

Sheriff of Cook County

vs.

Deputy Sergeant  
Michael Gercone  
Star # 1147

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Docket No. 2075

## DECISION

This matter coming on to be heard pursuant to notice before Vincent T. Winters on November 12, 2019 and August 25, 2020, Board Member, the Cook County Sheriff's (CCSO) Merit Board finds as follows:

### Jurisdiction

Michael Gercone, hereinafter Respondent, was appointed a Deputy Sheriff on October 30, 1995, and promoted to Deputy Sergeant on September 22, 2013. Respondent's position as a Deputy Sergeant involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

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

The original Complaint in this matter was filed with the Merit Board's administrative staff on September 8, 2017, an amended complaint was filed on January 28, 2018, and a second amended complaint was filed on November 4, 2019. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body

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and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on September 8, 2017 commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

### **Findings of Fact**

The Sheriff filed a complaint on September 8, 2017 and an amended complaint on January 26, 2018. The Sheriff is requesting termination.

On October 30, 1995, Respondent was appointed a Deputy Sheriff, and on September 22, 2013 he was promoted to Deputy Sergeant. Respondent was assigned to the Criminal Courts Building ("CCB") at 2650 South California, Chicago, IL, with the Cook County Sheriff's Court Services Division.

The Sheriff called [REDACTED] who worked for the Cook County Sheriff's Office from 1995 to 2018. [REDACTED] worked in Inspectional Services for the last three years of his career and was assigned cases involving unauthorized attendance and absences. (R. 23). [REDACTED] was assigned to investigate Cook County Sheriff's sergeants and lieutenants from the CCB regarding time fraud allegations. (R. 25). All seven dates that [REDACTED] testified about, October 10, 2015, October 17, 2015, November 1, 2015, November 7, 2015, April 23, 2016, May 1, 2016 and May 21, 2016 were either Saturday's or Sunday's. All sheriff's deputies at weekend bond court worked 10-hour shifts, beginning at 6:00am; 2 hours before Respondent began his shift. Respondent was never at work, on any date when a violation against him has been alleged, when any deputy checked in for his/her regular shift. (TR 2 pg. 177). Weekend bond court duties changed approximately sometime in 2012, when all the bond court responsibilities prior to the start of court were transferred to Cook County Department of Corrections, the Bridge. (TR 2 pg. 178). Typically, employees are allowed to go to lunch 2 hours after being at work and one and a half hours before they are to be sent home. (R. 27). Duties for deputies did not change in 2012, even though most of them, if not all, had actually no duties to perform until shortly before the prisoners began arriving, about 11:00 a.m. (TR. 2 pg. 179). According to [REDACTED] employees that would start at 8:00 would not be able to go to lunch at 8:30 am and the earliest they could go would be 10:00 am (R. 27). All employees are allowed 1 hour for lunch. (R. 27). Respondent had multiple conversations with his supervisor, Lt. [REDACTED], about the fact that the deputies essentially had nothing to do for 5 hours before prisoners began arriving around 11:00am; nothing was done to correct the issue (TR 2 pg. 179, 182). Respondent then sent an email to Lt. [REDACTED], the regular Sunday supervisor, Lt. [REDACTED], as well as [REDACTED] the assistant chief, or Director, in charge of the facility, in which he expressed his concerns and suggested changes that would allow a more efficient operation of weekend bond court. (TR 2 pgs. 182-

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183; Respondent's exhibit 25). No changes were made to the deputies' hours while working weekend bond court after the Respondent's email. (TR 2 pg. 190).

██████████ testified that he watched videos of deputies entering and existing the 26<sup>th</sup> street facility and the time records did not match; he went on to testify that it is the responsibilities of the sergeants to complete the management logs and the daily attendance forms. (R. 26 & 27). The purpose of the management/ supervisor log is to alert subsequent shifts of things that occurred on previous shifts; on weekend bond court there is only one shift, no prior or subsequent shift exists. (TR 2 pg. 207).

██████████ testified that he saw the Respondent arrive late by 3 minutes on one occasion and saw him coming back late from lunch on four separate occasions. Respondent admitted that he lost track of time and returned late from lunch on the four dates in question which totaled two hours and twenty-five minutes. Respondent admitted that he signed overtime forms for deputies that did not earn because he operated on an honor system with deputies who brought him paperwork because they either signed in before the start of his shift. Respondent testified that he never authorized overtime payment for anyone he did not believe had earned it. (TR 2 pg. 200-202).

### **Conclusion**

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Board finds that Respondent violated the Court Services Department General Order No.3101.2 I, II, IV, VII; Cook County Court Services Department Lexipol Policy Manual., Policy No. 211, No. 201, No.1016, and Policy No. 321; and Cook County Sheriff's Department Merit Board Rules and Regulations, Article X, Paragraph B.

### **Order:**

Wherefore, based on the foregoing, it is hereby ordered that Respondent Michael Gercone be suspended from the Cook County Sheriff's Office effective September 8, 2017 for 8 days.

**JOHN J. DALICANDRO**, Chairman  
**BYRON BRAZIER**, Vice-Chairman  
**VINCENT T. WINTERS**, Secretary  
**KIM R. WIDUP**, Board Member  
**JUAN L. BALTIERRES**, Board Member  
**KIMBERLY PATE GODDEN**, Board Member  
**ELENI P. SIANIS**, Board Member



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**COOK COUNTY**  
**SHERIFF'S MERIT BOARD**  
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This Decision is adopted and entered by a majority of the Members of the Merit Board:

John J. Dalicandro, Vincent T. Winters, Kim R. Widup, Juan L. Baltierres, Kimberly Pate Godden and Eleni P. Sianis.

Not Present: Byron Brazier

DISSENT

The following Members of the Merit Board dissent from the Findings and Decision of the majority of the Board.

[NONE]

DATED AT COUNTY OF COOK, STATE OF ILLINOIS, THIS 21<sup>st</sup> DAY OF JANUARY, 2021.