of the Geneva Police Department are named in the Complaint. The complaint is a result of a tractor trailer traffic stop on [REDACTED] in the City of Geneva on [REDACTED] alleges in his complaint action form the following incidents:

1. Responding Officers placed driver/tractor trailer in an “Out of Service,” status.
2. Responding Officers failed to provide a “safe have,” after taken out of service.
3. Responding Officers would not let the driver and his unit leave [REDACTED]
4. [REDACTED]
5. [REDACTED]

### **Findings Section for the Specific Violations**

The information alleged by complainant:

Responding Officers placed driver/tractor trailer in an “Out of Service,” status

The facts of the investigation support the findings of:

1. **SUSTAINED:** After review of CFR 395.13b3, interview of both the complainant and the Officers of the Geneva Police Department, an interview of NYSP [REDACTED] while in a “out of Status” directly relating to his logbook did *not classify for being taken out of service*. [REDACTED] was issued the appropriate ticket via the NYS VTL UTT, but should have been allowed to update his logbook and then continue on his way as stated in Federal Regulations CFR 395.13 (b)(3). He was no more than (2) duty statuses out and had slept in [REDACTED] New York the night before.

2. CFR states the following

§395.13 Drivers declared out of service.

(a) Authority to declare drivers Out of Service. Every special agent of the Federal Motor Carrier Safety Administration (as defined in Appendix B to this subchapter) **is authorized to declare a driver out of service** and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out of service criteria as set forth in paragraph (b) of this section.

(b) Out of Service criteria. (1) No driver shall drive after being on duty in excess of the maximum periods permitted by this part.

**(b)(2) No driver required to maintain a record of duty status under §395.8 or §395.15 of this part shall fail to have a record of duty status current on the day of examination and for the prior 7 consecutive days.**

**(b)(3) Exception. A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.**

The information alleged by complainant:

3. Responding Officers failed to provide a “safe have,” after taken out of service.

The facts of the investigation support the findings of:

4. **TRAINING ISSUE:** After review of CFR 395.13b3, interview of both the complainant and the Officers of the Geneva Police Department, an interview of NYSP Trooper [REDACTED]

- a. **While "Safe Haven," Only applies *below* and not in this specific incident, Officers, if they had been correct in taking the driver out of service, should have used their observation and training and purposely brought the driver and his load to another safe, location to limit danger on the road, secure and protect his truck and give the driver a location that is safely off the road.**
- b. **One specific location is available within ¼ mile of the stop location, that provides a parking lot, a potential rest area, and at that time a business that would have been open should the driver need to use a bathroom or other facilities.**
- c. The "Safe Haven Rule" (FMCSA 397.5) applies to where drivers can leave unattended truckloads of explosive Haz Mat (class 1.1 - 1.3) loads.  
<http://www.fmcsa.dot.gov/regulations/title49/section/397.5>  
**THERE IS NO SAFE HAVEN RULE THAT ALLOWS DRIVERS TO EXCEED THE 14/70 HOURS OF SERVICE LIMITATIONS!!!**

There is a rule that applies to driver's hours but it's not "Safe Haven". It's called the Adverse Conditions Rule and it's as follows: (FMCSA 395.1) <http://www.fmcsa.dot.gov/regulations/title49/section/395.1>

That rule states that, in case of emergency, a driver may complete their run without being in violation, provided that the run could have been completed without the emergency.

- d. What constitutes an emergency? All the following must be met:
  5. You unexpectedly run into snow, sleet, fog or other bad weather or a highway covered with Snow or Ice or unusual road or traffic condition
  6. The person who dispatched your run was not and could not have been aware of those conditions.
  7. The run is one that you could normally complete in 11 hours and...
  8. You can complete the (extended) run without exceeding the 14 or 70-hour limits

The information alleged by complainant:

- Responding Officers would not let the driver and his unit leave [REDACTED]

The facts of the investigation support the findings of:

9. **SUSTAINED:** After review of CFR 395.13b3, interview of both the complainant and the Officers of the Geneva Police Department, an interview of NYSP Trooper [REDACTED] while in a “out of Status” directly relating to his logbook he did not classify for being taken out of service. [REDACTED] was issued the appropriate ticket via the NYS VTL UTT, but should have been allowed to update his logbook and then continue on his way as stated in Federal Regulations CFR 395.13 (b)(3). Based upon this statute, the driver should have been issued any tickets that were constituted at that time and he should have dismissed from the traffic stop and allowed to proceed to his designated route.

The information alleged by complainant:

6. [REDACTED]

The facts of the investigation support the findings of:

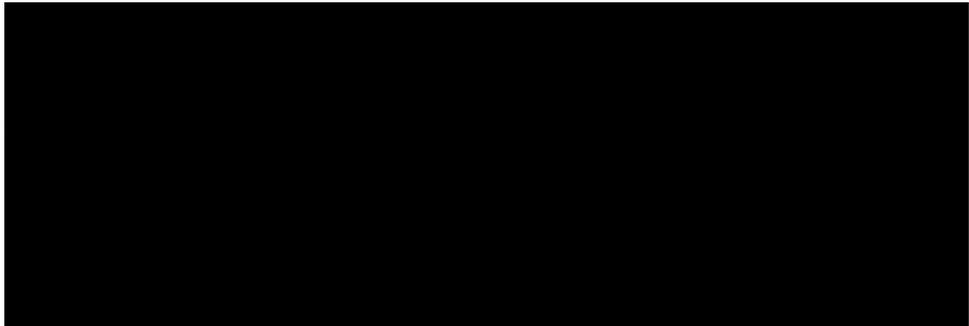
10. **NOTSUSTAINED:** [REDACTED] on on of

The information alleged by complainant:

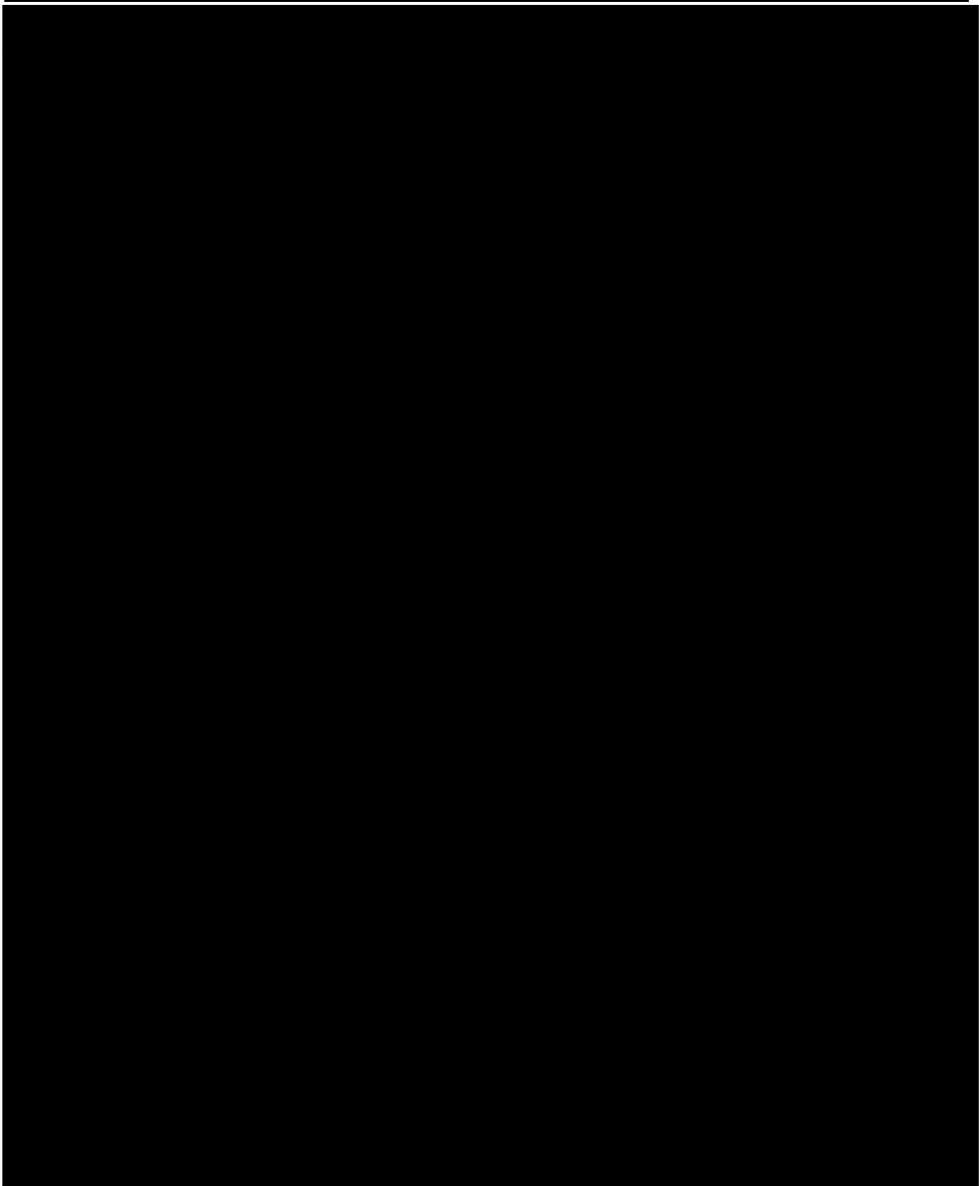
7. [REDACTED]

The facts of the investigation support the findings of:

11. **UNFOUNDED:** [REDACTED]



12.



13.

g. This report is complete based upon the information supplied to this Officer as if 8.11.2015 @ 1400

**Attachments:**

1. Citizen Complaint Form – 4pgs
2. Statement of Officer Cole – 1pg
3. Statement of Sgt. Turner – 1pg
4. Email to Complainant 7.6.2015
5. CR# [REDACTED] Complaint Call for Service
6. Email from Sgt. Turner to Chief Trickler 4.16.2015
7. Letter to Sgt Turner
8. Letter to Officer Cole
9. Letter to [REDACTED] Sent Email and Received
10. Certificate of Conviction & Disposition [REDACTED]
11. CD of MIRRA Radio Transmissions
12. CFR 395.13 (b)(3). 2 pgs.
13. CFR 394 LOG BOOK Rules
14. Written Letter from Sgt. Turner

**Respectfully Submitted,**

*Eric R. Heieck*

**Lt. Eric R. Heieck**

# GENEVA POLICE DEPARTMENT

## Citizens Complaint Form



**Chief J. Trickler**

Public Safety Building  
255 Exchange Street  
Geneva, New York 14456  
315.789.1111

GENEVA POLICE DEPARTMENT

Complaint Action Form

This form is to be completed in full and signed by the complaining citizen and a notary republic, if not signed by a Sergeant or Lieutenant of the Geneva Police Department. **WARNING: False Statements made herein are punishable as a Class A Misdemeanor crime pursuant to Section 210.45 of the Penal Law of the State of New York. Please type or Print.**

COMPLAINANT

Name:	[REDACTED]
Address:	[REDACTED]
Occupation:	[REDACTED]
Work Address:	[REDACTED]
Email Address:	[REDACTED]

ACCUSED OFFICER(S)

Name: <u>Jess Cole</u>	Badge Number <u>841</u>
Name: <u>Sgt Turner</u>	Badge Number <u>NA</u>

INCIDENT

Time/Date: [REDACTED]	Location: [REDACTED]
Nature of Complaint <u>unqualified officer</u>	

WITNESS(ES)

Name: <u>Officer [REDACTED]</u>	Phone Number
Address: <u>NYST DOT enforcement</u>	(H) _____ (W) _____
Name: _____	
Address: _____	(H) _____ (W) _____

- Are you making this complaint of your own free will: Yes  No
- Were you arrested as a result of this incident: Yes  No

If yes, what charge: \_\_\_\_\_

Date: \_\_\_\_\_

Disposition (fine, imprisonment, etc.): Threwed out in Court

3. Are you willing to appear and give testimony under oath at a department hearing and/or criminal proceeding: Yes  No

**COMPLAINT - state exact circumstances of the complaint**

officer lake stopped me for speeding during which he also look at my log books proceeding to issue me a speeding and a logbook citations after reviewing the D.O.T. handbook I was sure he could NOT place me out of service in which he had done. I requested he allow me to drive to a safe place to part of the road and with rest rooms he refused. after looking a Sect. 395.1363 I believed he was wrong in putting me out of service. I then confirmed that I was right. (Threw NSPT [redacted]) I called the station and request a officer to come review my log so I could proceed with my job. Sgt Turner showed up about 20-25 min later asked him to check my logbook so I could leave and he would not even tho the state DOT officer [redacted] had told me I could go if I had hrs to run. Sgt Turner could only tell me I could not leave because he had talked to officer and I could not leave I was out of service he confirmed officer lake statement [redacted]

[redacted] I left and then shortly after officer [redacted] called me again I meet with him just south of Geneva on [redacted] where he did look at my logbook and told me I was not out of service I could go on.

That is why I believe officer lake and Sgt Turner were out of line and unprofessional after the [redacted] of my truck and getting along the road for hrs I believe they violated my civil rights [redacted]

**\*\* if necessary, additional sheets may be attached hereto and made a part hereof.**

I understand that this statement of complaint will be submitted to the Geneva Police Department and may be the basis for an investigation. Further, I declare the facts contained herein are accurate and true to the best of my knowledge and belief. Further, I declare that my statement has been made by me voluntarily without persuasion, coercion or promise of any kind. **False statements made herein are punishable as a Class A Misdemeanor pursuant to Section 210.45 of the Penal Law.** Accordingly and with notice of the foregoing I hereby affirm that the foregoing statements are true.

Signature of Complainant: \_\_\_\_\_

Date: \_\_\_\_\_

(must be signed in presence of Supervisor, *if not notarized*)

Time 1955

Supervisor Receiving Complaint: SGT. J. J. [Signature] SGT.#1

**ADMINISTRATIVE USE ONLY**

Reviewed By: \_\_\_\_\_  
Name & Rank

Date Reviewed: \_\_\_\_\_ GPD Log No.: \_\_\_\_\_

- NO FURTHER ACTION  
 INVESTIGATION ASSIGNED TO:

**CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC**

State of New York

COUNTY OF \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ [Date] by  
\_\_\_\_\_ [name of principal].

[Notary Seal, if any]:

\_\_\_\_\_  
(Signature of Notarial Officer)

Notary Public for the State of New York

My commission expires: \_\_\_\_\_



TO: Lieutenant Heieck  
FROM: Officer Cole

DATE: July 10, 2015

SUBJECT: Detailed response to UTTs issued to [REDACTED]

On [REDACTED] at 1420 hours I was working uniformed patrol in GV5/west patrol. I was stationary in the [REDACTED] when I observed a tractor trailer southbound on [REDACTED]. I estimated the speed to be 48 and confirmed the speed at 46 with GV5's RADAR. I stopped the same truck on [REDACTED]. I obtained the driver's license, identifying his as [REDACTED] as well as cab card and log book. A review of the logbook shows the last change of status was in the sleeper berth at 2100-0000 on 4.11.15. [REDACTED] had no entries for the 12<sup>th</sup>. He had been driving for an indeterminate time as his logs were not maintained to show when he started driving or when he had or had not rested. I issued the tickets for speed in zone and fail to maintain logbook to [REDACTED]. Based on my on-the-job training received at Geneva PD, with the misdemeanor log book violation, I advised [REDACTED] that he was out of service. Again based on this training, I advised him that he could not drive the truck for 8 hours. [REDACTED]. After issuance of tickets he was advised he was allowed to leave [REDACTED].

Respectfully,

Officer Cole

**Geneva Police Department**

255 Exchange Street- GENEVA, NEW YORK 14456

To: Lt. Heieck

From: Sgt. Turner

Re: Written response to Complaint Action Form of [REDACTED]

07/12/2015

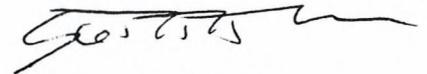
Lt. Heieck,

On [REDACTED] at the beginning of my shift I was advised that P.o. Cole had taken a trucker out of service on [REDACTED]. At some point during my shift I was advised that [REDACTED] wanted to speak to me on the telephone. [REDACTED] was irrational on the phone. A short time later I was radioed via GPD radio that [REDACTED] would like to speak to me at the actual location he was stopped on [REDACTED].

I responded to the location and spoke with [REDACTED] he initially stated that P.O. Cole had stolen some of his property, paperwork and when I inquired about the property, [REDACTED] stated that he didn't care about the item that was missing but was upset about the fact that his truck was taken out of service. I explained to [REDACTED] that if his log book was not up to date, he should not be driving. [REDACTED] stated that his log book is now complete and that he had made the corrections after the traffic stop with P.o. Cole. [REDACTED] also was upset that P.o. Cole had told him that he could not go into the woods alongside [REDACTED] and urinate.

I told [REDACTED] that as far as I was concerned, as long as his log book was up to date, then he could leave. I then left the location and [REDACTED] got back into his vehicle and I drove away. Twenty minutes later I drove down [REDACTED] vehicle was gone.

Respectfully submitted,



Sergeant T. Turner

## Eric Heieck

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**From:** Eric Heieck  
**Sent:** Monday, July 06, 2015 1:21 PM  
**To:** [REDACTED]  
**Subject:** Letter to Complaint Action [REDACTED] GENEVA POLICE DEPARTMENT  
**Attachments:** Letter to Complaint Action [REDACTED] GENEVA POLICE DEPARTMENT.pdf

Please see attached letter from the Geneva Police Department:

Respectfully,

**Lt. Eric R. Heieck**  
**Geneva Police Department**  
**255 Exchange Street**  
**Geneva, New York 14456**  
**315.789.1111**





**GENERAL INFORMATION**

Supervisor: TTUR TURNER      Dispatcher: SPLU PLURETTI      Call Taker: SPLU PLURETTI  
 Date/Time: 06/20/15 18:42      Reported Signal: POLICE INFORMATION 04  
 Actual Signal: POLICE INFORMATION 04      Received By: OTHER  
 Received: 18:42:33      Cleared: 18:43

Vehicle Description:

Plate No.:      State: NY  
 Disposition: P      Disp. Date: 06/20/15 18:42      Report Taken: NO  
 Action Taken:  
 Reference No. 1:      Reference No. 2:

**LOCATION**

Location Name: GENEVA POLICE DEPT.      Zone: GV7  
 Address: 255 EXCHANGE ST  
 Alt. Address:      Direction:  
 Apt. No.:      City: GENEVA      Intersection:  
 Phone No.: (315) 789-1111

**CALLER INFORMATION**

Last Name: TURNER      First Name: SGT      Middle Name/Suffix:  
 Alias/Maiden Name:      DOB:  
 Address: GPD  
 City: GENEVA      State: NY      Zip: 14456-\_\_\_\_  
 Phone: (315) 789-1111      Anonymous: NO

**RESPONDING UNITS/OFFICERS**

<u>Unit/Officer</u>	<u>Dispatched</u>	<u>En Route</u>	<u>Arrived</u>	<u>Cleared</u>
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**ASSOCIATED PERSONS**

<u>Name</u>	<u>Alias</u>	<u>DOB</u>	<u>Address</u>	<u>Phone</u>	<u>Sex</u>	<u>Inv.</u>

**NOTES**

PERSONEL COMPLAINT FORM PROVIDED TO SUB.

STOP 1417      605

Clear 1438      605 Clear Dish Completed

7.10.2015      lith Barb from Cole, F/U needed

## Eric Heieck

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**From:** Jeff Trickler  
**Sent:** Friday, July 10, 2015 10:02 AM  
**To:** Eric Heieck  
**Subject:** FW: Traffic stop of [REDACTED]

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**From:** Tyler Turner  
**Sent:** Thursday, April 16, 2015 9:48 PM  
**To:** Jeff Trickler  
**Subject:** Traffic stop of [REDACTED]

Dear Chief,

I spoke with Deputy [REDACTED] of the Ontario County Sherriff's Office and he advises the following:

1. Out of date logbook is not a service violation
  2. Federal Regulation 385.203 regulate who may complete a roadside inspection
- So it would appear that the 8 hours out of service was unapropriate

Sergeant T. Turner  
City of Geneva Police Department  
255 Exchange Street  
Geneva N.Y. 14456  
(315)789-1111 (315)789-1814

"If you knew you would be fighting for your life tomorrow, would you change the way you train today?"



Sgt. Turner  
Geneva Police Department

Dear Sgt. Turner,

You are hereby directed to complete a written document detailing your actions relating to the stop and issuance of NYS Uniform Traffic Tickets to:

[REDACTED]

[REDACTED] @ 1420PM

Speeding & LogBook Violations.

A Complaint Action Form has been filed by [REDACTED] alleging that he should not have been taken out of service [REDACTED] than issuance of the UTTS.

Please have this to me not later than 7.16.2015. It should be placed in an envelope in my mailbox. Any specific questions regarding this matter should be directed to me or Chief Jeffrey Trickler.

Respectfully,

*Eric R. Heimb*

**Geneva Police Department  
Jeffrey E. Trickler**

PSB255 Exchange Street- GENEVA, NEW YORK 14456



Officer Cole  
Geneva Police Department

Dear Officer Cole,

You are hereby directed to complete a written document detailing your actions relating to the stop and issuance of NYS Uniform Traffic Tickets to:

[REDACTED]

@ 1420PM

Speeding & LogBook Violations.

A Complaint Action Form has been filed by [REDACTED] alleging that he should not have been taken out of service [REDACTED] than issuance of the UTTS.

Please have this to me not later than 7.16.2015. It should be placed in an envelope in my mailbox. Any specific questions regarding this matter should be directed to me or Chief Jeffrey Trickler.

Respectfully,

*Eric R. Hain*

Geneva Police Department  
Jeffrey E. Trickler



Subject: Complaint Action Form – Officers Geneva Police Department



Dear Sir:

I am in receipt of your complaint action form dated 6.20.2015, against various Officers of the Geneva Police Department. I have been entrusted by the Chief of Police in investigating this matter. Be confident that this matter will be investigated with professionalism and accuracy devoted to the facts of this case. I will forward my final report to the Chief of Police at which time you will then be notified by the Chief of Police regarding any action. I can be reached at any time.

Respectfully,

*Eric R. Heieck*

Lt. Eric R. Heieck

315.828.6782

[erh@geneva.ny.us](mailto:erh@geneva.ny.us)

STATE OF NEW YORK  
COUNTY OF ONTARIO - CITY COURT OF GENEVA  
CERTIFICATE OF CONVICTION/DISPOSITION

\*\*\*\*\*

I, [REDACTED] certify that a judgment of conviction and/or disposition has been entered in this Court (CPL 60.60) against:

[REDACTED] Defendant, [REDACTED] Docket # [REDACTED]  
Arrested: [REDACTED] Arraigned: [REDACTED] Judge: [REDACTED]

-----  
ORIGINAL OFFENSE #1: LOG BOOK VIOLATIONS TL-02120 -UM-

Disposition Date: [REDACTED] Disposition: DISMISSED

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ORIGINAL OFFENSE #2: SPEED VIOL:POSTED LIMIT VTL-1180.D-0D -I -  
Reduced to: FAILURE TO OBEY TRAFFIC DEVICE  
VTL-1110.A-0A -I -

Disposition Date: [REDACTED] Disposition: PLED GUILTY  
Sentence Date: [REDACTED]  
Sentence: FINE  
Fine Amount: \$100.00

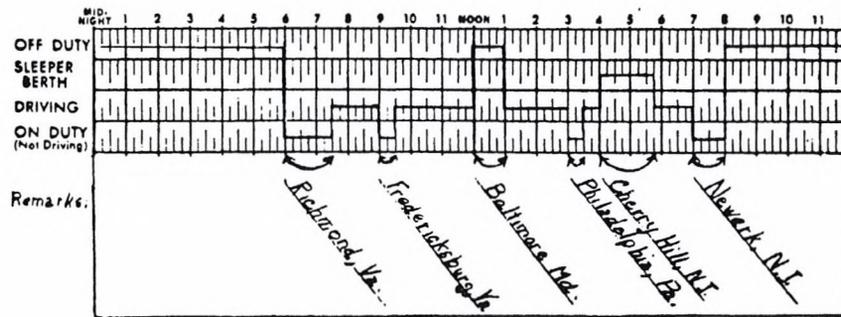
-----  
REMARKS:  
PENALTY ASSESSMENT: \$88.00

Witness my hand and the seal  
of said court this 6  
day of July, 2015

\_\_\_\_\_  
[REDACTED]  
Clerk

Federal Motor Carrier Safety Administration, DOT

§ 395.13



Graph Grid (Midnight to Midnight Operation)

The driver in this instance reported for duty at the motor carrier's terminal. The driver reported for work at 6 a.m., helped load, checked with dispatch, made a pretrip inspection, and performed other duties until 7:30 a.m. when the driver began driving. At 9 a.m. the driver had a minor accident in Fredericksburg, Virginia, and spent one half hour handling details with the local police. The driver arrived at the company's Baltimore, Maryland, terminal at noon and went to lunch while minor repairs were made to the tractor. At 1 p.m. the driver resumed the trip and made a delivery in Philadelphia, Pennsylvania, between 3 p.m. and 3:30 p.m. at which time the driver started driving again. Upon arrival at Cherry Hill, New Jersey, at 4 p.m., the driver entered the sleeper berth for a rest break until 5:45 p.m. at which time the driver resumed driving again. At 7 p.m. the driver arrived at the company's terminal in Newark, New Jersey. Between 7 p.m. and 8 p.m. the driver prepared the required paperwork including completing the driver's record of duty status, driver vehicle inspection report, insurance report for the Fredericksburg, Virginia accident, checked for the next day's dispatch, etc. At 8 p.m., the driver went off duty.

(Approved by the Office of Management and Budget under control number 2125-0016)

[47 FR 53389, Nov. 26, 1982, as amended at 49 FR 38290, Sept. 28, 1984; 49 FR 46147, Nov. 23, 1984; 51 FR 12622, Apr. 14, 1986; 52 FR 41721, Oct. 30, 1987; 53 FR 18058, May 19, 1988; 53 FR 38670, Sept. 30, 1988; 57 FR 33649, July 30, 1992; 58 FR 33777, June 21, 1993; 59 FR 8753, Feb. 23, 1994; 60 FR 38748, July 28, 1995; 62 FR 16709, Apr. 8, 1997; 63 FR 33279, June 18, 1998]

§§ 395.10-395.12 [Reserved]

§ 395.13 Drivers declared out of service.

(a) *Authority to declare drivers out of service.* Every special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter) is authorized to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that the driver has violated the out of service criteria as set forth in paragraph (b) of this section.

(b) *Out of service criteria.* (1) No driver shall drive after being on duty in excess of the maximum periods permitted by this part.

(2) No driver required to maintain a record of duty status under § 395.8 or § 395.15 of this part shall fail to have a record of duty status current on the day of examination and for the prior seven consecutive days.

(3) *Exception.* A driver failing only to have possession of a record of duty status current on the day of examination and the prior day, but has completed records of duty status up to that time (previous 6 days), will be given the opportunity to make the duty status record current.

(c) *Responsibilities of motor carriers.* (1) No motor carrier shall:

(i) Require or permit a driver who has been declared out of service to operate a commercial motor vehicle until that driver may lawfully do so under the rules in this part.

§ 395.15

49 CFR Ch. III (10-1-04 Edition)

(ii) Require a driver who has been declared out of service for failure to prepare a record of duty status to operate a commercial motor vehicle until that driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section. The appropriate consecutive hours off-duty period may include sleeper berth time.

(2) A motor carrier shall complete the "Motor Carrier Certification of Action Taken" portion of the form MCS-63 (Driver-Vehicle Examination Report) and deliver the copy of the form either personally or by mail to the Division Administrator or State Director Federal Motor Carrier Safety Administration, at the address specified upon the form within 15 days following the date of examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

(d) *Responsibilities of the driver.* (1) No driver who has been declared out of service shall operate a commercial motor vehicle until that driver may lawfully do so under the rules of this part.

(2) No driver who has been declared out of service, for failing to prepare a record of duty status, shall operate a commercial motor vehicle until the driver has been off duty for the appropriate number of consecutive hours required by this part and is in compliance with this section.

(3) A driver to whom a form has been tendered declaring the driver out of service shall within 24 hours thereafter deliver or mail the copy to a person or place designated by motor carrier to receive it.

(4) Section 395.13 does not alter the hazardous materials requirements prescribed in §397.5 pertaining to attendance and surveillance of commercial motor vehicles.

[44 FR 34963, June 18, 1979, as amended at 47 FR 53392, Nov. 26, 1982; 51 FR 12622, Apr. 14, 1986; 53 FR 18058, May 19, 1988; 53 FR 38670, Sept. 30, 1988; 53 FR 47544, Nov. 23, 1988; 60 FR 38748, July 28, 1995; 68 FR 22516, Apr. 28, 2003]

**§ 395.15 Automatic on-board recording devices.**

(a) *Authority to use automatic on-board recording device.* (1) A motor carrier may require a driver to use an auto-

matic on-board recording device to record the driver's hours of service in lieu of complying with the requirements of §395.8 of this part.

(2) Every driver required by a motor carrier to use an automatic on-board recording device shall use such device to record the driver's hours of service.

(b) *Information requirements.* (1) Automatic on-board recording devices shall produce, upon demand, a driver's hours of service chart, electronic display, or printout showing the time and sequence of duty status changes including the drivers' starting time at the beginning of each day.

(2) The device shall provide a means whereby authorized Federal, State, or local officials can immediately check the status of a driver's hours of service. This information may be used in conjunction with handwritten or printed records of duty status, for the previous 7 days.

(3) Support systems used in conjunction with on-board recorders at a driver's home terminal or the motor carrier's principal place of business must be capable of providing authorized Federal, State or local officials with summaries of an individual driver's hours of service records, including the information specified in §395.8(d) of this part. The support systems must also provide information concerning on-board system sensor failures and identification of edited data. Such support systems should meet the information interchange requirements of the American National Standard Code for Information Interchange (ANSI) (EIA RS-232/CCITT V.24 port (National Bureau of Standards "Code for Information Interchange," FIPS PUB 1-1)).

(4) The driver shall have in his/her possession records of duty status for the previous 7 consecutive days available for inspection while on duty. These records shall consist of information stored in and retrievable from the automatic on-board recording device, handwritten records, computer generated records, or any combination thereof.

(5) All hard copies of the driver's record of duty status must be signed by the driver. The driver's signature certifies that the information contained thereon is true and correct.

### **Log Books**

#### **Hours of Service Maximum Driving and On-Duty Time, 49CFR 395.3**

This law applies to all drivers, companies and owner / operators.

Under Federal and State law for **Property Carriers**, you may not drive more than 11 hours following 10 consecutive hours off duty **or** drive for any period after having been on duty 14 hours following 10 consecutive hours off duty.

For **Passenger Carriers**, you may not drive more than 10 hours following 8 consecutive hours off duty **or** drive for any period after having been on duty 15 hours following 8 consecutive hours off duty.

Unless you are exempt, you **must** complete **and** carry a Record of Duty Status (Log Book) in duplicate for each day, whether or not work is done. Management and drivers are equally responsible for the maintenance and retention of the driver's Record of Duty Status in accordance with Federal and State Law.

You are exempt under the 100-air mile radius rule only if **all 5** of the following conditions are met:

1. The driver operates within a 100 air-mile radius of the normal reporting location for CDL vehicles, or within 150 air-mile radius for non-CDL vehicles, **and**
2. The driver, except a driver-salesperson, returns to the work reporting location and is released from work within 12 hours, **and**
3. At least 10 consecutive hours off duty separate each 12 hours on duty, and
4. The driver does not exceed 11 hours maximum driving time following 10 consecutive hours off duty, **and**
5. The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true records showing the time the driver reported for work, his total hours on duty and the time released each day.

These records must be available at your place of employment for inspection by DMV Inspectors. Supporting documents such as toll receipts, fueling records, and delivery documents must also be kept on file and identified by the driver.

### **When You get Stopped for Inspection**

Your truck may be stopped and inspected by a Motor Carrier Inspector who has been certified by the Commercial Vehicle Safety Alliance (CVSA). You will be asked to produce certain documents during the inspection which includes:

- Your driver's license
- Your medical examiner's certificate
- Your medical waiver, if applicable
- Your record of duty status (logbook)
- Your trip receipts
- Your shipping/delivery papers or manifest
- A vehicle registration for each unit
- Current annual inspections for each unit

To: Lt. Heieck

From: Sgt. Turner

Re: Written response to Complaint Action Form of [REDACTED]

08/06/2015

Lt. Heieck,

In my conversation with [REDACTED] I told him that if his log book was not up to date, he should not be driving. [REDACTED] stated that his log book is now complete and he had made the corrections after the traffic stop with P.o. Cole. I did tel [REDACTED] that if his log book was not completed and he was stopped by the NYSP commercial vehicle enforcement [REDACTED]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sgt. Turner", written in a cursive style.

Sergeant Turner

## Jeff Trickler

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**From:** Tyler Turner  
**Sent:** Thursday, April 16, 2015 9:48 PM  
**To:** Jeff Trickler  
**Subject:** Traffic stop of [REDACTED]

Dear Chief,

I spoke with Deputy [REDACTED] of the Ontario County Sherriff's Office and he advises the following:

1. Out of date logbook is not a service violation
  2. Federal Regulation 385.203 regulate who may complete a roadside inspection
- So it would appear that the 8 hours out of service was unaproprate

Sergeant T. Turner  
City of Geneva Police Department  
255 Exchange Street  
Geneva N.Y. 14456  
(315)789-1111 (315)789-1814

"If you knew you would be fighting for your life tomorrow, would you change the way you train today?"

## Jeff Trickler

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**From:** Eric Heieck <ericheieck@mac.com>  
**Sent:** Thursday, September 10, 2015 8:34 AM  
**To:** Jeff Trickler  
**Subject:** Fwd: Letter to Complaint Action Form [REDACTED] GENEVA POLICE DEPARTMENT

Sent from my iPhone 📱

Begin forwarded message:

**From:** [REDACTED]  
**Date:** September 9, 2015 at 10:27:55 PM EDT  
**To:** Eric Heieck <[ericheieck@mac.com](mailto:ericheieck@mac.com)>  
**Subject: Re: Letter to Complaint Action Form** [REDACTED] **GENEVA POLICE DEPARTMENT**

at this time I would like to request a copy of all information involving the investigation officer statements radio communications the company in the entire file as I will be preparing to file a lawsuit against officers involved the City Police Department and the city of Geneva for my civil rights being violated thank you  
Please send a copy to me in care of [REDACTED]  
Also if you could please include any actions taken against the officers

On Sep 8, 2015 1:51 PM, "Eric Heieck" <[ericheieck@mac.com](mailto:ericheieck@mac.com)> wrote:  
Sir,

I have forwarded your email to the Chief of Police. From my knowledge he sent a letter many weeks ago to the address you put on your complaint.

Please let me know that you received the letter.

Respectfully,

Lt. Heieck.

Sent from my iPhone 📱

On Sep 8, 2015, at 4:30 PM, [REDACTED] <[REDACTED]> wrote:

Seems like it's taken an awful long time to get something figured out I hope you haven't forgotten me because you can bet I haven't forgotten the Geneva Police Department

On Jul 30, 2015 11:46 AM, "Eric Heieck" <[ERH@geneva.ny.us](mailto:ERH@geneva.ny.us)> wrote:

Good Afternoon,

Typically 30-60 Days upon completion and submittal to the Chief of Police. I have not located the NYSP Officer that you spoke to regarding the actions of the Geneva Police Department. Do you have his phone number and full name. I have completed a majority of the information in this case.

Thanks for any information you can help with on this.

Respectfully,

Eric

**Lt. Eric R. Heieck**

**Geneva Police Department**

**255 Exchange Street**

**Geneva, New York 14456**

**[315.789.1111](tel:315.789.1111)**



**From:** [REDACTED]  
**Sent:** Thursday, July 30, 2015 2:40 PM  
**To:** Eric Heieck  
**Subject:** Re: Letter to Complaint Action Form [REDACTED] GENEVA POLICE DEPARTMENT

Just wondered how long this investigations going to take  
Need to hear something soon need to get ahold of attorney

On Jul 6, 2015 12:22 PM, "Eric Heieck" <[ERH@geneva.ny.us](mailto:ERH@geneva.ny.us)> wrote:

Please see attached letter from the Geneva Police Department:

Respectfully,

**Lt. Eric R. Heieck**

**Geneva Police Department**

**255 Exchange Street**

**Geneva, New York 14456**

**[315.789.1111](tel:315.789.1111)**





Relative to your complaint the following investigation was undertaken by Police Lieutenant Eric Heieck:

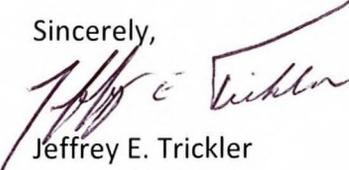
- Review of your complaint
- Review of Statement from Officer Cole
- Review of statement from Sgt. Turner
- Review of radio transmissions
- Review of CFR 395.13 (b)(3)
- Review of CRF 394 Log Book Rules
- Interview with NYSP Truck Enforcement Trooper 

**Specific Complaint** – 1.) Being placed *Out of Service* without authority  
2.) Unqualified Officers

**Finding** – 1.) Sustained- The act complained of did occur and constituted a violation of rule.  
2.) Training Issue – Act occurred due to lack of or insufficient training.

Thank you for calling your concerns to my office. Complaints and inquiries often can have a beneficial effect. I apologize for the inconvenience this has caused you and the officers will be dealt with internally by my office.

Sincerely,



Jeffrey E. Trickler  
Chief of Police



**Geneva Police Department**  
**JEFFREY E. TRICKLER**  
*Chief of Police*  
255 Exchange St. - Geneva, New York 14456  
(315) 789-1111 - Fax (315) 789-1814 - [www.geneva.ny.us](http://www.geneva.ny.us)

