

**COOK COUNTY SHERIFF'S MERIT BOARD**

Sheriff of Cook County	)	
	)	
vs.	)	
	)	Docket No. 1915
Deputy Sheriff	)	
Rocco J. Coduto	)	
Employee # [REDACTED]	)	
Star # 11248	)	

**DECISION**

This matter coming to be heard pursuant to notice before Gray I. Mateo-Harris, Board Member, on January 12, 2017, the Cook County Sheriff's Merit Board finds as follows:

**Jurisdiction**

Rocco J. Coduto, hereinafter Respondent, was appointed a Deputy Sheriff on July 19, 2004. Respondent's position as a Deputy Sheriff involved duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." See *Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and citing *Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1<sup>st</sup>) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.")).

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The original Complaint in this matter was filed with the Merit Board's administrative staff on August 12, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on August 12, 2016 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

### **Findings of Fact**

The Sheriff filed a complaint on August 12, 2016. The Sheriff is requesting Respondent's discharge from employment.

Respondent was appointed a Deputy Sheriff on July 19, 2004. (Tr. 25). Respondent was assigned to District 4 – Maywood Courthouse on December 12, 2007, and on May 26, 2015, was reassigned to Civil Process at the Richard J. Daley Center. (Tr. 25). Respondent was de-deputized on May 26, 2015 and relieved of his law enforcement powers in connection with his below arrest. (Tr. at 18).

On May 24, 2015, while off duty, Respondent was drinking beer at a Roselle, Illinois bar with a couple of friends. (Tr. 15). After leaving the bar, Respondent was involved in a traffic stop near the intersection of Irving Park and Albion in Roselle, Illinois. (Tr. at 26). The traffic stop was recorded and established that Respondent was intoxicated – but quite cooperative and non-combatant. (Tr. at 10). Roselle Police Department Officer [REDACTED] administered several Field Sobriety Tests ("FSTs") and Respondent was unable to perform the FSTs. (Tr. 16). Respondent's Breathalyzer test resulted in a BAC of .392. (Tr. at 16). He was arrested and charged with 625 ILCS 5.0/11-501 (A)(2) Driving Under the Influence of Alcohol ("DUI"). Respondent mentioned to [REDACTED] that he worked for the CCSO. (Tr. 20). Shortly following his arrest on May 24, 2015, Respondent timely reported his arrest [REDACTED] (Tr. at 33).

On September 22, 2015, Respondent was interviewed by investigators from the Cook County Sheriff's Office of Professional Review ("OPR") and provided them with an audio recorded statement. (Tr. at 15). Respondent admitted that the May 24, 2015 arrest was his third DUI arrest. (Tr. at 17). Respondent was convicted for a DUI in November 2006 (for which he was suspended), and arrested for a DUI in August 2007 (for which it is unclear he received any discipline). (Tr. 21-22, 54-62). Respondent promptly reported both arrests and was evaluated but not recommended for any alcohol treatment. (Tr. 58-62). [REDACTED] [REDACTED] (Tr. 58).

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On July 15, 2016, Respondent pled guilty to Reckless Driving in violation of 625 ILCS 5/11-503(a)(1), a class A misdemeanor (Tr. at 28), and received a Conditional Discharge of two years, which he has since completed (Tr. at 30). Respondent's driver's license has been reinstated. (Tr. at 30).

As part of his conditional discharge for the May 24, 2015 arrest, Respondent was sentenced to complete the DUI Monitoring Program, to submit to random urinalysis testing, and to abstain from alcohol. (Tr. 64). [REDACTED]

[REDACTED] (Tr. 64-65). [REDACTED]

[REDACTED] (Tr. 65-66). Respondent further testified under oath that he had never reported to work under the influence of alcohol and had never been under the influence of alcohol while driving in connection with work. (Tr. 66-67). Respondent credibly expressed remorse and apologized to everyone for the situation. (Tr. 67).

Retired Deputy [REDACTED], who worked with EAP, [REDACTED] (Tr. 36-38). [REDACTED] (Tr. 38).

(Tr. 36-38). He also had numerous counselors and sponsors submit glowing letters and testimonials about his progress. (Tr. 39). [REDACTED]

[REDACTED] (Tr. 42-44). [REDACTED]

[REDACTED] (Tr. 42-44). [REDACTED]

[REDACTED] (Tr. 42-44). [REDACTED]

[REDACTED] (Tr. 72-73). [REDACTED]

[REDACTED] stated that he was comfortable knowing Respondent would be able to carry a weapon, drive his vehicle and potentially transport patients as part of his primary job [REDACTED] [REDACTED]. (Tr. 76-77). Respondent enjoys the confidence of his colleagues based on the results of the Loudermill hearing (Tr. 45-51).

Notably, there was no assessment by the Sheriff as to whether Respondent is disabled or entitled to any reasonable accommodation.

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Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that the Sheriff has met its burden of proof in establishing that Respondent violated the following policies, rules and regulations *except those italicized*:

- (1) Sheriff's Order 11.2.20.1:
  - a. *(VI.)(B.)(h.), Conduct ("Using . . . status as a member of the CCSO in any way that could reasonably be perceived as an attempt to gain influence or authority for no-official business or activity.")*
  - b. (VI.)(E.), Performance –
    - i. (28) ("Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/employer relationship . . . whether on-duty or off-duty.")
    - ii. (42) ("Any misdemeanor or felony violation.")
    - iii. (43) ("Any other on-or-off conduct which a member knows or reasonably should know is unbecoming of a member of the CCSO; which is contrary to good order . . . ; or which tends to reflect unfavorably upon the CCSO or its members . . . .")
- (2) Cook County Sheriff's Department of Merit Board Rules and Regulations, Article X, Paragraph B (prohibiting violations of policies, rules, regulations or laws).

There is no question that Respondent violated the aforementioned rules with respect to his DUI in May 2015. His conduct in driving while significantly intoxicated violates the Sheriff's policies, rules and regulations. However, he did cooperate fully with the arresting officer's instructions and behaved in a calm, non-combative manner. The mere fact that Respondent mentioned he was a CCSO Deputy Sheriff to the arresting officer will not be considered an aggravating factor. Nor will Respondent's two prior DUIs – dated nearly a decade ago – be considered aggravating factors in this matter.

Respondent has followed the Court's Conditional Discharge instructions, has completed all required treatment programs [REDACTED]

Respondent is certainly quite fortunate that no property or persons were injured in connection with his DUI. He is also fortunate that he enjoys the confidence of his colleagues.

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**Order**

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to remove Respondent Rocco J. Coduto from the Cook County Sheriff's Department is DENIED. Respondent is hereby suspended from duty for a period of 180 days effective August 12, 2016.

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James P. Nally, Chairman



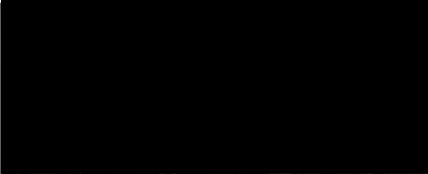
Byron Brazier, Vice-Chairman



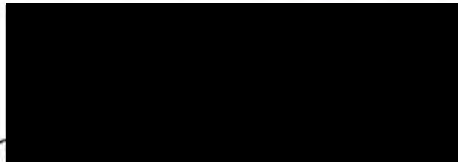
John Dalicandro, Secretary



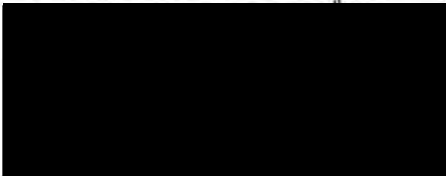
Kim R. Widup, Board Member



Vincent T. Winters, Board Member



Juan L. Baltierres, Board Member



Patrick Brady, Board Member



Gray Mateo - Harris, Board Member

Date December 14, 2018