



INTEROFFICE MEMORANDUM

TO: Keith Storms, Officer
FROM: Tim Brunenkant, Lieutenant
SUBJECT: Notice of Intended Disciplinary Action
DATE: November 07, 2017
CC: Human Resources Department
Chief Rozema, Marana Police Department

This memorandum serves as a Notice of Intended Disciplinary Action pursuant to Town of Marana Personnel Policy Section 5-5-6 and Marana Police Department (MPD) General Order (GO) 1050.2. The proposed disciplinary action in this case is **termination** pursuant to Personnel Policy Section 5-5-3(F) and MPD GO 1030.7. This action is being taken for the following reasons.

On or about October 10, 2017, the Department became aware of a statement from an anonymous citizen regarding two officers. The citizen reported that she had seen a male officer and a female officer at the El Rio preserve area (commonly referred to as the "Marana Lake") on the evening of July 28, 2017, and that the officers appeared to be involved in a "romantic moment." Based on shift assignments on the date and time in question, and the citizen's description of the officers and the officers' vehicles, the Department was able to determine that the two officers were you and former Officer Kyla Sylvia.

You were questioned on October 13, 2017 as a part of the ensuing administrative investigation. When specifically questioned about July 28, 2017, you admitted that you were at the Marana Lake with Officer Sylvia for an extended period of time while you were supposed to be on patrol. Your Spillman logs for that night indicate that from approximately 6:00 p.m. to approximately 9:30 p.m., you repeatedly hit 10-8 on your MDC indicating that you were active. You acknowledged that during that time period you were actually sitting at the Marana Lake talking to Officer Sylvia. You left the lake area only when LPO Neuman came out to the area and directed you and Officer Sylvia to get back to patrol. You stated that LPO Neuman told you that it did not "look good" for the two of you to

be out there alone and that it may appear that you were doing something "sexual in nature." (Transcript of October 13, 2017 Interview (hereinafter "Transcript 10/13/17"), p. 7)

During the interview, you denied that any inappropriate behavior occurred between you and Officer Sylvia that evening at the lake, but acknowledged that it may "look bad" for a citizen seeing the two of you in a dark, secluded area for an extended period of time. (Transcript 10/13/17, p. 15) You were then asked if there was a rumor going around regarding what happened that night and you stated "You know, I've heard a lot of rumors. Nothing." (Transcript 10/13/17, p. 15) When Sgt. Scott followed up by asking "What about that particular night?" you stated "No. I'm trying to think. No. Just with Officer Neuman. What he had told me." (Transcript 10/13/17, p. 15-16) When Sgt. Scott pressed further and specifically asked "Did Sylvia ever approach you and tell you that she had heard [a] rumor from someone else?" you admitted that you had in fact heard a rumor about what happened with you and Officer Sylvia on July 28 at the lake. (Transcript 10/13/17, p. 16) You then went on to describe in detail a rumor about you and Officer Sylvia engaging in sexual activity at the lake. (Transcript 10/13/17, p. 17-21) You even described speaking to the employee who had told Officer Sylvia the rumor. (Transcript 10/13/17, p. 20)

Sgt. Scott then asked you to tell him about the nature of your relationship with Officer Sylvia. You answered "We're friends. Well, we're coworkers and we're friends while we're on duty. We're not in a relationship. We, you know, it's not like we've gone out in public, you know. The nature of our relationship is coworkers." (Transcript 10/13/17, p. 22) When asked if your relationship with Officer Sylvia has been "anything, other than coworkers," you answered "No. Not on duty. It has not been anything, other than coworkers." (Transcript 10/13/17, p. 22) When questioned further about whether you had ever had "any sort of romantic relationship" with Officer Sylvia you finally acknowledged an off-duty sexual encounter and stated that it was a one-time occurrence. (Transcript 10/13/17, p. 22-23) You then repeatedly stated that absolutely no conduct of a sexual nature ever occurred between you and Officer Sylvia while on duty. (Transcript 10/13/17, p. 33, 36, 38, 40)

However, when you were specifically asked if an incident occurred between you and Officer Sylvia in the area of Tiffany Loop and Twin Peaks, you admitted to an encounter of a sexual nature that occurred immediately after debriefing. Specifically, you admitted that your squad debriefed in this area one evening in July 2017, around midnight. After everyone else left, Officer Sylvia showed you nude photos of herself. You acknowledged that you said something to the effect of "don't get me hard" and placed Officer Sylvia's hand on your erect penis, through your pants. (Transcript 10/13/17, p. 42-44) This incident occurred near the intersection of two arterial roads in the town, while both you and Officer Sylvia were in uniform, Officer Sylvia was sitting in her marked patrol vehicle, and you were standing outside yours.

This summary is intended to put you on notice of the reasons for the proposed termination. It is not intended to be an exhaustive recitation of every fact supporting the Town's intended disciplinary action. The Town reserves the right to supplement these grounds based on any additional information presented by you or that the Town learns through investigation or other means.

Your behavior provides grounds for disciplinary action under the following Marana Police Department General Orders and Town of Marana Personnel Policies:

- **MPD General Order 130.7 General Standards of Expected Conduct:** Employees shall not engage in any conduct, whether on or off duty, which is unbecoming or detrimental to their duties, position, or the Department. All employees shall conduct their private and professional lives in such a manner as to avoid adverse reflection upon the Department or themselves as employees of the Department. Employees shall treat each other and all persons with whom they have contact with respect and courtesy.
- **MPD General Order 130.12 Required Conduct and Participation in Internal Investigations:** All employees are required to fully and truthfully participate in, and cooperate with, any internal investigation to which they are a party or witness. Employees shall provide complete and truthful relevant information, whether specifically requested or not. Any and all acts of intentional untruthfulness and/or purposeful omission of relevant information shall be addressed under General Order 130.19 Untruthfulness.
- **MPD General Order 130.19 Untruthfulness:** A. No employee shall knowingly make an untrue statement about a fact, either orally or in writing, in connection with any investigation, assignment or inquiry. C. Employees are required to report completely, honestly, and accurately all facts and information pertaining to any investigation, whether criminal or administrative, or other matter of concern to the Department.
- **MPD General Order 130.25 On Duty Conduct Standards:** C. Prohibited On Duty Conduct: Employees are prohibited from engaging in any activity, action, or conduct that detracts from their obligations and responsibilities while on duty.
- **Town of Marana Personnel Policies and Procedures Section 1-2-1(A) Performance of Duties:** Employees should perform official duties diligently, conscientiously and to the best of their ability, remembering that they are public servants.
- **Town of Marana Personnel Policies and Procedures Section 5-5-5 Grounds For Disciplinary Action:** Grounds for disciplinary action, up to and including termination, include, but are not limited to, the following:
 - A. Dishonesty, including, but not limited to, intentionally giving false information, intentionally falsifying records or making false statements when applying for employment, lying to supervisors in connection with the employee's job, or an investigation, giving false information or lying about the reason for an absence from work, or falsifying time sheets or other payroll records.
 - O. Inability or unwillingness to perform the assigned job; failure to perform assigned work in an efficient or effective manner.

Based upon the information revealed during the Department's administrative investigation, the Town has just cause to terminate you. The Town and the Department, through the Personnel Policies and Procedures and General Orders, have made you aware that the conduct under consideration in this instance could result in disciplinary action against you. Under the circumstances set forth in this Notice, termination is an appropriate disciplinary action for misconduct of this seriousness, is reasonably related to the conduct at hand, and is not excessive.

During your July 28, 2017 shift, you spent as much as three and a half hours of a ten-hour shift primarily engaged in non-law-enforcement related activity, i.e., sitting in your vehicle speaking to Officer Sylvia. You did this in spite of being well aware of orders from the chain of command to be

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proactive during periods when there are few calls for service. You even admitted to manually hitting 10-8 several times to avoid a dispatcher's safety check due to inactivity. This lack of activity detracts from your duties and responsibilities while a police officer on patrol. Additionally, your actions during the incident at Tiffany Loop and Twin Peaks are a gross deviation from the standards of conduct expected from an MPD police officer. You engaged in sexual activity with another officer in a public place while in uniform and directly outside a marked patrol vehicle.

Finally, your conduct during your administrative interview was directly contrary to all General Orders and Personnel Policies regarding truthfulness. GO 130.12 specifically states "Employees shall provide complete and truthful relevant information, whether specifically requested or not." In spite of this clear directive, during your interview you repeatedly withheld information that should have been provided in response to broad questions. On multiple occasions, you did not divulge the relevant information until you were asked very specific, pointed questions by investigators. This behavior is untruthful and, on its own, is grounds for termination in this instance.

The proposed date of the termination is Thursday, November 9, 2017. In accordance with Section 5-5-7 of the Town of Marana Personnel Policies and MPD GO 1050.3, I have scheduled a pre-action meeting for Wednesday, November 8, 2017 at 3:30 p.m. in Chief Rozema's office. The purpose of this meeting is to give you the opportunity to present reasons, either orally or in writing, as to why the proposed disciplinary action should not be taken. Pursuant to Section 5-5-7(B), you may have a non-attorney co-worker of your choice present during the pre-action meeting, if you so desire. The co-worker may not speak on your behalf and may only participate as an observer. Any relevant information that you present regarding the proposed disciplinary action will be taken into consideration in making a final determination regarding this disciplinary action. If you fail to appear at the pre-action meeting and/or fail to timely submit reasons in writing why you should not be terminated, you will be deemed to have waived this right and the proposed disciplinary action will be implemented.

K. Storms
Signature Acknowledging Receipt

11.7.17
Date