

**GALANTUCCI, PATUTO,  
DE VENCENTES, POTTER & DOYLE, LLC**  
COUNSELLORS AT LAW

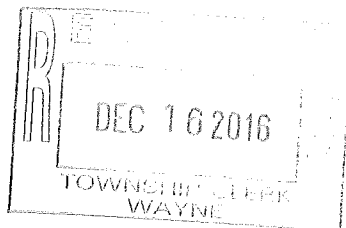
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DelBalso  
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Scorsolini  
file: Litigation*

ROBERT L. GALANTUCCI  
JAMES P. PATUTO  
PHILIP DE VENCENTES  
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55 STATE STREET  
HACKENSACK, NEW JERSEY 07601  
TEL: (201) 646-1100  
FAX: (201) 343-4639

PAUL R. HUOT  
OF COUNSEL

December 14, 2016



**Via Lawyers Service**

Township Clerk  
Township of Wayne  
475 Valley Road  
Wayne, New Jersey 07470

**Re: Ferschman v. Township of Wayne**  
**Docket No.: PAS-L-4119-16**

Dear Sir/Madam:

This firm represents the interests of plaintiff, Erik Ferschman, in the above-referenced matter.

Enclosed please find a Summons and Verified Complaint/Notice of Appeal Pursuant to N.J.S.A. 40A:14-150 (Action in Lieu of Prerogative Writs), filed in the Passaic County Superior Court on November 28, 2016, along with attached Track Assignment Notice dated December 5, 2016, which we hereby serve upon you.

Please be guided accordingly.

Very truly yours,

GALANTUCCI, PATUTO,  
DE VENCENTES, POTTER & DOYLE

BY:

DAVID J. ALTIERI

DJA/ac

Enc.

cc: Erik Ferschman

## SUMMONS

Attorney(s) DAVID J. ALTIERI, ESQ.  
Office Address GALANTUCCI, PATUTO, ET AL  
55 STATE STREET  
Town, State, Zip Code HACKENSCK, NJ 07601  
Telephone Number (201) 646-1100  
Attorney(s) for Plaintiff ERIK FERSCHMAN

## Superior Court of New Jersey

Passaic COUNTY  
LAW DIVISION

Docket No: PAS-L-4119-16

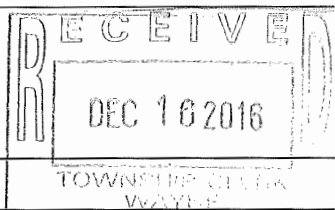
ERIK FERSCHMAN

Plaintiff(s)

Vs.

TOWNSHIP OF WAYE

Defendant(s)



## CIVIL ACTION SUMMONS

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).

*S. Michelle M. Smith*  
Clerk of the Superior Court

DATED: 12/14/2016

Name of Defendant to Be Served: TOWNSHIP OF WAYNE - ATTN: TOWNSHIP CLERK

Address of Defendant to Be Served: 475 VALLEY ROAD, WAYNE, NEW JERSEY 07470

PASSAIC SUPERIOR COURT  
PASSAIC COUNTY COURTHOUSE  
77 HAMILTON STREET  
PATERSON NJ 07505

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (973) 247-8176  
COURT HOURS 8:30 AM - 4:30 PM

DATE: DECEMBER 05, 2016  
RE: FERSCHMAN VS TOWNSHIP OF WAYNE ET AL  
DOCKET: PAS L -004119 16

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON RAYMOND A. REDDIN

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003  
AT: (973) 247-8198 EXT 8198.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH R.4:5A-2.

ATTENTION:

ATT: DAVID J. ALTIERI  
GALANTUCCI PATUTO DE VENCENTES  
55 STATE ST  
HACKENSACK NJ 07601-5460

JURPEAO

Galantucci, Patuto, DeVencentes, Potter & Doyle, L.L.C.  
David J. Altieri, Esq., Attorney No. 028322009  
55 State Street  
Hackensack, New Jersey 07601  
(201) 646-1100  
Attorneys for Plaintiff, Erik Ferschman

RECEIVED and FILED  
Superior Court of New Jersey  
NOV 28 2016  
PASSAIC COUNTY

Erik Ferschman,

Plaintiff,

v.

Township of Wayne,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: PASSAIC COUNTY

Docket No.

*L-4119-16*

CIVIL ACTION

**VERIFIED COMPLAINT AND  
NOTICE OF APPEAL PURSUANT  
TO N.J.S.A. 40A:14-150  
(Action in Lieu of Prerogative Writs)**

Plaintiff, ERIK FERSCHMAN, a municipal police officer in and resident of the Township of Wayne, New Jersey, says:

1. This is an action brought pursuant to the provisions of N.J.S.A. 40A:14-150.
2. At all times relevant hereto, Plaintiff, Erik Ferschman, was employed as a police officer by Defendant, the Township of Wayne, a municipal corporation of the State of New Jersey.
3. Defendant, Township of Wayne, is a non-Civil Service municipality, and Plaintiff is not covered by the provisions of Title 11A of the New Jersey Statutes.
4. On December 18, 2015, Plaintiff was served with a Preliminary Notice of Disciplinary Action, signed by Chief James Clarke of the Wayne Police Department, which is attached hereto as "Exhibit A."

5. Following a hearing before Edward J. Florio, Esq., who was hired by Defendant to serve as hearing officer, that took place on May 5, 2016, June 16, 2016, June 30, 2016, July 13, 2016, and July 21, 2016, Mr. Florio provided a written decision, attached hereto as "Exhibit B," finding Plaintiff guilty of all of the charges and specifications set forth in the Preliminary Notice of Disciplinary Action. The undersigned received a copy of the hearing officer's decision and recommendation on Monday, November 14, 2016. Neither Plaintiff nor counsel have received a formal Final Notice of Disciplinary Action.

6. On Monday, November 21, 2016, Sergeant Colin Tarpey of the Wayne Police Department provided Plaintiff with a "Notice of Personnel or Payroll Change," which is attached hereto as "Exhibit C," indicating that he was terminated from his position with the Wayne Police Department.

7. Plaintiff has exhausted his administrative remedies and, pursuant to N.J.S.A. 40A:14-150, seeks a hearing de novo on the record of the charges against him, of which he was found guilty at the hearing below.

WHEREFORE, Plaintiff, Erik Ferschman, demands judgment against the Township of Wayne, as follows:

- (A) Ordering and conducting a de novo hearing on the aforesaid disciplinary charges against Plaintiff, at which Defendant shall be put to its proofs;
- (B) Reversing and rescinding the decision of, and penalties imposed by, Defendant, the Township of Wayne;
- (C) Awarding counsel fees and costs of suit; and
- (D) For such other relief as the court may deem just and proper.

#### CERTIFICATION

I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. I further certify all transcripts have been ordered.

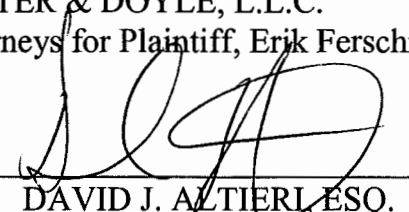
I further certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, David J. Altieri, Esq. is designated as trial counsel for Plaintiff in this matter.

GALANTUCCI, PATUTO, DEVENCENTES,  
POTTER & DOYLE, L.L.C.  
Attorneys for Plaintiff, Erik Ferschman

Dated: November 22, 2016

BY: 

DAVID J. ALTIERI, ESQ.

VERIFICATION OF PLEADING

1. I am Erik Ferschman, Plaintiff in the above entitled matter.
2. I have read the foregoing complaint and on my own personal knowledge I know that the facts set forth herein are true and they are incorporated in this certification by reference.
3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 23, 2016



ERIK FERSCHMAN  
Plaintiff

Sworn to and subscribed before me  
this 23<sup>rd</sup> day of November, 2016.



ALICE M. COONEY  
Notary Public of New Jersey  
ID No. 15983  
My Commission Expires 03/07/2017

CERTIFICATION OF SERVICE

I, David J. Altieri, a member of the Bar of this Court, hereby certify that a copy of the within Complaint was served by Lawyer's Service upon counsel for Defendant, Matthew Giacobbe, Esq., 169 Ramapo Valley Road, Upper Level 105, Oakland, New Jersey 07436, in accordance with Rule 4:5-1. I further certify that a copy of the within Complaint was served by Lawyer's Service upon the "appropriate authority" of the Township of Wayne, Business Administrator Neal Bellet, 475 Valley Road, Wayne, New Jersey 07470. I further certify that a copy of the within Complaint was served by Lawyer's Service upon the Township Clerk of the Township of Wayne, Paul V. Margiotta, 475 Valley Road, Wayne, New Jersey 07470.

GALANTUCCI, PATUTO, DEVENCENTES,  
POTTER & DOYLE, L.L.C.  
Attorneys for Plaintiff, Erik Ferschman

Dated: November 22, 2016

BY: \_\_\_\_\_

DAVID J. ALTIERI, ESQ.

# EXHIBIT A

# Notice of Disciplinary Action

INSTRUCTIONS: This notice must be served on an employee against whom any discipline above a written reprimand is contemplated.

|              |                                                       |                                             |                           |
|--------------|-------------------------------------------------------|---------------------------------------------|---------------------------|
| <b>FROM:</b> | JURISDICTION (Local Service)<br><b>Wayne Township</b> | DEPARTMENT<br><b>Police Department</b>      |                           |
|              | DIVISION, INSTITUTION OR AGENCY<br><b>Patrol</b>      | ADDRESS<br><b>475 Valley Road, Wayne NJ</b> | DATE<br><b>12/21/2015</b> |
| <b>TO:</b>   | NAME OF EMPLOYEE<br><b>Erik Ferschman #268</b>        | TITLE<br><b>Police Officer</b>              |                           |
|              | STREET<br><b>3 Fox Hollow Ct</b>                      | CITY AND STATE<br><b>Wayne, NJ</b>          |                           |

1. You are hereby notified that the following charge(s) has been made against you:  
(If necessary, use additional sheets and attach.)

**CHARGE(S):**

1. Violation T.O. 25-109V: Neglect of Duty
2. Violation T.O. 25-109V: Neglect of Duty
3. Violation T.O. 25-109V: Neglect of Duty
4. Violation T.O. 25-109V: Neglect of Duty
5. Violation Township Ordinance 25-109F:
6. Violation Township Ordinance 25-109F:

**SPECIFICATION(S):**

1. Failure to respond appropriately and timely to 130 Terhune Drive
2. Failure to respond appropriately and timely to 63 Braemar Drive
3. Loitering at Wayne Park Diner 09/20/2015
4. Loitering at Wayne Park Diner 09/21/2015
5. Absence from post of duty without excuse or not properly patrolling a beat 09/20/2015
6. Absence from post of duty without excuse or not properly patrolling a beat 09/21/2015

☒ If checked, charges are continued on attached page

☒ If checked, specifications are continued on attached page

☐ You are hereby suspended effective \_\_\_\_\_

(Check box and indicate if employee is suspended pending final disposition of the matter.)

4. ☒ IF YOU DESIRE A DEPARTMENTAL HEARING ON THE ABOVE CHARGE(S), NOTIFY THIS OFFICE WITHIN 5 (five) \* DAYS OF RECEIPT OF THIS FORM. IF YOU REQUEST A DEPARTMENTAL HEARING IT WILL BE HELD ON January 14, 20 16 at (time) 9:00 am at (place of hearing) 475 Valley Road, Wayne NJ

\* Must be minimum of five days

3. The following disciplinary action may be taken against you:

- ☐ Suspension for \_\_\_\_\_ days, beginning \_\_\_\_\_ and ending \_\_\_\_\_
- ☐ Indefinite suspension pending criminal charges effective (date) \_\_\_\_\_
- ☒ Removal, effective (date) Determined by Chief of Police
- ☐ Demotion to position of \_\_\_\_\_ effective (date) \_\_\_\_\_
- ☐ Resignation not in good standing, effective (date) \_\_\_\_\_

☐ Fine \$ \_\_\_\_\_ which is equal to \_\_\_\_\_ days pay

☐ Other Disciplinary Action  
(explain on attached page)

SIGNATURE [Signature]  
(Chief of Police or authorized designee)

TITLE CHIEF OF POLICE

NOTICE: Your health insurance coverage may be affected by this action; check with your Personnel Office.

|                                  |                                                                |                                                                                                             |                                  |
|----------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|----------------------------------|
| Method of Service<br>(Check One) | <input checked="" type="checkbox"/> <b>PERSONAL SERVICE</b> →  | NAME AND TITLE OF SERVER<br><b>Lt. J. McNiff</b>                                                            | DATE SERVED<br><b>12/18/2015</b> |
|                                  | <input type="checkbox"/> <b>CERTIFIED OR REGISTERED MAIL</b> → | Give date of receipt by employee or agent as shown<br>On return receipt postal card and the receipt number: |                                  |

# Notice of Disciplinary Action

INSTRUCTIONS: This notice must be served on an employee against whom any discipline above a written reprimand is contemplated.

|       |                                 |                           |            |
|-------|---------------------------------|---------------------------|------------|
| FROM: | JURISDICTION (Local Service)    | DEPARTMENT                |            |
|       | Wayne Township                  | Police Department         |            |
| TO:   | DIVISION, INSTITUTION OR AGENCY | ADDRESS                   | DATE       |
|       | Patrol                          | 475 Valley Road, Wayne NJ | 12/21/2015 |
| TO:   | NAME OF EMPLOYEE                | TITLE                     |            |
|       | Erik Ferschman #268             | Police Officer            |            |
|       | STREET                          | CITY AND STATE            |            |
|       | 3 Fox Hollow Ct                 | Wayne, NJ                 |            |

1. You are hereby notified that the following charge(s) has been made against you:  
(If necessary, use additional sheets and attach.)

## CHARGE(S):

7. Violation of Wayne PD Rule and Regulation 4:1.24 Meals
8. Violation of Wayne PD Rule and Regulation 4:1.24 Meals
9. Violation of Wayne PBA 136 Contract: Article XIV Hours and Overtime #19 C.
10. Violation T.O. 25-109L, Conduct Unbecoming an Officer
11. Violation Township Ordinance 25-109M:
12. Violation of Rule and Regulation 4:4.4

## SPECIFICATION(S):

7. 09/20/2015
8. 09/21/2015
9. "Officers will be entitled to a forty-five (45) minute meal period."
10. Reckless Driving 39:4-96 (two counts)
11. Conduct subversive to good order and discipline of the Department.
12. Truthfulness: false statement to Dispatcher Stanaback

☒ If checked, charges are continued on attached page

☒ If checked, specifications are continued on attached page

☐ You are hereby suspended effective \_\_\_\_\_  
(Check box and indicate if employee is suspended pending final disposition of the matter.)

2. ☒ IF YOU DESIRE A DEPARTMENTAL HEARING ON THE ABOVE CHARGE(S), NOTIFY THIS OFFICE WITHIN 5 (five) \* DAYS OF RECEIPT OF THIS FORM. IF YOU REQUEST A DEPARTMENTAL HEARING IT WILL BE HELD ON January 14, 2016 at (time) 9:00 am at (place of hearing) 475 Valley Road, Wayne NJ

\* Must be minimum of five days

3. The following disciplinary action may be taken against you:

- ☐ Suspension for \_\_\_\_\_ days, beginning \_\_\_\_\_ and ending \_\_\_\_\_
- ☐ Indefinite suspension pending criminal charges effective (date) \_\_\_\_\_
- ☒ Removal, effective (date) Determined by Chief of Police
- ☐ Demotion to position of \_\_\_\_\_ effective (date) \_\_\_\_\_
- ☐ Resignation not in good standing, effective (date) \_\_\_\_\_
- ☐ Fine \$ \_\_\_\_\_ which is equal to \_\_\_\_\_ days pay

☐ Other Disciplinary Action  
(explain on attached page)

SIGNATURE [Signature]  
(Chief of Police or authorized designee)

TITLE CHIEF OF POLICE

NOTICE: Your health insurance coverage may be affected by this action; check with your Personnel Office.

|                                  |                                                         |                                                                                                             |             |
|----------------------------------|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-------------|
| Method of Service<br>(Check One) | <input checked="" type="checkbox"/> PERSONAL SERVICE →  | NAME AND TITLE OF SERVER                                                                                    | DATE SERVED |
|                                  | <input type="checkbox"/> CERTIFIED OR REGISTERED MAIL → | Lt. J. McNiff                                                                                               | 12/18/2015  |
|                                  |                                                         | Give date of receipt by employee or agent as shown<br>On return receipt postal card and the receipt number; |             |

# Notice of Disciplinary Action

**INSTRUCTIONS:** This notice must be served on an employee against whom any discipline above a written reprimand is contemplated.

|              |                                                       |                                             |                           |
|--------------|-------------------------------------------------------|---------------------------------------------|---------------------------|
| <b>FROM:</b> | JURISDICTION (Local Service)<br><b>Wayne Township</b> | DEPARTMENT<br><b>Police Department</b>      |                           |
|              | DIVISION, INSTITUTION OR AGENCY<br><b>Patrol</b>      | ADDRESS<br><b>475 Valley Road, Wayne NJ</b> | DATE<br><b>12/21/2015</b> |
| <b>TO:</b>   | NAME OF EMPLOYEE<br><b>Erik Ferschman #268</b>        | TITLE<br><b>Police Officer</b>              |                           |
|              | STREET<br><b>3 Fox Hollow Ct</b>                      | CITY AND STATE<br><b>Wayne, NJ</b>          |                           |

1. You are hereby notified that the following charge(s) has been made against you:  
(If necessary, use additional sheets and attach.)

**CHARGE(S):**

- 13. Violation of Rule and Regulation 4:4.4
- 14. Violation of Rule and Regulation 4:4.4
- 15. Violation Rule and Regulation 2:1.16  
Neglect of Duty
- 16. Violation of Rule and Regulation Neglect of  
Duty 2:1.26
- 17. Misconduct in Violation NJSA: 40A: 14-147
- 18. NJSA 40A:14-147

**SPECIFICATION(S):**

- 13. Truthfulness: less than complete candor-  
misleading investigator-during interview
- 14. Truthfulness (Falsification of Official Wayne PD  
Patrol Logs
- 15. Loitering at Park Wayne Diner 09/20/2015
- 16. Loitering at Park Wayne Diner 09/21/2015
- 17. Misconduct in Violation of NJSA: 40A: 14-147.
- 18. Disobedience of the Rules and Regulations  
Established for the Government of the Police  
Department

☐ If checked, charges are continued on attached page

☐ If checked, specifications are continued on attached page

☐ You are hereby suspended effective \_\_\_\_\_  
(Check box and indicate if employee is suspended pending final disposition of the matter.)

2. ☒ IF YOU DESIRE A DEPARTMENTAL HEARING ON THE ABOVE CHARGE(S), NOTIFY THIS OFFICE WITHIN  
5 (five) \* DAYS OF RECEIPT OF THIS FORM. IF YOU REQUEST A DEPARTMENTAL HEARING IT WILL BE HELD  
ON January 14, 20 16 at (time) 9:00 am at (place of hearing) 475 Valley Road, Wayne NJ

\* Must be minimum of five days

3. The following disciplinary action may be taken against you:

- ☐ Suspension for \_\_\_\_\_ days, beginning \_\_\_\_\_ and ending \_\_\_\_\_
- ☐ Indefinite suspension pending criminal charges effective (date) \_\_\_\_\_
- ☒ Removal, effective (date) Determined by Chief of Police
- ☐ Demotion to position of \_\_\_\_\_ effective (date) \_\_\_\_\_
- ☐ Resignation not in good standing, effective (date) \_\_\_\_\_
- ☐ Fine \$ \_\_\_\_\_ which is equal to \_\_\_\_\_ days pay

☐ Other Disciplinary Action  
(explain on attached page)

SIGNATURE *[Signature]* TITLE CHIEF OF POLICE  
(Chief of Police or authorized designee)

**NOTICE:** Your health insurance coverage may be affected by this action; check with your Personnel Office.

|                                      |                                                                |                                                                                                             |                                  |
|--------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|----------------------------------|
| <b>Method of Service (Check One)</b> | <input checked="" type="checkbox"/> <b>PERSONAL SERVICE</b> →  | NAME AND TITLE OF SERVER<br><b>Lt. J. McNiff</b>                                                            | DATE SERVED<br><b>12/18/2015</b> |
|                                      | <input type="checkbox"/> <b>CERTIFIED OR REGISTERED MAIL</b> → | Give date of receipt by employee or agent as shown<br>On return receipt postal card and the receipt number: |                                  |

# EXHIBIT B

**FLORIO ♦ KENNY ♦ RAVAL, L.L.P.**

**ATTORNEYS AT LAW**

5 MARINE VIEW PLAZA  
SUITE 103  
P.O. BOX 771  
HOBOKEN, NEW JERSEY 07030  
PHONE: (201) 659-8011  
FAX: (201) 659-8511/0884

E-MAIL: [MAIN@FKRLAW.COM](mailto:MAIN@FKRLAW.COM)

WEBSITE: [WWW.FKRLAW.COM](http://WWW.FKRLAW.COM)

EDWARD J. FLORIO  
BERNARD F. KENNY, JR.  
NITA G. RAVAL  
CHRISTOPHER K. HARRIOTT

OF COUNSEL

MICHAEL A. CIFELLI

DAVID J. YANOTCHKO  
DENNIS P. LILOIA  
KEITH KANDEL  
WILLIAM J. MASLO  
PAUL SAMOUILIDIS\*  
MAXINE J. KUTNER\*

\*ADMITTED TO NJ & NY BAR

November 14, 2016

**VIA EMAIL ONLY**

David J. Altieri, Esq.  
Galantucci & Patuto  
55 State Street  
Hackensack, New Jersey 07601

Matthew Giacobbe, Esq.  
169 Ramapo Valley Road  
Upper Level 105  
Oakland, New Jersey 07436

**RE: IN THE MATTER OF THE DISCIPLINARY HEARING OF POLICE OFFICER**  
**ERIK FERSCHMAN**  
**OUR FILE NUMBER: 2071.003**

Gentlemen:

Enclosed please find the Final Decision of the Disciplinary Hearing in the Matter of Police Officer Erik Ferschman.

Thank you for your attention to this matter.

Should you have any questions please do not hesitate to contact our office.

Very truly yours,

FLORIO ♦ KENNY ♦ RAVAL, L.L.P.



EDWARD J. FLORIO, ESQ.

EJF/ap  
Encl.

(00647620)

**DISCIPLINARY ACTION AGAINST**  
**POLICE OFFICER ERIK FERSCHMAN:**  
**DECISION**

**PRELIMINARY STATEMENT**

.....This opinion focuses on the appropriate sanction for a police officer's neglect of his duties and lack of candor. Due to the seriousness of these allegations, which the Township has proven by a preponderance of the credible evidence, this tribunal imposes the Township's recommended sanction of termination upon Police Officer Erik Ferschman (hereinafter "Ferschman") of the Township of Wayne Police Department.

**PROCEDURAL HISTORY**

On November 21, 2015, a complaint was made regarding Ferschman's response time to a call at 130 Terhune Drive. Thereafter, an investigation into his response time, led by Lieutenant Jack McNiff (hereinafter "McNiff"), ensued. After concluding his investigation, McNiff recommended that Ferschman be charged, at minimum, with the following:

four violations of Township Ordinance ("T.O.") 25-109V: Neglect of Duty; two violations of T.O. 25-109F: Absence from post of duty without excuse or not properly patrolling a beat; two violations of the Wayne PD Rules and Regulation 4:1.24: Meals; one violation of Wayne PBA 136 Contract: Articles XIV Hours and Overtime #19C; a violation of T.O. 25-109L, Conduct Unbecoming an Officer; a violation of T.O.

25-109M: Conduct subversive to good order and discipline of the Department; three violations of Rule and Regulation 4:4.4: Truthfulness; two violations of Rule and Regulation, Neglect of Duty; misconduct in violation of N.J.S.A. 40A:14-147; and a violation of N.J.S.A. 40A:14-147 with respect to disobedience of the rules and regulations established for the government of the police department.

(T-#).

Then, on December 18, 2015, Ferschman was served with a Notice of Disciplinary Action (hereinafter "Notice"). The Notice charges Ferschman with eighteen (18) different violations recommended by McNiff. McNiff also came to fourteen (14) different conclusions based on his investigation. These conclusions were as follows:

1. Erik Ferschman was not within or properly patrolling his assigned zone (Zone 8) when he was dispatched to a call involving a cardiac arrest patient at 130 Terhune Drive on September 21, 2015. He did not ask for permission to leave his zone, and his area of responsibility went uncovered for several hours.

2. Ferschman was seated at the Park Wayne Diner (Zone 7) and was eating with four (4) other police officers when he was dispatched to the call. Ferschman did not ask for, nor was he granted, permission from Communications to take a meal break, in violation of WPD Rules and Regulations, and did not advise of his meal location.

3. Statements indicate that Ferschman continued to eat, gave money to Officer Wlazel to pay for his meal, and even questioned and discussed "why" he was being

dispatched to that call prior to him actually leaving the dinner.

4. Ferschman parked his police vehicle on the east side of the diner to obscure it from public view. This contributed to his vehicle being "blocked in" by P.O. Wlazel and also added to his delay in leaving the diner.

5. Despite his statement, the AVL histories of Wlazel and Ferschman indicate that Wlazel didn't move his vehicle to free Ferschman to respond until seconds before Ferschman actually drove out of the lot.

6. Ferschman was advised that the patient was "pronounced" deceased prior to him leaving the diner, and he acknowledged that the notification from his portable radio, indicating he was not yet in his police vehicle and still at/in the diner.

7. Once in his vehicle, Ferschman drove recklessly, reaching speeds topping 105 mph, yet carelessly drove past the call location and arrived at the incorrect address. This added to delay in response. Ferschman stated to dispatch that he arrived at approximately 03:19 hours when, in actuality, he did not arrive until approximately 03:21.

8. Ferschman failed to notify Communication that he was clear from the call at 130 Terhune Drive when he departed that location at approximately 03:52. Instead, he returned to his vehicle and drove at reckless speeds, topping 98 mph, and arrived back at the Park Wayne Diner at 03:55 hours, travelling over four (4) miles in approximately three (3) minutes. He remained out of his patrol zone and at the diner, neglecting his patrol responsibilities, until the conclusion of his shift (approximately 05:34).

9. Although seated at the Park Wayne Diner and eating again at approximately 04:00 hours, Dispatcher Stanaback asked via police

radio if Ferschman was still at the call on Terhune Drive. Ferschman replied: "Yeah, 10-4," as witness by other officers and Sgt. Kearney, knowing that was a false statement.

10. Ferschman was later heard, in a taped phone recording, joking about his excessive speed ("haulin' ass") back to the diner with Dispatcher Stanaback. They also joked about Ferschman's statement on the radio that he was still on Terhune Drive, when they both knew that he was back at the diner. Ferschman stated to me in his statement that he did not recall how fast he was driving when traveling back to the diner, adding that he did not look at his speedometer. Yet, Ferschman joked about his recklessness as he described his driving as "haulin' ass" twice to Dispatcher Stanaback. This indicated less than complete candor on the part of Ferschman during his first interview in an attempt to mislead this investigator and conceal his numerous infractions.

11. While comparing calls for service to ensure the accuracy of the Automatic Vehicle Locator, it was discovered that Ferschman neglected his duties earlier in his patrol shift on 09/21/15 as well. Ferschman was dispatched to an odor of something burning at 63 Braemar Drive at 00:14 hours. He acknowledged that call via police radio at 00:14, yet his vehicle remained stationary in a church parking lot for approximately twelve (12) additional minutes before he actually responded at 00:26. This delay in response was confirmed by Wayne Volunteer Fire Personnel, who actually arrived on the scene and spoke to the homeowner before Ferschman even arrived. Wayne Fire Department radio transmissions also confirmed this.

12. Ferschman neglected his duties and failed to properly patrol his zone on 09/20/2015. A review of the AVL, as well as statements of other officers, indicate that Ferschman spent approximately one hour and

forty-three minutes (1:43) at the Park Wayne Diner on that morning as well. He did not request permission for a meal break, in violation of WPD Rules and Regulations.

13. Ferschman's entries on the Daily Patrol Logs he submitted do not accurately reflect his actions on 09/20 and 09/21.

14. Radio transmissions confirm that Ferschman is not in his police vehicle while the Daily Patrol Log states he is conducting patrol-related activities.

#### **PROCEDURAL ISSUES**

Prior to the commencement of testimony, Ferschman moved to dismiss the charges pursuant to N.J.S.A. 40A:14-147. He argued that the Township had sufficient information to charge him on September 21, 2015 after Lieutenant Keith O'Sullivan (hereinafter "O'Sullivan") began to investigate a complaint as to Ferschman's response time to a 911 call and after he reviewed the GPS/AVL and Timegate data. Accordingly, pursuant to Ferschman's calculations, he should have been served with charges on or before November 13, 2015. Instead, the Department served Ferschman with the charges on December 18, 2015, 86 days later. Ferschman asserts that this is a clear violation of the 45-Day Rule; therefore, he argued that the Department and ordinance violations must be dismissed.

On May 10, 2106, I denied this motion in a written decision. The basis for my decision was that the Wayne Chief of Police, James Clarke, (hereinafter "Clarke") received the final investigation report on November 24, 2015, which required him to file the charges against Ferschman by January 8, 2016. Thus, I found the filing of the charges on December 18, 2015 was well within the 45 days required by N.J.S.A. 40A:14-147. Furthermore, there was nothing to indicate that O'Sullivan or McNiff were designated by the Wayne Police Department to initiate disciplinary proceedings that could result in an officer's removal. Thus, Ferchman's argument that the Township could have filed the charges sooner than November 24, 2015 was without merit.

Ferschman renewed this motion in his summation brief. It will be addressed below.

#### **SUMMARY OF PROCEEDINGS**

I will now summarize the testimony of the witnesses who appeared at the hearing. The Township presented the testimony of McNiff and Clarke. McNiff testified on June 16, 2016, June, 30, 2016, July 13, 2016, and July 21, 2016. Clarke testified on July 21, 2016. In defense of Ferschman, his counsel called: O'Sullivan; Police Officer Raymond Caronia (hereinafter "Caronia"); Police Officer Ardian Cela (hereinafter "Cela");

Corporal Alexander Sanagorski (hereinafter "Sanagorski"); and Dispatcher Christopher Stanaback (hereinafter "Stanaback"). All witnesses on behalf of Ferschman testified on July 21, 2016. Sergeant Robert Franco (hereinafter "Franco") was called by the Township after the presentation of Ferschman's case on July 21, 2016.

McNiff began his testimony by stating that he has been with the Wayne Police Department for fifteen (15) years and that he has been a lieutenant for a little over two years. 1T<sup>1</sup> 11:25; 12:3. Specifically, he serves as an Internal Affairs officer. 1T 12:6. Then, after some background with respect to the Department's Rules and Regulations and McNiff's training, his testimony then turned to issues at hand.

McNiff testified that the Internal Affairs investigation commenced when he was advised by O'Sullivan that he received a complaint from Lt. First Class Keith McDermott regarding a delayed response to a 911 call at 130 Terhune Drive involving Ferschman. 1T 14:8-11. The Township then marked for evidence T-2, which is a Wayne Township Police Department Reportable Incident Form. 1T:12-13;19-20. McNiff testified that this form is completed when an Internal Affairs complaint is commenced. 1T

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<sup>1</sup> 1T refers to the transcript proceedings on June 16, 2016.

2T refers to the transcript proceedings on June 30, 2016.

3T refers to the transcript proceedings on July 13, 2016.

4T refers to the transcript proceedings on July 21, 2016.

14:22-23. He then stated that he filled out this form after he was advised by O'Sullivan that McDermott approached him and sent him an email about a complaint with respect to delay in response to a cardiac arrest call at 130 Terhune Drive. 1T 16:1-7. Further, when McDermott looked into the complaint, he found there was definitely a delay in response time. 1T:7-9. McNiff testified that he believed McDermott determined there was a delay based on a review of radio transmissions and possibly the GPS. 1T 16:10-11. McNiff stated the delay was with respect to Ferschman, which triggered an Internal Affairs investigation. 1T 16: 12:14; 16-19.

McNiff stated that he began his own investigation into the matter by looking at ROW sheets, reports from the initial incident radio transmission, as well as on the GPS. 1T 17:15-17. The Township then marked T-3, which is a Wayne Police Department Internal Affairs Officer's Notes Investigation. 1T 18:1-2. This document is directed to Ferschman and dated September 23, 2015. 1T 18:4-5. Additionally, it was served upon Ferschman within 48 hours of the incident. 1T 18:7-9. Next, the Township marked T-4, which was Ferschman's daily patrol log for September 20, 2015 to September 21, 2015. 1T 19:4-5; 9; 23. McNiff testified that the patrol log showed that Ferschman worked the late shift, 1800 to 0600, and that he was assigned to Zone 8. 1T 20:2-7. He also

stated that it is the officer's responsibility to complete this form; the purpose of the log is to document his/her activity for the entire shift. 1T 20:18;23-24.

The Township then inquired as to whether Ferschman's log indicated that he took a meal break during the shift at issue. 1T 21:15-16. McNiff stated that it did not and it is a requirement for an officer to request permission to take a meal break. 1T 21:17;21-24. McNiff's testimony then turned to the 130 Terhune Avenue call. First, the Township marked T-6, which was the Detail Report for the Terhune Call. 1T 24:24-25. McNiff stated that the document indicates that there was a call to 130 Terhune Drive, which is an advanced care center. 1T:25:5-13. He further testified that the Report indicated that an officer was dispatched to that address to assist at 3:07am. 1T 25:15-16;19. The Report also demonstrated that Ferschman arrived at the scene at 3:19am and 23 seconds, which is a nine minute response time; he finished the call at 4:58am and 15 seconds. 1T 26:19;20-21; 24. McNiff then testified that the responding officer is the one who completes this form on his computer, which is located in his patrol car. 1T 27:4-5;9-10;11-13.

Next, McNiff testified that during the course of his investigation he interviewed Ferschman twice, and that they were videotaped. 1T 30:14-16; 22-25. The first interview was marked

as T-7 and played. The Township then asked about the charges against Ferschman with respect to his lack of candor. Specifically, the Township asked McNiff what Ferschman's response was when he asked him how fast he was traveling to and from the diner, both before and after the Terhune call. 1T 36:2-5. McNiff stated that Ferschman told him that he could not recall and that he was not looking at the speedometer. 1T 36:8-14.

McNiff then testified that during the course of his investigation, he reviewed communications between Ferschman and dispatch. 1T 36:24-5; 37:1-3. Thereafter, a radio transmission between Ferschman and dispatch while Ferschman was on the Terhune call was played. 1T 39:21. McNiff testified that Stanaback asked him if he was still on Terhune, and he replied that he was. 1T 41:12-13; 19-20. McNiff stated that during his investigation he found that this statement was not truthful as Ferschman was back at the diner, not at Terhune. 1T 41:24-25; 42:1-4. McNiff also stated that Ferschman answered this over his portable radio. 1T 42:5-7. McNiff also testified regarding a discussion between Ferschman and Stanaback that he discovered during the course of the investigation. 1T 43:5-8. This conversation was played. 1T 43:20. During this conversation, Ferschman asked Stanaback, "did you see my dot blink once and I

was back at the diner here." 1T 45:15-18. Ferschman further stated, "I was fucking hauling ass on 206." 1T 46:4-6. This conversation was admitted into evidence as T-9. Ferschman also asked during this conversation, as he is laughing, "why did you ask before if I was still on Terhune," to which Stanaback responded, "because I know you weren't." 1T 49:9-13.

The Township then turned McNiff's attention to the Braemar Drive call. McNiff testified that when he was looking back at previous calls, in order to substantiate the fact that the GPS was accurate, he discovered that a call for something burning came in at 12:14am, but Ferschman did not leave his location to respond to the call until 12:26am. 1T 54:8-12. The Call Detail Report for this incident was marked at T-11. 1T 52:20-25. After discovering this, McNiff stated that he interviewed Ferschman again. 1T 56:1-5. McNiff testified that he also interviewed a firefighter who was at the Braemar scene. 1T 59:18-21. Markowitz, the firefighter on the scene, stated that he recalled Ferschman arriving on the scene approximately two minutes after he had already spoken with the complainant. 1T 60:3-6.

Thereafter, the Township asked whether McNiff recalled asking Ferschman whether he got up or continued eating when he received the Terhune call at the diner. 1T 61:17-20. McNiff stated that he believed that Ferschman told him that he got up

right away. 1T 61:24-25. However, other officers contradicted this statement and told McNiff during his investigation that Ferschman continued to eat; took out money to pay for his meal; and even questioned why he was even being dispatched for that type of call. 1T 62:19-25; 63:1-2. Further, after he received the call, he had to go back into the diner because his car was blocked in. 1T 63:5-7.

The Township continued its examination on June 30 by asking McNiff whether he remembered asking Ferschman how many patrons were at the diner when he was there. 2T 19:9-16. McNiff answered in the affirmative. 2T 19:17. McNiff stated that Ferschman told him that there were 2-4 four patrons in the diner. 2T 19:20-22. Mr. Giacobbe then turned to T-10, which is McNiff's investigation report. 2T 19:23-25; 20:1.

The Township then turned McNiff's focus to Exhibit T-13, and the conclusions that he drew after his investigation. 2R 25:1-3. McNiff then discussed conclusion number one, which was that Ferschman was not in his designated zone; did not ask for permission to leave his zone; and his zone went uncovered for hours. 2T 26:20-25. McNiff testified that dispatch did not know that Ferschman was not in his zone. 2T 27:15-17. Further, he stated that Ferschman was called by dispatch to report to 130 Terhune Drive and it took him several minutes to respond. 2T

28:4-7. He further stated that it would have taken him less time if he was in his proper zone. 2T 28:8-10. Additionally, Ferschman should have asked permission to leave his zone and should have asked for permission to take a meal break. 2T 28:19-22. McNiff testified that he reviewed all of Ferschman's transmissions to dispatch for the day in question and he did not request permission to take a meal break. 2T 29:13-16. Further, his Daily Patrol Log did not indicate that he took a meal break. 2T 30:18-21. McNiff also stated that Ferschman was at the diner from about 2:30am to 3:16am, which is when he left for the Terhune call. 2T 32:9-16. Ferschman then returned to the diner after the call and remained there until about 5:30am. Id. McNiff stated that when he interviewed Ferschman, he stated he could not remember when he left the diner. 2T 32:21-23 However, when McNiff read him the GPS/AVL times, Ferschman agreed that those times sounded accurate. 2T 33:5-10.

The Township then asked McNiff to read his second conclusion from T-13. 2T 33:23-24. This conclusion was that Ferschman was eating with four other officers when his was dispatched to Terhune Drive and that he did not ask permission for a meal break, which is a violation of the Department's Rules and Regulations. 2T 34:1-7. The conclusion was based on a review of the radio transmissions, interview statements, and a review of the GPS/AVL log. 2T 34:10-13. The third conclusion was that

when Ferschman received the dispatch call for Terhune, he continued to eat, gave money to Walzal for his meal, and questioned why he was being dispatched to a nursing home before leaving. 2t 34:19-23. McNiff stated that this conclusion was based on his interviews with the other officers. 2T 35:1-2. The fourth conclusion was that Ferschman parked his car on the east side of the diner to obscure it from public view, which contributed to him being blocked in and his delay in leaving the diner. 2T 35:20-24. McNiff concluded this based on the location shown on his GPS/AVL and interview statements, including Ferschman's. 2T 36:7-8.

The fifth conclusion was that Walzal did not move his car until seconds before Ferschman drove out of the lot. 2T 38:6-10. This is in contradiction to the statement made by Walzal where he said he shot right up when Ferschman came in to the diner and then moved his car. Id. The sixth conclusion is that Ferschman was advised that the patient at Terhune was pronounced dead prior to him leaving the dinner and he acknowledged same from his portable radio. 2T 38:11-17. This indicated that he was not in his car when he received the second dispatch call with respect to Terhune. Id. The seventh conclusion was when Ferschman was finally in his vehicle, he drove recklessly, reaching speeds up to 105 MPH. 2T 40:6-9. Additionally, he drove past the Terhune location and arrived at the wrong address. Id.

McNiff made this conclusion based on the GPS/AVL records and Ferschman's own statement. 2T 40:13-14; 42:15-18. When McNiff interviewed Ferschman regarding how fast he was traveling back from the Terhune call, Ferschman stated that he was not looking at his speedometer. 2T 44:8-11. However, when Ferschman called Stanaback on the date in question on a recorded line, Ferschman stated that he was "fucking hauling ass" on his way back from the call. 2T 44:22-25; 45:4-5.

The eighth conclusion made by McNiff was that Ferschman failed to notify Communications that he was done with the call at Terhune. 2T 45:16-18. Instead, he drove recklessly back to the diner, driving 94-98MPH; further, he drove four miles in approximately three minutes and remained out of his zone. 2T 45:19-25. McNiff testified that an officer is supposed to advise Communications when he is back in service. 2T 46:8-9. Further, Ferschman did not request permission to go to the diner a second time. 2T 47:3-5. The ninth conclusion was that Ferschman told dispatch that he was still at Terhune even though he was at the diner. 2T 48:1-4. This was evidenced by Stanaback asking whether he was still on the call and Ferschman responding "10-4." 2T 48:5. An audio recording of this conversation was played. 2T 50:9. The tenth conclusion was the Ferschman was heard on a recorded line with Stanaback joking about speeding to the diner,

and about him being back at the diner, not at Terhune Drive. 2T 50:16-23.

The last conclusion discussed during this date was the Braemar call. 2T 52. McNiff testified that earlier on September 21, 2015, Ferschman was dispatched at 0014 for a report of an odor of something burning. 2T 52:14-17. Ferschman acknowledged the call at 0014, yet remained in his vehicle nearby for approximately twelve minutes until he arrived at 0026. 2T 52:17-20. McNiff stated that fire personnel confirmed they arrived before Ferschman. 2T 52:20-24. McNiff also testified that he discovered this when he was comparing calls for service to ensure the accuracy of the AVL. 2T 52:10-14. Ferschman was questioned regarding this and his interview was played at the hearing. 2T 54:15. The hearing was then continued to July 13, 2016.

On July 13, McNiff's testimony continued. He began by discussing the statement that Ferschman made to Stanaback that he was still on Terhune, but was in fact in the diner. 3T 4:14-18. McNiff stated that other officers' statements confirmed that Ferschman was in the diner when Stanaback's radio transmission came through. 3T 4:22-25. McNiff then discussed the "haulin' ass" statement again. See generally 3T 6-7. McNiff stated that he believed that Ferschman demonstrated less than complete candor when he told McNiff that he did not know how fast he was

going and that he was not looking at the speedometer. 3T 7:24-25; 8:5-7. McNiff then addressed his eleventh conclusion again, which was the delay in response to the Braemar call. See generally 3T 9-11. McNiff stated that Ferschman did not deny that it took him twelve minutes to answer the call and that Ferschman could not remember the exact reason for his delay, but thought it might be because he was involved in a conversation with another officer. 3T 11:7-19; 22. Next, McNiff discussed his twelfth conclusion, which was that he neglected his duties and failed to patrol his Zone because he was in the Park Wayne Diner. 3T 11:25; 12:1-5. The conclusion also states that Ferschman did not request a meal break. 3T 12:6-7. He then testified that that Ferschman did not indicate in his patrol log that he was in the Park Wayne Diner. 3T 12:15-20.

Turning to his thirteenth conclusion, McNiff stated that Ferschman's Daily Patrol Log did not accurately reflect his actions on September 20-21, 2015. 3T 13:24-25; 14:1. He elaborated by saying that Ferschman did not accurately log what he did in terms of patrolling and in terms of what he was supposed to log during his shift, i.e., that he was taking a meal and at the diner. 3T 14:4-15. In his fourteenth conclusion, McNiff found that a radio transmission confirmed that Ferschman was not in his police vehicle conducting patrol related activities during the time indicated on his patrol log. 3T 17:7-

8. McNiff continued to say that the radio logs and Ferschman's patrol log conflict because the radio transmission shows he was at the diner when his log says he was still on Terhune. 3T 17:13-16. McNiff then went through each of the charges that he recommended based on his investigation and why he drew each conclusion.

Next, McNiff was cross-examined by David J. Altieri (hereinafter "Altieri"), counsel for Ferschman. Altieri first questioned McNiff about whether there was any regulation that indicated that two or more officers could not be a restaurant together. 3T 31:14-17. McNiff stated that there was not and that it had been an "unspoken" rule. 3T 31:19;22-25. Altieri then inquired as to Ferschman's past disciplinary history. 3T 32:24-25. McNiff answered that he did not believe that he had one. 3T 33:1. Thereafter, Altieri asked McNiff about why McNiff began the investigation and about McNiff's interviews with Ferschman. 3T 33-38. Altieri then pointed out that McNiff concluded in his report that Ferschman's delayed response did not contribute to the patient's death at the Terhune call. 3T 40:5-7.

Thereafter, Altieri questioned McNiff regarding an email chain between McDermott and Captain McGrath (hereinafter "McGrath"). 3T 41:1-2. The emails discussed the Terhune call, which was to document the delay in the medical response due to issues with the facility's internal phone lines. 3T 42. These

emails were marked as D-2. 3T 43:15-16. Altieri then asked McNiff to look at T-10, which discussed, in part, a conversation McNiff had with a William Benitez. 3T 46:18-25. McNiff read this portion of T-10 aloud. 3T 47:6-7. This portion stated that Benitez took no issue with the police response; that he called the Department to make it aware that the Terhune location was having issues dialing 911; and that he took no issue with Ferschman's response time and described it as perfect. 3T 47:8-9.

Altieri then inquired as to the frequency of McNiff's conversations with Clarke. 3T 54:14. McNiff stated that he usually speaks with him daily; he also testified that with respect to investigations, he updates him as to what direction he is heading in, but does not provide him with the specifics until the investigation is completed. 3T 54:15;19-24. He then asked McNiff whether he has ever heard of officers being out of their zone while on shift. 3T 58:22-24. McNiff responded in the affirmative and stated that if an officer is responding to call or trying to stop a motor vehicle they can leave their zone. 3T 58:25; 59:1. He also stated that there might be other instances in which an officer might be out of their zone, but could not recall specifics. 3T 59:14;19-20. Alteiri then asked whether Ferschman provided McNiff an explanation as to why he did not request a meal break during the night in question. 3T 60:1-5.

McNiff stated that Ferschman said that he did not call out for a meal break so that he could stay available for calls. 3T 60:8-9. McNiff then confirmed that when an officer is writing a report, he is still considered to be on a call. 3T 63:21-22.

Altieri then questioned McNiff's written statement that he found it alarming that Ferschman did not know his exact rate of speed. 3T 66:21-24. McNiff confirmed this statement and said that he found it alarming that Ferschman could not recall his rate of speed even though the GPS showed him traveling at 105 MPH on his way to the Terhune call and 94 to 98 MPH back. 3T 67:1-6. Altieri then clarified that McNiff asked him how fast he was going and not whether he was speeding. 3T 67:8-11. Altieri also inquired as to whether "hauling ass" was a unit of measure in response to McNiff's contention that Ferschman lied about the speed he was going. 3T 68:10-12. McNiff stated that it was not. 3T 68:13. Altieri then addressed the conversation between Ferschman and Stanaback, during which they laughed and joked about Ferschman's speed and Ferschman stating that he was still the Terhune call even though he was at the diner. 3T 70:17-18;20-23. McNiff testified that he believed Stanaback called Ferschman to check whether he was still actively on the call. 3T 72:13-16. Altieri then inquired as to McNiff's allegation that Ferschman and Stanaback joked about Ferschman's statement that he was still on Terhune. 3T 76:2-6.

Thereafter, Altieri asked McNiff about his conclusion that Ferschman continued to eat after he received the Terhune call and whether any of the officers he interviewed indicated that he ate for an extended period of time. 3T 78:18-23; 79:1-2. McNiff stated that he did not believe so. 3T 79:3. Further, Altieri asked McNiff if there was some confusion as to whether it made sense for Ferschman to respond to the Terhune call at all. 3T 81:9-12. McNiff then referred to a conversation between Ferschman and Sergeant Kearney (hereinafter "Kearney") during which Kearney said that Ferschman did question whether he needed to respond to the call. 3T 81:13-24. Next, Altieri turned McNiff's attention to the Braemer call and asked whether McNiff believed it to be a serious call. 3T 85:2-3;12. The audio of the 911 call was then played and McNiff stated that the caller stated that she smelled burnt tire or gas. 3T 86:3-4. It should be noted, however, that there was some confusion as to whether the caller said "burnt tire" or "burning." Notwithstanding, there was no doubt the caller used the word "gas." 3T 86:10-12.

Then, Altieri began to question McNiff about the ProPhoenix GPS/AVL System generally. 3T 87-89. He then asked more specific questions about issues with the systems in certain vehicles. 3T 90-91. Altieri then showed McNiff emails that were exchanged in the Department that discuss certain patrol vehicles not updating

their GPS location in ProPhoenix. 3T 100:4-9;23-25.<sup>2</sup> Additionally, he pointed out that one of the vehicles having issues with its AVL/GPS system was vehicle 112; this vehicle was used by Ferschman during the night at issue. 3T 104:21; 109:20-21.

The next witness to testify on behalf of the Township was Chief Clarke. His testimony began on July 21, 2016. 4T 15:6-9. Chief Clarke testified that based on his review of the report authored by McNiff, Clarke determined that Ferschman violated the Rules and Regulations stipulated in the report. 4T 17:11-12. Further, he decided to charge Ferschman based on same. 4T 18:13-16. The Township then briefly went through the charges with Clarke. 4T 20-33.

On cross-examination of Clarke, Altieri inquired as to whether Clarke believed that Ferschman knew his speed when he was traveling back from Terhune. 4T 36:10-12. Clarke continued to say that Ferschman's "haulin' ass" comment and his statement about being a blip on the screen indicated that he was aware of his speed. 4T 36:15-19. However, he then stated that he did not think that Ferschman knew his exact speed. 4T 36:23. Altieri then inquired as to whether Clarke was a "hands on" chief and whether he had a close relationship to O'Sullivan; Clarke

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<sup>2</sup> Altieri showed McNiff multiple emails with respect to the GPS/AVL issues. However, I will not address each one individually. See 3T 101-107.

responded in the affirmative to both. 4T 37:17-19;23-25. Altieri then asked whether he had conversations with O'Sullivan about this matter; again, he responded in the affirmative. 4T 39:12-15. Clarke then testified about his reaction to hearing that officers were hanging out in the diner and why he was unhappy about it. 4T 40-44.

The first witness called by Ferschman was O'Sullivan. 4T 50:5-7. After some background information, Altieri called O'Sullivan's attention to D-11, an email dated October 3, 2015. 4T 50:17-22. The email was with respect to issues involving the AVL/GPS system. 4T 51:20-25. He testified that the AVL/GPS system was not functioning properly because the GPS was not showing certain vehicles' actual location. 4T 51:11-16. Altieri also questioned why O'Sullivan was present during Ferschman's Internal Affairs interviews when they were being recorded and that the AG Guidelines state that these interviews should be confidential. 4T 54:5-11; 55:1. O'Sullivan stated that he was present at the request of Clarke. 4T 54:13-15. The Township did not cross-examine O'Sullivan.

Ferschman's next witness was Martello. 4T 58:18-20. Altieri began his direct examination with some background and then asked Martello about D-11. 4T 59:14-15. This email discusses issues with the GPS in certain vehicles, including 112. 4T 59:23-25; 60:1-15. Altieri then showed him D-12, which was another email

indicating that to try to resolve the issues with the GPS, patrol officers should shut it down and restart it. 4T 61:5-10. Martello stated that it was they were told, but it did not fix the issue. 4T 61:11-13. Martello also testified that he thought Ferschman was a good officer and that he never lied to him when he acted as his supervisor. 4T 62:17-25; 63:1-3.

The third witness to testify for Ferschman was Caronia, who trained Ferschman. 4T 63:22-24; 64:12-14. Altieri asked Caronia about writing a report after a call and whether he typically remains on the location of the call; he responded in the affirmative. 4T 64:19-23. Altieri then asked whether there are any instances in which an officer would not remain on scene; he responded that he would complete his report elsewhere if there was a traffic hazard, if he has to get out of the way of a fire truck/ambulance, or if he needed to move to the shade on a hot day. 4T 65:2-6. He also stated that he would fill out his patrol log to indicate that he was still on call while he was writing his report. 4T 65:14-17. On cross-examination, the Township asked how Caronia how he would take a meal break on patrol. 4T 68:1-2. Caronia stated that he would call out for a meal break, give them his location, and indicate it in his patrol log. 4T 68:3-6.

The next witness was Stanaback. 4T 72:19-21. Altieri first asked Stanaback about the Terhune call. 4T 73:12-14. Stanaback

stated that this type of call was not normal because the call came from the establishment itself. 4T 74:2-6. Next Altieri asked whether Stanaback typically asks for a location when he does a time check; Stanaback stated that he does not. 4T 75:4-5. Altieri then inquired as to his conversation with Ferschman on the taped line, but Stanaback did not have much of a recollection of same. 4T 77. On cross examination, the Township asked Stanaback whether Ferschman's statement that he was on Terhune, but was in fact eating at the diner to be an accurate statement, to which he responded no. 4T 81:24-25; 82:1-2.

Cela was the next witness to testify on Ferschman's behalf. 4T 83:6-8. Cela also trained Ferschman. 4T 84:9-13. Altieri asked him Cela about whether he always remains in the location of a call to write his report; Cela stated that it depends on the situation. 4T 84: 16-25. He also testified that an officer is still considered to be on call when he is writing his report and would indicate the end time of the call to be when he finished his report. 4T 85:8-18. On cross-examination, the Township inquired as to what Cela told Ferschman to do when he wanted to take a meal break. 4T 87:14-16. He said that he told him that you request a meal break from the desk. 4T 87:16-17.

The last witness called by Ferschman was Sanagorski. 4T 91:7-9. Sanagorski testified that officers get together on the night shift and it is not uncommon for them to do so. 4T 92:7-

17. Altieri then marked a picture of officers meeting up on the night shift as D-16, which was brought to his attention by Sanagorski. 4T 96:2-7. Sanagorski testified that the picture was sent to him, via text message, by Franco the evening before his testimony. 4T 96:19-21. Sanagorski then stated that McNiff was in that picture. 4T 96:9-10. The Township then cross-examined Sanagorski as to the picture; the meal break policy; and the daily log sheet policy. 4T 98-105. The Township also asked Sanagorski about his disciplinary history. 4T 107-109.

After the presentation of Ferschman's witnesses, the Township called Franco to inquire about the photograph he sent to Sanagorski the night before. 4T 118:24-25. Franco stated that he did send the picture to Sanagorski and did it to help Ferschman as well as to reminisce about the "old days". 4T 119:17-23; 122:14-21.

#### **ARGUMENTS OF COUNSEL**

In lieu of closing arguments on the record, counsel submitted summation briefs in support of their respective positions. I will now briefly summarize their arguments.

#### ***Township of Wayne***

The Township argues that the documentary evidence and the testimony of the various witnesses demonstrates that Ferschman

(1) falsified his September 20-21, 2015 Road Sheet; (2) left his assigned post without permission on two separate occasions; (3) endangered the lives of certain citizens due to his response times; (4) failed to timely respond to a cardiac arrest emergency at 130 Terhune Drive in Wayne; (5) failed to timely respond to a fire call at 63 Braemar Avenue in Wayne; (6) took two excessive meals breaks without permission; (7) lied to Dispatcher Stanaback about his actual location on the police communication dispatch system; and (8) knowingly lied during his Internal Affairs interview regarding his rate of speed when returning to the Park Wayne Diner to 130 Terhune Drive in Wayne and his rate of speed when returning to the Park Wayne Diner for his second unauthorized meal break.

The Township further argues that the totality of the evidence presented at the hearing warrants termination. In support of this argument, the Township cites to numerous cases discussing the higher standard that to which police officers are held.

***Officer Ferschman***

First, Ferschman renews his motion to dismiss based on the forty-five day rule under N.J.S.A. 40A:14-147. He renews this motion based on the Attorney General Guidelines, which are binding on law enforcement pursuant to N.J.S.A. 40A:14-181. The

Guidelines states that "[a]lthough the 45 day clock begins at the time the person who has the responsibility to file charges has sufficient information, an agency would have a difficult time justifying an extensive bureaucratic delay once any member of that agency has established sufficient information." Ferschman argues that the testimony elicited during the hearing demonstrated that Clarke obtained sufficient information to file charges some point early into the investigation. Thus, there was no reason for the Chief to have waited to file the charges until December 21, 2015, eighty-six (86) days after the commencement of the investigation. Additionally, Ferschman argues that the violations of the Township Ordinances are not properly venued in an administrative hearing; they are venued in municipal court. Therefore, since the Township Ordinances in questions merely echo the charges based on the Department's Rules and Regulations, they are to be deemed equivalent and subject to the forty-five day rule as well.<sup>3</sup>

With respect to the charges as hand, Ferschman first argues that there was no rule or regulation stating that more than two (2) officers were permitted to eat at a public restaurant. Instead, this is been described as an unwritten rule. Ferschman argues that this was supported by the testimony of McNiff and

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<sup>3</sup> When this motion was initially argued, counsel for the Township argued that any motion should apply only to violations of the Rules and Regulations, but not the violations of the Township Ordinances.

Sanagorski. Ferschman then addresses the 130 Terhune Drive incident. He argues that Ferschman's delay did not cause the death on Patricia Reyes and that the facility did not take issue with his response time. In fact, he argues, they stated that Ferschman's response was "perfect." Further, after he was no longer needed at the facility, he left the scene to write his report, returned to the diner to see if he could still eat his food, briefly ate it, and then returned to his car to write his report.

Ferschman then argues that Specification 9, which alleges a violation of his P.B.A. contract with the Township is not actionable in an administrative disciplinary hearing as the contract has its own grievance procedure. Further, Specifications 17 and 18, which allege violations of N.J.S.A. 40A:14-147, are not actionable in an administrative disciplinary hearing.

Next, Ferschman addresses the allegations relating to the "truthfulness," which are charges as Specifications 12, 13, and 14. The first Specification he addresses is number 12, which relates to Ferschman's false statement to Stanaback. Ferschman argues that this charge cannot be sustained for two reasons: first, if Stanaback was asking about a physical location, Ferschman could not have lied because both of them knew where

Ferschman was. In support of this argument, Ferchman states that it is impossible for a person to lie to another person about a fact, when that person knows the other person is aware of that fact. Ferschman's second argument is that if Stanaback was referring to the call when he said "Terhune," Ferschman did not lie because he was still on the call despite not being at that location. As support for his second argument, Ferschman points to Stanaback's testimony in which he states that during time checks, he typically does not ask for locations. Further, since Ferschman was still in the process of writing his report, he was technically still on the Terhune call and thus, did not lie.

The second Specification with respect to truthfulness was Specification 13. This related to the allegation that Ferschman was untruthful when he told McNiff that he did not know his speed when traveling to and from Terhune. Ferschman argues that the Township has not presented evidence that indicates that Ferschman lied to McNiff by stating that he did not know his speed. To support his argument he states just because Ferschman told Stanaback that he was "hauling ass," does not mean he knew exactly how fast he was going. Therefore, he did know his exact speed and did not lie.

The last Specification charging untruthfulness is number 13. This Specification deals with falsification of Wayne Police

Department Patrol Logs, specifically, failing to indicate that he took a meal break and was at the Park Wayne Diner. With respect to this Specification, Ferschman asserts that he could not have falsified his patrol log by not indicating that he took a meal break because he did not take a meal break, but was still "in service" or "on a call." Additionally, while the Department Rules and Regulations indicate that meal breaks must be requested, the custom and practice of the overnight shift is to not request a meal break so they can remain in service if they are needed.

The next charges Ferschman addresses are the neglect of duty allegations based on the Terhune call (Specification 1) and the Braemar call (Specification 2). With respect to the Terhune call, Ferschman argues that the paramedic on scene took no issue with Ferschman's response time or behavior while on scene and described it as "perfect." Further, based on the testimony of the other officers, the perceived delay was minimal and due to Wlazel blocking Ferschman in, an action that cannot be attributable to Ferschman. With regard to the Braemar call, Ferschman argues that this allegation is based on the GPS/AVL system, which is "a system replete with functionality and accuracy issues."

Ferschman then addresses the loitering allegations, which are part of the neglect of duty charges, specifically Specifications 3, 4, 15, and 16. These charges are based on Ferschman's time at the diner. He argues that the fact that he remained "in service" shows that he was not loitering. Then, with respect to Specifications 5 and 6, which allege that Ferschman was absent from his post because he was at the diner. Ferschman argues that while he admits he was out of his Zone, he did not neglect his duty because he remained "in service" and responded to a call.

Ferschman then addresses the concept of progressive discipline. He states that he agrees that he did not perform flawlessly during the shift in question, it cannot be "reasonably argued" that he should be terminated, especially since he does not have a disciplinary history.

#### **FINDINGS OF FACTS**

Based on the testimony presented and the exhibits submitted in to evidence, I find that the City demonstrated, by a preponderance of the credible evidence, that Ferschman falsified his September 20-21, 2015 Road Sheet; left his assigned post without permission on two separate occasions; endangered the lives of certain citizens due to his excessive and unnecessary speeding; failed to timely respond to a cardiac arrest emergency

at 130 Terhune Drive in Wayne; failed to timely respond to a fire call at 63 Braemar Avenue in Wayne; took two excessive meals breaks without permission; lied to Stanaback about his actual location on the police communication dispatch system; and was less than completely candid during his Internal Affairs interview regarding his rate of speed when returning to the Park Wayne Diner to 130 Terhune Drive in Wayne.

With respect to charge number one, a violation of Township Ordinance 25-109V, which is neglect of duty and failure to respond appropriately and timely to the Terhune call, I find that the Township presented sufficient evidence to warrant a finding of same. Based on the testimony of McNiff, and the evidence introduced, I find that Ferschman failed to response properly to the Terhune call as he was out of his zone when he received the call, continued to eat after he was dispatched, questioned by he was being called to the scene, and drove at a reckless speed to the call. During the hearing, Altieri tried to down play Ferschman's behavior by eliciting testimony that he only took a few bites of his food, that the woman had been pronounced deceased, and that the call was not necessarily typical; however, I do not find that those facts negate Ferschman's careless behavior.

Next, with respect to Ferschman's failure to respond appropriately and timely to the Braemar call, I find the Township demonstrated a violation of Township Ordinance 25-109V, Pursuant to McNiff's testimony and Ferschman's Internal Affairs interview, it is clear that Ferschman did not respond to this call in a timely manner as it took him twelve minutes to respond. Further, his excuse for the delay was that he was caught up in a conversation with another officer. During the hearing, there was some question as to what the caller at Braemar stated she smelled and whether it was an emergent; however, that does not excuse Ferschman's delay in response as he was called to the scene of a potentially burning building or the smell of gasoline.

The third charge, another violation of Township Ordinance 25-109V, was for loitering at the Park Wayne Diner on September 20, 2015. The Township proved this by entering T-5, Ferschman's Daily Patrol Log for that date. The next charge was a violation of Wayne PBA 136 Contract Article 14, which states that officers are entitled to a 45 minutes meal period. Notwithstanding same, I find that Ferschman took an hour meal break on September 20, 2015, and did so without proper notification.

With respect to Ferschman's two violations of Township Ordinance 25-109F, absence from post duty without excuse or not

properly patrolling beat on September 20, 2105 and September 21, 2015, I find that that Township demonstrated that Ferschman violated same. Based on the evidence presented, it was clear that Ferschman was absent from his zone, for hours, without receiving permission because he was at the Park Wayne Diner, which is not in Zone 8. This was demonstrated by McNiff's interviews of other officers who were present at the diner, Ferschman's own testimony during his Internal Affairs investigation, and the AVL/GPS data. The next charges, violations of Wayne PD Rules and Regulations 4:1.24 on September 20, 2015 and September 21, 2015, were also proven by a preponderance of the evidence. To me, it is clear that Ferschman did not request a meal break; did not advise the communications desk where he was taking a break; and exceeded the time allowed for a break. This was evidenced by Ferschman's patrol logs, the testimony of other officers in the diner, and the AVL/GPS information. While Ferschman stated that the reason did not call out on a meal break was because he wanted to stay available for calls, I do not find this to be a reason for his failure to follow protocol.

Additionally, with respect to the charges of Conduct Unbecoming an Officer 25-109L, Reckless Driving, 39.4, I find that Ferschman is guilty of same. Based on the evidence,

Ferschman admitted to Stanaback that he was driving at a reckless speed as he stated that he was "hauling ass"; the GPS/AVL evidence showed that he drove up to 105 miles per hour to the Terhune call, even though he knew the party was deceased; and drove over 90 miles per hour on his way back from the call. I also find that Ferschman put the public in danger by driving at these rates of speed unnecessarily. Next, with respect to the violation of Township Ordinance 25-109M, Conduct Subversive to Good Order and Discipline of the Department, the evidence demonstrates that Ferschman was not properly adhering to his duties as a police officer. This was evidenced by his reckless speeding; remaining out of his assigned Zone for hours, his delay to two different calls; his lack of candor during his Internal Affairs investigation and his conversation with Stanaback; and his falsification of his patrol log entries.

The next two charges, which involve the requirement that officers be truthful, were also demonstrated by the Township by a preponderance of the evidence. I find that Ferschman was not honest in his conversation with Stanaback when he told Stanaback that he was still on Terhune, even though he was physically in the diner. Counsel for Ferschman argues that his client's statement cannot be considered to be untruthful because both Ferschman and Stanaback each knew that he was at the diner and

not Terhune. However, that argument is not convincing because Ferschman knew the statement itself was not truthful; Stanaback's knowledge of where Ferschman was at the time he made the statement does not negate the fact that the words uttered by Ferschman were not accurate. Moreover, the other officers present witnessed Ferschman being dishonest to Stanaback over the radio, which is problematic behavior. Alternatively, counsel for Ferschman argues that Ferschman did not lie because he was still on the Terhune call, even though not on the location, when he made the statement. I do not find this to be persuasive because Ferschman was in the diner eating when he spoke to Stanaback; he was not in his police vehicle writing his report. The next statement addressed for its lack of truthfulness was Ferschman's statement to McNiff that he did not know how fast he was going on his way back from the Terhune call because he did not look at the speedometer. I find that Ferschman did violate Rule and Regulation 4:4.4, which is "truthfulness, less than complete candor, misleading investigator during interview." Here, I find that Ferschman was less than completely candid with McNiff when he told him that he did not know how fast he was going. While it may be true that Ferschman did not look at his speedometer, he must have had some general awareness of how fast he was going because he told Stanaback that he was "hauling ass." As a police officer, who is trained to drive at a high

rate a speed when necessary, Ferschman would have known the speed he was going and should have been forthcoming regarding same.

I also find that the Township demonstrated that Ferschman violated Rule and Regulation, 2:1.26, Neglect of Duty for the all of the above-mentioned reasons. Additionally, I find that the evidence is sufficient to sustain the charges under N.J.S.A. 40A:14-147. Altieri argues that charges under N.J.S.A. 40A:14-147 are not actionable in an administrative disciplinary hearing, the text of the statute does not support such an argument. See N.J.S.A. 40A:14-147 (stating that "[e]xcept as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force").

While Ferschman takes issue with the Township's reliance on the AVL/GPS system, I do not. McNiff testified that he matched up Ferschman's arrival times through the radio transmissions as well as witness statements, including Ferschman's, to make sure that what he was seeing on the AVL/GPS system was Ferschman's actual location. 1T 34:2-6. For example, he testified that he

took Ferschman's statement that he made a right turn out of the diner parking lot, making a U-Turn around the median, and saw that the ProPhoenix/AVL accurately displayed this. 1T 34-7-9. Therefore, I find that any conclusions drawn from the AVL/GPS system were properly verified.

#### **STATEMENT OF LAW AND DISCUSSION**

First, I must address, Ferschman's renewal of his motion to dismiss. As stated above, he argues that pursuant to the Attorney General Guidelines, "[a]lthough the 45 day clock begins at the time the person who has the responsibility to file charges has sufficient information, an agency would have a difficult time justifying an extensive bureaucratic delay once any member of that agency has established sufficient information."

Judicial and administrative case law interpreting and applying the 45-day rule set forth in N.J.S.A. 40A:14-147 is rather limited. While reported decisions addressing this statutory provision involve factual patterns distinguishable from the instant matter, a review of those cases is helpful in understanding the intent of the 45-day rule. In the matter of Division of State Police v. Maguire, 368 N.J. Super. 564, 847 A.2d 614 (App.Div.2004), State Trooper Maguire, who had been

involved in an off-duty road rage incident was suspended for fifteen days without pay by the Division of State Police. While the primary issue in Maguire upon appeal to the Appellate Division was whether the Division of State Police properly utilized a hearing officer, rather than an Administrative Law Judge to conduct Maguire's disciplinary hearing, a threshold issue raised by Trooper Maguire was that all of the charges should have been dismissed, "due to the Division of State Police's failure to abide by the 45-day rule under N.J.S.A. 53:1-33." That statutory provision has a 45-day time rule that is identical to the statutory provision at issue in the instant case.

In Maguire, the incident for which Trooper Maguire was disciplined occurred on June 29. Subsequent to the incident, an investigation commenced and was completed on August 15. A report of the investigative findings was forwarded to the Superintendent of the State Police on September 3, 2002. Thereafter, in early October 2002, upon following a prescribed protocol for review of the legal sufficiency of the charges, Maguire was charged with various violations of the Rules and Regulations of the Division of State Police. Hence, the filing of the charges occurred more than 100 days after the precipitating incident of June 29, 2002.

In addressing the 45 day rule, the Appellate Division stated:

[W]e believe the relevant statute is unambiguous and clear on its face, and consequently we apply it as written. The 45-day period began to run in this matter on September 3, 2002 when the Superintendent received the investigative report. Because charges were filed on October 1, 2002 and served on Maguire on October 7, 2002, the Division has complied with N.J.S.A. 53:1-33.

Id. at 570, 847 A.2d 614 (internal citations omitted).

Further, in The Matter of Joseph McCormick, 2001 WL 34609057 (N.J. Adm.), the Merit System Board (hereinafter the "Board") rendered its final administrative action. The Board rejected the recommendation of the Administrative Law Judge (hereinafter "ALJ") that charges against Lawrence Township Police Officer Joseph McCormick be dismissed for failure to comply with N.J.S.A. 40A:14-147. The Board, in rejecting the ALJ's decision, stated that N.J.S.A. 40A:14-147 is designed to protect police officers from an appointing authority unduly and prejudicially delaying the imposition of disciplinary action. However, the Board stated the statute does not prohibit an appointing authority from doing a proper investigation into a matter to determine whether disciplinary charges are necessary and appropriate. Further, the fact that an investigation may span a period of time, which may exceed 45 days, does not

automatically call for the dismissal of the charges. Rather, for the purposes of N.J.S.A. 40A:14-147, the charges must be brought within 45 days of the "person filing the complaint" obtaining sufficient information to bring such charges. The "person filing the complaint" is generally acknowledged to be the Chief of Police. See N.J.S.A. 40A:14-118. Therefore, the 45 days start when the Chief of Police has sufficient knowledge to bring the charges against an officer.

Here, while Ferschman highlights the Attorney General Guidelines with respect to this issue, I do not find his argument persuasive. The Guidelines do not abrogate the statute, which clearly states that "a complaint charging a violation of the internal rules and regulations...shall be filed not later than the 45<sup>th</sup> day after the date on which the person filing the complaint obtained sufficient information to file." N.J.S.A. 40A:14-147. Here, that person was Clarke, not O'Sullivan or McNiff. Since Clarke did not receive the investigation report for McNiff until November 24, 2015 and the charges were filed on December 18, 2015, they were timely. Further, just because the Chief stated that he was generally aware of the facts early on in the matter, does not mean that he had sufficient knowledge to file the charges at issue at that point. Accordingly, Ferschman's renewal of his motion to dismiss is denied.

With respect to the PNDA at issue, Ferschman has been charged with the following: four violations of Township Ordinance ("T.O.") 25-109V: Neglect of Duty; two violations of T.O. 25-109F: Absence from post of duty without excuse or not properly patrolling a beat; two violations of the Wayne PD Rules and Regulation 4:1.24: Meals; one violation of Wayne PBA 136 Contract: Articles XIV Hours and Overtime #19C; a violation of T.O. 25-109L, Conduct Unbecoming an Officer; a violation of T.O. 25-109M: Conduct subversive to good order and discipline of the Department; three violations of Rule and Regulation 4:4.4: Truthfulness; two violations of Rule and Regulation, Neglect of Duty; misconduct in violation of N.J.S.A. 40A:14-147; and a violation of N.J.S.A. 40A:14-147 with respect to disobedience of the rules and regulations established for the government of the police department.

In the instant matter, the Township argues, convincingly, that Ferschman's conduct reflected a substantial disregard for departmental rules and regulations, and moreover that it showed a troubling willingness to disregard the safety of others as well as his responsibilities as a police officer. Rather than holding himself to the appropriately higher standard of conduct that our State requires of its police officers, he sought to avoid the responsibilities attendant on all members of the

public. See In Re Phillips, 117 N.J. 567, 576-77 (1990) (stressing that police officers are held to higher standards as a distinct class of public employee with a special status in the eyes of the public). Being held to this "higher standard" is "one of the obligations [a police officer] undertakes upon voluntary entry into the public service." In Re Emmons, 63 N.J. Super. at 142. The Township's evidence, the bulk of which is uncontroverted as to its factual basis, persuasively establishes that Ferschman failed to uphold that obligation.

As stated by our Supreme Court in City of Asbury Park v. Dep't. of Civil Service, 17 N.J. 419, 429 (1955), police officers "stand[] in the public eye as upholder of that which is legally and morally correct." Ferschman's conduct falls far short of "legally and morally correct." Id. His behavior falls squarely within the "elastic" definition of conduct unbecoming a public employee, implicates the public trust of police officers, and, as such, requires firm discipline. See In Re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960); see also In Re Phillips, 117 N.J. at 576 - 577. Here, Ferschman not only left his Zone unattended for hours, but endangered the lives of others by speeding at high rates of speed, failing to respond to two calls in a timely manner, failing to follow procedure with respect to meal breaks, and was less than candid in his conversation with

Stanaback as well as during his Internal Affairs interview. Based on his behavior during the two shifts at issue, it is clear that Ferschman did not uphold the high standard that is expected of police officers.

With regard to penalty, consideration must generally be given to the concept of progressive discipline, involving penalties of increasing severity. W. New York v. Bock, 38 N.J. 500 (1962). However, progressive discipline is not a "fixed and immutable rule to be followed without question." Carter v. Bordentown, 191 N.J. 474, 484 (2007); see also In re Herrmann, 192 N.J. 19, 36, 926 A.2d 350, 360 (2007) (stating that while progressive discipline is a worthy principle, it is not subject to universal application when determining a disciplined employee's quantum of discipline). It is well-established that when the misconduct is severe, when it is unbecoming to the employee's position or renders the employee unsuitable for continuation in the position, or when application of the principle would be contrary to the public interest, progressive discipline need not apply. In re Herrmann, 192 N.J. at 28; In re Stallworth, 208 N.J. 182 (2011). It has been held that termination without progressive discipline is appropriate in circumstances where an employee cannot competently perform the work required of his position. Klusaritz v. Cape May Cty., 387

N.J. Super. 305, 317 (App. Div. 2006), certif. denied, 191 N.J. 318 (2007). In Klusaritz, the panel upheld the removal of a principal accountant on charges of inability to perform duties, among other things, based on proof that the employee had consistently failed to perform the duties of his position in a timely and proper manner, and had also failed or refused to accept direction with respect to performance of these duties. See also Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 197-98, 627 A.2d 602 (1993) (upholding dismissal of police officer who refused drug screening as "fairly proportionate" to offense).

Thus, it has been noted that the question with respect to discipline is "whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" In re Polk License Revocation, 90 N.J. 550, 578, 449 A.2d 7 (1982). Our Appellate Division, likewise, has both acknowledged and adhered to this principle, upholding dismissal where the acts charged, with or without any prior discipline, have warranted the imposition of that sanction. See, e.g., Cosme v. Borough of East Newark, 304 N.J. Super. 191, 205-06, 698 A.2d 1287 (App.Div.1997) (finding termination appropriate for police officer who went on unauthorized paid vacation), certif. denied, 156 N.J. 381, 718

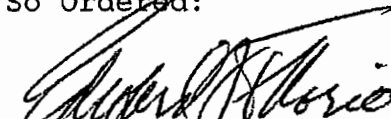
A.2d 1210 (1998); City of Newark v. Massey, 93 N.J. Super. 317, 322-25, 225 A.2d 723 (App.Div.1967) (concluding that police officer's multiple acts of insubordination and his careless handling of police weapon warranted termination).

Here, while Ferschman has not been subject to discipline previously, it is clear that his misconduct is so severe that the concept of progressive discipline need not be applied. Ferschman's neglect of his duties endangered the lives of the citizens of Wayne as his zone was not patrolled for hours, his response time to calls were delayed, and he drove at reckless speeds. Therefore, the application of progressive discipline in this case would be contrary to the public interest as Ferschman's conduct is clearly unbecoming to his position.

#### CONCLUSION

Based on the foregoing, the Township's proposed sanction of termination is justified under the circumstances, and thus, I impose that sanction.

So Ordered:



Edward J. Florio, Esq.  
Hearing Officer  
Florio Kenny Raval, L.L.P.  
5 Marine View Plaza, Suite 103  
Hoboken, NJ 07030

DATED: November 14, 2016

# EXHIBIT C

## TOWNSHIP OF WAYNE, NEW JERSEY

# NOTICE OF PERSONNEL OR PAYROLL CHANGE

("PERSONNEL STATUS FORM")

Date Originated : November 21, 2016

Originated By: Chief James Clarke

## FOR OFFICE USE ONLY

EEOC-GROUP: B - C - D - E - F - G - H - I - J - K

JOB CATEGORY: 1 - 2 - 3 - 4 - 5 - 6 - 7 - 8

W/C Code: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Social Security: 149-74-3768

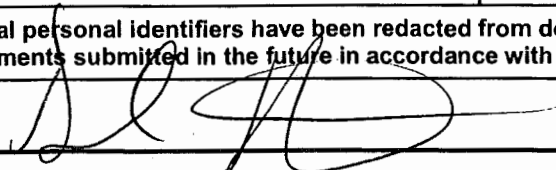
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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 1. Employee Name<br>FERSCHEMAN, ERIK                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | 2. Position Title<br>POLICE OFFICER                                                                                                                                                                                                                                                                                                                            |                       |
| 3. Employee Address<br>34 Friar Way                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  | Town<br>Wayne                                                                                                                                                                                                                                                                                                                                                  | State<br>NJ           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | Zip<br>07470                                                                                                                                                                                                                                                                                                                                                   | 4. Account No.<br>745 |
| 5. Department<br>POLICE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | Division<br>UNIFORM PATROL                                                                                                                                                                                                                                                                                                                                     | Phone<br>973 694-7130 |
| 6. EFFECTIVE Date or Inclusive Dates of Action: See below                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                                                                                |                       |
| <b>7. APPOINTMENT</b><br>Permanent - subject to satisfactory completion of probationary period. Fingerprint and physical examinations.<br><input type="checkbox"/> Temporary<br><input type="checkbox"/> Seasonal<br><input type="checkbox"/> Part-Time<br><input type="checkbox"/> Re-employment<br><input type="checkbox"/> Return from Military Service<br><input type="checkbox"/> Appointment Term<br>Start Salary _____                                                                                                                                                                                                                                                                                                                  |  | <b>8. SEPARATION</b><br><input type="checkbox"/> Resignation<br><input type="checkbox"/> Left Job<br><input type="checkbox"/> Dismissed<br><input type="checkbox"/> Lay-Off<br><input checked="" type="checkbox"/> Termination<br><input type="checkbox"/> Retirement<br><input type="checkbox"/> Death<br><input type="checkbox"/> Other - see comments below |                       |
| Present Base Salary \$89,033<br>Longevity %<br>Shift Diff. /Bur. %<br>Other<br><br>Total \$89,033<br><br>Grade                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | New Base Salary<br>Longevity %<br>Shift Diff. /Bur. %<br>Other<br><br>Total<br><br>Grade                                                                                                                                                                                                                                                                       |                       |
| <b>9. IN-SERVICE CHANGE</b> <input type="checkbox"/><br><input type="checkbox"/> Disability/Extended sick leave<br><input type="checkbox"/> Suspension - No. of Days _____<br><input type="checkbox"/> Leave of Absence without pay<br><input type="checkbox"/> Leave of Absence with pay<br><input type="checkbox"/> New Job Title<br><input type="checkbox"/> Promotion<br><input type="checkbox"/> Demotion<br><input type="checkbox"/> Change of Address or Phone<br><input type="checkbox"/> Transfer from:<br><input type="checkbox"/> Pay Increase<br>Annual _____ Longevity _____<br>Promotion _____ Other _____<br><input type="checkbox"/> Job Category: From _____ To _____<br><input type="checkbox"/> Other - see comments below: |  |                                                                                                                                                                                                                                                                                                                                                                |                       |
| Continuous Fulltime<br>Employment 12/19/2012<br>Anniversary 12/19<br>New Employees Minimum<br>Probation - 1 year<br>Probation Period ends _____<br>Part-Time Employment from _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                                                                                                                                                                                                                                |                       |

Comments: In accordance with Ordinance 25.3 the Business Administrator on behalf of Wayne Township accepts the Hearing Officer's November 14, 2016 determination; and effective November 18, 2016 does terminate the employment of Police Officer Ferschman, for reasons enunciated in the Hearing Officer's decision. Employee to be paid through November 18, 2016 and entitled to compensation for 12 hours vacation, 54.75 hours comp time and 63 hours SAD time as per Collective Negotiation Agreement with PBA Local 136. Not entitled to any other benefits from Wayne Township.

This change is in accordance with State Statutes, the Administration Code, the classification and Pay Plan, and other rules and policies governing Township Employees.

REQUESTED BY James A. AceAPPROVED BY James A. AceAPPROVED BY Director of PersonnelACKNOWLEDGED BY MayorAPPROVED BY Business AdministratorAPPROVED BY Employee Signature

**Appendix XII-B1**

|                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|                                                                                                                                                                                                                                                       | <b>CIVIL CASE INFORMATION STATEMENT<br/>(CIS)</b>                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                         | FOR USE BY CLERK'S OFFICE ONLY                                                                                                                                                      |  |
|                                                                                                                                                                                                                                                                                                                                        | Use for initial Law Division<br>Civil Part pleadings (not motions) under <i>Rule 4:5-1</i><br><b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>,<br/>         if information above the black bar is not completed<br/>         or attorney's signature is not affixed</b> |                                                                                                                                                                                                                                                         | PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA<br>CHG/CK NO. _____<br>AMOUNT: _____<br>OVERPAYMENT: _____<br>BATCH NUMBER: _____ |  |
|                                                                                                                                                                                                                                                                                                                                        | ATTORNEY / PRO SE NAME<br>DAVID J. ALTIERI, ESQ.                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                         | TELEPHONE NUMBER<br>(201) 646-1100                                                                                                                                                  |  |
|                                                                                                                                                                                                                                                                                                                                        | COUNTY OF VENUE<br>Passaic                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
| FIRM NAME (if applicable)<br>GALANTUCCI, PATUTO, DE VENCENTES, POTTER & DOYLE                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         | DOCKET NUMBER (when available)                                                                                                                                                      |  |
| OFFICE ADDRESS<br>55 STATE STREET, HACKENSACK, NJ 067601                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         | DOCUMENT TYPE<br>COMPLAINT                                                                                                                                                          |  |
|                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         | JURY DEMAND <input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                |  |
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>ERIK FERSCHMAN, PLAINTIFF                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                             | CAPTION<br>ERIK FERSCHMAN, PLAINTIFF V.<br>TOWNSHIP OF WAYNE, DEFENDANT                                                                                                                                                                                 |                                                                                                                                                                                     |  |
| CASE TYPE NUMBER<br>(See reverse side for listing)<br>999                                                                                                                                                                                                                                                                              | HURRICANE SANDY<br>RELATED?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                          | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO<br>IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW<br>REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. |                                                                                                                                                                                     |  |
| RELATED CASES PENDING?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                             | IF YES, LIST DOCKET NUMBERS                                                                                                                                                                                                                             |                                                                                                                                                                                     |  |
| DO YOU ANTICIPATE ADDING ANY PARTIES<br>(arising out of same transaction or occurrence)?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                        |                                                                                                                                                                                                                                                                                             | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)<br><input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN                                                                                                                   |                                                                                                                                                                                     |  |
| THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
| DO PARTIES HAVE A CURRENT, PAST OR<br>RECURRENT RELATIONSHIP?<br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                             | IF YES, IS THAT RELATIONSHIP:<br><input checked="" type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS         |                                                                                                                                                                                     |  |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE FILING PARTY? <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR<br>ACCELERATED DISPOSITION<br>VERIFIED COMPLAINT FOR APPEAL PURSUANT TO N.J.S.A. 40A:14-150                                                                                                                            |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
| <div style="position: relative; height: 100px;"> <div style="position: absolute; top: 0; right: 0; transform: rotate(-15deg); font-weight: bold; font-size: 1.2em;">             RECEIVED and FILED<br/>             Superior Court of New Jersey<br/>             NOV 28 2015<br/>             PASSAIC COUNTY           </div> </div> |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
|  DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                   |                                                                                                                                                                                                                                                                                             | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION                                                                                                                                                                                                     |                                                                                                                                                                                     |  |
| WILL AN INTERPRETER BE NEEDED?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                             | IF YES, FOR WHAT LANGUAGE?                                                                                                                                                                                                                              |                                                                                                                                                                                     |  |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be<br>redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .                                                                                                           |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |
| ATTORNEY SIGNATURE:                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                         |                                                                                                                                                                                     |  |



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

## CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

### Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Appeal Pursuant to N.J.S.A. 40A:14-150

### Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

### Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

### Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

### Multicounty Litigation (Track IV)

- |                                            |                                                           |
|--------------------------------------------|-----------------------------------------------------------|
| 271 ACCUTANE/ISOTRETINOIN                  | 292 PELVIC MESH/BARD                                      |
| 274 RISPERDAL/SEROQUEL/ZYPREXA             | 293 DEPUY ASR HIP IMPLANT LITIGATION                      |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL     | 295 ALLODERM REGENERATIVE TISSUE MATRIX                   |
| 282 FOSAMAX                                | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS           | 297 MIRENA CONTRACEPTIVE DEVICE                           |
| 286 LEVAQUIN                               | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR              |
| 287 YAZ/YASMIN/OCELLA                      | 300 TALC-BASED BODY POWDERS                               |
| 289 REGLAN                                 | 601 ASBESTOS                                              |
| 290 POMPTON LAKES ENVIRONMENTAL LITIGATION | 623 PROPECIA                                              |
| 291 PELVIC MESH/GYNECARE                   |                                                           |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category ☐ Putative Class Action ☐ Title 59