

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 2284**
CORRECTIONAL OFFICER)
MICHAEL MALONE)
STAR #17442)

DECISION

This matter coming on to be heard pursuant to notice before Marla M. Kaiden, Board Member, on January 30, 2023, the Merit Board conducted a hearing before Commissioner Marla M. Kaiden. Sheriff was represented by counsel and Respondent was represented *pro se* and had a full and fair opportunity to present evidence. The Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Michael Malone, (Respondent Malone) was appointed a Correctional Officer on June 13, 2005. February 7, 2020, Respondent Malone was assigned to Receiving Trust Classification (RTC) of the Cook County Department of Corrections (CCDOC), located at 2717 S. Sacramento, Chicago, Illinois. Respondent Malone's position as a Correctional Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and Respondent Malone was served with a copy of the Complaint and notice of hearing and appeared before the Board *pro se* to contest the charges contained in the Complaint.

Background

The Sheriff (Petitioner) filed a Complaint on June 10, 2022, Petitioner seeking termination of Respondent Malone. Petitioner alleged that Respondent Malone, while off-duty on February 7 and February 8, 2020, battered an unconscious female and physically struck a minor child. Petitioner further alleges Respondent Malone made false statements regarding the incidents to the investigator from the Cook County Sheriff's Office, Office of Professional Review (OPR).

After the case was continued from time to time, and discovery completed, it was called for a formal hearing on January 30, 2023. Respondent Malone filed a *pro se* appearance January 9, 2023. At the hearing, court reporter being present, all witnesses sworn under oath, testimony was taken from witnesses called by the Sheriff as well as testimony from the Respondent Malone. Respondent Malone called no witnesses and conducted limited cross-examination of the Petitioner's witnesses. Documents were introduced by Petitioner and received into evidence.

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Respondent Malone provided no documentary evidence.

Issues Presented:

The Respondent was charged with violations of the Rules and Regulations of the Cook County Department of Corrections, more specifically:

**COOK COUNTY DEPARTMENT OF CORRECTIONS CUSTODY MANUAL
POLICY 101¹**

CONDUCT, in its entirety, including but not limited to, the following subparts:

101.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Cook County Sheriff's Office and are expected of all department members. This policy applies to all Sheriff's Office members.

101.1.1 ISSUANCE/EFFECTIVE DATE

This policy was re-issued on Dec. 3, 2018 and shall become effective upon issuance (operational updates).

101.2 POLICY

Members of the Sheriff's Office shall conduct themselves in a professional and ethical manner, both on- and off-duty. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions, but they do identify many of the important matters concerning member conduct. Every member is also subject to the provisions contained throughout this policy and

¹ The Lexipol Conduct Policy for the Cook County Department of Corrections was initially issued as Lexipol Policy 100 on September 29, 2017 and effective October 1, 2017. On July 2, 2018, August 1, 2018, November 1, 2018, **December 3, 2018, June 1, 2020**, October 1, 2020, and June 1, 2021 the Lexipol Conduct Policy was reissued and renumbered in the Lexipol Cook County Department of Corrections Custody Manual as Lexipol Policy 101 (released as recently as June 1, 2022). The applicable versions of this policy are those in **bold** above.

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applicable written directives, as well as any additional guidance on conduct that may be disseminated by the Sheriff's Office or the member's supervisors.

101.3 COMPLIANCE WITH ALL LAWS, ORDINANCES AND REGULATIONS

Members shall respect and protect the civil and legal rights of all individuals; uphold the constitutions of the United States and the State of Illinois; obey all applicable federal, state and local laws; comply with court decisions and orders of courts having jurisdiction; and comply with lawful rules, written or verbal orders, Sheriff's Office Employment Action Manual (SEAM) articles, and policies and procedures issued by the Sheriff's Office or any supervisor.

101.4 CONDUCT POLICY

The continued employment or retention of every Sheriff's Office member shall be based on conduct that reasonably conforms to the guidelines set forth herein.

Failure of any member to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action, up to and including termination.

A member's off-duty conduct shall be governed by this policy to the extent that it is related to any act that may affect or arise from the member's ability to perform official duties, or to the extent that it may be indicative of unfitness for his/her position.

101.5 CONDUCT THAT MAY RESULT IN DISCIPLINE

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of the Sheriff's Office. This list is not intended to cover every possible type of misconduct, and does not preclude the recommendation of

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disciplinary action for specific action or inaction that is detrimental to efficient service. Conduct which may result in discipline includes, but is not limited to, the following:

101.5.5 PERFORMANCE

(ab) Any knowing or negligent violation of the provisions of a policy, operating procedure or other written directive of an authorized supervisor.

1. Members are responsible for reading and becoming familiar with the contents of applicable policies and procedures, and are responsible for compliance with the content contained therein.

(ad) Criminal, dishonest, infamous or disgraceful conduct adversely affecting the employee/ employer relationship (including applicable members) whether on- or off-duty.

(ar) Any misdemeanor or felony violation.

(as) Any other on- or off-duty conduct which a member knows or reasonably should know is unbecoming a member of the Sheriff's Office; which is contrary to good order, efficiency or morale; or which tends to reflect unfavorably upon the Sheriff's Office or its members.

**COOK COUNTY DEPARTMENT OF CORRECTIONS CUSTODY MANUAL
POLICY 101²**

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101.5.5 PERFORMANCE

- (ae) Failure to disclose facts or misrepresenting facts, or the making of any false or misleading statement.**

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2. During the course of any work-related investigation.

1. Furthermore, the RESPONDENT's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B

No Police Officer, Police Sergeant, Police Lieutenant of the Cook County Sheriff's Police Department, Correctional Officer, Correctional Sergeant, Correctional Lieutenant, Correctional Captain of the Cook County Department of Corrections or Deputy Sheriff, Deputy Sergeant, Deputy Lieutenant of the Cook County Sheriff's Court Services Department will:

- 3. Violate any of the Sheriff's Executive Orders, General Orders, Special Orders, Directives, Rules and Regulations of the Cook County Sheriff's Department or Cook County Sheriff's Merit Board Rules and Regulations.**

Findings of Fact

██████████ testified she lived in the same apartment building as Respondent Malone during February 2020 (Tr. 10). ██████████ further testified Respondent Malone lived with his girlfriend ██████████ (██████████) and her two children, 7 year old ██████████ and 2 year old ██████████ during February 2020, except for those times when the children would stay with their father (Tr. 12-13). On February 7, 2020, Respondent Malone and ██████████ invited ██████████ to dinner at Respondent Malone and ██████████ shared apartment (Tr. 14). ██████████ two children, seven year old ██████████ and two year old ██████████, were also present (Tr. 14). ██████████ brought childrens' cereal to the dinner for the children (Tr. 14). Later that evening ██████████ asked Respondent Malone and ██████████ mother ██████████ for the childrens cereal (Tr. 15). Both Respondent Malone and ██████████ denied ██████████ request (Tr. 15). ██████████ responded by becoming verbally upset and "blowing a raspberry" (Tr. 15). ██████████ testified that Respondent Malone reacted to ██████████ behavior by backhanding ██████████ in the mouth (Tr. 16-17). ██████████ further testified that ██████████ mouth was bleeding after Respondent Malone hit ██████████ (Tr.17).

At approximately midnight on February 7, 2020, ██████████ joined Respondent Malone, ██████████ and ██████████ two children, ██████████ and ██████████ (Tr. 18). ██████████ then joined Respondent Malone, ██████████ and ██████████ in drinking alcoholic beverages (Tr. 18). ██████████ testified she later moved to the couch and fell asleep (Tr. 18). ██████████ stated that sometime after she fell asleep, ██████████ woke her up and insisted that ██████████ and ██████████ leave Respondent Malone and ██████████ apartment (Tr. 19). After ██████████ and ██████████ left the apartment, ██████████ told ██████████ that Respondent Malone had slammed ██████████ to the floor (Tr. 21).

██████████ testified that after ██████████ went to the couch to lay down, ██████████ fell asleep at the table (Tr. 26). ██████████ stated that Respondent Malone attempted to kiss her after ██████████ fell asleep (Tr. 26). ██████████ declined Respondent Malone's advances (Tr. 26). ██████████ testified that Respondent Malone then took ██████████ by the ponytail and slammed her to the ground (Tr. 26). ██████████ states that ██████████ then woke up but had no further reaction (Tr. 26). ██████████ characterized ██████████ as being drunk and unaware during this incident (Tr. 26). At this time, ██████████ testified that she helped and accompanied ██████████ to ██████████ apartment in the same apartment building (Tr. 27). That same evening, ██████████ described the incident to ██████████ once ██████████ and ██████████ were in ██████████ apartment (Tr. 27). The next day, ██████████ telephoned ██████████ and described the incident to ██████████ (Tr. 27). Upon cross examination by Respondent Malone, ██████████ admits to consuming four alcoholic beverages during that time (Tr. 29).

██████████ testified she is an investigator with the Cook County Sheriff's Office of Professional Review (OPR) since 2015 and has been employed by the Cook County Sheriff's Office (CCSO) in other capacities for 13 years (Tr. 31). ██████████ investigates allegations of Sheriff employee misconduct and was assigned to investigate Respondent Malone on March 2, 2020 after OPR received notification from 911 Communications Center that Respondent Malone was arrested by the Chicago Police Department (CPD) for domestic battery (Tr. 34-35; Sheriff's Exhibit 1). ██████████ during the course of her investigation, identified and reviewed the notification from 911, the OPR de-deputization form (Tr. 35-36; Sheriff's Exhibit 2), the CPD Arrest Report (Tr. 37-38; Sheriff's Exhibit 3), the CPD Original Case Incident Report(s) (Tr. 39-44; Sheriff's Exhibits 4 and 5). In addition, ██████████ interviewed ██████████ ██████████, ██████████ and

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Respondent Malone (Tr. 45-66; Sheriff's Exhibits 6,7,8,10,11,12,13,14). Finally, ██████ reviewed the Court Orders of Protection and Associated Documents (Tr. 58, Sheriff's Exhibit 9). Respondent Malone was accompanied by his union representative to the OPR investigation conducted by ██████ (Tr. 72; Sheriff's Exhibit 10). Respondent Malone was arrested by CPD on March 1, 2020 for domestic battery and de-deputized on March 2, 2020 (Tr. 35-36). Respondent Malone was arrested for domestic battery on two counts, one count for ██████ and one count for ██████ (Tr. 40-43). ██████ and ██████ respectively, were listed as witnesses (Tr. 42,44).

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, by a preponderance of the evidence, that Respondent Michael Malone did violate the Cook County Sheriff's Department Rules and Regulations.

Respondent Malone was observed by witness ██████ ██████ physically striking a minor child which resulted in the child's bleeding (Tr. 16-17). Respondent Malone was observed by witness ██████ battering an unconscious adult female (Tr. 26). Respondent Malone has denied all allegations (Tr. 71); however, Respondent Malone presented no corroborating witnesses or evidence. Respondent Malone has been arrested for each of the above allegations (Sheriff's Exhibits 4 and 5).

██████ after due investigation and interviews with witnesses and Respondent Malone, sustained findings that Respondent Malone violated the conduct policy in multiple areas that govern both on-duty and off-duty conduct. Cook County Sheriff's Office (CCSO) members are required to conduct themselves in a professional and ethical manner, both on- and off-duty. CCSO members may not inflict unlawful bodily injury on others. A CCSO member's off-duty conduct may be indicative of unfitness for his/her position. Respondent Malone also falsely represented his actions and conduct.

The fact that a criminal case moves forward or not, or a person is found guilty or not, does not matter in the determination of a case before the Merit Board. The Merit Board looks at conduct separately from what a criminal case would consider, the Merit Board reviews and considers policy violations. The burden of proof is not beyond a reasonable doubt, which is the criminal standard; but rather, a preponderance of the evidence.

Order

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to terminate and remove Respondent Michael Malone from the Cook County Sheriff's Office is granted effective June 10, 2022.

JOHN J. DALICANDRO, Chairman
BYRON BRAZIER, Vice-Chairman
VINCENT T. WINTERS, Secretary
KIMBERLY PATE GODDEN, Board Member
TERRENCE J. WALSH, Board Member
MARLA M. KAIDEN, Board Member
WADE INGRAM SR., Board Member
JAMES J. SEXTON, Board Member



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COOK COUNTY
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This Decision is adopted and entered by a majority of the Members of the Merit Board:

John J. Dalicandro, Byron Brazier, Vincent T. Winters, Terrence J. Walsh, Marla M. Kaiden,
Wade Ingram Sr. and James J. Sexton

Not Present: Kimberly Pate Godden and Marla M. Kaiden

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 25th DAY OF MAY, 2023.