

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

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**Admitted NY Bar

#Admitted NJ & PA Bars

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New York, NY 10279
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December 10, 2015

Via Federal Express

Superior Court of New Jersey
Mercer County Civil Courthouse
Civil Part
175 S. Broad Street
Trenton, New Jersey 08650-0068

Re: Frank Marchione v. The Borough of Hightstown, et al.
Docket No.:
Our file: 15-486

ORDER TO SHOW CAUSE

Dear Sir or Madam:

The undersigned represents Frank Marchione in the above referenced matter. Enclosed please find the following for filing:

1. Order to Show Cause
2. Verified Complaint
3. Certification of Christopher Gray, Esq. with attachments
4. Letter Brief
5. Proposed Order
6. Certification of Service
7. Case Information Statement

We respectfully request that the Court execute the Order to Show Cause as it deems appropriate and return it to the undersigned in the enclosed self-addressed stamped envelope. We also request that the Court stamp the additional copy of the Verified Complaint as 'filed' and return same to the undersigned in the additional self addressed stamped envelopes.

Kindly charge our Superior Court account # 140927 for any attendant filing fees.

Superior Court of New Jersey

Re: Frank Marchione v. The Borough of Hightstown, et al.

December 10, 2015, Page 2

We thank the Court for its attention and courtesies in this matter.

Very truly yours,

Sciarra & Catrambone, L.L.C.

By: *Deborah Masker Edwards /s/*
Deborah Masker Edwards, Esq.

DME/d

Enclosures

cc: Henry Underhill, Borough Administrator (*Via Federal express w/enclosures*)
Client (*w/enclosures*)

SCIARRA & CATRAMBONE, LLC
Deborah Masker Edwards, Esq.
(Attorney Id. No.: 047181991)
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
(973) 242-3118
Attorney for Plaintiff
Frank Marchione

FRANK MARCHIONE,

Petitioner

V.

THE BOROUGH OF HIGHTSTOWN and
THE BOROUGH OF HIGHTSTOWN
POLICE DEPARTMENT,

Defendant

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - MERCER COUNTY
:
:
: CIVIL ACTION
:
: DOCKET NO.: MER-L-_____-15
:
: ORDER TO SHOW CAUSE
:
:
:
:

THIS MATTER, being opened to the Court by Sciarra & Catrambone, LLC, attorneys for Plaintiff Police Officer Frank Marchione("Marchione") seeking relief by way of summary action pursuant to R. 4:67-1(a), based upon that facts set forth in the Verified Complaint filed herewith; and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to N.J.S.A. 40A:14-155 and for good cause shown,

IT IS on this _____ day of _____, 2015,

ORDERED that the Defendant(s) The Borough of Hightstown and The Borough of Hightstown Police Department and show cause on the _____ day of _____, 2015 before the Superior Court at the Mercer County Civil Courthouse in Trenton, New Jersey at _____ o'clock in the _____ a.m./p.m., or as soon thereafter as counsel can be heard, why judgment should not be entered for:

- A. Ordering the Defendant reimburse Plaintiff for his attorney's fees and costs related to the disciplinary charges assessed against him on March 9, 2015; and
- B. Granting such other relief as the court deems equitable and just.

And it is further **ORDERED** that:

1. A copy of this Order to Show Cause, Verified Complaint and all supporting Affidavits or Certifications submitted in support of this application be served upon Defendants, personally, within _____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. The Plaintiff must file with the Court his/her/its proof of service of the pleadings on Defendants no later than (3) days before the return date.

3. Defendants shall file and serve a written Answer, an answering affidavit or a motion returnable on the return date to this Order to Show Cause and the relief requested in the Verified Complaint and proof of service of the same by _____,

2015. The Answer, answering affidavit or a motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge _____.

4. The Plaintiff must file and serve any written reply to Defendant's Order to Show Cause opposition by _____, 2015. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chamber of Judge _____.

5. If Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendants take notice that the Plaintiff has filed a lawsuit against you in Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states that basis of the lawsuit. If you dispute this Complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the Order to Show Cause and proof

of service before the return date of the order to show cause.

These documents must be filed with the Clerk of Superior Court in the county listed above. A directory of these offices 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>.

Include a \$ _____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer, answering affidavit or motion to the plaintiff's attorney whose name and address appear above, or to the Plaintiff, if no attorney I named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county which 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.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and

parties are advised to the contrary no later than _____ days
before the return date.

SO ORDERED.

J.S.C.

SCIARRA & CATRAMBONE, LLC
Deborah Masker Edwards, Esq.
(Attorney Id. No.: 047181991)
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
(973) 242-3118
Attorney for Plaintiff
Frank Marchione

FRANK MARCHIONE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MERCER COUNTY
	:	
Petitioner	:	
V.	:	CIVIL ACTION
	:	
THE BOROUGH OF HIGHTSTOWN and	:	DOCKET NO.: MER-L-_____ -15
THE BOROUGH OF HIGHTSTOWN	:	
POLICE DEPARTMENT,	:	
	:	VERIFIED COMPLAINT
	:	
Defendant	:	
	:	
	:	

Plaintiff Frank Marchione ("Marchione") who brings this matter pursuant to N.J.S.A. 40A:14-155 as means of obtaining reimbursement of his legal expenses in defense of disciplinary charges which were dismissed and finally determined in the favor of the Plaintiff. These charges emanated from his employer The Borough of Hightstown and The Borough of Hightstown Police Department, located in the County of Mercer, State of New Jersey, wherein Marchione alleges and says as follows:

JURISDICTION

1. Jurisdiction is properly laid in this Court in that the Borough is subject to personal jurisdiction in the State of New Jersey, the events giving rise to the Complaint occurred within the County of Mercer, and The Borough of Hightstown Police Department is a political sub-division and/or public entity and an employer located in the County of Mercer.
2. Plaintiff brings this action under N.J.S.A. 40A:14-155 for the reimbursement of the expenses of his defense of disciplinary charges which were dismissed and finally determined in the favor of the Plaintiff.

STATEMENT OF FACTS

3. Marchione is employed as a Police Officer by the Defendants.
4. On or around June 14, 2013, Marchione's affair with a Melissa J. Vybrial ("Vybrial"), approximately seven (7) to ten (10) years ago, came to the attention of Hightstown Fire Chief Scott Jenkins ("Chief Jenkins"), a friend of Marchione.
5. On or around June 20, 2013, Chief Jenkins reported to Hightstown Borough Police Director James LeTellier that Marchione engaged in sexual activity while on duty with Vybiral.
6. Thereafter, Vybrial and Chief Jenkins reported to Defendants and the Mercer County Prosecutor's Office that on at least two separate occasions Marchione had engaged in sexual acts with

- Vybrial while on duty in his department vehicle. The Mercer County Prosecutor's Office declined any criminal prosecution.
7. On or about March 9, 2015, Marchione was administratively charged with conduct unbecoming a police officer and violating Department Rules and Regulations for engaging in sexual acts while on duty in violation of N.J.S.A. 40A:14-147, and Rule and Regulation 4.6.3. He was also charged with the use of department vehicles for engaging in sexual acts in his marked patrol vehicle in violation of Rule and Regulation 4.8.9 and failing to be truthful during an investigation related to the sexual acts while on duty in violation of Rule and Regulation 4.12.6. Attached hereto as **Exhibit A** is a true and accurate copy of Charges 1-4 dated March 9, 2015.
 8. Thereafter, Plaintiff retained Sciarra & Catrambone, LLC to represent him with regard to these disciplinary charges.
 9. On or around June 18, 2015 and August 27, 2015, a Departmental Hearing took place before Hearing Officer Ira E. Kreizman, J.S.C. (Ret.) with regard to the four (4) disciplinary charges. Attached hereto as **Exhibit B** is a true and accurate copy of the transcript of the disciplinary hearing dated August 27, 2015.
 10. The Defendants presented the testimony of Melissa J. Vybrial, David McGuinness Special State Investigator/Acting Lieutenant of Detectives, and Lieutenant Frank Gendron of Internal Affairs of Defendant Borough of Hightstown Police Department.

charges filed against Marchione pursuant to N.J.S.A. 40A:14-155. Attached hereto as **Exhibit D**, is a true and accurate copy of the correspondence to Defendants dated October 7, 2015 and an Invoice dated October 6, 2015.

16. In Plaintiff's correspondence it was directly conveyed that Defendants were statutorily responsible for Plaintiff's defense. See Exhibit D.

17. Defendants have denied responsibility for Plaintiff's defense costs related to the March 9, 2015 charges. Attached hereto as **Exhibit E**, is a true and accurate copy of the correspondence from Defendants dated October 29, 2015.

18. To date Defendants have failed to reimburse Plaintiff for his defense costs of the March 9, 2015 disciplinary charges.

19. Marchione is entitled to reimbursement for the expense of his defense of the criminal charges for which were dismissed pursuant to N.J.S.A. 40A:14-155 as follows:

Whenever a member or officer of a municipal police department or force is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of his official duties, the governing body of the municipality shall provide said member or officer with necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the municipality or in a criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

20. Plaintiff made every effort to resolve this matter through written exchanges with Defendants. Defendants have rejected

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their statutory responsibilities to pay for Plaintiff's criminal defense legal fees and costs.

21. Plaintiff is seeking an award of fees for Plaintiff's defense of the disciplinary charges which filed against Plaintiff on or about March 9, 2015.
22. Plaintiff is also seeking an award of attorneys' fees for the drafting of the Order to Show Cause, the Verified Complaint and the Certification of Christopher A. Gary, Esq., with attachments, in support of this Complaint.

COUNT ONE
(N.J.S.A. 40A:14-155)

**MARCHIONE SHOULD BE REIMBURSED FOR THE EXPENSE OF HIS DEFENSE OF
THE DISCIPLINARY CHARGES FILED ON MARCH 9, 2015 PURSUANT TO
N.J.S.A. 40A:14-155.**

23. Marchione reasserts and realleges each and every previous paragraph as if fully set forth and reiterated herein.
24. N.J.S.A. 40A14-155 provides that if a officer is a "disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense."
25. Marchione had to engage in a full defense of the disciplinary charges filed against him as supported by the Certification of Christopher A. Gray, Esq. filed herewith.
26. The March 9, 2015 disciplinary charges were dismissed by the

- Hearing Officer as Defendants failed to prove by a preponderance of the evidence the charges against Plaintiff.
27. The Hearing Officer found absolutely no credibility in the testimony of Vybrial who was identified as the only witness to any of the actions assessed against Plaintiff by Defendants.
 28. The Hearing Officer's factual findings and recommendations were adopted by The Hightstown Borough Council by Resolution 2015-254, thus establishing a final determination in favor of Marchione.
 29. Following the favorable determination of the disciplinary charges against Plaintiff, a demand for payment reimbursement of the defense costs, including but not limited to the reasonable legal fees, commensurate with Mr. Gray's expertise and years of practice, was made to The Borough of Hightstown.
 30. Marchione seeks herein an Order from the Court for the reimbursement of his expenses for his defense of the disciplinary charges dated March 9, 2015.

WHEREFORE, Frank Marchione demands judgement against the Borough of Hightstown and the Borough of Hightstown Police Department as follows:

- a. For an Order of the Court, pursuant to N.J.S.A. 40A:14-155 for the defense costs of Marchione, including but not limited to the counsel fees to Sciarra & Catrambone, LLC

as detailed in the Certification of Christopher A. Gray, Esq. filed herewith.

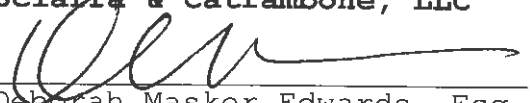
- c. Payment of counsel fees and costs for the filing of the instant Order to Show Cause, Verified Complaint and papers in support thereof.
- d. For such other, further, additional and different relief as this Court deems just and proper.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised the **Christopher A. Gray, Esq.** is hereby designated as trial counsel.

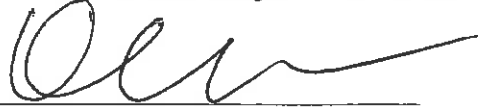
Respectfully submitted,
Sciarra & Catrambone, LLC

By:


Deborah Masker Edwards, Esq.

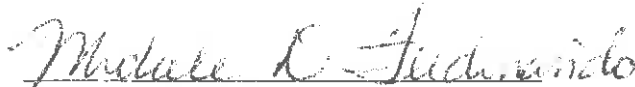
Dated: December 9, 2015

I verify that those allegations are true and accurate to the best of my knowledge, information and belief.



Deborah Masker Edwards, Esq.

Subscribed and sworn to before me on this 9th day of December, 2015.



Notary Public

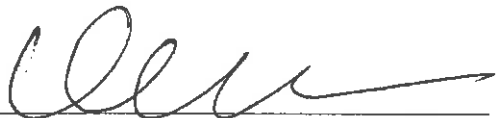
MICHELE D. FERDINANDO
ID # 2347498
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 7/25/2016

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned, of full age, hereby certifies as follows:

1. The matter in controversy is not the subject of any other pending court action or arbitration, other than those proceedings outlined herein.
2. No other court action or arbitration proceeding is contemplated at this time.
3. There are no other parties to be joined in this action at the present time.

By:


Deborah Masker Edwards, Esq.

Dated: December 9, 2015

Exhibit A

FROM:	Borough of Hightstown		Police Department	
	DIVISION, INSTITUTION OR AGENCY		ADDRESS	DATE
			415A Mercer Street, Hightstown, NJ 08520	March 9, 2015
TO:	NAME OF EMPLOYEE		TITLE	
	Frank Marchione		Patrolman	
	STREET		CITY AND STATE	
	57 Eddington Lane		Monroe, NJ 08831	

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

CHARGE(S):

Charge #1: Officer Marchione committed an act of Conduct unbecoming a police officer, by engaging in sexual act with Melissa Vybiral while he was on-duty as a police officer with the Hightstown Police Department in violation of N.J.S.A. 40A:14-147.

Charge #2: Officer Marchione violated department Rules and Regulations, by engaging in activities which are not directly related to the performance of their duties, specifically by engaging in sexual acts with Ms. Vybiral while he was on-duty in violation of 4.6.3 – Prohibited Activity on Duty

X If checked, charges are continued on attached page

SPECIFICATION(S):

Officer Marchione engaged in sexual activity with Melissa Vybiral on two occasions in 2005, while on-duty as a police officer with the Hightstown Police Department. On one occasion Officer Marchione met with Ms. Vybiral in the Cedar Hill cemetery, which is located on Mercer Street in Hightstown. During this meeting Officer Marchione, who was on-duty, in uniform and operating a marked Hightstown Police department vehicle engaged in vaginal intercourse with Ms. Vybiral.

On another occasion Officer Marchione called Ms. Vybiral at her place of employment and asked her to meet up with him. Officer Marchione picked up Ms. Vybiral at place of employment (Dept. of Human Services, 222 S. Warren Street in Trenton).

X If checked, specifications are continued on attached page

X You are hereby suspended effective **August 22, 2013**

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

YOU ARE HEREBY NOTIFIED that based upon the nature of the foregoing charges, you are terminated from the Borough's employment.

Should you wish to be heard on these charges, a hearing will be held at Parker, McCay 9000 Midlantic Drive, Mt. Laurel, NJ 08054 at a mutually convenient date within thirty (30) days of today's date. Please advise the Borough Clerk in writing (156 Bank St, Hightstown, NJ 08520) within five (5) calendar days from service of the charged, whether you wish to proceed with a hearing, and your and your attorney's, if any, availability.

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

☐ Suspension for _____ days, beginning _____ and ending _____

☐ Indefinite suspension pending criminal charges effective (date) _____

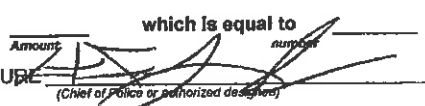
X Removal, effective (date) **August 22, 2013**

☐ 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 
(Chief of Police or authorized designee)

TITLE **H/OCT C.**

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

Method of Service (Check One)		NAME AND TITLE OF SERVER	DATE SERVED
☐	PERSONAL SERVICE →		
X	CERTIFIED OR REGISTERED MAIL →	Give date of receipt by employee or agent as shown On return receipt postal card and the receipt number:	

FROM:	Borough of Hightstown		Police Department	
	DIVISION, INSTITUTION OR AGENCY		ADDRESS	DATE
			415A Mercer Street, Hightstown, NJ08520	March 9, 2015
TO:	NAME OF EMPLOYEE		TITLE	
	Frank Marchione		Patrolman	
	STREET		CITY AND STATE	
	57 Eddington Lane		Monroe, NJ 08831	

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

CHARGE(S):

Charge # 3: Officer Marchione violated department Rules and Regulations, using a departmental vehicle for personal business or pleasure, specifically by using a marked patrol vehicle to pick up Ms. Vybiral at her place of employment and drive her to a location so she could perform fellatio on him in violation of 4.8.9 - Use of Department Vehicles.

Charge # 4: Officer Marchione violated department Rules and Regulations, by failing to be truthful with investigators during the Internal Affairs investigation that was conducted into him engaging in sexual activities with Ms. Vybiral while he was on-duty in violation of 4.12.6 - Truthfulness

SPECIFICATION(S):

Officer Marchione who was on-duty and operating a marked Hightstown Police department vehicle, then drove Ms. Vybiral a parking lot behind the Communication Workers of America building located at 321 W. State Street in Trenton, where Ms. Vybiral performed fellatio on Officer Marchione. After the act, Officer Marchione drove Ms. Vybiral back to her place of employment. During the internal affairs investigation, Officer Marchione denied having sexual relations with Ms. Vybiral while in uniform, in, on or around a police vehicle and during working hours. Ms. Vybiral confirmed that she had sexual relations with Officer Marchione while he was in uniform, while he was utilizing a marked police car and while on duty.

☐ If checked, charges are continued on attached page

☐ If checked, specifications are continued on attached page

X You are hereby suspended effective August 22, 2013
(Check box and indicate if employee is suspended pending final disposition of the matter.)

YOU ARE HEREBY NOTIFIED that based upon the nature of the foregoing charges, you are terminated from the Borough's employment.

Should you wish to be heard on these charges, a hearing will be held at Parker, McCay 9000 Midlantic Drive, Mt. Laurel, NJ 08054 at a mutually convenient date within thirty (30) days of today's date. Please advise the Borough Clerk in writing (156 Bank St, Hightstown, NJ 08520) within five (5) calendar days from service of the charged, whether you wish to proceed with a hearing, and your and your attorney's, if any, availability.

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

☐ Suspension for _____ days, beginning _____ and ending _____

☐ Indefinite suspension pending criminal charges effective (date) _____

X Removal, effective (date) August 22, 2013

☐ 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 _____

(Chief of Police or authorized designee)

TITLE LT/OIC

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

Method of Service (Check One)		NAME AND TITLE OF SERVER	DATE SERVED
☐ PERSONAL SERVICE	→		
X CERTIFIED OR REGISTERED MAIL	→	Give date of receipt by employee or agent as shown On return receipt postal card and the receipt number:	

Exhibit B

HEARD BY:
JUROR: JUDGE [illegible]
AND:
FRANK [illegible]

CHARGES:
August 17, 2015

Hearing taken before Judge Pineson,
Certified Court Reporter and Notary Public, of the State
of New Jersey, at the Hightstown Historical Society,
114 North Main Street, Hightstown, New Jersey,
commencing at 10:00 a.m.

DEGNAN & BATEMAN, INC.

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COPY

DEGNAN & BATEMAN, INC.

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APPEARANCES:

IRA E. KREIZMAN, J.S.C.(Ret.),
802 West Park Avenue
Suite 222
Ocean, New Jersey 07712-8526
(732) 780-5590
Hearing Officer.

PARKER MCCAY, P.A., ESQS.,
BY: ELIZABETH M. GARCIA, ESQ.,
9000 Midlantic Drive
Suite 300
Mount Laurel, New Jersey 08054-1539
(856) 596-8900
For the Borough of Hightstown.

SCIARRA & CATRAMBONE, L.L.C., ESQS.,
BY: CHRISTOPHER A. GRAY, ESQ.,
100 Horizon Center Boulevard
Hamilton, New Jersey 08691
(856) 888-7066
For Frank Marchione.

ALSO PRESENT:
Frank Gendron.

DEGNAN & BATEMAN, INC.

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EXHIBITS

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1 HEARING OFFICER: We're back in the
2 matter of Borough of Hightstown and Frank Marchione.
3 Mr. Marchione's not here.

4 MR. GRAY: He is not here. He is taking
5 care of his father.

6 HEARING OFFICER: Not coming?

7 MR. GRAY: No.

8 HEARING OFFICER: Okay. This is the
9 second set of charges, and this is a continuing
10 matter. We adjourned the last time to hear from some
11 other witnesses. And I think we're prepared to
12 proceed.

13 Would you enter your appearances, please?

14 MS. GARCIA: Elizabeth Garcia on behalf
15 of the Borough of Hightstown.

16 MR. GRAY: Good morning. Christopher
17 Gray of Sclarra & Catrambone on behalf of Frank
18 Marchione.

19 HEARING OFFICER: Someone has a witness
20 to call?

21 MS. GARCIA: Yes. Dave McGuinness.

22 HEARING OFFICER: Would you please stand?

23 THE WITNESS: Yes, Your Honor.

24 HEARING OFFICER: Raise your right hand.

25 Do you swear the testimony you're about to give in
DEGNAN & BATEMAN, INC.

6

1 this matter will be the truth, the whole truth, and
2 nothing but the truth?

3 THE WITNESS: I do.

4 HEARING OFFICER: Have a seat, please.
5 Would you state your name and then spell your last
6 name?

7 THE WITNESS: My name is David McGuinness,
8 M-C-G-U-I-N-N-E-S.

9 HEARING OFFICER: Thank you.

10 You may proceed.

11 BY MS. GARCIA:

12 Q Mr. McGuinness, what's your occupation?

13 A I am employed by the Mercer County
14 Prosecutor's Office. My title is -- was Lieutenant.
15 Recently been amended, since we have an acting
16 prosecutor, to Special State Investigator/Acting
17 Lieutenant of Detectives.

18 Q Okay. And what do you currently do in
19 that position?

20 A I'm the administrative lieutenant. Among
21 those responsibilities include Internal Affairs,
22 overseeing of the trial unit, property and evidence,
23 and various other smaller units within the office.

24 Q And how long have you been at the
25 Prosecutor's Office?

DEGNAN & BATEMAN, INC.

B

1 A Twenty-four years.

2 Q What other positions have you held with
3 the Prosecutor's Office?

4 A I spent approximately five and a half
5 years in the child abuse and sexual assault unit.

6 Before being transferred to the homicide

7 unit I spent seven years, and then after that I was
8 promoted to sergeant.

9 I spent the next, I believe, seven or
10 eight years working various units, including the grand
11 jury unit, the trial unit, child abuse and sexual
12 assault. Supervised that for about three years, then
13 I was promoted to lieutenant.

14 Q Now, did you conduct an Internal Affairs
15 investigation of this matter?

16 A I did.

17 Q And the matter that we're talking about
18 is involving Officer Frank Marchione, correct?

19 A Yes.

20 Q Did you have any training on conducting
21 Internal Affairs investigations?

22 A Yes.

23 Q Can you tell us about that training?

24 A I forget the year, but it may have been
25 in 2006 or 2008 I went to a three-day Internal Affairs
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1 training course. I also been to a training course in
2 January of this year that was sponsored with regard to
3 conducting Internal Affairs.

4 There have been various updates
5 throughout the years I've attended. I'm involved in
6 Internal Affairs. Has probably this year -- in 2006.
7 It didn't become my full-time assignment until January
8 of 2014.

9 Q 2014?

10 A 2014.

11 Q And how many Internal Affairs
12 investigations have you done, roughly?

13 A 200.

14 Q Do those involve prosecutors or other
15 agency investigations as well?

16 A Both Internal -- Internal Affairs
17 investigations involving members of our -- our -- of
18 our own department. Most of the Internal Affairs
19 investigations, just because of sheer numbers, involve
20 law enforcement officers from outside agencies. And
21 those investigations -- that number does not mean
22 start to finish. It may just be the initial review
23 for criminal conduct.

24 And once the determination's been made
25 that we're going to sign off on it, the criminal

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9 1 charges, then it gets transferred back to the 2 municipality. 3 Q What was your role in this investigation? 4 A My role in this investigation was the 5 Internal Affairs investigator. I acted in the 6 capacity of someone within the Hightstown Police 7 Department, because of the conflict that existed. 8 The conflict existed because of 9 Lieutenant Gendron was a witness in this matter, and 10 he had information with regard to this, so he couldn't 11 do the investigation himself. That determination was 12 made by Deputy First Assistant Prosecutor Doris 13 Galuchie. 14 Q And did you do the investigation from 15 start to finish in this matter? 16 A I would say mostly. There was some 17 interviews or interviews -- two interviews that were 18 done prior to this being assigned to me. 19 Q And did you consider those interviews in 20 your investigation? 21 A Yes. 22 Q Okay. Tell us what you learned during 23 your investigation and where -- let me back up. 24 When you did your investigation, what 25 issues were you looking at? DEGNAN & BATEMAN, INC.	11 1 office. 2 Also present for that was Deputy First 3 Assistant Prosecutor Doris Galuchie. During that 4 interview -- 5 HEARING OFFICER: Talking about 6 interviewing Scott Jenkins? 7 THE WITNESS: During Lieutenant Gendron's 8 interview. 9 HEARING OFFICER: With Scott Jenkins? 10 THE WITNESS: Yes. With Melissa Vybral. 11 HEARING OFFICER: Okay. 12 THE WITNESS: He had summarized the 13 investigation that the officer engaged in sexual 14 relations with Melissa Vybral while on duty. 15 BY MS. GARCIA: 16 Q And what did you do after that? You said 17 that -- who did you interview? 18 A I interviewed Frank Marchione, Officer 19 Marchione, and he acknowledged having a relationship 20 with Melissa Vybral. He denied having a relationship 21 with her while on duty. 22 He stated that his relationship with her 23 lasted anywhere between three to six weeks, and that 24 he recalled three acts of sexual -- sexual activity 25 with her, although he couldn't give me a specific DEGNAN & BATEMAN, INC.
10 1 A Initially it was two issues: Whether 2 Officer Marchione used office -- department equipment 3 to engage in gambling, and the other issue was whether 4 or not he had a sexual relationship while on duty with 5 Melissa Vybral. 6 Q Okay. And just to speed this up, you 7 only found that there was some possible evidence of 8 one of those; is that right? 9 A Yes. 10 Q Okay. So we're here strictly today to 11 talk about that one that you did have a finding on, 12 okay? 13 A Okay. 14 Q So I don't -- 15 MS. GARCIA: Off the record for a second. 16 (Off-the-record discussion was held.) 17 BY MS. GARCIA: 18 Q So tell us what you found during your 19 investigation. 20 A During my investigation I interviewed 21 Officer Marchione, I interviewed Melissa Vybral, I 22 reviewed Lieutenant Gendron's report. He had 23 summarized his findings during the course of the 24 interview with Scott Jenkins and Melissa Vybral that 25 took place at our -- my office, the prosecutor's DEGNAN & BATEMAN, INC.	12 1 number of how many times they had sex. 2 Q And what did he recall? 3 A He recalled having sex. The first 4 incident he mentioned, he said that Melissa had 5 contacted him by way of telephone, and that she asked 6 to meet him. Officer Marchione suggested they meet at 7 the cemetery in town. I believe it's called Cedar 8 Hill, and they met at night and had sex. 9 He denied being on duty. He stated he 10 was familiar with the cemetery because he had used it 11 as a law enforcement officer for other law enforcement 12 purposes, and knew it to be a quiet place, a place 13 that people were afraid to enter at night. 14 He said they had sex at Melissa's 15 sister's house in Ewing, and on another occasion at 16 Melissa's mother's residence. 17 Q Did you ask him whether or not he was on 18 duty in any of those instances? 19 A Yes, I did. 20 Q And what was his response? 21 A He denied that. 22 Q And what else did you learn from your 23 interview with Officer Marchione? If it's helpful for 24 you, we can mark your report and you can refer to 25 that, if that helps. DEGNAN & BATEMAN, INC.

1 A Okay.

2 (Mercer County Prosecutor's Office

3 Investigation Report was marked as McGuinness-1

4 for identification by the court reporter.)

5 BY MS. GARCIA:

6 Q I just marked a document as McGuinness-1.

7 Can you take a look at that and tell us what that is?

8 A Yes.

9 Q What is it?

10 A This is the 14-page report I prepared at

11 the conclusion of my investigation.

12 Q And it's a true and accurate copy?

13 A Yes, it is.

14 Q Is that your signature on the bottom?

15 A Yes, it is.

16 Q So will this document assist you in

17 recalling what you discussed with Officer Marchione

18 and what you learned?

19 A Yes.

20 Q Okay. Can you tell us what else you

21 learned with your interview with Officer Marchione?

22 A Yes.

23 Officer Marchione went into great detail

24 describing the confrontation that he experienced in

25 June of 2013 with Scott Jenkins upon Scott Jenkins

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1 learning of a relationship.

2 Prior to that confrontation, Scott

3 Jenkins was unaware that Melissa Vybiral and Officer

4 Marchione had engaged in a relationship.

5 Marchione described Scott Jenkins as

6 being enraged, hostile, aggressive, and waiting to

7 fight him at the police department while Officer

8 Marchione was on duty and in the company of other

9 officers in the area.

10 Marchione -- Officer Marchione indicated

11 he told Scott Jenkins he wouldn't fight him, and that

12 he had had -- it had been difficult for him to look at

13 him, and he felt bad about it, but he refused to fight

14 him.

15 Officer Marchione suggested that Scott

16 Jenkins had put Melissa up to this to make the

17 allegation that he was having sex with Melissa while

18 on duty.

19 I think at one point during the interview

20 Officer Marchione described Melissa Vybiral as being

21 abused by Scott Jenkins, and almost as if she was a

22 battered woman, and that she would do whatever he told

23 her to do.

24 Q And do you -- what did you take that --

25 what did you do next?

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1 Well, let me rephrase this. Did you

2 believe what Mr. Marchione said, based on your

3 investigation?

4 A At this point it was clearly

5 contradictory to what was already expressed by Melissa

6 Vybiral to Lieutenant Gendron at that first meeting.

7 After that I interviewed Melissa Vybiral.

8 Q And what did you learn?

9 A I contacted Melissa Vybiral, explaining

10 what I was doing. That I was acting as the Internal

11 Affairs officer for Hightstown due to a conflict, and

12 I was assigned to conduct this investigation.

13 I asked her to meet with me. I knew she

14 expressed some reluctance early on, stating it was a

15 private matter, it was embarrassing. She did not wish

16 to discuss it further.

17 I asked her if she would take the time to

18 meet with me. She agreed, and she came to the office,

19 and I conducted a recorded interview with her, both

20 audio and video recorded.

21 Q And what did you learn during that

22 interview?

23 MR. GRAY: Just going to object to

24 testifying to what Vybiral told him as hearsay. She

25 already came here and testified,

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1 MS. GARCIA: The reason I want to get

2 that information out is because the investigator here

3 is going to -- is going to indicate where he believed

4 that there were holes in his investigation. Why he

5 concluded there was enough evidence to move forward

6 with the charge, with the finding that there was sex

7 on duty.

8 HEARING OFFICER: The request for

9 information from Melissa that the municipality's

10 attorney, which is to get into evidence, that is

11 really not hearsay. It's not given for the truth of

12 the matter; it's given for his -- his ultimate

13 decision as to what he was going to do, so I'll permit

14 it.

15 MS. GARCIA: Thank you.

16 THE WITNESS: During the course of the

17 interview Melissa Vybiral stated that the disclosure

18 of the information of her relationship with Officer

19 Marchione to Scott Jenkins, her then boyfriend, was

20 prompted during a session between the two of them,

21 Jenkins and Vybiral, where they were trying to

22 reconcile. They had had a on-again-off-again type of

23 relationship, and she indicated that it was time to

24 shit or get off the pot kind of thing.

25 And so she had said to him, you know, we

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1 want to move forward, we have to clear the air. They
2 both agreed. I guess, unfortunately for her, she went
3 first, and she had expressed having the relationship
4 with Officer Marchione, which was a sensitive subject
5 because of Officer Jenkins' relationship with Officer
6 Marchione. As Officer Jenkins -- Scott Jenkins
7 described, they were best friends.

8 So Scott Jenkins had been offended and
9 hurt, then left to confront Officer Marchione at work.

10 Q What else did you learn from your
11 interview with Melissa Vybiral?

12 A Ms. Vybiral stated that Officer Marchione
13 contacted her by way of her office cell phone. I
14 believe it was a Blackberry that she had at one point
15 while she was working for the Department of Human
16 Services. She said -- I asked her how she got -- how
17 Officer Marchione was able to obtain her number, and
18 she stated she believed that he obtained it from
19 Scott's -- I'm sorry. Yes. With -- from Scott's
20 phone.

21 She said one night Officer Marchione
22 contacted her while she was at the shore, the Jersey
23 Shore. Apparently they have a house, I think she
24 said, in Surf City. And she said that Officer
25 Marchione was asking about her. He hadn't seen her

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1 for a while, since Scott Jenkins and she were in a
2 period of break-up.

3 And -- and then she said that Officer
4 Marchione told her she deserved better and that she
5 wasn't being treated as she should, and asked if she
6 wanted to meet with him later that night. He
7 suggested the cemetery, and she agreed, wanting to
8 obtain more information about their relationship; that
9 being her relationship with Scott Jenkins.

10 Q And what else did you learn?

11 A She said that she met him in the Cedar
12 Hill Cemetery. And that when I asked her how she
13 found him, being unfamiliar with the cemetery, she
14 said, basically, she drove until she saw him in
15 uniform in his marked vehicle.

16 Q And what else did you learn?

17 A She said that they spoke for a while, and
18 that ultimately they ended up having vaginal
19 intercourse in the cemetery, and that upon completion
20 of the act, she left.

21 Q And what else did she tell you?

22 A She -- not at that point, but during the
23 course of that exchange -- conversation between the
24 two parties, she told me that, as I was trying to
25 determine when this relationship occurred, she was

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1 unable to pinpoint it at that point.

2 Moving forward for just a second, after
3 ending the interview she called me and said she was
4 thinking about it some more, and she recalled the
5 conversation that she had with Officer Marchione while
6 in the cemetery prior to having sexual relations.

7 I asked her to come back to the office.

8 She did. I asked her, you know, when and how she was
9 able to determine the time. She said that while they
10 were talking, Officer Marchione said to her that his
11 wife, whose first name is Bree, was pregnant.

12 Q Was she his wife at that time?

13 A She was not his wife at that time.

14 And then she said that Officer Marchione
15 told her he felt trapped, but he was going to do the
16 right thing and marry her.

17 So based on the age -- the birth of her
18 son, which is in November, I believe, of 2005, that
19 put the relationship in 2005.

20 Q Okay. What else did you learn from your
21 interview with Ms. Vybiral?

22 A She said the next time that they met was
23 probably a few days later. She said she was working
24 -- she works on -- works in Trenton on South Warren
25 Street. Sorry.

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1 Officer Marchione contacted her and said
2 he was -- at this point she said he was on the way
3 home from the range. He had been at the range. His
4 firing range that Hightstown Police Department uses is
5 the range that belongs to the Mercer County
6 Prosecutor's Office. The range is located next to the
7 correctional facility in Lambertville on Route 29,
8 which she -- he would pass, most likely, if he
9 traveled to that if he went by way of 29.

10 There are other ways to get there, but
11 that would be one way to get there, and he would pass
12 -- basically, pass her office.

13 She asked if -- he asked if she had time
14 to meet him. She said while on her break. He went
15 out and picked her up. He was in the marked unit
16 dressed as a police officer. I believe -- I believe
17 she said it was a different kind of uniform. Probably
18 uniform used just for the purpose of the training
19 range activity.

20 And he drove her to a parking lot off of
21 West State Street behind the CWA building. There's a
22 large lot back there, and they sat in the car for a
23 while. Then she said she performed fellatio on
24 Officer Marchione, and then he returned her to work.

25 Q And what else did she tell you about?

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1 A She said they had one other -- she
2 recalled one other sexual encounter, and that occurred
3 at her sister's house in Ewing. But she said that he
4 was not working at that time.

5 Q When she talked to you about the incident
6 where she was at work and she got picked up, did she
7 give you any detail about what he was wearing or what
8 he was driving?

9 A A marked -- a marked Hightstown police
10 vehicle.

11 Q Okay. After you spoke to -- or did you
12 learn anything else that you thought was relevant from
13 Ms. Vybiral?

14 A You know, the one thing I just would add
15 with regard to that encounter, initially when Melissa
16 Vybiral came to meet with Lieutenant Gendron and
17 Deputy First Assistant Prosecutor Galuchie, which is
18 G-A-L-U-C-H-I-E, she indicated that Officer Marchione
19 -- she and Scott Jenkins indicated that Officer
20 Marchione was on his way to the range. So there's a
21 discrepancy there about coming or going.

22 And at that time that was closer to the
23 event than when I had met with her, which is probably
24 another additional three-quarters of a year.

25 Q Now, what did you do after talking to
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1 Officer Marchione and Ms. Vybiral?

2 A I obtained copies of the range schedule
3 from Lieutenant Gendron. He had provided four
4 calendars that displayed the scheduling for Officer
5 Marchione. He indicated those dates on the calendars
6 by circling the dates.

7 There was a June date that was close in
8 time to her timing, which was July 4th. She said -- I
9 think when she came back from the meeting in the
10 cemetery that was July 4th weekend, but she wasn't
11 sure, but in close proximity. His training for June,
12 which I think was either June 13th or 15th, possibly
13 was a Monday.

14 Within a couple of weeks of July 4th
15 holiday --

16 Q Okay.

17 A -- coincides with the timing of how she
18 described the length of the relationship.

19 MS. GARCIA: Okay. Can we mark this as
20 McGuinness --

21 HEARING OFFICER: 2005?

22 THE WITNESS: Yes, sir.

23 (Calendar from March, June, September,
24 and November 2005 was marked as McGuinness-2 for
25 identification by the court reporter.)

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1 BY MS. GARCIA:

2 Q We just marked a document McGuinness
3 Number 2. Can you tell us what that is?

4 A It's a four-page document. On each
5 particular page is a month calendar. The year is
6 2005. The first calendar is from March of 2005, the
7 second is June of 2005, the third is September of
8 2005, and the last one is November of 2005.

9 At the top of the page there's a number
10 1102. Next to that is the last name, Marchione,
11 Frank.

12 This was the document that was provided
13 to me by Lieutenant Gendron at my request.

14 Q And this is the document that you were
15 testifying to?

16 A Yes, it is.

17 Q And how did you find out that he was at
18 the range in and around the time that you indicated in
19 your testimony?

20 A After determining the year, based upon
21 Officer Marchione's statement that his wife had become
22 -- or his -- his -- Bree had become pregnant, the year
23 was determined to be 2005.

24 Ms. Vybiral had stated she believed that
25 the sexual encounter in the cemetery occurred around
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1 the time of July 4th.

2 Looking at the calendar, you know, July
3 4th would be approximately, you know, two, three weeks
4 later. Within the same time frame.

5 Q And when you spoke to Officer Marchione,
6 did he give you his indication of how long he thought
7 the relationship had lasted?

8 A He did. He said it lasted a minimum of
9 three weeks to a maximum of six weeks.

10 Q And what else did you do in your
11 investigation? Did you obtain any other documents?
12 Did you talk to anybody else related to this one
13 specific issue of sex on duty?

14 A I interviewed Scott Jenkins.

15 Q And why did you interview Scott Jenkins?

16 A Just to be -- in the interest of being
17 thorough, to see what information he might have. I
18 was familiar with some text messaging that had been
19 supplied to us initially when the assignment was given
20 to us. I was also familiar with the information he
21 provided to Lieutenant Gendron and Deputy First
22 Assistant Prosecutor during that first initial
23 meeting, but I wanted to interview him myself to see
24 what if anything additional I could learn.

25 Q And what did you gather from that

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1 interview?

2 HEARING OFFICER: When was it?

3 THE WITNESS: Yes, Your Honor. The
4 interview took place on Wednesday, November 5, 2014,
5 and that interview occurred at my office.

6 BY MS. GARCIA:

7 Q And what information did you learn that
8 you thought was relevant?

9 A That this was still a very sensitive
10 matter for Scott Jenkins. He was highly upset. He
11 was emotional. He indicated he was concerned for his
12 safety, given that he works in Hightstown, the same
13 location that Officer Marchione works, and that given
14 that he was involved with the fire department -- I'm
15 not sure if he was the fire chief at that time -- he
16 knew their paths would cross, and he was concerned.
17 He indicated that his relationship with
18 Melissa Vybiral was over, and that he was involved
19 with another person and that they were expecting a
20 child in the near future.

21 He was very upset with Officer Marchione
22 who he described as like a brother. He, basically,
23 said he would do anything for Officer Marchione, and
24 that the two of them had been inseparable. And that
25 the level of emotional distress he was experiencing

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1 was, you know, extremely high.

2 He said that Scott Jenkins -- I'm sorry.
3 Officer Marchione misused confidential information
4 that they had exchanged as best friends, and used this
5 information to get in Ms. Vybiral's pants.

6 He -- he tried to provide a time frame.
7 He thought there's some conflicting time frames. He
8 wasn't sure what the time frame was. At one point he
9 said he thought it was when Officer Marchione was
10 married to his wife, and then later I think he had
11 said it was when she was pregnant.

12 Q What was?

13 A I'm sorry. Scott Jenkins. When I asked
14 Scott Jenkins about the timing of the relationship, he
15 initially said he thought --

16 MR. GRAY: Just going to object. He did
17 it when he was talking about what Melissa was saying.
18 Now he's doing when Jenkins told him.

19 HEARING OFFICER: I'll permit it, not for
20 the truth of the matter.

21 THE WITNESS: Scott Jenkins initially
22 said he thought Bree and Frank were married when the
23 relationship with Melissa started. Later he said he
24 thought -- he corrected himself and said, I think it
25 was when she was pregnant.

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1 BY MS. GARCIA:

2 Q Did you obtain any documentation from
3 him?

4 A I did later on, yes.

5 Q What did you obtain?

6 A I asked him if he had maintained the text
7 messages that he had received or he had exchanged. He
8 did most of the sending. And he said he had not
9 deleted them from his phone. So I asked him if he
10 would permit us to do an examination of his phone.

11 MS. GARCIA: I'd like to mark this as
12 McGuinness-3, please.

13 (Print-out of text messages was marked as
14 McGuinness-3 for identification by the court
15 reporter.)

16 BY MS. GARCIA:

17 Q I'm presenting you what's been marked as
18 McGuinness-3. Can you tell us what that is?

19 A This is a series of text messages that
20 were recovered during a forensic examination of Scott
21 Jenkins' telephone.

22 Q And are these true and accurate copies of
23 the documents that you reviewed in your investigation
24 from Mr. Jenkins' phone?

25 A Yes.

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1 Q And did you read through these text
2 messages?

3 A I did.

4 Q And what did you learn from reading
5 through these text messages?

6 A The first thing that sticks out is just
7 how upset Scott Jenkins was. Scott Jenkins authored
8 probably 95 percent of the text messages here. Just a
9 rough guess. Certainly the great majority were from
10 him to Officer Marchione.

11 Officer Marchione did exchange and return
12 some text messages indicating that he had trouble
13 facing Scott Jenkins after having the relationship
14 with Melissa.

15 Scott Jenkins made several -- initially
16 the gist of the text messages was Scott Jenkins
17 telling Officer Marchione to choose between his
18 relationship with Bree and his work, because Scott
19 Jenkins was going to inform either his wife or his
20 employer that he had sexual relations while on duty.

21 Q Did you find any of those texts to
22 include any specific information regarding the sexual
23 relationship between Ms. Vybiral and Officer
24 Marchione?

25 A Yes.

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1 Q Can you go through and tell us what you
2 found?

3 A Scott Jenkins texted Officer Marchione
4 that he --

5 HEARING OFFICER: Why don't you point it
6 out?

7 THE WITNESS: Yes.

8 HEARING OFFICER: Which one are you
9 referring to?

10 THE WITNESS: I have to read through it
11 to point it out to you, Your Honor.

12 HEARING OFFICER: Go ahead.

13 THE WITNESS: On the second page on the
14 far left corner there's a number 57. It corresponds.

15 HEARING OFFICER: I have it.

16 THE WITNESS: Okay. There is a reference
17 from Scott Jenkins to Officer Marchione to make a
18 choice. And he gives him a time frame that he has to
19 choose between the two.

20 My understanding this is in reference to
21 the conversation that they had earlier at the police
22 station about wanting to disclose this to either his
23 wife or his employer.

24 BY MS. GARCIA:

25 Q What I'm trying to gather is more of to
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1 the point of the actual relationship; if he discussed
2 any information contained in the text messages about
3 the relationship, specifically what happened between
4 Vybiral and Marchione.

5 So one example that I'm referring to
6 would be number 75.

7 A Yeah. Number 75 is a text message from
8 Scott Jenkins to Officer Marchione, and it reads as
9 follows.

10 HEARING OFFICER: I have it. You don't
11 have to read it.

12 THE WITNESS: Okay.

13 BY MS. GARCIA:

14 Q Are there any other instances, if you can
15 go through, that you looked at and thought were
16 pertinent for purposes of determining your conclusion?

17 A Item -- or text line 89 there's --
18 there's reference to Melissa Vybiral testifying about
19 what he did on duty.

20 MR. GRAY: Judge, same objection about
21 reading Scott's text messages.

22 MS. GARCIA: It goes back to what he
23 considered in his conclusion.

24 HEARING OFFICER: I agree. I'll permit
25 it.

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1 THE WITNESS: There's also reference,
2 line 117, of Officer Marchione going to Melissa
3 Vybiral's place of employment.

4 There's also reference in that same line
5 to Officer Marchione and Melissa Vybiral being at her
6 sister's house.

7 There's reference at line 152 in which
8 Scott Jenkins mentions his reframing from going to
9 Officer Marchione's job, indicating he didn't want to
10 punish Officer Marchione's family.

11 I think that's it.

12 BY MS. GARCIA:

13 Q Okay. And after you reviewed this, what
14 were your thoughts specifically pertinent to this
15 investigation?

16 HEARING OFFICER: I guess what your
17 conclusions; not his thoughts.

18 MS. GARCIA: Right. That's fine.

19 THE WITNESS: I suppose my take-away from
20 this was, while there's accusations being made -- the
21 acknowledgement of a relationship, accusations are
22 being made with regard to where and when the sexual
23 relations took place, there's not a denial. There's
24 no denial from Officer Marchione indicating he did not
25 have sex with Melissa Vybiral while on duty.

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1 BY MS. GARCIA:

2 Q And why did you believe that that was
3 pertinent to this investigation?

4 A Just, basically, due to the nature of
5 this matter and the significance if that was, in fact,
6 true, you know, the expectation would be that one
7 would deny that which did not happen.

8 Q And what else did you conclude after you
9 met with these individuals?

10 Or before I go there, did you review any
11 other documents that were relevant for purposes of the
12 conclusion on the sex on duty charge?

13 MR. GRAY: Can you mark his answer before
14 that? I want to be able to come back to it.

15 THE WITNESS: To answer your question,
16 have I reviewed any other documents after that? I
17 just want to point out that there were text messages
18 that were supplied prior to this, but they were in no
19 particular -- they were provided by Officer Marchione,
20 to my understanding, and they weren't in particular
21 order.

22 There's no way of verifying the order in
23 which they were in. But those were available to us,
24 and I mentioned earlier there was a police report
25 filed in Monroe, Officer Marchione's hometown, for the

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1 evening of the confrontation. And in it his son's,
2 Sal's, date of birth is in that, which was used later
3 to help determine the time frame.

4 HEARING OFFICER: What was that? What
5 was Sal's date of birth if you know offhand?

6 THE WITNESS: It's November of 2005. I
7 believe it's the 19th.

8 HEARING OFFICER: That's close enough.
9 November of 2005. Okay.

10 THE WITNESS: I can verify that. It's in
11 the report.

12 BY MS. GARCIA:

13 Q So then at one point you made a
14 conclusion relating to this information. What did you
15 conclude and how did you get there?

16 A The summary of my investigative findings
17 for sexual activity on duty, I found that it was
18 substantiated.

19 Q And what did you -- how did you get
20 there? Who did you credit? Who didn't you credit?
21 What did you consider in reaching that conclusion?

22 MR. GRAY: Just going to object to him --
23 I understand he said it was substantiated, but now
24 he's going to give you his credibility determinations
25 from his investigation.

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1 MS. GARCIA: Well, he's the one that
2 interviewed --

3 HEARING OFFICER: He made the complaint.

4 MS. GARCIA: He interviewed Officer
5 Marchione, so he knows whether or not he thinks he's
6 truthful or not, and he can tell us what his opinion
7 is.

8 HEARING OFFICER: I'll permit it and give
9 it whatever weight I think it deserves.

10 THE WITNESS: In finding -- in finding
11 that allegation to be sustained, and, again, having --
12 having the -- well, it's different, but it relates.

13 Having had approximately 10 years'
14 experience in sexual assault and child abuse units,
15 you know, the mere testimony from a particular person
16 is -- can be substantial enough to meet that burden in
17 a criminal court.

18 I found that her reporting, in my
19 opinion, met the burden for this particular matter.
20 There were a lot of similarities between Officer
21 Marchione and Melissa Vybiral. They both describe a
22 relationship that was consensual, that lasted between

35
1 think he said three to six weeks.

2 They both described three incidents of
3 sexual activity, although he says there could have
4 been more. He was unsure. On two of the instances
5 the locations match; that being the cemetery and the
6 other one being at her sister's house.

7 The timing of the relationship they both
8 agree upon, based on the description of the pregnancy,
9 which gives us the year.

10 Then the way and manner in which this
11 disclosure was made. While it -- you know, it had
12 been some years, obviously, had passed, this wasn't a
13 purposeful disclosure, a reporting to the police
14 department. It kind of came in almost sideways, if
15 you will. It was a -- disclosure of the relationship
16 was one thing. Where it took place and the timing and
17 being on duty was really another matter.

18 Had no significance at all to Melissa
19 Vybiral. It was significant to Scott Jenkins in that
20 he felt hurt and disrespected and taken advantage of.
21 Knowing that -- that Officer Marchione could be held
22 accountable for having that sort of activity while on
23 duty gave it greater weight for him than it did for
24 Melissa Vybiral.

25 She only disclosed this information when
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1 she and Scott Jenkins had agreed to try and wipe the
2 slate clean, clear the air, and move forward, as
3 indicated before. She went first. She disclosed the
4 relationship, and Scott Jenkins, who I hadn't met
5 with, is an emotional guy, and became very angry. He
6 left. He immediately left upon learning the
7 information.

8 He went directly to Officer Marchione,
9 who engaged in a number of telephone calls trying to
10 reach him. Eventually he couldn't reach him. He went
11 to the police department and said he needed to speak
12 to him now.

13 This being a smaller town, Scott Jenkins
14 is widely known. The information was relayed to
15 Officer Marchione. He came out, and the confrontation
16 ensued.

17 The timing between her disclosure and the
18 confrontation in which Officer Marchione -- I'm sorry.
19 Which Scott Jenkins makes those statements to Officer
20 Marchione is shorter. And the significance of that,
21 to me, is that the greater the period of time, the

1 So he got the information. He
2 immediately ran and confronted Officer Marchione about
3 it. That information didn't change.

4 The discrepancy -- I think the one main
5 discrepancy is just the timing of whether or not
6 Officer Marchione was going to or coming from the
7 range.

8 Scott Jenkins maintains that it was on
9 the way to the range. That's what he was told.
10 That's what he recalled.

11 Melissa Vybiral initially said it was on
12 the way to the range. And later, when I interviewed
13 her, she said it was on the return home. I don't
14 think she -- that that has that level of significance
15 to her that it might have to me as the investigator.

16 I also found Melissa Vybiral to be -- in
17 the interview to be direct in her responses, to be
18 forthcoming, and to be highly credible. I didn't give
19 that same credibility -- credibility to Officer
20 Marchione during his interview.

21 Q Why not?

22 A He wasn't as direct. His answers were
23 somewhat less responsive, and he wanted to direct all
24 -- he directed a great majority of his energy to the
25 confrontation and having to protect his family.

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1 And, again, some of that is just -- you
2 know, that's -- it's hard to put words. You find
3 someone credible -- more credible than another. But,
4 you know, talking about credibility raise -- you know,
5 for this particular matter, you know, I found her to
6 be credible.

7 Q That's all I have.

8 HEARING OFFICER: Mr. Gray is going to
9 ask you some questions.

10 BY MR. GRAY:

11 Q Where is it in your report that she was
12 on crack cocaine?

13 A It's not in my report.

14 Q Where is it during the interview of
15 Melissa Vybiral that you asked her about her crack
16 cocaine usage at the time?

17 A I didn't ask her about it.

18 Q Why not?

19 A I didn't see the relevancy.

20 Q Well, you got a report from Lieutenant
21 Gendron, who's at the first meeting with the First
22 Assistant Prosecutor, Scott Jenkins, and Melissa
23 Vybiral, correct?

24 A Yes.

25 Q And she specifically outlaid a few times,

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1 and it was mentioned by the lieutenant, that she was
2 on crack cocaine, so she was a little hazy about the
3 time line of things and what happened, correct?

4 A I don't know. I don't recall her
5 attributing her -- any haziness to crack cocaine. I
6 do recall some reference to the time frame that
7 transpired. I am aware of allegations that she had
8 used crack cocaine, but not as it relates to this
9 matter.

10 Q They weren't allegations. She admitted
11 herself that she used crack cocaine, correct?

12 A Not to me.

13 Q Well, did you ever talk to the Lieutenant
14 about what happened in that first conversation that he
15 documented about her revealing her crack cocaine
16 usage?

17 A I'm sure, when we initially met, we
18 discussed the entire investigation at that point.

19 Q And the first meeting Jenkins was there
20 and Vybiral were together, correct, that you weren't
21 at?

22 A Correct. Yes.

23 Q Now, also during that meeting part of the
24 -- oh, actually, do you have the report from
25 Lieutenant Gendron?

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1 A No, I don't, which I was going to ask you
2 for if you want me to refer to it, since I wasn't
3 there. I do not have a copy.

4 Q Unfortunately, I left my paper copy --
5 HEARING OFFICER: Somebody's got to have
6 it.

7 MS. GARCIA: I have my copy.

8 MR. GRAY: I have my scanned copy.

9 HEARING OFFICER: You want him to take a
10 look at Lieutenant Gendron's report?

11 MR. GRAY: Sure.

12 Mark this one Marchione-2.

13 (Hightstown Police Department Internal
14 Affairs Investigation Report was marked as M-2
15 for identification by the court reporter.)

16 MS. GARCIA: I just want to make an
17 objection to the use of crack cocaine. There's
18 nowhere in this report from Lieutenant Gendron that he
19 talks about specifically crack cocaine.

20 HEARING OFFICER: Well, we'll find out.
21 The Detective is going to review it.

22 MS. GARCIA: Okay.

23 BY MR. GRAY:

24 Q Take a look at that. Is that the
25 Lieutenant Gendron report?

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1 **A** **Yes.**

2 **Q** All right. If you look on the fourth

3 page --

4 **A** **Okay.**

5 **Q** -- second paragraph, all right, third

6 line from the bottom, "Ms. Vybiral again told us that

7 this relationship occurred while she was having a

8 problem with drugs."

9 See that?

10 **A** **I do.**

11 **Q** Now, did you ever ask her about her

12 problem with drugs during this time period?

13 **A** **No.**

14 **Q** So were you aware that when Ms. Vybiral

15 came in to testify here, she said it was crack

16 cocaine?

17 **A** **No, I'm not aware what she testified**

18 **about, you know, the type of drugs. Is that what**

19 **you're asking?**

20 **Q** I was asking if anyone ever told you that

21 she said that the drug use was crack cocaine at this

22 time period when this happened?

23 **A** **Scott Jenkins may have made reference to**

24 **it.**

25 **Q** Now --

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1 **A** **I don't recall if he said crack cocaine.**

2 **Q** Jenkins also relayed to you that there

3 was going to be messages or phone calls between Frank

4 Marchione's cell phone and Melissa Vybiral's work

5 phone, didn't he?

6 **A** **He told Lieutenant Gendron that.**

7 **Q** And didn't you actually get a

8 communications data warrant and get her cell phone

9 records from the State of New Jersey?

10 **A** **I did not. Any efforts to obtain those**

11 **work telephone records was made by Lieutenant Gendron.**

12 **That was done prior to the case being turned over to**

13 **my office, due to the conflict.**

14 **Q** Did you receive those records?

15 **A** **No. My understanding was they no longer**

16 **existed. It had been a substantial period of time,**

17 **and my understanding of telephone records is that they**

18 **don't last, you know, that long. It had been almost**

19 **-- by the time -- that would have been about eight**

20 **years, so --**

21 HEARING OFFICER: So to your knowledge an

22 application was made? The phone records didn't exist?

23 THE WITNESS: Yes, sir.

24 BY MR. GRAY:

25 **Q** Now, during the first interview that --

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1 now, you received this report at some point in time,

2 right?

3 **A** **Yes.**

4 **Q** Did you have this report when you

5 interviewed Melissa Vybiral?

6 **A** **I had this report in my possession, yes.**

7 **Q** Did you ask her why she told the first

8 assistant and the lieutenant that this relationship

9 occurred after Frank's son was born?

10 **A** **I'm sorry? I'm confused.**

11 **Q** Did you ask Melissa Vybiral during the

12 recorded interview why she told Lieutenant Gendron,

13 Doris Galuchie, that the relationship with Frank

14 Marchione happened after Sal was born?

15 **A** **No.**

16 **Q** Did you know that she said that?

17 **A** **I don't recall thinking of that while I**

18 **was in the interview. I asked her what her**

19 **recollection -- she had not been -- she had been**

20 **interviewed; nothing had been recorded. I wanted to**

21 **ask her what her recollection of the timing of the**

22 **relationship was.**

23 **Q** Because if you look in that same

24 paragraph, look up a couple more lines -- actually,

25 no. Page three, second paragraph, second sentence

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1 there, "Ms. Vybiral stated that her relationship with

2 Patrolman Marchione occurred during a time of -- in

3 her life when she was having trouble with drugs."

4 We were referring to page four, so this

5 is page three. This is now another reference.

6 Ms. Vybiral stated that she believed her

7 relationship with Marchione occurred approximately

8 seven years ago, but could not be sure. Ms. Vybiral

9 said that she was not sure if Patrolman Marchione was

10 married at the time.

11 However, she was confident that Patrolman

12 Marchione was with Bree, and that their first son,

13 Sal, had been born. Ms. Vybiral again stated that it

14 was during this time in her life when she was having

15 trouble with drugs.

16 So now there's three references in a

17 report that you had, prior to interviewing Ms.

18 Vybiral, that says that this was during a time period

19 she was on drugs. And you didn't ask her one question

20 about her drug use in your interview, did you?

21 **A** **I didn't ask her about her drug use. I**

22 **asked her about having sex with Officer Marchione and**

23 **the timing of that. And regardless of the timing,**

24 **she's wrong in this. The timing is confirmed by both**

25 **parties. The year is 2005. Officer Marchione**

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1 indicates he had a relationship with her. The
2 question is whether or not he was on duty or off duty.

3 Q Well, let's go back to that.

4 MR. GRAY: Do you have that question we
5 flagged and that answer? Can we go back to that? Can
6 you read back his answer?

7 (Above-mentioned answer was read back by
8 the court reporter as follows:

9 "ANSWER: Just, basically, due to the
10 nature of this matter and the significance if
11 that was, in fact, true, you know, the
12 expectation would be that one would deny that
13 which did not happen."

14 BY MR. GRAY:

15 Q Remember giving that answer?

16 A Oh, yes.

17 Q Do you remember testifying before that
18 that you interviewed Frank Marchlone, correct?

19 A Yes.

20 Q And he denied that he had sex with her on
21 duty?

22 A I'm sorry. I'll clarify that -- that for
23 you.

24 HEARING OFFICER: Just first answer his
25 question. Let him direct the examination.

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1 the time frame, correct?

2 A Yes.

3 Q And didn't she tell you that it was after
4 she spoke to Jenkins they figured out what the time
5 frame was?

6 A No. No. She left. I had asked her
7 about the timing, if she could attribute anything
8 significant to that particular time frame, we often
9 used in sexual child abuse cases. She said going down
10 the shore was a common occurrence for her because they
11 had a shore house.

12 So while it might be a big deal for me,
13 because I don't go down that often, but it wasn't for
14 her, because they were always there. She left shortly
15 after she contacted me and said, I do remember
16 something, and she made reference to the -- to Bree
17 being pregnant.

18 Q So she laid -- she was -- it was
19 confident after the son was born, then she -- when she
20 was interviewed with you, what did she tell you during
21 the interview about when the timing of it was?

22 A She didn't know. She called me back and
23 said later on that Officer Marchione said he felt
24 trapped now, but he was going to do the right thing
25 because Bree was pregnant.

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1 THE WITNESS: That answer relates to the
2 text messages, though. That would be the answer.

3 HEARING OFFICER: I understand what
4 you're saying. That wasn't in response to his
5 question.

6 Ask the question again.

7 BY MR. GRAY:

8 Q Frank Marchione denied that he had sex
9 with her on duty when you interviewed him, correct?

10 A When I interviewed him?

11 Q When he was squarely asked if he had sex
12 on duty with Melissa Vybiral, he told you no, I did
13 not have sex on duty?

14 A Yes.

15 Q Now, after Melissa Vybiral left you, she
16 called you back and said, oh, wait. I talked to Scott
17 and I realized that it was when she was pregnant.

18 MS. GARCIA: Objection to the form. He
19 never said -- he never testified that she spoke to
20 Jenkins.

21 HEARING OFFICER: Ask it again in a
22 different way.

23 BY MR. GRAY:

24 Q When Melissa called you back after the
25 recorded interview, she told you that she figured out

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1 Q And she told you it was when she was
2 coming home from July 4th after the fireworks, is that
3 what she told you, is when this first encounter had
4 happened?

5 A She believed it was around July 4th. She
6 also indicated it had been a long time ago, and it was
7 difficult to -- to say with a great degree of
8 certainty.

9 Q Now, Marchione admitted to you that he
10 did meet her in the cemetery and they did have sex
11 there, correct?

12 A Yes.

13 Q Then he admitted the two other instances
14 where he remembered that they met up and had sex?

15 A Once at her sister's and once at her
16 mother's.

17 Q Now, there were varying accounts as to
18 this range fellatio incident, correct, as to coming or
19 going to the range?

20 A The only difference -- discrepancy was
21 whether or not Officer Marchione was traveling to or
22 from.

23 Q Now, prior or around this time in
24 Hightstown do you know whether or not officers wore
25 uniforms to go to the range?

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1 A They probably -- I don't know. I don't
2 work here in Hightstown, but most likely what
3 typically happens is there's another uniform, not
4 their traditional uniform you wear on the street as
5 responding to calls for assistance. Usually a
6 training type of uniform.

7 Q Did you know whether or not Officer
8 Marchione was working with a -- a tactical unit in the
9 prosecutor's office around this time?

10 A I do not.

11 Getting back to your question for a
12 second, whether he was in the uniform or in jeans and
13 a T-shirt, she did indicate he was operating a vehicle
14 belonging to the Hightstown Police Department.

15 Q Now, if this incident had occurred and he
16 was not in uniform and not in a patrol car, we
17 wouldn't be here, correct?

18 MS. GARCIA: Objection.

19 HEARING OFFICER: I'll permit it. I'll
20 permit it.

21 THE WITNESS: If -- let me see if I have
22 your question correct. You're asking, would it be an
23 issue if Officer Marchione was not operating a
24 Hightstown Borough police car and not in uniform? He
25 has a shift. That shift is from -- on that particular

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1 day, if this is the day, on June 13th, his shift is
2 listed on the schedule as being 13:00. This copy is a
3 little difficult to read. Probably an eight-hour
4 shift. It's 13:00 to probably 21:00 hours.

5 BY MR. GRAY:

6 Q It looks like 13 to 21; I'll give you
7 that. From -- what did we call this? McGuinness --

8 HEARING OFFICER: Yes.

9 THE WITNESS: So --

10 BY MR. GRAY:

11 Q But this was in June. She said the
12 relationship started after the July 4th holiday.

13 MS. GARCIA: Objection. I don't believe
14 she ever said that.

15 MR. GRAY: He just testified that she
16 said it was after July 4th.

17 HEARING OFFICER: And I recall her
18 testimony. She said it was around July 4th. I'll
19 permit it.

20 THE WITNESS: Yeah. I think what she
21 said was around.

22 BY MR. GRAY:

23 Q This was three weeks before the July 4th
24 weekend, correct?

1 Q Because the next time after that didn't
2 occur until September --

3 A That's correct.

4 Q -- according to the calendar that you
5 have?

6 A Yes.

7 Q Now, you said you interviewed Scott
8 Jenkins because you wanted to be complete and
9 thorough, correct?

10 A Yes.

11 Q Why didn't you record his interview?

12 A I met with -- see how agreeable he would
13 be to meet with us. We brought him into a room. He
14 was very difficult to interview because he was so
15 emotional. And at some point we already started. He
16 discussed some things. And rather than stop then and
17 start and rehash the stuff that was already sensitive,
18 I did not record it.

19 Q But in all this training you received
20 about Internal Affairs and investigations and other
21 things, isn't the standard to actually conduct a
22 recorded interview? Either just audio recording or a
23 video recording like you did with the other witnesses
24 in the case?

25 A That was my practice for this particular
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1 case. In hindsight I probably should have recorded
2 it. I didn't want to relocate him to another --
3 another location where the recording equipment was
4 there. We already went through it once. It would
5 have been a rehearsal.

6 So I took notes, I documented it, I made
7 a report, filed his interview after that. So I'm
8 confident in what's in the report, but in hindsight I
9 probably should have recorded it.

10 Q And didn't -- at the end of Vybral's
11 interview did she give you the impression or was it
12 your understanding that -- that she still loves Scott
13 Jenkins and wanted to be with him?

14 A The impression I got was that, yeah,
15 there was disappointment there that the relationship
16 had ended, especially since this whole thing started
17 with her providing information to reconcile and fix,
18 foster, and renew the relationship.

19 In the end the only person who lost was
20 her by providing information. So providing
21 information for her was detrimental to her mental
22 health well-being because it ended the relationship
23 that, yeah, she was so fondly involved with.

24 Q Now, from the time of the confrontation,



1 confronted Frank, from that time forward Scott
2 threatened, saying, it's your family or your job. I
3 think you pointed out one of the text messages, make a
4 decision in two minutes, and he kept insisting that he
5 was going to go after one of them or both, correct?
6 **A Yes.**
7 **Q** And even in those text messages there was
8 reference that Frank supposedly did this after he was
9 married and after he had the kids, correct?
10 **A Scott Jenkins made reference to a**
11 **relationship, and the time was different than what I**
12 **determined the timing to be, yes. And some of that**
13 **confusion may be related to the nontraditional way in**
14 **which Bree and Officer Marchione had their child. She**
15 **became pregnant, she got married, and then she had a**
16 **child.**
17 **So that may -- it's possible that throws**
18 **off memories. Typically think of dating, marriage,**
19 **child down the road. So maybe that contributed to**
20 **some of the confusion; I don't know.**
21 **Q** Wouldn't drug use also --
22 HEARING OFFICER: Still back in the '50s.
23 BY MR. GRAY:
24 **Q** Wouldn't drug use also confuse time lines
25 or memories of things more than they had a baby before
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1 they got married?
2 **A Whose drug use?**
3 **Q** Vybiral's.
4 **A Well, you just asked about when they got**
5 **married. I'm not sure I understand your question.**
6 **Are you asking if drug use --**
7 HEARING OFFICER: He'll ask it again.
8 BY MR. GRAY:
9 **Q** Okay. How long have you been in law
10 enforcement?
11 **A Twenty-four.**
12 **Q** Ever work in a drug unit?
13 **A No.**
14 **Q** Were you ever taught the effects of what
15 drugs or cocaine can do to a person?
16 **A Yes.**
17 **Q** Are you aware that cocaine can affect
18 people's memories or recollection of incidents or
19 events?
20 MS. GARCIA: Objection.
21 Why are we talking about cocaine?
22 THE WITNESS: I don't --
23 HEARING OFFICER: I'll permit the
24 question.
25 THE WITNESS: I'm not a physician to say
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1 that an undefined amount of use over an undefined
2 period of time could contribute to, you know,
3 prolonged excessive year-after-year use.
4 **I would say yes, something below that.**
5 **I'm not in a position -- I don't think I'm qualified**
6 **to answer that question.**
7 BY MR. GRAY:
8 **Q** Well, it's undefined in this case because
9 you didn't ask any questions, did you? You didn't ask
10 her --
11 **A Ask her --**
12 **Q** -- about her drug use?
13 **A No, I didn't.**
14 **I work in law enforcement. There's a lot**
15 **of drug use in the people we deal with. That's not an**
16 **uncommon occasion or uncommon occurrence to interview**
17 **people.**
18 **She clearly was not under the influence**
19 **of anything when I spoke to her. And I have had**
20 **experience with people who have been under the**
21 **influence while interviewing. So she wasn't -- at**
22 **that time she was coherent. You know, she was**
23 **responsive. She was direct with her answers.**
24 **Q** And just to be clear, Scott Jenkins had
25 no direct knowledge of what actually had occurred
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1 other than what was relayed from Vybiral, correct?
2 **A That's my understanding.**
3 **Q** So he was interviewed as a witness for
4 what he may have heard from Vybiral, not as to what he
5 knew actually being there or observing any of it?
6 **A He was interviewed as a witness because I**
7 **wanted to see what he had to say about what took place**
8 **and what he knew about the information, how he learned**
9 **of it, what he did once he was there.**
10 **Officer Marchione had documented in a**
11 **report the confrontation that he had, and I guess --**
12 **and I asked about the confrontation as well. And**
13 **there were a number of things and number of reasons**
14 **why he was interviewed.**
15 **Q** And you -- actually, you testified about
16 Marchione's interview; that he was -- he was
17 concentrating and fixated on the actual confrontation
18 more than the sex on duty or the other allegations,
19 correct?
20 **A Yes.**
21 **Q** Is that the way you characterized it?
22 **A Yes.**
23 **Q** You were the first person to actually
24 talk to or interview Officer Marchione after that
25 confrontation had occurred, correct?
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57 1 A No. 2 Q You weren't the first person to interview 3 him? 4 A No. 5 Q Who interviewed him? 6 A I believe Lieutenant Gendron. Not in the 7 sense of a formal interview; as a part of the Internal 8 Affairs investigation. 9 But the facts or the events following up 10 that confrontation, and in the days to follow, 11 Lieutenant Gendron responded to Officer Marchione's 12 house to deal with some other issues. Which I don't 13 know if -- 14 Q Okay. After Officer Marchione went 15 through treatment and was released and went through 16 that first Plainfield Consulting fit for duty eval., 17 you were the only interview after that, correct? 18 A Yes. 19 Q The formal sit-down Internal Affairs 20 interview, correct? 21 A Yes. 22 Q So it was the first time he sat down in a 23 recorded manner and actually relayed what happened, 24 correct? 25 A Yeah. To a law enforcement officer for DEGNAN & BATEMAN, INC.	59 1 provided a different time frame for the relationship. 2 And then here he says he told me that Officer 3 Marchione was married to his current wife, Bree. And 4 later on he said it was when Bree was pregnant with 5 Sal. 6 Q So his time line changed the same way 7 that Melissa's time line kept changing? 8 A Scott Jenkins changed his answer. 9 Melissa provided, yeah, a different answer to me than 10 she provided to Lieutenant Gendron, based on 11 Lieutenant Gendron's report. 12 Q Let me see M-2 that you have there. 13 A (Witness complies.) 14 Q Now, also when you interviewed Vybiral 15 you never asked her about the complaint that Jenkins 16 filed about her drug use and money owed to drug 17 dealers, that problem that happened? 18 A We didn't discuss that. 19 Q Now, we talked about phone records 20 before. I'll direct your attention to page five. 21 This is from Lieutenant Gendron's report. This is 22 M-2. That's still the same report? 23 A It is. 24 Q And this whole page actually deals with 25 the communication data warrant that they got for DEGNAN & BATEMAN, INC.
58 1 Internal Affairs purposes. 2 Q And didn't you find that Officer 3 Marchione's recitation of the confrontation actually 4 was consistent with what Jenkins said happened? 5 A Yes. 6 Q So he was truthful in that? 7 A Yes. 8 Q Now, going back to your report, this is 9 McGuinness-1, page eight, third paragraph -- second 10 paragraph, second sentence, now you're talking here 11 about when you spoke to Jenkins, correct? 12 A Okay. Yes. 13 Q This was the interview that wasn't 14 recorded, right, this time? 15 A Same one. 16 Q Okay. "However, he said he later 17 realized it was when Bree was pregnant with 18 Marchione's first child." 19 A I'm sorry. You're -- third paragraph? 20 Q I'm second paragraph, second sentence. 21 Starts with, "However, he" -- 22 A Yes. 23 Q "He said he later realized it was 24 when" -- 25 A Indicated earlier that Scott Jenkins had DEGNAN & BATEMAN, INC.	60 1 Melissa Vybiral's work cell phone number; is that 2 right? 3 A I will read it. 4 Q Okay. Go ahead. 5 MS. GARCIA: Can I take a quick recess? 6 HEARING OFFICER: Sure. 7 (Short recess was held.) 8 BY MR. GRAY: 9 Q Did you have a chance to read that? 10 A I did. 11 Q Now, I just want to go back. Jenkins 12 told -- Jenkins or Vybiral, someone, said that there 13 would be all these phone calls or proof of the contact 14 between Officer Marchione and Melissa Vybiral's work 15 phone, correct? 16 A Yes. 17 Q And these were the records that 18 supposedly Frank was afraid of getting released or 19 found, right? 20 A I don't know if Frank was afraid of that 21 or not. 22 MS. GARCIA: I'm going to object to this 23 line of questioning. He had nothing to do with 24 getting these records. 25 HEARING OFFICER: I'll sustain the DEGNAN & BATEMAN, INC.

1 objection to that question. They just said the
2 records were not available.
3 BY MR. GRAY:
4 Q Doesn't say these records were returned
5 and reviewed?
6 A This does -- this does contradict what I
7 said earlier. This says there were no records for
8 Officer Marchione's current cell phone. I don't know
9 what his other cell phone was, but, no, this does -- I
10 had testified earlier that those records weren't
11 available. Lieutenant Gendron obtained records that
12 didn't contain that particular phone number, which
13 they list her current phone number.

14 So, no, I made a mistake. Sorry.
15 Q Okay. So just want to make sure we get
16 this clear. So there were phone records that were
17 actually produced regarding Melissa Vybiral's work
18 cell phone number pursuant to a communications data
19 warrant, correct?

20 A Yes.

21 Q Now, you, as the lead investigator in
22 this Internal Affairs investigation, received a report
23 from Lieutenant Gendron indicating that --

24 A Yes.

25 Q And that's what you're looking at?

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1 A Yes.

2 Q And Lieutenant Gendron in his report
3 says, I reviewed those records and was unable to find
4 any contact with Frank Marchione's cell phone number?

5 A His current cell phone number, yes.

6 Q Now, you interviewed Officer Marchione
7 before interviewing Melissa Vybiral, correct?

8 A Yes.

9 Q Did you bring Officer Marchione in for a
10 supplemental or a follow-up interview?

11 A No.

12 Q So you never followed up and asked
13 Officer Marchione questions regarding the alleged
14 fellatio incident that occurred, or the a -- that
15 allegedly occurred, correct?

16 A I didn't ask him about it, correct.

17 Q Now, in your training in Internal
18 Affairs, isn't the target usually the last person who
19 gets interviewed?

20 A Usually.

21 Q And, generally, that's done because you
22 get all the other information so you can ask them
23 about everything you already know?

24 A Usually they're the last. In this case
25 Ms. Vybiral had indicated fairly strongly in

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1 Lieutenant Gendron's report that she was not
2 interested in discussing this further. That is, that
3 it is a personal matter. It was a private matter,
4 it's embarrassing, and she didn't want to discuss it.
5 And so there was some hesitancy on my
6 part about contacting her to bring this up, based on
7 what she had represented to Lieutenant Gendron and our
8 deputy first prosecutor.

9 So I did interview Officer Marchione
10 first. I did interview her second. It is out of the
11 typical context. And I agree that typically a target
12 is interviewed last, but on occasion that doesn't
13 happen for various reasons.

14 Although I would suspect that,
15 regardless, Officer Marchione was going to deny having
16 sexual relations while operating a Hightstown Borough
17 police vehicle on his way to the range. I didn't
18 suspect he was going to admit to that.

19 Q So your suspects that he was going to
20 deny it prevented you from bringing him in for another
21 interview to confront him about it?

22 A Yes. It would have been pointless. If
23 he wanted to acknowledge a relationship while he was
24 working, he had the opportunity to discuss it while --
25 with regard to the cemetery, although, I have to add

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1 too, I did ask him.

2 Q I don't think there's a question pending,
3 but --

4 HEARING OFFICER: There's no question.

5 BY MR. GRAY:

6 Q Now, in your interview with Officer
7 Marchione, did you ask him what -- where he was living
8 or what was going on at the time period when he said
9 this relationship occurred?

10 A No, I didn't ask him where he lived.

11 Q Did you ask him if there's any particular
12 reason why he may not have Melissa Vybiral back to his
13 house and why he met her in the cemetery instead?

14 A No.

15 Q Now, did you ever conduct a recorded
16 interview of Lieutenant Gendron in your investigation?

17 A No. No.

18 Q Did you get any statements or was there
19 any report done by First Assistant Doris Galuchie
20 regarding her meeting with Vybiral?

21 A No. Lieutenant Gendron documented that
22 interview.

23 Q But there was nothing produced by Doris
24 Galuchie at all? A memo in-house or anything else
25 about that meeting?

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65 1 A No, not to my knowledge. Not to my 2 recollection. 3 Q Now, you said before -- I want to get 4 your wording of this. That this allegation came in 5 sideways, correct? 6 A Yes. 7 Q Didn't this allegation come from Scott 8 Jenkins talking to Director LeTellier directly 9 complaining that Officer Marchione did this? 10 A Yeah. But what I meant by that was that 11 this wasn't a traditional, someone knocks on the 12 police department's door and says, I want to make a 13 complaint of the conduct of this officer during a 14 motor vehicle stop. 15 This was a disclosure between two parties 16 involved in a relationship for the purpose of 17 reconciliation, and then that other party that 18 reported it to the police department. 19 So that's what I meant by sideways. It's 20 just your nontraditional complaint. 21 Q Now, when the first -- so it was Scott 22 Jenkins that brought Melissa Vybiral to the 23 prosecutor's office? 24 A I don't know how they arrived at the 25 prosecutor's office. DEGNAN & BATEMAN, INC.	67 1 allegations that Officer or Scott Jenkins made were 2 documented in my report, and they were relayed to 3 Hightstown for additional -- whatever action they deem 4 appropriate at that time. 5 These were administrative matters some of 6 them. There's the issue of documents being destroyed 7 with the flood, I think, in 2011. So some documents 8 may not have been available. 9 But to try and stick to this particular 10 investigation, they were documented as they were 11 brought up, and then they would be separate 12 investigations based on the nature of the allegation. 13 Q The finding of -- make sure I have the 14 exact -- the sustaining the allegation -- 15 A Yes. 16 Q -- for the sex on duty, the only two 17 witnesses that have any firsthand information 18 regarding this are Melissa Vybiral and Officer 19 Marchione, correct? 20 A They were the only two parties there, 21 yes. 22 Q So no matter what Jenkins says or any 23 other witness that was talked to or discussed in this 24 matter, none of them had firsthand knowledge? 25 A By "firsthand knowledge" you mean DEGNAN & BATEMAN, INC.
66 1 Q And were you aware that she told 2 Lieutenant Gendron in their first meeting, along with 3 the first assistant prosecutor, that she didn't want 4 any of this disclosed? That it was personal? None of 5 their business? 6 A Yes, I earlier testified to that. 7 Q But this only came out because of that 8 conversation with Jenkins and because he wanted her to 9 come relay all this stuff? 10 A No. I disagree with that. I think this 11 came out because of some of the mental health issues 12 that Officer Marchione was having, and this was 13 followed initially after that. An Internal Affairs 14 case was originated, but there were also other 15 concerns, fitness for duty concerns that, while 16 distinct, are still related. 17 And I think Lieutenant Gendron, as the 18 officer in charge of the department, was following up, 19 you know, with two different things in the same time, 20 and later they were separated. 21 Q And Jenkins made other allegations 22 against Officer Marchione, didn't he? 23 A He did. 24 Q And all of those were unfounded? 25 A No, I can't answer that. Those DEGNAN & BATEMAN, INC.	68 1 witnessing the actual sex acts? 2 Q Witnessing the actual sex acts. 3 A No. No one came forward. No one 4 discovered to have having observed having -- them 5 having sex at the cemetery or at the CWA lot. 6 Q So your finding was based upon weighing 7 the credibility of a witness who was on drugs, but you 8 don't know how much or when or how long, versus a 9 sworn police officer, correct? 10 A No. It was just two people. 11 Q It was just two people? 12 A Two people. I didn't take in 13 consideration all the events and experiences of both 14 parties and how they may have impacted them up until 15 this point. I didn't do it for Vybiral, I didn't do 16 it for Officer Marchione. 17 Q That's all. 18 HEARING OFFICER: Redirect? 19 MS. GARCIA: No, sir. 20 HEARING OFFICER: Thank you. 21 Any further witnesses? 22 MS. GARCIA: Excuse me? 23 HEARING OFFICER: Any further witnesses? 24 MS. GARCIA: Just one more: Lieutenant 25 Gendron. DEGNAN & BATEMAN, INC.

1 HEARING OFFICER: We'll take five
2 minutes.
3 (Short recess was held.)
4 MS. GARCIA: We're going to be
5 incorporating both the swearing and the background.
6 He can be sworn in. Does it matter?
7 HEARING OFFICER: Lieutenant Gendron has
8 already been sworn in in a related matter. He's still
9 under oath. All his qualifications and his background
10 and history have been admitted earlier and may not be
11 repeated and need not be repeated. I have all that
12 information, okay?

13 MS. GARCIA: Thank you. I'm going to
14 keep this pretty brief.

15 BY MS. GARCIA:

16 Q Did -- at any point in preparing to be
17 here today did you go and look to see whether or not
18 Officer Marchione worked on or around July 4, 2005?

19 A Yes, I did. At your request I checked
20 our POS scheduling, our scheduling software, and
21 determined that Officer Marchione worked the 4th of
22 July weekend, July 2nd. Friday night, July 2nd, into
23 the 3rd, which is Saturday morning, and then the 3rd,
24 Saturday night, into the 4th, which was Sunday
25 morning.

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1 Q Okay. And what is a shift? What shift
2 did he work?

3 A He would have worked -- at that
4 particular time the shift he would have been working
5 was 5:30 at night to 5:30 in the morning. We were on
6 a different schedule back then.

7 Q Okay. I want to move to the range. Back
8 in this time frame of around 2005, I guess, summer of
9 2005, were officers in Hightstown practicing at the
10 range that's been talked about?

11 A Mercer County Prosecutor's Range?

12 Q Yes.

13 A Yes.

14 Q And how often did officers go to the
15 range?

16 A Back then I wasn't in charge of firearms,
17 but I still believe it was the same practice that we
18 have now. It's four times a year.

19 Q Was there any sort of dress code or
20 anything to go to the range at that time?

21 A It depended on the situation. It
22 depended on the weather, you know. There were some
23 times when we're allowed to wear civilian clothes,
24 there were other times where they wanted us to wear
25 full uniform. You train with firearms practice --

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1 practice as you do wear a vest, wear your full-duty
2 belt.

3 So not being in charge of firearms back
4 then, so I couldn't tell you what the dress code was
5 that day. It could have been plainclothes or what we
6 consider Class B uniform.

7 HEARING OFFICER: What is that, Class B?

8 THE WITNESS: It's more traditionally
9 what we're wearing now; cargo pants and a thicker
10 cotton shirt versus the polyester uniform.

11 Back then we used to wear a sand brown,
12 which is the cross strap used to go across. That was
13 our Class A uniform.

14 But Class B was more turtle neck in the
15 wintertime, things like that. Boots, cotton. Easier
16 to maintain if it got dirty. It wasn't a big deal;
17 just wash it.

18 HEARING OFFICER: You're wearing a golf
19 shirt now with a crest on it. Is that a police
20 officer's --

21 THE WITNESS: Yes. It's a badge.

22 HEARING OFFICER: It's the badge of this
23 department?

24 THE WITNESS: Uh-huh. Yes.

25 HEARING OFFICER: Is that something

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1 that's worn --

2 THE WITNESS: At the range.

3 Now, what our uniforms consist of is,
4 basically, this attire. It's just 5.11 pants with a
5 polo shirt, and that was back -- but that just got
6 instituted around 2012.

7 BY MS. GARCIA:

8 Q And even though there was no policy, what
9 was your Class B uniform? What did it look like back
10 then?

11 A Our Class B uniform was a solid -- back
12 then was a solid blue uniform. It was made by Blauer.
13 It was solid blue cargo pants with French blue stripe
14 and a solid blue -- dark blue, yeah. Dark blue shirt.

15 Q And was it a polo shirt? Turtle neck?

16 A They were short sleeve and long sleeve
17 shirts, button up.

18 Q Okay. You were here for Lieutenant
19 McGuinness' testimony, and Mr. Gray brought up
20 something about the violent crime task force.

21 A Yes.

22 Q What is that?

23 A It was an initiative started by the
24 Mercer County Prosecutor's Office where the member --
25 each department of Mercer County, along with the State

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1 Police, the DEA, U.S. Marshals, would send officers to
2 work on certain days.

3 We would, basically, go out with a group
4 of, like, 20 or 30 officers and just hit corners and
5 do violent criminal apprehension; things along those
6 lines.

7 HEARING OFFICER: Along Mercer County?

8 THE WITNESS: Basically, just centered in
9 Trenton.

10 BY MS. GARCIA:

11 Q Were there any uniform requirements at
12 that time?

13 A At that particular time our Chief of
14 Police initially -- and I can't remember whether --
15 what time frame this started. But when we initially
16 started doing this we had to wear our Class B
17 uniforms, yes.

18 Q And were you also a member of that
19 program?

20 A Yes, I was.

21 Q Who else was a member of that program?

22 A Back then it was me, Patrolman Marchione,
23 and I think an officer since retired, Glen Moore.

24 Q We've also been talking about -- I'm just
25 trying to speed this up. So if you have a problem

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1 with me leading, let me know.

2 MR. GRAY: It depends where you're going.

3 BY MS. GARCIA:

4 Q We've been talking about driving a
5 vehicle to the range being a police vehicle.

6 A Uh-huh.

7 Q What's your recollection of the policy in
8 that time frame of 2005 about driving to and from the
9 range?

10 A Officers took patrol cars. Some of them
11 -- some of us carpool. Like, we'd hop -- we'd hop in
12 the patrol car. Some officers chose at that
13 particular time -- I wasn't a firearms -- I live close
14 to the range, so I drive my personal vehicle there.

15 Other guys that lived -- we had a lot of
16 guys that live at the shore. They would come in here,
17 hop in vehicles.

18 Another common practice was to come in
19 early, take a vehicle, go to Samzie's Uniforms, which
20 is where we get our uniforms, which is on the way to
21 the range, and then head up to the range.

22 So it was not uncommon for someone to
23 come in and hop in a vehicle going to the range, and
24 they would be by themselves doing it.

25 Q During the 2005 time frame did you happen

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1 to ever go to the range with Officer Marchione?

2 A Did I ever -- I don't think that I did.

3 Again, going back to that particular
4 time, I was living in Chambersburg, so I would just
5 hop on 29 and go over there, up to the range. So it
6 didn't benefit me to come into Hightstown, drive back
7 up that way.

8 Q Did you ever see Officer Marchione drive
9 his own vehicle to and from the task force?

10 A He may have, but highly unlikely, because
11 guys don't like to leave their vehicles. Some people
12 didn't like to leave their vehicles in the parking
13 lot.

14 And at one point there was so many
15 officers working the task force that they put them
16 into a side lot, which is away from the police
17 station. So there was worry about vehicles being
18 vandalized and things like that.

19 Q Is that also the case for taking your
20 vehicle to the range?

21 A As what?

22 Q Whether or not people took -- or had
23 concerns about taking their cars down there?

24 MR. GRAY: Object. We're talking
25 generally and people. I mean --

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1 HEARING OFFICER: I'll permit it. I'll
2 permit it. I understand.

3 THE WITNESS: I mean --

4 BY MS. GARCIA:

5 Q Well, let me rephrase it. I'll rephrase
6 it.

7 Did Officer Marchione ever talk to you
8 about driving his own vehicle for police-related
9 activities that was not actually --

10 A I do not recall Patrolman Marchione ever
11 using his personal vehicle for any department-related
12 things.

13 Some officers have a real issue with
14 using their own vehicles and burning their own gas for
15 department issues. And Patrolman Marchione was one of
16 those officers. That if he was doing something for
17 the Department, he was going to be either operating a
18 vehicle or being compensated for the time.

19 Q That's all I have.

20 HEARING OFFICER: Cross-examine.

21 BY MR. GRAY:

22 Q You have no firsthand knowledge of
23 whether or not Officer Marchione actually drove a
24 marked or unmarked or personal vehicle on whatever
25 date Melissa Vybiral alleges this fellatio incident

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1 occurred, correct?

2 **A On those specific dates the only thing I**

3 **have personal knowledge of is him -- I couldn't tell**

4 **you that I just have specific knowledge of him driving**

5 **patrol vehicles to the range.**

6 **Q But you don't have any personal knowledge**

7 **of him driving a personal vehicle or a Hightstown**

8 **vehicle?**

9 **A No, I do not.**

10 **Q The task force, some days, depending on**

11 **what event or what the task force was planning to do,**

12 **sometimes they would go in street clothes?**

13 **A Never in street clothes.**

14 **Q Even undercover guys?**

15 **A Patrolman Marchione never did undercover**

16 **buys, not during that detail.**

17 **Q You were there for this -- this first**

18 **meeting we were talking about with Doris Galuchie,**

19 **Scott Jenkins, Melissa Vybiral, and yourself, correct?**

20 **A Yes.**

21 **MS. GARCIA: I'm going to object. This**

22 **is way outside the scope of the questions I asked.**

23 **HEARING OFFICER: I'll permit. We tried**

24 **to narrow issues at the beginning, but I'll permit it.**

25 **We won't start it up again.**

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1 BY MR. GRAY:

2 **Q Do you have M-2 up there?**

3 **A Yes.**

4 **Q What's M-2?**

5 **A M-2 is a copy of the report that I wrote**

6 **documenting --**

7 **Q Is that report accurate?**

8 **A To the best of my knowledge, yes.**

9 **Q On page three you mentioned twice and on**

10 **page four you mentioned once Melissa Vybiral related**

11 **that this all occurred during the period to which she**

12 **was using drugs, correct?**

13 **A Yes.**

14 **Q Was there any further conversation with**

15 **her about what drugs she was using, how much, when?**

16 **Anything along those lines?**

17 **A No.**

18 **Q Did she volunteer the information that**

19 **she was on drugs at the time or was she asked about**

20 **it?**

21 **A All the statements that are here was**

22 **stuff that she brought up, as far as the drug use,**

23 **during her statements to us.**

24 **Q And you gave that report to the**

25 **Prosecutor's Office?**

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1 **A Yes.**

2 **Q Did you directly speak with Officer**

3 **McGuinness about that meeting that occurred between**

4 **you, Scott Jenkins, Doris Galuchie?**

5 **A My conversation, he was aware of the**

6 **meeting that took place, and I told him that my report**

7 **was -- the context of my report was the contents of**

8 **the meeting.**

9 **Q He never asked you any follow-up**

10 **questions or anything about the meeting?**

11 **A Other than to get the range reports, the**

12 **dates, that was it.**

13 **Q You pulled the range reports, you pulled**

14 **that schedule. Is that McGuinness-2 in front of you?**

15 **A Yes.**

16 **Q And during the meeting you had with**

17 **Melissa Vybiral she stated that this -- well, she**

18 **didn't relay to you the order of these events,**

19 **correct?**

20 **A No.**

21 **Q Of the sexual encounters?**

22 **A No, she didn't.**

23 **Q No, she didn't?**

24 **She started with the fellatio encounter**

25 **first, correct?**

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1 **A I have to refer to my report. I believe**

2 **that's the order.**

3 **Q I believe it's page three. It's the**

4 **fellatio incident first, then the graveyard incident,**

5 **then the sister's?**

6 **A She just, basically, said one of the**

7 **sexual encounters. So it's not really saying -- she**

8 **doesn't give any order as to when it took place.**

9 **Q But when she did talk about the**

10 **graveyard, she did mention specifically either 4th of**

11 **July or coming from the beach?**

12 **A You know, no, I don't think she did on**

13 **this either. I got to double-check on that, if I read**

14 **the report. But I don't believe there was any**

15 **specific.**

16 **Q I think it's page four.**

17 **A I don't believe there's anything -- she**

18 **said it occurred several years ago in July and August,**

19 **but she didn't remember the exact time frame. But it**

20 **was a night that she was returning from the shore. So**

21 **she said she was returning from the shore, but she**

22 **never said 4th of July weekend.**

23 **Q Now, have you seen her recorded**

24 **statement?**

25 **A No.**

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1 Q Now, I just want to make sure I get these
2 days right. You said that Marchione was working. He
3 worked the -- the Saturday night and the Sunday night?
4 A He worked on Friday night into Saturday
5 morning.
6 Q Okay.
7 A And Saturday night into Sunday morning.
8 Q Okay. Then he was off Sunday night into
9 Monday, off Monday night into Tuesday?
10 A I believe so, yeah. I didn't look. He
11 was off on Sunday. I didn't look past --
12 Q Well, the 4th of July was Monday that
13 week?
14 A Yes.
15 Q Right?
16 A Well, I assume so.
17 Q So if she said that it occurred,
18 mentioning 4th of July and fireworks, presumably that
19 would be Monday, the 4th?
20 A I don't think so. Very rarely do
21 fireworks -- do fireworks on the actual holiday
22 because it becomes problematic with resources.
23 Usually something like that you do it prior to that
24 event.
25 Q Not on the beach where they --
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1 A I don't -- shore towns especially,
2 because you're dealing with crowds, you're dealing
3 with people, you don't have the additional resources
4 for traffic, but that's just my opinion.
5 Q So if Melissa came here and testified
6 that on the 4th of July weekend she would have left
7 the night of the 4th, Officer Marchione was not
8 working that evening, correct?
9 MS. GARCIA: Objection. She never
10 testified to that. You're putting words in her mouth.
11 You're speculating.
12 HEARING OFFICER: Ask it again.
13 MS. GARCIA: Everything she said was that
14 it was around July 4th. Around July 4th. Around July
15 4th.
16 BY MR. GRAY:
17 Q Okay. You were here when Melissa Vybiral
18 testified?
19 A Yes.
20 Q Now, she specifically mentioned, "I only
21 refer to the 4th of July because that was the only
22 time I saw fireworks down the beach. And it was when
23 I was coming home from the beach during that period
24 where my mother lets the family go in before the
25 renters come," okay?

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1 MS. GARCIA: Continue reading.
2 BY MR. GRAY:
3 Q "Not saying it happened on July 4th. It
4 could have been two days after the beginning -- the
5 first week that we're down there, end of May,
6 beginning of June, just saying."
7 So she said that she saw the fireworks,
8 specifically remembered July 4th. It was within a
9 couple of days of that. Yet later --
10 MS. GARCIA: What page are you on?
11 MR. GRAY: I'm looking for it real quick.
12 BY MR. GRAY:
13 Q She made it clear during your meeting
14 that this relationship with Marchione occurred during
15 a period when she was using drugs, correct?
16 A She mentioned that was a time period in
17 her life when she was using drugs.
18 Q Now, you were here when she testified and
19 said that she was not using drugs during that time;
20 that she used drugs later?
21 MS. GARCIA: Where are you reading from?
22 THE WITNESS: I don't remember that
23 testimony.
24 HEARING OFFICER: Page 25.
25 MR. GRAY: It's also on 47. I'll go back
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1 to 25.
2 BY MR. GRAY:
3 Q Well, the Hearing Officer knows what it
4 is, so I don't need to -- so you don't know what
5 Officer Marchione's schedule was for the 4th, 5th, and
6 6th of July?
7 A I wasn't asked to look that far. But I
8 do -- if it's a schedule that worked at that
9 particular time, it would have been two on, two off,
10 two on, three off.
11 I don't know where that break came in or
12 if he picked up any overtime shifts. But I did look
13 at that 4th of July weekend, and I know he was off on
14 Sunday. I didn't look to see if he had worked Monday
15 overtime.
16 Q But under that schedule he could be off
17 that Sunday night, Monday night, Tuesday night?
18 A He could be, or he could just be off that
19 Sunday night, Monday night.
20 Q So nothing in your review of department
21 records was able to put together that Officer
22 Marchione was working a night that he was at the
23 cemetery having sex with Melissa Vybiral?
24 MS. GARCIA: Objection.
25 HEARING OFFICER: I'll permit it.

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1 Overruled.

2 THE WITNESS: It depends on when that
3 incident occurred. Her testimony was 4th of July
4 weekend. I consider Friday and Saturday night into
5 Sunday morning 4th of July weekend.

6 BY MR. GRAY:

7 Q But if her testimony was after fireworks,
8 he wasn't working Sunday night, he wasn't working
9 Monday night.

10 A Well, we don't know when the fireworks
11 occurred.

12 Q Did you reach out to whatever shore town
13 that was?

14 A I was not asked to, and I was not
15 conducting that part of the investigation.

16 Q I just want to make sure. I think we
17 clarified it with Lieutenant McGuinness. But you did
18 receive cell phone records in response to your
19 communications data warrant?

20 A Based on the time period that we wrote
21 the warrant -- search warrant for, yes.

22 Q And there was no contact you could find
23 between Officer Marchione and Melissa Vybiral?

24 A We issued -- the search warrant was
25 issued for a time of -- period of 2008. The time
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1 period, it was later determined, was to be 2005. At
2 that point it was an administrative investigation, so
3 we couldn't proceed with the search warrant.

4 Q Was it determined administratively it
5 wasn't in 2008?

6 A That was based on the prosecutor's
7 office.

8 Q Was it because the statute of limitations
9 run?

10 A It could be. I did the 2008 based on the
11 information I had at the time.

12 Q Do you know what the statute of
13 limitations are on official misconduct?

14 A Seven years.

15 Q And this was, basically, all found -- if
16 it occurred, it was well before that?

17 A Yes.

18 Q During your meeting with Doris Galuchie
19 did you talk to her after Melissa Vybiral left?

20 A Actually, no. Because as soon as we got
21 done, as soon as we were done with these interviews,
22 she's like, I've got another interview to go to, and
23 she left. The next conversation I had in her office
24 was with Stu Alterman.

25 Q Which you documented about the target
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1 letter, correct?

2 A Yes.

3 Q Did you ever discuss Melissa Vybiral's
4 account with Doris Galuchie?

5 A In the conversation with Stu Alterman,
6 yes.

7 Q But not prior to or after that
8 conversation?

9 A I don't believe so, no, other than the
10 time we were in -- I think we spoke about it a little
11 bit when we all met that one time.

12 Q Why didn't -- why wasn't a recorded
13 statement taken the day that she came to the
14 prosecutor's office?

15 A That was asked with First Assistant Doris
16 Galuchie, and her statement to me was this, basically,
17 is just a meeting to see if there's anything to be
18 investigated at all.

19 It was like someone walking into the
20 lobby of a police station saying, I want to make a
21 complaint against this officer.

22 That initial interview isn't recorded.
23 It's recorded later on when we start conducting
24 interviews and bring that person back in.

25 Q But you met them on September 17th of
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1 2013, correct?

2 A Yes.

3 Q And she wasn't interviewed until October
4 28th of 2014?

5 A Yes.

6 Q And the entire time she met with you and
7 the First Assistant, Scott Jenkins was there?

8 A No. Scott Jenkins was -- she was in the
9 room when Scott Jenkins was talking, and then we
10 separated them. And that's when we interviewed or
11 when he walked -- we had Scott leave the room, and
12 then we spoke with her.

13 Q Is that actually notated in your report
14 that they were separated?

15 A It may not be.

16 Q Did that occur -- I'm just going to show
17 you. I think there's some form of reference to it on
18 page three where it says, "When Deputy First Assistant
19 Prosecutor and I spoke with Ms. Vybiral at this point
20 in time."

21 A I believe that's when it happened.

22 Q Did you ask Ms. Vybiral at all -- because
23 you said during your conversation with her you
24 remembered the incident back when Scott Jenkins made
25 this complaint about her.

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1 A What I remembered was conversations going
2 around the police department about Scott coming in and
3 filling a report. I wasn't involved in it. I didn't
4 know about it. Didn't know the details to it. I just
5 remember hearing guys talking about it, Patrolman
6 Marchione being one of them. And that's when I went
7 back and looked that information up.

8 Q But you didn't ask her anything about
9 that?

10 A At the time I wasn't sure that it was
11 right that, you know.

12 Q That's all.

13 HEARING OFFICER: Anything further?

14 Thank you. You may step down.

15 Anything further on behalf of either
16 side?

17 MS. GARCIA: Not for the Borough.

18 MR. GRAY: No.

19 HEARING OFFICER: Okay. Take about 20
20 minutes and then sum up, and I'll make a decision
21 today.

22 MS. GARCIA: Perfect. Okay.

23 HEARING OFFICER: All right. Give it
24 time to get your thoughts together.

25 (Short recess was held.)

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1 HEARING OFFICER: Go in reverse order.

2 MR. GRAY: There's a burden in this case,
3 and the Borough is woefully short of what they need to
4 show by a preponderance of the credible evidence, that
5 anything happened that was inappropriate.

6 Now, when you look at the case law for
7 police disciplinary hearings, we know that these local
8 hearings are -- courts have said it, they're not fair
9 for employees. That's why they get all these
10 different appeal rights.

11 So, you know, we're here to go through
12 the process, to make our record, and do what we have
13 to do going forward.

14 But in this matter, in order to find that
15 Officer Marchione did anything wrong, you have to take
16 the word of a crack head. And it was her own words
17 that her drug of choice was crack cocaine. She told
18 the prosecutor's office on three occasions during
19 their first meeting, I'm not sure about this, I'm not
20 sure about that because I was on drugs at the time.

21 Now, she changed her story regarding the
22 drug use when she testified here saying, oh, no, that
23 was years later.

24 So we have a person that keeps sort of
25 changing her story and evolving around.

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1 And the only reason we get here to a
2 hearing is because of McGuinness. McGuinness got caught
3 three or four times giving inaccurate testimony, or
4 not being forthright about what the investigation
5 entailed and what was involved in it.

6 He completely overlooked and did not
7 conduct any follow-up into information which he had in
8 his possession. He had Lieutenant Gendron's report
9 that mentioned at this period in time she was on
10 drugs.

11 There were a lot of discrepancies about
12 going to, coming from. Was he wearing a uniform? Was
13 he wearing a duty belt with -- you know, it was only
14 here that she pulled this epiphany, he was wearing
15 blues but he wasn't wearing a duty belt with it.

16 So I've very reluctant to see a police
17 officer driving in uniform without an actual duty belt
18 or firearm on for his own protection, protection of
19 anybody else.

20 So Vybiral's testimony just doesn't add
21 up. If you want to believe her -- if you want to
22 believe her, you have to call Lieutenant Gendron a
23 liar, because she did. She called him a liar on pages
24 22 and 23 when she was questioned about what she said
25 during the interview at the Prosecutor's Office. So

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1 if we want to believe her, then we believe that she
2 calls the Lieutenant a liar. That his report was
3 wrong and not accurate.

4 Then you also have to believe her that
5 Scott Jenkins is a liar, because she calls him a liar
6 too about the incident where he called the police
7 because he was afraid that she had drugs stored in the
8 house and drug dealers were going to come take it. So
9 he was a liar about that too.

10 You also have to reconcile this with
11 Vybiral's position that she's in love with Scott
12 Jenkins. She feels that she's the one that was the
13 victim in all of this. That she lost everything. And
14 McGuinness testified about it. He said, when I
15 interviewed Frank Marchione, you know, he denied that
16 he ever did anything on duty with her. He admitted
17 the sexual relationship. There's no dispute there was
18 a sexual relationship. So he denied that it occurred
19 on duty, which he tried to lie and cover up about in
20 his first part of the testimony, the part I marked,
21 but he never denied it.

22 So when you go --

23 HEARING OFFICER: I think he was talking
24 about -- in the text that's what he said.

25 MR. GRAY: But he clearly said oh, and
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1 Marchione never denied that he had sex on duty. He
2 didn't clarify what text messages or anything else.
3 He came to the position because he wanted to support,
4 I believe, Melissa Vybiral, the person that was on
5 drugs that could have influenced her memory, that
6 could have influenced what had gone on.

7 If he had known the extent or what drugs
8 she was using -- the only person that asked the
9 question was me when she was being cross-examined,
10 because they didn't ask her.

11 When I have a witness coming in saying,
12 yeah, I was on drugs, you know, three times during
13 this interview, and you don't find out what she was
14 doing, how she was doing it, how it may affect what's
15 going on, you got to believe that that's going to have
16 some bearing on her credibility and recollection.

17 Team that with Scott Jenkins who
18 threatened and went after Officer Marchione right from
19 the beginning. You pick it, your family or your job.
20 Your family or your job. And it goes ranting in these
21 text messages. You pick it, your family or your job.

22 So -- and not to mention, here we go,
23 Scott Jenkins gets protected again. Let's not take a
24 recorded statement of him. Let's violate the
25 policies, procedures, and protocols and not record

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1 what this guy says, because we can't touch him in the
2 fitness for duty case. God forbid we take an
3 interview from the -- from the person that came,
4 harassed, and threatened my client. No. Let's let
5 him go and we'll talk to him. Little distraught. We
6 can't put him on a recording.

7 I've never seen someone get treated so
8 well. You think Scott Jenkins is the king of
9 Hightstown here.

10 So when you go through what other proof
11 do they have to try to substantiate any part of
12 Melissa Vybiral's story, they can't do it off the
13 schedule, because she was adamant it was 4th of July.
14 I saw the fireworks. I remember the fireworks. I
15 came home after the fireworks.

16 So was Marchione working on the Sunday
17 night? No. Was he working on the Monday night? No.
18 Was he working on Tuesday? Oh, we don't know. We
19 didn't look. We don't need to investigate or look at
20 things. Oh, but she said something happened with the
21 range, so let's disregard everything about it happened
22 4th of July weekend and let's go back into June
23 because, hey, he went to the range.

24 And then, oh, well, generally people take
25 a police car, but we're not sure because officers can

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1 take their personal car.

2 What investigation was here? They had
3 every opportunity to go forward, and this is their
4 burden. They had every opportunity. McGuinnes said,
5 oh, yes, normally we do the principal last so we can
6 ask him all the questions. Oh, we didn't do that
7 because I suspected that if I were to ask him, he was
8 going to deny it.

9 So, great. This is how we can conduct
10 investigations? Now I suspect they're going to deny
11 the allegation, so let's not ask him a question about
12 it. It's absurd. What sort of protection does
13 Officer Marchione get? What is he entitled to?

14 Well, there are these guidelines they are
15 police rules that say you got to do investigations a
16 certain way. We don't need to do them here. I
17 decided that, yeah, it was a bad use of procedure.

18 McGuinnes, you know, twice not
19 interviewing Jenkins, not interviewing Marchione.
20 Again, not following up. They just got the answers
21 that they wanted, put together a report, and said,
22 here, this will give you what you want. Get rid of
23 the guy. We'll hire our Hearing Officer. We'll get
24 him fired. We'll make him fight to get his job back.

25 I mean, the fact that they can just
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1 overlook something that's staring them in the eye,
2 that Jenkins had a motive to go after Frank because he
3 was pissed off -- he was pissed off that Frank slept
4 with his girlfriend 10 years ago, and he said, I'm
5 either going to end your marriage or I'm going to end
6 your job.

7 Well, yes, sir, guess what? He failed on
8 the marriage part. Frank admitted, I had the
9 relationship. It was before I was married, okay? I
10 failed on that part. Let me go after his job now.

11 So Jenkins goes to LeTellier, who's the
12 police director, who's magically missing, because he
13 quit and sued and everything else. Tells LeTellier,
14 by the way, Frank, yeah, he was having sex on duty.
15 You need to investigate that. You need to go after
16 him, okay? This is Jenkins fulfilling his promise
17 that I'm going to get Frank's job.

18 So what does he do? He then -- he gets
19 Melissa and brings her to the Prosecutor's Office so
20 she can give her story. So they come together. They
21 sit down, they talk about things, and McGuinnes is,
22 like, let me interview -- interview Jenkins about what
23 he knows, but he has no firsthand knowledge whatsoever
24 that will give him dignitary support. So it supports
25 Melissa's credibility.

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1 Okay. Well, he got all his information
2 from Melissa. They both change the stories about
3 coming from or going to the range, what uniforms were
4 worn or not worn, what the time period was. They're
5 all over the place.

6 So they think, okay. Great. We got him.
7 We got him. We may not get him on all this other
8 stuff. Unfortunately for Hightstown all the other
9 allegations were unfounded.

10 So we go forward and he sustained -- I
11 sustained, based upon my credibility, the
12 determination that Melissa Vybiral came in here and
13 was -- and was direct and forthcoming.

14 And when Marchione was interviewed, he
15 just wanted to talk about the confrontation at the
16 police department. Well, at the time period Marchione
17 was actually interviewed -- talking about a date.
18 August 12th of 2014.

19 So an incident happens June of '13.
20 Marchione's out of work. He's trying to get back. He
21 finally gets called to come tell his side of the story
22 of what happened in the confrontation. He credibly
23 tells it.

24 Got to remember that he said that, oh,
25 yeah, Frank's recitation of -- recitation of what
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1 happened and every event that happened that evening
2 was consistent with what Jenkins said he did, which,
3 in a prior hiring, someone here admitted that that
4 could be harassment or some sort of criminal charge.

5 But it's Scott Jenkins, king of
6 Hightstown. Don't worry about it.

7 So Marchione credibly testifies to the
8 Prosecutor's Office about what happened on the evening
9 he was confronted, which they try to say he lied
10 about, which was unfounded.

11 They then only have Melissa Vybiral's
12 statement, the person that didn't want to come
13 forward, didn't want to be interviewed, didn't want
14 anything to do with this. But every time she had a
15 contact with the Prosecutor's Office, she talked to
16 Jenkins first. It's her testimony, yeah. I talked to
17 Scott about what was going on to make sure what I
18 should do. Did you talk to him about the interview?
19 Yeah, I talked to him about the interview too.

20 So we had -- we have someone -- it's --
21 can't get any clearer. Jenkins had an ax to grind to
22 go after Frank, and he wanted to get him on anything
23 he could. Either destroy his family or destroy his
24 job. Failed on the family. Getting more successful
25 in the job because of Melissa Vybiral, the key witness
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1 here.

2 You know, you got to look at someone's
3 history. You got to look at someone's -- you know,
4 they haven't brought anything here to show that Frank
5 has this horrible history. That it's, you know, not
6 entitled to some credibility in what he's talking
7 about here. Frank's not a liar. There's no -- no
8 charges. There's nothing that he lied in his
9 statement, nothing. You know, this is all about he
10 said/she said.

11 And it's he said, police officer, who was
12 truthful about this whole thing that happened at the
13 police station that, you know, came through this
14 fitness for duty stuff, versus a crack head who
15 changed her story several times who calls other people
16 liars, you know. She calls, you know, Gendron a liar
17 just off his report of what happened. Oh, well, you
18 know, this report says this. Well, oh, no, that's
19 wrong. That ain't right either.

20 You know, adamant about -- they kept
21 trying to stick this on this happened when -- after
22 Frank had his son. Because they knew that if it
23 happened after Frank had the son, that's when they
24 were married and, oh, there's the marriage. Oh, wait.
25 You know what? The facts are really hurting us here.
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1 This relationship didn't happen.

2 Then just keep trying to find any -- some
3 way to go after Frank Marchione. You know, it's got
4 to stop. This is 10 years old. I mean, any statute
5 in the world -- well, I mean, I'm not saying homicide
6 or -- or, you know, a rape offense, you know, those
7 excluded, but anything else, it's -- it's so old it's
8 so -- you know, it's so difficult to either defend or
9 deal with because you're dealing with stuff that's 10
10 years old.

11 No one -- no one kept records of what was
12 going on at this point in time. The police department
13 lost all the records. They weren't looking for stuff.
14 You know, they pinned together a calendar that says,
15 oh, well, yes, in June he went to the range. Okay.
16 She said everything started in July. That the first
17 event was this cemetery thing before this fellatio
18 act. The next wasn't until September, and no one said
19 they were in a relationship in September.

20 You know, there's -- there's not enough
21 here, you know. This one, they don't have it. They
22 don't have it. They can't base it upon her. They
23 can't base it upon McGuinness and him sustaining it,
24 because he failed to even follow up on easy points
25 that were spoon fed to him in a report.

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1 There's a reason -- there's got to be a
2 reason that Lieutenant Gendron writes in his report,
3 oh, and, again, she mentioned this was at a time
4 period when she was on drugs. That's -- that's a
5 pretty important thing.

6 So based upon the evidence that's here,
7 based upon what's presented, they haven't met their
8 burden to show that Marchione did anything
9 inappropriate other than have a consensual sexual
10 relationship with Scott Jenkins' ex-girlfriend,
11 current, whatever they are. Which it's not illegal,
12 you know. They couldn't show that whatever, if this
13 fellatio thing happened, which, you know, my client
14 was interviewed, as McGuinness said, he didn't
15 acknowledge that, but he wasn't ever asked about it
16 later.

17 They can't show that he was on duty, off
18 duty, going to, coming from, what he was wearing, what
19 he was driving. They can't prove any of it, and they
20 got to prove it. They got a burden.

21 So these charges have to be dismissed.
22 You know, Marchione's got to go back.

23 HEARING OFFICER: Thank you.

24 Okay. Ms. Garcia?

25 MS. GARCIA: Thank you.

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1 If Your Honor were to take the testimony
2 that Mr. Gray provided and not the testimony that
3 you've heard, maybe we haven't met our burden of
4 proof.

5 But to sit here and have Mr. Gray testify
6 as to what the facts are that we're presenting, which
7 were not, in fact, presented, and he can't show it
8 anywhere in the transcript where those facts are
9 coming from, we can meet our burden of proof.

10 He talks about how Jenkins brought her to
11 the station. That's his testimony. That's nowhere in
12 the record. He talked about how she talked to him
13 about everything every single time they met. That's
14 not in the record.

15 So if you're going to listen to his
16 testimony, yeah, maybe we don't have that burden of
17 proof. But here we're not going back -- we're not
18 going back and questioning what McGuinness found. Your
19 Honor has the ability to make credibility
20 determinations; not ultimately what McGuinness
21 determined to be credible.

22 Your Honor heard what Ms. Vybiral said.
23 You heard what Officer Gendron said. You heard what
24 he -- what Officer McGuinness said on behalf of
25 Marchione. Because if Marchione is not a liar, why

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1 didn't he ever testify? It's his prerogative not to
2 testify. But if he's got nothing to hide, where is
3 he, okay?

4 You have someone here who had absolutely
5 no intention from the beginning to be involved in
6 this. You have Missy Vybiral who was having a
7 discussion with her then possibly new, you know,
8 rekindled relationship with her boyfriend. They had a
9 personal conversation. She never meant for that to
10 get out. Why would she make stuff up? Why would she
11 make up these stories of when, where, and how when she
12 was talking to Jenkins, which is reflected, in part,
13 in the text messages where he specifically says, at
14 her sister's house, at the cemetery, at her work.

15 We don't have a cooling-down period
16 there. It was when Missy Vybiral and Scott Jenkins
17 were talking, within minutes the e-mails and text
18 messages started.

19 Same set of facts. Throughout Ms.
20 Vybiral's testimony, both here and in the testimony
21 that she provided to the Prosecutor's Office, she
22 never specifically said it was on July 4th. She kept
23 on saying it was the weekend of or around July 4th. I
24 remember the fireworks. She testified that the
25 fireworks probably were not on the 4th; that they were

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1 around the 4th. She remembers that distinctly.

2 We have testimony here from Officer or
3 Lieutenant Gendron that said he worked that weekend in
4 2005. He worked that weekend. What more is there to
5 show? If he's working and she testified, and
6 Marchione doesn't disagree, that they did have sex on
7 the -- in the cemetery at night, well, he's working
8 5:00 p.m. to 5:00 a.m. or 5:30 p.m. to 5:30 a.m.
9 We've met our burden there. There's no question. If
10 he's working -- and if he's working, he's in a patrol
11 car.

12 There's also lot to do with what Officer
13 or Lieutenant McGuinness did and didn't do when he
14 followed up and what he didn't follow-up that, you
15 know, he did a poor investigation.

16 Again, you're here to make credibility
17 determinations about what actually happened that day.
18 You have Missy, you have Lieutenant Gendron, you have
19 Lieutenant McGuinness. Regardless of what actually
20 happened there and what he did, doesn't really matter.

21 I'm going to agree with Lieutenant
22 McGuinness. If he had gone back and questioned him
23 about whether or not certain things happened, and all
24 of a sudden he's coming clean, he sure fire to get --
25 he's sure to get fired, because he would have lied

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105 1 during the first interview. What's wrong with that? 2 I don't see a problem with that. 3 He made a determination based on his 4 experience of 24 years in law enforcement. I bring 5 him back, he's going to deny it. Why bother? Is that 6 a negative thing that he did? Did he follow the 7 procedure to the point? No, but ultimately the 8 information would have been the same. 9 We also have testimony from Lieutenant 10 McGuinness that he did not know that she -- or what she 11 was -- what type of drug she was using. When pushed 12 for more information about whether or not that would 13 inhibit her ability to testify and recall stuff, he 14 said, well, maybe if she had been on it for a long 15 time and for years of use, then, yeah. 16 Well, we have testimony from her that 17 says, I was smoking crack cocaine for about two and a 18 half months maximum. I went and then got treatment. 19 Again, she was completely honest. She 20 didn't hide anything in this hearing about being on 21 drugs. She was forthcoming with it all along. That's 22 not something that someone who's no longer on drugs 23 and hasn't been on drugs for years is going to be 24 proud of and communicate. 25 She's been honest throughout. What does DEGNAN & BATEMAN, INC.	107 1 you forget as a woman, regardless of whether or not 2 you're on crack cocaine or not. 3 But Officer Marchione, he didn't really 4 remember anything about the relationship. He thought 5 it was maybe three or six years. It may have been 6 three times; he doesn't remember. One time it being 7 at the cemetery. He does remember one time being at 8 his sister's house, but the third time he talks about 9 being at the mother's house. Where does that come in? 10 They're -- there's three times. And let 11 me add, if she really was out to get Frank Marchione, 12 she could have made up the third time was also on 13 duty. She didn't do that. She said he was not on 14 duty. It was at her sister's house. He came in his 15 vehicle. 16 Why would someone destroy their 17 reputation, be on public record that she had a crack 18 cocaine addiction, that she had sex in order to get 19 information about her ex -- because at that time there 20 was an issue and she was trying to get him back. Why 21 would someone do that? Why would someone come here 22 and lie about that? 23 The evidence is clear. We have a 24 situation where they both agreed they had sex at the 25 cemetery. They both agree that it was at night. She DEGNAN & BATEMAN, INC.
106 1 she have to hide? She had nothing to hide. She has 2 no stake in the game. She testified that she, you 3 know, did lose in this situation because she's lost 4 Jenkins. But she also testified that she knows that 5 the relationship's over and there's nothing that she 6 can do to get it back. He's moved on, she's moved on. 7 She's here because we keep on asking her 8 to be here, and each time she's honest. Now, has her 9 memory changed occasionally? Sure. He keeps on 10 harping on how she changed her story, how she 11 constantly changed her story. One time she changed 12 her story. I can't remember if it was to and I can't 13 remember what that -- or if it was from, okay? 14 Doesn't matter that he still was either 15 going to and from the range and then he picked her up 16 at her place of employment in a police vehicle. They 17 don't contradict that. They have provided nothing to 18 show that that never happened. 19 You know, he, "he" being Marchione, 20 admits to three times having sex with her. Did he 21 ever bring that one up? No. But, again, 22 contemporaneous from what she remembered, what he was 23 texted that specific day, it was included work. She 24 remembered that. There was no denying that she 25 remembered it happened at work. That's not something DEGNAN & BATEMAN, INC.	108 1 remembers 4th of July. She's emphatic about it. 2 Based on what she said and how she came 3 off, I think that she's credible on that. That's your 4 determination to make, obviously. 5 You have nothing from Marchione. All he 6 says is that it didn't happen. Same thing with the 7 fellatio. She remembered she specifically talked 8 about it. Granted, Marchione was never asked about 9 it, but that's not one of the three things that he 10 ever brought up as when having sex with her. He never 11 brought up the fact that it was anywhere but the three 12 places that he indicated. 13 Again, bring him in. What is he going to 14 do and say, oh, shoot, I lied last time. I didn't 15 tell you about that one, because then he's in bigger 16 trouble than he is if he just doesn't say anything at 17 all. 18 You know, Mr. Marchione keeps on talking 19 about how Jenkins is untouchable, how Jenkins is this 20 and how Jenkins is that. 21 HEARING OFFICER: Mr. Gray. 22 MS. GARCIA: Mr. Gray does on behalf of 23 Mr. Marchione. 24 We're not here testifying or trying 25 Officer Jenkins. There's a lot of things said about DEGNAN & BATEMAN, INC.

1 Officer Jenkins that's pure speculation. That he
2 doesn't know what happened. He doesn't know who spoke
3 to who. He doesn't know what happened, if anything.

4 When all that other stuff was occurring
5 that you know about from the other case that you're
6 here for. To bring that up and try to muddy this,
7 when the facts are very clear, is of no moment
8 whatsoever. We're here to determine whether or not
9 Marchione had sex and whether or not -- well, he
10 admitted to having sex. The issue is whether or not
11 he had sex on duty.

12 And I think, based on the testimony that
13 you've heard about the shooting range, the time frames
14 match up exactly with the time frames that Marchione
15 talked about. Three to six weeks, 4th of July.
16 That's three to six weeks.

17 There was never any testimony by
18 Marchione, by Vybiral, who are the two individuals
19 that were there, of what incident happened first.
20 That never came out. We don't know whether or not the
21 fellatio is first. We don't know whether or not the
22 sex at the sister's house was first. We don't know
23 whether or not the cemetery was first.

24 So it all fits within that three to
25 six-week period, and it coincides with when he was at
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1 the range. It coincides with when he was working, and
2 it coincides with the practice that Marchione has had
3 in going to the range.

4 I mean, you heard from Lieutenant Gendron
5 that he never uses his own car to go to the range.
6 How would Missy Vybiral know that? She wouldn't.

7 So we have beyond met the burden of proof
8 of the preponderance of the evidence. And if Your
9 Honor finds that he did have sex on duty, then there
10 has to be a finding that he also lied during the
11 Internal Affairs investigation where he denied that he
12 did not.

13 HEARING OFFICER: Okay. Mr. Gray, what
14 about the negative inference that he failed to
15 testify? Does that draw a negative inference? It's a
16 civil case.

17 MR. GRAY: Well, he does not have any
18 requirement to testify in this forum. He -- I planned
19 to have him here, but because of circumstances and the
20 inability to adjourn and reschedule, draw whatever
21 inference you want. I'm going -- I'm going to
22 Superior Court one way or another. He'll testify
23 there.

24 We will -- we have what McGuinness said.
25 McGuinness hasn't testified what the statement was. I
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1 have his full recorded statement.

2 HEARING OFFICER: I want to know whether
3 or not I can draw a negative inference.

4 MR. GRAY: I don't know.

5 HEARING OFFICER: If somebody came to
6 court in a civil case and didn't testify, the judge
7 would tell the jury, you can draw a negative inference
8 if you so choose. So, okay.

9 These matters come before this Hearing
10 Officer as a result of charges brought by the Borough
11 of Hightstown versus Frank Marchione, who is a
12 patrolman. There are two charges.

13 Charge number one, Officer Marchione
14 committed an act of conduct unbecoming an officer by
15 engaging in a sexual act with Melissa Vybiral while he
16 was on duty as a police officer with the Hightstown
17 Police Department in violation of N.J.S.A. 40A:14-147.

18 Charge number two, Officer Marchione
19 violated Department rules and regulations by engaging
20 in activities, which are not directly related to the
21 performance of their duties, specifically by engaging
22 in sexual acts with Ms. Vybiral while he was on duty
23 in violation of -- these are local ordinances --
24 4-6.3, prohibited activity on duty.

25 And the specifications are Officer
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1 Marchione engaged in sexual activity with Melissa
2 Vybiral on two occasions in 2005 while on duty as a
3 police officer with the Hightstown Police Department.
4 On one occasion Officer Marchione met with Ms. Vybiral
5 in the Cedar Hill Cemetery, which is located on Mercer
6 Street in Hightstown. During this meeting Officer
7 Marchione, who was on duty, in uniform, and operating
8 a marked Hightstown Police Department vehicle, engaged
9 in vaginal intercourse with Ms. Vybiral.

10 On another occasion Officer Marchione
11 called Ms. Vybiral at her place of employment and
12 asked her to meet up with him. Officer Marchione
13 picked up Ms. Vybiral at her place of employment,
14 Department of Human Services, 222 South Warren Street,
15 Trenton, and was on duty operating a marked Hightstown
16 Police Department vehicle. Then drove Ms. Vybiral to
17 a parking lot behind the Communication Workers of
18 America building located at 321 West State Street in
19 Trenton where Ms. Vybiral performed fellatio on
20 Officer Marchione. After the act Officer Marchione
21 drove Ms. Vybiral back to her place of employment.

22 During the Internal Affairs investigation
23 Officer Marchione denied having sexual relations with
24 Ms. Vybiral while in uniform on or around the police
25 vehicle during working hours.

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1 Ms. Vybiral confirmed that she had sexual
2 relations with Officer Marchione while he was in
3 uniform, while he was utilizing a marked police car,
4 and while on duty.

5 With those charges in mind, this Hearing
6 Officer has to make a determination as to whether or
7 not the municipality has proven the charges by a
8 preponderance of the credible evidence. And most of
9 the evidence comes from one source: That is, Melissa
10 Vybiral.

11 The background to this case is that
12 Vybiral and Scott Jenkins were together for some 15 or
13 so years. That that relationship was on the rocks,
14 and they went to some kind of a counselor to try to
15 resolve their problems.

16 During those discussions Ms. Vybiral felt
17 it was appropriate to admit that she had a sexual
18 relationship with Jenkins' best friend, the officer,
19 Officer Marchione.

20 Jenkins went absolutely berserk and
21 immediately came to police headquarters. And that's
22 subject of another part of these actions against Mr.
23 Marchione, Officer Marchione.

24 But, in any event, he did not accept what
25 she said as being a catharsis of some kind. That he
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1 went absolutely berserk, threatening, trying to fight
2 Officer Marchione. Apparently he was so upset with
3 Ms. Vybiral that he threw her out or did something,
4 broke up that relationship permanently.

5 This case rises and falls on the
6 credibility of Missy Vybiral. I've gone through the
7 transcript of her testimony, and there's some parts
8 that I'm telling you in my assessment of Ms. Vybiral.

9 She says that she has known Officer
10 Marchione for approximately 16 years. That he was one
11 of Scott Jenkins' best friends. And that she would
12 ask Officer Marchione questions, because she was
13 concerned about Scott Jenkins' infidelities. She says
14 he was the only person I trusted to be honest. He
15 always was.

16 She testified that -- she said that she
17 had an approximately a week-and-a-half to two-week
18 period where they had a relationship; that is,
19 Marchione and her.

20 The first encounter she had was coming
21 back from the beach. It was late at night. They were
22 going to -- going to meet up and talk about Scott and
23 things that were going on. They met in the graveyard,
24 prearranged meeting. She says that he was on duty.
25 Unfortunately, she made that determination because she

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1 says it was a marked vehicle and he was in uniform.

2 She says that he told her that he had
3 impregnated Bree, and to do the right thing -- he had
4 to do the right thing and marry her. Then what
5 happened? We had intercourse.

6 She testified that there were two other
7 instances. I don't recall if he was going to or
8 coming back from the shooting range up at the
9 correctional facility on 29 toward Lambertville. I
10 received a phone call saying he was coming. I was at
11 work during my lunch hour. I went out -- went out and
12 he picked me up. I believe it was the CWA lot that we
13 pulled over and I performed oral sex. He was driving
14 a police car, but he wasn't in uniform. He then
15 dropped me back off.

16 Talks about a couple other incidents,
17 which is really not relevant to here. She went to the
18 Prosecutor's Office and gave a statement there. She
19 says, I didn't make up any facts. All I said was
20 true.

21 She met with Lieutenant Gendron, Doris
22 Galuchie, the first assistant prosecutor, and Scott
23 Jenkins might have been there; she wasn't sure.

24 "Question: Do you recall telling them
25 that this incident occurred after Marchione had Sal,
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1 his first son?

2 "Absolutely not. I don't remember saying
3 that, but I do remember saying that day she was
4 pregnant with their first child."

5 After she gave her statement she walked
6 out the doors and went back in and said, I recall that
7 she was pregnant. This is confirmed by Detective
8 McGuinness.

9 She testified on cross-examination that
10 the report stated, however, she was confident that
11 Patrolman Marchione was with Bree and had their first
12 son, Sal, had been wrong.

13 She was asked about being on drugs. She
14 said that she was on drugs for a two-and-a-half month
15 period, because of another time I found Scott was
16 cheating on me. Instead of sleeping with someone
17 else, and cheating, other than the time I've done it
18 with Frank, because he was the closest person to
19 Scott.

20 She says, "I didn't do this while I was
21 on drugs.

22 "Question: You didn't say that the
23 relationship with Marchione occurred while you were
24 having a problem with drugs. You didn't say it?

25 "If I did, I was obviously wrong."

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1 There's an issue as to when the event in
2 the graveyard occurred. She says that -- she said she
3 believed it was 4th of July weekend because she had
4 been down in Surf City, and that is the first time
5 she'd ever seen fireworks on the beach, and she
6 thought it was around that time.

7 When she gave her statement, that she
8 said that Officer Marchione was in full uniform with
9 his duty belt on. And then she says she didn't recall
10 whether or not he was in full uniform and had his duty
11 belt on.

12 She said -- she was adamant that this
13 event occurred -- that the second event, the fellatio
14 event, occurred at the CWA building, large building on
15 the left-hand side with a large parking lot, in a
16 police car.

17 She testified that the calls between she
18 and Frank were from her Blackberry, and she may have
19 called from her mother's house as well.

20 The testimony was that the Blackberry
21 contained no records of phone calls between her
22 Blackberry and Officer Marchione. And she swears that
23 that's what happened.

24 Okay. I've had an opportunity over the
25 years to hear lots of different witnesses in court. I

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1 thought that Melissa Vybiral was one of the worst I
2 ever heard. I really find that she is not capable of
3 telling the truth. She changed her story time and
4 time again.

5 I find that, in regard to the allegation
6 that Officer Marchione picked her up, took her behind
7 some building in a police car, public parking lot,
8 lunchtime, just strains credibility. Just doesn't
9 make any sense.

10 There were questions asked of her about
11 the police car, what kind of a car was it? Was it a
12 console between the driver and the passenger seat?
13 Oh, we moved things around.

14 If it's a police car, I've seen lots of
15 police cars with lots of equipment there. I just -- I
16 just don't believe her. I just don't believe that
17 story at all. He denies it. I don't believe it.

18 Suffice it to say, when she says that he
19 was in uniform in the -- in the graveyard, I don't
20 know if he was or wasn't. I don't know if he was in a
21 police car or wasn't. I don't know if he was on duty
22 or wasn't.

23 The bottom line is I don't believe her.
24 She's not believable. Her life -- her life spun out
25 of control. She testified that she lost her house,

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1 she lost her business, she lost her kids, her dogs.

2 That she's living with her mother, I think she said.

3 Lost her job and is hand-to-mouth kind of living.

4 The municipality takes their witnesses as
5 they find them. They can't vouch for them. That's
6 the way they are.

7 I heard that -- from the Detective
8 McGuinness that he accepted her credibility because
9 these were embarrassing things, and she said them.

10 I wouldn't -- I don't find that she was
11 credible.

12 The fact that the texts that were
13 received, most of those texts came from Scott Jenkins.
14 There were a couple from Marchione, just a couple.
15 And the fact that he didn't deny in those texts what
16 happened, I don't think he wanted anything to do with
17 -- with Jenkins. This led to tremendous turmoil in
18 his life, and that's part of the other case.

19 And after reading those texts, I can
20 understand that he didn't want to participate in a
21 communication or a dialogue with Jenkins.

22 So based upon what I've heard and seen, I
23 find that the testimony of Missy Vybiral is not
24 credible. I don't believe it. I find the

25 Municipality has failed to prove its case by a

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1 preponderance of the evidence.

2 Okay. All right. And I will send you a
3 detailed decision in regard to the other case,
4 hopefully, within the next 10 days or so.

5 MS. GARCIA: Thank you, Your Honor.

6 HEARING OFFICER: You're welcome.

7 (Hearing was concluded at 12:45 p.m.)

DEGNAN & BATEMAN, INC.

1 CERTIFICATION

2 STATE OF NEW JERSEY

3 COUNTY OF CAMDEN

4

5 I, Cindy Pineiro, a Certified Shorthand
6 Reporter and Notary public of the State of New Jersey,
7 do hereby certify that I reported hearing in the
8 above-captioned matter; that the foregoing is a true
9 and correct transcript of the stenographic notes of
10 testimony taken by me in the above-captioned matter.

11 I further certify that I am not an attorney
12 or counsel for any of the parties, nor a relative or
13 employee of any attorney or counsel connected with the
14 action, nor financially interested in the action.

15

16

17

18

19

20

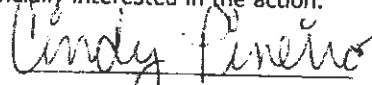
21 Dated: August 27, 2015

22

23

24

25



Cindy Pineiro, CSR #X1001815

Notary Public #50010742 Exp. 2/24/20

DEGNAN & BATEMAN, INC.

Exhibit C

Resolution 2015-254

BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY

**RESOLUTION ADOPTING THE HEARING OFFICER'S
RECOMMENDATION TO DISMISS THE CHARGES SET FORTH IN
THE NOTICE OF DISCIPLINARY ACTION SERVED ON FRANK
MARCHIONE ON MARCH 12, 2015 AND HEARD ON JUNE 18, 2015
AND AUGUST 27, 2015**

WHEREAS, Officer Frank Marchione was served with a Notice of Disciplinary Action containing four (4) charges dated March 9, 2015 and served on March 12, 2015. The Charges alleged that Marchione committed an act of conduct unbecoming a police officer by engaging in sexual acts while on duty, he violated department Rule and Regulations by engaging in activities which are not directly related to the performance of his duties; he used a department vehicle for personal business and pleasure, and truthfulness; and

WHEREAS, Marchione requested a hearing on the charges which took place on June 18, 2015 and August 27, 2015; and

WHEREAS, the hearing officer heard and reviewed the evidence present during the hearings, and on August 27, 2015 issued a verbal recommendation stating that the Borough failed to prove its case by a preponderance of the evidence on the March 9, 2015 set of charges; and

WHEREAS, the hearing officer's findings have been reviewed by the Borough Council for the Borough of Hightstown.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Hightstown, County of Mercer, State of New Jersey, that it hereby adopts the hearing officer's findings and recommendations issued on August 27, 2015 and dismisses the March 9, 2015 set of charges.

CERTIFICATION

I hereby certify the foregoing to be a true copy of a resolution adopted by the Borough Council at a meeting held on October 5, 2015.

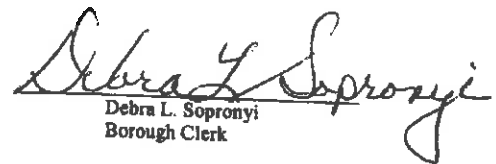

Debra L. Sopronyi
Borough Clerk

Exhibit D

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

A Limited Liability Company
1130 Clifton Avenue - Suite #3
Clifton, New Jersey 07013
Tel: 973-242-2442
Fax: 973-242-3118
www.sciarralaw.com

Charles J. Sciarra
Jeffrey D. Catrambone
Matthew R. Curran

Of Course:

Cathie Perselay Seidman
Alan Serrins**
Deborah Masker Edwards
Christopher A. Gray*

*Admitted NJ & NY Bars

**Admitted NY Bar

#Admitted NJ & PA Bars

Hamilton Office
100 Horizon Center Blvd
Hamilton, New Jersey 08691
856-888 7066

New York Office
The Woolworth Building
233 Broadway 18th Floor
New York, NY 10279
212-406-1700

October 7, 2015

Henry Underhill, Borough Administrator
Borough of Hightstown
156 Bank Street
Hightstown, New Jersey 08520

**Re: Hightstown Police Department
and
Police Officer Frank Marchione
Sex on Duty Allegation
Our File No.: 15-486**

Dear Mr. Underhill:

As you are aware, this office represented Officer Frank Marchione regarding his disciplinary matters. In light of the dismissal of the administrative charges relating to the alleged sex on duty, enclosed please find a bill for services. Pursuant to N.J.S.A. 40A:14-155 Officer Marchione is seeking counsel fees for defending the charges. Please respond to this correspondence within 10 days. If no response or payment is received a complaint will be filed in Superior Court seeking the counsel fees and the costs for that litigation.

Thank you for your attention and courtesies.

Very truly yours,
Sciarras & Catrambone, L.L.C.

By: Christopher A. Gray/s/
Christopher A. Gray

Enclosure

c. Frank Marchione

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

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Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran
Of Counsel
Cathie Perselay Seidman*
Alan Serrins**
Deborah Masker Edwards*
Christopher A. Gray #
*Admitted NJ & NY Bars
**Admitted to NY Bar
admitted NJ & PA Bars

New York Office
The Woolworth Building
233 Broadway - 18th Floor
New York, NY 10279
212-406-1700

October 6, 2015

File #: 15-486

Inv #: 3831

The Borough of Hightstown
156 Bank Street
Hightstown, NJ 08520

RE: Marchione: Sex on Duty Allegation

FOR PROFESSIONAL SERVICES RENDERED:

<u>DATE</u>	<u>LWYR</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
11/5/13	CG	meeting with client and investigator, call to prosecutor's office	3.50
11/8/13	CG	conference with investigator	0.25
11/14/13	CG	call with investigator about case updates	0.50
11/19/13	CG	call to Galucie	1.25
12/10/13	CG	review investigator reports	1.50
12/13/13	CG	call with client, new information about Gendron	0.50
12/16/13	CG	updates from DH	0.50
2/7/14	CG	call to Galucie, call to Sandrock, call to client, letter to Galucie	0.75
2/10/14	CG	call to Galucie	0.25
2/18/14	CG	update to client via phone	0.75
2/21/14	CG	call from Galucie	0.25
3/13/14	CG	call from client	0.20

3/18/14	CG	follow up with Galucie	0.20
6/2/14	CG	meeting with client about status and putting pressure on town	2.00
7/14/14	CG	Garrity request of prosecutor	0.50
7/16/14	CG	letter from prosecutor, call to client	0.25
7/29/14	CG	IA interview scheduling, follow up about IME	0.40
8/11/14	CG	prep for interview	2.75
8/12/14	CG	internal affairs interview at MCPO	4.25
10/23/14	CG	media questioning about case	0.40
10/30/14	CG	meeting with client	1.00
1/14/15	CG	call with client and review letter from Prosecutor	0.40
2/9/15	CG	review new discovery sent by town	3.25
3/12/15	CG	meeting with client about new charges issued. plan course of case- review investigatory materials obtained.	3.50
3/16/15	CG	review charges, letter of rep and discovery request meeting with client	2.50
4/7/15	CG	review Vrybal statement prep for sex case.	2.20
4/8/15	CG	review range GO and call with client, waiver of 30 day hearing requirement	0.90
	CG	discovery requested from Hightstown responded to	0.40
4/9/15	CG	dissect county IA report, call with client	1.40
	CG	meet with client, prep for testimony. respond to requests from Garcia	2.50
4/21/15	CG	scheduling issues	0.20
6/2/15	CG	witness coordination	0.20
6/9/15	CG	scheduling matter	0.20
6/10/15	CG	review materials for hearing	1.75
6/14/15	CG	hearing prep review statements	1.75

6/16/15	CG	prep for hearing with client	1.25
6/17/15	CG	prepare for disciplinary hearing with cleint	3.20
6/18/15	CG	disciplinary hearing part 1	6.00
6/19/15	CG	review additional discovery from Borough	1.25
6/24/15	CG	watch witness videos prep for hearing	2.75
7/23/15	CG	review and notate Vrybal statement	1.25
7/27/15	CG	scheduling issues due to client medical emergency	0.50
8/4/15	CG	meeting with client about statements	1.75
8/10/15	CG	review and notate Brennan statement	1.25
8/11/15	CG	review niro interview	0.90
8/12/15	CG	watch brennan video, miller video and jiminez videos compare with reports, calls with client	2.25
8/13/15	CG	review and note Altiero interview	1.20
8/18/15	CG	review Vrybal statements in reports and transcript and hearing testimony	1.25
8/20/15	CG	prep client for hearing	1.25
8/25/15	CG	hearing preparation, scheduling issues	1.50
8/26/15	CG	hearing preparation	2.25
8/27/15	CG	disciplinary hearing, meeting with client	5.50
8/31/15	CG	gather materials to start fee shift	0.30

TOTAL HOURS**78.70****TOTAL FEES****\$23,216.50**

Billing Summary

Christopher Gray

78.70hrs

\$295.00/hr

\$23,216.50

TOTAL HOURS AND FEES	78.70	\$23,216.50
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DISBURSEMENTS

Jul-20-15	Transcript Costs Audio Transcription of Melissa Vybiral Interview Oct 28, 2014	174.50
Sep-24-15	Investigation Costs 11/05/2013	365.00
	Investigation Costs 11/10/2013	156.00
	Investigation Costs 11/11/2013	156.00
	Investigation Costs 11/12/2013	365.00
	Investigation Costs 11/13/2013	365.00
	Investigation Costs 11/17/2013	156.00
	Investigation Costs 11/30/2013	210.00
	Investigation Costs 12/02/13	312.00
TOTAL DISBURSEMENTS		\$2,259.50
TOTAL BALANCE NOW DUE		\$25,476.00

PAYMENT IS REQUESTED WITHIN THIRTY (30) DAYS OF BILLING**PLEASE INCLUDE FILE AND INVOICE NUMBER ON CHECK**

OUTSTANDING BILLS

<u>Date of Bill</u>	<u>Invoice #</u>	<u>Fees Billed</u>	<u>Disbs Billed</u>	<u>Paid</u>	<u>Due</u>	<u>Aging</u>
10/06/15	3831	\$23,216.50	\$2,259.50	\$0.00	\$25,476.00	<=30
TOTALS		\$23,216.50	\$2,259.50	\$0.00	\$25,476.00	

Payments received after the date of this invoice will be reflected on next months bill

Exhibit E



Borough of Hightstown

156 Bank Street, Hightstown, NJ 08520
(609) 490-5100 Fax: (609) 371-0267

Website: www.hightstownborough.com

October 29, 2015

Christopher A Gray, Esq.
1130 Clifton Ave Suite 3
Clifton, NJ 07013

Dear Mr. Gray:

I am forwarding this reply to your letter of October 8, 2015 on behalf of the Borough of Hightstown. Mr. Marchione is not entitled to have attorney fees paid because the disciplinary charges were not brought as a result actions he took within the scope of his official duty. Hightstown Borough will not authorize counsel fees for any officer charged with actions "outside the lawful exercise of police powers in furtherance of their official duties."

Should you have any questions regarding this decision please contact Elizabeth Garcia, Esq. at Parker McKay.

Sincerely,

Henry M. Underhill
Borough Administrator

SCIARRA & CATRAMBONE, LLC
Christopher A. Gray, Esq.
(Attorney Id. No.: 014682007)
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
(973) 242-3118
Attorney for Plaintiff
Frank Marchione

FRANK MARCHIONE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MERCER COUNTY
	:	
Petitioner	:	
V.	:	CIVIL ACTION
	:	
THE BOROUGH OF HIGHTSTOWN and	:	DOCKET NO.: MER-L-_____ -15
THE BOROUGH OF HIGHTSTOWN	:	
POLICE DEPARTMENT,	:	
	:	CERTIFICATION OF
	:	CHRISTOPHER A. GRAY, ESQ
Defendant	:	IN SUPPORT OF PLAINTIFF'S
	:	ORDER TO SHOW CAUSE
	:	

Christopher A. Gray, Esq., of full age, certifies as follows:

1. I am an attorney-of-law licensed in the State of New Jersey and Of Counsel to the firm of Sciarra & Catrambone, LLC. I represent Frank Marchione in the above referenced matter. I am fully familiar with the facts herein. I make this certification in support of Frank Marchione's application for Attorneys' Fees and Costs pursuant to N.J.S.A. 40A:14-155.

PROFESSIONAL BACKGROUND AND EXPERIENCE

2. In May 2004, I graduated from Villanova University with a Bachelor, of Arts Degree.

3. In May 2007, I received my *Juris Doctorate* from Widener University School of Law.
4. I am admitted to the New Jersey State Bar, Pennsylvania State Bar, and the Federal District Court of New Jersey.
5. Following law school I worked at Helmer, Paul, Conley and Kasselman, P.C. in the administrative law department.
6. I was an Associate with the Alterman & Associates, LLC from October 2008 until May 1, 2013.
7. On May 1, 2013, I joined Sciarra & Catrambone, LLC as Of Counsel to handle police cases ranging from collective bargaining, Civil Service, discipline, criminal defense and retaliation/ discrimination cases.
8. I have spent my years as an attorney concentrating my work in the Office of Administrative Law, Superior Court, and the Civil Service Commission representing members of law enforcement, including police officers, sheriff's officers, corrections officers and state troopers.
9. I work on all aspects of police litigation including drafting of pleadings, production and review of discovery, the drafting of motion papers, trial, and Appellate practice.
10. I have tried several cases before the Civil Service Commission, the Superior Court, and Office of Administrative Law. I have previously been awarded fees from the Civil Service Commission and the Superior Court of New Jersey in public employee litigation.

11. I am an annual lecturer at the New Jersey State Policeman's Benevolent Association Collective Bargaining Seminar where I teach law enforcement officer's rights.
12. I am the Co-Author of *Knowing Your Rights as a Law Enforcement Officer*, 2009-2013 editions. This publication covers rights against discrimination and retaliation by employers.
13. On September 26, 2012, the Honorable Anthony J. Graziano, J.S.C. awarded me counsel fees while at my prior firm at the rate of \$225 per hour in an unlawful removal case pertaining to a Chief of Police.
14. In May of 2014, I second chaired a criminal trial of a Bergen County Police Officer in Superior Court. After acquittal, pursuant to N.J.S.A. 40A:14-155, Bergen County paid \$300.00 per hour for my work.
15. On October 10, 2014, the Honorable Lisa P. Thornton, Assignment Judge of Monmouth County, awarded me counsel fees, after a contested hearing, in a police officer disciplinary matter at \$295 per hour.
16. We seek the following rates in this matter: \$295.00 for the undersigned, \$365.00 an hour for Mr. Curran, Esq., and \$250.00 for Ms. Edwards.
17. Attached hereto as **Exhibit A** is a copy of the Certification of Matthew R. Curran, Esq., partner of the firm, who sets forth his education and experience herein.
18. Attached hereto as **Exhibit B** is a copy of the Certification of

Of Counsel to the firm Deborah Masker Edwards, Esq. who sets forth her education and experience.

19. These certifications support our claim that the rates requested for this firm's attorneys are commensurate with the prevailing market rates in the relevant community.
20. Based upon the relevant factors as outlined in the Certification herein the undersigned seeks an hourly rate of \$295.00 for the undersigned, \$365.00 for Mr. Curran, and \$250.00 for Ms. Edwards.
21. An invoice reflecting Disbursements and 78.70 hours of work as follows: Christopher A. Gray, Esq. 78.70 hours at a rate of \$295.00 an hour has been attached as **Exhibit C**.
22. The disbursements related to defending the disciplinary charges are related to transcription costs and Investigation Costs by Private Investigator Dennis Hallion and are identified on the Invoice. See **Exhibit C**.

INVOLVEMENT IN THE PRESENT MATTER

23. On or about March 9, 2015, Marchione was administratively charged with conduct unbecoming a police officer and violating Department Rules and Regulations for engaging in sexual acts while on duty in violation of N.J.S.A. 40A:14-147, and Rule and Regulation 4.6.3. He was also charged with the use of department vehicles for engaging in sexual acts in his marked patrol vehicle in violation of Rule and Regulation 4.8.9 and

failing to be truthful during an investigation related to the sexual acts while on duty in violation of Rule and Regulation 4.12.6. See Verified Complaint ¶ 3-7; Attached hereto as **Exhibit D** is a true and accurate copy of Charges 1-4 dated March 9, 2015.

24. Plaintiff retained the firm of Sciarra & Catrambone, LLC to provide a defense to the disciplinary charges.
25. As detailed by the Invoice, I met with my client and the Private Investigator in this matter throughout the course of the defense of the charges, I had numerous conversations with the Prosecutor's Office, and attended an Internal Affairs Interview with Plaintiff.
26. As detailed in the Invoice, I reviewed discovery in the matter, prepared for the disciplinary hearing which included, but was not limited to, reviewing statements and witness videos, and attended the hearing with Plaintiff.
27. Finally, I collaborated in the drafting of the within Order to Show Cause and Verified Complaint, and supporting documents of Marchione's application for reimbursement for the defense of disciplinary charges filed against him on March 9, 2015 which were dismissed and finally determined in favor of the Plaintiff. See Verified Complaint ¶ 12-14; Attached hereto as **Exhibit E** is a true and accurate copy of the Resolution 2015-254.

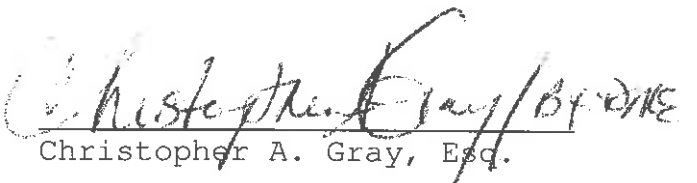
CONCLUSION

28. As set forth in paragraph 21-22 *supra*, Marchione has attached an invoice for attorneys' fees related to his defense of the disciplinary charges filed against him which were dismissed. The total attorney hours expended in defense of the disciplinary charges were 78.70. See **Exhibit C**.
29. The invoice had been submitted to Henry Underhill, Borough Administrator of Hightstown on or about October 7, 2015. To date Defendants have failed to reimburse Plaintiff for the defense costs related to the disciplinary charges that were dismissed. See Verified Complaint ¶ 15-18.
30. As set forth in paragraph 22 *supra*, the total amount sought for disbursements in this matter total \$2,259.50.
31. In addition to the foregoing, Marchione is seeking attorneys' fees for the time spent drafting the within application to the Court including the Order to Show Cause and accompanying paperwork. As true and accurate copy of this invoice is attached hereto as **Exhibit F**.
32. Plaintiff will be submitting a Supplemental Certification setting forth additional time expended on this application including the review of Defendants' submission, reply papers, and oral argument.
33. For the reasons set forth herein as well as the arguments set forth in the accompanying Letter-Brief, the Court should award Plaintiff Frank Marchione his Attorneys' Fees and Costs

pursuant to N.J.S.A. 40A:14-155.

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements are wilfully false, I am subject to punishment.

By:


Christopher A. Gray, Esq.

Dated: December 9, 2015

Exhibit A

SCIARRA & CATRAMBONE, LLC
Matthew R. Curran, Esq.
(Attorney Id. No.: 024172005)
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
(973) 242-3118
Attorney for Plaintiff
Frank Marchione

FRANK MARCHIONE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MERCER COUNTY
	:	
Petitioner	:	
V.	:	CIVIL ACTION
	:	
THE BOROUGH OF HIGHTSTOWN and	:	DOCKET NO.: MER-L-_____ -15
THE BOROUGH OF HIGHTSTOWN	:	
POLICE DEPARTMENT,	:	
	:	CERTIFICATION OF
	:	MATTHEW R. CURRAN, ESQ
Defendant	:	IN SUPPORT OF PLAINTIFF'S
	:	ORDER TO SHOW CAUSE
	:	

Matthew R. Curran, Esq. of full age, certifies as follows:

1. I am an attorney-of-law licensed in the State of New Jersey and a Partner of Sciarra & Catrambone, LLC. I represent Frank Marchione in the above referenced matter. I am fully familiar with the facts herein. I make this certification in support of Frank Marchione's application for Attorneys' Fees and Costs pursuant to N.J.S.A. 40A:14-155.

PROFESSIONAL BACKGROUND AND EXPERIENCE

2. In May 2001, I graduated *cum laude* from Boston College with a Bachelor of Arts Degree.

3. In May 2005, I received my *Juris Doctorate, magna cum laude*, from Seton Hall University School of Law.
4. I am admitted to the New Jersey State Bar and the Federal District Court of New Jersey.
5. Following law school, I served as a Law Clerk to the Honorable Donald W. Merkelbach, J.S.C. in Essex County Superior Court from September 2005 until Judge Merkelbach's retirement in June 2006.
6. During my clerkship with Judge Merkelbach, I engaged in extensive legal research and drafted Bench Memorandum regarding a wide range of civil matters.
7. As an Associate with the Law Firm of Sciarra & Catrambone, LLC since July 2006, I have been responsible for assisting in the firm's employment litigation practice as well as the administrative matters involving public servants, specifically police and corrections officers. In 2012, I became a Partner with the firm.
8. I have assisted in every aspect of litigating general litigation and civil employment litigation matters on behalf of Non-Law Enforcement and Sworn Law Enforcement, including the drafting of pleadings, production and review of discovery, the drafting of motion papers, and Appellate practice.
9. With regard to litigation on behalf of Sworn Law Enforcement, I have engaged in every aspect of civil and administrative litigation including drafting of pleadings, production and

review of discovery, the drafting of motion papers, departmental and Office of Administrative Law hearings and Appellate practice.

10. I have assisted as second chair in five complex civil employment litigation jury trials and one criminal homicide jury trial comprising approximately 27 weeks of total jury trial time. During these trials, I have examined witnesses, argued trial motions before the Court and assisted with all aspects of trial preparation and presentation.
11. Over two years ago, the Honorable Ralph L. DeLuccia, Jr., J.S.C. granted my application for attorneys' fees in the employment litigation Michele Sedeyn v. City of Paterson, et al., Docket No.: PAS-L-1053-08. At that time, Judge DeLuccia established my rate at \$245.00 per hour.

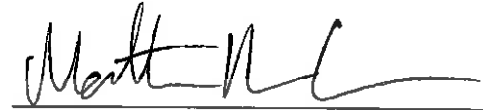
INVOLVEMENT IN THE PRESENT MATTER

12. I collaborated in the drafting of the within Order to Show Cause, Verified Complaint, attorney certifications, and Letter Brief of Marchione's application for reimbursement for the defense of disciplinary charges filed against him on March 9, 2015, which were dismissed and finally determined in favor of the Plaintiff.

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements are wilfully false, I am subject to punishment.

Dated: December 9, 2015

By:

A handwritten signature in black ink, appearing to read 'Matt R. Curran', written over a horizontal line.

Matthew R. Curran

Exhibit B

SCIARRA & CATRAMBONE, LLC
Deborah Masker Edwards, Esq.
(Attorney Id. No.: 047181991)
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
(973) 242-3118
Attorney for Plaintiff
Frank Marchione

FRANK MARCHIONE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MERCER COUNTY
	:	
Petitioner	:	
V.	:	CIVIL ACTION
	:	
THE BOROUGH OF HIGHTSTOWN and	:	DOCKET NO.: MER-L-_____ -15
THE BOROUGH OF HIGHTSTOWN	:	
POLICE DEPARTMENT,	:	
	:	CERTIFICATION OF
	:	DEBORAH MASKER EDWARDS, ESQ
Defendant	:	IN SUPPORT OF PLAINTIFF'S
	:	ORDER TO SHOW CAUSE
	:	

Deborah Masker Edwards, Esq., of full age, certifies as follows:

1. I am an attorney-of-law licensed in the State of New Jersey and Of Counsel to the firm of Sciarra & Catrambone, LLC. I represent Frank Marchione in the above referenced matter. I am fully familiar with the facts herein. I make this certification in support of Frank Marchione's application for Attorneys' Fees and Costs pursuant to N.J.S.A. 40A:14-155.

PROFESSIONAL BACKGROUND AND EXPERIENCE

2. I have practiced law in the State of New Jersey for over twenty (20) years.
3. In June 1991, I received my *Juris Doctorate, cum laude*, from New York Law School. My law school honors included being an Executive Notes and Comments Editor for New York Law School Law Review.
4. I am admitted to the New Jersey State Bar and the Federal District Court of New Jersey.
5. I am also admitted to the New York State Bar.
6. Following law school, I served as a Law Clerk to the Honorable Paul Bangiola, Civil Presiding Judge of New Jersey in Morris County Superior Court from September 1991 until August 1992.
7. After my clerkship I worked Of Counsel with Ira Karasick, P.C., a general practice firm. While at this firm I researched issues of law, prepared pleadings, engaged in motion practice, prepared briefs for Superior Court and Appellate Division matters, and attended Court appearances.
8. From June 1993 through 2009, I maintained a solo private law practice initially in Hoboken and later in Glen Ridge. My firm provided general legal and small business affairs services to individuals and business clients. I handled residential real estate transactions involving single and multiple family dwellings, condominiums, and cooperatives. Finally, I provided per diem services in the area of Special Education Law

9. In March 2009, I became affiliated as Of Counsel with the Law Firm of Sciarra & Catrambone, LLC. Since 2009, I have been responsible for assisting in the firm's general and employment litigation practice as well as the administrative matters involving public servants, specifically police and corrections officers.
10. I have assisted in numerous aspects of litigating general litigation and civil employment litigation matters on behalf of Non-Law Enforcement and Sworn Law Enforcement, including the drafting of pleadings, production and review of discovery, the drafting of motion papers, and Appellate practice.
11. With regard to litigation on behalf of Sworn Law Enforcement, I have assisted in numerous aspects of litigation involving discipline matters that include all aspects of litigation including drafting of pleadings, production and review of discovery, the drafting of motion papers, and Appellate practice.
12. I have assisted as second chair on one bench trial and four administrative hearings.

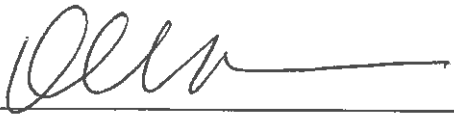
INVOLVEMENT IN THE PRESENT MATTER

13. I collaborated in the drafting of the within Order to Show Cause, Verified Complaint, attorney certifications, and Letter Brief, with supporting documents in support of Marchione's application for reimbursement for the criminal defense of

charges filed against him on November 25, 2013, which arose out of and were related to the lawful exercise of police powers in furtherance of Marchione's duties, which were dismissed and finally determined in favor of the Plaintiff.

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements are wilfully false, I am subject to punishment.

By:


Deborah Masker Edwards, Esq.

December 9, 2015

Exhibit C

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

A Limited Liability Company
1130 Clifton Avenue - Suite #3
Clifton, New Jersey 07013
Tel: 973-242-2442
Fax: 973-242-3118
www.sciarralaw.com

Hamilton Office
100 Horizon Center Blvd.
Hamilton, New Jersey 08691
856-888 7066

New York Office
The Woolworth Building
233 Broadway 18th Floor
New York, NY 10029
212-406 1700

Charles J. Sciarra
Jeffrey D. Catrambone
Matthew R. Curran
Of Counsel:
Cathie Perselay Seidman
Alan Serrins**
Deborah Masker Edwards*
Christopher A. Gray#
*Admitted NJ & NY Bars
**Admitted NY Bar
#Admitted NJ & PA Bars

October 7, 2015

Henry Underhill, Borough Administrator
Borough of Hightstown
156 Bank Street
Hightstown, New Jersey 08520

**Re: Hightstown Police Department
and
Police Officer Frank Marchione
Sex on Duty Allegation
Our File No.: 15-486**

Dear Mr. Underhill:

As you are aware, this office represented Officer Frank Marchione regarding his disciplinary matters. In light of the dismissal of the administrative charges relating to the alleged sex on duty, enclosed please find a bill for services. Pursuant to N.J.S.A. 40A:14-155 Officer Marchione is seeking counsel fees for defending the charges. Please respond to this correspondence within 10 days. If no response or payment is received a complaint will be filed in Superior Court seeking the counsel fees and the costs for that litigation.

Thank you for your attention and courtesies.

Very truly yours,
Sciarra & Catrambone, L.L.C.

By: Christopher A. Gray/s/
Christopher A. Gray

Enclosure
c. Frank Marchione

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

A Limited Liability Company
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Clifton, New Jersey, 07013
Tel: 973-242-2442
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Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran
Of Counsel
Cathie Perselay Seidman*
Alan Serrins**
Deborah Masker Edwards*
Christopher A. Gray #
*Admitted NJ & NY Bars
**Admitted to NY Bar
admitted NJ & PA Bars

New York Office

The Woolworth Building
233 Broadway - 18th Floor
New York, NY 10279
212-406-1700

October 6, 2015

File #: 15-486

Inv #: 3831

The Borough of Hightstown
156 Bank Street
Hightstown, NJ 08520

RE: Marchione: Sex on Duty Allegation

FOR PROFESSIONAL SERVICES RENDERED:

<u>DATE</u>	<u>LWYR</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
11/5/13	CG	meeting with client and investigator, call to prosecutor's office	3.50
11/8/13	CG	conference with investigator	0.25
11/14/13	CG	call with investigator about case updates	0.50
11/19/13	CG	call to Galucie	1.25
12/10/13	CG	review investigator reports	1.50
12/13/13	CG	call with client, new information about Gendron	0.50
12/16/13	CG	updates from DH	0.50
2/7/14	CG	call to Galucie, call to Sandrock, call to client, letter to Galucie	0.75
2/10/14	CG	call to Galucie	0.25
2/18/14	CG	update to client via phone	0.75
2/21/14	CG	call from Galucie	0.25
3/13/14	CG	call from client	0.20

3/18/14	CG	follow up with Galucie	0.20
6/2/14	CG	meeting with client about status and putting pressure on town	2.00
7/14/14	CG	Garrity request of prosecutor	0.50
7/16/14	CG	letter from prosecutor, call to client	0.25
7/29/14	CG	IA interview scheduling, follow up about IME	0.40
8/11/14	CG	prep for interview	2.75
8/12/14	CG	internal affairs interview at MCPO	4.25
10/23/14	CG	media questioning about case	0.40
10/30/14	CG	meeting with client	1.00
1/14/15	CG	call with client and review letter from Prosecutor	0.40
2/9/15	CG	review new discovery sent by town	3.25
3/12/15	CG	meeting with client about new charges issued. plan course of case- review investigatory materials obtained.	3.50
3/16/15	CG	review charges, letter of rep and discovery request meeting with client	2.50
4/7/15	CG	review Vrybal statement prep for sex case.	2.20
4/8/15	CG	review range GO and call with client, waiver of 30 day hearing requirement	0.90
	CG	discovery requested from Hightstown responded to	0.40
4/9/15	CG	dissect county IA report, call with client	1.40
	CG	meet with client, prep for testimony. respond to requests from Garcia	2.50
4/21/15	CG	scheduling issues	0.20
6/2/15	CG	witness coordination	0.20
6/9/15	CG	scheduling matter	0.20
6/10/15	CG	review materials for hearing	1.75
6/14/15	CG	hearing prep review statements	1.75

6/16/15	CG	prep for hearing with client	1.25
6/17/15	CG	prepare for disciplinary hearing with cleint	3.20
6/18/15	CG	disciplinary hearing part 1	6.00
6/19/15	CG	review additional discovery from Borough	1.25
6/24/15	CG	watch witness videos prep for hearing	2.75
7/23/15	CG	review and notate Vrybal statement	1.25
7/27/15	CG	scheduling issues due to client medical emergency	0.50
8/4/15	CG	meeting with client about statements	1.75
8/10/15	CG	review and notate Brennan statement	1.25
8/11/15	CG	review niro interview	0.90
8/12/15	CG	watch brennan video, miller video and jiminez videos compare with reports, calls with client	2.25
8/13/15	CG	review and note Altiero interview	1.20
8/18/15	CG	review Vrybal statements in reports and transcript and hearing testimony	1.25
8/20/15	CG	prep client for hearing	1.25
8/25/15	CG	hearing preparation, scheduling issues	1.50
8/26/15	CG	hearing preparation	2.25
8/27/15	CG	disciplinary hearing, meeting with client	5.50
8/31/15	CG	gather materials to start fee shift	0.30

TOTAL HOURS**78.70****TOTAL FEES****\$23,216.50**

Billing Summary

Christopher Gray

78.70hrs

\$295.00/hr

\$23,216.50

TOTAL HOURS AND FEES	78.70	\$23,216.50
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DISBURSEMENTS

Jul-20-15	Transcript Costs Audio Transcription of Melissa Vybiral Interview Oct 28, 2014	174.50
Sep-24-15	Investigation Costs 11/05/2013	365.00
	Investigation Costs 11/10/2013	156.00
	Investigation Costs 11/11/2013	156.00
	Investigation Costs 11/12/2013	365.00
	Investigation Costs 11/13/2013	365.00
	Investigation Costs 11/17/2013	156.00
	Investigation Costs 11/30/2013	210.00
	Investigation Costs 12/02/13	312.00
TOTAL DISBURSEMENTS		\$2,259.50
TOTAL BALANCE NOW DUE		\$25,476.00

PAYMENT IS REQUESTED WITHIN THIRTY (30) DAYS OF BILLING

PLEASE INCLUDE FILE AND INVOICE NUMBER ON CHECK

OUTSTANDING BILLS

<u>Date of Bill</u>	<u>Invoice #</u>	<u>Fees Billed</u>	<u>Disbs Billed</u>	<u>Paid</u>	<u>Due</u>	<u>Aging</u>
10/06/15	3831	\$23,216.50	\$2,259.50	\$0.00	\$25,476.00	<=30
TOTALS		\$23,216.50	\$2,259.50	\$0.00	\$25,476.00	

Payments received after the date of this invoice will be reflected on next months bill

Exhibit D

FROM:	Borough of Hightstown		Police Department	
	DIVISION, INSTITUTION OR AGENCY		ADDRESS	DATE
			415A Mercer Street, Hightstown, NJ 08520	March 9, 2015
TO:	NAME OF EMPLOYEE		TITLE	
	Frank Marchione		Patrolman	
	STREET		CITY AND STATE	
	57 Eddington Lane		Monroe, NJ 08831	

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

CHARGE(S):

Charge #1: Officer Marchione committed an act of Conduct unbecoming a police officer, by engaging in sexual act with Melissa Vybiral while he was on-duty as a police officer with the Hightstown Police Department in violation of N.J.S.A. 40A:14-147.

Charge # 2: Officer Marchione violated department Rules and Regulations, by engaging in activities which are not directly related to the performance of their duties, specifically by engaging in sexual acts with Ms. Vybiral while he was on-duty in violation of 4.6.3 – Prohibited Activity on Duty

X If checked, charges are continued on attached page

SPECIFICATION(S):

Officer Marchione engaged in sexual activity with Melissa Vybiral on two occasions in 2005, while on-duty as a police officer with the Hightstown Police Department. On one occasion Officer Marchione met with Ms. Vybiral in the Cedar Hill cemetery, which is located on Mercer Street in Hightstown. During this meeting Officer Marchione, who was on-duty, in uniform and operating a marked Hightstown Police department vehicle engaged in vaginal intercourse with Ms. Vybiral.
On another occasion Officer Marchione called Ms. Vybiral at her place of employment and asked her to meet up with him. Officer Marchione picked up Ms. Vybiral at place of employment (Dept. of Human Services, 222 S. Warren Street in Trenton).

X If checked, specifications are continued on attached page

X You are hereby suspended effective August 22, 2013

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

YOU ARE HEREBY NOTIFIED that based upon the nature of the foregoing charges, you are terminated from the Borough's employment.

Should you wish to be heard on these charges, a hearing will be held at Parker, McCay 9000 Midlantic Drive, Mt. Laurel, NJ 08054 at a mutually convenient date within thirty (30) days of today's date. Please advise the Borough Clerk in writing (156 Bank St, Hightstown, NJ 08520) within five (5) calendar days from service of the charged, whether you wish to proceed with a hearing, and your and your attorney's, if any, availability.

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

☐ Suspension for _____ days, beginning _____ and ending _____

☐ Indefinite suspension pending criminal charges effective (date) _____

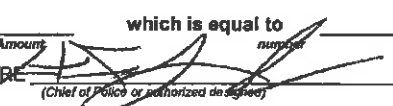
X Removal, effective (date) August 22, 2013

☐ 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 
(Chief of Police or authorized designee)

TITLE H/OIC

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

Method of Service (Check One)	☐ PERSONAL SERVICE →	NAME AND TITLE OF SERVER	DATE SERVED
	X CERTIFIED OR REGISTERED MAIL →	Give date of receipt by employee or agent as shown On return receipt postal card and the receipt number:	

FROM:	Borough of Hightstown		Police Department	
	DIVISION, INSTITUTION OR AGENCY		ADDRESS	DATE
			415A Mercer Street, Hightstown, NJ08520	March 9, 2015
TO:	NAME OF EMPLOYEE		TITLE	
	Frank Marchione		Patrolman	
	STREET		CITY AND STATE	
	57 Eddington Lane		Monroe, NJ 08831	

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

CHARGE(S):

Charge # 3: Officer Marchione violated department Rules and Regulations, using a departmental vehicle for personal business or pleasure, specifically by using a marked patrol vehicle to pick up Ms. Vybiral at her place of employment and drive her to a location so she could perform fellatio on him in violation of 4.8.9 – Use of Department Vehicles.

Charge # 4: Officer Marchione violated department Rules and Regulations, by failing to be truthful with investigators during the Internal Affairs investigation that was conducted into him engaging in sexual activities with Ms. Vybiral while he was on-duty in violation of 4.12.6 - Truthfulness

SPECIFICATION(S):

Officer Marchione who was on-duty and operating a marked Hightstown Police department vehicle, then drove Ms. Vybiral a parking lot behind the Communication Workers of America building located at 321 W. State Street in Trenton, where Ms. Vybiral performed fellatio on Officer Marchione. After the act, Officer Marchione drove Ms. Vybiral back to her place of employment. During the internal affairs investigation, Officer Marchione denied having sexual relations with Ms. Vybiral while in uniform, in, on or around a police vehicle and during working hours. Ms. Vybiral confirmed that she had sexual relations with Officer Marchione while he was in uniform, while he was utilizing a marked police car and while on duty.

☐ If checked, charges are continued on attached page

☐ If checked, specifications are continued on attached page

X You are hereby suspended effective **August 22, 2013**

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

YOU ARE HEREBY NOTIFIED that based upon the nature of the foregoing charges, you are terminated from the Borough's employment.

Should you wish to be heard on these charges, a hearing will be held at Parker, McCay 9000 Midlantic Drive, Mt. Laurel, NJ 08054 at a mutually convenient date within thirty (30) days of today's date. Please advise the Borough Clerk in writing (156 Bank St, Hightstown, NJ 08520) within five (5) calendar days from service of the charged, whether you wish to proceed with a hearing, and your and your attorney's, if any, availability.

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

☐ Suspension for _____ days, beginning _____ and ending _____

☐ Indefinite suspension pending criminal charges effective (date) _____

X Removal, effective (date) **August 22, 2013**

☐ 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

LT/OIC

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

Method of Service (Check One)	☐ PERSONAL SERVICE →	NAME AND TITLE OF SERVER	DATE SERVED
	X CERTIFIED OR REGISTERED MAIL →	Give date of receipt by employee or agent as shown On return receipt postal card and the receipt number:	

Exhibit E

Resolution 2015-254

BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY

**RESOLUTION ADOPTING THE HEARING OFFICER'S
RECOMMENDATION TO DISMISS THE CHARGES SET FORTH IN
THE NOTICE OF DISCIPLINARY ACTION SERVED ON FRANK
MARCHIONE ON MARCH 12, 2015 AND HEARD ON JUNE 18, 2015
AND AUGUST 27, 2015**

WHEREAS, Officer Frank Marchione was served with a Notice of Disciplinary Action containing four (4) charges dated March 9, 2015 and served on March 12, 2015. The Charges alleged that Marchione committed an act of conduct unbecoming a police officer by engaging in sexual acts while on duty, he violated department Rule and Regulations by engaging in activities which are not directly related to the performance of his duties; he used a department vehicle for personal business and pleasure, and truthfulness; and

WHEREAS, Marchione requested a hearing on the charges which took place on June 18, 2015 and August 27, 2015; and

WHEREAS, the hearing officer heard and reviewed the evidence present during the hearings, and on August 27, 2015 issued a verbal recommendation stating that the Borough failed to prove its case by a preponderance of the evidence on the March 9, 2015 set of charges; and

WHEREAS, the hearing officer's findings have been reviewed by the Borough Council for the Borough of Hightstown.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Hightstown, County of Mercer, State of New Jersey, that it hereby adopts the hearing officer's findings and recommendations issued on August 27, 2015 and dismisses the March 9, 2015 set of charges.

CERTIFICATION

I hereby certify the foregoing to be a true copy of a resolution adopted by the Borough Council at a meeting held on October 5, 2015.

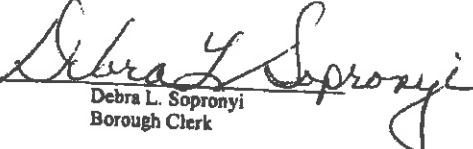

Debra L. Sopronyi
Borough Clerk

Exhibit F

Law Offices
SCIARRA & CATRAMBONE, L.L.C.

A Limited Liability Company
1130 Clifton Avenue
Clifton, New Jersey 07013
Tel: 973-242-2442
Fax: 973-242-3118
www.sciarralaw.com

Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Of Counsel
Cathie Perselay Seidman*
Alan Serrins**
Deborah Masker Edwards*
Christopher A. Gray#

*Admitted NJ & NY Bars
** Admitted NY Bar
Admitted NJ & PA Bars

Hamilton Office
100 Horizon Center Blvd.
Hamilton, New Jersey 08691
856-888-7066

New York Office
The Woolworth Building
233 Broadway 23rd Floor
New York, NY 10279
212-406-1700

December 9, 2015

RE: Frank Marchione Matter

FOR PROFESSIONAL SERVICES RENDERED

<u>DATE</u>	<u>LWYR</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
11/12/15	DME	Begin review of file for preparation of Attorney Fee Application.	0.25
12/3/15	DME	Review file; Draft OTSC, initial drafts of certifications of DME, and CG, proposed order, cover letter and Verified Complaint.	2.25
12/4/15	MRC	Conference with DME re: Attorney Fee Application.	0.25
	DME	Review transcript and draft Verified Complaint for OTSC with identified exhibits.	3.75
12/7/15	MRC	Review of Attorney Fee Application.	0.50
	DME	Revised Verified Complaint, prepared draft of certification of CG and MRC, prepared draft of letter brief and cover letter.	3.75
	DME	Final edits inputted and e-mail prepared to CG regarding finalizing documents.	0.75
12/8/15	DME	Telephone conference with CG.	0.25
12/9/15	DME	Finalize documents for service.	2.25
		TOTAL HOURS	14.00
		TOTAL FEES	3586.25

Billing Summary

Matthew R. Curran	0.75hrs	\$365.00/hr	\$273.75
Deborah Masker Edwards	13.25hrs	\$250.00/hr	\$3,312.50
TOTAL HOURS AND FEES	14.00		\$3,586.25

Law Offices

SCIARRA & CATRAMBONE, L.L.C.

A Limited Liability Company
1130 Clifton Avenue - Suite #3
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Charles J. Sciarra*
Jeffrey D. Catrambone*
Matthew R. Curran

Of Counsel

Cathie Perselay Seidman*
Alan Serrins**
Deborah Masker Edwards*
Christopher A. Gray#

*Admitted NJ & NY Bars

**Admitted NY Bar

#Admitted NJ & PA Bars

Hamilton Office
100 Horizon Center Blvd.
Hamilton, New Jersey 08691
856-888-7066

New York Office
The Woolworth Building
233 Broadway 18th Floor
New York, NY 10279
212-406-1700

December 9, 2015

Via Federal Express

Superior Court of New Jersey
Mercer County Civil Courthouse
Civil Part
175 S. Broad Street
Trenton, New Jersey 08650-0068

Re: Frank Marchione v. The Borough of Hightstown, et al.
Docket No.:
Our file: 14-191

ORDER TO SHOW CAUSE

Dear Sir or Madam:

The undersigned's firm represents Plaintiff Frank Marchione ("Marchione") in the above referenced matter. Enclosed please find Plaintiff's Order to Show Cause, Verified Complaint, Certification, with attachments, and Certification of Christopher A. Gray, Esq., with attachments. Please accept the within letter brief, in lieu of a formal brief, in support of Plaintiff's Order To Show Cause and Verified Complaint. Plaintiff brings this action under N.J.S.A. 40A:14-155 for the reimbursement of the expenses of his defense of disciplinary charges which were dismissed.

STATEMENT OF FACTS

Marchione is employed as a Police Officer by the Defendants. See Verified Complaint ¶ 3. On or around June 14, 2013, Marchione's affair with a Melissa J. Vybrial ("Vybrial"), approximately seven (7) to ten (10) years ago, came to the attention of Hightstown Fire Chief Scott Jenkins ("Chief

Honorable Judge of
the Superior Court of New Jersey
Re: *Frank Marchione v. The Borough of Hightstown, et al.*
December 9, 2015, Page 2

Jenkins”), former friend of Marchione. See Verified Complaint ¶ 4. On or around June 20, 2013, Chief Jenkins reported to Hightstown Borough Police Director James LeTellier that Marchione engaged in sexual activity while on duty with Vybrial. See Verified Complaint ¶ 5. Thereafter, Vybrial and Chief Jenkins reported to Defendants and the Mercer County Prosecutor’s Office that on at least two separate occasions Marchione had engaged in sexual acts with Vybrial while on duty in his department vehicle. See Verified Complaint ¶ 6. The Mercer County Prosecutor’s Office declined any criminal prosecution against Plaintiff. See Verified Complaint ¶ 6.

On or about March 9, 2015, Marchione was administratively charged with conduct unbecoming a police officer and violating Department Rules and Regulations for engaging in sexual acts while on duty in violation of N.J.S.A. 40A:14-147 and Rule and Regulation 4.6.3. He was also charged with the use of department vehicles for engaging in sexual acts in his marked patrol vehicle in violation of Rule and Regulation 4.8.9 and failing to be truthful during an investigation related to the sexual acts while on duty in violation of Rule and Regulation 4.12.6. See Certification of Christopher A. Gray, Esq.¹ ¶ 23. Thereafter, Plaintiff retained Sciarra & Catrambone, LLC to represent him with regard to these disciplinary charges. See Gray Cert., ¶ 24.

On or around June 18, 2015 and August 27, 2015, a Departmental Hearing took place before Hearing Officer Ira E. Kreizman, J.S.C. (Ret.) with regard to the four (4) disciplinary charges. See Verified Complaint ¶ 9. Defendants presented the testimony of Melissa J. Vybrial, David McGuinness Special State Investigator/Acting Lieutenant of Detectives, and Lieutenant Frank Gendron of Internal Affairs of Defendant Borough of Hightstown Police Department. See Verified Complaint ¶ 10-11. After a full departmental hearing, the Hearing Officer found that Defendants failed to prove by a

¹ Certification of Christopher A. Gray, Esq. is hereinafter “Gray Cert.”

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preponderance of the evidence the disciplinary charges filed on March 9, 2015 against Marchione. See Verified Complaint ¶ 12. Specifically, the Hearing Officer found that the testimony of Vybrial regarding having sexual acts with Marchione while he was on duty was “not believable”. See Verified Complaint, ¶ 12, **Exhibit B**, T118:14-17. The Hearing Officer further found that Vybrial “was not capable of telling the truth”. See Verified Complaint, ¶ 13, **Exhibit B**, T117:24-118:4. The Hearing Officer determined that Vybrial was not credible in her accounts of having sexual relations with Marchione. See Verified Complaint ¶ 13, **Exhibit B**, T119:7-11.

On or about October 5, 2015, through Resolution 2015-254, the Hightstown Borough Council adopted Hearing Officer Kreizman’s findings and recommendations on August 27, 2015 and dismissed the March 9, 2015 set of charges. See Verified Complaint ¶ 14.

On or about October 7, 2015, Plaintiff forwarded to Henry Underhill, Borough Administrator of Hightstown, an invoice for the services in the defense of the March 9, 2015 disciplinary charges filed against Marchione pursuant to N.J.S.A. 40A:14-155. See Gray Cert., ¶ 29. To date Defendants have failed to reimburse Plaintiff for his defense costs of the March 9, 2015 disciplinary charges. See Gray Cert., ¶ 29.

LEGAL ANALYSIS

Marchione should be reimbursed for defending the disciplinary charges assessed on March 9, 2015 pursuant to N.J.S.A. 40A:14-155 as the charges were dismissed against him for lack of any credible evidence.

Pursuant to statutory authority, Plaintiff should be reimbursed for the cost of his defense of the disciplinary charges that were assessed against him as the charges were dismissed as the Defendant failed to prove the charges by a preponderance of the evidence.

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Re: *Frank Marchione v. The Borough of Hightstown, et al.*
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Marchione is entitled to reimbursement for the expense of his defense of the disciplinary charges that the Hearing Officer determined had no evidentiary support. The Hearing Officer found that the witness that was relied on by Defendants was unbelievable and lacked any credibility. Pursuant to N.J.S.A. 40A:14-155 Plaintiff is entitled to have his defense expenses reimbursed. N.J.S.A. 40A:14-155 states as follows:

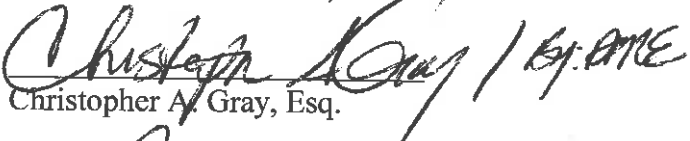
Whenever a member or officer of a municipal police department or force is a defendant in any action or legal proceeding arising out of and directly related to the lawful exercise of police powers in the furtherance of his official duties, the governing body of the municipality shall provide said member or officer with necessary means for the defense of such action or proceeding, but not for his defense in a disciplinary proceeding instituted against him by the municipality or in a criminal proceeding instituted as a result of a complaint on behalf of the municipality. If any such disciplinary or criminal proceeding instituted by or on complaint of the municipality shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

It is respectfully requested that Marchione be reimbursed for the defense costs related to the defense of the disciplinary charges, that were dismissed for lack of evidence, pursuant to N.J.S.A. 40A:14-155.

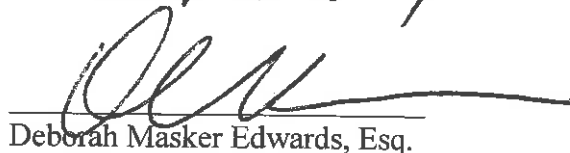
We thank the Court for its attention and courtesies in this matter.

Respectfully submitted,
Sciarras & Catrambone, L.L.C.

By:


Christopher A. Gray, Esq.

By:


Deborah Masker Edwards, Esq.

DME/d

Enclosures

cc: Henry Underhill, Hightstown Borough Administrator
Client

SCIARRA & CATRAMBONE, LLC
Deborah Masker Edwards, Esq.
(Attorney Id. No.: 047181991)
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
(973) 242-3118
Attorney for Plaintiff
Frank Marchione

FRANK MARCHIONE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MERCER COUNTY
	:	
Petitioner	:	
V.	:	CIVIL ACTION
	:	
THE BOROUGH OF HIGHTSTOWN and	:	DOCKET NO.: MER-L-_____ -15
THE BOROUGH OF HIGHTSTOWN	:	
POLICE DEPARTMENT,	:	
	:	ORDER
	:	
Defendant	:	
	:	
	:	
	:	

THIS MATTER, having come before the Court by Sciarra & Catrambone, LLC, attorneys for Plaintiff Frank Marchione ("Marchione"), who brings this matter as a means of obtaining reimbursement of his legal fees in defense of disciplinary charges assessed by his employer, The Borough of Hightstown and The Borough of Hightstown Police Department ("Defendants"), pursuant to N.J.S.A. 40A:14-155, with an Order to Show Cause, Notice of Motion, Verified Complaint, Brief and Certification of Counsel with attachments being filed with the Court, with Marchione seeking to have Count One of the Complaint to be heard in a summary manner pursuant to R. 4:67-1 et seq., and the Court having heard all

issues in a summary manner as they are ripe for determination; and good cause having been shown therefore,

IT IS on this _____ day of _____, 2015

ORDERED that relief sought by way of Count One of Marchione's Verified Complaint seeking Defendants' reimbursement for the defense of the disciplinary charges dated March 9, 2015 is **granted**; and it is further

ORDERED that the Defendants The Borough of Hightstown and the The Borough of Hightstown Police Department shall pay attorneys' fees to Plaintiff Marchione, payable to the firm of Sciarra & Catrambone, LLC, for reimbursement of his defense against the March 9, 2015 disciplinary charges as follows:

Attorney	Rate	Hours	Total
Christopher A. Gray, Esq.			

For a Sub-Total of: \$ _____

ORDERED that Sciarra & Catrambone, LLC is hereby awarded additional attorneys' fees for the filing of Plaintiff's Order to Show Cause and Motion to Proceed Summarily in the amount of \$ _____; and it is further

ORDERED that the Defendants shall reimburse the firm of Sciarra & Catrambone, LLC, for costs in the amount of \$ _____; and it is further

ORDERED that Judgement is herein entered in favor of Plaintiff Frank Marchione and against Defendants The Borough of Hightstown and The Borough of Hightstown Police Department, in accordance with the above, for a **Grand Total** in the amount of \$ _____, and it is further

ORDERED that Defendants The Borough of Hightstown and The Borough of Hightstown Police Department shall make full payment of all counsel fees and costs to Plaintiff Marchione, payable to Sciarra & Catrambone, LLC, within twenty (20) days of the date of this Order; and it is further

ORDERED that a copy of this filed Order shall be served upon
Counsel within _____ days of the date hereof.

J.S.C.

So Ordered

Unopposed []

Opposed []

SCIARRA & CATRAMBONE, LLC
Deborah Masker Edwards, Esq.
(Attorney Id. No.: 047181991)
1130 Clifton Avenue
Clifton, NJ 07013
(973) 242-2442
(973) 242-3118
Attorney for Plaintiff
Frank Marchione

FRANK MARCHIONE,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION - MERCER COUNTY
	:	
Petitioner	:	
V.	:	CIVIL ACTION
	:	
THE BOROUGH OF HIGHTSTOWN and	:	DOCKET NO.: MER-L-_____ -15
THE BOROUGH OF HIGHTSTOWN :	:	
POLICE DEPARTMENT, :	:	
	:	CERTIFICATION OF SERVICE
	:	
Defendant	:	
	:	
	:	

Certification of Service

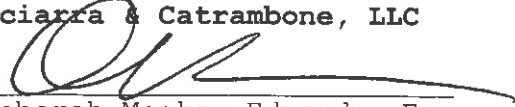
I hereby certify on this date that one (1) true copy of the within Order to Show Cause, Verified Complaint, and all papers in support thereof, was served upon the following via FedEx:

Henry Underhill, Borough Administrator
Borough of Hightstown
156 Bank Street
Hightstown, New Jersey 08520

I hereby certify that the foregoing 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.

Respectfully submitted,
Sciarr & Catrambone, LLC

By:


Deborah Masker Edwards, Esq.

Date: December 10, 2015

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: ☐ CK ☐ CG ☐ CA	
			CHG/CK NO.	
			AMOUNT:	
			OVERPAYMENT:	
		BATCH NUMBER:		
ATTORNEY / PRO SE NAME Christopher A. Gray, Esq.			TELEPHONE NUMBER (973) 242-2442	
			COUNTY OF VENUE Mercer	
FIRM NAME (if applicable) Sclarra & Catrambone, LLC			DOCKET NUMBER (when available)	
OFFICE ADDRESS 1130 Clifton Avenue, Clifton, New Jersey 07013			DOCUMENT TYPE Order To Show Cause	
			JURY DEMAND ☐ YES ☒ NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Frank Marchione		CAPTION Frank Marchione v. The Borough of Hightstown and The Borough of Hightstown Police Department.		
CASE TYPE NUMBER (See reverse side for listing) 801	HURRICANE SANDY RELATED? ☐ YES ☒ NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? ☐ YES ☒ NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? ☐ YES ☒ NO		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? ☐ YES ☒ NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) ☐ NONE ☒ 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 RECURRENT RELATIONSHIP? ☒ YES ☐ NO		IF YES, IS THAT RELATIONSHIP: ☒ EMPLOYER/EMPLOYEE ☐ FRIEND/NEIGHBOR ☐ OTHER (explain) ☐ FAMILIAL ☐ BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? ☒ YES ☐ NO				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? ☐ YES ☒ NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? ☐ YES ☒ 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 redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: <i>Christopher A. Gray, Esq.</i> <i>Bejdane</i> <i>12/9/15</i>				



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)

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 | 289 REGLAN |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 278 ZOMETA/AREDIA | 291 PELVIC MESH/GYNECARE |
| 279 GADOLINIUM | 292 PELVIC MESH/BARD |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 282 FOSAMAX | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 285 STRYKER TRIDENT HIP IMPLANTS | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 286 LEVAQUIN | 297 MIRENA CONTRACEPTIVE DEVICE |
| 287 YAZ/YASMIN/OCELLA | 601 ASBESTOS |
| 288 PRUDENTIAL TORT LITIGATION | 623 PROPECIA |

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