

**COOK COUNTY SHERIFF'S MERIT BOARD**

<b>Sheriff of Cook County</b>	)	
	)	
<b>vs.</b>	)	
	)	<b>Docket No. 2035</b>
<b>Police Officer</b>	)	
<b>David Sheppard</b>	)	
<b>Star # 557</b>	)	

**DECISION**

This matter coming on to be heard pursuant to notice before John Jay Dalicandro, Board Member, on August 23<sup>rd</sup> and 24<sup>th</sup>, 2018, the Cook County Sheriff's Merit Board finds as follows:

**Jurisdiction**

David Sheppard, hereinafter Respondent, was appointed a Correctional Officer on September 5, 1995. February 1, 1998, Respondent was promoted to the position of Correctional Sergeant. December 1, 2002, Respondent was promoted to the position of Correctional Lieutenant. June 27, 2004, Respondent was appointed to the position of Police Officer. December 8, 2013, Respondent was assigned as an Investigator to the Correctional Information and Investigations Division ("CIID"), located at 3026 South California Avenue, Chicago, Illinois 60608. October 24, 2016, Respondent was assigned to Civil Process Clerical at the Daley Center, located at 50 West Washington Street, Chicago, Illinois 60602.

Respondent's position as a Police Officer involves 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.*

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*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.”)).

The original Complaint in this matter was filed with the Merit Board’s administrative staff on July 20, 2017 and an amended complaint was filed on January 25, 2018. 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 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 July 20, 2017 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 July 20, 2017 and an amended complaint on January 25, 2018. The Sheriff is requesting termination.

Officer [REDACTED] has been with the Cook County Sheriff’s Department of Corrections for 26 years and is currently an investigator. (R. 18, 19) He was the evidence custodian at the time of this incident. (R. 20) He was told by his previous sergeant to provide binders to Sgt. [REDACTED] when he arrived on the job to replace him. (R. 22) He did not look over the binders as he was not permitted to. (R. 22) He recalls having a conversation with Respondent Shepard on October 17, 2016 at the copier because he seemed “deceptive”. (R. 23) At that time he observed Respondent making copies and he said he has to quickly get this back soon and hurry up and make these copies before [REDACTED] gets back. (R. 25, 26) Respondent Shepard reported to Officer [REDACTED] that what he was copying were testing scores and evaluations and asked the Respondent what you are going to do with the copies and how you are going to say you got them? To which Respondent responded, “I don’t have to have it I just need to know of its existence”. (R. 26) Officer [REDACTED] would consider the testing scores and evaluations confidential. (R. 27) The next day he approached Sgt. [REDACTED] and explained to him what had transpired with Respondent Shepard at the copier and the conversation they had. (R. 28) He has never seen Sgt. [REDACTED] give permission to anyone to copy the binders or to go into his office as they wish and take something out and copy it. (R. 30)

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Sgt. [REDACTED] has been employed with the Cook County Sheriff's Police since 1998. (R. 42) He recalls Investigator [REDACTED] providing him a safe that had documents in binders contained in it. (R. 46) No one else was in Sgt. [REDACTED]'s office when he initially reviewed the binders in question. (R. 47) He recalls having a conversation with Respondent Shepard regarding some of the contents of what was on his desk, a transfer order, but then realized that as the pages were being turned there was additional information in there regarding scores and evaluations that Respondent Shepard was not supposed to look at. (R. 48) Sheppard went over to the open binder and Sergeant [REDACTED] proceeded to review the contents of the binder with Sheppard. In the binder were "Article H" transfer papers which are documents used for transfers. (R. 171,178). Article H transfers refer to the process conducted by the Department when employees want to transfer from one unit to another. (R. 171). The two proceeded to review the material in the book to see why Sheppard has scored to low. Once he realized what was in that binder he put in one of his vestibule cabinets in his office. (R. 49) The reason he took the book back and put it away is that staff members can see their own scores and evaluations, but they are not supposed to look at others. (R. 49) He did not have any discussion with Respondent Shepard regarding allowing him to take the documents for a grievance case he had or provide him with his test score. (R. 49) Respondent Shepard never asked permission to copy the contents of the binder. (R. 50) Two of AFSCME's grievances regarding promotions and transfers were scheduled for a grievance meeting on October 18, 2016. (R. 170, 198). These were the grievances that were related to the documents that Sergeant [REDACTED] had shown Sheppard. He never told Shepard that these documents would help them in a grievance, promotions or negotiations with the union and never said "whatever you need man." (R. 50) He recalls October 17, 2016 which is the day he was working. (R. 53, 54) He was out of the office that day because he had to attend a juvenile hearing. (R. 54) All the people in his unit have his cell phone number so if they need something they can contact him. (R. 56) When he got to work on October 18, 2016 at that point he went and talked to Investigator [REDACTED] and learned that he saw Respondent Shepard at the copy machine copying documents from the sergeant exams and evaluations and that Shepard told him these documents were going to help him in some type of complaint. (R. 58) At that point he went and got the binder and went up and talked to the Executive Director [REDACTED]. (R. 58) He went straight to OPR and met with Director [REDACTED]. (R. 59) The sergeant agrees he has an open-door policy which means people can come in and talk to him and he is more than happy to meet with them. (R. 60) His open-door policy does not mean anyone can come and take stuff from his office or use the contents or use the computer within his office. (R. 61) Sgt. [REDACTED] never exchanged text messages with Respondent Shepard inquiring about how a particular union grievance meeting went. (R. 71) The only information he ever gave Respondent was statistics for the additional personnel. He never gave him information regarding his role as a union steward. (R. 72) Sergeant [REDACTED] never told Sheppard that the documents were confidential. (R. 209)

Investigator [REDACTED] has been with the Office of Professional Review for 8-1/2 years. (R. 84.) He conducted all the interviews, reviewed all the proper documents and took statements for witnesses. (R. 86) He interviewed Director [REDACTED], Sgt. [REDACTED], Officer [REDACTED], Union Steward [REDACTED] and the Respondent David Shepard. (R. 89) He reviewed the documents that were copied out of the binder from Sgt. [REDACTED]'s office as part of his investigation. (R. 96) Investigator [REDACTED] made a finding of sustained regarding the allegations that the Respondent Shepard

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violated the conduct unbecoming General Orders and that he removed the County documents without authorization. (R. 98) He further made a determination that Respondent Shepard had misrepresented facts and made false and misleading statements. (R. 98, 99) At the interview of the Respondent, Investigator [REDACTED] reviewed the documents that the Respondent brought but he had previously reviewed all the documents in the binder from which those documents came. (R. 118) The documents that Respondent wanted to show him during the interview were totally separate and were not surrounding the occurrences of October 17th. (R. 120) The only reason he interviewed Sgt. [REDACTED] a second time was that Respondent Shepard was so adamant that he had permission to copy these documents, he wanted to verify from Sgt. [REDACTED] that he was very clear he did not have that authorization. (R. 120, 121)

[REDACTED] has been with the Department for 21 years and with the CIID for the past two years. (R. 126) Sgt. [REDACTED] was her supervisor in 2016. (R. 127) [REDACTED] testified to recalling a conversation back in June of 2016 when she saw Sgt. [REDACTED] and Respondent looking over documentation and afterwards Respondent Shepard came over to her and told her that he could not believe that he was given an evaluation of 39. (R. 128, 129)

Respondent David Shepard admits going into Sgt. [REDACTED]'s office and copying the material in question. (R. 200, 201) Respondent admits that he did not confirm his permission to copy this information from Sgt. [REDACTED] prior to going and doing this. (R. 202) He refers back to Sgt. [REDACTED] saying "whatever you need brother" as his permission. Sheppard made no effort to conceal copying the documents in the binder. (R. 207). Two employees, Officer [REDACTED] and Investigator [REDACTED] spoke with Sheppard while he was copying the documents and Sheppard openly told each of them what he was copying and why and that the documents supported certain grievances that were being processed. (R. 202) Respondent further confirmed that Officer [REDACTED]'s testimony stating that they would just make a request for this document and the administration would have to turn this all over to them. (R. 205) That those files were testing scores, evaluations, attribute questions, and operational questions for personnel who applied in the CIID Unit in 2013. (R. 201) That on October 17, 2016, Respondent photocopied these same files and returned the originals to Sergeant [REDACTED]'s office. (R. 200-208) Respondent admits to giving the documents that he copied to the labor management team at a meeting the next day. (R. 207) Respondent again admits that after reviewing the documents and prior to taking them out of [REDACTED]'s office and copying them he did not ask for permission and did not discuss them with Sgt. [REDACTED] again. (R. 235, 236) He also admits he took the documents when [REDACTED] was out of the office. (R. 237) He had his cell phone number and he did not try to call him to make sure it was okay to take the documents. (R. 238) Respondent admits that he did not ask permission but that he believes it was "insinuated that it was okay" for him to go in the office and copy documents. (R. 239) He admits he recognized there was personal information on the documents that he was copying on the applications and other places. (R. 242) Respondent admits that he was trying not to give information to the union that he was not supposed to have. (R. 244)

Respondent admits that the Sheriff's administration office could not go into the union's office and take documents that they wanted to see. (R. 250, 251) Respondent admits he did not

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give the Sheriff's Office a chance to redact any of the documents before he passed them along. (R. 252) He took the documents home and redacted information.

### **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 Respondent violated the Cook County Sheriff's Department Rules and Regulations.

The Respondent David Sheppard since 2006, has been very involved with his Union. Respondent has served as a Union Steward and member of the collective bargaining team. His duties as Union Representative included filing and processing grievances, attending grievance meetings, discussing the resolution of grievances with representatives of the Employers and participating in grievance arbitrations, collective bargaining, and interest arbitration. In his role as Union Representative, first with the American Federation of State, County, and Municipal Employees ("AFSCME") and then with the Illinois Fraternal Order of Police Labor Council, (IFOP), Respondent was involved in over 40 grievances and attended 6 arbitrations. (R 161) Clearly Mr. Sheppard knows the proper procedures in acquiring documentation that will be used in a grievance hearing. In his own testimony he stated that, AFSCME, in its role as collective bargaining representative, was entitled to the documents copied and had been given similar documents by the Employer in the past. (R 211). He knew the documents he was taking without permission would help with the grievance that was going to take place the next day October 18, 2016. Respondent clearly knew what he was copying, he even took the documents home and redacted some of the information. Respondent admits he did not ask for formal permission from anyone. Respondent should have followed correct procedures and asked for the documents through the proper channels.


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**Order**

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to terminate and remove David Sheppard, respondent, from the Cook County Sheriff's Office is granted effective July 20, 2017.



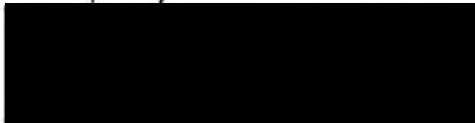
**James P. Nally, Chairman**



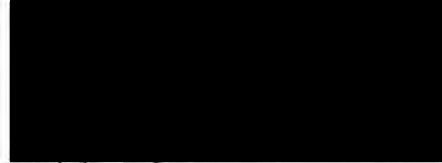
**Byron Brazier, Vice Chairman**



**John J. Balicandro, Secretary**



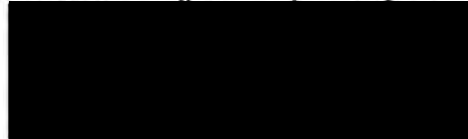
**Juan Baltierres, Board Member**



**Vincent T. Winters, Board Member**



**Kim R. Widup, Board Member**



**Patrick Brady, Board Member**



**Gray Mateo-Harris, Board Member**

Dated: October 26, 2018