

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER ERIC VIGUERAS,) **No. 12 PB 2784**
STAR No. 15694, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
RESPONDENT.) **(CR No. 1002203)**

FINDINGS AND DECISION

On January 9, 2012, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Eric Viguera, Star No. 15694 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 8: Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 14: Making a false report, written or oral.
- Rule 15: Intoxication on or off duty.
- Rule 38: Unlawful or unnecessary use or display of a weapon.

The specific charges brought by the Superintendent are as follows:

Rule 2 charge: On or about December 23, 2006, Officer Viguera’s overall actions impeded Department policy and/or brought discredit upon the Department when he engaged in a physical altercation with Diana Castillo outside of a bar, prompting Cleveland Dean to intervene; and/or when he removed his weapon from his holster and pointed his weapon at Dean while threatening to “kick his ass” and/or threatening to shoot him; and/or when he struck Dean about the head and face with his weapon and engaged in a physical altercation with Dean.

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Rule 8 charge (Count I): On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera grabbed Diana Castillo's coat and/or pushed her up against a wall outside of the Salud Bar.

Rule 8 charge (Count II): On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera removed his weapon from his holster and pointed his weapon at Cleveland Dean while threatening to "kick his ass" and/or threatening to shoot him.

Rule 8 charge (Count III): On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera struck Cleveland Dean about the head and/or face with his weapon.

Rule 9 charge (Count I): On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera grabbed Diana Castillo's coat and/or pushed her up against a wall outside of the Salud Bar.

Rule 9 charge (Count II): On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera struck Cleveland Dean about the head and/or face, and engaged in a verbal and/or physical altercation with Dean.

Rule 14 charge: On or about January 19, 2007, Officer Viguera gave a false statement to the Independent Police Review Authority regarding his actions during the incident that occurred on or about December 23, 2006, at or near the Salud Bar, located at 1471 North Milwaukee Avenue, Chicago.

Rule 15 charge: On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera was intoxicated while off duty.

Rule 38 charge: On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera displayed his gun without lawful justification.

The Police Board caused a hearing on these charges against Officer Viguera to be had before Michael G. Berland, Hearing Officer of the Police Board, on June 12 and June 13, 2012.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer

Berland made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent filed a Motion to Strike and Dismiss, requesting that the charges filed against him be stricken and the case dismissed for the following reasons: (a) the failure to bring timely charges violates the five-year statute of limitations established by 65 ILCS 5/10-1-18.1; (b) the failure to bring timely charges violates the due process rights of the Respondent; (b) the charges should be barred by laches; (c) the investigation by the Independent Police Review Authority (IPRA) violated protections bestowed by Chicago Police Department General Orders; and (d) the IPRA investigation violated Section 2-57-070 of the Municipal Code of Chicago.

The Respondent's Motion to Strike and Dismiss is **granted in part and denied in part** for the reasons set forth below.

a. **Statute of Limitations.** The Respondent argues that this case is time-barred under 65 ILCS 5/10-1-18.1, which states in relevant part:

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Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held. If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within 5 years after the commission of the act upon which the charge is based. The statute of limitations established in this Section 10-1-18.1 shall apply only to acts of unreasonable force occurring on or after the effective date of this amendatory Act of 1992.

For the reasons stated in the Board's Memorandum Opinion and Order issued in Police Board Case No. 11 PB 2776, Bruce Askew, the Board unanimously determines that the above section of 65 ILCS 5/10-1-18.1 ("Statute of Limitations") applies to the City of Chicago.

The Board, by votes of a majority of its members¹, hereby grants the Respondent's motion to dismiss Count III of the Rule 8 charge and Count II of the Rule 9 charge ("Dismissed Charges") based on the Statute of Limitations, and hereby denies the Respondent's motion to dismiss all other charges.

There is no dispute that the charges against Viguera were filed more than five years after the incident that led to the charges—the incident occurred on December 23, 2006, and the Superintendent filed the charges on January 9, 2012.

In the Askew case, there was no dispute that the charges filed against Officer Askew were "based upon an allegation of the use of unreasonable force by a police officer." Here, there is such a dispute, and this appears to be a case of first impression on the interpretation of this provision of the Statute of Limitations.

Board Members Conlon, Foreman, and Miller: Both Viguera and the complaining witness, Cleveland Dean, agreed that Viguera did identify himself as a police officer when Dean walked up and attempted to intervene in the domestic quarrel between Viguera and Diana Castillo. Dean also credibly testified that Viguera pulled his service weapon on Dean. Both the

¹ The composition of the majority is different for certain issues. See pp. 35-36 below for the listing of votes on specific issues.

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Superintendent and the Respondent agree that Viguera can take action as a police officer twenty-four hours a day, whether he is on or off duty. The issue here is whether the actions reflected in the Dismissed Charges were taken by Viguera as a “police officer” so as to come under the express language of the Statute of Limitations.

Whether a person who is a member of the Chicago Police Department is acting as a police officer is a question of the facts and circumstances under which he or she is acting. For example, no one could credibly argue that a member of the Chicago Police Department who engages in a domestic battery of a spouse or abuse of a child is acting as a “police officer.” At the same time, we often recognize the heroic efforts of men and women of the Chicago Police Department who step up and exercise police powers, that is, act as “police officers,” in their off-duty hours. As a society, citizens are expected to respond cooperatively to a person who announces or by other means communicates that he or she is a police officer. Orally announcing one’s position as a police officer, displaying a police department star, or the presence of other circumstances reasonably creating an inference that one is a police officer obligates a citizen to cooperate. A person who publicly communicates in some manner his position and authority as a police officer is responsible for his conduct in that role. Inappropriate conduct by a police officer has consequences. The counterpoint to a person communicating his position as a police officer is the reaction of the citizen confronted with that fact. We do not expect – nor do we encourage – a citizen in that position to determine for himself whether the person is, in fact, acting as a police officer and whether the instructions of the officer should be obeyed. Failure to cooperate in the face of such declaration could cause a citizen to be charged with interference with a police officer or a comparable charge.

Every circumstance is different. The particular circumstances here were unique. Both

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Viguera and Dean agree that Viguera orally identified himself as a police officer when Dean first approached Viguera and Castillo. Based on the credible testimony of Dean and several other witnesses, at or about the same time Viguera identified himself as a police officer, he pulled his service weapon and pointed it at Dean. There is also credible evidence that Viguera used some crude language in telling Dean to back off, that he was a police officer. As disturbing as this language and scenario are, Viguera was acting as a police officer. To find otherwise would be to diminish the expectation that when police officers announce their office, citizens will stand down and cooperate with the police and follow police instructions and directions. While we find Viguera's language and demeanor totally unacceptable, we do not find that behavior to cause him not to be acting as a police officer.

Shortly after announcing he was a police officer and pointing his weapon at Dean, and as part of the same general melee, Viguera struck Dean in the head and face with his weapon. Viguera's striking Dean in the head and face with his weapon was the act of unreasonable force by a police officer which triggered application of the Statute of Limitations. The fact that Dean was not arrested on the charges does not bear on the fact that Viguera was acting as a police officer. Viguera was acting unprofessionally as a police officer, and that unprofessional behavior has consequences for Viguera; but Viguera was, nonetheless, acting as a police officer.

This conclusion is supported by *Jocks v. Tavernier*, 316 F.3d 128 (2nd Cir. 2003), a case brought under 42 U.S.C. Section 1983, where the Court stated that "when an officer identifies himself as a police officer and uses a pistol, he acts under color of law...." Similarly, we find that Viguera was acting as a police officer under color of state law when he took the actions set forth in the Dismissed Charges, even if his actions were unlawful.

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The cases cited by some of the other members of the Board all stand for the proposition that an employer cannot be liable for unlawful actions by its employees which are outside the scope of the employee's employment. See *Wolf v. Libaris*, 153 Ill. App. 3d. 488, 494 (First Dist. 1987), *Schilt v. New York City Transit Authority*, 304 A.D.2d 189, 759 N.Y.S.2d 10 (2003), and *Seymour v. Gateway*, 295 A.D.2d 278, 744 N.Y.S. 398 (2002). None of those cases involved the issue of whether a statute of limitations was applicable to the employee's conduct. It is well established law that an employer is not legally responsible for employee conduct taken outside the scope of his employment. We find that whether or not Viguera was acting within the scope of his employment as a police officer is not at issue in this case and is irrelevant as to whether the Statute of Limitations was violated in this case.

For the reasons set forth above, we find that Count III of the Rule 8 charge and Count II of the Rule 9 charge fall within the ambit of the Statute of Limitations and therefore are time-barred.

Regarding the charges pertaining to Viguera's actions toward his girlfriend Diana Castillo, Viguera's verbal and physical altercation with Castillo, unlike his actions toward Dean, did not involve his invoking police powers, but rather related solely to his personal concerns. Because Viguera was not acting as a police officer with respect to Castillo, we find that the Statute of Limitations does not apply to Count I of the Rule 8 charge and Count I of the Rule 9 charge, and we vote to deny the motion to dismiss these charges.

We determine that the Statute of Limitations does not require the dismissal of the Rule 14 charge. We find that the alleged false statements are acts separate and distinct from the acts that occurred on December 23, 2006, and therefore find that the Rule 14 charges are not time-barred.

In *Robinson v. Baltimore Police Department*, 424 Md. 41, 51 (2011) the court had to

determine whether a one-year statute of limitations began to run from the date that the police officer engaged in the unlawful conduct or from the later date on which the officer made false statements relating to the conduct that prompted the original investigation. The *Robinson* court found that the statute of limitations in that case did not begin to run until the date that the officer made the false statement.

The *Robinson* court unequivocally rejected the contention of the officer in that case that the false statements made by the officer “are part and parcel” of the underlying misconduct and barred by the statute of limitations applicable in that case. We likewise reject Viguera’s contention that the false statements are inextricably intertwined with the underlying conduct, which occurred on December 23, 2006.

The *Robinson* court also held that the rules of statutory construction required the Court to find that the making of certain false statements by the officer did not relate back to the underlying conduct and did not violate the statute of limitations. There was no language in the Maryland statute that permitted a reading that the making of later false statements by the officer related back to the date the officer engaged in the original unlawful conduct. The *Robinson* court found that if they accepted the officer’s argument that the making of the false statements were barred by the statute of limitation that they would need to “add” language “to reflect an intent not evidenced in the plain and unambiguous language of the statute.” Therefore, the *Robinson* court held, as we do in this case, that “making a false statement is the making of the false statement itself, not the incident that gives rise to an investigation during which the officer makes a false statement material to the investigation of the underlying incident.”

Nothing in the Statute of Limitations relied on by the Respondent requires the dismissal of the Rule 14 charges. As in *Robinson*, there is no language in the Statute of Limitations which

requires the dismissal of this charge or which would permit the Board to relate Viguera's false statements back to the conduct he engaged in on December 23, 2006.

This conclusion is further supported by the fact that criminal prosecution for the making of false statements is permitted even though they pertain to underlying conduct that is barred from prosecution. In *United States v. Burge*, 2009 WL 3597950 (N.D.Ill. 2009), the criminal prosecution arose out of an indictment against Burge for obstruction of justice and perjury for submitting false answers to interrogatories in a civil rights case. Burge moved to dismiss the case by arguing that he was being deprived of due process, because the underlying conduct to which his alleged false statements pertained was very old, that witnesses had died, and that memories had faded. The Court found that the perjury charges, which were timely filed, could be prosecuted if they were false, even though the applicable statute of limitations would have barred any prosecution for the underlying conduct.

Thus, we find that the false statements Viguera made to IPRA are acts separate and distinct from Viguera's altercation with Dean, and that the false statements are not "based upon an allegation of the use of unreasonable force." In addition, the false statements were made less than five years prior to the filing of charges against Viguera. For these reasons, we find that the false statements do not fall within the ambit of the Statute of Limitations.

We vote to deny the motion to dismiss the Rule 15 intoxication charge based on the Statute of Limitations. The intoxication charge is in no way based upon an allegation of the use of unreasonable force by Viguera, and Viguera makes no argument that this charge somehow falls within the ambit of the Statute of Limitations.

We determine that the Rule 38 charge is not time-barred. This charge alleges only that Viguera displayed his gun without lawful justification. The Rule 38 charge, unlike Count III of

the Rule 8 charge and Count II of the Rule 9 charge, does not allege that Viguera hit Dean in the head and face with his weapon. We therefore determine that because the Rule 38 charge pertains only to Viguera's removing his gun from his holster without justification, this charge is not based upon an allegation of the use of unreasonable force, and the Statute of Limitations does not apply to this charge. The same is true for Count II of the Rule 8 charge, which alleges that Viguera removed his weapon from his holster, pointed the weapon at Dean and threatened him. This charge does not involve the use of unreasonable force and is, therefore, not covered by the Statute of Limitations. (Board Member Foreman dissents from this finding with respect to the Rule 38 charge and Count II of the Rule 8 charge; he votes to dismiss these charges based on the Statute of Limitations. Board Member Miller dissents from this finding with respect to Count II of the Rule 8 charge; he votes to dismiss this charge based on the Statute of Limitations.)

Finally, with regard to the Rule 2 charge, which consists of elements of several of the other charges discussed above, we find that the question of whether Viguera, by his overall actions and conduct on December 23, 2006, impeded the Department's efforts to achieve its policy and goals or brought discredit on the Department, is not a question of the use of unreasonable force. Therefore, we find that the Rule 2 charge is not covered by the Statute of Limitations. (Board Member Conlon dissents from this finding with respect only to the part of the Rule 2 charge pertaining to Viguera striking Dean about the head and face with his weapon and engaging in a physical altercation with Dean; Board Member Conlon votes to dismiss this part of the Rule 2 charge based on the Statute of Limitations.)

Vice President Davis and Board Member Fry: We vote to grant the motion to dismiss all of the Rule 2, Rule 8, Rule 9, and Rule 38 charges because in our view they are barred by the

Statute of Limitations. Board Members Conlon, Miller, and Foreman agree with us that the portion of these charges that constitute the Dismissed Charges—Count III of the Rule 8 charges and Count II of the Rule 9 charges—are barred by the Statute of Limitations. However, we disagree with their view that the Statute of Limitations applies to these charges only because Viguera was acting as a police officer in his encounter with Dean. The key sentence of the Statute of Limitations provides:

If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within 5 years after the commission of the act upon which the charge is based.

Under the plain language of the statute, the charges against Viguera must be dismissed if they are (1) based upon the use of unreasonable force (2) by a police officer and (3) brought more than five years after the commission of the act upon which the charge is based. The Dismissed Charges are based upon the use of unreasonable force by Viguera, who was a police officer, and were brought more than five years after the commission of the act upon which the Dismissed Charges are based. That is all that the Statute of Limitations requires. In our judgment the conclusion that the Statute of Limitations also requires a finding that the police officer was acting as a police officer is an improper effort to add a requirement that the General Assembly did not add.

In addition to ignoring the plain language of the Statute of Limitations, this reasoning means that it will be easier to bring unreasonable force charges before the Board when an officer is not acting as a police officer than when he is doing so. There is no good reason to make such a distinction, and one should not infer that the General Assembly intended such a distinction in the absence of clear language evidencing such an intent.

Because we do not think that it matters for purposes of the Statute of Limitations whether

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Viguera was acting as a police officer, we would also grant the motion to dismiss the charges pertaining to Viguera's actions toward his girlfriend, Diana Castillo (part of the Rule 2 charge, Count I of the Rule 8 charge and Count I of the Rule 9 charge). The charges that Viguera, a police officer, grabbed Castillo's coat and/or pushed her up against a wall are charges based upon the use of unreasonable force by a police officer. Because those charges were brought more than five years after the commission of the acts upon which they were based, those charges are time-barred.

Finally, we believe that the part of the Rule 2 charge pertaining to Viguera's encounter with Dean, Count II of the Rule 8 charge, and the Rule 38 charge should also be barred under the Statute of Limitations because they are charges based on the unreasonable use of force by a police officer brought more than five years after the commission of the acts upon which they are based. We do not agree with the conclusion that these charges are not based upon an allegation of the use of unreasonable force.

For the reasons stated above, we also disagree with the view of President Carney and Board Members Ballate, McKeever, and Rodriguez that the Statute of Limitations does not apply unless Viguera was taking police action and acting as in his official role as a police officer on the night in question.

We vote to deny the motion to dismiss the Rule 14 and 15 charges because, for the reasons stated by Board Members Conlon, Foreman and Miller, those charges are not barred by the Statute of Limitations.

President Carney and Board Members Ballate, McKeever, and Rodriguez: While there is no dispute that Viguera, at one point, did identify himself as a police officer, our inquiry does

not end there. The appropriate question is whether Viguera was taking police action and acting as a police officer on the night in question. We find that he was not, and therefore the Statute of Limitations does not apply to any of the charges against him.

Viguera was involved in a private domestic quarrel with his girlfriend, Diana Castillo. When Dean intervened to calm the situation down and prevent the further physical abuse of Castillo, Viguera identified himself as a police officer. But Viguera did so solely as a means to threaten Dean so that Dean would leave him alone and not get involved in the quarrel (Dean credibly testified that Viguera put the gun to Dean's forehead and stated "Fuck you. Who the fuck are you? I will kick your ass. I'm a cop." Tr. 40). Viguera did not identify himself as a police officer for purposes of taking police action or for any official purpose. Rather, Viguera's initial threat to Dean and his subsequent physical altercation with Dean were made while Viguera was acting as a private citizen.

Public policy suggests that when an officer is engaged with a citizen for a proper police purpose, the police officer is acting in his or her official role to serve, protect, and uphold the law. However, when an officer acting in his personal capacity announces his or her police office to cause a threat or put a citizen in harm's way, then the officer is not acting to serve and protect. As a result, the officer's actions should not be offered the veil of protection of the Statute of Limitations for alleged claims of unreasonable force that is afforded to officers acting in their official police role.

The evidence is uncontested that Dean was not arrested by Viguera or any other police officer, that Dean was never placed in handcuffs, and was never placed in any police vehicle. Not only did Viguera never arrest Dean, Viguera never requested that the many other officers who reported to the scene arrest Dean. In fact, Dean credibly testified that he wanted to be

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arrested so that he could file a complaint against Viguera, but that all officers refused to do so and told him to leave. In addition, Viguera never prepared any type of police report, whether it be a case report, arrest report, or tactical response report. Indeed, Viguera left the scene without taking any police action whatsoever. His actions that evening were wholly personal in nature and in no way job-related; his actions were those of a private citizen, not a police officer.

In the case of *Wolf v Liberis*, 153 Ill. App.3d.488,494 (1st. Dist.1987), the Court stated that while a police officer may be on-duty 24 hours a day for the purpose of internal discipline, that does not mean all acts taken by an off-duty police officer are within the scope of his employment. The *Wolf* court held that when a police officer is not acting in his official capacity, he is acting as a private citizen and his employer is not legally responsible for his conduct. In the case of *Schilt v. New York City Transit Authority*, 304 A.D.2d 189, 759 N.Y.S.2d 10 (2003), the Court stated that “a police officer’s conduct...which is ‘brought on by a matter wholly personal in nature, the source of which is not job-related, cannot be said to fall within the scope of his employment.’” (citing *Stavitz v. City Of City Of New York*, 98 A.D.2d 529, 531, 471 N.Y.S. 2d 272). In the case of *Seymour v. Gateway Productions Inc*, 295 A.D.2d 278, 744 N Y.S. 398 (2002), the Court found that the actions taken by an off-duty corrections officer were personal and not done in his official position when the officer punched a person in the face inside a café, and then he went outside, pushed the same person, produced his shield and told the person he was under arrest. While the above cases do not involve issues regarding a statute of limitations, we find the reasoning of the above cases persuasive and applicable to Viguera as well, since his conduct on December 23, 2006, was not related to his position as a police officer.

Jocks v. Tavernier, 316 F.3d 128 (2nd Cir. 2003), is cited by Board Members Conlon, Foreman, and Miller for the proposition that Viguera was acting under color of law when he

struck Viguera with a gun and otherwise engaged in unlawful conduct. However, in the *Jocks* case, the off-duty police officer, Tavernier, placed Jocks under arrest and took police action. That case is completely distinguishable from the instant case where Viguera, and other police officers on the scene, took no police action against Dean.

General Order 03-02 states the Chicago Police Department's policy regarding the use of force and provides guidelines for the use of force. This General Order defines and discusses in the subject in terms of officers taking police action (*e.g.*, performing a lawful task, effecting an arrest, overcoming resistance). Because Viguera was not taking police action, or acting as a police officer on the night in question, his actions that night do not constitute use of force per the Department's General Order. Viguera's conduct was not "the use of unreasonable force by a police officer," but rather unlawful acts by a private citizen.

In sum, we find, as a matter of law, that Viguera was committing unlawful acts as a private citizen, that he was not acting as a police officer on the night in question, and that this is not a case of unreasonable use of force by a police officer. Therefore, the Statute of Limitations does not apply in this case to the Rule 2, Rule 8, Rule 9, and Rule 38 charges. We also find that the Statute of Limitations does not apply to the Rule 14 and 15 charges for the reasons stated by Board Members Conlon, Foreman and Miller.

b. **Due Process**. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill.App.3d 275, 871 NE2d 178 (1st Dist 2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004), the Respondent claims that the constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon*, however, involved a delay in *adjudication* of allegations of misconduct after the respective

plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed and he was suspended without pay. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their name. Here, the Respondent was working and was being paid his full salary and benefits during the entire period of the investigation and up to the filing of charges with the Police Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent was not suspended without pay from his job until January 10, 2012, one day after the charges against him were filed, and therefore the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondent's due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v. City of Chicago Police Board*, 11 CH 08166 (March 1, 2012) found that the protections of the Due Process clause are triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his job, salary and benefits during the investigation. The Court cited *Stull v. The Department of*

Children and Family Services, 239 Ill.App.3d 325 (5th Dist. 1992). *Stull* involved a teacher accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children sought a hearing. The *Stull* court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly “indicated” as an abuser. The *Stull* court did find that the teacher’s due process rights had been infringed, but it was not because of a delay in DCFS’s investigation of the case. The court held that due process was violated by the more than one-year delay in adjudicating the teacher’s appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, *see* 239 Ill.App.3d at 335, thus triggering the kind of deprivation that is not present in the Respondent’s case. *Cavaretta v. Department of Children and Family Services*, 277 Ill.App.3d 16 (2nd Dist. 1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The *Cavaretta* court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) “indicated” the teacher as a child abuser and placed the teacher’s name in the state’s central registry, which directly deprived the teacher of the ability to work.²

c. **Laches**. The Respondent argues that the doctrine of laches should apply here in supporting the dismissal of charges, for he argues that the delay in bringing the charges against

² The Circuit Court also cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but only in general terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

him resulted in prejudice to him in losing his employment and in hampering his ability to locate witnesses and counter evidence years after the fact to defend against the charges.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85, 630 NE2d 830 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1st Dist. 1992). Under Illinois law, the Respondent must demonstrate that the Superintendent’s unreasonable delay caused material prejudice to the Respondent; the Respondent must submit evidence in support of his claims of prejudice (for example, testimony that witnesses could no longer recall what happened, or affidavits stating that records had been lost or destroyed during the intervening years). *Nature Conservancy v. Wilder*, 656 F.3d. 646 (7th Cir. 2011).

The Respondent has made no specific showing of any prejudice that resulted from a delay in bringing charges before the Police Board. He argues that had the charges been brought in a timely manner, he would have been able to conduct his own investigation and locate witnesses who could have been favorable to his defense, as well as witnesses whose memories had not faded with the passage of time. In fact, the Respondent did locate a witness who was favorable to his defense—Neftaly Hernandez. The Respondent made no showing that he attempted to locate further witnesses or evidence but was unable to do so because of the passage of time.

Consequently, any argument that there may be other witnesses out there, or that material evidence was overlooked and is now unavailable, is speculative.

The Respondent here has not demonstrated any “compelling” or “extraordinary” circumstances warranting a dismissal of his case, and has not carried the burden of proving that he was prejudiced by a delay in the bringing of charges.

d. **General Order 93-03**. The Respondent argues that the Police Department’s own General Order requires a prompt and thorough investigation, and that the Department failed to fully comply with the provisions of this General Order.

In fact, the General Order does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Here, the investigator regularly did seek, and was granted, extensions of time, in compliance with the General Order.

Once the investigator completed the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by the General Order.

There was no substantial violation of the General Order in this case. Even if, however, the General Order was violated, there is no provision in the General Order requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board declines to extend the reach of the General Order in this manner.

e. **Municipal Code Section 2-57-070**. The Code provides that if the Chief Administrator

of the Independent Police Review Authority (IPRA) does not conclude an investigation within six months after its initiation, the Chief Administrator shall notify the Mayor, the City Council, the complainant, and the accused officer. The Respondent argues that IPRA did not comply with this provision of the Code.

This provision of the Code took effect in September 2007, and does not contain any language making it retroactive. Because the investigation of the allegations against the Respondent was initiated in December 2006, and the six-month point of the investigation occurred in June 2007, this provision of the Code is, on its face, not applicable to the Respondent.

Even if this provision is applicable to the Respondent and was violated, neither Section 2-57-070 nor anything else in the Code states that dismissal of a Police Board case is the sanction for failing to make the report to the Mayor, the City Council, the officer, and the complainant. It is unpersuasive that such an extreme sanction would automatically follow, particularly where the alleged misconduct under investigation is as serious as it is here. Without any basis or cited authority, and none is given by the Respondent, there is no basis for the Board to dismiss the charges pursuant to Section 2-57-070, and the Board declines to extend the reach of the ordinance in this manner.

5. The Respondent, Police Officer Eric Viguera, Star No. 15694, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that:

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On or about December 23, 2006, Officer Viguera's overall actions impeded Department policy and/or brought discredit upon the Department when he engaged in a physical altercation with Diana Castillo outside of a bar, prompting Cleveland Dean to intervene; and/or when he removed his weapon from his holster and pointed his weapon at Dean while threatening to "kick his ass" and/or threatening to shoot him; and/or when he struck Dean about the head and face with his weapon and engaged in a physical altercation with Dean.

See the findings set forth in paragraph nos. 6 and 7 below, which are incorporated here by reference. The Board finds that Viguera, by his overall actions and conduct on the night in question, impeded the Department's efforts to achieve its policy and goals and brought discredit on the Department.

(Vice President Davis and Board Member Fry dissent from the above finding, for they voted to dismiss this charge based on the Statute of Limitations. Board Member Conlon dissents from the above finding with respect only to the charge that the Respondent struck Dean about the head and face with his weapon and engaged in a physical altercation with Dean, for Board Member Conlon voted to dismiss this part of the charge based on the Statute of Limitations.)

6. The Respondent, Police Officer Eric Viguera, Star No. 15694, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,

in that:

Count I: On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Chicago, Officer Viguera grabbed Diana Castillo's coat and/or pushed her up against a wall outside of Salud Bar.

The Board finds that Cleveland Dean credibly testified that he observed Officer Viguera grab Diana Castillo's coat and push her up against a wall outside of the Salud Bar.

The Board finds that Diana Jean Louis was a credible witness and that she had no

connection with Viguera, Castillo, or Dean. Louis corroborated Dean's testimony in that she observed Officer Viguera become physically aggressive with Diana Castillo.

The Board also finds that Janet Cruz was a credible witness. Cruz also had no connection with any of the parties involved in any of the physical altercations. Cruz further corroborated Dean in that she saw a man and woman fighting, now known to be Viguera and Castillo, and that Castillo was screaming.

The Board did not find credible the testimony of Viguera and Neftaly Hernandez that Viguera did not engage in any type of physical altercation with Castillo in the early morning hours of December 23, 2006. See the Board's findings regarding the credibility of Viguera and Hernandez as set forth in paragraph no. 9 below.

(Vice President Davis and Board Member Fry dissent from the above finding, for they voted to dismiss this charge based on the Statute of Limitations.)

7. The Respondent, Police Officer Eric Viguera, Star No. 15694, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, while on or off duty,

in that:

Count II: On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Officer Viguera removed his weapon from his holster and pointed his weapon at Cleveland Dean while threatening to "kick his ass" and/or threatening to shoot him.

Cleveland Dean intervened peacefully while Viguera was engaging in a verbal and physical altercation with his (Viguera's) girlfriend, Diana Castillo. Dean, Cruz, Louis, and Brian Frost testified credibly that Viguera had his gun out during his altercation with Dean.

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Dean credibly testified that Viguera put the gun to Dean's forehead and stated "Fuck you. Who the fuck are you? I will kick your ass. I'm a cop." Tr. 40. The credible testimony of Frost, Louis, and Cruz corroborates Dean's credible testimony that he (Dean) did not pose any danger to Viguera or Castillo that justified Viguera pulling out his gun. The Board further determines that Dean made no statement, nor did he take any action, which posed a threat of bodily harm or of an assault, either to Viguera or to Castillo. The Board finds that Viguera had no legal justification to take out his gun, and finds that his pointing his weapon at Dean while threatening him constitutes maltreatment of Dean.

(Vice President Davis and Board Members Foreman, Fry, and Miller dissent from the above finding, for they voted to dismiss this charge based on the Statute of Limitations.)

8. The Respondent, Police Officer Eric Viguera, Star No. 15694, charged herein, is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that:

Count I: On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Chicago, Officer Viguera grabbed Diana Castillo's coat and/or pushed her up against a wall outside of Salud Bar.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

(Vice President Davis and Board Member Fry dissent from the above finding, for they voted to dismiss this charge based on the Statute of Limitations.)

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9. The Respondent, Police Officer Eric Viguera, Star No. 15694, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that:

On or about January 19, 2007, Officer Viguera gave a false statement to the Independent Police Review Authority regarding his actions during the incident that occurred on or about December 23, 2006, at or near the Salud Bar, located at 1471 North Milwaukee Avenue, Chicago.

The Police Board unanimously finds, as set forth below, that Viguera knowingly and intentionally made numerous material false statements in the statement he gave to IPRA on January 19, 2007 (“Statement 1”) (Superintendent Ex. No. 8), and that he reaffirmed those false statements in his second statement given to IPRA on June 2, 2010 (“Statement 2”) (Superintendent Ex. No. 7).

Statements 1 and 2 were admitted into evidence without objection. Viguera’s false statements were made in both Statement 1 and Statement 2, but Viguera has been charged only with the false statements made in Statement 1.

a. Viguera denied that he engaged in a physical and verbal altercation with Diana Castillo, which was contradicted by the credible testimony of Dean, Louis and Cruz. See the findings set forth in paragraph no. 6 above, relating to Count I of the Rule 8 charge, which are incorporated here by reference.

b. Viguera denied he consumed any alcoholic beverages or was intoxicated, which was contradicted by the credible testimony of Geenan and Lore. The Board finds that Adam Geenan was a credible witness. Geenan worked at the Salud Bar for over 8 years. Geenan testified that when Viguera asked Geenan for the return of his gun, Viguera said that he had been drinking

and was drunk. Geenan also testified that, based on his own experience, Viguera was intoxicated since he smelled of alcohol, had poor balance and was wobbly, and his speech was slurred.

The Board finds that Joseph Lore was a credible witness. Joseph Lore was employed at Salud Bar on the night of the incident. Lore testified that when Viguera asked Lore that his gun be returned to him, Viguera said that he was drunk. Lore also testified that, based on his 20 years of work experience, he believed Viguera was drunk.

The Board finds not credible Viguera's and Hernandez's testimony that Viguera was not drinking during the going way party for Hernandez held that evening at the Swig Bar. Viguera told Geenan and Lore he was drunk and they both independently came to the same conclusion based on their experience in the restaurant and bar industry.

c. Viguera denied he saw any police officers outside Salud, which was contradicted by the credible testimony of Dean and the 911 calls which were made by other witnesses. Brian Frost, one of the Superintendent's witnesses, called 911. Janet Cruz called 911. Dean said he was going to call 911 and police showed up "everywhere" and blocked off about two blocks of Milwaukee Avenue. Most of the alleged altercation took place outside of the Salud Bar. Dean testified that "several police officers are running around everywhere, inside the establishment, outside the establishment..." Tr. 50. The Board did not find credible Viguera's denial that he saw any police officers outside Salud Bar after the police were called.

d. Viguera denied he engaged in an unjustified physical altercation with Dean, which is contradicted by the credible testimony of Dean, Frost, Cruz, and Louis. Dean, Frost, and Cruz all testified that Viguera engaged in an unjustified physical altercation with Dean. Frost saw Viguera shove Dean to the ground, even though Dean did not make any physical contact with

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Viguera. Louis and Cruz both saw Dean hit by Viguera with a gun, even though Dean was taking no aggressive action toward Viguera, or engaging in any activity which warranted this action.

Dean testified that he was hit by Viguera twice with Viguera's gun, even though Dean was not doing anything which warranted this type of use of force. The Police Board finds Dean's testimony credible that he was trying to intervene and calm Viguera down so that Viguera would stop pushing and shoving Diana Castillo.

The Board finds that Viguera's testimony was not truthful regarding the incident. Viguera knew that he was intoxicated when he engaged in the improper conduct with Dean on December 23, 2006, and that he was carrying duty weapon. Viguera's testimony as to the events involving Dean on December 23, 2006 was contradicted by Frost, Louis, and Cruz, each of whom corroborated Dean in certain material respects. The Board finds each of these witnesses to be credible and determines they had no motive to lie. Although some of the witnesses, who corroborated Dean's testimony, may have misidentified certain clothing worn by Viguera on date this incident occurred, the Board finds these misidentifications to be immaterial.

Viguera and Castillo had been engaged in a physical and verbal altercation before Dean walked up to them in which Viguera was pushing Castillo and otherwise engaging in an aggressive physical altercation with her. The Police Board finds that Viguera engaged in a physical altercation with Dean, that Viguera removed his gun from his holster and pointed it at Dean and threatened to shoot him, that Viguera struck Dean about the head and face with his weapon, and that all of this conduct was not in self defense and was without cause or any justification. Viguera never placed Dean under arrest, never placed him in handcuffs, nor did he ever place Viguera in a squadrol. The Police Board finds that, if Dean had been the aggressor in

initiating the physical altercation, which left Viguera bleeding from the face, Viguera would certainly have taken some police action against Dean, or requested the many other officers on the scene to do so. But Viguera left the scene without taking or requesting any police action.

Neftaly Hernandez had a party thrown for him by Viguera on the evening of this incident. Hernandez was in the Army and was being sent to Germany. Hernandez testified that Viguera and Castillo were not engaged in any physical or verbal altercation. Hernandez believed Dean was the aggressor and attacked Viguera. Hernandez never saw Viguera take out his gun and point it at Dean. The Police Board finds Hernandez's testimony to be not credible. Hernandez is hardly a disinterested witness—he has been a close friend of Viguera since they were fourteen years old. In addition, Hernandez was at the bar for several hours prior to the incident (he testified that he had been at the bar for 4 or 5 hours before Viguera, and the incident on the street involving Dean and Viguera occurred about 2 or 3 hours after that) and Hernandez admitted that he was drinking that night.

Henry Heredia, a security person at Salud bar, saw two black males fighting with another man, who was Viguera. After Viguera left the Salud Bar to pay for the party, another black male, who has not been identified, engaged in a fight with Viguera, along with Dean. Heredia's testimony was that one of the black males was hitting Viguera with a gun in the chest and head. Viguera testified that the person who struck him with a gun was not Dean. Therefore, Heredia's testimony does not support Viguera's version of what happened that evening. Dean admitted that when Viguera left the Swig Bar to pay the bill he engaged in a fight with Viguera, although Dean testified that Viguera initiated this part of the altercation.

e. Viguera denied he pointed a gun at Dean, which is contradicted by the credible testimony of Dean, Cruz, Louis, and Frost. Viguera denied in Statements 1 and 2 that he ever

pointed a gun at Dean. The testimony of Dean, Cruz, Louis, and Frost all credibly established that Viguera was not telling the truth. The Board finds that Viguera lied both to conceal his wrongful actions that evening and because he was intoxicated when he took those actions. The Board incorporates by reference its findings as to the credibility of Viguera and Hernandez as set forth in paragraph (d) above.

f. Viguera denied he struck Dean with a gun, which is contradicted by the credible testimony of Dean and Cruz. Dean credibly testified that he was hit with a gun twice by Viguera, once in the temple on his forehead and once on the jaw. The Board finds that actions by Viguera of hitting Dean twice with his gun were not in self defense or otherwise legally justified, but rather were taken by Viguera to punish Dean for his intervention in the quarrel between Viguera and Castillo.

g. Viguera denied using profanities to Dean, which was contradicted by the credible testimony of Dean. Dean credibly testified that after he attempted to intervene in the quarrel between Viguera and Castillo that Viguera said “Fuck you. Who the fuck are you. I will kick your ass.” Tr.40. The Board does not find credible Viguera’s denial that he used these profanities toward Dean.

h. Viguera denied threatening to shoot Dean, which was contradicted by the credible testimony of Dean. When Dean told Viguera that Viguera was drunk and that he should know better than to beat up his girlfriend and to pull his gun, Viguera responded with another profanity and by telling Dean that he would shoot him. At the time Viguera was making this threat, he had his gun to Dean’s head.

i. Viguera failed to report the incident involving Dean to a supervisor and/or the Department. Viguera admitted that he had physical contact with Dean that evening but he failed

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to prepare any type of written report, including but not limited to a tactical response report, or orally report the incident to a supervisor or to anyone else at the Department, even though he believed that he was a victim of a battery. Viguera's testimony was that all physical contact with a citizen does not merit reporting. However, Viguera was bleeding from the face after this incident, numerous police officers were required to report to the scene, and Viguera admitted that his gun came loose during the altercation. The Board determines that Viguera did not report the incident because he knew he was intoxicated and knew that he had engaged in wrongful conduct toward Dean by pulling his gun, threatening to shoot him, and then hitting Dean with his gun.

j. Viguera denied going downstairs after entering Salud Bar, which was contradicted by the credible testimony of Geenan and Lore. Viguera made a further false statement when he denied ever going downstairs into the basement once he entered Salud Bar to attempt to retrieve his gun. Both Geenan and Lore testified credibly that Viguera went into the basement at Salud Bar to request the return of this gun.

10. The Respondent, Police Officer Eric Viguera, Star No. 15694, charged herein, is **guilty** of violating, to wit:

Rule 15: Intoxication on or off duty,

in that:

On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Chicago, Officer Viguera was intoxicated while off duty.

See the findings set forth in paragraph no. 9b above, which are incorporated here by reference. Based on the credible testimony of Geenan and Lore, the Board unanimously finds

that Viguera was intoxicated on the night in question.

11. The Respondent, Police Officer Eric Viguera, Star No. 15694, charged herein, is **guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

in that:

On or about December 23, 2006, at approximately 0110 hours, while in the vicinity of 1471 North Milwaukee Avenue, Chicago, Officer Viguera displayed his gun without lawful justification.

Based on the credible testimony of Dean, Cruz, Louis, and Frost, Viguera had his gun out during his altercation with Dean. The Board finds that Viguera had no legal justification to take out his gun. Dean intervened peacefully when Viguera engaged in a verbal and physical altercation with his (Viguera's) girlfriend, Diana Castillo. The Board determines that the credible testimony of Frost, Louis, and Cruz corroborates Dean's credible testimony that he (Dean) did not pose any danger to Viguera or Castillo that justified Viguera pulling out his gun. The Board further determines that Dean made no statement, nor did he take any action, which posed a threat of bodily harm or of an assault, either to Viguera or to Castillo.

(Vice President Davis and Board Members Foreman and Fry dissent from the above finding, for they voted to dismiss this charge based on the Statute of Limitations.)

12. The Police Board has considered the facts and circumstances of the Respondent's conduct, the evidence presented in defense and mitigation, and the Respondent's complimentary and disciplinary histories, copies of which are attached hereto as Exhibit A. The Board determines that the Respondent must be discharged from his position due to the serious nature of

the conduct of which it has found him guilty.

Viguera engaged in an unjustified physical altercation with his girlfriend, Diana Castillo, while intoxicated. When a citizen, Cleveland Dean, attempted to intervene peacefully, Viguera pointed his weapon at Dean and threatened him, thereby endangering Dean's life, and, by escalating the situation to this level, the lives of innocent by-standers on the scene. Viguera's actions were reckless, violent, and unjustified. Such conduct is incompatible with continued service as a police officer.

Separate and apart from the rule violations relating to the misconduct described above, the Board unanimously finds that the extensive number and nature of the material false statements Viguera made warrant his discharge. The evidence overwhelmingly establishes that Viguera, with legal counsel present, knowingly and intentionally made multiple false official statements as to material issues during the IPRA investigation of his conduct which, if it occurred as alleged, constituted serious abuse of an innocent and concerned citizen. Viguera's false statements were a blatant attempt to cover up his serious misconduct. No police officer, even one such as Viguera, who has no prior disciplinary history and numerous awards, can be allowed to remain on the job when he makes numerous material false statements about matters as serious as those present in this case. Viguera's intentional and pre-mediated lying to IPRA during its investigation is the type of behavior that allows abuse of citizens by off-duty police officers to flourish and go unpunished, and which seriously undermines public confidence in the Police Department. The Board unanimously finds that Viguera's violation of Rule 14 is, in and of itself, sufficiently serious to warrant a penalty discharge.

Separate and apart from the rule violations described above, the Board unanimously finds that Viguera's violation of Rule 15 by being intoxicated from alcohol also warrants a penalty of

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discharge. The Rules and Regulations of the Chicago Police Department state that: “An off duty member under the influence of any intoxicant represents a danger to himself and to others and cannot, therefore, be permitted.” Notwithstanding this regulation, Viguera left work, went to a party at a bar with his service weapon, became intoxicated, and acted in a highly irresponsible manner while intoxicated. His decision to go to the bar with his gun and become intoxicated indicates a gross disregard for the safety of members of the public, and a lack of judgment so serious as to render him unfit to be a Chicago police officer.

The consequences of Viguera’s lack of judgment and disregard for the safety of others are evident in his behavior that night. The Board finds that on the night in question Viguera’s intoxication was a significant contributing factor to his committing numerous and serious violations of the laws of the City of Chicago. This is not a case of simple intoxication, but rather a case where the Board determines that Viguera’s intoxication led him to batter citizens that he was sworn to protect, engage in an unnecessary physical altercation, and threaten the life of a citizen by placing a gun to his head and threatening him, all in violation of numerous laws of the City of Chicago.

Viguera’s disregard for public safety and lack of judgment while out drinking with his gun are incompatible with continued service as a police officer. The Board cannot take the risk that Viguera will again become intoxicated, hold his gun to another person’s head and threaten that person, and then hit that person with his gun, all without justification. We find that, based on the totality of the facts and circumstances of Viguera’s violation of Rule 15, returning him to duty as a police officer, armed and authorized to use deadly force, poses an unacceptable risk to the safety of the public.

A police officer’s violation of a single rule of conduct has long been held to be a

sufficient basis for termination. *Siwek v. Police Board of the City of Chicago*, 872 N.E.2d 87 (2007), citing *Kinter v. Board of Police and Fire Commissioners*, 194 Ill. App. 3d 126 (1990), *King v. City of Chicago*, 60 Ill. App. 3d 504 (1978), and *Moriarty v. Police Board of the City of Chicago*, 7 Ill. App. 3d 978 (1972). The Board finds that any one of the following rule violations is, by itself, sufficiently serious to constitute a substantial shortcoming that renders Viguera's continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something which the law recognizes as good cause for Viguera no longer occupying his office: (a) the rule violations relating to Viguera's maltreatment of Castillo and pointing his weapon at Dean without lawful justification and threatening him, (b) Viguera's violation of Rule 14, and (c) Viguera's violation of Rule 15. (Vice President Davis and Board Member Fry find that Viguera's violation of Rule 14 and his violation of Rule 15 are each sufficiently serious to warrant a penalty of discharge.)

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

1. By a vote of 7 (Carney, Ballate, Conlon, Foreman, McKeever, Miller, Rodriguez) to 2 (Davis, Fry), the Board denies the Respondent's Motion to Dismiss the parts of the Rule 2 charge pertaining to the Respondent's physical altercation with Diana Castillo and his pointing his weapon at and threatening Cleveland Dean, and finds the Respondent guilty of this charge;
2. By a vote of 6 (Carney, Ballate, Foreman, McKeever, Miller, Rodriguez) to 3 (Davis,

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Conlon, Fry), the Board denies the Respondent's Motion to Dismiss the part of the Rule 2 charge pertaining to the Respondent's striking Cleveland Dean with his weapon and engaging in a physical altercation with Dean, and finds the Respondent guilty of this charge;

3. By a vote of 7 (Carney, Ballate, Conlon, Foreman, McKeever, Miller, Rodriguez) to 2 (Davis, Fry), the Board denies the Respondent's Motion to Dismiss Count I of the Rule 8 charge, and finds the Respondent guilty of this charge;
4. By a vote of 5 (Carney, Ballate, Conlon, McKeever, Rodriguez) to 4 (Davis, Foreman, Fry, Miller), the Board denies the Respondent's Motion to Dismiss Count II of the Rule 8 charge, and finds the Respondent guilty of this charge;
5. By a vote of 5 (Davis, Conlon, Foreman, Fry, Miller) to 4 (Carney, Ballate, McKeever, Rodriguez), the Board grants the Respondent's Motion to Dismiss Count III of the Rule 8 charge because that count is barred by the Statute of Limitations set forth in 65 ILCS 5/10-1-18.1;
6. By a vote of 7 (Carney, Ballate, Conlon, Foreman, McKeever, Miller, Rodriguez) to 2 (Davis, Fry), the Board denies the Respondent's Motion to Dismiss Count I of the Rule 9 charge, and finds the Respondent guilty of this charge;
7. By a vote of 5 (Davis, Conlon, Foreman, Fry, Miller) to 4 (Carney, Ballate, McKeever, Rodriguez), the Board grants the Respondent's Motion to Dismiss Count II of the Rule 9 charge because that count is barred by the Statute of Limitations set forth in 65 ILCS 5/10-1-18.1;
8. By a unanimous vote, the Board denies the Respondent's Motion to Dismiss the Rule 14 charge, and finds the Respondent guilty of this charge;
9. By a unanimous vote, the Board denies the Respondent's Motion to Dismiss the Rule 15 charge, and finds the Respondent guilty of this charge; and
10. By a vote of 6 (Carney, Ballate, Conlon, McKeever, Miller, Rodriguez) to 3 (Davis, Foreman, Fry), the Board denies the Respondent's Motion to Dismiss the Rule 38 charge, and finds the Respondent guilty of this charge.

As a result of the foregoing, the Police Board, by a unanimous vote, hereby determines that cause exists for discharging the Respondent from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

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NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Eric Viguera, Star No. 15694, as a result of having been found **guilty** of charges in Police Board Case No. 12 PB 2784, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 10th DAY OF SEPTEMBER, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

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DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board.

[None]

RECEIVED A COPY OF
THE FOREGOING COMMUNICATION
THIS ____ DAY OF _____, 2012.

SUPERINTENDENT OF POLICE

/ 1 Main Report 100%

Chicago Police Department

Personnel Division

Only for active personnel

Report Date: 09 Jan 2012
 Report Time: 1250 Hrs

Information Services Division
 Data Warehouse
 Produced by: IL01656AEC

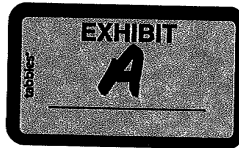
Complimentary History

Name	Title	Star	Unit	Detail Unit	Emp Number
VIGUERAS, ERIC	9161	15694	015	376	[REDACTED]

Achievements

DEPARTMENT COMMENDATION	1
EMBLEM OF RECOGNITION - PHYSICAL FITNESS	6
HONORABLE MENTION	30
2009 CRIME REDUCTION AWARD	1
COMPLIMENTARY LETTER	1
PRESIDENTIAL ELECTION DEPLOYMENT AWARD 2008	1
2004 CRIME REDUCTION RIBBON	1
TOTAL AWARDS	41

Total No.



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BUREAU OF INTERNAL AFFAIRS
RECORDS SECTION

DEC 20, 2011

TO: COMMANDING OFFICER UNIT 113

FROM: RECORDS SECTION
INTERNAL AFFAIRS DIVISION

SUBJECT: PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF:

VIGUERAS	ERIC	15694	376
NAME	(LAST,FIRST)	STAR	UNIT
M	H	[REDACTED]	
SEX	RACE	EMPLOYEE#	

REFERENCE: COMPLAINT REGISTER/ LOG NUMBER 1002203

THE PREVIOUS SUSTAINED DISCIPLINARY HISTORY OF THE SUBJECT ACCUSED HAS BEEN REQUESTED IN YOUR NAME BY:

D.C. MUELLENBACH [REDACTED] 113

RANK	NAME	STAR	EMPLOYEE#	UNIT
------	------	------	-----------	------

RELATIVE TO A SUSTAINED FINDING IN THE INVESTIGATION OF THE ABOVE REFERENCE COMPLAINT LOG NUMBER.

THE RECORDS SECTION, INTERNAL AFFAIRS DIVISION, DISCLOSED THE FOLLOWING DISCIPLINARY ACTION ADMINISTERED TO THE SUBJECT ACCUSED FOR THE PAST FIVE(5) YEARS.

*
VERIFIED/PREPARED BY:

BERNETTE KELLY

NONE
SEE ATTACHED

FOR: COMMANDING OFFICER
RECORDS SECTION
INTERNAL AFFAIRS DIVISION