

STATE OF ILLINOIS
ILLINOIS STATE POLICE MERIT BOARD

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ILLINOIS STATE POLICE
MERIT BOARD

IN THE MATTER OF:

MASTER SERGEANT THEODORE RHODES)
I.D. No. 4655) Illinois State Police
16024 West Water Street) Merit Board No. 15-8
Teutopolis, IL 62467)

RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

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I. BACKGROUND

A. Pleadings

On October 9, 2015, Leo P. Schmitz, Director of the Illinois State Police (hereinafter the “Department”) filed a Complaint with the Illinois State Police Merit Board (hereinafter the “Board”). The Complaint contains six counts of alleged violations against Master Sergeant Theodore Rhodes (hereinafter referred to as “Rhodes or Respondent”). In the Complaint, Director Schmitz requests that the Board conduct a hearing in this matter and suspend Rhodes from his employment with the Illinois State Police in excess of 30 days and demote him to the rank of Trooper.

Count I of the Complaint alleges that Rhodes violated Department Directive ROC-002, Paragraphs III.A.41.c., when he failed to answer questions truthfully during his Division of Internal Investigation (“DII”) administrative interview. Rhodes is alleged to have violated this rule when (i) he stated during his DII administrative interview that he contacted Trooper Nathan Schnarre, to see if James Newberry (“Newberry”) needed an attorney or if the Fayette County State’s Attorney’s office offered court supervision, and (ii) when he stated during his DII administrative interview that he contacted the Fayette County State’ Attorney’s Office to inquire only about whether or not Newberry needed an attorney and whether or not the Fayette County State’s Attorney’s office offered court supervision.

Count II of the Complaint alleges that Rhodes violated Department Directive ROC-002, Paragraphs III.A.14.a., which prohibits an Officer from misusing his/her office. Rhodes is alleged to have violated this Rule between March 22, 2015 and April 15, 2015, when he used his official position for the personal or financial gain of James Newberry by attempting to obtain leniency for Newberry.

Count III of the Complaint alleges that Rhodes interfered with another officer's case and thereby violated Department Directive ROC-002, Paragraphs III.A.29., when Respondent interfered with Newberry's DUI case, which was being handled by Trooper Seth Williams.

Count IV of the Complaint alleges that Rhodes brought the Department into disrepute and thereby violated Department Directive ROC-002, Paragraphs III.A.8. when he requested that Trooper Schnarre contact the Fayette County State's Attorney's office regarding Newberry's pending DUI case, when he contacted the Fayette County State's Attorney's office regarding Newberry's pending DUI case and identified himself as an ISP officer, and when he scheduled a meeting for Newberry with the Fayette County State's Attorney.

Count V of the Complaint alleges that Rhodes violated Department Directive ROC-002, Paragraphs III.A.12. when he failed to perform his duties in a manner that maintains the highest standards of efficiency in carrying out the functions and objectives of the Department in that he contacted the Fayette County State's Attorney's Office regarding Newberry's pending DUI case.

Count VI of the Complaint alleges that Rhodes failed to supervise and thereby violated Department Directive ROC-002, Paragraphs III.B.1., when he requested that Trooper Schnarre, a subordinate, contact the Fayette County State's Attorney's Office regarding James Newberry's pending DUI case.

B. Hearing Procedure Issues

1. Pre-Hearing Procedural Issues

As noted above, the Complaint in this case was filed on October 9, 2015. Discovery was conducted and both parties exchanged documents and witnesses as provided in the Rules. On February 10, 2016, the Department filed a Motion in Limine to prohibit Rhodes' counsel from calling five specific individuals to testify about the discipline afforded other officers doing the

same or similar acts of wrongdoing of which Rhodes is accused. Rhodes filed a Reply to the Department's Motion in Limine. After reviewing the parties' arguments as set forth in the Department's Motion in Limine and Rhodes' Reply, the Hearing Officer denied the Motion.

2. Hearing Dates

During the course of discovery, the hearing was continued from time to time by the Hearing Officer to allow the parties adequate time to prepare for hearing. The hearing was held on February 18, 2016. Following the close of evidence at the hearing on February 18, 2016, a briefing schedule was established. After the initial briefing schedule was established, Respondent's attorney requested additional time for medical reasons. Ultimately, the parties' written closing arguments were filed on May 9, 2016 and the parties' written rebuttals to closing arguments were filed on May 30, 2016. Pursuant to the schedule, the Hearing Officer's Recommendations, Findings of Facts and Conclusions of Law are to be submitted by July 14, 2016.

3. Post-Hearing Order

At the hearing, Respondent's attorney made a motion to admit two cases as evidence of prior discipline in cases with facts similar to the case against Respondent. The Department objected to Rhodes' motion. The Hearing Officer delayed ruling on the matter until she had an opportunity to review the cases submitted by Rhodes. On July 8, 2016, the Hearing Officer denied Rhodes' motion.

II. HEARING TESTIMONY

A. List of Witnesses

The following witnesses testified at the hearing in this case. The page number of the Transcript of the Proceedings upon which the testimony of the witness starts is included in parentheses.

1. Master Sergeant Theodore Rhodes (17, 33, 43, 137)
2. Captain Kelly Hodge (45, 53, 61, 62)
3. Trooper Nathan Schnarre (65, 71, 84, 145)
4. Amanda Ade-Harlow (84, 90, 95, 96, 97)
5. Kira Palmer (98, 103)
6. Deb Simental (104, 124, 134, 135)
7. Kevin Smith (148, 150, 151)
8. Ron Will (151, 154)
9. Josh Fergus (155, 158, 160, 161)

B. List of Exhibits The following exhibits were admitted into evidence in this case:

Petitioner's Exhibits

| | |
|------------------------|---|
| Petitioner's Exhibit 1 | Memorandum dated June 24, 2015 from Colonel Deborah Simental to Colonel Michel R. Zerbonia regarding discipline received by Respondent |
| Petitioner's Exhibit 2 | Illinois State Police Complaint Against Department Member Form filed by Captain Kelly Hodge against Master Sergeant Theodore Rhodes dated April 16, 2015 |
| Petitioner's Exhibit 3 | Text messages between Trooper Nathan Schnarre and Assistant State's Attorney Amanda Ade-Harlow on April 13, 2015 |
| Petitioner's Exhibit 4 | Notations of Kira Palmer, Victim Witness Coordinator for Fayette County State's Attorney regarding a telephone message from Rhodes for the Fayette County State's Attorney and Fayette County State's Attorney's calendar for April 15, 2015 and April 17, 2015 |
| Petitioner's Exhibit 5 | Illinois State Police Directive ROC-002, Rules of Conduct |

Respondent's Exhibits

| | |
|------------------------|---|
| Respondent's Exhibit 3 | Letters of appreciation for Rhodes |
| Respondent's Exhibit 4 | Complimentary letters regarding Rhodes |
| Respondent's Exhibit 5 | Illinois State Police Performance Evaluations of Rhodes |

C. Background Summary

Theodore Rhodes ("Rhodes") has been employed by the Illinois State Police ("Department") since November 29, 1995 and holds the rank of Master Sergeant Rhodes is assigned to duties in District 12, Effingham, IL.

Rhodes has known James Newberry ("Newberry") since 1992. Newberry was a subcontractor on two homes built by Rhodes. In February and March of 2015, Newberry did some additional construction work on a commercial property owned by Rhodes and his brother.

On March 22, 2015, Trooper Seth Williams, arrested Newberry in Fayette County, Illinois, for the offenses of Driving Under the Influence of Alcohol (DUI), Disregarding a Traffic Control Device, and Operating an Uninsured Motor Vehicle. During his arrest, Newberry informed Trooper Williams that he lived across from ISP District 12 headquarters in Effingham, Illinois, and asked Trooper Williams if he knew Rhodes. Trooper Williams told Rhodes that he had arrested Newberry in Fayette County.

Between March 22, 2015 and April 14, 2015, Newberry contacted Rhodes regarding the DUI charges pending in Fayette County, Illinois. Rhodes then contacted Trooper Nathan Schnarre, who Rhodes knew had worked with the Fayette County State's Attorney. Rhodes asked Trooper Schnarre if he would contact the Fayette County State's Attorney regarding Newberry to find out if Newberry needed his own attorney and if supervision for a DUI was offered in Fayette County.

Schnarre contacted the Fayette County Assistant State's Attorney, Amanda Ade-Harlow on at least 2 occasions between April 8, 2015 and April 13, 2015, regarding Newberry's pending DUI case.

On April 13, 2015, Rhodes contacted Harlow and inquired about Newberry's pending DUI case. Harlow told Rhodes she needed to discuss the matter with Joshua Morrison, the State's Attorney, who handled all DUI cases.

On April 15, 2015, Rhodes again contacted Harlow regarding Newberry's pending DUI case, and Harlow told Rhodes that Newberry should contact Mr. Morrison and set up an appointment.

Between April 13, 2015 and April 15, 2015, Rhodes contacted the Fayette County State's Attorney's office, identified himself as an ISP officer and requested an appointment for Newberry with Mr. Morrison, the Fayette County State's Attorney. Shortly after making the initial appointment for Newberry with Mr. Morrison, Rhodes called and rescheduled Newberry's appointment for April 17, 2015.

On April 16, 2015, a Complaint Against Department Member Form (CADMF) was filed against Rhodes by Captain Hodge. On June 18, 2015, agents from the DII conducted an administrative interview of Rhodes.

D. Summary of Testimony

Master Sergeant Theodore Rhodes

Master Sergeant Theodore Rhodes ("Rhodes") testified that he has been employed by the Illinois State Police ("ISP") for 22 years and is currently employed in District 12 as Master Sergeant. (Tr.17) Rhodes testified that he has known James Newberry ("Newberry") for over 20 years and that Newberry had done some construction work for Rhodes. (Tr.18) Rhodes testified

that Newberry had previously worked on two homes for Rhodes as a subcontractor and in February of 2015, Newberry did some additional construction work for Rhodes on a commercial property owned by Rhodes and his brother. (Tr. 18-19) The commercial construction project lasted for several months.

Rhodes testified that Trooper Seth Williams told him that he (Williams) had arrested Newberry for DUI in Fayette County. Trooper Williams told Rhodes that when he (Trooper Williams) arrested Newberry for DUI, Newberry asked Trooper Williams if he knew Rhodes. (Tr. 20) Newberry subsequently called Rhodes about his DUI.

Rhodes testified that after talking to Newberry, he called Trooper Nathan Schnarre and asked Trooper Schnarre to contact the Fayette County State's Attorney. (Tr. 21) Rhodes testified that he asked Trooper Schnarre to contact the Fayette County State's Attorney because Trooper Schnarre had a high arrest rate in Fayette County and he (Rhodes) did not know the Fayette County State's Attorney. (Tr. 21) Rhodes testified that he did "not recall" asking Trooper Schnarre to ask the Fayette County State's Attorney to review Newberry's file. (Tr. 21) Rhodes testified that he asked Trooper Schnarre to ask the Fayette County's State's Attorney if Newberry needed his own attorney, and if supervision was available as a penalty or punishment for a DUI. (Tr. 21) Rhodes testified that Trooper Schnarre agreed to contact the Fayette County State's Attorney's office. (Tr. 24) Rhodes testified that he did not hear from Trooper Schnarre after his initial call for about a month. (Tr.25)

About a month after Rhodes received Newberry's initial call, Rhodes received another phone call from Newberry. (Tr.25) Rhodes testified that Newberry told him during his second call that "his court date was getting close and he (Newberry) needed to know if he needed to hire an attorney". (Tr. 26) Rhodes testified that after Newberry's second call, he called Trooper Schnarre

again and asked if he had talked to the Fayette County State's Attorney's office. (Tr.26) Schnarre told Rhodes that he had not and Rhodes testified that he then called the Fayette County State's Attorney's office. (Tr.25) Rhodes testified that he had called Trooper Schnarre at least 2 times and perhaps more. Rhodes testified that he did not recall exactly how many times he called Trooper Schnarre about Newberry. (Tr. 25) Rhodes testified that in addition to phone calls, he had also sent Trooper Schnarre text messages about Newberry. (Tr.26)

Rhodes testified that he contacted Amanda Ade-Harlow ("Harlow"), a Fayette County Assistant State's Attorney in April of 2015. At the time Rhodes spoke to Harlow, Newberry's case was pending in Fayette County. (Tr. 27) Rhodes testified that when he spoke to Harlow, she told him that she did not make decisions regarding "supervision" in DUI cases as those decisions were made by Joshua Morrison, the Fayette County State's Attorney. Rhodes testified that when he spoke to Harlow, she told him that Newberry did not need his own attorney and that Newberry needed to make an appointment with Mr. Morrison, the Fayette County State's Attorney. (Tr. 27-28, 41) Rhodes testified that during his call with Harlow, she connected him with the secretary in the Fayette County State's Attorney's office and he made an appointment for Newberry with the Fayette County State's Attorney, Joshua Morrison. Rhodes testified that after he called Newberry and told him about the date and time of the appointment with Mr. Morrison, Newberry told Rhodes that the date and time of the appointment would not work for him. Rhodes called the State's Attorney's office back "within a few minutes" and rescheduled Newberry's appointment. (Tr. 27-28)

Rhodes did not recall whether or not he had identified himself as a Master Sergeant to Harlow. (Tr. 27) Rhodes testified that he did not recall whether or not he had identified himself as a Master Sergeant to the secretary in the Fayette County State's Attorney's office. (Tr. 29)

Rhodes testified that he called the Fayette County State's Attorney office instead of telling Newberry to call because "it just helps cut through the red tape. If they don't know who somebody is, they jack them around, you know, so." (Tr. 29)

Rhodes testified that he had called State's Attorneys' offices before on behalf of criminal defendants to ask questions in cases where he was the arresting officer and on other cases. (Tr. 29) Rhodes testified that he had not been disciplined before when he called State's Attorneys' offices to ask questions. (Tr.35) Rhodes testified that he did not speak with or meet with Josh Morrison, the Fayette County State's Attorney. (Tr. 34)

Rhodes testified that in April of 2015, he did not have specific knowledge of the practices of the Fayette County State's Attorney's office with respect to penalties offered for DUI's or whether a defendant needed his or her own attorney to speak to the Fayette County State's Attorney. (Tr. 38)

Rhodes testified that he did not recall whether he had more than one conversation with Amanda Harlow. (Tr. 42)

Captain Kelly Hodge

Captain Kelly Hodge testified that he is the Commander for Districts 12 and 19 and Rhodes' supervisor. (Tr. 45-46) Captain Hodge testified that his Administrative Lieutenant in District 12, Master Sergeant Chad Smith, told him that he (Smith) was told by a Secretary of State Police Officer over breakfast, that "the Fayette County State's attorney . . . was pissed off at the State Police." (Tr. 48) Captain Hodge testified that Master Sergeant Smith told him (Hodge) that another officer had told him (Smith) that the Fayette County State's Attorney's office was upset because "Master Sergeant Rhodes had directly asked one of our Troopers, Trooper Schnarre, to intervene in a DUI case or try to gain some type of leniency for the subject." (Tr. 49)

Captain Hodge testified that in his experience in District 18, 12 and 19, it was extremely uncommon, improper and does not comply with policy for ISP members to call State's Attorneys about cases that their friends or acquaintances are involved in. (Tr. 51)

Captain Hodge testified that he did not order or ask Rhodes to call the Fayette County State's Attorney about Newberry's case and Rhodes did not report to him (Hodge) that he called the Fayette County State's Attorney about Newberry's case. (Tr. 52)

Captain Hodge testified that he asked Assistant State's Attorney Amanda Ade-Harlow about her impression of Rhode's intentions in calling her office. Hodge testified that Harlow told him that it was her "impression" that Rhodes was trying to get some kind of leniency for Newberry. (Tr. 62)

Trooper Nathan Schnarre

Trooper Nathan Schnarre testified that he is a trooper employed by the Illinois State Police in District 12. (Tr. 65) Trooper Schnarre testified that he believed Rhodes was aware of his DUI arrest record in Fayette County. (Tr. 80)

Trooper Schnarre testified that around March of 2015, Rhodes contacted him about Newberry. Schnarre testified that Rhodes asked him to contact the Fayette County State's Attorney and ask the Fayette County State's Attorney to take a look at Newberry's DUI report because he (Rhodes) had never spoken to the Fayette County State's Attorney. (Tr. 66) Trooper Schnarre testified that after Rhodes' initial call, Rhodes called and texted him "maybe 6 to 8, 10" times. (Tr. 67)

Trooper Schnarre testified that he texted Fayette County Assistant State's Attorney, Amanda Ade-Harlow, on April 13, 2015 regarding Rhodes' request. (Tr. 68, Petitioner's Exhibit 3)

Trooper Schnarre testified that Rhodes did not ask him to obtain favors for Newberry or to negotiate any leniency for Newberry with the Fayette County State's Attorney. (Tr. 71-72) Trooper Schnarre testified that he was disciplined for his role in the matter involving Rhodes. (Tr. 79)

Amanda Ade-Harlow

Amanda Ade-Harlow ("Harlow") testified that she was the Assistant State's Attorney in Fayette County from December of 2012 through the end of August of 2015. (Tr. 85) Harlow testified that Trooper Schnarre texted her on April 8, 2015 and asked her to call him. Harlow testified that she had worked with Trooper Schnarre on several occasions. She called Trooper Schnarre on April 13, 2015 and discussed Newberry's DUI case. On April 13, 2015, Trooper Schnarre sent her a text message and asked her to look at Newberry's DUI report. Harlow testified that she looked at Newberry's report on April 13, 2015. Harlow testified that Petitioner's Exhibit 3 represents the text messages she exchanged with Trooper Schnarre on April 13, 2015, regarding Newberry's case. (Tr. 87) Harlow testified that she texted Schnarre and told him to have Newberry make an appointment with Morrison and Morrison may cut him a deal. (Tr. 92)

Harlow testified that on April 13, 2015, she received a call from Rhodes. (Tr. 87) Rhodes asked her about Newberry's DUI and Harlow stated that "he didn't get very much out before I shut him down because I don't, I didn't at that time, handle DUIs." (Tr. 87) Harlow testified that she advised Rhodes that Mr. Morrison, the Fayette County State's Attorney, handled all DUIs and that if Rhodes would give her a phone number, she would give the message to Mr. Morrison. (Tr. 88) Harlow testified that she became aware a couple of days after her call with Rhodes that Rhodes had called the office to schedule an appointment for Newberry with Mr. Morrison, the Fayette County State's Attorney. (Tr. 88) Harlow testified that it was her impression, after talking to

Rhodes, that Rhodes was trying to get leniency for Newberry. (Tr. 89) Harlow testified that Rhodes never specifically asked her for leniency for Newberry or for her to cut a deal for Newberry. (Tr. 90-91)

Harlow testified that it was not common for ISP officers to make appointments for friends of theirs about cases that were not theirs. (Tr. 90) Harlow testified that the ISP contacted her initially about Rhodes. (Tr. 95)

Kira Palmer

Kira Palmer ("Palmer") testified that she was employed as the Victim Witness Coordinator with the Fayette County State's Attorney's office. (Tr. 98) Palmer testified that she was one of the people who kept Joshua Morrison's, the Fayette County State's Attorney, calendar. She testified that Rhodes called the Fayette County State's Attorney's office on April 15, 2015. (Tr. 98) Palmer testified that when Rhodes called, he asked to speak to Mr. Morrison. Palmer took a message (See Petitioner's Exhibit 4) and included "ISP" under his name (Tr. 101-102) Palmer testified that she did not specifically remember the phone call with Rhodes on April 15, 2015, however, Rhodes would have had to have identified himself to her as an ISP Officer, otherwise she would not have included the notation "ISP" underneath Rhodes' name. (Tr. 101) Palmer testified that Rhodes called back and made an appointment for Newberry with Mr. Morrison, the Fayette County State's Attorney. (Tr. 102) Palmer testified that Rhodes called back again and rescheduled Newberry's appointment with Morrison. (Tr. 102)

Colonel Deborah Simental

Colonel Simental testified that she is a Colonel and oversees the Division of Internal Investigation ("DII"). (Tr. 105) Colonel Simental testified that she was present at the Disciplinary Review Board ("DRB") hearing for Rhodes. (Tr. 109) Colonel Simental testified that the DRB

took into account discipline that Rhodes received from a 2014 DII investigation because it occurred within the time frame that the DRB is allowed to consider prior discipline. (Tr. 110-111, Petitioner's Exhibit 1) Colonel Simental testified that in her experience it was not common for ISP members to call the State's Attorney's office about cases that they were not the arresting officer. (Tr. 116) Colonel Simental testified that in her experience it was not common for ISP members to call the State's Attorney's office about cases involving the ISP member's family or friends. (Tr. 116) Colonel Simental testified that in her opinion, calling the State's Attorney's office about a case involving an ISP member's family or friend is involved in did not comply with ISP policy. (Tr. 116-117)

Colonel Simental testified that in her opinion, the fact that Rhodes had requested Trooper Schnarre to contact the Fayette County State's Attorney's office "in an effort to . . . gain leniency for Mr. Newberry" and the fact that Rhodes himself had contacted the Fayette County State's Attorney's office and identified himself as an ISP officer "in an effort to gain leniency for Mr. Newberry", supported a charge of misuse of office. (Tr. 114-115)

Colonel Simental testified that in her opinion Rhodes interfered with another officer's case because Trooper Seth Williams was the officer that arrested Newberry. The fact that Rhodes requested Trooper Schnarre to contact the Fayette County State's Attorney's office in an effort to obtain leniency for Newberry and the fact that Rhodes himself contacted the office without Trooper Williams' knowledge, supported the charge of interfering with another officer's case. (Tr. 115-116)

Colonel Simental testified that in her opinion, Rhodes brought the Department into disrepute by "the fact that he involved not only himself, but Trooper Schnarre, as well as an outside agency in this matter, specifically, the Fayette County State's Attorney's office." (Tr. 117)

Colonel Simental testified that in her opinion, Rhodes' actions constituted a failure to perform his duties because he contacted the State's Attorney's office in an effort to gain leniency, he interfered with an investigation and involved a subordinate in the request. (Tr. 117-118) Colonel Simental testified that in her opinion it was the "totality of his actions" that resulted in Rhodes failure to perform his duties. (Tr. 118)

Colonel Simental testified that in her opinion, when Rhodes called the Fayette County's State's Attorney's office and identified himself as being with the ISP or as a Master Sergeant he violated ISP policy and procedures. (Tr. 118)

Colonel Simental testified that Trooper Schnarre was considered Rhodes' subordinate under ISP policy even though he was not in Rhodes' direct chain of command.

Kevin Smith

Kevin Smith ("Smith") testified that Rhodes was his Sergeant and Master Sergeant in District 10 for three years. (Tr. 148-149) Smith testified that he never observed Rhodes to be deficient in the performance of his duties and in his opinion, he had observed Rhodes go above and beyond the performance of his duties. (Tr. 149)

Ron Will

Ron Will ("Will") testified that Rhodes was his supervisor in District 12. Will testified that in his opinion, Rhodes' performance of his duties as his supervisor was "pretty good." (Tr. 153)

Josh Fergus

Josh Fergus ("Fergus") testified that he was a Trooper in District 12 and that Rhodes had been his supervisor for about two years and a half. (Tr. 155-156) Trooper Fergus testified that he interacted with Rhodes on a daily basis when he was his supervisor. (Tr. 156) Trooper Fergus

testified that in his opinion Rhodes was not deficient in the performance of his duties when he was his supervisor. (Tr. 156) Trooper Fergus testified that he and Rhodes were involved in the 2014 incident that resulted in discipline for himself and Rhodes. (Tr. 158)

III. FINDINGS OF FACT

A. General Findings of Fact

Master Sergeant Theodore Rhodes (“Rhodes”) has been employed by the ISP for 22 years and is currently employed as a Master Sergeant in District 12. James Newberry (“Newberry”) is an acquaintance of Rhodes. Newberry had previously worked as a subcontractor on two homes for Rhodes and, in February and March of 2015, Newberry worked on a commercial property owned by Rhodes and his brother.

Trooper Seth Williams asked Rhodes if he knew Newberry and told him that he (Williams) had arrested Newberry for a DUI in Fayette County. After Rhodes’ conversation with Trooper Williams, Newberry called Rhodes and told Rhodes about his DUI. After talking to Newberry, Rhodes called Trooper Nathan Schnarre and asked Trooper Schnarre to contact the Fayette County State’s Attorney’s office to ask whether Newberry needed his own attorney and if supervision was available as a penalty or punishment for a DUI. Trooper Schnarre agreed to contact the Fayette County State’s Attorney’s office as requested by Rhodes. Rhodes asked Schnarre to contact the Fayette County State’s Attorney’s office because of Schnarre’s arrest record in Fayette County and because Rhodes did not know the Fayette County State’s Attorney. Rhodes did not recall whether or not he had asked Schnarre to have the Fayette County State’s Attorney review Newberry’s file. Newberry called Rhodes a second time and again asked if he needed an attorney because his (Newberry’s) court date was coming up. After Newberry’s second call, Rhodes called Trooper Schnarre and asked him if he had talked to the Fayette County State’s Attorney and

Trooper Schnarre told him that he had not. Rhodes called Trooper Schnarre at least two times and sent him text messages about Newberry.

Rhodes called the Fayette County Assistant State's Attorney Amanda Ade-Harlow on April 13, 2015 and on April 15, 2015. During one telephone call, Rhodes asked Harlow about Newberry's DUI. In response, Harlow told Rhodes that she did not handle DUIs, Joshua Morrison, the Fayette County State's Attorney handled all DUIs and that she (Harlow) would give Mr. Morrison a message. Rhodes called the Fayette County State's Attorney's office on April 15, 2015, identified himself as an ISP officer, and scheduled an appointment for Newberry with the Fayette County State's Attorney. Rhodes called the Fayette County State's Attorney's office a second time on April 15, 2015 and rescheduled Newberry's appointment with the Mr. Morrison.

Trooper Schnarre is Rhodes' subordinate under ISP policy. Rhodes did not speak to the Fayette County State's Attorney. Rhodes did not ask Fayette County Assistant State's Attorney Amanda Ade-Harlow for leniency for Newberry. Rhodes did not ask Trooper Schnarre to obtain any favors for Newberry or try to negotiate any leniency with the Fayette County State's Attorney.

B. Specific Findings of Fact

1. Count I

Count I of the Complaint alleges that Rhodes committed the offense of violating Department Directive ROC-002, Paragraphs III.A.41.c., which states:

“Officers are required to truthfully answer questions by, or render material and relevant statements to, competent authority in a Department personnel investigation when said officer: . . .

- c. is the subject of the investigation and has been advised of his/her statutory administrative proceedings rights if the

allegation indicates that a recommendation for demotion, suspension or more than 15 days or discharge from the Department is probable.”

The Complaint alleges that Respondent violated this Rule on June 18, 2015 when Respondent failed to answer questions truthfully in a DII administrative interview.

Count I is based upon the contention that Rhodes failed to answer questions truthfully during his DII administrative interview. Count I specifically alleges that Rhodes was untruthful during his administrative review when he made the following statements:

(a) That he contacted Trooper Nathan Schnarre to see if James Newberry needed an attorney, or, if the Fayette County State’s Attorney offered supervision; and

(b) That he contacted the Fayette County State’s Attorney’s Office to inquire only about whether or not James Newberry needed an attorney and whether or not the Fayette County State’s Attorney’s Office offered court supervision.

FINDINGS

The Department failed to introduce the transcript of Rhodes’ DII administrative interview into the record at the hearing and therefore, offered no evidence that Rhodes stated in his DII administrative interview that he contacted Trooper Nathan Schnarre to see if James Newberry needed an attorney, or, if the Fayette County State’s Attorney offered supervision, or that he stated that he contacted the Fayette County State’s Attorney’s Office only to inquire whether or not James Newberry needed an attorney and whether or not the Fayette County State’s Attorney’s office offered court supervision. In the absence of evidence that Rhodes made these statements in his DII administrative interview, the Hearing Officer is not able to make any findings supporting the allegations of Count I.

The Hearing Officer specifically finds that Rhodes did not answer questions untruthfully in his DII administrative interview.

2. Count II

Count II of the Complaint alleges that Rhodes committed the offense of misuse of office in violation Department Directive ROC-002, Paragraphs III.A.14.a., which states:

“Officers will not use their official position, official identification cards or stars for:

- a. personal or financial gain for themselves or others.”

The Complaint alleges that Rhodes violated this Rule sometime between March 22, 2015 and April 15, 2015, when Respondent used his official position for the personal or financial gain of James Newberry by attempting to obtain leniency for Newberry in that he requested Trooper Schnarre to contact the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case and in that he identified himself as an officer with the Department when he contacted the Fayette County State’s Attorney’s office regarding Newberry’s pending case.

FINDINGS

Rhodes asked Trooper Schnarre to contact the Fayette County State’s Attorney’s office and ask the Fayette County State’s Attorney if Newberry needed his own attorney and if supervision was available as a penalty or punishment for a DUI. Rhodes contacted the Fayette County Assistant State’s Attorney Amanda Ade-Harlow and asked her whether Newberry needed his own attorney and whether supervision was available. Rhodes contacted the Fayette County State’s Attorney’s office and scheduled an appointment for Newberry with the Fayette County State’s Attorney. Rhodes called the Fayette County State’s Attorney’s office a second time and rescheduled Newberry’s appointment. Rhodes identified himself as an ISP officer when he

scheduled Newberry's appointment with the Fayette County State's Attorney. Rhodes testified at hearing that he called the State's Attorney himself instead of telling Newberry to call because "it just helps cut through the red tape. If they don't know who somebody is, they jack them around, you know, so." (Tr. 29)

Rhodes did not ask Fayette County Assistant State's Attorney Amanda Ade-Harlow for leniency for Newberry or for her to cut a deal for Newberry. Rhodes did not ask Trooper Schnarre to obtain favors for Newberry or negotiate any leniency for Newberry with the Fayette County State's Attorney's office.

The Department did not present any direct evidence that Rhodes attempted to obtain leniency for Newberry through Trooper Schnarre or through his own contacts with the Fayette County State's Attorney's office. The Department argues that it can be inferred from Rhodes' actions, including the fact that he identified himself as an ISP officer when he scheduled an appointment for Newberry with the Fayette County State's Attorney's office that he was attempting to obtain leniency for Newberry. (Petitioner's Closing Argument, p.7) The Department also argues that it can be inferred from Rhodes' testimony at the hearing that by calling the Fayette State's Attorney's office himself it would "cut through the red tape", that Rhodes was attempting to obtain leniency for Newberry. (Petitioner's Closing Argument, p.6) Finally, the Department offers Colonel Simental's testimony that certain "facts" made it appear that Rhodes was trying to gain leniency for Newberry. (Petitioner's Closing Argument, p.7) However, Colonel Simental had no personal knowledge of the "facts" that she cited that made it appear to her that Newberry was trying to obtain leniency for Newberry. Her conclusions were based upon the DII report and the DRB hearing. Although Colonel Simental was designated by the Department as a "controlled

expert witness”,¹ her opinion that Rhodes actions constituted a request for leniency for Newberry does not relate to her area of expertise and therefore is of no probative value.

The burden of proof in this case is upon the Department. The Department does not offer any direct evidence that Rhodes used his position to obtain leniency for Newberry. The Department offers Colonel Simental’s testimony which, as stated above, is not based upon her personal knowledge and is not an opinion based upon her area of expertise. The Department offered no credible evidence that Rhodes attempted to obtain leniency for Newberry by requesting that Trooper Schnarre contact the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case or by identifying himself as an officer with the Department when he contacted the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case.

The Hearing Officer specifically finds that Rhodes did not attempt to obtain leniency for Newberry by requesting that Trooper Schnarre contact the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case or by identifying himself as an officer with the Department when he contacted the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case.

3. Count III

Count III of the Complaint alleges that Rhodes committed the offense of interfering with another officer’s case in violation of Department Directive ROC-002, Paragraphs III.A.29., which states:

“Officers will not interfere with cases being handled by other officers of the Department or by any other governmental agency unless:

- a. ordered to intervene by a superior officer

¹ Petitioner’s Pre-Hearing Disclosures, p.1.

- b. the intervening officer reasonably believes that a manifest injustice would result from failure to take immediate action. When intervention occurs, a report of such intervention will be made to a superior officer as soon as possible.”

The Complaint alleges that Rhodes violated this Rule between March 22, 2015 and April 15, 2015 when Respondent interfered with a case being handled by Trooper Seth Williams when he contacted the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case.

FINDINGS

Rhodes knew that Trooper Seth Williams arrested Newberry for a DUI and that Newberry’s case was pending in Fayette County. Rhodes requested Trooper Schnarre to contact the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case and he himself contacted the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case. Captain Hodge testified at hearing that as Rhodes’ supervisor, he did not order Rhodes to intervene in Newberry’s case. Captain Hodge further testified that Rhodes did not submit a report to him, Rhodes’ superior, that he (Rhodes) had intervened in Newberry’s pending DUI case.

Colonel Simental testified at the hearing that by requesting that Trooper Schnarre contact the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case, and by contacting the Fayette County State’s Attorney’s office himself, Rhodes interfered with Trooper Williams’ case.

Rhodes argues that Trooper Schnarre’s contact with the Fayette County State’s Attorney’s office and Rhodes contact with the Fayette County State’s Attorney’s office did not interfere with Trooper Williams’ ability to “investigate the case, prepare possible testimony, or otherwise process the matter on the Department side”. (Rhodes’ Post-Hearing Memorandum, p. 18) However,

Rhodes did not introduce any evidence at the hearing that a violation of the Rule required proof that the Department show that Rhodes' interference with in the case affected the investigation of the case or the preparation of testimony in the case.

Colonel Simental was designated by the Department as a controlled expert witness. Knowledge of the Department's Rules of Conduct is within Colonel Simental's area of expertise. Therefore, Colonel Simental's opinion testimony that Rhodes' conduct interfered with Trooper Williams' case constituted a violation of the Rule is credible evidence.

Rhodes did not testify at hearing that he believed that "manifest injustice" would occur if he did not take immediate action to interfere with Newberry's case. Additionally, Captain Hodge testified that as Rhodes' superior, he did not order Rhodes to interfere in Newberry's case and Rhodes did not report to him that he had interfered in Newberry's case. Therefore, the exceptions to the Rule set forth in sections (a) and (b) of ROC-002, Paragraphs III.A.29. are not applicable.

The Hearing Officer specifically finds that Rhodes interfered with Trooper Seth Williams' case.

4. Count IV

Count IV of the Complaint alleges that Rhodes committed the offense of bringing the Department into disrepute in violation of Department Directive ROC-002, Paragraphs III.A.1.8., which states:

"Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute."

The Complaint alleges that Respondent violated this Rule sometime between March 22, 2015 and April 15, 2015 when Respondent participated in conduct that caused the Department to be brought into disrepute when he requested that Trooper Schnarre contact the Fayette County State's Attorney's office regarding Newberry's pending DUI case, when he identified himself as an officer with the Department when he contacted the Fayette County State's Attorney's office regarding Newberry's pending DUI case and when he scheduled a meeting for Newberry with the Fayette County State's Attorney's office.

FINDINGS

Rhodes directed Trooper Schnarre to contact the Fayette County State's Attorney's office regarding Newberry's case. Rhodes contacted the Fayette County State's Attorney's office regarding Newberry's pending DUI and Rhodes identified himself as an ISP officer. Colonel Simental testified at the hearing that it was improper and against ISP policy for Rhodes to contact the Fayette County State's Attorney's office about Newberry's case. Captain Hodge² also testified that it was against ISP policy for an ISP officer to call the state's Attorney's office about his or her friend's case. Colonel Simental also testified at the hearing that by involving Trooper Schnarre, as well as an outside agency in his actions which violated ISP policy, Rhodes brought the Department into disrepute.

Both Colonel Simental and Captain Hodge were designated by the Department as controlled expert witnesses. Knowledge of the Department's Rules of Conduct is within their area of expertise. Therefore, Colonel Simental's opinion testimony and Captain Hodge's opinion testimony that Rhodes' conduct violated ISP policy is credible evidence of a violation. Colonel Simental's testimony that in her opinion, Rhodes brought the Department into disrepute by

² Captain Hodge was designated by the Department as a "controlled expert witness" (Petitioner's Pre-Hearing Disclosures, p.1)

involving Trooper Schnarre and the Fayette County State's Attorney's office, is credible evidence that Rhodes violated the Rule. Rhodes offered no credible evidence that his actions did not violate ISP policy and that his actions did not bring the Department into disrepute.

The Hearing Officer specifically finds that Rhodes violated ISP policy when he directed Trooper Schnarre to contact the Fayette County State's Attorney's office and when he contacted the Fayette County State's Attorney's office regarding Newberry's pending DUI case. Rhodes identified himself as an ISP officer and brought the Department into disrepute.

5. Count V

Count V of the Complaint alleges that Rhodes committed the offense of failing to perform his duties in violation of Department Directive ROC-002, Paragraphs III.A.12., which states:

“Officers will maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Officers will perform their duties in a manner that will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to conform to work standards established for the officer's rank, grade or position; the failure to take appropriate action on the occasion of a crime, disorder or other condition deserving police attention; the failure to successfully complete mandatory annual training requirements; or absence without leave. An isolated incident can be evidence of incompetency and/or unsatisfactory performance. In addition to other indications

of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations or orders of the Department.”

The Complaint alleges that Respondent violated this Rule on April 15, 2015 when Respondent failed to perform his duties in a manner that maintained the highest standards of efficiency in carrying out the functions and objectives of the Department in that he contacted the Fayette County State’s Attorney’s Office regarding James Newberry’s pending DUI case.

FINDINGS

The Hearing Officer specifically found under Count III that when Rhodes contacted the Fayette County State’s Attorney’s office regarding Newberry’s case, he interfered with Trooper Seth Williams’ case. The Hearing Officer specifically found under Count IV that when Rhodes contacted the Fayette County State’s Attorney’s office he violated ISP policy. Rhodes offered no credible evidence that his conduct maintained the highest standards of efficiency in carrying out the functions and objectives of the Department.

In addition, Rhodes had previously been disciplined for violating Paragraph III. A. 12. for an incident that occurred one year prior to the incidents in the current case. (Tr. 117-118, Petitioner’s Exhibit 1). The Hearing Officer specifically finds that Rhodes’ conduct in the current case, which violated ISP policy and interfered with another officer’s case, taken together with his previous violation of ROC-002, Paragraph III.A.12. within 1 year, established that Rhodes did not perform his duties in a manner that maintained “the highest standards of efficiency in carrying out the functions and objectives of the Department.”

6. Count VI

Count VI of the Complaint alleges that Rhodes violated Department Directive ROC-002, Paragraphs III.B.1., which states:

“Rules and regulations for supervisory personnel.

- 1) Supervisory personnel are responsible for subordinates’ adherence to Department rules, regulations, policy, orders, directives and procedures and will take reasonable action to ensure compliance.”

The Complaint alleges that Rhodes violated this Rule sometime between March 22, 2015 and April 15, 2015 in that Respondent failed to take reasonable action to ensure compliance for a subordinate’s adherence to Department rules, regulations, policy, orders, directives, and procedures, as well as failed to provide leadership, supervision, and example to ensure the efficiency of Department operations when Respondent requested Trooper Schnarre, a subordinate, to contact the Fayette County State’s Attorney’s Office regarding James Newberry’s pending DUI case.

FINDINGS

Trooper Schnarre is Rhodes’ subordinate. Rhodes directed Trooper Schnarre to contact the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case. The Hearing Officer found under Count III that contacting the Fayette County State’s Attorney’s office regarding Newberry’s pending DUI case interfered with Trooper Seth Williams’ case. As a result, Rhodes directed Trooper Schnarre to engage in conduct that violated a Department rule. Rhodes’ argument that he (Rhodes) was not aware that his conduct was improper is not credible.

(Respondent's Post Hearing Memorandum, p. 17) Colonel Simental testified at the hearing that all ISP employees are obligated to be familiar with the Rules of Conduct. (Tr. 112)

The Hearing Officer specifically finds that Trooper Schnarre is Rhodes' subordinate and Rhodes failed to take reasonable action to ensure that Trooper Schnarre complied with Department rules, regulations, policies, orders and procedures when he directed Trooper Schnarre to contact the Fayette County State's Attorney's office regarding Newberry's pending DUI case.

IV. CONCLUSIONS OF LAW

1. The Illinois State Police Board has jurisdiction over the parties hereto and the subject matter of this case.

2. This matter is decided exclusively on the evidence admitted at the hearing held in this case.

3. The burden of proof in this case rests upon the Illinois State Police. The Illinois State Police are required to prove the allegations of the Complaint by a preponderance of the evidence (80. Ill. Adm. Code, Ch. IV, Secs. 150.665(f), 250.680(a)). By requiring proof of a matter by preponderance of the evidence, the Illinois State Police are required to prove that the matters asserted are more probably true than not true (Illinois Pattern Jury Instructions, Civil, 21.01).

4. With reference to Count I of the Complaint, in accordance with the determination of the Hearing Officer above, the Hearing Officer concludes that the Department has failed to prove a violation of Department Directive ROC-002, III.A.41.c.

5. With reference to Count II of the Complaint, in accordance with the determination of the Hearing Officer above, the Hearing Officer concludes the Department has failed to prove a violation of Department Directive ROC-002, III.A.14.a.

6. With reference to Count III of the Complaint, in accordance with the determination of the Hearing Officer above, the Hearing Officer concludes that the Department has proven a violation of Department Directive ROC-002, III.A.29.

7. With reference to Count IV of the Complaint, in accordance with the determination of the Hearing Officer above, the Hearing Officer concludes that the Department has proven a violation of Department Directive ROC-002, Paragraph III.A.8.

8. With reference to Count V of the Complaint, in accordance with the determination of the Hearing Officer above, the Hearing Officer concludes that the Department has proven a violation of Department Directive ROC-002, Paragraph III.A.8. Count V is considered a second offense because of Rhodes' previous disciplinary case.

9. With reference to Count VI of the Complaint, in accordance with the factual findings and the determination of the Hearing Officer above, the Hearing Officer concludes that the Department has proven a violation of Department Directive ROC-002, Paragraph III.B.1. Count VI is considered a second offense because of Rhodes' previous disciplinary case.

V. DISCIPLINE CONSIDERATION

The Hearing Officer fully realizes and appreciates that the imposition of any appropriate penalty in this case following a finding of a violation for any of the charges is within the exclusive prerogative of the Illinois State Police Merit Board. Thus, no recommendation is made with reference to the appropriate penalty to be imposed in the event the Board finds a violation with reference to any of the charges. However, in an effort to facilitate the Board's consideration of the evidence presented in aggravation and mitigation and explanation of the arguments and recommendations with reference to the appropriate penalty to be imposed in this case, the Hearing

Officer directs the Boards attention to the following evidence presented with reference to these issues. This evidence highlights the discipline evidence but is not intended to be all inclusive.

The primary witness for Director Schmitz and the Illinois State Police with reference to the penalty to be imposed in this case was Colonel Deborah Simental. Her testimony begins on page 104 of the transcript of the hearing. Colonel Simental testified about the application of the facts in this case to each of the Counts in the Complaint. Colonel Simental testified that in making her recommendation regarding the penalty to be imposed upon Rhodes, she took into account the discipline that Rhodes received from a 2014 investigation. (See, Petitioner's Exhibit 1) Colonel Simental stated that because of the time period within which the prior discipline occurred, it was considered "prior reportable discipline" and therefore, could be taken into consideration when making a recommendation for a penalty in the current case. (Tr.111) Colonel Simental testified that in her opinion a suspension of more than 30 days and a double demotion was warranted after "reviewing the case file in its totality" and taking into consideration Rhodes' previous disciplinary case. (Tr. 111) Colonel Simental stated that Rhodes had "clearly demonstrated that he doesn't have the ability to perform as a supervisor" and between this case and the prior reportable discipline, Rhodes has "involved subordinates in both of them giving them misdirection..., asking them to do things that he knows or should know are a violation of policy and procedure". (Tr.120-121)

Colonel Simental went over each of the Counts in the Complaint and stated that Count I involves a Level 7 Misconduct charge and the penalty to be imposed for a first offense for that Count is up to termination. Colonel Simental stated that Counts V and VI were both considered second offenses because of Rhodes' previous disciplinary case. (Tr. 117-119)

Kevin Smith presented his observations regarding Rhodes' performance as his supervisor in District 10. Smith testified that he had never observed Rhodes to be deficient in the performance

of his duties as far as he was concerned and that he had observed Rhodes to go above and beyond in the performance of his duties. (Tr. 149)

Ron Will testified that Rhodes was his supervisor in District 12 and that in his opinion Rhodes skills and abilities in the performance of his duties as his supervisor were “pretty good”. (Tr. 153) He also testified that he had never had any problems with him as his supervisor. (Tr. 153)

Josh Fergus testified that he is a Trooper in District 12 and that Rhodes was his supervisor for a year and a half. He stated that in his opinion Rhodes is a “good supervisor that likes to take care of his people.” (Tr. 157) Fergus testified that he was involved in the prior case that Rhodes was disciplined for and that he had received one day of suspension as a result of the incident. (Tr. 158,160)

Respondent’s Exhibit 5 is a copy of Rhodes’ performance evaluations. Respondent’s Exhibit 3 contains letters of appreciation Rhodes received when he was a Trooper in District 10. Respondent’s Exhibit 4 are complimentary documents sent to the Department of behalf of Rhodes.

CERTIFICATE OF SERVICE

I attest that service of the foregoing document was made by hand delivering the original document in a sealed envelope, to:

Illinois State Police Merit Board
531 Sangamon Avenue East
Springfield, IL 62702

and depositing copies of the same in the U.S. Mail in correctly addressed prepaid envelopes to the following:

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this 14th day of July, 2016.



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