

**BEFORE THE CIVIL SERVICE COMMISSION, CITY OF AURORA, COLORADO**

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**PETITION FOR APPEAL OF DISCIPLINARY ACTION**

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**IN RE THE MATTER OF A DISCIPLINARY PROCEEDING AGAINST:**

**OFFICER VICTOR OVIEDO, #309750, MEMBER OF THE AURORA CLASSIFIED SERVICE, AURORA POLICE DEPARTMENT,**

**Appellant.**

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COMES NOW, Officer Victor Oviedo, a sworn member of the Aurora Civil Service and the Aurora Police Department, by and through his attorneys Bruno, Colin & Lowe, P.C., by David M. Goddard, and pursuant to and in accordance with the Aurora City Charter §3-16(8)(e) and Sections XI and XII of the Rules and Regulations of the Aurora Civil Service Commission, respectfully appeals and requests review by the Civil Service Commission of a Disciplinary Order dated February 16, 2022, regarding IA 21-16, issued by Chief of Police Vanessa Wilson and served upon Officer Oviedo on that date, sustaining Appellant for alleged policy violations and suspending him without pay to 40 hours. In support of the instant appeal, Officer Oviedo states as follows:

1. At all times pertinent hereto, Officer Oviedo was a member of the Aurora Civil Service, Aurora Police Department, maintaining the rank of Officer.

2. At all times pertinent hereto, Respondent Chief of Police Vanessa Wilson was the duly appointed, authorized, and empowered Chief of Police of the Aurora Police Department, and was acting in such capacity in the issuance of the Disciplinary Order, dated February 16, 2022, and served upon Officer Oviedo on that same date.

3. On or about January 11, 2022, Appellant Oviedo received a Civil Service Acknowledgment from Deputy Chief Darin Parker advising of the completion of the IA Case No. 21-16 investigation and recommended disposition, as follows:

- |    |         |   |
|----|---------|---|
| a. | 6.11.2  | Responsibility for Preliminary Investigations<br><b>Sustained</b> |
| b. | 14.2.15 | Unsatisfactory Performance<br><b>Sustained</b>                    |
| c. | 11.1.3  | Mandatory Notification to Social Services<br><b>Sustained</b>     |
| d. | 14.1.5  | Conformance to Law  |

## Not Sustained

See Civil Service Acknowledgement attached as **Exhibit A**.

4. On or about January 27, 2022 a pre-disciplinary hearing was held with Appellant Oviedo and Respondent Chief Wilson in connection with the above-specified alleged violations in IA Case No. 21-16. Appellant Oviedo provided an oral statement at that time.

5. On or about February 16, 2022 Appellant Oviedo attended a disciplinary hearing with Respondent Chief Wilson wherein she suspended Oviedo for 40 hours without pay. *See* Disciplinary Order, dated February 16, 2022, attached as **Exhibit B**.

6. The Disciplinary Order and the resulting suspension of the Appellant is not supported by the standard of evidence necessary to prove a violation of the Aurora Police Department Policies and Procedures, is contrary to rule or law and/or constitutes an arbitrary and capricious abuse of discretion on behalf of Respondents, and the following are offered pursuant to the Aurora Charter, §3-16, and Aurora Civil Service Rules and Regulations Section XI, Paragraph 61 and Section XII, Paragraph 66 as a brief summary of the reasons for this appeal and reasons the disciplinary action was incorrect:

a. The sustained findings for the above violations are unsupported by the facts elicited during the course of the investigation conducted in connection with this matter and the suspension imposed is unjustified, lacks support in the investigative record and as a result is excessive and unjust;

b. The discipline imposed is excessive based on the nature and seriousness of the alleged conduct at hand. The level of discipline imposed is therefore punitive rather than corrective in nature and therefore violates the applicable policies utilized by the City of Aurora and the Aurora Police Department, both at the time of the alleged violation and now, regarding corrective discipline;

c. The discipline imposed further constitutes a penalty disproportionate to the violations 1) by other members of the Aurora Police Department of this same policy under similar circumstances, and 2) by other members of the Civil Service involved in the same underlying incident, as such denies Appellant Oviedo his right to equal protection under the laws and his right to substantive due process. Such action is contrary to the Constitution of the United States, the Constitution of the State of Colorado, and violates the provisions and policies of the City of Aurora and the Aurora Police Department regarding fair and equal treatment for all employees thereof;

d. The discipline imposed additionally fails to consider the prior service and work history of Appellant Oviedo as a longstanding member of the Civil Service and the Aurora Police Department. It entirely ignores his length of service, quality of performance, and complete lack of any prior disciplinary history, again violating the progressive and/or corrective discipline policies previously and presently being

utilized by the Aurora Police Department and the City of Aurora; and

e. The discipline imposed is also violative of generally accepted standards of proper police administration and was imposed upon the Appellant for purposes other than the administrative control of the Aurora Police Department.

7. Accordingly, Appellant Oviedo respectfully requests that pursuant to the Rules and Regulations of the Civil Service Commission of the City of Aurora, and pertinent sections of the Aurora Charter, he be afforded a review *de novo* by the Commission of the subject Disciplinary Order. In that regard, Appellant Oviedo further requests that such Disciplinary Order be vacated and held for naught, or that the same be modified and the penalty be reduced by the Commission, and that he be awarded back pay, seniority, and all other emoluments of office such that proper progressive disciplinary action is imposed consistent with departmental policy and as appropriate under the attendant and/or mitigating circumstances.

Appellant Oviedo requests that a hearing in connection with this appeal be closed to the public. Further, Appellant Oviedo objects to the public release, dissemination or other public disclosure of any pleadings, materials, stipulations or Commission orders related to this matter.

DATED this 2<sup>nd</sup> day of March, 2022.

BRUNO, COLIN & LOWE, P.C.

*s/David M. Goddard*

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*Attorneys for Appellant*

Appellant's Address:

c/o Bruno, Colin & Lowe, P.C.

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Denver, CO 80202

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>nd</sup> day of March, 2022 a true and correct copy of the foregoing **PETITION FOR APPEAL OF DISCIPLINARY ACTION** was filed with the Civil Service Commission via electronic mail to [civilservice@auroragov.org](mailto:civilservice@auroragov.org), and to include the following:

Matt Cain  
[civilservice@auroragov.org](mailto:civilservice@auroragov.org)

Peter Morales  
[pmorales@auroragov.org](mailto:pmorales@auroragov.org)

Isabelle Evans  
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*s/Julie Bozeman* \_\_\_\_\_  
Julie Bozeman, Paralegal  
Bruno, Colin & Lowe, P.C.

# **CIVIL SERVICE ACKNOWLEDGMENT**

*(APPLIES ONLY IF DISCIPLINE EXCEEDS WRITTEN REPRIMAND)*

**Officer Victor Oviedo #309750**

**IAB CASE #21-16**

**I acknowledge receipt of true and correct copies of:**

- 1. The Specification of Charges against me.**
- 2. The Summary of Evidence supporting those charges.**
- 3. The summary of my disciplinary history.**

**I further acknowledge that I have been given an opportunity to review those documents and am familiar with them.**

**I realize I have the following rights:**

- 1. To a pre-disciplinary hearing with the Chief of Police or designee.**
- 2. To make a statement in response to the charges at the pre-disciplinary hearing.**
- 3. To have this statement transcribed and included in the file.**
- 4. To submit a written statement to the Chief of Police or designee within three (3) business days after the pre-disciplinary hearing. I may submit the written statement whether or not I made an oral statement.**
- 5. To an automatic review by the City Manager or designee who may approve, modify, or disapprove the terms of the Order if it involves a monetary impact greater than one-third (1/3) of my monthly salary.**
- 6. To appeal the Disciplinary Order to the Civil Service Commission within ten (10) business days from service of the Order on me, provided I follow the requirements set forth in Sec. 3-16(8)(e) of the City Charter, as amended November 6, 1987, for such appeal.**

**I understand that, pursuant to applicable policy, I may request a review by an Independent Review Board. This is not a right, but a privilege provided by policy and granted at the sole discretion of the Chief of Police. The IRB panel provides a recommendation of disciplinary action to the Chief of Police, which may or may not be used for consideration in the Chief's determination of final discipline.**

\_\_\_\_\_  
**Member Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Time**

\_\_\_\_\_  
**Witnessed By**

## 5. SPECIFICATIONS OF CHARGES AND FINDINGS

### 6.11.2 Responsibility for Preliminary Investigations

All sworn members are responsible for the preliminary investigation of assigned incidents. Sworn members assigned an incident, or discovering a possible crime, will conduct an efficient and reasonable preliminary investigation with the objectives of determining if a crime has occurred and, whenever possible, bringing the case to a satisfactory conclusion without the necessity for a follow-up investigation.

Sworn members will, as appropriate, perform those following tasks relevant to the situation when conducting a preliminary investigation:

- (a) Provide aid to the injured.
- (b) Protect the scene to ensure that evidence is not lost or contaminated.
- (c) Determine if an offense has actually been committed.
- (d) Determine the identity of the suspect(s) and effect an arrest, if possible and appropriate.
- (e) Provide assisting members with relevant information.
- (f) Locate and identify all witnesses.
- (g) Determine what information is known by victims and witnesses.
- (h) Determine the exact circumstances of the offense.
- (i) Collect or arrange for the collection of evidence.
- (j) Obtain written statements from victims, witnesses, and suspects, if feasible.
- (k) Accurately document all information on the proper report forms.

**Officer Victor Oviedo #309750**

SUSTAINED  
 Chief's Review Board Finding  
[Signature]  
 Deputy Chief Signature

01-11-22  
 Date

### 14.2.15 Unsatisfactory Performance

Members will maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Unsatisfactory performance may be demonstrated by lack of knowledge of the application of laws required to be enforced, an unwillingness or inability to perform assigned tasks, the failure to conform to work and/or training standards established for the member's rank, grade or position, the failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention, or absence without leave or habitual tardiness. In addition to other indications of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or an official written report of repeated infractions of directives, and/or corrective action reports of the Department.

Members are required to maintain proficiency in the proper deployment of authorized weapons. Members will only deploy those weapons for which they are certified to carry. The discharge of any weapon in a negligent or inappropriate manner could be considered an unsatisfactory performance.

**Officer Victor Oviedo #309750**

SUSTAINED  
Chief's Review Board Finding  
[Signature]  
Deputy Chief Signature

01-11-22  
Date

**11.1.3 Mandatory Notification to Social Services**

Members investigating cases of child abuse or neglect will contact the Department of Human Services (DHS) when there is evidence of:

- (a) Injury resulting in death or serious bodily injury to include broken bones, and burns.
- (b) Past or current sexual abuse, incest, molestation, sexual exploitation or prostitution.
- (c) Known or suspected physical abuse, to include bruising, and bleeding.
- (d) Cases where a child exhibits a condition of failure to thrive.
- (e) Cases where a child's environment is injurious to their health and safety.
- (f) Cases where abandonment occurs.
- (g) Any potentially injurious or unsafe situation as based upon officer observations.

Members will notify the appropriate County Department of Human Services as listed in the Juvenile Procedures Directive regarding child abuse and neglect cases.

**Officer Victor Oviedo #309750**

SUSTAINED  
Chief's Review Board Finding  
[Signature]  
Deputy Chief Signature

01-11-22  
Date

**14.1.5 Conformance to Law**

Members will, whether on or off duty, whether acting in an official capacity or not, obey all laws of the United States and of any State and local jurisdiction in which the members are present.

A finding of guilty by a judge or jury, or a plea of guilty or nolo contendere, whether judgment and sentencing is deferred or not, to a violation of any law will constitute prima facie evidence of a violation of this section and the Department need not re-establish the facts and findings of the charge.

Regardless of the status of any criminal proceeding, the Department reserves the right to conduct an internal investigation into the underlying allegation. The Department may take disciplinary action based upon the internal investigation independent of the determination or conclusion of the criminal case.

**Officer Victor Oviedo #309750**

NOT SUSTAINED

Chief's Review Board Finding

06-11-22

Date

[Signature]

Deputy Chief Signature

**Chief's Review Board Recommendation(s):**

40 HOUR SUSPENSION

**Brady / Rule 16 Disclosure** – notification to DA's offices and City Prosecutors for any sustained finding related to the officer's credibility or character for truthfulness, or statements by the officer indicating bias directed at a particular individual, numerous individuals, or any characteristics of individuals or groups (such as gender, ethnicity, nationality, race, creed, religion and sexual orientation). Notification also required when there is a sustained finding related to an officer's criminal acts. Notification typically is completed after the completion of any appeals to the Civil Service Commission. Special circumstances may require earlier notification.

**SB 15-218 (CRS 24-33.5-114(4))** Notification required to the DA's offices whenever an officer has a sustained finding that an officer has made a knowing misrepresentation in either (I) testimony or affidavit related to the arrest or prosecution of a person or related to a civil case pertaining to the officer; or (II) during the course of any internal investigation which is related to the officer's alleged criminal conduct, official misconduct as defined by CRS 18-8-404 or 18-8-405, or use of excessive force on duty or off duty. Notification is due no more than seven (7) days after the agency makes the sustained finding.



**HB 21-1250 (CRS 24-72-303(4)(a))** – Public access to records on completed IA investigations, including any appeals process. Applies to the on-duty or in uniform conduct of an officer, an incident of alleged misconduct involving a member of the public. Applies to investigations initiated after April 12, 2019, no matter the final determination.

**SB-19-166 (C.R.S. 24-31-305(2.5))** requires a notification from APD to POST that there was a sustained finding that an officer made an untruthful statement concerning a material fact OR knowingly omitted a material fact on an official criminal justice record, while testifying under oath, during an IA investigation or during an administrative investigation and/or disciplinary process. The finding must be made by the clear and convincing evidence standard after all disciplinary appeals have been completed. Applies to untruthful statements after August 2, 2019.

## 6. SUMMARY OF FINDINGS

### IN THE MATTER OF DISCIPLINARY PROCEEDING AGAINST

**Officer Victor Oviedo #309750**

### MEMBER OF THE AURORA CIVIL SERVICE, AURORA POLICE DEPARTMENT

The evidence in support of the findings is that on September 16, 2020, Officer Victor Oviedo was dispatched as the primary officer on a traffic accident involving a driver who was possibly DUID. A juvenile passenger was in the vehicle at the time of the accident. Several months later, the juvenile passenger was found deceased at home while in the custody of the driver. It was suspected that the cause of death was an overdose. A review of the traffic investigation revealed that Officer Oviedo did not document properly the following: the possibility of a DUID, the use of Narcan by AFD on the driver, the involvement of the juvenile or his welfare, and he failed to make a notification to the Department of Human Services (DHS). Officer Oviedo lacked the willingness to complete a thorough investigation to determine the cause of the accident, if DUID charges were applicable, or if the juvenile was the victim of child neglect. He displayed minimal concern for the juvenile's welfare or who obtained custody of the child while on the scene of the accident. He diminished his overall responsibility for conducting a thorough investigation on this traffic accident failing to meet a satisfactory performance in a variety of areas. The failure to report the incident to DHS was investigated criminally. The 18<sup>th</sup> Judicial District did not find any evidence of criminal conduct that could be proven beyond a reasonable doubt.

Based on the review of investigation the Chief's Review Board has recommended to the Chief of Police that Officer Victor Oviedo be **SUSTAINED** for violating Aurora Police Department directive:

#### **6.11.2 Responsibility for Preliminary Investigation**

#### **14.2.15 Unsatisfactory Performance**

#### **11.1.3 Mandatory Reporting to Social Services**

Based on the review of investigation the Chief's Review Board has recommended to the Chief of Police that Officer Victor Oviedo be **NOT SUSTAINED** for violating Aurora Police Department directive:

#### **14.1.5 Conformance to Law**

**YOU HAVE THREE (3) DAYS FROM THE DATE OF THE PRE-DISCIPLINARY HEARING TO REQUEST AN IRB.**

**8. SUMMARY OF DISCIPLINE**

**Officer Victor Ovideo #309750  
IA Case #21-16**

**Date**

**Violation**

**Discipline**

No prior discipline



**Office of the Chief of Police  
Disciplinary Order**

Date: February 16, 2022  
To: Officer Victor Oviedo #309750  
From: Vanessa Wilson, Chief of Police  
Re: IA Case #21-16

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Please be advised that I have reviewed IAB Case #21-16 in its entirety and considered statements made during your Pre-Disciplinary meeting held on January 27, 2022. In making my determination, I make the following findings and orders:

1. **FINDINGS OF FACT:** I adopt as my findings of fact the Summary of Findings as prepared by the Internal Affairs Bureau.
2. **DISCIPLINARY ORDER:** Based on the factual findings above, it is my determination that you be suspended without pay for 40 hours. The dates and times of suspension shall be in accordance with Addendum "A" attached to this Order.
3. **NOTICE OF RIGHT TO APPEAL:** You have the RIGHT TO APPEAL this Order within ten (10) business days from the service of the order to file an appeal of the disciplinary order in writing with the Civil Service Commission as is more fully set out in the Home Rule Charter of the City of Aurora.

By Order of:

Vanessa Wilson  
Chief of Police

VW/djc

## **ADDENDUM "A"**

It is agreed that Officer Victor Oviedo will serve the 40-Hour suspension as noted below.

*TBD*

**TOTAL HOURS: 40 Hours**

**SUSPENSION LEAVE WITHOUT PAY**

**APPROVED AS TO FORM:**

K. Randy Stip  
Office of the City Attorney

February 7, 2022  
Date

Received by this Office of the City Manager on February 9, 2022, at 6:05 a.m.

**ORDER:**

Approved XX, Disapproved \_\_\_\_\_, Modified as follows:

On February 10, 2022, at 9:55 a.m.

Jason D Batchelor  
Jason Batchelor  
Deputy City Manager

**ACKNOWLEDGMENT OF SERVICE**

I, Victor Oviedo, hereby certify that I received a true and correct copy of the above Disciplinary Order on the 16<sup>th</sup> day of Feb, 2022, at 2:25 a.m./p.m.

[Signature]  
(Signature)

**CERTIFICATE OF PERSONAL SERVICE**

The undersigned hereby certifies that on the 16<sup>th</sup> day of February, 2022, I hand delivered a true and correct copy of the above Disciplinary Order to Victor Oviedo.

[Signature]  
Signature of Person Affecting Service