

BEFORE THE CIVIL SERVICE COMMISSION
OF THE CITY OF SAN DIEGO, CALIFORNIA

IN THE MATTER OF THE APPEAL OF
LARRY AVRECH, FROM THE ORDER OF
HIS TERMINATION

The matter of the appeal of Larry Avrech, Police Officer II, from an order effective January 22, 1985, terminating his services as an employee of the City of San Diego Police Department, came on for a hearing before the Civil Service Commission of the City of San Diego on Tuesday, May 7, 1985, at 9:00 a.m. The hearing was continued on May 8, May 15, May 16, June 4, June 19, July 2, and concluded on July 3, 1985, in the Sixth Floor Commission Room of the City Administration Building, 202 C Street, San Diego, California.

Commission President Jim McFarland and Commissioners Dale Cobb and Hope Logan convened the appeal hearing. Serving as staff to the Commission were Chief Deputy City Attorney Jack Katz, Chief Deputy City Attorney Stu Swett, Deputy City Attorney John Kaheny and Personnel Services Supervisor Liz Pattison. Representing the Appointing Authority were Deputy City Attorney Sue Heath, Captain Tom Hall, and Lieutenant Bill Skinner. Representing the Appellant was Donald Peterson, Attorney-at-Law.

The Commission, having held said hearing and having heard testimony pursuant thereto, and having received evidence both oral and documentary, and after hearing arguments by the respective sides, now makes its findings and conclusions as follows.

BACKGROUND

1. Larry Avrech, Appellant herein, was employed by the City of San Diego Police Department from November 13, 1979, until January 22, 1985, when he was terminated by order of the Police Chief acting pursuant to authority granted by the City Manager.
2. In accordance with Civil Service Rule XI, the Appellant was furnished the reasons for his termination, said reasons being:

"This recommendation for your termination is based on the fact that an investigation conducted by this Department shows that between June 1984, and September 1984, you: maintained a relationship with a known prostitute under police investigation; provided her with a letter of reference for court, knowing it to contain false information; provided confidential information to an unauthorized person; made derogatory remarks concerning Department members; neglected police assignments; improperly handled a criminal informant, and conducted a personnel investigation without proper authorization. On October 16, 1984, you violated a direct order relating to this investigation.

Therefore, based on the information available to me, I believe termination from employment is appropriate for the following reasons:

You have violated the following Civil Service Rules:

1. Civil Service Rule XI, Section 3(i) (That the employee has been guilty of any conduct unbecoming an officer or employee of the City).
2. Civil Service Rule XI, Section 3(d) (That the employee has violated any lawful or official regulation....). To Wit:
 - a) The following Rules and Regulations of the Department:

1.06 Unbecoming Conduct

- A. Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the Department. Officers shall not conduct themselves in any manner which brings the Department into disrepute or reflects discredit upon the officer as a member of the Department, or which impairs the operation and efficiency of the Department or officer.
- B. Members shall not engage in any conduct which is unbecoming an employee of the Department, or in conduct which impairs the operation of the Department.

1.07 Immoral Conduct

Officers shall maintain a level of moral conduct in their personal and business affairs which is in keeping with the highest standards of the law enforcement profession. Officers shall not participate in any activity or incident involving moral turpitude which impairs their ability to perform as members of the Department or causes the Department to be brought into disrepute.

1.09 Abuse of Position

- A. Use of Official Position or Identification

Members shall not use their official position, official identification cards or badges: (1) for personal or financial gain, (2) for obtaining privileges not otherwise available to them except in the performance of duty, or (3) for avoiding consequences of illegal acts. Members shall not lend their identification cards or badges to another person or permit their identification cards to be reproduced.

- C. Members shall not enter into official Department correspondence over a signature other than that of the Chief of Police, except as authorized by Department procedures.
- D. Members shall not use the Department's name or address, or the address of any area station, for other than

official purposes. Members shall not permit or authorize the use of the Department's name, any Department address or their official titles on any personal correspondence, including, but not limited to, personal checks, credit cards and other items to be deemed for personal use without the prior approval of the Chief of Police.

1.11 Associations

Members shall avoid maintaining associations or dealings with persons whom they know, or should know, are registered sex offenders, felons, suspected felons, (or) persons under criminal investigation or indictment, which may adversely affect Department operations. Additionally, such associations are permissible in the performance of official duties when authorized.

1.14 Public Statements and Appearances

Members shall not publicly criticize or ridicule the Department, its policies or other members by speech, writing or other expression, where such speech, writing or other expression is defamatory, obscene, unlawful, undermines the effectiveness of the Department, interferes with the maintenance of discipline or is made with reckless disregard for truth or falsity.

1.18 Performance of Duty

- A. Members shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Members shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by, but is not limited to, a lack of knowledge of the application of laws required to be enforced, an unwillingness or inability to perform assigned tasks, or the failure to conform to work standards established for the member's rank, grade or position.

1.24 Neglect of Duty

Members shall not engage in activities or personal business which would cause them to neglect or be inattentive to their duty. Such activities include, but are not limited to, recreational reading, playing games, watching television or otherwise engaging in entertainment while on duty, except as may be required in the performance of duty.

Members shall remain awake on duty. If unable to do so, they shall so report to their superior who shall determine the proper course of action.

1.37 Dissemination of Information

Members shall treat the official business of the Department as confidential. Any information regarding official business shall be disseminated in accordance with the law and established Department procedures. Members may remove or copy official records or reports from a police installation only in accordance with established Department procedures. Members shall not divulge the identity of persons giving confidential information except as authorized by the proper authority in performance of police duties.

1.38 Investigations

Officers shall not conduct any investigations or other official action not part of their regular duties without obtaining permission from their superior unless the urgency of the situation requires immediate police action.

1.44 Truthfulness

A. Members shall be truthful in all matters relating to their duties.

1.04 Obedience to Lawful Order

Members shall promptly obey any lawful orders of superiors. This includes orders reasonably relayed from a superior by someone of the same or lesser rank. While on duty and in the presence of others, members of the Department shall address superior officers by their titles.

b) Department Instruction 3.21, Section IV, J.

Informant contacts shall be of a strictly professional nature. Off-duty social and personal business contacts are expressly prohibited."

3. Within the time provided by Section 5(a) of Rule XI of the Civil Service Rules of the City of San Diego, the Appellant requested a hearing before the Civil Service Commission upon the question of his termination.

FINDINGS

1. Testimony revealed that the person in question was a known prostitute who had been convicted of prostitution on several occasions. Testimony indicated the Appellant first met her in 1981 when she participated in a Police Department ride-along and that he next came into contact with her on June 8, 1984, when he gave her a Field Interrogation as part of his regular prostitution enforcement duties. Testimony indicated that he again contacted her on June 12, 1984, when he wrote her a traffic ticket and then on

- June 16, 1984, during another Field Interrogation of her for possible prostitution activity at which time she said that she was tired of being harassed and followed, and that it was going to come to an abrupt stop because she had someone "in her hip pocket". The Appellant testified that upon questioning her, she told him the name of the individual she was referring to, a San Diego Police Lieutenant who was the Appellant's second-level supervisor. The Appellant testified he did not believe her and that there had been complaints against her from other officers. Testimony further revealed that some officers thought she was out to burn them and others thought she liked the officers.
2. Testimony revealed the Appellant next contacted this prostitute on June 19, 1984, for another Field Interrogation. At this time, she told him she was going on a trip to the Colorado River with the same Lieutenant and two San Diego Police Sergeants whose names she did not reveal. The Appellant, after hearing this, telephoned a friend and former supervisor of his, a Police Sergeant whom he knew was on an authorized leave of absence. The Appellant told the Sergeant that he had information from a known prostitute that the prostitute was going to the river with a Police Lieutenant (he revealed his name) and two unidentified Sergeants. Testimony indicated the Sergeant told him this was a very serious allegation and, if it were untrue, could jeopardize the Lieutenant's career and possibly cause the Appellant to lose his job. The Sergeant testified she spoke in vague terms, telling him if he had something specific it should be carried forward. She testified she did not feel at the time that he was asking her advice as a supervisor.
 3. The Appellant testified he felt he could not go to his immediate supervisor, a Sergeant, with the information because of prior disagreements they had concerning monthly prostitution enforcement statistics and concerning his being turned down, at the recommendation of the Vice Unit, for a special prostitution detail. The Appellant testified he also thought that his Sergeant was possibly involved in this matter because he and the Lieutenant had spent quite a lot of time together on the prostitution detail. Evidence indicated the Appellant felt it was inappropriate for him to go to his own Lieutenant on the matter because the Lieutenant was the subject involved. He further testified he felt he could not go to his Captain because he had been admonished by his Lieutenant in the past not to go to the Captain with questions and that he took this to mean that if he ever went over the Lieutenant's head, he would be in trouble.
 4. Testimony indicated the Appellant contacted this same prostitute for a Field Interrogation on June 29, 1984. Testimony revealed he was observed by his Sergeant talking to her on this occasion for over an hour at a laundromat. She told him she had been to the Colorado River as previously mentioned and that she needed money for her attorney. The Appellant testified he went to her apartment after work that day at her request to find out more details, that he stood in her doorway for about 25 minutes while she mentioned she would be getting money from the Lieutenant, telling him also of some photographs she would be viewing of the river trip. The Appellant testified of his interest in obtaining the photographs which would give him the concrete evidence needed to bring this issue forward to the proper authorities. The Appellant further testified he realized during

this conversation with the prostitute that his immediate supervisor was not one of the Sergeants who went to the river.

5. Evidence indicated the Appellant's Sergeant had observed the Appellant spending too much time with this prostitute and being too friendly with her. Testimony revealed the Appellant's Sergeant warned him on June 30, 1984, to be careful of this prostitute and that she would get him into trouble if he became involved with her.
6. Evidence indicated the Appellant in July, 1984, telephoned, at this prostitute's request, the Probation Officer who was responsible for recommending to the court sentencing for a prior prostitution conviction the prostitute had received. Evidence further indicated that the prostitute told the Probation Officer that she had been working with two Police Officers and they would be phoning her. The Probation Officer testified she felt this was an unusual occurrence and was uncomfortable about the situation. She testified the Appellant, when he telephoned, told her this prostitute was not a typical prostitute, she was not a transient, she did not have a pimp, and did not take drugs. She testified he identified himself as a San Diego Police Officer and did not ask her to do anything on behalf of the prostitute. The Probation Officer testified she considered the information told her by the Appellant in preparing her report and that it corroborated the prostitute's story. The Appellant testified he phoned the Probation Officer because the prostitute had told him the Lieutenant would also be calling her and he wanted to find out if this had occurred. Additionally, he testified he wanted to satisfy the prostitute.
7. Testimony indicated that the Appellant, in the middle of July, 1984, at this prostitute's request, went over to her apartment to write a character reference that she indicated was to be given to her attorney. The Appellant testified that he wrote the reference in his patrol car, purposely on a piece of cardboard backing to make it a worthless, unprofessional document. The prostitute testified that he told her that he ran out of paper and therefore used the cardboard instead. Evidence revealed the Appellant, on the cardboard, documented the conversation he had with the Probation Officer, writing that he had known the prostitute for about three years and that there were girls more deserving of her fate. He signed the cardboard and wrote the initials "SDPD" under his name. Testimony and evidence revealed the Appellant, on July 21, 1984, went to the prostitute's apartment after work at her request to rewrite this document on regular paper because she thought the cardboard was unacceptable and unprofessional. Evidence indicated he included on the paper statements that the prostitute had always cooperated with the Police and he felt probation would be more beneficial than incarceration. He also wrote he understood she was presently employed as a security officer and had not been seen working the streets. He signed the paper and put the initials "SDPD" under his name. Testimony revealed the Appellant, approximately 12 days before he wrote the second reference letter, had conducted a Field Interrogation of this prostitute and that another police officer, approximately five days before this letter, had stopped her for possible prostitution activity on El Cajon Boulevard. The prostitute testified that although it was true that she had not been seen on the Boulevard for awhile, that she was still "working the Boulevard" at the time. The prostitute further testified she was employed

- as a security guard during late July, 1984. Testimony further indicated she was employed as a security guard from July 21, 1984 to August 4, 1984. Testimony by the judge assigned to rule on the prostitute's sentencing indicated the Appellant's character reference letter was forwarded to him, he considered its contents and mentioned he had never before received a letter like this from a Police Officer. He further testified there was some difference between the letter and the Probation report which indicated the prostitute was not employed as a security officer, that she had lost her job and went back to prostitution.
8. Evidence revealed that, during the week of August 1, 1984, one of the Appellant's fellow squad members announced in front of the entire squad at lineup that he had been told by this same prostitute that an Officer had asked her to file a complaint about him. Evidence indicated this Officer, on August 11, 1984, stopped this prostitute for possible prostitution activity and he later relayed to his Sergeant that she told him almost everything he had said at the previously-mentioned lineup. Evidence revealed she would not identify the other Officer's name to him, other than to say he was a "dirty cop." The Appellant's Sergeant contacted the prostitute that same day and she explained her relationship with this "dirty cop", saying he gave her information regarding the Police Department and squad activities, and then identified him as the Appellant.
 9. Testimony indicated that Internal Affairs began its investigation on August 14, 1984, and that the prostitute agreed to assist in the investigation by tape recording any telephone conversations between herself and the Appellant. Evidence indicated that nine telephone conversations were recorded between the two from the period of August 15, 1984, up to and including August 21, 1984. Testimony and evidence indicated the Appellant initiated the majority of the calls, which occurred both while he was on duty and while off-duty. Evidence revealed the Appellant, during the calls, often initiated discussions of a sexual nature. In addition, he made derogatory comments to the prostitute about another Police Officer, his Sergeant, his Lieutenant, a prior supervisor, and described conflicts he was having with his present Sergeant. Evidence further indicated that he gave her license plate registration information at her request (using police teletype facilities to gain the information), described to her the procedure for obtaining restricted information from the Sacramento Department of Motor Vehicles, and told her information not commonly made available to persons outside the law enforcement community concerning retrieval of restricted DMV license information. Evidence also revealed he gave her information that police units were no longer allowed to travel outside San Diego City limits to follow working prostitutes and additionally provided her information concerning a homicide that had taken place involving a cab driver which was then being investigated by the Police Department.
 10. Evidence indicated the Appellant, on October 8, 1984, was given a direct order by the investigating Lieutenant in the Police Department not to discuss the case with anyone other than his attorney or Internal Affairs investigators. On October 16, 1984, the Appellant was interviewed by another Police Department Lieutenant regarding an investigation of misconduct by the Sergeant whom the Appellant had telephoned regarding his knowledge of the river trip. Evidence indicated the Appellant believed that

during the course of that interview, the Lieutenant had told him the investigation into the Appellant's actions was completed; however, the Lieutenant testified she did not say that the initial investigation by the first Lieutenant was finished. Evidence indicated that, on that evening, the Appellant discussed the investigation with another Police Officer at a 7-11 store. Testimony indicated the Police Officer's wife, a store clerk, and one or two customers were present and that the officer, after hearing some of the details, took the Appellant out of public view and earshot into the back room of the store to continue the conversation. Evidence indicated the Appellant recalled the order not to discuss the matter, but believed since he had been made aware that the case had been sent to his command for disciplinary action that it was alright to discuss this series of incidents with other Department members.

11. Evidence indicated that the Appellant, by his own admission, continued an association with this prostitute for a total of at least three months time and acknowledged the fact, in his interview with Internal Affairs, that she was a known prostitute and that his association with her was maintained without the permission of his immediate supervisor or the Police Department.
12. Based upon the testimony and evidence presented during the course of this hearing, the Commission makes the following findings as to the violation of the Rules and Regulations of the San Diego Police Department charged against the Appellant:

A. 1.06 (Unbecoming Conduct)

The Commission finds that the Appellant's continuing association with a known, convicted prostitute was inappropriate and unbecoming conduct for a Police Officer. The Appellant's self-initiated investigation into allegedly inappropriate behavior on the part of a San Diego Police Lieutenant unnecessarily delayed a proper and timely investigation into this matter, thus impairing the efficiency of Police Department operations. The Commission finds the Appellant exercised extremely poor judgment in deepening his relationship with the prostitute over a span of time even after being warned by his Sergeant about associating with her in the end of June, 1984. The Appellant's relationship with a known prostitute certainly did not reflect favorably upon the Police Department nor upon himself as a Police Officer charged specifically with enforcing the laws to eliminate the crime of prostitution. The Commission therefore upholds this charge.

B. 1.07 (Immoral Conduct) NO

The Commission, in considering the taped telephone conversations between the Appellant and the prostitute, finds that although the conversations were sexually explicit and improper under the circumstances for a Police Officer, that there is no evidence to support the charge that the Appellant's conversations or actions showed immoral conduct on his part. The Commission therefore does not uphold this charge.

C. 1.09 (Abuse of Position)

The Commission finds that the Appellant exercised poor judgment and abused his official position by telephoning the Probation Officer on behalf of the prostitute and by writing a character reference letter for the prostitute prior to her sentencing. The Commission finds that the Appellant's signature and use of the initials "SDPD" under his signature on the letter carried with it some suggestion of official Police Department approval and authorization to a document which he should have realized could be, and in fact was, submitted to the court. The Commission therefore finds that the Appellant's inappropriate actions support this charge.

D. 1.11 (Associations)

The Commission finds that the Appellant's actions violated this rule in that he maintained an association with an individual whom he knew was under surveillance and continuing criminal investigation by the Police Department for possible prostitution activity. In addition, he was aware that she had been convicted for a prior prostitution offense and was awaiting sentencing and continued his association with her despite this fact. The Commission finds that the Appellant's unauthorized association with this prostitute and conduct in providing her information pertaining to Police business and prostitution enforcement procedures was inappropriate and adversely affected Police Department operations. The Commission therefore upholds this charge.

E. 1.14 (Public Statements and Appearances) *NO*

The Appellant during his telephone conversations with the prostitute, did criticize certain supervisors and speak in a derogatory manner of them and of a fellow Police Officer. However, the Commission finds that these were private conversations not made in a public forum and did not undermine the effectiveness of the Department, interfere with the maintenance of discipline, or recklessly disregard truth. Further, the Commission finds that the Appellant's conversation at the 7-11 store on October 16, 1984, similarly did not demonstrate any adverse effect. The Commission therefore does not uphold this charge.

F. 1.18 (Performance of Duty)

The Commission finds that the Appellant's relationship with a known prostitute and his actions in not bringing the information he had to the proper investigative authorities showed poor judgment on his part and that his own mishandling of this matter including lack of detailed, adequate documentation in the course of his investigation demonstrated severe incompetency. The Appellant's approach to this matter did not maintain the highest standards of efficiency in carrying out the functions and objectives of the Police Department. The Commission therefore upholds this charge.

G. 1.24 (Neglect of Duty)

Although there is no evidence to indicate the Appellant missed any radio calls during his conversations with the prostitute, the Commission finds that, during the time he devoted to her, he could have been performing other patrol and enforcement duties which he in turn neglected. The Commission therefore upholds this charge.

H. 1.37 (Dissemination of Information)

The Commission finds that the Appellant during his telephone conversations with the prostitute did provide her information regarding official business of the San Diego Police Department relating to prostitution enforcement procedures and an ongoing homicide case in addition to license plate registration information. The Appellant was not authorized to provide her such information. The Commission therefore upholds this charge.

I. 1.38 (Investigations)

Testimony and evidence clearly indicate the Appellant conducted a self-initiated, unauthorized investigation of a ranking officer. The Commission therefore upholds this charge.

J. 1.44 (Truthfulness) NO

The Commission finds that the Appellant's character reference letter written on behalf of the prostitute, while misleading, was nevertheless not untruthful. The Commission finds that the Appellant showed poor judgment in not researching if the prostitute had any more recent prostitution interrogations or arrests at the time of the letter. However, the Commission finds no evidence to uphold this charge that the Appellant violated this rule.

K. 1.04 (Obedience to Lawful Order) NO

Based on testimony and evidence presented, the Commission finds that there was confusion as to the information the Appellant received regarding whether or not the investigation into his actions was officially over. The Commission finds that the Appellant did not deliberately disobey an order to not discuss the investigation and therefore does not uphold this charge.

NO L. Department Instruction 3.21, Section IV, J (Informant Contacts)

The Commission finds that although the Appellant had an inappropriate and unprofessional relationship with a known prostitute, there is no evidence to support the allegation that she was an informant. The Appellant testified he never labeled her an informant and the prostitute herself testified she was never given any compensation or favors by the Police Department because of this investigation. The Commission therefore does not uphold this charge.

CONCLUSION

Based upon the foregoing findings of fact, the Commission unanimously concludes that the Appellant was accorded due process and upholds the termination of Larry Avrech, effective January 22, 1985, by the City Manager.

Dated this 10th day of July, 1985.

JIM MCFARLAND, President

DALE COBB, Commissioner

HOPE LOGAN, Commissioner