No. 125085

IN THE SUPREME COURT OF ILLINOIS

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, and LASHON SHAFFER, on behalf of themselves and others similarly-situated, Plaintiffs-Respondents, v. THOMAS J. DART, Sheriff of Cook County; COOK COUNTY, ILLINOIS; and THE COOK COUNTY SHERIFF'S MERIT BOARD. Defendants-Petitioners.	On Appeal from the Appellate Court of Illinois, First Judicial District No. 1-18-1646 There Heard on Appeal From The Circuit Court of Cook County, No. 17-CH-15546 The Hon. Sophia H. Hall, Judge Presiding

BRIEF AND APPENDIX OF DEFENDANTS-PETITIONERS

ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This case involves two legal doctrines that have been upheld in many Illinois decisions involving the actions of administrative agencies, and should be applied here: (1) the rule that exhaustion of administrative remedies must occur before the dispute is filed for circuit court review; and (2) the *de facto* officer doctrine, which confers validity upon acts that a person performs while acting under color of official title even though it is discovered that the person's appointment may be deficient.

Plaintiffs-Respondents ("Plaintiffs") are six Cook County Sheriff's officers who, when this lawsuit was filed, were defendants in disciplinary cases pending before the Cook County Sheriff's Merit Board ("Merit Board"). The Merit Board is an administrative agency empowered under Illinois law to hear and decide complaints that the Cook County Sheriff ("Sheriff") makes against Sheriff's officers who are charged with misconduct.

The Sheriff charged each plaintiff with misconduct between September 2016 and July 2017. In November and December 2017, the plaintiffs declined to participate in Merit Board hearings of the disciplinary charges against them and instead filed a lawsuit against Defendants-Petitioners ("Defendants") in the Circuit Court of Cook County ("Circuit Court") seeking to enjoin the agency from taking any action in their cases. Plaintiffs sought this relief because, they claimed, the Sheriff and County improperly appointed some members of the Merit Board in violation of the Counties Code, 55 ILCS 3-7002. Plaintiffs' lawsuit was based on and sought to expand *Taylor v. Dart*, 2017 IL App (1st) 143684-B, *appeal denied*, 81 N.E.3d 1 (Ill. 2017), which had voided a 2013 decision of the Merit Board based on an improper appointment of a Merit Board member.

On July 26, 2018, the Circuit Court dismissed the complaint because the Plaintiffs failed to exhaust their administrative remedies in the Merit Board before filing suit. A 61-

69.[1] The Circuit Court directed the disciplinary cases to proceed in the Merit Board and also ruled that the Board should decide both the appointment challenges and the merits of the disciplinary charges against the six plaintiffs. *Id.* Plaintiffs appealed the Circuit Court decision to the Illinois Appellate Court, First District ("First District").

While the appeal of the Circuit Court's ruling was pending, the Merit Board held full evidentiary hearings for each of the six Plaintiffs. The Merit Board issued written decisions reinstating five Plaintiffs – Police Officers Goral, Badon, Mendez, and Stojkovic and Correctional Officer Evans – to full active duty. The Merit Board issued a written decision disciplining and terminating employment of the sixth Plaintiff, former police officer Lashon Shaffer, after finding that Shaffer had interfered with a criminal domestic abuse investigation and befriended the domestic abuse suspect behind his partner's back. In each written decision, the Merit Board found itself to be "duly appointed" under the December 7, 2017 amendments to Counties Code § 3-7002.

On July 10, 2019, after these Merit Board decisions were issued, the First District reversed the Circuit Court decision, holding that neither the exhaustion doctrine nor the *de facto* officer doctrine barred the Plaintiffs' Complaint, and instructing the Circuit Court to take evidence relating to both the appointment challenges and the officers' claimed back pay. Ill. App. Ct. Corrected Op of Jul. 10, 2019 ("App. Op."), A 126-51. The First District also suggested that if the appointment challenges had merit, then all actions that the Merit

[1] Bates numbers with the prefix "A" refer to the Appendix filed with this Court on July 22, 2019 and which is attached again to this brief for the Court's convenience. Bates numbers with the prefixes "C" or "R" refer to other documents outside the Appendix which are contained in the Record on Appeal, an Index of which is attached to this brief.

Board had taken in the six Plaintiffs' cases would be void, including even the ministerial receipt of a complaint. *Id.*

Defendants timely filed a petition for leave to appeal the First District decision, which this Court granted. *Goral v. Dart*, 2019 Ill. LEXIS 722 (Ill. Sept. 25, 2019). In the meantime, the six Plaintiffs are pursuing new lawsuits in the Circuit Court. The five Plaintiffs who were reinstated by the Merit Board are seeking damages, including back pay. Plaintiff Shaffer is seeking to void or reverse the Merit Board decision against him, and is also seeking back pay.

ISSUES PRESENTED FOR REVIEW

1. Under the exhaustion doctrine, should the Cook County Sheriff's Merit Board first resolve charges of misconduct by Sheriff's officers, along with the officers' allegation that Merit Board members are appointed in violation of 55 ILCS 3-7002, before an officer can challenge the agency's actions in a circuit court?

2. Under the *de facto* officer doctrine, should acts of an administrative agency with improperly appointed members be deemed valid?

3. Did the composition of the Cook County Sheriff's Merit Board as of September 2016 and through the present violate the Counties Code, 55 ILCS 5/3-7002, 3-7005 or 3-7006?

JURISDICTION

Jurisdiction lies under Supreme Court Rule 315. This Court allowed the defendants' petition for leave to appeal on September 25, 2019.

In addition, notwithstanding the Merit Board's reinstatement to work of five of the six Plaintiffs during the pendency of the appeal, there remains a "live controversy" between the Defendants and all six Plaintiffs. *See In re E.G.*, 133 Ill. 2d 98, 105 (1989). All six

Plaintiffs seek awards of back pay. Additionally, Plaintiff Shaffer seeks to void all actions that the Merit Board took in his disciplinary case, including the December 2018 written Board decision terminating his employment on the basis of alleged deficient appointments. In short, the case or controversy requirement is satisfied here.

Further, this appeal falls squarely under the public interest exception to the mootness doctrine, as set forth in *In re Shelby R.*, 2013 IL 114994 ¶ 16. That exception applies where the Court is presented with: (1) questions of a public nature; (2) an authoritative determination of the questions is desirable for the future guidance of public officers; and (3) the questions are likely to recur if this Court does not resolve the appeal. *Id.* ¶ 16. Just as in *Shelby R.*, the questions raised in this case concerning the Illinois *de facto* officer doctrine, the doctrine of exhaustion of administrative remedies, and appointments to the Merit Board are of a highly public nature and certain to recur without a decision from this Court. *See also Bless v. Cook Cnty. Sheriff's Office*, No. 13 C 0271, 2019 U.S. Dist. LEXIS 155426 at * 24-28 (N.D. Ill. Sept. 12, 2019) (Lee, J.) (calling for "the Illinois Supreme Court" to resolve unsettled state law concerning the Merit Board and the *de facto* officer doctrine). The issues decided here will affect far more than the Merit Board, and will impact the many administrative agencies subject to the exhaustion rule and the *de facto* officer doctrine.

STATEMENT OF FACTS

A. The Role of the Merit Board.

The Merit Board is an administrative agency created under the Counties Code, 55 ILCS 5/3-7001. Members of the Merit Board are appointed by the Sheriff to six-year terms with the advice and consent of the Board of Commissioners of Cook County ("County"). 55 ILCS 5/3-7002. No more than half plus one of Merit Board members may be affiliated with the same political party. *Id.* Among its duties, the Merit Board at all relevant times had exclusive authority to remove, demote, or suspend or terminate rank and file Sheriff's officers as a disciplinary sanction for violation of the Sheriff's rules, regulations and code of conduct. *See* 55 ILCS 5/3-7011; 55 ILCS 5/3-7012.[2] Final decisions of the Merit Board are subject to review in circuit courts under the Administrative Review Law ("ARL"). *See* Counties Code, 55 ILCS 5/3-7012 (allowing for exclusive review under the ARL); ARL, 735 ILCS 5/3-101 *et seq.* (setting forth process for reviewing agencies in circuit court).

B. The First District's *Taylor* Decision and Subsequent Legislation.

On May 12, 2017, the First District decided a Supreme Court Rule 308 appeal in *Taylor v. Dart*, 2017 IL App (1st) 143684-B, *appeal denied,* 116 N.E.3d 947 (Ill. 2017), which concerned the appointment of a Merit Board member who replaced another member who retired before his six-year term had expired. *Taylor* held that former Merit Board member John Rosales was improperly appointed in 2011 to a term of fewer than six years,

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[2] Counties Code §§ 3-7011 and 3-7012 were amended effective August 17, 2018 to make some disciplinary cases brought after June 1, 2018 subject to collective bargaining arbitrators, rather than the Merit Board. These amendments do not bear on the claims in this case. The text of the Counties Code prior to the 2018 amendments is available at http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0912 (last visited Dec. 4 , 2019).

and was also improperly allowed to remain on the Board after his short term had expired and until a replacement could be named. *Id.* ¶¶ 8, 21-37.

Taylor also concluded that plaintiff Percy Taylor could challenge the appointment at "any time" and was not subject to the *de facto* officer doctrine. 2017 IL App (1st) 143684-B ¶¶ 38-46. On that basis, *Taylor* voided the Merit Board's 2013 decision terminating the plaintiff for misconduct, ordered a new disciplinary hearing and decision, and remanded the case to the Circuit Court. *Id.* ¶ 46. As of this writing, the remanded *Taylor* case is pending in Circuit Court under the case caption *Taylor v. Dart*, Cir. Ct. Case No. 13 CH 26319.

The General Assembly acted quickly in response to *Taylor*. On December 8, 2017, the General Assembly amended Counties Code § 3-7002 abolishing the terms of all then-serving Merit Board members in order to allow for the immediate appointment of a new Board and expressly allow interim appointments. 55 ILCS 5/3-7002 (amended effective Dec. 8, 2017). On December 14, 2017, a new seven-member Merit Board was appointed. (County Resolutions, A 2-A8.) Plaintiffs allege that four of these appointees are Democrats and three are Republicans. (A 12- A13.)

C. Post-*Taylor* Litigation and Appellate Decisions.

Despite the General Assembly's prompt action, *Taylor* produced an explosion of litigation in the First District, all challenging discipline rendered by a Merit Board with one or more purportedly improperly appointed Board members. *See Lopez v. Dart*, 2018 IL App (1st) 170733 ¶ 59 n.4 (noting the "over sixty cases challenging appointments to the Merit Board, which have been filed in the circuit court since the decision in *Taylor* and pursuant to its ruling."), *appeal denied,* 116 N.E.3d 947 (Ill. 2017).

Following *Taylor*, the First District published four opinions that limited the scope of *Taylor* based on the *de facto* officer doctrine:

- In *Lopez*, 2018 IL App (1st) 170733, the First District applied the *de facto* officer doctrine and upheld 2015 and 2016 Merit Board disciplinary decisions terminating the employment of a correctional officer who took 96 hours of unauthorized absences from his job at the jail.

- In *Cruz v. Dart*, 2019 IL App (1st) 170915, the First District affirmed the validity of a May 2016 Merit Board disciplinary decision under the *de facto* officer doctrine and also affirmed the agency's fact finding that the officer had used excess force on a suspect. *Cruz* ordered the officer's case remanded to the Board for a new penalty hearing on other grounds relating to certain mitigating factors in the officer's job history. *See id.*

- In *Acevedo v. Cook Cnty. Sheriff's Merit Bd.*, 2019 IL App (1st) 181128, the First District applied the *de facto* officer doctrine to affirm a 2015 Merit Board disciplinary decision terminating an absentee correctional officer, and also rejected a class-action "due process" complaint seeking reinstatement of all officers whom the Merit Board terminated.

- In *Pietryla v. Dart*, 2019 IL App (1st) 182143 – decided after the First District's *Goral* decision below– the First District applied the *de facto* officer doctrine to affirm a 2012 Merit Board disciplinary decision terminating a correctional officer who pleaded guilty to off-duty criminal battery.

The *Lopez*, *Cruz*, *Acevedo* and *Pietryla* cases each involved challenges to the composition of the Merit Board. In these four cases, the First District affirmed the Merit

Board's decision as valid under the *de facto* officer doctrine, and distinguished *Taylor* on the basis of a supposed "first challenger" exception to the *de facto* doctrine.

D. The *Goral* Plaintiffs' Claims in Circuit Court.

Plaintiffs are six officers who were charged by the Sheriff between September 2016 and July 2017 with misconduct, and placed on unpaid administrative leave pending decisions by the Merit Board. (2/26/18 Compl., A 9-A 54.) It is undisputed that all six Plaintiffs received the required hearings with supervisors under *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985) before being placed on unpaid leave.

The original complaint in this case was filed in Circuit Court on November 27, 2017 by four of the six Plaintiffs – Officers Goral, Badon, Mendez and Stojkovic – before the Merit Board had issued a decision in any of their cases. (C 38-C 61.) On December 4, 2017, at a TRO proceeding in Circuit Court, the Merit Board temporarily took the Plaintiffs' cases off its docket, at Plaintiffs' counsel's request. (R 2-R 23; C 142.) On December 11, 2017, a first amended complaint was filed adding Officers Shaffer and Evans as additional Plaintiffs. (C 150 – C 184.). On February 26, 2018, Plaintiffs filed the operative Second Amended Complaint. (A 9-54; C 1184 V2 - C 1223 V2.) Each of these three Circuit Court complaints was filed before the Merit Board had rendered a final decision in any of the six plaintiffs' cases.[3]

Plaintiffs' Second Amended Complaint challenged appointments to the Merit Board and, on that basis, sought to: (a) nullify the Sheriff's disciplinary complaints filed

[3] A seventh former plaintiff named in the First Amended Complaint and Second Amended Complaint, Correctional Officer Frank Donis, settled his dispute with Defendants on July 20, 2018, and is no longer a party to this lawsuit. (C 2384 V 5.)

against them in the Merit Board between September 2016 and July 2017; (b) enjoin the Merit Board from deciding any pending cases; and (c) award plaintiffs back pay, back benefits and tort damages without first asking for that relief in the Merit Board or taking evidence before the agency. (A. 9-54.) The appointment challenges are as follows:

1. A *Taylor*-based objection to interim appointees and appointees to non-staggered terms who served on the Merit Board prior to December 2017. (A 11-A12.)

2. A claim that the size of the Merit Board dropped to five members after May 2017, in the wake of resignations following *Taylor*. (A 12, A 19.)

3. A claim that the Counties Code imposes term limits on the Merit Board's chairman and secretary. (A 12, 13.)

4. A claim that the December 2017 appointments to the Merit Board were improper because four appointees were Democrats and three were Republicans. According to plaintiffs, one of the appointees was required to be an Independent. (A 12-13.)

E. The Circuit Court's July 26, 2018 Order Dismissing the Claims Based on the Exhaustion Doctrine and Ordering the Merit Board to Decide Plaintiffs' Appointment Challenges.

On July 26, 2018, the Circuit Court (Hall, J.) dismissed the Second Amended Complaint under 735 ILCS 5/2-619(a)(1) based on Plaintiffs' failure to exhaust their administrative remedies before the Merit Board. (A 55-61.) The Circuit Court also found that the Merit Board itself should, in the first instance, adjudicate the Plaintiffs' appointment challenges. (*Id.*) Because the Circuit Court disposed of the case on § 2-619 grounds, the Circuit Court did not rule on a separate pending 735 ILCS 5/2-615 motion, which alleged that Plaintiffs' appointment challenges failed as a matter of law. (C 1342 V3 – C1355 V3.)

Each Plaintiff alleges to have filed appointment challenges in the Merit Board parallel to their pending lawsuit in Circuit Court. Plaintiff Evans alleges that he first made his appointment challenge via a motion to the Merit Board on July 6, 2017. (A 24.) Plaintiff Shaffer alleges that he first made his appointment challenge via a motion to the Merit Board on September 21, 2017. (A 21.) Plaintiffs Goral, Badon, Mendez and Stojkovic allege that they made appointment challenges to the Merit Board via motions filed before the Board on November 21, 2017. (A 19.) The Merit Board deferred ruling on the appointment challenges while the case was pending in Circuit Court. (*See* A 19, A 21, A 24.)

As the Circuit Court required, and after the conclusion of evidentiary proceedings for each Plaintiff, the Merit Board decided each of the plaintiffs' appointment challenges. The Merit Board found its members to be "duly appointed" in light of the December 2017 amendments. *See* A 61-62 (Shaffer) A 70-71 (Evans); A 77-79 (Goral); A 90-92 (Badon); A 102-104 (Mendez); A 114-16 (Stojkovic). The Merit Board also found that it had authority to receive the Sheriff's disciplinary complaints filed prior to December 2017, including by making fact findings that receipt of a disciplinary complaint is an administrative function handled by agency staff members and not by Merit Board members. *See* A 61-62, A 70-71, A 77-79, A 90-92, A 102-104, and A 114-16.

F. The Merit Board Proceedings and Decisions for Each *Goral* Plaintiff.

The Sheriff filed disciplinary charges against all six plaintiffs between September 2016 and July 2017. During the pendency of appellate proceedings, all six plaintiffs' cases proceeded to full evidentiary hearings and rulings from the Merit Board on all disputed matters before the agency.

1. Plaintiff Shaffer.

The Sheriff filed disciplinary charges against Shaffer on July 20, 2017. (A 21.) On December 14, 2018, following a one-day evidentiary hearing, the Merit Board issued a written decision ruling against and terminating the employment of plaintiff Shaffer, after finding that Shaffer had improperly befriended a domestic abuse suspect and interfered with the Sheriff's investigation of the suspect. (A 61-68.) The Merit Board found that Shaffer attempted to obstruct his partner's investigation of the suspect, improperly influenced the outcome of the investigation, and lied to Sheriff's internal affairs investigators about his contacts with the suspect. (A 68.)

On December 18, 2018, Shaffer filed a new lawsuit seeking administrative review of the Merit Board decision, which is currently pending in Circuit Court under the title *Shaffer v. Dart et al.*, Cir. Ct. Case No. 2018 CH 15653.[4]

2. Plaintiff Evans

The Sheriff filed disciplinary charges against Officer Evans on February 22, 2017. (A 64.) On March 1, 2019, following a three-day evidentiary hearing, the Merit Board issued a written decision ruling in favor of Evans, who had been charged with using excess force on a suspect, and reinstated him to work. (A 70-75.) On March 5, 2019, Evans filed a mandamus claim against the Sheriff, seeking back pay allegedly owed to him during his disciplinary case, without regard to any setoff for other jobs worked during the pendency of the disciplinary cases. The case is currently pending in Circuit Court under the title *Evans v. Dart et al.*, Cir. Ct. Case No. 2019 CH 2813.

[4] This Court may take judicial notice of the filing of new Circuit Court complaints in *Shaffer*, *Evans* and *Goral* cases. *See, e.g.*, *May Dep't Stores Co. v. Teamsters Union*, 64 Ill. 2d 153, 159 (1976).

3. Plaintiffs Goral, Badon, Mendez, and Stojkovic

The Sheriff filed disciplinary charges against Officers Goral, Badon, Mendez, and Stojkovic on September 16, 2016, charging all four officers with submitting false overtime reports on Christmas Day. (A 18.) On July 10, 2019, following a two-week joint evidentiary hearing, the Merit Board issued written decisions ruling in favor of Goral, Badon, Mendez, Stojkovic, and reinstating all four officers to work. (A 90-126.) On August 12, 2019, the same four Plaintiffs filed a new lawsuit seeking administrative review of the Merit Board and seeking back pay allegedly owed them during the pendency of their disciplinary cases, without regard to any setoff for other jobs worked during the pendency of the disciplinary cases. The case is pending in Circuit Court under the title *Goral et al. v. Dart et al.*, Case No. 2019 CH 9302.

G. The First District's July 10, 2019 Opinion.

In its corrected opinion of July 10, 2019, the First District reversed the Circuit Court in part, holding that neither the exhaustion requirement nor the *de facto* officer doctrine apply to this case. App. Op., A 126-151, at ¶ 114. The First District affirmed the Circuit Court's dismissal of the Second Amended Complaint to the extent the Plaintiffs alleged constitutional due process violations. App. Op. ¶¶ 59-70. Defendants in this appeal do not seek review of the First District's due process ruling.

More specifically, the First District ruled that:

1. The *de facto* officer doctrine is limited to "old decisions" and does not apply unless the Merit Board has made a final decision. App. Op., A 126-151, at ¶¶ 96-105.

2. The *de facto* officer doctrine does not apply because the Plaintiffs made "new" challenges to Merit Board appointments that were different from the *Taylor*

challenges, allowing all six Plaintiffs the benefit of the so-called "first party" challenger exception to the *de facto* officer doctrine. App. Op., A 126-151, at ¶¶ 88-95, 106-112.

3. This case falls under the "authority to act" exception to the exhaustion doctrine set forth in *Castaneda v. Ill. Human Rights Comm'n*, 132 Ill. 2d 304 (1983). Under this exception to *Castaneda*, Plaintiffs were excused from exhausting their remedies in the Merit Board before filing suit in Circuit Court. App. Op., A 126-151, at ¶¶ 33-57.

All defendants now appeal the First District's exhaustion ruling and *de facto* officer ruling, and seek reversal of the First District, as well as affirmance of the July 26, 2018 Circuit Court decision dismissing the Second Amended Complaint.

STANDARD OF REVIEW

This Court reviews *de novo* a ruling on a §2-619 motion to dismiss. *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 368 (2003).

ARGUMENT

The First District has created a new exception to the well-settled doctrine of exhaustion of administrative remedies, as well as a new exception to the Illinois *de facto* officer doctrine, that swallows both doctrines whole. If the First District is not reversed, parties to any Illinois administrative agency proceeding may now file litigation in circuit courts before a final record and agency decision exists, simply on the basis of an alleged "procedural" challenge to the appointment of individual agency members. (App. Op. ¶¶ 34-35.)

The First District's approach is a recipe for chaos. It will lead to endless litigation between agencies and the individuals and businesses that agencies are supposed to regulate. It would incentivize individuals, corporations, and other regulated entities throughout

Illinois to devote substantial resources to nitpicking at appointment procedures in order to escape agency regulation of their behavior. It would impose fact-finding burdens on the circuit courts that fly in the face of legislation about the role of courts in reviewing agency actions. It would subject administrative agencies throughout Illinois to a wave of declaratory or injunctive lawsuits based on interlocutory procedural challenges to individual agency hearing officers. These consequences are the opposite of judicial economy and efficiency.

The importance to the public of preserving the Merit Board's authority to proceed with pending disciplinary cases against Sheriff's officers also weighs strongly in favor reversing the First District decision. The best outcome for the people of Cook County, as well as the Sheriff who serves them, is for disciplinary cases to proceed expeditiously before the Merit Board, rather than to paralyze the Merit Board and prevent the agency from deciding any pending cases. The Merit Board can decide challenges to the composition of the agency in the first instance and such decisions may then be reviewed along with other factual and legal issues under the Administrative Review Law.

Stopping all Merit Board procedures simply on the basis of an allegation of improper appointments, which is what the First District opinion would allow, is both premature and potentially dangerous to the public. This case shows the folly of that approach. Plaintiff Shaffer engaged in serious misconduct as the Merit Board determined and should not be allowed to continue as a Sheriff's Officer on the basis of alleged improper appointments. The other five Plaintiffs prevailed before the Merit Board and are now in the awkward position of having sought to enjoin the agency officials who found in their favor on disciplinary charges and restored them to their jobs.

Under both the exhaustion doctrine and the *de facto* officer doctrine, the First District's decision should be reversed and the Circuit Court's July 26, 2019 order of dismissal should be affirmed.

I. Each Plaintiff Should Have Been Required To Exhaust All Administrative Remedies, including Receiving a Final Decision in the Merit Board, Before Filing a Circuit Court Lawsuit Challenging the Merit Board's Composition under Counties Code § 3-7002.

A. The Roots of the Exhaustion Doctrine: The ARL, Judicial Economy, and Public Policy.

The exhaustion doctrine is rooted in the Administrative Review Law ("ARL"), 735 ILCS 5/3-101 *et seq.*, and this Court's interpretation of the ARL in *Castaneda v. Ill. Human Rights Comm'n*, 132 Ill. 2d 304 (1989) (holding ARL requires exhaustion of remedies). *Castaneda* made clear that, subject to very limited exceptions not present here, review of an agency's decision cannot take place until the litigant exhausts proceedings before the agency. *See Castaneda*, 132 Ill. 2d at 321.

The exhaustion doctrine is well-founded in both the ARL and the Illinois Constitution, both of which reflect the General Assembly's intent to expressly limit the jurisdiction of Illinois courts over state administrative agencies, including the Merit Board. Article VI of the Illinois Constitution grants circuit courts only "such power to review administrative action as provided by law." Ill. Const. Art. VI § 9. The Counties Code makes clear that the Administrative Review Law (ARL) applies to and governs proceedings for review of the Merit Board. 55 ILCS 5/3-7012. The ARL in turn bars any "other statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available." 735 ILCS 5/3-102. The ARL also curtails the reviewing jurisdiction of a circuit court as it: (1) forbids new discovery on matters not presented to

the agency, 735 ILCS 5/3-110; and (2) limits the relief available in a circuit court to remand, affirmance, or reversal of the agency. 735 ILCS 5/3-111.

This Court time and again has recognized the importance of protecting the original jurisdiction of administrative agencies. *See Ameren Transmission Co. v. Hutchings*, 2018 IL 122973 ¶¶ 13-15 (holding that Ill. Const. Art. VI § 9 precludes circuit courts' original jurisdiction over agencies); *Texaco-Cities Serv. Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278 (1998) (decrying the practice of "piecemeal litigation" in both the agency and circuit court); *Dubin v. Personnel Bd.*, 128 Ill. 2d 490, 498 (1989) (holding the ARL bars "other types of actions" against an agency); *Fredman Bros. Furniture Co. v. Dep't of Rev.*, 109 Ill. 2d 202, 210-11 (1985) (barring complaint outside the ARL); *People ex rel. Chicago & N. W. R. Co. v. Hulman*, 31 Ill. 2d 166, 169 (1964) (applying ARL to bar other methods of challenging agency decisions).

The recent *Ameren* opinion, 2018 IL 122973, is especially instructive on the constitutional grounds for limiting judicial review of agencies in circuit court. Although the agency in *Ameren* was reviewable under the Public Utility Act and not the ARL, this Court recognized that Article VI, Section 9 of the Illinois Constitution sweeps broadly and does not allow circuit courts "general jurisdiction" over agency decisions, but instead limits circuit courts to "special statutory jurisdiction" to review administrative agency decisions. *Id.* ¶¶ 13-15. *Ameren* held there must be "an explicit statutory scheme in place for reviewing" an agency, and a circuit court has "no authority whatsoever" to entertain a due process claim brought outside the confines of the circuit court's special jurisdiction. *Id.*

The Illinois Constitution's limitation on judicial review parallels and is consistent with a fundamental staple of American jurisprudence, *Marbury v. Madison*, 5 U.S. 137

(1803), a case in which the United States Supreme Court ruled that a former justice of the peace who the President appointed could not file an original mandamus lawsuit in the Supreme Court seeking to reinstate him to his job. *Marbury* held that Article III, Section 2 of the United States Constitution would be strictly construed to limit the subject matter jurisdiction of reviewing courts and deny them general jurisdiction, because the "essential criterion" of a functioning appellate process is that a reviewing court "revises and corrects the proceeding in a cause already instituted, and does not create that cause." *Id.* at 175-76. Further, because the jurisdictional limitation of a reviewing court is constitutional, "there is no middle ground" and "the constitution controls" and prohibits an original action in reviewing courts. *Id.* at 176-77. *Marbury*'s rationale applies to all "written constitutions," *id.* at 177-78, and not only to the United States Constitution. The same sound logic compels strict enforcement of Article VI, Section 9 of the Illinois Constitution, which bars most original actions against agencies in circuit court.

In the context of this basic constitutional and statutory framework, this Court held in *Castaneda* that the ARL requires "exhaustion of remedies" at the agency level with *very limited* exceptions before an agency can be sued in circuit court. 132 Ill. 2d at 322. Important public policy and judicial economy reasons support the exhaustion doctrine, as understood by *Castaneda* and other decisions.

First, exhaustion recognizes that agency hearing officers have "expertise" adjudicating the subject matter that the legislature has consigned to the agency, and that agencies "should be allowed every opportunity to dispose of complaints" of impropriety "fairly and efficiently." *Castaneda,* 132 Ill. 2d at 322. Similarly, in *McGee v. United States*, 402 U.S. 479, 485-86 (1971), the United States Supreme Court required exhaustion

of remedies before federal administrative agencies, in order to allow "full administrative fact gathering and utilization of agency expertise" and allow the agency to "correct its own errors" prior to judicial review of the agency." *McGee* wisely cautions against "relaxation of exhaustion requirements," which may "induce 'frequent and deliberate flouting of administrative processes.'" *Id.* (citations omitted).

Second, the exhaustion doctrine rests on important concerns of judicial economy and efficiency. *Castaneda* teaches that "exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the cause before it; it allows the agency to utilize its expertise; and it allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary" and "also helps protect agency processes from impairment by avoidable interruptions, allows the agency to correct its own errors, and conserves valuable judicial time by avoiding piecemeal appeals." 132 Ill. 2d at 308. *See also Woodford v. Ngo*, 548 U.S. 81, 90-91 (2006) (the exhaustion doctrine "promotes overall efficiency and judicial economy" and "demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings").

In short, the exhaustion doctrine cautions strongly against paralyzing an agency with a lawsuit in circuit court before it has decided a disputed case. Allowing widespread exceptions to the doctrine would (1) thwart the legislature's intent to consigning certain disputes to agency specialists (often lawyers who concentrate their practice in a given subject matter); and (2) create unworkable chaos at the agency, as it would leave it unable to function. Such a result does not serve but rather undermines judicial economy. Agencies are set up under the ARL to make efficient, specialized fact findings and apply their

expertise to evidentiary and legal matters that frequently come before the agency. Circuit courts, in contrast, are not specialized to a particular subject matter and would be required to generate factual and legal conclusions in an area where they do not specialize, necessarily leading to a more complex record and more time-consuming process.

B. The Circuit Court Correctly Required Plaintiffs to Exhaust Their Remedies Before the Merit Board.

The Circuit Court's July 26, 2018 Opinion and Order required all factual disputes between plaintiffs and the Sheriff to be brought before the Merit Board, including the allegation that some Merit Board members were improperly appointed, before plaintiffs could challenge the agency's actions or decisions in state court. The Circuit Court's ruling was entirely consistent with the legislative plan because the legislature, through the Counties Code and ARL, has deemed the Merit Board to be best positioned to make fact findings about disciplinary complaints against Sheriff's officers. *See* 55 ILCS 5/3-7001; 55 ILCS 5/3-7011; 55 ILCS 5/3-7012; 735 ILCS 5/3-102, 3-111. Such fact findings include whether the officer has committed a disciplinary infraction and if so, whether the officer should be reprimanded, suspended or terminated. Under *Castaneda*, the Circuit Court was correct in requiring all factual disputes to be resolved in the Merit Board and forbidding plaintiffs from skipping over the Merit Board process.

It is self-evident that the disputes before the Merit Board in this case are primarily factual or specialized legal matters that in large part call upon the Merit Board's expertise. The members of the Merit Board are either lawyers with experience in law enforcement or government practices, or are non-lawyers with law enforcement, local government or community organizing experience. The Merit Board routinely brings this expertise to bear, including its familiarity with Sheriff's rules and regulations, in cases before it.

In the case of Plaintiff Shaffer, the Merit Board conducted a detailed review of the Sheriff's written rules and regulations, as well as the evidence that Shaffer had violated the rules, and applied its expertise to determine that Shaffer had violated the rules and that the appropriate disciplinary sanction was termination. (A 61- 69.) The Board did the same type of review for the other five Plaintiffs, concluding after contested evidentiary hearings that their conduct did not violate the Sheriff's written rules and regulations and did not require discipline. (A 70 - 125.)

In rejecting the appointment challenges made by Shaffer, the Merit Board made fact findings about its membership and procedures. The agency concluded that it was empowered to receive the Sheriff's disciplinary complaint before the effective date of the December 2017 post-*Taylor* amendments to the Counties Code, based in part on the Merit Board's fact finding that receipt of the complaint was an administrative function that agency staff, and not Merit Board members, handled. (A 61- 62.) The Merit Board went on to find itself "duly appointed" under the December 2017 amendments to the Counties Code (*Id.*) a finding that, among other things, necessarily meant that the Merit Board rejected Shaffer's factual allegation that the new December 2017 appointees to the Merit Board included one too many Democrats.

The Merit Board was in a superior position to the Circuit Court to make initial fact findings about its own members' political party affiliation and the role that the agency clerk plays in receipt of a complaint. It was both within the Merit Board's expertise, as well as in the interests of judicial economy, that the agency resolve Shaffer's appointment challenge in the first instance before the Circuit Court could consider Shaffer's argument that the Merit Board lacked power to fire him.

The wisdom of the Circuit Court's July 26, 2018 exhaustion ruling is further shown by Merit Board decisions about the other five plaintiffs in this case – Goral, Mendez, Badon, Stojkovic and Evans – who were *not* terminated by the Merit Board. These five plaintiffs are textbook examples of litigants who should have been forced to exhaust remedies because they may "ultimately succeed before the agency." *Castaneda*, 132 Ill. 2d at 304. To the extent these five plaintiffs are still unhappy with the Merit Board and seek back pay owed while their cases were pending before the agency, that is no reason to excuse them from the exhaustion requirement. It is self-evident that much of the alleged back pay accrual in these five plaintiffs' Merit Board cases was due in part to the plaintiffs' tactic of filing a parallel lawsuit in Circuit Court (which they then appealed to the First District) challenging the actions of an agency that ultimately ruled in their favor. *Gunia v. Cook Cnty. Sheriff's Merit Bd.*, 211 Ill. App. 3d 761, 767 (1st Dist. 1991) (recognizing that litigants before the Merit Board cannot complain of "delay" when their own motion practice caused such delay).

Because the back pay that Plaintiffs Goral, Mendez, Badon, Stojkovic and Evans may have accrued is a disputed question of fact, the Merit Board and not the Circuit Court must in the first instance determine the back pay, if any, owed to the officer, minus setoff and mitigation for other jobs worked. *See Mitchem v. Cook Cnty. Sheriff's Merit Bd.*, 196 Ill. App. 3d 528, 532 (1st Dist. 1990) (under § 3-111 of the ARL, the Merit Board, not the circuit courts, should take evidence on back pay owed to an officer who is exonerated of disciplinary charges); *Feldstein v. Guinan*, 148 Ill. App. 3d 610 (1st Dist. 1986) (back pay owed to an officer is subject to setoff for other employment while the officer was on leave). Other jurisdictions that have considered the issue agree with *Mitchem* that back pay is a

question for the trier of fact.[5] The Appellate Court opinion below, which contended the question of back pay "is not a factual one" that requires "taking of additional evidence" (App. Op. ¶ 52), cannot be squared with this authority.

In sum, the Circuit Court's exhaustion ruling of July 26, 2018 was correct, because it properly deferred to the expertise of the agency and made efficient use of valuable judicial resources. The Circuit Court rightly recognized that it was not in a superior position to conduct fact-findings, and that doing so in each instance of officer discipline would be contrary to the intent of the Illinois legislature and the ARL. The Merit Board was in a superior position to make fact findings about officer discipline, back pay, mitigation for other jobs worked while officers are facing discipline, and other disputed factual matters. The Circuit Court properly deferred to and recognized the meaningful role that agencies play in generating a fact record and applying their expertise.

C. The First District's Application of the Exhaustion Doctrine Is Unworkable and Inconsistent with the ARL and *Castaneda*.

When it reversed the Circuit Court's exhaustion ruling, the First District created chaos for any state or county agency that is subject to the ARL, allowing any claimant to raise any type of technical appointment challenge and thereby skip over the agency. Under the First District approach, a claimant can entirely avoid agency fact-finding by making

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[5] *See, e.g., Sr. Accountants Analysts & Appraisers Ass'n v. Detroit*, 399 Mich. 449, 458 (Mich. 1976) (calculating back pay is a question of fact); *Graham v. Sheets*, 12 Ky. Op 735, 737 (Ct. App. Ky. 1884) ("back pay or who should get it" is a "question of fact"); *Thomas v. Hershey Chocolate Co.*, 36 Pa. D & C 4th 334. 344 (Pa. Ct. Com. Pl. 1997) (whether a plaintiff is entitled to backpay in claim under state Human Relations Act is a question of fact); *see also Pegues v. Miss. St. Employment Serv.*, 899 F.2d 1449, 1455 n.54 (5th Cir. 1990) ("back pay" owed for employment discrimination "is a question of fact"); *Meacham v. Knolls Atomic Power Lab,* 185 F. Supp. 2d 193, 236 (N.D.N.Y. 2002) (same); *Moore v. Trump Casino-Hotel*, 676 F. Supp. 69, 72 (D.N.J. 1987) (same).

allegations about an agency appointment in a circuit court and then proceed to try the entire case in circuit court.

The First District's improper reading of *Castaneda* invites havoc for any state or county agency that is subject to the ARL – and scores of such agencies exist. One is the Illinois Human Rights Commission, the agency in the *Castaneda* decision. 132 Ill. 2d at 304. Other agencies include, as just a few examples, the Illinois Liquor Control Commission (235 ILCS 5/7-11); the Illinois State Board of Elections (10 ILCS 5/10-10.1); the Illinois Labor Relations Board (5 ILCS 515/11(e)); the Illinois Department of Financial and Professional Regulation (225 ILCS 15/22; 225 ILCS 20/33; 225 ILCS 60/41(a)); the Illinois Department of Employment Security (820 ILCS 405/1100); the Illinois Department of Children and Family Services (325 ILCS 5/11.6); the Illinois Department of Insurance (215 ILCS 5/1019); and dozens more.

Contrary to *Castaneda*, the First District manufactured from whole cloth a new exception to the exhaustion doctrine that allows litigants to bypass agencies entirely by running to circuit courts and making "procedural" challenges to appointments before the agency itself can address the alleged procedural problem. (App. Op. ¶ 34.) The First District decision squarely conflicts with the plain language of the ARL and this Court's long line of ARL jurisprudence, with Article VI of the Illinois Constitution, and with *Castaneda* itself. Compounding the problem, the First District gave a green light to parallel and simultaneous litigation between the Sheriff and plaintiffs in two different forums – the Merit Board, which would decide the underlying disciplinary dispute, and the Circuit Court, where the plaintiffs would seek "back pay" for the time they had been placed on unpaid leave. (App. Op. ¶¶ 51-52.) The First District's unwieldy dual-track process is

precisely the sort of inefficient, piecemeal litigation that this Court forbade when it decided *Castaneda*.

Indeed, under the First District's approach, any claimant could skip over proceedings in any agency subject to the ARL simply by filing a lawsuit challenging the composition of the agency in circuit court. The First District's opinion allows claimants to avoid any agency fact-finding until the circuit court case is resolved, grinding the agency to a halt. That rule is especially wasteful when an agency ultimately issues a decision in favor of the claimant, as happened here to five of the Plaintiffs during this appeal. The First District approach invited these Plaintiffs and other litigants throughout the state to place themselves in the anomalous position of suing over the composition of an agency in circuit court before the agency makes a decision, yet seeking the benefit of the same agency's decision.

The First District was wrong to force this case into the narrow exception to exhaustion "where the agency's jurisdiction is attacked because it is not authorized by statute." *Castaneda*, 132 Ill. 2d 309. This Court has narrowly limited the authority-to-act exception to situations where an agency exceeds its statutory authority by *promulgating a rule or regulation* that falls outside the statutory subject matter consigned to the agency's jurisdiction by the legislature. *See Van Dyke v. White,* 2019 IL 121452 (agency lacked authority to determine attorney fees); *Crittenden v. Cook Cnty. Comm'n on Human Rights*, 2013 IL 114876 (agency lacked authority to determine punitive damages); *County of Knox ex rel. Masterson v. The Highlands, LLC*, 188 Ill. 2d 546 (1999) (zoning board lacked authority to regulate a hog farm); *Business & Prof'l People for the Public Interest v. Ill. Commerce Comm'n*, 136 Ill. 2d 192 (1989) (agency lacked authority to freeze utility rates);

City of Chicago v. Fair Employment Practices Comm'n, 65 Ill. 2d 108 (1976) (agency lacked authority to determine attorney fees).

These Supreme Court decisions squarely conflict with the First District's application of the "authority to act" exception to *procedural* appointment challenges, which are unrelated to the scope of the agency's statutory rulemaking power and unrelated to the Merit Board's subject matter jurisdiction.

Compounding the error, the First District improperly divined an "exception" to the exhaustion rule from *Vuagniaux v. Dep't of Prof'l Reg.*, 208 Ill. 2d 173 (2003) and *Daniels v. Indus. Comm'n*, 201 Ill. 2d 160 (2002), two cases with no bearing on the exhaustion doctrine. *Vuagniaux* and *Daniels* (1) make no mention whatsoever of *Castaneda*, (2) do not contain the words "exhaustion" or "exhaust," and (3) invalidated agency decisions on ARL review in cases filed well after the plaintiffs exhausted their remedies before the agency. Importantly, and contrary to the First District's opinion, *Vuagniaux* allowed an agency to correct a purported appointment defect "*before* the tribunal considered the [plaintiff's] case on the merits or made its recommendations." 208 Ill. 2d at 187 (emphasis added). *Vuagniaux* thus strongly supports application of the exhaustion doctrine to challenges of improper appointments, like the ones here.

The First District's notion that the Merit Board is incapable in the first instance of resolving appointment challenges conflicts with this Court's admonition against bringing "piecemeal" challenges to an agency before the agency itself has had a chance to decide the question. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 214-15 (2008) (a "party in an administrative proceeding should assert a constitutional challenge on the record before the administrative tribunal, because administrative review is confined

to the evidence offered before the agency. Such a practice avoids piecemeal litigation and, more importantly, allows opposing parties a full opportunity to refute the constitutional challenge" while the matter is before the agency); *Texaco-Cities*, 182 Ill. 2d at 278 (same). Because the First District decision rests on the false premise that the Merit Board cannot consider and decide challenges to its appointments, the entire decision is fatally flawed.

If left to stand, the First District opinion invites a wave of challenges from individual litigants, who will file allegations in circuit courts which challenge the validity of an agency board member's appointment and skip over the agency decision-making process. The circuit courts will suffer the enormous burden of managing multiple lawsuits, each filed before the time when the General Assembly has stated they are ripe for court review. Adding to the burden, circuit courts will not have the benefit of the administrative agency's decision-making process, including the full development and consideration of a factual record, the opinions and subject-matter expertise of the agency, and the opportunity for the "aggrieved party to ultimately succeed before the agency, making judicial review unnecessary." *Castaneda*, 132 Ill. 2d at 304. Instead, circuit courts will be forced to engage in initial fact-finding, motion practice, evidentiary rulings, and other litigation procedures – none of which the ARL sanctions and all of which would impose a great burden on the circuit courts. It is easy to predict that this scenario will repeat itself time and again if cases are prematurely moved to the circuit courts – this will be the inevitable consequence of the First District decision.

If upheld, the First District decision will have an untoward impact on the many Illinois individuals and businesses who depend on an efficient and timely decision-making process by administrative agencies. Allowing a litigant to move a dispute to the circuit

court, simply based on an allegation of improper appointment and before the agency has produced a developed record and provided input, will result in additional delays of months if not years to all the parties. The First District approach will further burden the Appellate Court as disgruntled litigants pursue further appeals of such cases. It will not bring either the efficiency or the expertise of an agency to bear on matters squarely within the agency's domain.

Furthermore, and of general importance, the First District ruling has a direct negative impact on public safety, and in particular public safety in Cook County. The violation of public trust by police officers – like the plaintiffs in *Taylor* and its progeny, as well as plaintiff Shaffer in this case – is an issue front and center with the public. *See, e.g., United States v. Bailey*, 227 F.3d 792, 802 (7th Cir. 2000) ("Police officers occupy positions of public trust, and individuals who have apparent authority of police officers when facilitating the commission of an offense abuse the trust that victims place in law enforcement"); *Bultas v. Bd. of Fire & Police Comm'rs*, 171 Ill. App. 3d 189, 196 (1st Dist.1988) ("the discharge of a police officer for conduct unbecoming to the department" serves the "protection of the community at large"). Indeed, one of the Plaintiffs, Shaffer, was found to have interfered with a criminal investigation by befriending the suspect, who may have walked free as a result. (A. 61-69.)

Under the First District's approach, Shaffer and other officers who endanger the public safety could "skip over" the Merit Board process simply by alleging an impropriety in the agency appointment process. Such officers could do so no matter the egregiousness of their alleged conduct. Instead of allowing the Merit Board to decide discipline, the First District effectively consigns disciplinary disputes to the Chancery Division of the Circuit

Court of Cook County, with all of the process and time-consuming effort that will be required.

The results here show why it is imperative to allow an orderly administrative process to proceed through a final agency decision, and exhaust administrative remedies before the agency decision is reviewed by a circuit court. The better rule, consistent with *Castaneda*, is the rule the Circuit Court used here: allow agency proceedings to reach the point of final decision and allow the agency an opportunity to correct the challenged appointment, if necessary, before rendering a final decision.

II. Under the *De Facto* Officer Doctrine, Official Actions of an Agency with Alleged Appointment Deficiencies Are Deemed Valid.

A. The *De Facto* Officer Doctrine Is the Law in Many Jurisdictions.

The *de facto* officer doctrine is a centuries-old equitable doctrine that is critical to the public interest and orderly function of government, as repeatedly recognized by this Court and other jurisdictions. The *de facto* officer doctrine requires treating actions of public officials holding improper title as valid as to the public, not void, to avoid the chaos and instability and public safety dangers inherent in voiding government action.

The classic formulation of the *de facto* officer doctrine has been adopted and followed in many other states. *See, e.g., State v. Carroll*, 38 Conn. 449 (Conn. 1871) (adopting *de facto* officer doctrine); *Long v. Stemm*, 7 N.E.2d 188 (Ind. 1937) (adopting *de facto* officer doctrine); *Iowa Farm Bureau Fed. v. Envtl. Prot. Comm'n*, 850 N.W.2d 403, 423-34 (Iowa 2014) (validating all "official agency actions" by an improperly appointed agency commissioner); *Petersilea v. Stone*, 119 Mass. 465, 467 (Mass. 1876) (validating actions of an improperly appointed City of Boston police constable); *Walcott v. Wells*, 24 P. 367 (Nev. 1890) (validating official actions of an improperly appointed judge). *In re*

Fichner, 677 A.2d 201, 203 (N.J. 1996) (adopting *de facto* officer doctrine); *State v. Staten*, 267 N.E.2d 122 (Ohio 1971) (applying *de facto* officer doctrine to actions of improperly appointed judge); *Walberg v. State*, 243 N.W.2d 190, 198 (Wis. 1974) ("It is generally recognized in this state and elsewhere that the acts of a *de facto* officer are valid as to the public and third parties and cannot be attacked collaterally. The acts are binding and valid until the individual is ousted from his office by the judgment of a court in a direct proceeding to try his title to the office.").

Federal courts have recognized the importance of the *de facto* officer doctrine as well, allowing only narrow exceptions. The federal common law allows an exception only when two conditions are both satisfied (1) a violation of the Appointments Clause of the Constitution (U.S. Const. art. II § 2), and (2) the plaintiff questions the appointment "at or around the time the challenged governmental action is taken." *Andrade v. Lauer*, 729 F.2d 1475, 1499 (D.C. Cir. 1984); *see also Ryder v. United States*, 515 U.S. 177, 185-86 (1995) (challenge to Coast Guard officials).

Like its state law counterpart, the purpose of the federal *de facto* officer doctrine is to "protect the public" and preserve "the orderly function of government." *See, e.g., Bless v. Cook Cnty. Sheriff's Office*, No. 13 C 0271, 2019 U.S. Dist. LEXIS 155426 at * 10-11 (N.D. Ill. Sept. 12, 2019). Importantly, *Bless* applied the federal common law doctrine to validate a Merit Board decision, rejecting yet another *Taylor*-like challenge to Merit Board appointments, and affirming the Merit Board's termination of a Sheriff's officer who was caught moonlighting at a second job without permission. *Id. See also Waite v. Santa Cruz*, 184 U.S. 302 (1901) (Harlan, J.) (adopting *Petersilea*) (importing the doctrine from Massachusetts law into the federal common law); *Nofire v. United States*, 164 U.S. 657

(1897) (holding acts of a *de facto* clerk "must be taken as official acts, and the license which he issued as of full legal force"); *EEOC v. Sears, Roebuck* & Co., 650 F.2d 14, 17 (2d Cir. 1981) ("The *de facto* officer doctrine was developed to protect the public from the chaos and uncertainty that would ensue if actions taken by individuals apparently occupying government offices could later be invalidated by exposing defects in the officials' titles").

B. The *De Facto* Officer Doctrine in Illinois.

1. The Illinois Supreme Court's Adoption of the Doctrine.

The Illinois *de facto* officer doctrine in rooted in decades of this Court's decisions recognizing the important equitable need to validate the acts of an otherwise improperly appointed or elected public official. Indeed, one of this Court's earliest decisions applying the doctrine was *Lavin v. Bd. of Comm'rs of Cook Cnty.*, 245 Ill. 496 (1910) (applying *de facto* officer doctrine where outside Special State's Attorney was improperly appointed). *Lavin* relied on *Carroll*, 38 Conn. 449, a seminal case with striking parallels to this dispute. In *Carroll*, a prisoner complained about the improper appointment of a justice of the peace "selected by the sheriff" of New Haven. 38 Conn. at 471. *Carroll* discussed the centuries-old history of the *de facto* officer doctrine and the need to invoke the doctrine when necessary "to avoid great public mischief" and validate all of the actions of an improperly appointed official who is openly holding office. *Id.* at 459-60. *Carroll* went on to validate as official the acts of the New Haven sheriff's appointee, holding it "unnecessary" to consider the merits of the appointment challenge. 38 Conn. at 479.

This Court has applied the *de facto* officer doctrine many times to validate the official acts of Illinois officeholders despite deficient title to office. *See People ex rel. Engle v. Kerner*, 32 Ill. 2d 11 (1965) (applying *de facto* officer doctrine to validate acts of

Illinois legislators after their elections were invalidated by *Reynolds v. Sims*, 377 U.S. 533 (1964)); *People ex rel. Chillicothe Twp. v. Bd. of Rev. of Peoria Cnty.*, 19 Ill. 2d 424 (1960) (applying *de facto* officer doctrine to acts of a township board that was improperly constituted because it contained too many Democrats, and holding that under the *de facto* officer doctrine, agency actions are "valid as to the public and persons having an interest in them," whether "legally constituted or not."); *Cleary v. Chi. Title & Trust Co.*, 4 Ill. 2d 57 (1954) (holding that acts of invalidly appointed Appellate Court justices are valid and not subject to collateral attack); *People ex rel. Hess v. Wheeler*, 353 Ill. 147, 150 (1933) ("it has many times in this State been held that the acts of one acting as a *de facto* officer are valid when they concern the public"); *People ex rel. Rusch v. Wortman*, 334 Ill. 298, 301-02 (1928) (applying *de facto* officer doctrine where needed to serve the interests of public "policy and justice"). Significantly, none of these longstanding Illinois decisions allowed a "first challenger" exception, nor did they limit the *de facto* officer doctrine to "final decisions" by an agency.

2. Approaches to the *De Facto* Officer Doctrine in *Daniels, Baggett* and *Vuagniaux*.

This Court last considered the *de facto* officer doctrine in a trio of decisions in 2002 and 2003. *Daniels v. Indus. Comm'n*, 201 Ill. 2d 160 (2002) was a split 4-3 decision with no majority opinion. *Daniels* concerned the effect of improper appointments of workers compensation arbitrators by the chairman of the Industrial Commission. *Id.* at 160-61. A two-Justice plurality of this Court, supported by a special concurrence that did not adopt the plurality's reasoning, voided administrative proceedings in the *Daniels* plaintiff's case and ordered the *Daniels* case remanded to the agency for a new decision before a properly appointed arbitrator. *Id.* at 167.

Daniels left much in flux, but at least five of this Court's Justices – the two concurring and three dissenting Justices – agreed that the *de facto* officer doctrine is and must remain the law in Illinois. The point of disagreement between the concurrence and dissents was whether to relax the *de facto* officer doctrine for a first challenger to an improper agency appointment, or to validate all official actions of the agency. Two Justices would allow the first challenger exception. *Daniels*, 201 Ill. 2d at 175-76 (McMorrow, J., concurring, joined by Freeman, J.). Three Justices cautioned against a first challenger exception, expressing strong concerns that allowing a first challenger exception to the doctrine would open the door to future picayune and unnecessary appointment challenges by litigants in administrative agencies, as lawyers race to the bottom to be the "first" to uncover supposed appointment irregularities. *See id.* at 179 (Fitzgerald, J., dissenting, joined by Garman, J.); *and id at* 182 (Thomas, J., dissenting).

A key basis for the *Daniels* concurrence was a New Jersey decision, *Fichner*, 677 A.2d at 201, which purportedly allowed a "first challenger" exception. *See Daniels*, 201 Ill. 2d at 175-76 (Mc Morrow, J., concurring) (adopting *Fichner*). However, *Fichner* did not rule as described by the *Daniels* concurrence or lead to the same result as *Daniels*. To the contrary, *Fichner* went out of its way not to void any of the evidentiary proceedings that took place before an improperly appointed state agency responsible for licensing plumbers. 677 A. 2d at 208. Instead, *Fichner* precluded the taking of any new evidence before the agency, instructed the agency on remand to correct the appointment and further instructed that once correction had been made, the newly appointed agency could only "read the record of the prior proceedings and, in addition, entertain briefs" before rendering a new decision. *Id.* at 208. *Fichner* admonished that "the *de facto* officer doctrine is

designed to prevent disciplinary licensing proceedings from turning into contests over the qualifications of the officers, precisely what has happened in this case." 677 A.2d at 206.

The New Jersey Supreme Court's refusal to void all agency proceedings even for the benefit of a first challenger, stands in stark contrast to the *Daniels* concurrence, which joined the plurality in voiding the entirety of administrative proceedings. Ironically, the outcome in *Daniels* was precisely the outcome *Fichner* cautioned against. To Defendants' knowledge, no other state Supreme Court, and certainly not the New Jersey Supreme Court, has ever gone as far as *Daniels* in carving out exceptions to the *de facto* officer doctrine or so relaxing the doctrine to void agency proceedings.

Within months, the *Daniels* dissenters reasserted their misgivings about the first challenger exception, dissenting from the denial of the Rule 315 petition for review in *Baggett v. Indus. Comm'n*, 201 Ill. 2d 187, 208 (2002) (Thomas, J., dissenting, joined by Fitzgerald, J. and Garman, J.). The *Baggett* dissenters wrote at length about why a first challenger exception to the *de facto* officer doctrine is unworkable, and incentivizes private lawyers to compete with each other to make "new" appointment challenges and make never ending claims to have discovered "new" problems with agency employments, throwing the agency into a tailspin and endless litigation as lawyers compete to argue who is "first" to raise new challenges. *Id.*

This Court returned to the *de facto* officer doctrine once more in *Vuagniaux v. Dep't of Prof'l Regulation*, 208 Ill. 2d 173 (2003). There, a chiropractor successfully challenged a decision by the Illinois Department of Financial and Professional Review (IDFPR) to reprimand and fine him for engaging in false advertising about the benefits of chiropractic treatment. One of the chiropractor's challenges was that, in the middle of evidentiary

proceedings, the administrative hearing officer improperly requested, and received over the plaintiff's objections, a change in membership of the IDFPR review board that would ultimately decide the case. *Id.* at 182-85. The replacement IDFPR member, Dr. Roger Pope, was appointed by the agency in the middle of a contested evidentiary hearing and not appointed by the Governor, as required by the Medical Practice Act. *Id.* at 185-87.

On these unusual facts, *Vuagniaux* made a narrow exception to the *de facto* officer doctrine, on the basis that: (1) a chiropractic licensing proceeding does not affect "a member of the public or a third party"; (2) that the appointment challenge was raised in the same "proceeding in which Pope was appointed"; and (3) the challenge was raised "at the time the appointment was made," not after the appointment was approved. *Id.* at 187.

Vuagniaux otherwise retreated from the first challenger approach articulated by the *Daniels* plurality opinion and emphasized that, but for the narrow exception it had just articulated, "a person actually performing the duties of an office under color of title is a considered to be an officer *de facto*, and his acts as such an officer are valid so far as the public or third parties who have an interest in them are concerned." *Id.* at 187-88 (reaffirming and citing *Chillicothe Twp.*, 19 Ill. 2d at 426-27). Nowhere did *Vuagniaux* recognize a "first challenger" exception to the *de facto* officer doctrine or limit the doctrine to "final decisions" by an agency.

3. The Split in Authority between the First District Appellate Court and Second and Fifth District Appellate Courts.

In the wake of *Daniels*, the Second District and Fifth District Appellate Courts took an approach to the *de facto* officer doctrine that allows no exception for a first challenger, consistent with other decisions of this Court and that of other states and federal law.

In *Peabody Coal Co. v. Indus. Comm'n*, 349 Ill. App. 3d 1023 (5th Dist. 2004), the Fifth District declined to adopt the *Daniels* concurrence, distinguishing the facts of *Daniels* from the case before it. Subsequently, in *Arnold v. Mt. Carmel Pub. Util.*, 369 Ill. App. 3d 1029, 1033-34 (5th Dist. 2006), the Fifth District ignored the first challenger concept and instead validated an appointment based on whether the "person who is actually performing the duties of an office under color of title is considered to be an officer *de facto*, and his acts as that officer are valid so far as the public or third parties who have an interest in them are concerned."

In *People ex rel. Rahn v. Vohra*, 2017 IL App (2d) 160953 ¶ 24 (collecting cases), the Second District embraced the traditional approach to the *de facto* officer doctrine used in Indiana, New Jersey, Nevada and Wisconsin. *Rahn* held that all of the official contracts signed by an allegedly improperly appointed public university officer were valid under the *de facto* officer doctrine, with no mention of the first challenger concept. *Id.*

It is clear that both the Second and Fifth Districts agree with the *Daniels/Baggett* dissents, which rejected a first challenger exception to the *de facto* officer doctrine. *See Daniels*, 201 Ill. 2d at 181 (Fitzgerald, J., dissenting) (urging Court not to retreat from of *Chillicothe Twp.*); and *Baggett*, 201 Ill. 2d at 208 (Thomas, J., dissenting) (the first challenger rule is an untenable "raffle" approach to litigation and encourages time-consuming challenges by agency litigants who cannot prevail on the merits and seek "underserved" relief).

In stark contrast to the Second and Fifth Districts, and beginning with *Taylor*, 2017 IL App (1st) 143684-B ¶ 43, the First District has allowed the "first" challenger of an agency's composition to get out from under the *de facto* officer doctrine, and challenge

appointments at "any time," including years or decades later. *See* App. Op., A 126-151, at ¶¶ 88-95, 106-112 (finding the six plaintiffs' challenges to be "new" and different from the *Taylor* challenges); ***but see Pietryla v. Dart***, 2019 IL App (1st) 182143 (applying *de facto* officer doctrine and distinguishing *Taylor* based on the first challenger exception, reasoning that Percy Taylor was the first sheriff's officer to challenge appointments to the Merit Board); *Acevedo v. Cook City. Sheriff's Merit Bd.*, 2019 IL App (1st) 181128 (same); *Cruz v. Dart*, 2019 IL App (1st) 170915 (same); *Lopez v. Dart*, 2018 IL App (1st) 170733 (same). As the First District stated in its opinion below, officers may bring "new" challenges that "look a lot like those in *Taylor*," yet still may claim the benefit of the first challenger exception if they can craft their challenge in ways that make slight distinctions from *Taylor*. App. Op. ¶ 108. If left unchecked, this rule gives free rein to future appointment challenges.

C. The First Challenger Exception, as Articulated by the First District, Lacks a Sound Legal Basis And Is Not Good Public Policy.

The Court should overrule the First District's decision below by finding that the *de facto* officer doctrine is not subject to any first challenger exception. No other state supreme court has gone as far as the First District in carving out exceptions to the *de facto* officer doctrine, which has placed a large part of Illinois well out of step with other jurisdictions. Other states – including, and contrary to the *Daniels* concurrence, New Jersey – do not allow litigants to void the entirety of an agency proceeding simply if they can claim to be the "first" to challenge an agency appointment. *See* Part II. B above. The federal *de facto* officer doctrine likewise does not have a "first challenger" rule and allows only narrow exceptions for litigants who make a timely challenge under the Appointments Clause of Article II of the U.S. Constitution. *Ryder*, 515 U.S. at 185-86.

The first challenger exception in the Merit Board context was heavily criticized in the well-reasoned opinion in *Bless*, 2019 U.S. Dist. LEXIS 155426 at * 24-28, which argued compellingly that this Court should follow the *Baggett* and *Daniels* dissents. *Bless* expressed "reservations" and "misgivings" about the *Daniels* concurrence, as well as its "unintended consequences" that, in the *Bless* court's view, have caused the First District's "recent struggles to fashion a consistent and equitable rule." *Id.* at * 19-21. *Bless* went on to discuss a hypothetical scenario of 100 litigants who challenge appointments on the same day, each with slight variations, and as a result bring the agency to a standstill. *Bless* cited with approval the *Baggett* dissent for the proposition that Illinois courts "should not be singling out and conferring on isolated litigants relief that that the law clearly prohibits." *Id.* at * 21 (citing *Baggett*, 201 Ill. 2d at 208 (Thomas, J., dissenting)).

The *Daniels* and *Baggett* dissents, as well as the Second and Fifth District approaches, wisely rejected the first challenger exception to the *de facto* officer doctrine. The post-*Taylor* wave of litigation illustrates the problems when the exception is applied: scores of Sheriff's officers are in a race to the bottom to raise new challenges to Merit Board appointments and get windfall relief, including back pay for jobs from which they were fired for misconduct years ago, as well as reinstatement to full duty. *See, e.g., Lopez*, 2018 IL App (1st) 170733 ¶ 59 n.4. The post-*Taylor* wave of litigation has swamped Cook County (the seat of the First District) with lawsuits that would be dismissed elsewhere in Illinois, under the prevailing version of the *de facto* officer doctrine followed in the Second and Fifth Districts.

If the First District's *Goral* decision stands, anyone who brings a challenge with even a slight variation from *Taylor* – including the six Plaintiffs in this case, whose

challenges "look a lot like" but are somehow deemed different from Percy Taylor's challenge (App. Op. ¶ 108) – may now avoid the *de facto* officer doctrine. This approach has no principled end, and the first challenger exception now threatens to swallow the rule.

This Court should put an end to this chaotic and endless wave of litigation over supposed "new" appointment challenges, which have hamstrung the Merit Board and are antithetical to the orderly function of government. In the interest of public policy, fairness, and to promote finality in administrative decisions, this Court should hold that no first challenger exception to the *de facto* officer doctrine exists, and reverse the First District's decision to the contrary.

D. The *De Facto* Officer Doctrine Should Not Be Limited to "Old Decisions" By Former Officeholders.

An equally important and independent reason for reversing the *Goral* is that the First District erroneously limited the *de facto* officer doctrine to "old decisions" of the Merit Board prior to *Taylor*. App. Op., A 126-151, at ¶¶ 96-10. The "old decisions" approach has no basis in Illinois law, or in past centuries of jurisprudence about the *de facto* officer doctrine. In the First District's view, Sheriff's officers can seek to void any agency action other than an "old decision," including even the agency staff's ministerial receipt of a complaint, without regard to the *de facto* officer doctrine. App. Op., A 126-151, at ¶¶ 96-10. The First District's new, narrow and frankly puzzling limitation to the *de facto* officer doctrine would, as a practical matter, stop all agency actions in their tracks on the basis of a mere allegation that a board was improperly constituted. This is a recipe for endless litigation in circuit court, takes Illinois far out of step with other jurisdictions, and is poor public policy.

The First District's "old decisions" rule runs contrary to decades of this Court's decisions applying the *de facto* officer doctrine. As this Court's *de facto* officer doctrine jurisprudence makes clear, the only way to ensure ordinary functioning of government is a rule validating *all* of an office holder's official actions toward the public, regardless of any deficiency in the office holder's title and regardless of whether the office holder's actions are "recent" or "old." *See, e.g.*, *Engle*, 32 Ill. 2d at 11 (applying doctrine to challenged actions, not challenged final decisions); *Chillicothe Twp.*, 19 Ill. 2d at 424 (same); *Cleary*, 4 Ill. 2d at 57 (same); *Hess*, 353 Ill. at 150 (same); *Rusch*, 334 Ill. at 301-02 (same); *Lavin,* 245 Ill. 496 (same).

The First District's "old decisions" rule is likewise nowhere to be found in decisions other State Supreme Courts to have adopted the *de facto* officer doctrine, none of which even hint that the doctrine applies only to final decisions of a former office holder. *See, e.g.*, *Carroll*, 38 Conn. At 449 (Connecticut); *Long,* 7 N.E.2d at 188 (Indiana); *Iowa Farm Bureau*, 850 N.W.2d at 423-34 (Iowa); *Petersilea*, 119 Mass. at 467 (Massachusetts); *Walcott*, 24 P. 367 (Nevada); *Fichner*, 677 A.2d at 203 (New Jersey); *Staten*, 267 N.E.2d at 122 (Ohio) ; *Walberg*, 243 N.W.2d at 198 (Wisconsin). The "old decisions" rule is also not part of the federal *de facto* officer doctrine. *Compare Waite v. Santa Cruz*, 184 U.S. at 302 and *Sears, Roebuck & Co.*, 650 F.2d at 17 (enforcing federal *de facto* officer doctrine) with *Ryder v. United States*, 515 U.S. at 185-86 (applying Article II exception). This Court should not sanction Illinois law reaching a place that other states, and federal courts, have not gone.

Additionally, the First District erred to the extent it based its "old decisions" rule on *Vuagniaux*, 208 Ill. 2d at 187. The "old decisions" rule appears nowhere in *Vuagniaux*,

which is also distinguishable on its highly unusual facts. In that case, the plaintiff, Dr. Vuagniaux, a chiropractor who disputed an IDFPR fine, lodged an objection to the appointment of an improperly appointed IDFPR officeholder, Dr. Pope, during the same proceeding in which Dr. Pope was appointed, *before* Dr. Pope was appointed and sworn into office. *Id.* at 187. The IDFPR appointed Dr. Pope after being placed on notice that the appointment violated the Medical Practices Act, and nonetheless proceeded to have Dr. Pope resolve the case against Dr. Vuagniaux. Here, by contrast, the record is devoid of any allegation that Plaintiffs objected to the appointments of any of the challenged Merit Board members before any of the Merit Board members were appointed.

Moreover, and equally importantly, *Vuagniaux* found that the underlying dispute – about allegedly misleading advertisements for a private chiropractic practice – did not impact the "public" interest and only raised private concerns about professional licensure. *Id.* Chiropractors are by definition exclusively engaged in private practice, among other reasons because it is illegal for them to prescribe drugs or attend patients at a hospital. *See* Med. Practice Act, 225 ILCS 60/2.

Sheriff's officers, in contrast with the *Vuagniaux* plaintiff, are public servants who occupy a position of enormous public trust. The ability to discipline wayward law enforcement officers for misconduct is a matter of tremendous public importance. *See, e.g., Bailey*, 227 F.3d at 802 (police officers hold positions of "public trust"); *Bultas*, 171 Ill. App. 3d at 196 (discipline of a police officer serves the public interest and "protection of the community at large"). The public interest factor, alone, takes this case well outside *Vuagniaux*. At stake here is a self-evident, overwhelming public interest in preserving the

orderly function of an agency with exclusive authority to discipline Sheriff's officers – as well as a danger to the public if officers are not disciplined in a reliable, efficient manner.

In short, this Court should find that no exception to the *de facto* officer doctrine applies here, and the First District's refusal to apply the *de facto* officer doctrine to bar this Complaint was in error.

E. The Illinois Legislature Provides a Remedy to Challenge the Appointment of a Public Officeholder under the *Quo Warranto* Statute.

The *de facto* officer doctrine is no impediment to the only proper remedy to challenge a public officeholder's deficient title, which is to petition the Attorney General or State's Attorney to remove the alleged improper appointee from office via a *quo warranto* proceeding. *See Lopez*, 118 N.E.3d at 591-92 (citing and discussing Illinois's *quo warranto* statute, 735 ILCS 5/18-101). Likewise, other jurisdictions permit a "direct" action to remove an officeholder by a state attorney general, even though other forms of challenge are barred. *See id.*; *see also, e.g.*, *Fichner*, 677 A.2d at 206 (taking the same approach to New Jersey's *quo warranto* statute); *Walberg*, 243 N.W.2d at 198 (taking the same approach to Wisconsin's *quo warranto* statute as the only proper means to challenge an official's allegedly improper officeholding). In Illinois as in other states, the *quo warranto* statute puts challenges to deficiently appointed officeholders where they belong: in the hands of the state attorney general. This legislative framework rightly recognizes that private parties, with personal interests at stake, should not usurp the public policymaking role of the Attorney General for their own private interests.

III. As A Matter of Law, the Defendants Did Not Violate Counties Code §§ 3-7002, 3-7005 and 3-7006.

As explained above, either the exhaustion doctrine or the *de facto* officer doctrine should dispose of this appeal, making it unnecessary to consider plaintiffs' allegations that

defendants violated the appointment provisions of the Counties Code. Should the Court wish to reach the issue, however, it should find that all of plaintiffs' myriad challenges to Merit Board appointments fail as a matter of law.

First, Plaintiffs rehash the same challenge that was made in *Taylor*, complaining that, between September 2016 and December 2017, two Merit Board members (Patrick Brady and Gray Mateo-Harris) were serving interim appointments to terms of fewer than six years. (A 21.) This Court need not entertain any further *Taylor*-like challenges, because the December 2017 amendments to the Counties Code cured any such defect by expressly allowing interim appointments, and were passed into law well before the resolution of plaintiffs' disciplinary cases. *See* 55 ILCS 5/3-7002. In the public interest and because the December 2017 amendments were procedural and not substantive, the amendments should be deemed retroactive to the time disciplinary charges were first filed against these plaintiffs. *People ex rel. Alvarez v. Howard*, 2016 IL 120729 ¶¶ 28 (applying default rule where procedural amendments are deemed retroactive).[6]

Second, the Court should find that, even prior to December 2017, the County had home rule power to approve interim appointments to the Merit Board. Returning this crucial home rule power to the County is consistent with *Scadron v. City of Des Plaines*, 153 Ill. 2d 164 (1992) (applying Ill. Const. art. VII § 6). *Scandron* teaches that the framers of the Illinois Constitution intended that "home rule units be given the broadest powers possible" and that the home rule doctrine be applied "liberally" to disputes over local "safety" matters and local government affairs. 153 Ill. 2d at 174-75.

[6] To the extent *Lopez* rejected a similar retroactivity argument, Defendants respectfully submit that *Lopez* was in error.

Third, Plaintiffs complain that, during 2017, the size of the Merit Board dropped to five members in the wake of post-*Taylor* resignations. (A 18-21.) This argument does not help their position. As a consequence of *Taylor*, it was impossible to fill Merit Board vacancies caused by resignations during 2017 and before the December 2017 amendments were signed into law by the Governor. Further, the two resignations in question did not deprive the Merit Board of power to continue to process disciplinary complaints, because *Taylor* expressly dictated that the agency should continue to go about its business as long as it had a "quorum" of four members. 2017 IL App (1st) 143684-B ¶ 34 (interpreting 55 ILCS 5/3-7005)).

Fourth, Plaintiffs claim that the December 13, 2017 appointments to the Merit Board were improper because, allegedly, four of the appointees were Democrats and three were Republicans. (A 12-13.) This argument fails as a matter of law under Counties Code § 3-7002, which provides that "no more than one half plus one of the members of the Board shall be affiliated with the same political party." 55 ILCS 5/3-7002. A Merit Board consisting of seven members, four of whom are Democrats, clearly satisfies the "half plus one" rule, and plaintiffs have no basis for arguing otherwise.

Finally, Plaintiffs missed the mark in alleging that the Defendants are somehow currently violating the Counties Code by not imposing term limits on the Merit Board's Chairman and Secretary. The Counties Code requires only that the Merit Board name one of its members as a "chairman" and another as a "secretary." 55 ILCS 5/3-7005. The Counties Code also gives the Merit Board exclusive power to formulate, adopt, and put into effect rules, regulations and procedures for its operation. 55 ILCS 5/3-7006. These provisions of the Code have nothing to do with the Sheriff's or Cook County's power to

appoint members to the Merit Board, and exclusively concern the agency's internal procedures for operation. Nothing in the Counties Code imposes term limits on the Merit Board Chairman or Secretary, let alone obliges the Sheriff or County to impose so-called term limits on the Merit Board's officers. This challenge, like all of Plaintiffs' appointment challenges, amounts to grasping at straws to avoid the dispositive effect of the December 2017 amendments, which were intended to limit the outcome of *Taylor*.

CONCLUSION

For the foregoing reasons, Defendants Thomas J. Dart, Sheriff of Cook County, and Cook County, Illinois, pray that the Court reverse the First District's July 10, 2019 decision in *Goral v. Dart*, 2019 IL App (1st) 181646, and affirm the Circuit Court's July 26, 2018 Order dismissing the case below.

CERTIFICATE OF COMPLIANCE WITH SUPREME COURT RULE 341

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rules 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 44 pages.

/s/ Stephanie A. Scharf

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No. _____

IN THE SUPREME COURT OF ILLINOIS

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, and LASHON SHAFFER, on behalf of themselves and others similarly-situated, Plaintiffs-Respondents, v. THOMAS J. DART, Sheriff of Cook County; COOK COUNTY, ILLINOIS; THE COOK COUNTY SHERIFF'S MERIT BOARD; and TONI PRECKWINKLE, Defendants-Petitioner(s).	Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District No. 1-18-1646 There Heard on Appeal From The Circuit Court of Cook County, No. 17-CH-15546 The Hon. Sophia H. Hall, Judge Presiding

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Board of Commissioners of Cook County

Text File

File Number: 18-0926

118 North Clark Street
Chicago, IL

Agenda Date: 12/13/2017 **Version:** 1 **Status:** Approved

In Control: Board of Commissioners **File Type:** Appointment

Agenda Number:

PROPOSED APPOINTMENT

Appointee(s): Juan L. Baltierres

Position: Member

Department/Board/Commission: Cook County Sheriff's Merit Board

Effective date: Immediate

Expiration date: Third Monday in March, 2019, or until a successor is appointed and qualified.

Summary: This appointment is being made pursuant to 55 ILCS 5/3-7002 as amended by the 100th General Assembly and shall be effective immediately. Pursuant to 55 ILCS 5/3-7002, as amended by the 100th General Assembly, the appointment of each existing member of the Merit Board was abolished on the effective date of 55 ILCS 5/3-7002 as amended by the 100th General Assembly.

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Board of Commissioners of Cook County

Text File

File Number: 18-0927

118 North Clark Street
Chicago, IL

Agenda Date: 12/13/2017 **Version:** 1 **Status:** Approved

In Control: Board of Commissioners **File Type:** Appointment

PROPOSED APPOINTMENT

Appointee(s): Kim R. Widup

Position: Member

Department/Board/Commission: Cook County Sheriff's Merit Board

Effective date: Immediate

Expiration date: Third Monday in March, 2019, or until a successor is appointed and qualified.

Summary: This appointment is being made pursuant to 55 ILCS 5/3-7002 as amended by the 100th General Assembly and shall be effective immediately. Pursuant to 55 ILCS 5/3-7002, as amended by the 100th General Assembly, the appointment of each existing member of the Merit Board was abolished on the effective date of 55 ILCS 5/3-7002 as amended by the 100th General Assembly.

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Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Text File

File Number: 18-0929

Agenda Date: 12/13/2017 **Version:** 1 **Status:** Approved

In Control: Board of Commissioners **File Type:** Appointment

PROPOSED APPOINTMENT

Appointee(s): James P. Nally

Position: Member

Department/Board/Commission: Cook County Sheriff's Merit Board

Effective date: Immediate

Expiration date: Third Monday in March, 2021, or until a successor is appointed and qualified.

Summary: This appointment is being made pursuant to 55 ILCS 5/3-7002 as amended by the 100th General Assembly and shall be effective immediately. Pursuant to 55 ILCS 5/3-7002, as amended by the 100th General Assembly, the appointment of each existing member of the Merit Board was abolished on the effective date of 55 ILCS 5/3-7002 as amended by the 100th General Assembly.

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Board of Commissioners of Cook County

Text File

File Number: 18-0931

116 North Clark Street
Chicago, IL

Agenda Date: 12/13/2017 **Version:** 1 **Status:** Approved

In Control: Board of Commissioners **File Type:** Appointment

PROPOSED APPOINTMENT

Appointee(s): Patrick M. Brady

Position: Member

Department/Board/Commission: Cook County Sheriff's Merit Board

Effective date: Immediate

Expiration date: Third Monday in March, 2021, or until a successor is appointed and qualified.

Summary: This appointment is being made pursuant to 55 ILCS 5/3-7002 as amended by the 100th General Assembly and shall be effective immediately. Pursuant to 55 ILCS 5/3-7002, as amended by the 100th General Assembly, the appointment of each existing member of the Merit Board was abolished on the effective date of 55 ILCS 5/3-7002 as amended by the 100th General Assembly.

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Board of Commissioners of Cook County

Text File

File Number: 18-0932

118 North Clark Street
Chicago, IL

Agenda Date: 12/13/2017 **Version:** 1 **Status:** Approved

In Control: Board of Commissioners **File Type:** Appointment

PROPOSED APPOINTMENT

Appointee(s): Byron Brazier

Position: Member

Department/Board/Commission: Cook County Sheriff's Merit Board

Effective date: Immediate

Expiration date: Third Monday in March 2023, or until a successor is appointed and qualified.

Summary: This appointment is being made pursuant to 55 ILCS 5/3-7002 as amended by the 100th General Assembly and shall be effective immediately. Pursuant to 55 ILCS 5/3-7002, as amended by the 100th General Assembly, the appointment of each existing member of the Merit Board was abolished on the effective date of 55 ILCS 5/3-7002 as amended by the 100th General Assembly.

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Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Text File

File Number: 18-0933

Agenda Date: 12/13/2017 **Version:** 1 **Status:** Approved

In Control: Board of Commissioners **File Type:** Appointment

PROPOSED APPOINTMENT

Appointee(s): John Dalicandro

Position: Member

Department/Board/Commission: Cook County Sheriff's Merit Board

Effective date: Immediate

Expiration date: Third Monday in March, 2023, or until a successor is appointed and qualified.

Summary: This appointment is being made pursuant to 55 ILCS 5/3-7002 as amended by the 100th General Assembly and shall be effective immediately. Pursuant to 55 ILCS 5/3-7002, as amended by the 100th General Assembly, the appointment of each existing member of the Merit Board was abolished on the effective date of 55 ILCS 5/3-7002 as amended by the 100th General Assembly.

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Board of Commissioners of Cook County

Text File

File Number: 18-0934

118 North Clark Street
Chicago, IL

Agenda Date: 12/13/2017 **Version:** 1 **Status:** Approved

In Control: Board of Commissioners **File Type:** Appointment

Agenda Number:

PROPOSED APPOINTMENT

Appointee(s): Vincent T. Winters

Position: Member

Department/Board/Commission: Cook County Sheriff's Merit Board

Effective date: Immediate

Expiration date: Third Monday in March, 2023, or until a successor is appointed and qualified

Summary: This appointment is being made pursuant to 55 ILCS 5/3-7002 as amended by the 100th General Assembly and shall be effective immediately. Pursuant to 55 ILCS 5/3-7002, as amended by the 100th General Assembly, the appointment of each existing member of the Merit Board was abolished on the effective date of 55 ILCS 5/3-7002 as amended by the 100th General Assembly.

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IN THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, FRANK DONIS, LASHON SHAFFER, on behalf of themselves and others similarly-situated,	)	
Plaintiffs,	)	**Circuit No. 2017 CH 15546**
v.	)	
THOMAS J. DART (Official and Ind. Cap.), COOK COUNTY, ILLINOIS, COOK COUNTY SHERIFF'S MERIT BOARD, TONI PREKWINCKLE (Official and Ind. Cap.),	)	
Defendants.	)	

Second Amended Verified Complaint For Declaratory, Mandamus, Injunctive and Other Equitable Relief, Negligent Misrepresentation, Fraud, A Temporary Restraining Order, Preliminary, and Permanent Injunction, And For Class Certification

NOW COME the Plaintiffs, Cook County Sheriff's Police and Correctional Officers, by and through counsel, the Law Office of Christopher Cooper, Inc., Cass T. Casper, Talon Law, LLC, and Art Gold, Gold & Associates. Plaintiffs seek a Temporary Restraining Order ("TRO") in which the Cook County Sheriff's Merit Board ("Board"), along with Sheriff Thomas Dart, are enjoined from conducting any business in any of Plaintiffs' pending disciplinary cases, as well as declaratory, mandamus, and injunctive and equitable relief, including reinstatement, back pay, a TRO and preliminary injunction in all of their cases. This Complaint also alleges that all Defendants, including Defendants Dart and Preckwinkle in their individual and official capacities, engaged in negligent

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misrepresentation and fraud towards Plaintiffs as the legality of the Defendant Board. Plaintiffs also seek that the Court certify a class of similarly-situated Sheriff's officers with cases now pending at various stages at the Board.

FACTS

I. General Background.

1. The Plaintiffs and those similarly situated to them are employees of the Sheriff and Cook County.

2. Plaintiffs Kevin Badon ("Badon"), Michael Mendez ("Mendez"), Matthew Goral ("Goral"), Milan Stojkovic ("Stojkovic"), and LaShon Shaffer ("Shaffer") are Cook County Sheriff's Department Police Officers.

3. Plaintiffs David Evans III ("Evans") and Frank Donis ("Donis") are Cook County Sheriff's Correctional Officers.

4. Goral is a 15-year veteran of the Department, Mendez is a 23-year veteran, Badon is a 19-year veteran, Stojkovic is a 21-year veteran, Shaffer is a 22-year veteran, Evans is a 12-year veteran, and Donis is a 12-year veteran. Each officer has completed his probationary period.

5. Thomas Dart ("Sheriff"), as the Cook County Sheriff, is the highest-level Sheriff's Department supervisor of Plaintiffs and those similarly situated to them.

6. This is a Complaint for declaratory and injunctive relief, and for reinstatement and make whole relief, including back pay with pre- and post-judgment interest, based on Plaintiffs' and similarly-situated officers' unlawful disciplinary proceedings and suspensions from their positions as

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sworn officers with the Defendant Sheriff and/or by an invalidly and illegally constituted Board.

7. There are two relevant time periods in issue in this Second Amended Complaint ("SAC"):

a. Pre-December 13, 2017 (hereinafter, denoted "Period 1"), when Plaintiffs' and similarly-situated officers' cases were started and processed through preliminary and status hearings, motion practice, and, in some cases, through to trial; and,

b. Post-December 13, 2017 (hereinafter, denoted "Period 2"), when a "new" Board was appointed under the auspices of an amended Act, consisting of six of the same *men* who sat on the "old" Board, with Juan Baltierres being the seventh and only new appointee. The political affiliation of the new Board has become an issue, since the statute requires that "[n]o more than 3 members of the Board shall be affiliated with the same political party . . . ." 55 ILCS 5/3-7002, but that four are democrats. Discussion, infra.

c. Also, during Period 2 (at times between late January and early February) the Sheriff filed "Amended Complaints" as Plaintiffs' "old" Board cases. The undersigned counsel have filed, or intend to file, "Motion[s] to Clarify and Affirm the Record" in all pending cases. The Board also set status hearings on Plaintiffs' cases, and unilaterally and materially amended its *Rules and Regulations* during on or about February 2, 2018, and applied such amendments to Plaintiffs' cases.

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8. During Period 1, the Board was improperly and illegally constituted at the time of Plaintiffs' disciplinary proceedings and suspensions. As in, during the pendency of Plaintiffs' cases and those of similarly situated officers:

   a. the Boards' members were unlawful interim appointments for less than six-year terms;

   b. between approximately September and December 2017, the Board had only five members, below the statutory-required minimum of seven members;

   c. some of the Board's members in 2017 had terms that were not staggered as required by Section 7002 of the Cook County Sheriff's Merit Board Act, 55 ILCS 5/3-7001, *et seq.* ("Act"); and,

   d. its chairperson and secretary held those positions for more than the statutorily-authorized two-year period. 55 ILCS 5/3-7005.

9. During Period 2, the Board continues to be improperly constituted and continues to lack authority to hear and decide Plaintiffs' and similarly-situated cases for at least the following reasons:

   a. the Board's jurisdiction and authority continues to be defective as to Plaintiffs' cases because it was invalidly constituted when it received the original charges against Plaintiffs. Additionally, "Amended Complaints" cannot "Amend" what was never there;

   b. the Board is now improperly constituted because, on investigation and information, the political affiliation requirements of the Act are not met, and the Board has four persons affiliated with the Democratic

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party / organizations / politicians, and three persons affiliated with the Republican party / organizations / politicians;

c. the Chairperson – James Nally – has held that position for years and continues to hold it, far longer than the two-year period authorized by the Act's plain language and obvious intent;

d. the Secretary has held that position for longer than the two-year period authorized by the Act's plain language and obvious intent;

e. the Board has created fatal due process problems by changing its *Rules and Regulations* effective February 2, 2018 to require Plaintiffs' to pay the costs of their own hearing transcript in a constitutionally-required hearing when no other officer in the past for decades has had to do so; and,

f. the Board has fatally compromised its ability to be fair or to appear fair in Plaintiffs' and similarly-situated officers' cases because it has taken an adversarial position in lockstep with the Sheriff to Plaintiffs and putative class members in this case with no evident reason for it doing so.

10. According to the First District Appellate Court of Illinois ("First District") in *Taylor v. Dart*, 2016 IL App (1st) 143684, 64 N.E.3d 123 (1st Dist. 2016) (*Taylor I*), former purported member John R. Rosales ("Rosales") was an unlawful interim appointment, that is, an appointment for less than a six-year term, and such appointments are not authorized by the appointment

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provisions of the Cook County Sheriff's Merit Board Act, 55 ILCS 5/3-7002 ("the Act").

11. In *Taylor I*, the First District held that the Board's decision terminating a Cook County Sheriff's Police Officer was not valid and void from inception because of such an invalidly-appointed Board member. *Id.* at 130 (interim appointments not permitted) *and* 132 (decision void).

12. A second, subsequent decision in the *Taylor* case confirmed that interim appointments were neither expressly nor implicitly permitted under the Act, stating:

> "[s]ection 3-7002 of [the Act] does not authorize the Sheriff of Cook County either explicitly or by implication to appoint an individual to the Merit Board for less than a six-year term." *Taylor v. Dart*, 81 N.E.3d 1, 8 (1st Dist.), *petition for leave to appeal denied*, (9/27/2017) ("*Taylor II*") (collectively, hereinafter both *Taylor I* and *Taylor II* will be referred to as the "*Taylor* litigation").

13. The *Taylor* litigation holds that the Act does not permit interim appointments, meaning an appointment for less than six years. *Taylor II* at 8.

14. During Period 1, the Plaintiffs and similarly-situated officers, have been subjected suspension without pay, while the Board has not been lawfully constituted either because of unlawfully-appointed members, or because of the Board having only five members.

15. During Period 2, the Plaintiffs and similarly-situated officers are subject to a continuation of suspension without pay order, while the Board continues to be illegally constituted for the reasons noted in Paragraph 9, *supra*. In

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addition, the Board has created fatal due process/fundamental fairness problems by the positions it has espoused in this litigation without any rational basis for taking positions identical to the Sheriff[1], and by amending its *Rules and Regulations* to require Plaintiffs to pay the transcript costs just to get a decision in their own cases.

16. Plaintiffs and similarly-situated officers are entitled to a declaration as to all Defendants that the Board has been improperly constituted during their cases (Periods I and II); as well, that their suspensions without pay are void, without legal effect, nullities; and, declarations that they are entitled to back pay, other make whole relief, and reinstatement to their positions.

17. Plaintiffs and similarly-situated officers are entitled to injunctive and mandamus relief as to all Defendants requiring them to reinstate them to their prior positions with full pay, step increases, benefits including benefit time, allowances, pension contributions, and seniority.

18. Plaintiffs and similarly-situated officers are entitled to injunctive and mandamus relief as to all Defendants enjoining them from filing or refiling the same or similar charges as those underlying the complaints in the Board's disciplinary proceedings, and from holding a hearing on the same charges in violation of due process.

19. Plaintiffs and similarly-situated officers are entitled to a Declaration that the Board has a conflict interest in that it cannot act as "judge\adjudicator" of

[1]The central problem raised in this case on this issue is that the Board is supposed to be neutral, but yet it litigates this case in lockstep with the Sheriff for no clear reason or discernible rational basis whatsoever. Plaintiffs state that the Board should have no position in this litigation where it has not heard the pending cases.

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the Plaintiffs' and similarly-situated officers' cases, since the Board is challenging the named Plaintiff's in the instant litigation.[2]

20. Plaintiffs and similarly-situated officers who have had their cases removed from the Board's docket, including those only awaiting decisions, are entitled to injunctive and mandamus relief as to all Defendants enjoining Defendants from claiming their cases are not dismissed, and barring Defendants from attempting to relitigate them.

21. Plaintiffs and similarly-situated officers are entitled to injunctive and mandamus relief that the Defendants dismiss their cases from the illegally constituted Board, reinstate them, and order them made-whole with back pay, benefits, and all other losses.

II. Jurisdiction and Venue

22. Jurisdiction is vested in this Court pursuant to Art. 6, Sec. 9, of the Illinois Constitution. This Court has jurisdiction over Count I pursuant to 735 ILCS 5/2-701 of the Illinois Code of Civil Procedure, providing that the Circuit Courts of Illinois have the power to issue binding declarations of rights, having the force of final judgments, because there is an actual controversy between the Plaintiff and Defendants and Plaintiff has a legally tangible interest in this litigation.

23. This Court has jurisdiction over Count II, and all Counts and claims for

[2] Plaintiffs' Discovery is directed to the Board and its members. Plaintiff intends to depose all Board members. All Defendants, including the Board were aware of the conflict in late 2017 when the instant case was filed; yet, it refuses to recuse itself.

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relief, pursuant to its equitable powers at common law to grant equitable relief.

24. This Court has jurisdiction over Count III pursuant to Illinois' Mandamus statute, 735 ILCS 5/14-101, *et seq.*

25. Venue is proper pursuant to 735 ILCS 5/2-101 of the Illinois Code of Civil Procedure because all parties reside in Cook County, Defendants' principal places of business and operation are in Cook County, and all operative acts occurred in Cook County.

III. Parties

26. Plaintiffs are legal adults and residents of the state of Illinois. They are jointly employed as sworn officers by the Sheriff of Cook County and the County of Cook.

27. The Board is an administrative agency created and empowered pursuant to the Act, 55 ILCS 5/3-7001, *et seq.* Plaintiffs were harmed by Defendant Board in Cook County, Illinois.

28. The Sheriff is a legal adult and the duly-elected Sheriff of Cook County. Defendant Sheriff was and is a party of record in the administrative proceedings before the Board seeking Plaintiffs' and similarly-situated officers' terminations and suspensions. Defendant Sheriff has harmed Plaintiffs and the putative class in Cook County, Illinois.

29. County of Cook, Illinois ("County") is a unit of local government and is a joint employer of the Plaintiffs with the Defendant Sheriff. The County has indemnification obligations for wrongful acts committed by its officials

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or employees, such as the Sheriff. *See* 745 ILCS §§ 10/1-202 and 9-102. It is named in its capacities as joint employer and as indemnor.

30. Defendant Toni Preckwinkle is the duly-elected President of the Cook County Board of Commissioners and a resident of Cook County. She is named in her official and individual capacities. She is and was responsible for calling to a vote before the Cook County Board the proposed appointments of the Board's former and current members, most of which proposed appointments were invalid. Her actions harmed Plaintiffs' and similarly-situated officers.

IV. Background Specific To Plaintiffs Goral, Mendez, Badon, and Stojkovic.

31. On September 18, 2016, Defendant Dart filed four Complaints with the Board, one for each of these four Plaintiffs (prescribed by 55 ILCS 5/3-7012), seeking termination of their employment.

32. Shortly afterwards, these cases were consolidated by the Board, but each officer's case number did not change.

33. The hearing officer assigned to hear the cases (as one case) was Gray Mateo-Harris ("Mateo-Harris").

34. Hearing Officer Mateo-Harris set trial to begin on May 4th, 2017. It was anticipated that trial would take at least three full days.

35. Plaintiffs and their attorneys prepared for trial.

36. The trial was postponed.

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37. A new trial date was set for December 7, 2017. And, once again Plaintiffs-Respondents served subpoenas upon their potential witnesses and prepared for trial.

38. On October 18, 2017, three of the Plaintiffs and the undersigned attorney arrived to a status hearing only to learn that Ms. Mateo-Harris had resigned because she was not a legal member of the Board.

39. Board member Mr. James Nally now sat as the hearing officer by all appearances.

40. On November 21, 2017, Mr. Nally did not rule on Plaintiffs' motions (e.g., Motion to Dismiss x 2; Motion to Disqualify, etc.).

41. Over Plaintiffs' vehement objection, the Board (through Mr. Nally) postponed, again, the trial set for December 7, 2017. The Board asserted the basis was outstanding Discovery owed to Plaintiffs. This was an incredulous assertion by the Board where Plaintiffs-Respondents asserted they were ready for trial.

42. Plaintiffs contend the real issue for delay is that the Board and its members are well-aware the Board is illegal for reasons which include at least one member who was appointed for a less than six-year term, it cannot operate with five members, and, that two of those five members have terms which are not staggered as required by 55 ILCS 5/3-7002.

43. The Board is believed to have cancelled the trial since the Board lacks jurisdiction; however, under the guise of owed Discovery.

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44. Plaintiffs are and were opposed to Mr. Dart's and the Board's decision to cancel the trial set for December 7-11, 2017. The delay of the trial was unnecessary, and has caused additional, extreme financial hardship to Plaintiffs-Respondents, who have been suspended, without pay, from their employment, since on or about September 18, 2016.

45. On or about January 23, 2018, the Sheriff filed, and the Board received, "Amended Complaints" against Goral, Badon, Mendez, and Stojkovic containing the same case numbers, allegations, cited rule violations, and being generally identical in nature to the "Complaints" filed against them in 2016.

46. These Plaintiffs' undersigned counsel Christopher Cooper was only notified and served with copies of this "Amended Complaint" on or about early February, 2018.

47. The Board set a status hearing on the Amended Complaints for February 27, 2018, at which time these Plaintiffs' counsel is anticipated to be served with the Sheriff's "Motion to Clarify and Affirm the Record []," which contains numerous admissions that the "Amended Complaint" seeks to continue the 2016 case.

48. These Plaintiffs will file a "Motion to Dismiss" and a response to the Sheriff's "Motion to Clarify and Affirm the Record []." These Plaintiffs and their undersigned counsel believe filing this Motion to Dismiss at the Board level is a *fait accompli.*

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V. Background Specific To Plaintiff Shaffer.

49. Plaintiff Shaffer is an African-American Sheriff's Police Officer. He was suspended without pay on July 20, 2017 and sent to the Board for termination for alleged conduct that a white female officer and white sergeant also engaged in in the exact same arrest, although for which only Shaffer was suspended and sent to the Board. The two white officers continue working with no discipline or penalty to this day, even if one were appropriate.

50. A complaint was filed with the Board on July 20, 2017 and Chairman James Nally was assigned as the hearing officer.

51. On September 21, 2017, Shaffer filed, through counsel Cass T. Casper, motions for discovery, and a motion to dismiss based on illegally-appointed members Mateo-Harris and Patrick Brady ("Brady") then being on the Board.

52. Subsequent to the filing of this Shaffer's first motion to dismiss, Mateo-Harris and Brady resigned from the Board, leaving the Board with only five purported members. Two of those remaining members, Winters and Dalicandro had terms both ending on the same date in March, 2023.

53. Shaffer, through counsel, then filed a second motion to dismiss seeking that the Board dismiss the case due to having less than the statutorily-required number of Board members, *to wit*, at least seven.

54. The Board sought a briefing schedule on Shaffer's second motion to dismiss, with Shaffer submitting the final reply brief on December 1, 2017. The

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Sheriff in its brief opposing the second motion to dismiss took the sole position that the Board has no statutory authority to dismiss cases before it, which means the Sheriff's position-of-record is that none of these issues may be raised at the Board level.

55. An identical motion in Plaintiff David Evans III's case was set for ruling on December 8, 2017, which would have been dispositive of Shaffer's motion.

56. Suddenly, on December 4, 2017, Shaffer's case was "cancelled" and "taken off the docket," according to an email to counsel Cass T. Casper from one of the Board's staff. No ruling on Shaffer's second motion to dismiss has been obtained by Plaintiff to date.

57. Plaintiff Shaffer has now been removed from the Board's docket, but he continues to be suspended without pay and caused extreme financial hardship as a result.

58. Shaffer tried to obtain recourse through the Board on the issues raised herein, but was opposed by the Sheriff on the grounds that he could not, and then the Board unilaterally removed his case from the docket on December 4, 2017. Shaffer has no choice but to seek recourse from this Court.

59. Shaffer, and the other Plaintiffs, believe that the true reason for removing his cases from the docket were so that the Board would not have to even bother with his motions challenging the Board's jurisdiction to hear his case.

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60. On or about January 23, 2018, the Sheriff filed, and the Board received, an "Amended Complaint" against Shaffer containing the same case number, allegations, cited rule violations, and being generally identical in nature to the "Complaint" filed against him in 2017.

61. Shaffer's undersigned counsel Cass T. Casper was only notified and served with copies of this "Amended Complaint" on or about February 7, 2018.

62. The Board set a status hearing on the Amended Complaint for February 16, 2018, at which time Shaffer's counsel was served with the Sheriff's "Motion to Clarify and Affirm the Record []," which contained numerous admissions that the "Amended Complaint" sought to continue the 2017 case.

63. Plaintiff Shaffer filed a "Motion to Dismiss, To Disqualify" and a response to the Sheriff's "Motion to Clarify and Affirm the Record []," and the Board, rather than holding off on setting a trial date pending Plaintiff's Motion to Dismiss, set a trial date. Shaffer and his undersigned counsel believe filing the Motion to Dismiss at the Board level is a *fait accompli.*

VI. Background Specific to Plaintiff Evans.

64. Plaintiff Evans is a Cook County Sheriff's Correctional Officer in recovery from cancer. He has been suspended without pay by the Sheriff since February 21, 2017. His insurance benefits from the County were terminated in or about October, 2017, leaving him in a dire position regarding his needed ongoing therapy for cancer recovery.

65. Plaintiff Evans was accused of striking an inmate one single time, after the inmate punched Plaintiff Evans and threatened that he would "bust [Evans']

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fucking skull open" when Plaintiff Evans was ordered to retrieve a loose wheelchair arm the detainee was threatening to use as a weapon on others. The lieutenant who ordered Evans to retrieve such was on scene at the time and adjudged this a lawful use of force in an Incident Report. Another officer on scene did, too. Nonetheless, the Sheriff sought to terminate Evans for this incident.

66. Like Shaffer, Evans is an African American man and the Lieutenant and other officer are white. The latter two are receiving no discipline and have not been sent to the Board.

67. A complaint was filed at the Board on February 22, 2017. Plaintiff Evans, through counsel Cass T. Casper, filed a motion to dismiss the case on July 6, 2017 on the ground that Mateo-Harris and Brady were not lawfully-appointed members, and he would not have the benefit of the full statutory tribunal to hear, review, and decide his case. The Sheriff never responded to the first motion, and the Board never ruled on it.

68. Like Shaffer, after Mateo-Harris and Brady resigned, Evans filed a second motion to dismiss on October 24, 2017, to which the Sheriff replied on November 20, 2017 with the sole objection that Evans cannot ask for dismissal of cases at the Board level.

69. Evans replied on December 1, 2017, and the matter was set for ruling on December 7, 2017. Such never occurred as the Board removed Evans' cases from the docket on December 4, 2017.

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70. Plaintiff Evans has now been removed from the Board's docket, but he continues to be suspended without pay and caused extreme financial hardship as a result. His health is under imminent threat due to his lack of funds to obtain replacement health insurance.

71. Plaintiff Evans has tried to obtain recourse through the Board on the issues raised herein, but was opposed by the Sheriff on the grounds that he could not, and then the Board unilaterally removed his case from the docket on December 4, 2017. Evans has no choice but to seek recourse from this Court.

72. Like Shaffer, Evans believes that the true reason for his case being removed from the Board's docket was so that it would not have to rule on his motions to dismiss.

73. On or about January 23, 2018, the Sheriff filed, and the Board received, an "Amended Complaint" against Evans containing the same case number, allegations, cited rule violations, and being generally identical in nature to the "Complaint" filed against him in 2017.

74. Evans' undersigned counsel Cass T. Casper was only notified and served with copies of this "Amended Complaint" on or about February 7, 2018.

75. The Board set a status hearing on the Amended Complaint for February 27, 2018, at which time Evans' counsel is anticipated to be served with the Sheriff's "Motion to Clarify and Affirm the Record []," which will contain numerous admissions that the "Amended Complaint" seeks to continue the

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2017 case. Evans and his undersigned counsel believe filing the Motion to Dismiss at the Board level is a *fait accompli.*

VII. Background Specific To Plaintiff Donis.

76. Plaintiff Donis is an Hispanic Cook County Correctional Officer who has not been suspended without pay, but is subject to a termination proceeding at the Board that has substantially damaged his reputation and caused him ongoing, daily emotional distress. The case has been pending since it was first filed on February 3, 2016, stemming from allegations on or about July 22, 2014.

77. The allegation for which Dart seeks Donis' termination is that he allegedly told an FBI agent he was acting unprofessionally when the agent approached Donis off-duty and demanded to see his phone with no explanation, much less a warrant.[3]

78. Donis' case has proceeded much the same way as Evans' and Shaffer's, with his counsel filing a first and second motion to dismiss based on unlawful appointments and a five-purported member Board.

79. Like Evans and Shaffer, his case was removed from the docket on December 4, 2017 without explanation.

80. On or about January 23, 2018, the Sheriff filed, and the Board received, an "Amended Complaint" against Donis containing the same case number,

[3] Donis has a federal First Amendment and Americans with Disabilities Act Complaint pending on the grounds that the Board case is based on such trivial allegations it must be viewed as a pretext to seek his termination because he has sought multiple ongoing ADA accommodations.

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allegations, cited rule violations, and being generally identical in nature to the "Complaint" filed against him previously.

81. Donis' undersigned counsel Cass T. Casper was only notified and served with copies of this "Amended Complaint" on or about February 7, 2018.

82. The Board set a status hearing on the Amended Complaint for February 20, 2018, at which time Shaffer's counsel was served with the Sheriff's "Motion to Clarify and Affirm the Record []," which contained numerous admissions that the "Amended Complaint" sought to continue the pre-2017 case.

83. Plaintiff Donis filed a "Motion to Dismiss, To Disqualify" and a response to the Sheriff's "Motion to Clarify and Affirm the Record []," and the Board, rather than holding off on setting a trial date pending Plaintiff's Motion to Dismiss, set a trial date for April 16, 2018. Donis and his undersigned counsel believe filing the Motion to Dismiss at the Board level is a *fait accompli.*

VIII. Background Specific to Other Similarly-Situated Officers and Class Certification.

84. On information and belief, there are approximately 230 plus officers (see attached exhibit, a list of pending cases), who are in positions similarly situated to Plaintiffs at various stages at the Board. Of these, many are believed to be suspended without pay, and many had their cases removed from the docket like Plaintiffs in 2017, including those with pending decisions, yet are not being afforded any relief, such as return to pay status and dismissal of their charges.

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85. Some officers have already gone to hearing\trial and are awaiting a decision, while others are in various stages of pre-trial litigation (the quasi-judicial administrative process).

86. During the entire Period 1 and entire Period 2 covered by this Complaint, and pertaining to all similarly-situated officers' cases (see attached exhibit showing pending cases), the Board has been unlawfully and improperly constituted. And, that it is depriving Plaintiffs of due process, by its overseeing (acting as the judge) each Plaintiffs' respective disciplinary process, while the same Board\Judge is contemporaneously challenging the Plaintiffs in this litigation where the Plaintiffs have accused the Board and certain members of fraud and misrepresentation. This represents a conflict of interest held by the Board. Furthermore, the changes to the Board's *Rules and Regulations* on February 2, 2018 represent yet another due process deprivation.

87. An actual controversy exists between the parties concerning the interests of each side, which the declarations from this Court sought herein will resolve.

88. All Plaintiffs have a clear right to the relief requested, have a tangible legal interest in the subject matter of this Complaint, and otherwise lack an adequate remedy at law, especially since the Sheriff has stated the Board cannot decide these issues (and the Board just removed all the cases from its docket without ruling on motions). *See* Exhibit A.

89. Pursuant to 735 ILCS 5/2-801, Plaintiffs bring this action on behalf of a class of similarly-situated officers injured by illegal constitution of the Board

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and the illegal disciplinary process thereunder. The class is defined as follows:

> **"All current Cook County Sheriff's Department officers (and any others) subjected to disciplinary proceedings by an illegally constituted Board, to include any and all disciplinary proceedings overseen by the Board during the time Mateo-Harris, Brady, Dalicandro, Nally, Widup, Brazier, Baltierres, and/or Winters were unlawfully-appointed members."**

90. The class members are so numerous that joinder of all members is impracticable. While, at this time, the Plaintiffs do not know the exact number of Class members, Plaintiffs reasonably believe that there are approximately 230 cases and covered by the allegations raised in this SAC.

91. The number of persons who have been affected can be ascertained through appropriate discovery.

92. There are common and overriding questions of law and fact which are common to each and every member of the class, *to wit*, (1) in Period I, subjected to an illegal Board which oversaw and administered disciplinary proceedings; (2) in Period 2 (presently ongoing), being subjected to an illegal Board and its proceedings; (3) entitlement to back pay; (4) entitlement to reinstatement; and, (5) entitlement to other relief, including other make-whole relief.

93. Those questions of law and fact which are common to all the members of the class predominate over any and all other questions of law or fact that may affect individual members of the class.

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94. Plaintiffs and similarly-situated officers were [all] subjected to unlawful disciplinary proceedings by the Board during Period 1, and continue to be subjected to unlawful disciplinary proceedings during Period 2, and will fairly and adequately represent and protect the interests of the Class.

95. Two of Plaintiff's counselors (Christopher Cooper and Art Gold) are experienced class-action attorneys.

96. A class-action is an appropriate method for the fair and efficient adjudication of this dispute.

COUNT I: DECLARATORY RELIEF AS TO ALL DEFENDANTS

Plaintiffs and Similarly-Situated Officers Are Entitled To Declarations That The Board Is And Has Been Unlawfully Constituted, Is Violating Their Due Process Rights, And They Are Entitled To Reinstatement, Back Pay, And All Other Make Whole Relief.

97. Plaintiffs and similarly-situated officers repeat, re-allege and incorporate by reference, the allegations in the above paragraphs, including the Facts section.

98. Throughout the pendency of Plaintiffs' and similarly-situated officers' cases, the Board has either had illegally-appointed members with unlawful terms of less than six years, had illegally-appointed members with non-staggered terms, been composed of only five members, failed to meet the Act's political affiliation requirements, and/or had a chairperson and secretary who occupied such positions in excess of the statutory limit.

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99. The Board's members have not been legal members of the Board at the time they participated during Period 1 or continue to participate during Period 2 in the Board's disciplinary proceedings covered by this case.

100. As the Board's members have been unlawful interim appointments, have had unlawful non-staggered terms, do not meet the Act's political affiliation requirements, the Board has been, at all times during Periods 1 and 2 involving the Plaintiffs' cases and those of all similarly-situated officers, illegal and unlawfully constituted.

101. The officers' cases covered by the SAC and now pending are, accordingly, void from inception, including receipt of the Sheriff's written charges.

102. Based on the foregoing, Plaintiffs and similarly-situated officers are entitled to declarations that the Board's members were and are invalidly appointed as a matter of law at the time of all of Plaintiffs' and similarly-situated officers' proceedings before the Board.

103. In addition, Plaintiffs and similarly-situated officers are entitled to declarations that the Board's amended Rules and Regulations requiring them to pay transcript costs to obtain a decision in their own cases violates their rights to due process and fundamental fairness, and unconstitutionally burdens their right to a hearing.

104. Plaintiffs and similarly-situated officers are presently being deprived of due process since the Board will not recuse itself.

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105. The Board has a conflict interest in that it cannot act as "judge\adjudicator" of the Plaintiffs' and similarly-situated officers' cases, since the Board is challenging the named Plaintiff's in the instant litigation.[4]

106. Based on the foregoing, Plaintiffs and similarly-situated officers are entitled to a declaration that the Board was and continues to be illegally constituted as to the time of all proceedings before the Board, including from each occurrence of receipt of the Sheriff's written charges onward.

107. Based on the foregoing, Plaintiffs and similarly-situated officers are entitled to declarations that the Board's disciplinary proceedings, inclusive of the Board's actions in the proceedings, are a nullity and continue to be void from inception.

108. Based on the foregoing, Plaintiffs and similarly-situated officers are entitled to declarations that they are entitled to full back pay and benefits had they on full duty for the Sheriff, but for the unlawful Board proceedings.

109. Based on the foregoing, Plaintiffs and similarly-situated officers are entitled to declarations that they are entitled to reinstatement to their former positions as sworn officers of the Sheriff.

REMEDY AND RELIEF REQUESTED AS TO COUNT I

110. Based on the foregoing and incorporating all foregoing paragraphs by reference herein, the Plaintiffs and similarly-situated officers pray that the Court:

[4] Plaintiffs' Discovery is directed to the Board and its members. Plaintiff intends to depose all Board members. All Defendants, including the Board were aware of the conflict in late 2017 when the instant case was filed; yet, it refuses to recuse itself.

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a. finds and declares that purported Board's members were and are unlawful appointments and that Plaintiffs' and similarly-situated officers' disciplinary proceedings are void from inception;

b. finds and declares that the Board was and is improperly constituted at the time of Plaintiffs' and similarly-situated officers' cases, including from receipt of the Sheriff's written charges;

c. finds and declares that Plaintiffs and similarly-situated officers are entitled to back pay, to reinstatement, and to all other full make whole relief with pre- and post-judgment interest;

d. finds and declares that Plaintiffs and similarly-situated officers are entitled to the Board's void proceedings being expunged and purged from all of the Defendants' files;

e. finds and declares that the Board's amended *Rules and Regulations* pertaining to Plaintiffs' and officers' payment of transcript costs violates Plaintiffs' due process rights;

f. find and declares that the Defendants are barred from litigating or relitigating the same charges before the Board;

g. finds and declares that Plaintiffs and similarly-situated officers are entitled to a Declaration that the Board has a conflict interest in that it cannot act as "judge\adjudicator" of the Plaintiffs' and similarly-situated officers' cases, since the Board is challenging the named Plaintiff's in the instant litigation; and,

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h. enters and orders such other relief as the Court deems just and proper.

COUNT II: TRO, PRELIMINARY, AND PERMANENT INJUNCTIVE AND OTHER EQUITABLE RELIEF AS TO ALL DEFENDANTS IN THEIR OFFICIAL CAPACITIES

111. Plaintiffs and similarly-situated officers repeat, re-allege and incorporate by reference, the allegations in the above paragraphs, including all presented facts preceding the Complaint's counts.

112. Plaintiffs and similarly-situated officers are entitled to injunctive relief based on the Board's purported members being unlawful appointments at all times relevant for Periods 1 and 2, and the Board, therefore, being invalidly and illegally constituted in violation of the Act, 55 ILCS 5/3-7002, including under the amended Act.

113. Plaintiffs and similarly-situated officers have a clear and ascertainable right to the injunctive relief requested.

114. Plaintiffs and similarly-situated officers would suffer irreparable injury if an injunction is not granted.

115. Plaintiffs and similarly-situated officers lack an adequate remedy at law. Plaintiffs and similarly-situated officers are entitled, *inter alia*, to reinstatement, and money damages are insufficient to compensate Plaintiffs and similarly-situated officers for their injuries, including stigma-plus damage, damage to reputations, loss of work opportunities, exclusion from law enforcement work, garden variety emotional injury, anguish, and humiliation.

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116. Plaintiffs and similarly-situated officers are entitled to an injunction requiring the Defendants to expunge any record of the underlying disciplinary charges against them.

117. Plaintiffs and similarly-situated officers are entitled to an injunction enjoining Defendants from filing or refiling the same or similar disciplinary charges contained in the complaint underlying the Board's decision.

118. Plaintiffs and similarly-situated officers are entitled to an injunction requiring Defendants to provide them full backpay with the value of the benefits they would have received if they had worked continuously without having been suspended without pay.

REMEDY AND RELIEF REQUESTED AS TO COUNT II

119. Based on the foregoing and incorporating all foregoing paragraphs by reference herein, the Plaintiffs and similarly-situated officers pray that the Court enter the following relief against all Defendants:

a. A temporary restraining order, preliminary, and permanent injunction against Defendants requiring Defendants to reinstate the Plaintiffs and similarly-situated officers to their prior positions with the Defendant Sheriff with full pay, benefits, other make-whole relief, and seniority.

b. A temporary restraining order, preliminary, and permanent injunction against Defendants from filing or refiling the same or similar charges at the Board as those underlying the charges against Plaintiffs and similarly-situated officers.

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c. A temporary restraining order, preliminary, and permanent injunction requiring Defendants to provide Plaintiffs and similarly-situated officers full backpay and benefits they would have received had they been continuously working from the time of their suspensions without pay.

d. Other such relief as the Court deems just and proper.

COUNT III: MANDAMUS AS TO ALL DEFENDANTS IN THEIR OFFICIAL CAPACITIES

120. Plaintiffs and similarly-situated officers repeat, re-allege and incorporate by reference, the allegations in the above paragraphs, including the Facts section.

121. Plaintiffs and similarly-situated officers seek mandamus relief in the form of a court order returning them to active employment and/or pay status, and/or ordering back pay and all other make whole relief.

122. Plaintiffs and similarly-situated officers have a clear right to the relief sought in this Count III based on the *Taylor* litigation, which held the Board's decision void where issued by an improperly-constituted Board.

123. Plaintiffs and similarly-situated officers are still employees of Defendants Sheriff and Cook County by virtue of all of their proceedings before the Board being null and void from inception onward.

124. Defendant Dart has a clear duty to appoint persons to the Board for six (6) year terms, and not less pursuant to the Act, 55 ILCS 5/3-7002 and the *Taylor* litigation.

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125. Defendant Cook County has a clear duty to confirm only those proposed appointees to the Board who are proposed for six (6) year terms pursuant to the Act, 55 ILCS 5/3-7002 and the *Taylor* litigation.

126. Defendant Board has a clear duty not to allow invalidly-termed persons to participate in, deliberate upon, hear or make rulings as a hearing officer, vote upon, or sign off on any decisions issued by the Board pursuant to the Act, 55 ILCS 5/3-7002.

127. Defendant Preckwinkle has a clear duty not to permit the Cook County Board to vote upon the confirmation of appointments that are illegal and unauthorized by statute, as happened numerous times in prior appointment confirmation hearings relative to this Board.

128. All Defendants also have a clear duty not to violate the constitutional rights of officers and clear authority to comply with their constitutional duties, including by not burdening Plaintiffs' and similarly-situated officers' rights to obtain a decision without having to pay onerous transcript costs;

129. Based on the foregoing, Defendants have a clear duty to make whole Plaintiffs and similarly-situated officers for the periods they were and continue to be wrongfully-deprived of work opportunities with Defendants, including with pay and benefits with interest.

130. Based on the foregoing, Defendants have a clear duty to expunge, purge, and remove all records of Plaintiffs' and similarly-situated officers' disciplinary proceedings from their files, and to treat Plaintiffs and similarly-situated officers as if the illegal disciplinary proceedings never occurred.

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131. By virtue of their employer and joint employer statuses, Defendants Cook County and the Sheriff have clear authority to comply with a court order returning Plaintiffs and similarly-situated officers to active employment and pay status, and to comply with a court order requiring Defendants to provide back pay and all other make whole relief with interest.

REMEDY AND RELIEF REQUESTED AS TO COUNT III

132. Based on the foregoing and incorporating all foregoing paragraphs by reference herein, the Plaintiffs on behalf of themselves and all those similarly-situated pray that the Court:

a. Enters an order directing Defendants Sheriff and Cook County to return Plaintiffs and similarly-situated officers to active employment and pay status, and/ ordering back pay and all other make whole relief;

b. Enters and order directing Defendants to rescind the Board's *Rules and Regulations* requiring Plaintiffs' and similarly-situated officers to pay any portion of transcript costs in their own cases;

c. Enters an order that Defendants expunge, purge, and remove the Board's illegal disciplinary proceedings from Plaintiffs' and similarly-situated officers' files, and to treat Plaintiffs and similarly-situated officers as if they are active employees of Defendants Dart and Cook County; and,

d. Enters and orders such other relief as the Court deems just and proper.

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COUNT IV: AS TO PERIOD I, NEGLIGENT MISREPRESENTATION AS TO ALL DEFENDANTS, AND AS TO DEFENDANTS DART AND PRECKWINKLE IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

133. Plaintiffs repeat, re-allege and incorporate by reference, the assertions and allegations in the prior paragraphs, including the "Facts" section and paragraphs One through One Hundred Thirty-Three.

134. Defendants misrepresented material facts in capacities to include pursuant to, and in the furtherance of, ministerial duties.

135. The Defendants made false representations of material facts, which included the false representation of the Board having legal status to include the false representation that the Board's members were and are now legally appointed to the Board, and that the Board was and continues to be legally constituted.

136. The Defendants owed a duty to Plaintiffs and similarly-situated officers to provide a hearing before a valid, legal, and properly constituted Board pursuant to 55 ILCS 5/3-7012.

137. The Defendants also owed a duty to Plaintiffs and similarly-situated officers to ensure that their appointments and confirmations of the Board's appointees were legally proper before making them and, in Preckwinkle's case, calling such appointments for a confirmation vote before the Cook County Board.

138. There was carelessness and negligence in ascertaining the truth of the misrepresentations by the Defendants.

139. There continues to be carelessness and negligence because the Board's

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political affiliation requirements are not met even under the amend statute, and neither Dart nor Preckwinkle made any inquiry into such issue before their appointments and confirmations.

140. Defendants reasonably foresaw, or should have reasonably foresaw, that their conduct in negligently representing to Plaintiffs that the Board was properly constituted would injure Plaintiffs.

141. There was negligence by Sheriff Dart, Cook County, and the Board in inducing Plaintiffs to act in reliance of such misrepresentations to Plaintiffs' detriment, including in entering representation agreements with attorneys as a matter of necessity to represent them at the Board hearings and incurring legal fees and liabilities.

142. The Plaintiffs took actions in reasonable reliance on the truth of the Defendants' negligent misrepresentations about the propriety and structural soundness of the Defendant Board.

143. Patrick M. Brady, willfully and wantonly, falsely represented Plaintiffs and similarly situated officers that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

144. Gray Mateo-Harris, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that she was a legal member of the Board; as well, misrepresented that the Board was legal when she knew or should have known it was illegal.

145. James P. Nally, willfully and wantonly, falsely represented to Plaintiffs

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and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

146. Byron Brazier, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

147. John Dalicandro, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

148. Kim R. Widup, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

149. Vincent T. Winters, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

150. The Defendants acted willfully and wantonly.

151. There was damage to the Plaintiffs resulting from such reliance.

152. There was a duty owed by Defendants to Plaintiffs to communicate accurate information, namely that the Board was, and continues to be,

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illegal, and, thus, without authority to hear their cases.

WHEREFORE, Plaintiff respectfully requests that this Court award compensatory and punitive damages in excess of $50,000, jointly and severally. Additionally, Plaintiffs seek attorney fees and punitive damages for the knowing, willful, wanton, and negligent wrongful conduct of Defendants.

COUNT V: FRAUD AS TO ALL DEFENDANTS AND AS TO DEFENDANTS DART AND PRECKWINKLE IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES

153. Plaintiffs repeat, re-allege and incorporate by reference, the allegations in the prior paragraphs, including the "Facts" section, and paragraphs One through One Hundred Forty-Nine.

154. Defendants made false statements and representations of material fact to Plaintiffs and similarly-situated officers in at least the following ways:

a. Filing and receiving of written charges against Plaintiffs at the Board while knowing the Board was improper and invalid;

b. Proceeding with a preliminary hearing, a status, motion, and evidentiary hearings and ultimate trials while knowing the Board was improper and invalid;

c. Representing at the hearings, to Plaintiffs and their lawyers, that the Board was valid, proper, and authorized to Act while knowing that it was not;

d. In the cases of Sheriff Dart and Preckwinkle, appointing and confirming Patrick Brady and Gray Mateo-Harris (and other Board members) to extremely short terms, and permitting them to continue

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in those positions, while knowing full well that the First District Appellate Court of Illinois in *Taylor* had rules appointments for less than six years unlawful;

e. Hiding and intentionally concealing facts about the authority of the Board to act, from Plaintiffs, similarly-situated officers, and Plaintiffs' counsels, while knowing full well such facts rendered the Board and its individual members legally impotent; and,

f. Post December 13, 2017, continuing to make knowing false representations to Plaintiffs and similarly-situated officers, this time, by appointing and confirming the same previously-appointed members (less Mr. Baltierres) to the Board and representing the Board as having proper political affiliation when, in fact, it does not.

155. Patrick M. Brady, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

156. Gray Mateo-Harris, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that she was a legal member of the Board; as well, misrepresented that the Board was legal when she knew or should have known it was illegal.

157. James P. Nally, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew

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or should have known it was illegal.

158. Byron Brazier, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

159. John Dalicandro, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

160. Kim R. Widup, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

161. Vincent T. Winters, willfully and wantonly, falsely represented to Plaintiffs and similarly situated officers, that he was a legal member of the Board; as well, misrepresented that the Board was legal when he knew or should have known it was illegal.

162. Defendants made such statements and representations knowing full well that their representations were false.

163. Defendants also made such false statements and representations to induce Plaintiffs and similarly-situated officers to proceed to hearings before the Board to their detriment.

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164. Plaintiffs and similarly-situated officers relied on Defendants' false statements and representations believing such statements were true.

165. Plaintiffs and similarly-situated officers suffered damages from their reliance on Defendants' false statements and representations, *to wit* at least:

a. Loss of work opportunities;

b. Wrongful suspensions without pay;

c. Wrongful incursion of unnecessary legal fees and costs;

d. Loss of ability to gain comparable employment in law enforcement work;

e. Loss of reputation along with stigma plus damage;

f. Anguish, suffering, humiliation, anxiety, and garden variety emotional distress with physical manifestations.

COUNT VI: CLASS CERTIFICATION AS TO ALL COUNTS

166. Plaintiffs repeat, re-allege and incorporate by reference, the allegations in the prior paragraphs, including the "Facts" section, and paragraphs One through One Hundred Sixty-Three. This count is a class-action claim.

167. The Board's members variously oversaw employment actions against putative class members, to include the Plaintiffs, while such purported Board members were (and, are as to Period II) illegally appointed and therefore, the Board's constitution is in violation of the statute.

168. Because the Board's members were not properly appointed to the Board during relevant time periods, namely, Period 1 and Period 2, any and all

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disciplinary proceedings undertaken by the Board or Defendant Sheriff while such persons were purported and unlawful members were and are void from inception.

169. The foregoing allegations stated throughout this Complaint form the basis for the Complaint and the basis upon which a class should be certified.

170. Because of the illegal conduct of the Sheriff, Defendant Preckwinkle, and the Defendant Board, Plaintiffs seek to represent the class.

171. The Board's conduct (to include the actions by its members, *supra.*; and to include Mr. Baltierres as to Period II); as well, conduct of Sheriff Dart were done willfully, wantonly, maliciously, and with willful ignorance and reckless disregard of 55 ILCS 5/3-7002 and 7012 and the *Taylor* decision, entitling Plaintiffs and those they seek to represent as a class to a punitive damage award.

172. Because the Board has had members with invalid interim appointments, appointments without staggered terms, or its constitution as a whole fails to meet the Act's political affiliation requirements, the current pending disciplinary proceedings of Plaintiffs and similarly-situated officers were and are not valid, and were and are void from inception onward as a matter of law, without legal effect, and nullities.

REMEDY AND RELIEF REQUESTED AS TO COUNT IV

173. For the foregoing reasons, and realleging and incorporating by reference all prior paragraphs, Plaintiffs seek that the Circuit Court rule, as invalid, illegal, and void as a matter of law, the disciplinary proceedings pending for

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any of the class members for which class certification is proper. To wit, Plaintiffs seek that the Court certify the class of present officers as follows:

> **"All current Cook County Sheriff's Department officers (and any others) subjected to disciplinary proceedings by an illegally constituted Board, to include any and all disciplinary proceedings overseen by the Board during the time Mateo-Harris, Brady, Dalicandro, Nally, Widup, Brazier, Baltierres, and/or Winters were unlawfully-appointed members."**

174. Additionally, Plaintiffs seek that the Court order Plaintiffs and all class members reinstated with full back pay, benefits, other make-whole relief, and any other relief deemed appropriate by the Court.

175. Finally, Plaintiffs on behalf of themselves and similarly-situated officers pray that the Court enter an award of attorneys' fees, and an award of punitive damages for Class Members.

CONCLUSION

For the foregoing reasons, Plaintiffs and those similarly-situated respectfully pray that this Honorable Court find in their favor on all allegations and Counts herein, and enter and order the relief sought herein, including class certification and preliminary injunction, together with such other relief as is just and proper.

Dated: February 26, 2018

s/ Cass T. Casper

Cook County Code #61254

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Email: asg@gcjustice.com

CERTIFICATE OF SERVICE

Under penalties as provided by Section 1-109 of the Illinois Code of Civil Procedure, the undersigned persons certify on this 26th Day of February, 2018 that they believe the foregoing to be true to the best of their memory, knowledge, and belief as non lawyers.

/s Matthew Goral /s Kevin Badon /s Milan Stojkovic /s Michael Mendez
/s David Evans III /s Frank Donis /s LaShon Shaffer

The undersigned hereby certifies that he caused the foregoing to be e-filed with the Cook County Circuit Court on February 26, 2018, and that Defendants' are registered e-filers.
/s Cass T. Casper

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Telephone: 312-603-0178
EMAIL.: Sheriff.MeritBoard@cookcountyil.gov
Fax: 312-603-9865

COOK COUNTY
SHERIFF'S MERIT BOARD

69 West Washington - Suite 1100
Chicago, IL 60602

JANUARY 30, 2018

THURSDAY FEBRUARY 14, 2018 **9:30 AM ** MERIT BOARD CONFERENCE ROOM 1100 VTW

1893	BRENDAN KELLY CO	LOPEZ, ATTY	SCOUFFAS, ATTY	STATUS
1918	RONALD KOLNICKI CO SGT	EDSTROM, ATTY	LUND, ATTY	STATUS
1938*	TABAS JACKSON CO	CHANEY, ATTY	LUND, ATTY	STATUS
1939*	WILLIAM CARNES CO	CHANEY, ATTY	LUND, ATTY	STATUS
1940*	LOUIS CHILDRESS CO	CHANEY, ATTY	LUND, ATTY	STATUS
1956	MARTENIA SHYNE CO	CAMDEN, ATTY	CAMPOS, ATTY	STATUS
1967*	PETER KENNEDY DEP	MAHONEY ATTY	CAMPOS, ATTY	STATUS
1968*	VINCE CASCIARO DEP	CUMMINGS ATTY	LUND, ATTY	STATUS
1975	ROBERT SANCHEZ DEP	MAHONEY, ATTY	MANGAS, ATTY	STATUS
1986	HERMAN GREEN CO	CHANEY, ATTY	ASA MURRAY	STATUS
1993	KENYONG RAY CO	CARPENTER, ATTY	NELLIGEN, ATTY	STATUS
2005	CHRISTOPHER RILEY CO	CARPENTER, ATTY	SCOUFFAS, ATTY	STATUS
2021	ANTHONY D. PECK CO SGT	EDSTROM,ATTY	ASA FREY	STATUS
2028	ANGEL GARCIA CO	HITT, ATTY	SCOUFFAS, ATTY	STATUS
2037	KEISHA JAMES CO	HITT, ATTY	SCOUFFAS, ATTY	STATUS
2045	SEAN D. ROBINSON CO	HITT, ATTY	LUND, ATTY	STATUS
2054	KAREN K. WILLIAMS CO	HITT, ATTY	LUND, ATTY	STATUS
2064	ANGELA DODSON DS	MAHONEY, ATTY	WEST, ATTY	STATUS
2065	THOMAS DOUGHERTY DS	BURKE, ATTY	WEST, ATTY	STATUS
2066	ARIEL LINSAY DS	CUMMINGS, ATTY	WEST, ATTY	STATUS
2067	KEANA MAGEE DS	BAILEY, ATTY	WEST, ATTY	STATUS
2068	THEODORE MERRIWEATHER DS	MAHONEY, ATTY	WEST, ATTY	STATUS
2069	TARA NEMETH DS	BURKE, ATTY	WEST, ATTY	STATUS
2070	JAMES NEVIN DS	BAILEY, ATTY	WEST, ATTY	STATUS
2071	KENDRA NOBLE-COBB DS	ROCHE, ATTY	WEST, ATTY	STATUS
2072	ANGELA PECORARO DS	CUMMINGS, ATTY	WEST, ATTY	STATUS
2073	KEISHA STIGGERS DS	ROCHE, ATTY	WEST, ATTY	STATUS
2074	JEANNE ZAPATA DS	ROCHE, ATTY	WEST, ATTY	STATUS
2075	MICHAEL GERCONE DS SGT	O'BRIEN, ATTY	WEST, ATTY	STATUS
2076	SAMANTHA KING-GRIFFIN DS SGT	HARRIS, ATTY	WEST, ATTY	STATUS
2077	GORDON HOLMES CO		LUND, ATTY	STATUS
2088	ANTHONY MONDELLO CO			PRE-LIM
2097	ADAM MURPHY POL			PRE-LIM

FRIDAY FEBRUARY 16, 201810::30 AM ** MERIT BOARD CONFERENCE ROOM 1100 KW**

1756	KEVIN ALEXANDER CO	CHANEY, ATTY		REMAND
1889	MARQUIS BEAUCHAMP CO	MORASK, ATTY	SCOUFFAS, ATTY	STATUS
1890	MARQUIS BEAUCHAMP CO	MORASK, ATTY	SCOUFFAS, ATTY	STATUS
1914	KELVIN BLANCHARD PO	EDSTROM, ATTY	WEST, ATTY	STATUS
1936	MARK SPICE CO	HITT, ATTY	ATTY BERMAN	STATUS
1955	RICHARD SANTIAGO CO	CAMDEN, ATTY	SCOUFFAS, ATTY	STATUS
1966	SCOTT RICE CO	CAMDEN, ATTY	ASA FREY	STATUS
1974	TIMOTHY DE COOK DEP	MAHONEY ATTY	LUND, ATTY	STATUS
1984*	STEWART TODD JR CO	HITT,ATTY	CAMPOS, ATTY	STATUS
1985*	FRANCISCO ROSALES JR CO	HITT, ATTY	CAMPOS, ATTY	STATUS
1992	SHARON BUCCI DEP	CARLSON, ATTY	LUND, ATTY	STATUS
2002*	CARL MERCHERSON CO	CARPENTER	CAMPOS, ATTY	STATUS
2003*	TREVOR GROOMS CO	CARPENTER	CAMPOS, ATTY	STATUS

Exhibit A 001 (Goral, et al. v. Dart, et al., 17 CH 15546)

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2020	RICARDO YANEZ CO	HITT, ATTY	ASA FREY	STATUS
2027	SEAN MICHALCZEWSKI CO	HITT, ATTY	LUND, ATTY	STATUS
2036	LASHON SHAFFER PO	CASPER, ATTY	CAMPOS, ATTY	STATUS
2044	VALDEMAR RAMOS CO	CHANEY, ATTY	SCOUFFAS, ATTY	STATUS
2051	JESSE A. LOPEZ CO	CHANEY, ATTY	CAMPOS, ATTY	STATUS
2053	KEITH J. GOMILLIA CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2062	ANTHONY W. GALIARDO CO SGT	EDSTROM, ATTY	CAMPOS, ATTY	STATUS
2063	DAVID KOCH CO SGT	EDSTROM, ATTY	CAMPOS, ATTY	STATUS
2087	CHRISTINE LARSON CO			PRE-LIM
2096	KEVIN LAYTON DEP			PRE-LIM

TUESDAY FEBRUARY 20, 2018 **9:00 AM MERIT BOARD CONFERENCE ROOM 1100 BB**

1870	FRANK DONIS CO	CASPER, ATTY	WEST, ATTY	STATUS
1907	BRENDAN P KELLY CO	CAMDEN, ATTY	SCOUFFAS, ATTY	STATUS
1934	LASONTIS PICKETT CO	HITT, ATTY	ASA MURRAY	STATUS
1952	ANTHONY VOSE CO	CAMDEN, ATTY	ASA FREY	STATUS
1953	ANTHONY VOSE CO	CAMDEN, ATTY	ASA FREY	STATUS
1972	NICK PAOLINO CO	CARPENTER, ATTY	ASA FREY	STATUS
1982	JOHN VEREEN CO	SAVIANO, ATTY	LUND, ATTY	STATUS
1999	CALVIN HARTSFIELD CO	CARPENTER , ATTY	LUND, ATTY	STATUS
2012*	GEORGE W. MOBLEY CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2013*	SANDRA L.HATTEN CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2025	STEVE S. HAN CO	CHANEY, ATTY	NELLIGEN, ATTY	STATUS
2034	GORDON C. HOLMES CO	HITT, ATTY	LUND, ATTY	STATUS
2041	STEVEN M SYLVESTER CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2042	RICARDO HOWER CO SGT	EDSTROM, ATTY	CAMPOS, ATTY	STATUS
2050	TREVOR A. GROOMS CO	CARPENTER, ATTY	WEST, ATTY	STATUS
2058	YOLANDA I. DIXON CO	CHANEY, ATTY	NELLIGEN, ATTY	STATUS
2085	JOSEPH BELMARES CO			PRE-LIM
2094	MARSHAN JOHNSON POL			PRE-LIM
2099	JOEL MIRELES CO			PRE-LIM

WEDNESDAY FEBRUARY 21, 2018 **9:30AM MERIT BOARD CONFERENCE ROOM 1100 JD**

1884	BERNARD GRIMMAGE CO	CHANEY, ATTY	SCOUFFAS, ATTY	STATUS
1911	CHRISTOPHER MCDONALD CO	CAMDEN, ATTY	ASA FREY	STATUS
1935	JAMES ANDERSON CO	MORASK/O'BRIEN, ATTY	ASA MILLER	STATUS
1954	BRIAN GOODWILL CO SGT	EDSTROM ATTY	SCOUFFAS, ATTY	STATUS
1964	CHRISTOPHER McDONALD CO	CAMDEN, ATTY	SCOUFFAS, ATTY	STATUS
1973	DAVID SANDOVAL CO	CAMDEN, ATTY	CAMPOS, ATTY	STATUS
1983	CHRISTOPHER MURRAY DEP	MAHONEY, ATTY	SCOUFFAS, ATTY	STATUS
1991	DARRIN POLK CO	SAVIANO, ATTY	LUND, ATTY	STATUS
2000*	JESSE GLASS CO	HITT, ATTY	ASA FREY	STATUS
2001*	WALTER LEWIS CO	HITT ATTY	ASA FREY	STATUS
2014*	MARVIE L. KEITH* CO	CAMDEN, ATTY	CAMPOS, ATTY	STATUS
2015*	DAVID F. BELTRAN* CO	CAMDEN, ATTY	CAMPOS, ATTY	STATUS
2016*	HASSAN O. MCCRAY* CO	CAMDEN ATTY	CAMPOS, ATTY	STATUS
2017*	RANDY MCKNIGHT* CO	CAMDEN, ATTY	CAMPOS, ATTY	STATUS
2018*	BUTLER C. MORGAN* CO	CAMDEN ATTY	CAMPOS, ATTY	STATUS
2019*	THEODORE L. LEWIS* CO	CAMDEN, ATTY	CAMPOS, ATTY	STATUS
2026	GARRETT W. JONES CO	HITT, ATTY	LUND, ATTY	STATUS
2035	DAVID SHEPPARD PO	POMERANZ, ATTY	NELLIGEN, ATTY	STATUS
2043	ANTHONY SQUEO CO SGT	EDSTROM, ATTY	CAMPOS, ATTY	STATUS
2048	CLEVELAND T. BANKS CO	CHANEY, ATTY	LUND, ATTY	STATUS
2052	FORTUNA P. BROWN CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2059	LARRY D. COLEMAN CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2060	ASIEL M. HARPER CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2061	ADDY M. YAU CO SGT	EDSTROM, ATTY	SCOUFFAS, ATTY	STATUS
2086	SHARON WOODS-FUGATE CO			PRE-LIM
2095	ALLEN EASON CO			PRE-LIM

THURSDAY FEBRUARY 22, 2018 **10:00 MERIT BOARD CONFERENCE ROOM 1100 JPN

1796	FERNANDO MUNOZ CO	CAMDEN, ATTY	CAMPOS, ATTY	STATUS
1885	WALTER MALACINA DEP	MAHONEY		REMAND
1900	DELPHINE BRIDGES CO	HITT,ATTY	ATTY, LUND	STATUS
1933	ROBERT FORBES CO	HITT ATTY	CAMPOS, ATTY	STATUS
1947	ANTOINETTE GARRETT-WILLIAMS CO	CAMDEN ATTY	ASA MILLER	STATUS
1961	MAURICE BYRD CO	CAMDEN, ATTY	ATTY'S WAYNE/KADISH	STATUS
1971	EDWARD BARKSDALE PO	EDSTROM, ATTY	ASA FREY	STATUS
1980	CORDELL LYONS CO	CARPENTER, ATTY	ASA MURRAY	STATUS
1989*	BILLAL HALEEM CO	SAVIANO,ATTY	CAMPOS, ATTY	STATUS
1990*	DARRYL HAWKINS CO	SAVIANO, ATTY	CAMPOS, ATTY	STATUS
1998	ANTONIO AMADOR COSGT	EDSTROM, ATTY	LUND, ATTY	STATUS
2011	JOSEPH A. DE LOS MONTEROS CO	HITT, ATTY	ASA FREY	STATUS
2024	CRYSTAL T. YANCE DEP	MAHONEY, ATTY	ASA MURRAY	STATUS
2033	LEONARD A. ROCCO JR. CO SGT	EDSTROM	CAMPOS, ATTY	STATUS
2040	JOHN L. CARBONE CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2049	RAYMOND JONES CO	HITT, ATTY	CAMPOS, ATTY	STATUS
2057	JOSE Q. HERNANDEZ CO	CHANEY, ATTY	CAMPOS, ATTY	STATUS
2080	SHEILA KALINA DEP	BURKE, ATTY		PRE-LIM
2081	TIMOTHY HOULIHAN DEP	MAHONEY, ATTY		PRE-LIM

Exhibit A 002 (Goral, et al. v. Dart, et al., 17 CH 15546)

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2082	MARVIN BUCHANAN DEP				PRE-LIM
2083	JOSEPHINE CARTER DEP				PRE-LIM
2084	MICKIN PERKINS CO				PRE-LIM
2092	RANDON RILEY DEP				PRE-LIM
2093	LAWRENCE GARRETT DEP				PRE-LIM
THURSDAY FEBRUARY 22, 2018 **12:00 PM ** MERIT BOARD CONFERENCE ROOM 1100 PMB					
1896	STEVEN BECK CO	CHANEY, ATTY	ASA CREIGHTON		STATUS
1926	RONALD KOLNICKI CO SGT EDSTROM, ATTY		LUND, ATTY	STATUS	
1941	MATTHEW COGLIANESE CO	CAMDEN, ATTY	BERNESCU, ATTY		STATUS
1957*	STEVEN BECK CO	CAMDEN, ATTY	NELLIGEN, ATTY		STATUS
1958*	JEROME GULTNEY CO	CAMDEN, ATTY	NELLIGEN, ATTY		STATUS
1959*	ERICA CANNON-SMITH CO	CAMDEN, ATTY	NELLIGEN, ATTY		STATUS
1969	ADAM MURPHY PO	EDSTROM,ATTY	CAMPOS, ATTY		STATUS
1978	ANTHONY MENDOZA CO	HITT, ATTY	NELLIGEN, ATTY		STATUS
1987	CHRISTOPHER FOREMAN CO	CHANEY, ATTY	MURRAY/WINTERHALTER		STATUS
1988	NICK KAVROULAKIS CO	CASPER, ATTY	ASA FREY		STATUS
1995	PERKINS, DARNEZ CO	HITT, ATTY	CAMPOS, ATTY		STATUS
2006	ANTHONY OWENS CO	SAVIANO, ATTY	LUND, ATTY		STATUS
2022	JOHN LUCKETT CO	CARPENTER, ATTY	CAMPOS, ATTY		STATUS
2029	ALEJANDRO VIRGEN CO	CARPENTER ATTY	ASA ORI		STATUS
2030	SHARON BUCCI DEP	CARLSON, ATTY	LUND, ATTY		STATUS
2038	PABLO PEREZ CO	HITT, ATTY	LUND, ATTY		STATUS
2048	WILLIE D. PARTEE CO	CAMDEN, ATTY	SCOUFFAS, ATTY		STATUS
2055	JACQUELINE E. RIVERS CO	CHANEY, ATTY	LUND, ATTY		STATUS
2078	ALEXANDER PERTEETE CO	CHANEY, ATTY			STATUS
2089	TIMOTHY DOODY CO SGT				PRE-LIM
2098	DORIAN SWAIN CO				PRE-LIM
2100	ANTHONY LYLES CO				PRE-LIM
TUESDAY FEBRUARY 27, 2018 **10:00 AM MERIT BOARD CONFERENCE ROOM 1100 JLB**					
1741	TONIA YOUNG DEP				REMAND
1777	HERMAN GREEN CO	CHANEY, ATTY	LUND, ATTY		STATUS
1897	MIGUEL ORTIZ CO	MARCONI, ATTY	SCOUFFAS, ATTY	STATUS	
1898	MIGUEL ORTIZ CO	MARCONI, ATTY	SCOUFFAS, ATTY	STATUS	
1929*	KEVIN BADON PO	COOPER, ATTY	SCOUFFAS, ATTY		STATUS
1930*	MATTHEW GORAL PO	COOPER, ATTY	SCOUFFAS, ATTY		STATUS
1931*	MICHAEL MENDEZ PO	COOPER, ATTY	SCOUFFAS, ATTY		STATUS
1932*	MILAN SKOJKOVIC PO	COOPER, ATTY	SCOUFFAS, ATTY		STATUS
1942*	DELPHINE BRIDGES CO	HITT, ATTY	ASA CAVANAUGH	STATUS	
1943*	MILTON BOZEMAN CO SGT	EDSTROM, ATTY	ASA CAVANAUGH		STATUS
1944*	MARIO ROBINSON CO	HITT ,ATTY	ASA CAVANAUGH	STATUS	
1960	LATAWNYA HALSEY DEP	MAHONEY, ATTY	LUND, ATTY		STATUS
1970	SCOTT CURRAN POL SGT	EDSTROM, ATTY	WEST, ATTY		STATUS
1979	ALESIA THOMAS CO	CHANEY, ATTY	LUND, ATTY		STATUS
1996	DAVID EVANS III CO	CASPER, ATTY	LUND, ATTY		MOTION
1997	DAVID EVANS III CO	CASPER, ATTY	LUND, ATTY		MOTION
2008*	ANTOINETTE L. DAVIS CO	HITT, ATTY	CAMPOS, ATTY		STATUS
2009*	JOSE A. TORRES CO	HITT, ATTY	CAMPOS, ATTY		STATUS
2010*	ROBERT ZACCONE JR CO SGT	EDSTROM, ATTY	CAMPOS, ATTY		STATUS
2023	ELENA VILLARREAL CO SGT	EDSTROM, ATTY	LUND, ATTY		STATUS
2031	EDWARD G. MOSQUERA CO	CHANEY, ATTY	LUND, ATTY		STATUS
2032	NICHOLAS J. REED CO	CHANEY, ATTY	LUND, ATTY		STATUS
2039	RASHID MUHAMMAD	CHANEY, ATTY	LUND, ATTY		STATUS
2047	RICHARD H. SATO CO	HITT, ATTY	LUND, ATTY		STATUS
2056	BRIAN MANTHEY PO	EDSTROM , ATTY	CAMPOS, ATTY		STATUS
2079	TIMOTHY REED DEP	MAHONEY, ATTY			PRE-LIM
2090	CHARES IZZO DEP				PRE-LIM
2091	CARL FALDETTA DEP				PRE-LIM

*CONSOLIDATED CASES

UNDER ADVISEMENT

1822 JESUS BARAJAS CO 4/19/2016
1832 KENDRA NOBLE-COBB DEP 6/22/2016
1857* GREGORY HOLSTROM CO 8/4/2016
1867* GREGORY HOLSTROM CO 8/4/2016
1873 JOHN STASZAK 8/19/2016
1865* JUANITA PETERSON CO 8/30/2016
1872* ANTHONY MARRERO CO 8/30/2016
1858 RORY CLAY CO 9/21/2016
1784 BARBARO CHANG DEP 9/22/2016
1886 THEODORE MERRIWEATHER DEP 10/06/2016
1888 BRIAN ACEVEDO DEP SGT 10/06/2016
1882 LOUIS PARKER CO 11/16/2016

Exhibit A 003 (Goral, et al. v. Dart, et al., 17 CH 15546)

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1827 JAMES EDWARDS CO SGT 11/17/2016
1807 ANTHONY MARRERO CO 12/07/2016
1768 ROBERT COSIMINI CO REMAND ORDER 12/27/2016
1905 MICHAEL GOMEZ POL 12/29/2016
1915 ROCCO CODUTO DEP 1/12/2017
1839 ALICIA WEBSTER DEP 2/2/2017
1830 BRIDGETT ROLLING CO 2/7/2017
1804*JOSEPH FABIAN CO 3/28/17
1880* DAVID BELTRAN CO 5/12/2017
1881* TIMOTHY SAMSON CO SGT 5/12/2017
1832 DOUGLAS ZIMNY 5/25/2017
1919* WILLIE PARTEE CO 6/22/2017
1921* DIONNE GRIGGS CO 6/22/2017
1922* KALISA HILL CO 6/22/2017
1923* KAHILIA CARTER CO 6/22/2017
1924* AISHA NIXON CO 6/22/2017
1925* SARAH GARNER CO 6/22/2017
1863 JAMES NEVIN DEP PMB 6/23/2017
1892 JAMES LEE CO JD 6/29/2017
1798 GWENDOLYN ATKINS CO SGT REMAND 8/22/2017
1976 ERIC ANDREWS CO 9/12/17
1908* THOMAS RAINES CO 9/13/17
1909* ANTHONY LYLES CO 9./13/17
1910* ROBERT H REIMEER CO 9/13/17
1868* RONALD KOLNICKI CO SGT 9/14/17
1869#*JACQUELINE MYERS CO 9/14/17
1871* HERNAN MOSQUERA CO 9/14/17
1903 JOHN DOROTISS JR. CO 9/19/2017
1904 MONTA SERVANT CO 9/21/2017
1927 MONTELL GRIFFIN CO 9/22/2017
1945 CIERRA THURMAN PO 9/25/2017
1981 FRANCISCO RUIZ POL 9/26/2017
1793 MCCLENDON, ROBERT CO REMAND 10/17/2017

Exhibit A 004 (Goral, et al. v. Dart, et al., 17 CH 15546)

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E-Notice

2017-CH-15546
CALENDAR: 14

To: SCHARF BANKS MARMOR LLC
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MATTHEW GORAL vs. THOMAS DART

The transmission was received on 02/26/2018 at 4:15 PM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 02/26/2018 at 4:20 PM.

EXHIBITS

AMENDED COMPLAINT FILED

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CLERK OF THE CIRCUIT COURT
COOK COUNTY
RICHARD J. DALEY CENTER, ROOM 1001
CHICAGO, IL 60602

(312) 603-5031
courtclerk@cookcountycourt.com

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, FRANK DONIS, and LASHON SHAFFER,	)	
Plaintiffs,	)	
v.	)	Case No. 2017 CH 15546
THOMAS J. DART (Official and Individual Capacity), COOK COUNTY, ILLINOIS, COOK COUNTY SHERIFF'S MERIT BOARD, and TONI PRECKWINKLE (Official and Individual Capacity),	)	Hon. Sophia H. Hall
Defendants.	)	

DECISION

This matter comes on for hearing on defendant Thomas J. Dart's 2-615 and 2-619(a)(1) motions to dismiss plaintiffs' Second Amended Verified Complaint. Joining in the motions are defendants Cook County Sheriff's Merit Board ("Merit Board"), and Cook County, Illinois ("Cook County") remaining in the case for indemnification purposes. This Court finds that the determination of the 2-619(a)(1) Motion to Dismiss based on lack of subject matter jurisdiction is dispositive and, accordingly, other issues raised in Dart's motions are not addressed.

Plaintiffs are police and correctional officers employed by defendants Cook County Sheriff Thomas J. Dart and Cook County. The Sheriff filed disciplinary charges pertaining to plaintiffs' employment. Specifically, defendant Dart filed charges against plaintiffs Goral, Badon, Mendez and Stojkovic on September 18, 2016, against plaintiff Evans on February 22, 2017, and against plaintiff Shaffer on July 20, 2017.

Effective December 8, 2017 the General Assembly amended the Merit Board Act abolishing the terms of office of the then-serving members and authorizing defendant Dart to make new appointments to the Board. 55 ILCS 5/3-7002. On December 13, 2017, defendant Dart made new appointments to fill the positions. On January 23, 2018, after the appointment of the new members, defendant Dart filed amended disciplinary charges against all of the instant plaintiffs.

The amended disciplinary charges still pend against plaintiffs before the defendant Merit Board. As of the briefing in this case, the charges have not been heard by the Merit Board.

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On February 26, 2018, plaintiffs filed a "Second Amended Verified Complaint for Declaratory, Mandamus, Injunctive and Other Equitable Relief, Negligent Misrepresentation, Fraud, a Temporary Restraining Order, Preliminary, and Permanent Injunction, and for Class Certification." They allege that the Merit Board was improperly constituted when defendant Dart first filed disciplinary charges against plaintiffs prior to the December 2017 amendments to the Merit Board Act, 55 ILCS 5/3-7001, *et seq.* ("Act"). Plaintiffs further allege that the present Merit Board is improperly constituted after the new members were appointed pursuant to the amended Act.

Count I of plaintiffs' Second Amended Verified Complaint seeks declaratory judgments that the prior Merit Board which was the subject of the Illinois Appellate Court's decision in *Taylor v. Dart*, 2017 IL App (1st) 143684-B, had been unlawfully constituted when the original disciplinary charges were filed. Plaintiffs, also, allege that the newly appointed Board is unlawfully constituted because the requirements of the Act that members have certain political affiliations have not been met, and that the Chairperson and Secretary have held their roles for longer than the two years allowed in the Act. Plaintiffs further seek a declaration that as a result of the illegally constituted Boards, the disciplinary proceedings against plaintiffs are void from inception.

With respect to actions of the new Merit Board, plaintiffs seek declarations that the Board's amended Rules and Regulations ("Rules") as of February 2, 2018 violate plaintiffs' due process rights because the Rules require plaintiffs to pay for their own hearing transcripts. Additionally, plaintiffs seek declarations that defendants are barred from litigating the same charges against plaintiffs as were brought before the prior illegally constituted Merit Board, that the new Merit Board cannot adjudicate the plaintiffs' cases due to a conflict of interest since the Board is challenging the plaintiffs in the instant litigation, and that plaintiffs are entitled to expungement of the charges from their files, full back pay, benefits and reinstatement.

Count II seeks a temporary restraining order, preliminary, and permanent injunction requiring defendants to reinstate plaintiffs with full pay, benefits, make-whole relief and seniority, preventing defendants from filing or refiling the same or similar charges against plaintiffs as currently pending before the Merit Board, and providing full back pay and benefits.

Count III seeks an order of mandamus directing defendants Dart and Cook County to return plaintiffs to active employment, provide back pay, rescind the Rules, and expunge the disciplinary proceedings from plaintiffs' files.

Counts IV and V seek compensatory and punitive damages and attorney fees for an alleged negligent misrepresentation by defendants that the Merit Board was legally constituted (Count IV), and for fraud based on false statements and representations of material fact to plaintiffs including pursuing each stage of Merit Board proceedings while knowing the Merit Board was improperly constituted, representing at the hearings that the Board was authorized to

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act, appointing members improperly, hiding and concealing facts about the authority of the Board to act, and continuing to make knowing false representations after December 13, 2017 regarding the Board having proper political affiliation (Count V).

Finally, Count VI seeks certification of a class action to include other similarly situated employees of the Sheriff who also have disciplinary proceedings pending before the Merit Board.

Analysis

In the instant 2-619(a)(1) motion to dismiss, defendant Dart argues that this Court lacks subject matter jurisdiction over plaintiffs' Second Amended Verified Complaint because the Merit Board has not made a final decision and the disciplinary charges against plaintiffs still pend. The core of plaintiffs' declaratory judgment request, and the other Counts, is their claim that the appointment of the new members of the Board does not comply with the Act and thus the Board is illegally constituted.

Defendant argues that the Circuit Court only possesses "such power to review administrative action as provided by law." Illinois Const., Art. VI, § 9. Defendant argues that the applicable law is the Illinois Administrative Review Law, 735 ILCS 5/3-101 *et seq.* ("ARL"), which limits the Circuit Court's jurisdiction to reviewing an agency's final determination, 5/3-111(6)-(7), and, therefore, the Court has no jurisdiction over the Board prior to such final decision. Accordingly, defendant argues, the instant complaint is premature.

Defendant cites a list of cases, including *Castaneda v. Ill. Human Rights Comm'n*, 132 Ill. 2d 304 (1989), in support of its lack of jurisdiction argument. In *Castaneda*, the Illinois Supreme Court explained that the doctrine of exhaustion of administrative remedies requires that the administrative agency charged with deciding the matter, determines issues first. This doctrine permits the agency to use its expertise to consider a fully developed factual record, avoids interruptions to agency processes, "allows the agency to correct its own errors, and conserves valuable judicial time by avoiding piecemeal appeals." *Castaneda*, 132 Ill. 2d at 308. The *Castaneda* decision also listed exceptions to this requirement. Plaintiffs argue that their suit is not an administrative review proceeding, but instead contains independent causes of action. As such, plaintiffs' Complaint must then satisfy one of the *Castaneda* exceptions.

Plaintiffs, in support of their position that this Court has jurisdiction to consider their Complaint, rely on the Illinois Appellate Court decision in *Taylor v. Dart*, 2017 IL App (1st) 143684-B issued September 27, 2017. In that case, the court found that the pre-amendment Merit Board, the one involved in the instant case before the appointment of new Board members pursuant to the amendments to the Act, was illegally constituted because the appointments were not for the full term required by statute.

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In that case, unlike the instant case, the Merit Board had made a final determination of the disciplinary charge before it. The circuit court, on administrative review, affirmed the Board's decision. Plaintiff, then, moved for reconsideration of the court's decision, and argued, for the first time, that the appointment of one of the Board members did not comply with the Act and thus the Board's orders were void. The court granted reconsideration and found that the Merit Board was improperly constituted on the date of its final decision because the appointment was not for the full term, a fact which was not in dispute. The court then remanded the case to the Merit Board.

The court, in addition, granted defendant's request to certify two questions for appeal. The first question was whether the particular member who had been appointed for the short term and been lawfully appointed to the Merit Board. The second was if the appointment was not valid, whether the final decision of the Board was valid or void as a result. The Illinois Appellate Court determined that the appointment of the member did not comply with the Act's requirement that any appointment be for the full term of office, and that the final decision of the Board was void because the Merit Board acted outside its jurisdiction.

Defendant argues that the decision in the *Taylor* case does not support a finding that this Court has jurisdiction to consider the new claims raised in plaintiffs' Second Amended Verified Complaint. Unlike *Taylor*, the instant plaintiffs' disciplinary actions are still pending before the new Board. Thus, the Board can consider all of the claims raised by plaintiffs, thus exhausting the plaintiffs' administrative remedies.

In addition to the constitutional and statutory requirements set forth above, defendant supports his exhaustion argument by citing the Illinois Supreme Court decisions in *Daniels v. Industrial Commission* 201 Ill. 2d 160 (2002) and *Vuagniaux v. Dep't of Prof'l Regulation*, 208 Ill. 2d 173 (2003).

In *Daniels*, unlike the instant case, a final decision of the administrative agency had been entered. There plaintiff sought adjustment of his workers compensation claim after the Industrial Commission reduced an arbitration award. The circuit court confirmed the decision, and plaintiff appealed to the Industrial Division of the Appellate Court. For the first time, plaintiff raised, on appeal, the argument that the Industrial Commission's decision was void because the panel of Commissioners was illegally constituted. Specifically, two of the Commissioners hearing plaintiff's case were not nominated or appointed by the Governor, but rather by the Commission's chairperson. *Daniels*, 201 Ill. 2d at 163.

The Appellate Court rejected plaintiff's argument and affirmed the Commission's decision. The Supreme Court reversed the Appellate Court, finding that the appointment of the Commissioners, without the Governor's participation, was not in accordance with the statute and, therefore, the Commission's actions were void. The Supreme Court observed that the claim that a decision is void for lack of statutory authority can be made at any time either directly or

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collaterally. *Id.* at 166. The Supreme Court reversed and remanded. As is apparent from *Daniels*, where there was a final decision of the Board, one of the *Castaneda* exceptions to exhaustion was satisfied because the court did not need further development of the facts in the record or agency expertise to resolve the facial deficiency in the appointment process.

In *Vuagniaux*, the interplay between a pending declaratory judgment case and a pending then finally decided administrative proceeding is illustrated.

The Illinois Department of Professional Regulation ("Department") entered a final decision reprimanding plaintiff, a chiropractic physician, for violating advertising regulations. *Vuagniaux*, 208 Ill. 2d at 178. During the disciplinary proceeding, Plaintiff filed a motion for exclusion of the chiropractic member of the Medical Disciplinary Board hearing his case. The administrative law judge granted plaintiff's motion. The Department then moved for appointment of another chiropractor to consider plaintiff's case. The Board granted the Department's motion and appointed a new chiropractor to the Board to hear plaintiff's disciplinary matter.

Plaintiff then filed a motion before the Board for judgment on the pleadings or dismissal objecting to the appointment of the new chiropractor on the ground that members of the Medical Disciplinary Board were "to be appointed by the Governor by and with the advice and consent of the Senate." *Id.* at 182. The Board denied the motion. *Id.* at 183. The administrative law judge and Medical Disciplinary Board then issued their recommendations, and the Department entered a final order reprimanding plaintiff's license and requiring him to pay a $2,500 fine. Thereafter, plaintiff filed a Petition for Administrative Review with the Circuit Court.

While the disciplinary matter was proceeding, plaintiff filed a declaratory judgment action in the Circuit Court, also, challenging the appointment of the new chiropractic member on the ground that the Board appointment violated the statutory requirement that the Governor appoints. Plaintiff sought a preliminary injunction to stop the administrative hearing. The court denied the motion.

After the filing of the Petition for Administrative Review, plaintiff moved to consolidate that case with the still pending declaratory judgment action. The motion was granted. The defendant Department then moved for summary judgment of plaintiff's declaratory judgment complaint on the ground that the only redress available to plaintiff in the circuit court was his Petition for Administrative Review. *Vuagniaux*, 208 Ill. 2d at 183-84. The court granted the Department's motion and dismissed the declaratory and injunctive counts with prejudice.

After further court proceedings, the Circuit Court set aside the Department's decision on multiple grounds, including finding that the Medical Practice Act was unconstitutional, and in addition, that the Board was illegally constituted. *Id.* at 184. The Department appealed the Circuit Court's decision directly to the Illinois Supreme Court, as required when an Act is declared unconstitutional. The Supreme Court avoided deciding the constitutional question, as

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allowed where a decision on a non-constitutional ground can dispose of the matter. The court held that the appointment of the new chiropractor to the Board was illegal, set aside the Department's decision, and remanded the case for reconsideration before a legally constituted Board. *Id.* at 189.

In the instant case, the administrative proceeding still pends before the Merit Board and plaintiffs, pursuant to the constitutional and statutory requirements, can exhaust their claims for relief before the Board.

Accordingly, this Court lacks subject matter jurisdiction to consider the claims raised in plaintiffs' Second Amended Verified Complaint.

Conclusion

For the reasons stated above, this Court grants Dart's 2-619(a)(1) Motion to Dismiss plaintiffs' Second Amended Verified Complaint.

ENTERED:
JUDGE SOPHIA H. HALL-0162

Entered: JUL 26 2018

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Date:

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COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County	)	
	)	
vs.	)	
	)	**Docket No. 2036**
Lashon Shaffer	)	
Sheriff's Police Officer	)	
Star # 435	)	

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on June 14, 2018, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Lashon Shaffer, hereinafter Respondent, was appointed a Correctional officer on July 21, 1999, and then was promoted on July 10, 2000, as a Police Officer. Respondent's position as a Police Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board, 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981) (quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and *citing Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *In re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982)); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose").

The original Complaint in this matter was filed with the Merit Board's administrative staff on July 20, 2017. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court (Administrative Staff). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit

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clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed on July 20, 2017, commenced the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on July 20, 2017, and an amended complaint on January 25, 2018. The Sheriff is requesting termination.

Respondent testified that he had been employed by the Cook County Sheriff's Office for 19 years and currently works with the Sheriff's Police (TR43). He joined the Sheriff's Police in 2000 and attended numerous in-service training (programs) approximately two or three times a year, every year (TR44). Part of that training was to keep updated on regulations, policies and orders that are currently in effect (TR45). The Respondent said that it is his responsibility to keep up to date on the rules and policies of the Cook County Sheriff's Office (TR45). A violation of the rules, regulations, orders or policies of the Sheriff's Office would subject them to discipline (TR45).

The Respondent has known Larry Young (Young) since 2015 after responding to a domestic call involving Young and his wife, Renee Young (TR45). Young obtained the Respondent's cell phone number during this timeframe while he was filling out reports for the domestic incident (TR46). The Respondent visited Young's home on approximately four occasions between December 15, 2015, and January 7, 2016 (TR47). The Respondent spoke with Young approximately ten times during that timeframe (TR47). Young gave the Respondent a key to his residence in early June 2016 (TR49). The Respondent was aware of Young's marital issues between December 15, 2015, and July 11, 2016. Young told the Respondent that he thought his wife was cheating on him (TR51). The Respondent learned of Young's arrest at his residence on June 11, 2016, for aggravated criminal sexual assault of his wife, Renee (TR52). The Respondent spoke with Young's mother, Patricia Hunt (Hunt), after the arrest (TR52). The Respondent discussed with Young that his wife (Renee Young) should recant her story of what transpired on June 11, 2016 (TR54). The Respondent had discussions with Hunt about having Young's wife recant her testimony (TR54).

The Respondent was working July 7, 2016 (TR56) and was in uniform in a marked squad car (TR57). A call came for 9044 Knight Street in Des Plaines, (IL), which the Respondent knew to be the Youngs' residence (TR57). The Respondent was not specifically called to the scene (TR58). The Respondent responded to the scene (TR58). When the Respondent arrived, Officer McCluskey and Sergeant Barloga were already on the scene (TR59). The Respondent did not tell either Officer McCluskey or Sergeant Barloga that he had been in touch with Young outside of his professional duties (TR59). The Respondent did not tell Officer McCluskey or Sergeant Barloga that Young had his cell phone number and called him on numerous occasions (TR59). The Respondent did not tell Officer McCluskey or Sergeant Barloga that Young had given him a key to his house (TR59-60). The Respondent did not tell Officer McCluskey or Sergeant Barloga that he had been to the Young house within the last month for lunch (TR60).

The Respondent did not tell Officer McCluskey or Sergeant Barloga that he knew the circumstances surrounding Young's arrest and incarceration in the Cook County Jail (TR60).

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Docket No. 2036
Lashon Shaffer
Sheriff's Police Officer

The Respondent did not tell Officer McCluskey or Sergeant Barloga that he had communicated with Young regarding the charges against him in Cook County Jail (TR60).

The Respondent testified that prior to the call coming to dispatch for the incident on July 7, 2016, the Respondent had spoken with Hunt, Larry Young's mother, either that morning or the day before (TR60). The Respondent discussed with Hunt what to do if she was aware that someone had stolen items and she had an idea of who it was (TR61). The Respondent did not tell Sergeant Barloga or Officer McCluskey that he knew Hunt was the one making the allegations on July 7, 2016 (TR61). The Respondent did not tell them that he had previous conversations with Hunt (TR62). The Respondent did not tell either Officer McCluskey or Sergeant Barloga that he had discussed the issue of the alleged stolen vehicle and personal items inside the home with prior to her making the call (TR62). The Respondent did not tell either Sergeant Barloga or Officer McCluskey that he had spoken to Hunt on 9 to 10 occasions prior to July 7, 2016 (TR62).

The Respondent testified that Hunt talked with him about Young's case (TR64). The Respondent was aware that Officer McCluskey was talking to Young on Hunt's cell phone on July 7, 2016 (TR67). The Respondent spoke with Young on July 7, 2016, for approximately 7 minutes (TR 67-68). Young told the Respondent on July 7, 2016, that Renee Young (Renee) was thinking about recanting her story (TR68). The Respondent, during the conversation with detainee Young on July 7, 2016, stated that he did not want to talk too much because he knew the conversation was being recorded (TR69-70). The Respondent stated to detainee Young that he would go to Renee's place of employment and "take it from there" (TR71).

The Respondent did accompany Officer McCluskey to Lutheran General Hospital (TR71). The Respondent was present when Renee was arrested (TR71). Renee was charged with criminal trespass to vehicle and theft (TR71). The Respondent spoke privately with Renee on July 7, 2016 (TR71). The Respondent understood that Renee was charged in her criminal case (TR73). The Respondent was aware that on August 23, 2016, the criminal charges were dismissed against Renee (TR73).

The Respondent was interviewed by OPR (Office of Professional Responsibility, Cook County Sheriff) on October 12, 2016 (TR73-74). The Respondent stated to OPR that Young was just an acquaintance (TR74). The Respondent told OPR that Renee had told him that she was making payments on detainee Young's car (TR74). The Respondent told OPR that he did not give Hunt advice on how to handle detainee Young's arrest (TR75).

The Respondent was interviewed a second time by OPR on January 20, 2017 (TR75). During the second OPR interview, the Respondent stated that he did speak with detainee Young while he was incarcerated but was "to say hi" (TR75-76). The Respondent stated that he did not believe he lied to OPR but that he had just forgotten that he had spoken to Young while he was incarcerated (TR76). The Respondent stated to OPR during the second interview after he heard the recorded conversation of July 7, 2016, that he believed that conversation with detainee Young was unethical (TR76).

The Respondent admitted in his OPR interview that it was a violation of the Cook County Sheriff's Police Department policies to have that telephone conference (TR76). The Respondent testified that during the January 20, 2017, OPR interview, he admitted that he knew it was

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wrong to discuss detainee Young's criminal case with him shortly before going out to arrest Renee (TR77).

The Respondent testified he visited the Young house on Memorial Day in 2016 without it being official business (TR78-79). The Respondent had been assigned to the Skokie District for approximately nine years (TR85). He testified as an officer on his beat, he gets to know residents within his district (TR90). He said as a cover car, you can roam freely, you can do traffic stops, premise stops, or when other officers get calls you back them up (TR92).

Officer McCluskey, Sergeant Barloga and another officer were present when the Respondent arrived on July 7, 2016, at the Young household (TR97). Hunt was present when he arrived (TR97) and was showing Officer McCluskey a court Order regarding certain possessions (TR98). The Respondent became aware that Officer McCluskey was talking to Young (TR99-100). The Respondent knew it was detainee Young on the phone prior to him being handed the phone by Hunt (TR100). Young told him that Renee had taken the specific items and the vehicle on July 7, 2016 (TR102). The Respondent did not do anything to try and stop Officer McCluskey from arresting Renee (TR103-104) The Respondent did not have any conversations with Officer McCluskey about the arrest of Renee while on the scene (TR104).

The Respondent learned that Young was incarcerated either June 15th or June 16th (TR106). The Respondent learned of Young's arrest from Hunt (TR109).

The Respondent has been a police officer for 19 years, has gone through all the appropriate training, carries a gun to work, and is exposed to potentially very dangerous situations (TR114). The Respondent admitted that in assisting Officer McCluskey it would be important for him to tell her about the domestic background between Larry Young and Renee Young (TR116). The Respondent admits it was crucial to tell the responding Officer McClusky why Young was in the Cook County Department of Corrections after having been charged with numerous felonies including aggravated criminal sexual assault of Renee (TR116). Hunt called the Respondent shortly after his arrest (Young's) (TR117).

The Respondent admitted in his testimony that taking the key from Young was inappropriate (TR325). The Respondent said he spoke by telephone to Young approximately five times (TR328). The Respondent learned on July 7, 2016, during his conversation with Young that he was on a recorded Securitas Cook County Jail call and that Young was incarcerated (TR329-330). The Respondent said he told OPR that he went to Young's house for a barbeque (TR340). The Respondent testified that he returned to Young's house approximately a day or two later to return a water bottle, but he did not return the key (TR341). The Respondent said he did not disclose to OPR that he had contacted Young on several occasions (TR341-342).

OPR Investigator James Siroky (Investigator Siroky) was assigned to investigate this case (TR121). OPR Investigator Siroky has been with the OPR for more than eight years (TR120). Investigator Siroky reviewed the complaint register, performed interviews, reviewed reports, court orders and conducted additional interviews (TR121-122). Investigator Siroky interviewed Sergeant Barloga, Officer Renee Smith, Officer Fulvio Compagnone, Officer Margarite McCluskey and the Respondent (TR122). The OPR interview of the Respondent was recorded and summarized in a report and was made part of the record (TR123). During the interview process with the Respondent, all the appropriate forms were completed, including right

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to counsel, the actual complaint allegations against him and his right to have a union representative present (TR124). The Respondent signed all of the appropriate forms including Exhibit 2 (TR126). The audio recording in Exhibit 5 is a true and accurate account of the interview from October 12, 2016, of the Respondent (TR128). A second recorded interview (Exhibit 6) occurred with the Respondent and OPR after additional investigation revealed additional facts (TR129).

Investigator Siroky testified the second interview was prompted by the revelation to Investigator Siroky by Officer McCluskey that she had spoken with detainee Young on the date of the arrest of Renee (TR129). Investigator Siroky pulled all of the Securus tapes for inmate Young (TR129). Investigator Siroky said he heard the conversation McClusky had with Young as well as the conversation between the Respondent with Young the same day (TR130). The second interview of the Respondent took place on January 20, 2017 (TR130). The allegations from OPR against the Respondent were that on July 7, 2016, he improperly arrested Renee for theft and criminal trespass to a motor vehicle at her place of employment, that the Respondent did not use every lawful means at his disposal to investigate Renee's arrest, and that he was not truthful in his OPR interview on October 12, 2016, about this incident (TR131-132). Investigator Siroky advised the Respondent that based on his investigation he was alleging that the Respondent was untruthful to OPR (TR132). Exhibit 6 is the recording of the second interview of the Respondent (TR132).

Investigator Siroky determined that the Respondent improperly contacted a detainee at the Cook County Jail prior to assisting in the arrest of Renee (TR134). Investigator Siroky determined that the Respondent violated Sheriff's Police General Order ROC-00-4.2, which states no member of the Department will make false official records reports, will report any inaccurate, false or improper information (TR134); the Respondent violated Police Order ROC-00-12.28, which states, except as part of their official duties members will not reveal the existence of or any information regarding Department projects, investigations or operations aimed at the apprehension of criminals or control or suppression of vice activities (TR134-135); the Respondent violated Cook County Sheriff Police General Order ROC-00-12.9 (TR139); the Respondent violated Cook County Sheriff Police General Order ROC-00-13.1 (TR139); the Respondent violated Cook County Sheriff Police General order ROC-00-13.26 (TR136); and that the Respondent violated Article X of the Merit Board's Rules and Regulations (TR136).

Investigator Siroky determined that the arrest of Renee was not proper (TR143) and that the Court Order (Exhibit 8) did not prohibit Renee from being at 9044 N. Knight, Des Plaines (TR146). The only recording (Exhibit 7) between the Respondent and detainee Young that Investigator Siroky located was the one from July 7, 2016 (TR149).

Detective McCluskey testified that she has been employed with the Cook County Sheriff's Office since 2013 (TR164). Detective McCluskey worked with the Respondent in Skokie (TR166). On July 7, 2016, Detective McCluskey received a call from dispatch regarding a vehicle and property missing at 9044 Knight, in Des Plaines (TR166), at the location she met with Hunt, the mother of Young (TR166-167), and was joined at the location were by the Respondent, Officer Smith, Officer Compagnome and Sergeant Barloga (TR167). Hunt was reporting that a vehicle and property were stolen (TR167). Detective McCluskey was shown a civil Order by Hunt regarding ownership of certain property while Young was incarcerated (TR168). During Detective McCluskey's investigation, she determined that the vehicle was in the possession of Renee (TR168).

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Docket No. 2036
Lashon Shaffer
Sheriff's Police Officer

Detective McCluskey learned that Renee was the daughter-in-law of Hunt (TR168) who alleged items were taken from the residence by Renee (TR169). During the investigation, Detective McCluskey spoke with Hunt and briefly spoke with detainee Young on the phone (TR169). Detective McCluskey understood that Young was incarcerated at the time she spoke with him (TR169). Hunt signed a complaint and the automobile was located later that day (TR170). Detective McCluskey and the Respondent went to Lutheran General Hospital where Renee worked (TR170). The Respondent told Detective McCluskey that he knew Renee and Young but did not tell her the extent of his knowledge of these individuals (TR171-172). The Respondent did not tell Detective McCluskey that he had been in touch with Young outside of his capacity as a Cook County police officer (TR171-172); he did not tell Detective McCluskey that Young had the Respondent's cell phone number and had given him a key to detainee Young's residence (TR172-173); did not tell Detective McCluskey that he had gone to the 9044 location for a meal with Young outside of work (TR173); and the Respondent did not tell Detective McCluskey that he knew the circumstances surrounding Young's arrest and incarceration (TR173).

Detective McCluskey testified all of these facts would have been relevant to her investigation (TR173). It would have been relevant to her investigation had she known that Young had been charged with numerous felony charges including aggravated criminal sexual assault of his wife, Renee (TR173). It would have been relevant to her investigation to know that the Respondent and detainee Young were discussing the possibilities of Renee recanting her story in the criminal case (TR174). She testified the Respondent never disclosed to her that he communicated with Young regarding his charges while he was incarcerated in the Cook County Jail (TR174). The Respondent did not disclose to her that he knew Young's mother Hunt or that he had spoken to Hunt approximately 9 to 10 times prior to arriving on the scene on July 7, 2016 (TR175). The Respondent never disclosed to Detective McCluskey that he had discussed detainee Young's pending criminal felony charges with Hunt (TR175). The Respondent did not disclose to her that he had spoken with Hunt either the morning of July 7, 2016, or the day before (TR175).

Detective McCluskey testified that he Respondent did not disclose to her that the Respondent had known several days prior to July 7, 2016; that Renee was, in fact, driving the subject vehicle; and this information would have been important for the purposes of her investigation (TR175). She stated that having all of this information would have been important for the investigation and likely changed her actions (TR175-176).

Detective McCluskey said engaging in community policing does not include going to citizen's homes for meals (TR176); community policing does not involve random citizens giving officers keys to their homes (TR177); community policing does not involve citizens sharing their marital problems when not related to the call for domestic abuse (TR177); community policing does not involve disclosing personal family members with random citizens (TR177-178); and community policing does not include communicating with citizens who are detainees at the Cook County Department of Corrections on criminal felony charges (TR178). Detective McCluskey testified she does not trust the Respondent and if asked by supervisors she would not want to work with him again (TR181). Detective McCluskey believed she had probable cause to arrest Renee based on the information she had from Hunt and the documentation provided by her (TR196). The OPR interview with Detective McCluskey and detainee Young was played and admitted into evidence (TR202).

Sergeant John Barloga has been employed with the Sheriff's Office since 1995 and the Police Department since 1999 (TR215). Sergeant Barloga was on duty on July 7, 2016 and

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Lashon Shaffer
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responded to the 9044 Knight Street address in Des Plaines (TR216), where Detective McCluskey and the Respondent were present when he arrived (TR218). The Respondent disclosed to Sergeant Barloga that he knew Larry and Renee Young but that he did not elaborate on his relationship (TR220). The Respondent did not disclose to Sergeant Barloga that he kept in touch with Young (TR221); did not disclose to him that Young had the Respondent's cell phone number, had called that cell phone on numerous occasions and that he had a key to Larry Young's residence (TR221-222); the Respondent did not disclose to him that prior to the incident on July 7, 2016, he had been invited to Young's home for a meal and that he knew the circumstances surrounding Young's arrest (TR222). Sergeant Barloga said it would have been relevant facts to his investigation had he known that Young was incarcerated after being arrested for aggravated criminal sexual assault of his wife, Renee (TR222). The Respondent did not disclose to him that he communicated with detainee Young regarding his charges in Cook County or that he knew and spoke with Young's mother, Hunt (TR224). The Respondent did not disclose to Sergeant Barloga that he had spoken to Hunt regarding Young's pending criminal charges or that he had spoken to her either on or the day before July 7, 2016 (TR224-225). The Respondent did not disclose to Sergeant Barloga for several days prior to July 7, 2016 that Renee had taken the vehicle in question (TR225). He testified that this information would have been relevant and important for him to know regarding this investigation as it presented a clear conflict of interest based on the intimate relationship of the parties (TR225).

He testified that community policing does not include going to citizen's homes for meals (TR226); community policing does not involve having random citizen's give you their keys, their personal cell phones, discussing the marital issues or domestic disputes or officers giving their opinions on someone's marital status or personal physical relationship (TR227); and that community policing does not include communicating with citizens who are incarcerated in the Cook County Department of Corrections on felony charges (TR227-228). Sergeant Barloga said he does not trust the Respondent and given a choice in the future would not work with the Respondent (TR228). Sergeant Barloga was interviewed by OPR investigator Siroky regarding this incident and agrees with the summary of his interview (TR234).

Patricia Hunt testified she was present at 9044 Knight Avenue on July 7, 2016, and the residence was that of her son, Young and his first wife, Evon (TR243-244). Hunt was at 9044 Knight Avenue on July 7, 2016, because her son's lawyer told her to have Renee arrested for taking the car (TR247). She said she called the Sheriff's Office to have an officer come to 9044 because they wanted to get Renee arrested for stealing her son's car (TR250). Hunt relayed to Young on the phone on July 7, 2016, while he was incarcerated that the Respondent had arrived at their house (TR252-253). She gave the phone to the Respondent and he spoke with Young (TR253). Hunt did not believe the property stolen belonged to Renee (TR257-258). She said Young was arrested for aggravated criminal sexual assault of Renee (TR 269). Hunt said she has the Respondent's personal cell phone number (TR270); she has called the Respondent about Young's arrest (TR270); she received the Respondent's telephone number in December 2015 (TR275); and she called the Respondent on June 13th or 14th after Young was arrested (TR276).

Hunt testified that Renee's case was dismissed, and she was at the court date (TR285). She told the State's Attorney prosecuting Renee's case that it was none of her business how she knew the Respondent (TR286). Hunt said she was not present at the time Young was arrested for the assault of Renee and does not know specifically what property was present that night (TR287-288). Hunt entered the home at 9044 Knight in Des Plaines on or about June 17,

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2016, at the direction of her son to make a list of items that he believed were missing from the home and had been taken by Renee Young (TR294-296). Hunt did not see Renee remove any of these items (TR296). Hunt said she handed the phone on July 7, 2016, to the Respondent who then talked with detainee Larry Young (TR299). She handed the phone to the Respondent because Young asked her to (TR300).

The Respondent testified he did not know of marital problems (between Larry and Renee Young) at the time he was given a key to their home (TR50). The Respondent denies that his relationship with Young was outside of his scope of Cook County Sheriff police officer (TR51). The Respondent stated that he did not tell Hunt to tell Young that his wife needed to recant her story for him to get out of jail (TR56). The Respondent stated to OPR that he only met Renee once (TR74). The Respondent told OPR he did not have contact with detainee Young while he was incarcerated with Cook County Department of Corrections (TR75). Phone records of the Cook County Jail of July 7, 2016 (Exhibit 7) show a recording between the Respondent and Young.

The Respondent testified that he was being honest to OPR when he stated he did not talk to Young while he was incarcerated (TR330). The Respondent said he did not remember talking with detainee Young on July 7, 2016, and that is why he answered the way he did at OPR (TR331).

Conclusion

The Board finds by a preponderance of the evidence through the testimony of the witnesses; the audio tape recordings of the Respondent's interviews with OPR on October 10, 2016 (Exhibit 5) and January 20, 2017 (Exhibit 6); and the supporting evidence that the Respondent was less then credible in his testimony, provided false information to OPR, attempted to improperly influence the testimony of a witness in a criminal matter, attempted to obstruct an ongoing investigation being conducted by his agency, failed to provide accurate and complete information during an ongoing investigation, maintained an inappropriate personal relationship with members of the public by using his official position to improperly influence the outcome of an official investigation and conducted other improper activities by the misuse of his official position. The Respondent told OPR he did not have contact with detainee Young while he was incarcerated with Cook County Department of Corrections. This is contradicted by the Cook County Jail phone records of July 7, 2016 (Exhibit 7).

The Board further finds that Respondent Lashon Shaffer, did violate Cook County Sheriff's Police Department General Order ROC-00-01-A, Section IV, 4.2, Section XII, 12.9 & 12.28, Section XIII 13.1, 13.26 & 13.28; Cook County Sheriff's Police Department Law Enforcement Services Manual Policy 321, Sections 321.2. 321.3, 321.4, 321.5,, 321.5 2 (f) & (h), 321.5.5 (c), (g), (l), (m), (v), (x) 3, (ac) 1-2, (ad), (am), (aq); and Article X, Paragraph B, 1-3, of the Rules of the Cook County Sheriff's Merit Board.

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Docket No. 2036
Lashon Shaffer
Sheriff's Police Officer

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent Lashon Shaffer be seperated from the Cook County Sheriff's Office effective July 25, 2017.

James P. Nally, Chairman

Vincent T. Winters, Board Member

Byron Brazier, Vice Chairman

Kim R. Widup, Board Member

John J. Dalicandro, Secretary

Juan L. Baltierres, Board Member

Patrick M. Brady, Board Member

Gray Mateo-Harris, Board Member

Dated: December 14 2018

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STATE OF ILLINOIS
COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County	)	
	)	
vs.	)	**Docket No. 1996**
	)	
DAVID EVANS III	)	
Employee #771949	)	
Star #15822	)	

DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on September 4, 2018; September 21, 2018; November 5, 2018; and November 28, 2018, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

DAVID EVANS III, hereinafter "Respondent", was appointed a Correctional officer on June 13, 2005. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 108 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commisssioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and *citing Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *In re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1081, 1087 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.").

The original Complaint in this matter was filed with the Merit Board's administrative staff on February 22, 2017. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created

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Correctional Officer
David Evans III
Star # 15822

legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed commencing the instant action, was properly filed, and will be accepted as the controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on February 22, 2017 and an amended complaint on January 23, 2018. The Sheriff is requesting termination of employment.

On June 13, 2005, David Evans III (hereinafter referred to as "Respondent") was appointed as a Correctional Officer with the Cook County Sheriff's Department (Tr. at 266). On December 16, 2015, Respondent was assigned to Cermak hospital – Division 3 West. (Tr. 268) Maximum and minimum security Detainees were housed in Division 3 West. (Tr. 268)

On or about December 16, 2017, the Office of Professional Review (hereinafter referred to as "OPR") received two complaint registers regarding an incident involving Raymoutez Price (hereinafter referred to as "Detainee Price") and Respondent. (Tr. at 119)

OPR Investigator Michael Flamburis (hereinafter referred to as "Investigator Flamburis") was assigned to investigate the reports and reviewed incident reports, videos and use of force reports. (Tr. 120) Investigator Flamburis also reviewed medical records, witness statements and general orders. (Tr. 120) Investigator Flamburis interviewed Correctional Officer Brian Fleck (hereinafter referred to as "Officer Fleck") and Lt. Matthew Koedyker (hereinafter referred to as "Lt. Koedyker"). (Tr. 120) Investigator Flamburis was unable to interview Respondent after multiple attempts to serve him notice to appear were unsuccessful. (R. 124) Investigator Flamburis testified that he saw nothing that supported Respondent' statements that he feared great bodily harm due to the fact that the Detainee Price was attempting to use the wheelchair armrest as a weapon in anything that he reviewed. (Tr. 144) Investigator Flamburis also testified that when Respondent struck Detainee Price with the metal wheelchair arm it could have caused great bodily harm or possibly death and that this was a use of force on Detainee Price that was unjustified. (Tr. 151-152)

Mr. Raymoutez Price (hereinafter after referred to as "Detainee Price") testified that on December 2015 he was housed in the Cook County Department of Corrections. (R. 389) On December 16, 2015, at around 2:30 a.m., he was waiting for his medication and he was knocking on the window with his armrest trying to get the correctional officer's attention because he was being refused his medication. (R. 390) Detainee Price testified that after the "white shirt" showed up the Respondent and the "white shirt" came into the room and Respondent picked up the first armrest, the "white shirt" began to film, Respondent attempted to take the second armrest off the

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wheelchair, and Detainee Price explained to him that it was complicated because it gets stuck. (Tr. 393) Detainee Price stated he tried to assist Respondent in taking the armrest off the wheelchair. (Tr. 395-396) While attempting to remove the wheelchair armrest, Detainee Price told Respondent "Let me do it. I can take it off." (Tr. 396) Respondent yanked the arm off and Detainee Price fell on the floor. (Tr. 396) Detainee Price testified that once he hit the ground, Respondent approached him with the wheelchair armrest and hit him in the forehead at least three to four times. (Tr. 397) Detainee Price testified that he needed medical attention and went to Stroger Hospital after the incident for contusions on his forehead and his face. (Tr. 399)

Correctional Officer Brian Fleck (hereinafter referred to as "Officer Fleck") testified that he has been employed with the Cook County Sheriff's Department for approximately four years. (Tr. 19-20) Officer Fleck stated that he was working on December 16, 2015 at Cermak hospital. (Tr. 20) He recalls coming into contact with Detainee Price for a couple of months at that point. (Tr. 20- 21) Officer Fleck testified that Detainee Price was in a wheelchair and seeking his medication for that night and that Detainee Price was agitated with the delay in getting his medication. (Tr. 21) Officer Fleck testified that Detainee Price removed the armrest off his wheelchair and began hitting the glass window and threw it at one point continuing to bang on the window breaking the glass. (Tr. 21- 22) Lt. Koedyker was called to the location in less than 10 minutes. (Tr. 22- 23) Lt. Koedyker ordered Respondent to go into the cell to retrieve the wheelchair armrest that was used to break the glass. (Tr. 23) Officer Fleck testified that he never actually entered the room and stayed by the doorway. (Tr. 23) Officer Fleck testified that Respondent went into the room, picked-up the first armchair off one of the beds. (Tr. 24) He observed that Detainee Price was still sitting in the wheelchair with the second armrest attached. (Tr. 24) Officer Fleck testified that while Respondent was trying to remove the second armrest, Detainee Price attempted to hit Respondent with his left hand. (Tr. 25-26) Officer Fleck observed Detainee Price swing once with his left arm towards Respondent's ribs and lower lower body. (Tr. 26) Officer Fleck also observed Detainee Price swing up with his right hand but he did not believe that he connected with that attempt. (Tr. 26) Officer Fleck observed Respondent swing his right hand, with the armchair rest still in his hand, at Detainee Price and make contact. (Tr. 26) Officer Fleck testified that he saw Respondent strike Detainee Price on the head with the hand that he was holding the wheelchair armrest. (Tr. 47) He observed Detainee Price fall out of his wheelchair and became fully compliant at that point. (Tr. 27) Officer Fleck testified that Detainee Price was taken for medical attention immediately to the emergency room. (Tr. 27)

Lieutenant Matthew Koedyker (hereinafter referred to as "Lt. Koedyker") testified that he has been employed with the Cook County Sheriff's Office in Division 10 for 12 years. (Tr. 52) He has been a lieutenant since 2014. (Tr. 53) He was working the midnight shift on December 16, 2015. (T. 53-54) He was working in Division 10 at Cermak hospital with Respondent and Sgt. Cooper who are under his command. (Tr. 54) He also understood that Officer Brian Fleck was present. (Tr. 54) He received a phone call from Respondent saying that Detainee Price had broken the window in the group room in the cell. (Tr. 55) He testified that Detainee Price was about 6 feet tall and 275 lbs. (Tr. 111) Lt. Koedyker learned that Detainee Price was upset over a medication issue so he went to the scene and brought a camera, (the video which was admitted into evidence as Sheriff's Exhibit No. 1) (Tr. 56) Lt. Koedyker testified that

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he ordered Respondent to open the door and told him to have Detainee Price back away from the door in his wheelchair which he did. (Tr. 57) He gave Respondent orders to secure the wheelchair arm which Detainee Price used to break the glass. (Tr. 58) Lt. Koedyker testified that he observed Respondent attempt to remove the second wheelchair armrest from the wheelchair where Detainee Price was still sitting. (Tr. 59) He testified that Detainee Price was sort of blocking Respondent' efforts and jabbing him with his hand to stop him from removing the wheelchair arm and made contact with Respondent's arm and possibly his hands. (Tr. 60) At that point Respondent struck Detainee Price with the wheelchair arm on his forehead. (R. 61) Lt. Koedyker states that he heard a loud crack or thump when Respondent did this and that Detainee Price had fallen out of the wheelchair at that point. (Tr. 62) Lt. Koedyker states that he stepped in between Respondent and Detainee Price and he took Detainee Price out of the room to get medical attention. (Tr. 62-63) Lt. Koedyker observed the video of the incident and identified each of the officers and the Detainee, as well as himself. (Tr. 68)

Correctional Officer David Evans III testified that he has been a Correctional Officer since 2005 and has been on administrative leave without pay since February 2016. (Tr. 266 and 268) Maximum and minimum security detainees are housed in Division 3 West at Cermak hospital. (Tr. 268) Respondent testified that he observed Detainee Price striking the window in the group holding cell with a wheelchair armrest to the extent that it cracked the window. (Tr. 269) Detainee Price was in the community room with 4-5 other detainees at the time of the incident. (Tr. 269) Detainee Price had used a 16 to 20 inch long metal wheelchair armrest to crack the security glass. (Tr. 275) Respondent testified that Detainee Price threatened to "bust Respondent's fucking skull open," if Respondent came into the room. (Tr. 283) Respondent testified that he was ordered by Lt. Koedyker to go into the room with Detainee Price and to retrieve the wheelchair armrest off the bed; he was also ordered by Koedyker to try to retrieve the second wheelchair armrest off from the Detainee Price's wheelchair. (Tr. 277-278) Respondent testified that while he was trying to retrieve the wheelchair arm off the chair. Detainee Price blocked him from doing so and then punched Respondent on the left side, in the lower stomach/rib area. (Tr. 281-282) Respondent testified that he made a "defensive reflective strike" to Detainee Price's head, stating, "It was just that fast. It was just, I reflexed. Once he punched me, it was a reflex." (Tr. 282) Respondent testified that although it was a reflex action on his part, "I knew that I struck him in his head with my fist, because I felt my hand." (Tr. 283) Respondent confirmed that "with 100 percent certainty he did not strike Price with the wheelchair armrest, but with his hand which was wrapped around the wheelchair arm." (Tr. 283) Respondent also testified that he would have been justified in intentionally striking Price under Sheriff's Policy, if it had been intentional, which it was not. (Tr. 311)

Dr. Roland Mbaoma (hereinafter referred to as "Dr. Mbaoma") testified that he is employed as the Medical Director and Oncologist at Franciscan Network in Munster, Indiana. (Tr. 220) He has been an oncologist for 14 years. (Tr. 220) Dr. Mbaoma was certified as an expert in the field of oncology. (Tr. 221-224) Dr. Mbaoma testified that he was Respondent's treating physician during Respondent's cancer treatment from 2015 onward into 2017. (Tr. 227) He testified that Respondent suffered from adenocarcinoma of the small bowel, and that he treated Respondent with chemotherapy for a six-month period in 2016. (Tr. 228- 229) He

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testified that Respondent suffered from a number of side effects during chemotherapy, including fatigue, neuropathy, nausea, and memory issues. (Tr. 230)

Mrs. Jeanette Evans (hereinafter referred to as Mrs. Evans) testified that Respondent is her son, and that on approximately April 2016 through April 2017 he was largely under her care at her house in Lansing, Illinois while he was in chemotherapy treatment for cancer. (Tr. 258) She testified that he was "just out of it" in April 2016, and she had to feed him, bathe him, and had him staying at her house during his treatment. (Tr. 259)

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds the Respondent's actions, when viewed in accordance with the totality of the circumstances, support the conclusion that Respondent's actions were reasonable and necessary to perform a lawful task and not in violation of COOK COUNTY SHERIFF DEPARTMENT'S ORDER 11.2.1.0 – RESPONSE TO RESISTANCE/ USE OF FORCE POLICY; COOK COUNTY SHERIFF DEPARTMENT'S ORDER 11.2.2.0 – RESPONSE TO RESISTANCE/ USE OF FORCE DUTIES, NOTIFICATIONS AND REPORTING PROCEDURES; COOK COUNTY DEPARTMENT OF CORRECTIONS GENERAL ORDER 24.9.1.0 – REPORTING INCIDENTS; COOK COUNTY SHERIFF DEPARTMENT'S ORDER 11.2.20.1 – CONDUCT POLICY; and COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

This is an incident in which Respondent, David Evans III, a corrections officer, was assigned to Tier 3 – West at Cermak Hospital at approximately 2:30 A.M on December 16, 2015. On that date, Detainee Raymoutez Price was being housed in a community group cell with 4-5 other detainees. At that time, Respondent reported to Lieutenant Koedyker that Detainee Price had broken the glass window in the community room cell with the armrest from Detainee Price's wheelchair. Upon his arrival Lieutenant Koedyker ordered Respondent to enter the community room to retrieve the metal wheelchair arm rest that was now on an unoccupied bed. Officer Fleak was instructed to hold the entrance door and Lieutenant Koedyker entered the threshold of the room to video record the events. The video admitted into evidence and presented at trial showed that a large security glass window had been visibly cracked. Inside the room were several other detainees that quickly move to the wall out of sight of the camera. Detainee Price is observed in the center of the room facing towards the door while seated unrestrained in a wheelchair with one armrest still attached. Detainee Price appeared to be of a large physical build. Respondent is observed to pick-up the wheelchair armrest from the unoccupied bed behind Detainee Price. Respondent walks back to Detainee Price and stands to Detainee Price's left side and bends over and across Detainee Price to remove the wheelchair's right armrest. As Respondent reaches over, Detainee Price makes a sudden aggressive move with both hands and appears to strike Respondent's torso and hands. Respondent is observed to immediately retreat while striking Detainee Price's head once with his right hand in one simultaneous motion. Detainee Price falls to his left and onto the floor and against another bed. The video is inconclusive if the injury to Detainee Price's forehead is a result of being struck with the wheelchair arm rest, falling onto the

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floor or falling against an adjacent bed frame. The encounter between Detainee Price and Respondent lasted six (6) seconds.

In addition, OPR Investigator Flamburis testified that OPR's attempts to serve Respondent notice to appear were unsuccessful. Lastly, Detainee Price's testimony was inconsistent with video evidence and witness testimony admitted at trial. Specifically, Detainee Price testified that Respondent struck him with the wheelchair armrest 3-4 times while he was on the floor. This assertion was not supported by the video evidence or eyewitness testimony.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, David Evans III, be reinstated to the Cook County Sheriff's Office effective February 22, 2017.

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David Evans III
Correctional Officer
Docket # 1996

James P. Nally, Chairman

Byron Brazier, Vice-Chairman

John Dalicandro, Secretary

Kim R. Widup, Board Member

Vincent T. Winters, Board Member

Juan L. Baltierres, Board Member

Patrick Brady, Board Member

Gray Mateo - Harris, Board Member

Date March 1, 2019

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STATE OF ILLINOIS
COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County	)	
	)	
vs.	)	
	)	**Docket No. 1930**
Matthew Goral	)	
Employee # 745968	)	
Star # 427	)	

DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on December 10 2018; December 11, 2018; December 18, 2018; January 16, 2019; January 28, 2019; January 29, 2019; February 6, 2019; February 8, 2019; February 20, 2019; March 8, 2019; March 18, 2019; March 19, 2019; and March 21, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

MATTHEW GORAL, hereinafter "Respondent", was appointed a correctional officer on November 18, 2002. On June 27, 2004, Respondent was promoted to Sheriff's police officer. Respondent's position as a Sheriff's police officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered

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Docket No. 1930
Police Officer
Matthew Goral
Star # 427

filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Comminssioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and *citing Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.").

The original Complaint in this matter was filed with the Merit Board's administrative staff on September 16, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed commencing the instant action, was properly filed, and will be accepted as the

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Police Officer
Matthew Goral
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controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on September 16, 2016 and an amended complaint on January 23, 2018. In the complaint, the Sheriff alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility, did not meet with his Supervisor, Sergeant Mark Caridei, that there was no I-Pass transponder or Mi-Fi puck usage by Respondent on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 23, 2015, Respondent provided false statements to Investigator John Sullivan. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. The Sheriff is requesting termination of employment.

On November 18, 2002, MATTHEW GORAL (hereinafter referred to as "Respondent") was appointed as a correctional officer with the Cook County Sheriff's Department. On August 2004, Respondent was promoted to police officer. On August 26, 2007, Respondent was assigned to the Central Warrants Unit. On December 25, 2014, Respondent was assigned to work in the Central Warrants - Fugitive Apprehension Unit – North Team. (Tr. 950, 951).

On or about February 2015, the Office of Professional Review (hereinafter referred to as "OPR") received a complaint regarding an anonymous letter alleging that members of the fugitive apprehension unit did not come into work on Christmas Day (December 25, 2014), used their covert vehicle for personal use and left work early every day (Tr. 27 thru 29).

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Lt. Michael Goldsmith (hereinafter referred to as "Lt. Goldsmith") was assigned to Internal Affairs as an investigator in 2014. (Tr. 25) He recalls being assigned to investigate an anonymous complaint in February or March of 2014. (Tr. 27). The anonymous letter that was given to him by Inspector Stajura regarding this particular investigation was entered into evidence as Sheriff's Exhibit 1. (Tr. 28) The individual named in Sheriff's Exhibit 1 were Sgt. Caridei and the allegation was that he and the Respondent who worked with him did not come to work on Christmas Day and they were told to use their covert cars for personal reasons and left work early every day. (Tr. 28, 29) After receiving the anonymous letter, he began by investigating who was working on that day. He called the timekeepers and asked for time sheets for December 25, 2014. (Tr. 29, 30) The timekeeper's time sheets for December 25, 2014 were entered as Sheriff's Exhibit No. 2. (Tr. 30) He spoke with Deputy Chief Ruel who oversaw the Fugitive Apprehension Unit and requested that he collect memorandums from the officers for their activities on that day which included all the members of the Unit, not just the Respondents. (Tr. 33) Lt. Goldsmith testified that there was no activity regarding Respondent's gas card, tollway transponder, computer usage, radio usage. (Tr. 41) A memorandum detailing his activities for December 25, 2014 was submitted to Chief Ruel was entered as Sheriff' Exhibit No. 5. (Tr. 43) Respondent stated in his memorandum that he worked surveillance in the Bridgeview area on a case. (Tr. 44) Respondent stated he was not with the other officers in his unit on December 25, 2014 but that he was investigating a subject around 87th Street in Bridgeview and went home for lunch and used the restroom that day. (Tr. 94) Respondent stated that he did not use his computer, radio, buy gas or go to any Sheriff's facility that day. (Tr. 95)

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Chief Donald Morrison (hereinafter after referred to as "Chief Morrison") testified that on that he had been retired for two years at the time of the hearing. (Tr. 10) From 1977 until the time of his retirement, he was a Cook County Sheriff's Police Officer. (Tr. 11) At the end of his career he worked in the Fugitives Unit where he had responsibilities to try and bring back any of the people who had escaped from home electronic monitoring. (Tr. 11, 12) He supervised respondent. (Tr. 14-15) They all had the responsibility to investigate and retrieve fugitives or persons that had warrants out. (Tr. 16) He is not certain as to whether the officers needed to report a 10-8 when they went on duty and off duty. (Tr. 22) He testified that Christmas, Fourth of July and Thanksgiving were dangerous days to be inside a family home trying to apprehend someone. (Tr. 35) He states that officers were told not to make lock ups on Christmas Day if possible. (R. 36) The reason for this policy was that family would be around, it would be a very highly emotional situation considering the holidays, alcohol consumption. (Tr. 37) The Respondent did not report directly to him but to Sgt. Caridei. (Tr. 40) He believed that the officers also carried paper files in their trunks upwards up to 300 files and that they would work on the paperwork when they were not actively searching for fugitives. (Tr. 52) He believes that the official policy of the Sheriff's Office is to work and attempt to apprehend fugitives on every day and it was only his unofficial policy regarding not working on Christmas Day in terms of going into people's homes. (Tr. 60, 61) It was his unwritten policy that an officer could do surveillance on his own. (Tr. 64) He would give lee way for officers who lived far away and let them remain on duty while they were driving home and not be officially quote "off duty" until they left Cook County. (Tr. 93, 94) It is his understanding that there was never a time when the officers did not have any work that they could be doing whether it be file review, updating or

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searching for criminals. (Tr. 107, 108) Chief Morrison testified that the North team, the entire time that I was with them, or as their boss anyway, before I took over from Teddy Stajura, I didn't worry about them. They had so much activity, you know, so many arrests that they doubled and tripled the arrests of the South team. They basically were workaholics. (Tr. 17)

Inspector John Sullivan (hereinafter after referred to as "Inspector Sullivan") testified that he has been with the Cook County Sheriff's Office for 26 years. (Tr. 622) His duties are to conduct administrative investigations of alleged wrongdoing by Sheriff's employees. (Tr. 634) Upon being assigned to this investigation to looked at everything that was already gathered, all the evidence, all the interviews that were conducted, and determine if any further investigation was warranted. (Tr. 625) He relied on all of the Sheriff's exhibits including the memorandums by the Respondents, the vehicle information from the gas card, I-Pass, Mi-Fi [internet access] puck and computers. (R. 631-633) Sheriff's Exhibit 25 was admitted which were the personal cell phone records for Respondent. (R. 664) Inspector Sullivan testified that he did not interview Respondent's supervisors, Commander O'Neill nor Sgt. Caridei, regarding orders to Respondent not to make arrests on Christmas Day. (Tr. 687 thru 689) Inspector Sullivan testified that he did not know if the Respondent was to report to a Cook County facility each day for work because he did not interview Respondent's supervisors, Commander O'Neill or Commander Morrison. (Tr. 711, 755-756) Inspector Sullivan testified that he did not know if Respondent had or had not been conducting surveillance on December 25, 2014. (Tr. 711) Inspector Sullivan further testified that there was no Mi-Fi puck usage by Respondent for December 25, 2014 but admitted that he didn't know how Respondent would used the Mi-Fi puck as Respondent had no

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department issued laptop issued to him on that date. (Tr. 747) Inspector Sullivan testified that he did not try to subpoena Respondent's cell phone tower records. (Tr. 744)

Keith Morrison (hereinafter after referred to as "Mr. Morrison") testified that he has been with the Cook County Sheriff's Office since 1995 where he spent 7 years in corrections, 3 years in patrol, a year at the Academy and the remainder in the Sheriff's IT Department since approximately 2005. (Tr. 828) His responsibilities have included everything from delivering computers to data base work up until his current role which is Director of all Information Security. (Tr. 828) One of the contract vendors is Verizon that does both telephones and something called the Mifi puck which is a small device the size of a hockey puck which allows for connectivity to other devices and the internet for computers. (R. 830) The Mi-Fi puck has a specialized identification number that is given to each employee that utilizes them. (Tr. 831, 832) He testified that there was no data usage by Respondent for December 25, 2014. (Tr. 833) When the Mi-Fi pucks are set up it is not supposed to be used for personal devices, only Sheriff's devices. (Tr. 834) He was asked to check on email activity as well as Mi-Fi puck activity and he learned that there was no ongoing email from any of these accounts. (Tr. 837)

Robert O'Neil (hereinafter after referred to as "Commander O'Neil") testified that he has been with the Cook County Sheriff's Office since September 2012. (Tr. 947) He has been a police officer for 20 years as a Patrolman, Tact Officer, Special Operations Officer, Sergeant, Gun Team, Patrol Sergeant and worked in the Police Academy. (Tr. 947) He has been on assignments and teams that have looked for people with warrants out on them. (Tr. 948) With the Sheriff's Office, he worked in the Central Warrant Division which had three sections including Child Support, Electronic Monitoring fugitives and Sheriff's Police fugitives. (Tr. 948) He was a

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supervisor over the fugitive unit in December 2014 and still holds that position today. (Tr. 949) In December 2014, all of the Respondents were members of the Fugitive Unit on the North Team. (Tr. 950, 951) At any given time in 2014, there were 44,000 warrants in Cook County so each officer probably was holding over 200 cases. (Tr. 953) Commander O'Neil testified that his policy was for officers not to hit multiple houses on Christmas morning for low level warrants because that would not be good for the Sheriff's department. He testified that by low level warrants he meant probation violations, violation of supervision, narcotics and traffic arrest warrants.

Matthew Goral (hereinafter after referred to as "Respondent") testified that he has been with the Cook County Sheriff's Office for 16 years and was assigned to the Fugitive Warrant Section of the Sheriff's Police on December 25, 2014. (Tr. 1569) Respondent testified that on the day in question he was going to look for a suspect that had been accused of children sex crimes. (Tr. 1582) Respondent admits that in December of 2014 he had smart phone and did use it for County business. (Tr. 1585, 1586) Respondent testified that he did not use his cell phone that was issued by the County on December 2014. (Tr. 1586) Respondent testified that he did not put any case numbers or specific details of what he actually did on Christmas Day 2014 in his memo to Chief Ruel. (Tr. 1588) Respondent admits that he did not talk to anyone else that day and only called into the warrant desk. (Tr. 1602)

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds the Respondent's actions did not violate:

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1. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: PER-03-01-A (Effective Date: March 1, 2003) PAYROLL AND TIMEKEEPING MANUAL;
2. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: ROC-00-01-A (Effective Date: April 3, 2001) RULES AND REGULATIONS;
3. SHERIFF'S ORDER 11.2.20.0 (Effective Date: January 25, 2013) RULES OF CONDUCT;
4. SHERIFF'S ORDER 11.2.20.1 (Effective Date: March 12, 2015) CONDUCT POLICY;
5. COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

This is a proceeding arising from an anonymous letter that was received by the Central Warrants - Fugitive Apprehension Unit alleging that members of the Fugitive Apprehension Unit 1) did not report to work on Christmas Day; 2) were allowed to use their covert cars for personal use, and 3) left work early every day. Respondent, MATTHEW GORAL, is one of several police officers assigned to the Fugitive Apprehension - North Unit. An investigation was conducted by the Office of Professional Review and a formal complaint filed by the Sheriff on September 16, 2016. The Sheriff alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility on December 25, 2014. That Respondent did not meet with his Supervisor, Sergeant Mark Caridei on December 25, 2014. That Respondent had no I-Pass transponder or Mi-Fi puck usage on December 25, 2014. That Respondent falsified timekeeping/

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attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 23, 2015, Respondent provided false statements to Investigator John Sullivan. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. A heavily contested and vigorously litigated 13 day trial was conducted and this decision is rendered by the Board.

A key defense by the Respondent was that the duties of a Fugitive Apprehension Officer are substantially different than those of a Correctional Officer, Deputy Sheriff or Sheriff's Police Officer. The position of Fugitive Apprehension Officer requires that the Respondent have much more discretion in the performance of those duties. This is not to say that the Respondent is free from accountability. In fact, Chief Donald Morrison testified that the Respondent's unit had so much activity, so many arrests that they doubled and tripled the arrests of the South team, going on to describe members of the Fugitive Apprehension North Unit as workaholics. Additionally, there was no testimony presented indicating that Respondent had a pattern of not reporting for work or leaving work early as alleged in the anonymous letter. It is uncontested that Respondent called into the Central Warrants desk at the beginning of his shift on December 25, 2014. Respondent testified that he conducted surveillance for most of that day. This would seem consistent with chain of command instructions to "lay low" on Christmas Day. Respondent also testified that he made written reports and verbal statements to that effect. Respondent's immediate supervisor at that time, Sergeant Caridei, has since retired and did not appear at trial to testify. In light of the Respondent's discretion in performing his daily duties and the testimony presented of an unofficial order from Respondent's immediate chain of command to lay low on

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this specific holiday, the Sheriff's evidence that Respondent had no gas card charges, no I-Pass or radio usage for the day in question was relevant, but not persuasive, that no work was performed by the Respondent on December 25, 2014.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, MATTHEW GORAL, be reinstated to the Cook County Sheriff's Department effective September 16, 2016.

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Correctional Officer
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James P. Nally, Chairman

Byron Brazier, Vice-Chairman

John Dalicandro, Secretary

Kim R. Widup, Board Member

Vincent T. Winters, Board Member

Juan L. Baltierres, Board Member

Patrick M. Brady, Board Member

Kimberly Pate Godden, Board Member

Date July 10, 2019

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Telephone: 312-603-0170
Fax: 312-603-9835

Sheriff.MeritBoard@cookcountyil.gov

COOK COUNTY
SHERIFF'S MERIT BOARD
69 West Washington - Suite 1100
Chicago, IL 60602

PROOF OF SERVICE OF MERIT BOARD ORDER

I Mary Anne Nash Sebby, certify a copy of this Final Merit Board Order was served upon the parties in this matter as follows:

Matthew Goral
6814 W. Archer
Chicago IL 60638
Via Certified Mail

Christopher Cooper
79 W. Monroe Suite 1213
Chicago IL 60603
Via Email: cooperlaw3234@gmail.com

Nick Scouffas
General Counsel
Legal & Labor Affairs Division
Richard J. Daley Center
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Miriam Santiago
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Sheila Carey, Paralegal
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Richard J. Daley Center
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Sheila.Carey@cookcountyil.gov
Via Personal delivery/Email

Thomas Nelligan
Assistant General Counsel
Legal & Labor Affairs Division50 W. Washington
50 W. Washington Room 704
Chicago IL 60602 Chicago, IL 60602
Via Email: Thomas.Nelligan@cookcountyil.il.gov.

There are no Cook County Sheriff's Merit Board Rules requiring a motion for reconsideration before this order is a final administration decision reviewable pursuant to the Illinois Administrative Review Act.

FOR THE BOARD

2019

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STATE OF ILLINOIS
COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County	)	
	)	
vs.	)	
	)	**Docket No. 1929**
Kevin Badon	)	
Employee # 377210	)	
Star # 692	)	

DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on December 10, 2018; December 11, 2018; December 18, 2018; January 16, 2019; January 28, 2019; January 29, 2019; February 6, 2019; February 8, 2019; February 20, 2019; March 8, 2019; March 18, 2019; March 19, 2019; and March 21, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

KEVIN BADON, hereinafter "Respondent", was appointed a Deputy Sheriff on June 15, 1998. On October 6, 2002, Respondent was promoted to Sheriff's police officer. Respondent's position as a Sheriff's police officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered

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filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Commissioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and *citing Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *In re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.").

The original Complaint in this matter was filed with the Merit Board's administrative staff on September 16, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed commencing the instant action, was properly filed, and will be accepted as the

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controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on September 16, 2016 and an amended complaint on January 23, 2018. In the complaint, the Sheriff alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility, did not meet with his Supervisor, Sergeant Mark Caridei, that there was no I-Pass transponder or Mi-Fi puck usage by Respondent on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 9, 2015, Respondent provided false statements to Inspector Stajura. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. The Sheriff is requesting termination of employment.

On June 15, 1998, KEVIN BADON (hereinafter referred to as "Respondent") was appointed as a Deputy Sheriff with the Cook County Sheriff's Department. On October 6, 2002, Respondent was promoted to police officer. On February 6, 2006, Respondent was assigned to the Central Warrants Fugitive Apprehension North Unit. On December 25, 2014, Respondent was assigned to work in the Central Warrants - Fugitive Apprehension Unit – North Team. (Tr. 950, 951).

On or about February 2015, the Office of Professional Review (hereinafter referred to as "OPR") received a complaint regarding an anonymous letter alleging that members of the

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fugitive apprehension unit did not come into work on Christmas Day (December 25, 2014), used their covert vehicle for personal use and left work early every day (Tr. 27 thru 29).

Lt. Michael Goldsmith (hereinafter referred to as "Lt. Goldsmith") was assigned to Internal Affairs as an investigator in 2014. (Tr. 25) He recalls being assigned to investigate an anonymous complaint in February or March of 2015. (Tr. 27). The anonymous letter given to him by Inspector Stajura regarding this particular investigation was entered into evidence as Sheriff's Exhibit 1. (Tr. 28) The individual named in Sheriff's Exhibit 1 were Sgt. Caridei and the allegation was that he and the Respondent, who worked with him, did not come to work on Christmas Day and they were told to use their covert cars for personal reasons and left work early every day. (Tr. 28, 29) After receiving the anonymous letter, he began by investigating who was working on that day. He called the timekeepers and asked for time sheets for December 25, 2014. (Tr. 29, 30) The timekeeper's time sheets for December 25, 2014 were entered as Sheriff's Exhibit No. 2. (Tr. 30) He spoke with Deputy Chief Ruel who oversaw the Fugitive Apprehension Unit and requested that he collect memorandums from the officers for their activities on that day which included all the members of the Unit, not just the Respondents. (Tr. 33) Lt. Goldsmith testified that there was no activity regarding Respondent's gas card, tollway transponder, computer usage, radio usage. (Tr. 47) Respondent submitted a memorandum detailing his activities for December 25, 2014 which was submitted to Chief Ruel. The memorandum was entered as Sheriff' Exhibit No. 5. (Tr. 43) Respondent stated that on that date he met with Investigator Milan Stojkovic and Michael Mendez in the Bridgeview area and worked on his case files and organized files for the following week from his vehicle. (Tr. 43) Respondent stated that he did not speak with his supervisor that day. (Tr. 79) Sheriff's Exhibit 15

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was marked for identification which is a summarization of the interview with Respondent. (Tr. 68)

Chief Donald Morrison (hereinafter after referred to as "Chief Morrison") testified that he has been retired from the department for two years at the time of the hearing. (Tr. 10) From 1977 until the time of his retirement, he was a Cook County Sheriff's Police Officer. (Tr. 11) At the end of his career he worked in the Fugitives Unit where he had responsibilities to try and bring back any of the people who had escaped from home electronic monitoring. (Tr. 11, 12) He supervised respondent. (Tr. 14-15) They all had the responsibility to investigate and retrieve fugitives or persons that had warrants out. (Tr. 16) He is not certain as to whether the officers needed to report a 10-8 when they went on duty and off duty. (Tr. 22) He testified that Christmas, Fourth of July and Thanksgiving were dangerous days to be inside a family home trying to apprehend someone. (Tr. 35) He states that officers were told not to make lock ups on Christmas Day, if possible. (R. 36) He testified that the reason for this policy was that family would be around and it would be a very highly emotional situation considering the holidays and alcohol consumption. (Tr. 37) The Respondent did not report directly to him but to Sgt. Caridei. (Tr. 40) He believed that the officers also carried paper files in their trunks upwards up to 300 files and that they would work on the paperwork when they were not actively searching for fugitives. (Tr. 52) He believes that the official policy of the Sheriff's Office is to work and attempt to apprehend fugitives on every day and it was only his unofficial policy regarding not working on Christmas Day in terms of going into people's homes. (Tr. 60, 61) It was his unwritten policy that an officer could do surveillance on his own. (Tr. 64) He would give lee way for officers who lived far away and let them remain on duty while they were driving home and

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not be officially quote "off duty" until they left Cook County. (Tr. 93, 94) It is his understanding that there was never a time when the officers did not have any work that they could be doing whether it be file review, updating or searching for criminals. (Tr. 107, 108) Chief Morrison testified that the North team, the entire time that he was with them, or as their boss, before he took over from Teddy Stajura, I didn't worry about them. They had so much activity, you know, so many arrests that they doubled and tripled the arrests of the South team. They basically were workaholics. (Tr. 17)

Inspector John Sullivan (hereinafter after referred to as "Inspector Sullivan") testified that he has been with the Cook County Sheriff's Office for 26 years. (Tr. 622) His duties are to conduct administrative investigations of alleged wrongdoing by Sheriff's employees. (Tr. 634) Upon being assigned to this investigation to looked at everything that was already gathered, all the evidence, all the interviews that were conducted, and determine if any further investigation was warranted. (Tr. 625) He relied on all of the Sheriff's exhibits including the memorandums by the Respondents, the vehicle information from the gas card, I-Pass, Mi-Fi [internet access] puck and computers. (R. 631-633) Inspector Sullivan testified that he did not interview Respondent's supervisors, Commander O'Neill nor Sgt. Caridei, regarding orders to Respondent not to make arrests on Christmas Day. (Tr. 687 thru 689) Inspector Sullivan testified that he did not know if the Respondent was to report to a Cook County facility each day for work because he did not interview Respondent's supervisors, Commander O'Neill or Commander Morrison. (Tr. 711, 755-756) Inspector Sullivan testified that he did not try to subpoena Respondent's cell phone tower records. (Tr. 744)

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Team. (Tr. 950, 951) At any given time in 2014, there were 44,000 warrants in Cook County so each officer probably was holding over 200 cases. (Tr. 953) Commander O'Neil testified that his policy was for officers not to hit multiple houses on Christmas morning for low level warrants because that would not be good for the Sheriff's department. He testified that by low level warrants he meant probation violations, violation of supervision, narcotics and traffic arrest warrants.

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds the Respondent's actions did not violate:

1. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: PER-03-01-A (Effective Date: March 1, 2003) PAYROLL AND TIMEKEEPING MANUAL;
2. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: ROC-00-01-A (Effective Date: April 3, 2001) RULES AND REGULATIONS;
3. SHERIFF'S ORDER 11.2.20.0 (Effective Date: January 25, 2013) RULES OF CONDUCT;
4. SHERIFF'S ORDER 11.2.20.1 (Effective Date: March 12, 2015) CONDUCT POLICY;
5. COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

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This is a proceeding arising from an anonymous letter that was received by the Central Warrants - Fugitive Apprehension Unit alleging that members of the Fugitive Apprehension Unit 1) did not report to work on Christmas Day; 2) were allowed to use their covert cars for personal use, and 3) left work early every day. Respondent, KEVIN BADON, is one of several police officers assigned to the Fugitive Apprehension - North Unit. An investigation was conducted by the Office of Professional Review and a formal complaint filed by the Sheriff on September 16, 2016. The Sheriff's complaint alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility on December 25, 2014. That Respondent did not meet with his Supervisor, Sergeant Mark Caridei on December 25, 2014. That Respondent had no I-Pass transponder, cell phone, computer or Mi-Fi puck usage on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 23, 2015, Respondent provided false statements to Investigator John Sullivan. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. A heavily contested and vigorously litigated 13 day trial was conducted and this decision is rendered by the Board.

A key defense by the Respondent was that the duties of a Fugitive Apprehension Officer are substantially different than those of a Correctional Officer, Deputy Sheriff or Sheriff's Police Officer. The position of Fugitive Apprehension Officer requires that the Respondent have much more discretion in the performance of those duties. This is not to say that the Respondent is free from accountability. In fact, Chief Donald Morrison testified that the Respondent's unit had so

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much activity, so many arrests that they doubled and tripled the arrests of the South team, going on to describe members of the Fugitive Apprehension North Unit as workaholics. Additionally, there was no testimony presented indicating that Respondent had a pattern of not reporting for work or leaving work early as alleged in the anonymous letter. Respondent's verbal and written statements reported that he worked on his files in the presence of Investigators Mendez and Stojkovic for the entire day on December 25, 2014. By all accounts this would seem consistent with chain of command instructions to "lay low" on Christmas Day. Respondent's immediate supervisor at that time, Sergeant Caridei, has since retired and did not appear at trial to testify. In light of the Respondent's discretion in performing his daily duties and the testimony presented of an unofficial order from Respondent's immediate chain of command to lay low on this specific holiday, the Sheriff's evidence that Respondent had no gas card charges, no I-Pass/ radio and/or computer usage for the day in question was relevant, but not persuasive, that no work was performed by the Respondent on December 25, 2014.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, KEVIN BADON, be reinstated to the Cook County Sheriff's Department effective September 16, 2016.

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MB1929
Correctional Officer
Kevin Badon
Star 692

James P. Nally, Chairman

Byron Brazier, Vice-Chairman

John Dalicandro, Secretary

Kim R. Widup, Board Member

Vincent T. Winters, Board Member

Juan L. Baltierres, Board Member

Patrick M. Brady, Board Member

Kimberly Pate Godden, Board Member

Date July 10, 2019

125085

Telephone: 312-603-0170
Fax: 312-603-9668

Sheriff.MeritBoard@cookcountyil.gov

COOK COUNTY
SHERIFF'S MERIT BOARD
69 West Washington - Suite 1100
Chicago, IL 60602

PROOF OF SERVICE OF MERIT BOARD ORDER

I Mary Anne Nash Sebby, certify a copy of this Final Merit Board Order was served upon the parties in this matter as follows:

Kevin D. Badon
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Chicago Ridge IL 60414
Via Certified Mail

Christopher Cooper
79 W. Monroe Suite 1213
Chicago IL 60603
Via Email: cooperlaw3234@gmail.com

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Legal & Labor Affairs Division
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Legal & Labor Affairs Division50 W. Washington
50 W. Washington Room 704
Chicago IL 60602 Chicago, IL 60602
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There are no Cook County Sheriff's Merit Board Rules requiring a motion for reconsideration before this order is a final administration decision reviewable pursuant to the Illinois Administrative Review Act.

FOR THE BOARD
July 10, 2019

125085

STATE OF ILLINOIS
COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County	)	
	)	
vs.	)	
	)	**Docket No. 1931**
Michael Mendez	)	
Employee # 385215	)	
Star # 681	)	

DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on December 10 2018; December 11, 2018; December 18, 2018; January 16, 2019; January 28, 2019; January 29, 2019; February 6, 2019; February 8, 2019; February 20, 2019; March 8, 2019; March 18, 2019; March 19, 2019; and March 21, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

MICHAEL MENDEZ, hereinafter "Respondent", was appointed a correctional officer on February 14, 1995. On July 8, 2002, Respondent was promoted to Sheriff's police officer. Respondent's position as a Sheriff's police officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered

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Docket No. 1931
Police Officer
MICHAEL MENDEZ
Star # 681

filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Comminssioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and *citing Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.").

The original Complaint in this matter was filed with the Merit Board's administrative staff on September 16, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed commencing the instant action, was properly filed, and will be accepted as the

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MICHAEL MENDEZ
Star # 681

controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on September 16, 2016 and an amended complaint on January 23, 2018. In the complaint, the Sheriff alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility, did not meet with his Supervisor, Sergeant Mark Caridei, that there was no I-Pass transponder or Mi-Fi puck usage by Respondent on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 9, 2015, Respondent provided false statements to Investigator John Sullivan. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. The Sheriff is requesting termination of employment.

On February 14, 1995, MICHAEL MENDEZ (hereinafter referred to as "Respondent") was appointed as a correctional officer with the Cook County Sheriff's Department. On July 8, 2002, Respondent was promoted to police officer. On January 8, 2012, Respondent was assigned to the Central Warrants Unit. On December 25, 2014, Respondent was assigned to work in the Central Warrants - Fugitive Apprehension Unit – North Team. (Tr. 950, 951).

On or about February 2015, the Office of Professional Review (hereinafter referred to as "OPR") received a complaint regarding an anonymous letter alleging that members of the fugitive apprehension unit did not come into work on Christmas Day (December 25, 2014), used their covert vehicle for personal use and left work early every day (Tr. 27 thru 29).

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MICHAEL MENDEZ
Star # 681

Lt. Michael Goldsmith (hereinafter referred to as "Lt. Goldsmith") was assigned to Internal Affairs as an investigator in 2014. (Tr. 25) He recalls being assigned to investigate an anonymous complaint in February or March of 2014. (Tr. 27). The anonymous letter that was given to him by Inspector Stajura regarding this particular investigation was entered into evidence as Sheriff's Exhibit 1. (Tr. 28) The individual named in Sheriff's Exhibit 1 were Sgt. Caridei and the allegation was that he and the Respondent who worked with him did not come to work on Christmas Day and they were told to use their covert cars for personal reasons and left work early every day. (Tr. 28, 29) After receiving the anonymous letter, he began by investigating who was working on that day. He called the timekeepers and asked for time sheets for December 25, 2014. (Tr. 29, 30) The timekeeper's time sheets for December 25, 2014 were entered as Sheriff's Exhibit No. 2. (Tr. 30) He spoke with Deputy Chief Ruel who oversaw the Fugitive Apprehension Unit and requested that he collect memorandums from the officers for their activities on that day which included all the members of the Unit, not just the Respondents. (Tr. 33) Lt. Goldsmith testified that there was no activity regarding Respondent's gas card, tollway transponder, computer usage, radio usage. (Tr. 41) A memorandum detailing his activities for December 25, 2014 was submitted to Chief Ruel was entered as Sheriff' Exhibit No. 6. (Tr. 44) Respondent stated that he met with Investigator Milan Stojkovic and Kevin Badon in the Bridgeview area and went to his vehicle and worked his case files and organized his files for the following week. (Tr. 44) Respondent stated that he did not speak with his supervisor that day. (Tr. 79) Sheriff's Exhibit 15 was marked for identification which is a summarization of the interview with Respondent. (Tr. 68)

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Chief Donald Morrison (hereinafter after referred to as "Chief Morrison") testified that on that he had been retired for two years at the time of the hearing. (Tr. 10) From 1977 until the time of his retirement, he was a Cook County Sheriff's Police Officer. (Tr. 11) At the end of his career he worked in the Fugitives Unit where he had responsibilities to try and bring back any of the people who had escaped from home electronic monitoring. (Tr. 11, 12) He supervised respondent. (Tr. 14-15) They all had the responsibility to investigate and retrieve fugitives or persons that had warrants out. (Tr. 16) He is not certain as to whether the officers needed to report a 10-8 when they went on duty and off duty. (Tr. 22) He testified that Christmas, Fourth of July and Thanksgiving were dangerous days to be inside a family home trying to apprehend someone. (Tr. 35) He states that officers were told not to make lock ups on Christmas Day if possible. (R. 36) The reason for this policy was that family would be around, it would be a very highly emotional situation considering the holidays, alcohol consumption. (Tr. 37) The Respondent did not report directly to him but to Sgt. Caridei. (Tr. 40) He believed that the officers also carried paper files in their trunks upwards up to 300 files and that they would work on the paperwork when they were not actively searching for fugitives. (Tr. 52) He believes that the official policy of the Sheriff's Office is to work and attempt to apprehend fugitives on every day and it was only his unofficial policy regarding not working on Christmas Day in terms of going into people's homes. (Tr. 60, 61) It was his unwritten policy that an officer could do surveillance on his own. (Tr. 64) He would give lee way for officers who lived far away and let them remain on duty while they were driving home and not be officially quote "off duty" until they left Cook County. (Tr. 93, 94) It is his understanding that there was never a time when the officers did not have any work that they could be doing whether it be file review, updating or

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searching for criminals. (Tr. 107, 108) Chief Morrison testified that the North team, the entire time that I was with them, or as their boss anyway, before I took over from Teddy Stajura, I didn't worry about them. They had so much activity, you know, so many arrests that they doubled and tripled the arrests of the South team. They basically were workaholics. (Tr. 17)

Inspector John Sullivan (hereinafter after referred to as "Inspector Sullivan") testified that he has been with the Cook County Sheriff's Office for 26 years. (Tr. 622) His duties are to conduct administrative investigations of alleged wrongdoing by Sheriff's employees. (Tr. 634) Upon being assigned to this investigation to looked at everything that was already gathered, all the evidence, all the interviews that were conducted, and determine if any further investigation was warranted. (Tr. 625) He relied on all of the Sheriff's exhibits including the memorandums by the Respondents, the vehicle information from the gas card, I-Pass, Mi-Fi [internet access] puck and computers. (R. 631-633) Inspector Sullivan testified that he did not interview Respondent's supervisors, Commander O'Neill nor Sgt. Caridei, regarding orders to Respondent not to make arrests on Christmas Day. (Tr. 687 thru 689) Inspector Sullivan testified that he did not know if the Respondent was to report to a Cook County facility each day for work because he did not interview Respondent's supervisors, Commander O'Neill or Commander Morrison. (Tr. 711, 755-756) (Tr. 747) Inspector Sullivan testified that he did not try to subpoena Respondent's cell phone tower records. (Tr. 744)

Keith Morrison (hereinafter after referred to as "Mr. Morrison") testified that he has been with the Cook County Sheriff's Office since 1995 where he spent 7 years in corrections, 3 years in patrol, a year at the Academy and the remainder in the Sheriff's IT Department since approximately 2005. (Tr. 828) His responsibilities have included everything from delivering

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computers to data base work up until his current role which is Director of all Information Security. (Tr. 828) One of the contract vendors is Verizon that does both telephones and something called the Mi-Fi puck which is a small device the size of a hockey puck which allows for connectivity to other devices and the internet for computers. (R. 830) The Mi-Fi puck has a specialized identification number that is given to each employee that utilizes them. (Tr. 831, 832) He testified that there was no data usage by Respondent for December 25, 2014. (Tr. 833) When the Mi-Fi pucks are set up it is not supposed to be used for personal devices, only Sheriff's devices. (Tr. 834) He was asked to check on email activity as well as Mi-Fi puck activity and he learned that there was no ongoing email from any of these accounts. (Tr. 837)

Robert O'Neil (hereinafter after referred to as "Commander O'Neil") testified that he has been with the Cook County Sheriff's Office since September 2012. (Tr. 947) He has been a police officer for 20 years as a Patrolman, Tact Officer, Special Operations Officer, Sergeant, Gun Team, Patrol Sergeant and worked in the Police Academy. (Tr. 947) He has been on assignments and teams that have looked for people with warrants out on them. (Tr. 948) With the Sheriff's Office, he worked in the Central Warrant Division which had three sections including Child Support, Electronic Monitoring fugitives and Sheriff's Police fugitives. (Tr. 948) He was a supervisor over the fugitive unit in December 2014 and still holds that position today. (Tr. 949) In December 2014, all of the Respondents were members of the Fugitive Unit on the North Team. (Tr. 950, 951) At any given time in 2014, there were 44,000 warrants in Cook County so each officer probably was holding over 200 cases. (Tr. 953) Commander O'Neil testified that his policy was for officers to hit multiple houses on Christmas morning for low level warrants because that would not be good for the Sheriff's department. He testified that by of low level

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MICHAEL MENDEZ
Star # 681

warrants he meant probation violations, violation of supervision, narcotics and traffic arrest warrants.

Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds the Respondent's actions did not violate:

1. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: PER-03-01-A (Effective Date: March 1, 2003) PAYROLL AND TIMEKEEPING MANUAL;
2. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: ROC-00-01-A (Effective Date: April 3, 2001) RULES AND REGULATIONS;
3. SHERIFF'S ORDER 11.2.20.0 (Effective Date: January 25, 2013) RULES OF CONDUCT;
4. SHERIFF'S ORDER 11.2.20.1 (Effective Date: March 12, 2015) CONDUCT POLICY;
5. COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

This is a proceeding arising from an anonymous letter that was received by the Central Warrants - Fugitive Apprehension Unit alleging that members of the Fugitive Apprehension Unit 1) did not report to work on Christmas Day; 2) were allowed to use their covert cars for personal use, and 3) left work early every day. Respondent, MICHAEL MENDEZ, is one of several police officers assigned to the Fugitive Apprehension - North Unit. An investigation was

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Star # 681

conducted by the Office of Professional Review and a formal complaint filed by the Sheriff on September 16, 2016. The Sheriff's complaint alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility on December 25, 2014. That Respondent did not meet with his Supervisor, Sergeant Mark Caridei on December 25, 2014. That Respondent had no I-Pass transponder, cell phone, computer or Mi-Fi puck usage on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 23, 2015, Respondent provided false statements to Investigator John Sullivan. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. A heavily contested and vigorously litigated 13 day trial was conducted and this decision is rendered by the Board.

A key defense by the Respondent was that the duties of a Fugitive Apprehension Officer are substantially different than those of a Correctional Officer, Deputy Sheriff or Sheriff's Police Officer. The position of Fugitive Apprehension Officer requires that the Respondent have much more discretion in the performance of those duties. This is not to say that the Respondent is free from accountability. In fact, Chief Donald Morrison testified that the Respondent's unit had so much activity, so many arrests that they doubled and tripled the arrests of the South team, going on to describe members of the Fugitive Apprehension North Unit as workaholics. Additionally, there was no testimony presented indicating that Respondent had a pattern of not reporting for work or leaving work early as alleged in the anonymous letter. Respondent's verbal and written statements reported that he worked on his files in the presence of Investigators Badon and

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Star # 681

Stojkovic for the entire day on December 25, 2014. Respondent's immediate supervisor at that time, Sergeant Caridei, has since retired and did not appear at trial to testify. In light of the Respondent's discretion in performing his daily duties and the testimony presented of an unofficial order from Respondent's immediate chain of command to lay low on this specific holiday, the Sheriff's evidence that Respondent had no gas card charges, no I-Pass/ radio and/or computer usage for the day in question was relevant, but not persuasive, that no work was performed by the Respondent on December 25, 2014.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, MICHAEL MENDEZ, be reinstated to the Cook County Sheriff's Department effective September 16, 2016.

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MB1931
Correctional Officer
Michael Mendez
Star 681

James P. Nally, Chairman

Byron Brazier, Vice-Chairman

John Calicandro, Secretary

Kim R. Widup, Board Member

Vincent T. Winters, Board Member

Juan L. Baltierres, Board Member

Patrick M. Brady, Board Member

Kimberly Pate Godden, Board Member

Date July 10, 2019

125085

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Sheriff.MeritBoard@cookcountyil.gov

COOK COUNTY
SHERIFF'S MERIT BOARD
69 West Washington - Suite 1100
Chicago, IL 60602

PROOF OF SERVICE OF MERIT BOARD ORDER

I Mary Anne Nash Sebby, certify a copy of this Final Merit Board Order was served upon the parties in this matter as follows:

Michael Mendez
5617 S. Melvina
Chicago IL 60638
Via Certified Mail

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Chicago IL 60603
Via Email: cooperlaw3234@gmail.com

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Miriam Santiago
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Chicago IL 60602 Chicago, IL 60602
Via Email: Thomas.Nelligan@cookcountyil.il.gov.

There are no Cook County Sheriff's Merit Board Rules requiring a motion for reconsideration before this order is a final administration decision reviewable pursuant to the Illinois Administrative Review Act.

FOR THE BOARD
July 10, 2019

125085

STATE OF ILLINOIS
COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County	)	
	)	
vs.	)	
	)	**Docket No. 1932**
Milan Stojkovic	)	
Employee # 381149	)	
Star # 495	)	

DECISION

This matter coming on to be heard pursuant to notice before Juan Leonardo Baltierres, Board Member, on December 10 2018; December 11, 2018; December 18, 2018; January 16, 2019; January 28, 2019; January 29, 2019; February 6, 2019; February 8, 2019; February 20, 2019; March 8, 2019; March 18, 2019; March 19, 2019; and March 21, 2019, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

MILAN STOJKOVIC, hereinafter "Respondent", was appointed a correctional officer on September 16, 1996. On January 17, 2000, Respondent was promoted to Sheriff's police officer. Respondent's position as a Sheriff's police officer involves duties and responsibilities to the public; each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; the Board has jurisdiction of the subject matter of the parties in accordance with 55 ILCS 5/3-7001, *et seq*; and the Respondent was served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint.

As a threshold matter, a proceeding before the Merit Board is initiated at the time the Sheriff files a written charge with the Merit Board. 55 ILCS 5/3-7012. A document is considered

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Docket No. 1932
Police Officer
MILAN STOJKOVIC
Star # 495

filed, in this case with the Merit Board, "when it is deposited with and passes into the exclusive control and custody of the [Merit Board administrative staff], who understandingly receives the same in order that it may become a part of the permanent records of his office." *See Dooley v. James A. Dooley Associates Employees Retirement Plan*, 100 Ill.App.3d 389, 395 (1981)(quoting *Gietl v. Comminssioners of Drainage District No. One*, 384 Ill. 499, 501-502 (1943) and *citing Hamilton v. Beardslee*, 51 Ill. 478 (1869)); accord *People ex rel. Pignatelli v. Ward*, 404 Ill. 240, 245 (1949); *in re Annex Certain Terr. To the Village of Lemont*, 2017 IL App (1st) 170941, ¶ 18; *Illinois State Toll Highway Authority v. Marathon Oil Co.*, Ill. App. 3d 836 (1990) ("A 'filing' implies delivery of a document to the appropriate party with the intent of having such document kept on file by that party in the appropriate place." (quoting *Sherman v. Board of Fire & Police Commissioners*, 111 Ill. App. 3d 1001, 1007 (1982))); *Hawkyard v. Suttle*, 188 Ill. App. 168, 171 (1914 ("A paper is considered filed when it is delivered to the clerk for that purpose.").

The original Complaint in this matter was filed with the Merit Board's administrative staff on September 16, 2016. Regardless of whether or not Merit Board Members were properly appointed during a given term, the Merit Board, as a quasi-judicial body and statutorily created legal entity, maintained at all times a clerical staff not unlike the Clerk of the Circuit Court ("Administrative Staff"). These Administrative Staff members receive and date stamp complaints, open a case file, assign a case number, and perform all of the functions typically handled by the circuit clerk's office. Just as a timely filed complaint would be accepted by the circuit clerk even if there were no properly appointed judges sitting on that particular day, so too was the instant Complaint with the Administrative Staff of the Merit Board. Accordingly, the Complaint filed commencing the instant action, was properly filed, and will be accepted as the

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MILAN STOJKOVIC
Star # 495

controlling document for calculating time in this case.

Findings of Fact

The Sheriff filed a complaint on September 16, 2016 and an amended complaint on January 23, 2018. In the complaint, the Sheriff alleges that the Respondent failed to report to work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility, did not meet with his Supervisor, Sergeant Mark Caridei, that there was no I-Pass transponder or Mi-Fi puck usage by Respondent on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 9, 2015, Respondent provided false statements to Investigator John Sullivan. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. The Sheriff is requesting termination of employment.

On September 16, 1996, MILAN STOJKOVIC (hereinafter referred to as "Respondent") was appointed as a correctional officer with the Cook County Sheriff's Department. On January 17, 2000, Respondent was promoted to police officer. On November 11, 2012, Respondent was assigned to the Central Warrants Unit. On December 25, 2014, Respondent was assigned to work in the Central Warrants - Fugitive Apprehension Unit – North Team. (Tr. 950, 951).

On or about February 2015, the Office of Professional Review (hereinafter referred to as "OPR") received a complaint regarding an anonymous letter alleging that members of the fugitive apprehension unit did not come into work on Christmas Day (December 25, 2014), used their covert vehicle for personal use and left work early every day (Tr. 27 thru 29).

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MILAN STOJKOVIC
Star # 495

Lt. Michael Goldsmith (hereinafter referred to as "Lt. Goldsmith") was assigned to Internal Affairs as an investigator in 2014. (Tr. 25) He recalls being assigned to investigate an anonymous complaint in February or March of 2014. (Tr. 27). The anonymous letter that was given to him by Inspector Stajura regarding this particular investigation was entered into evidence as Sheriff's Exhibit 1. (Tr. 28) The individual named in Sheriff's Exhibit 1 were Sgt. Caridei and the allegation was that he and the Respondent who worked with him did not come to work on Christmas Day and they were told to use their covert cars for personal reasons and left work early every day. (Tr. 28, 29) After receiving the anonymous letter, he began by investigating who was working on that day. He called the timekeepers and asked for time sheets for December 25, 2014. (Tr. 29, 30) The timekeeper's time sheets for December 25, 2014 were entered as Sheriff's Exhibit No. 2. (Tr. 30) He spoke with Deputy Chief Ruel who oversaw the Fugitive Apprehension Unit and requested that he collect memorandums from the officers for their activities on that day which included all the members of the Unit, not just the Respondents. (Tr. 33) Lt. Goldsmith testified that there was no activity regarding Respondent's gas card, tollway transponder, computer usage, radio usage. (Tr. 41) A memorandum detailing his activities for December 25, 2014 was submitted to Chief Ruel was entered as Sheriff' Exhibit No. 5. (Tr. 43) Respondent stated in his memorandum that he worked on his files in the Bridgeview area. (Tr. 109) Respondent stated he was with Investigator Badon and Mendez from his unit on December 25, 2014. (Tr. 109) Respondent stated that he did not use his computer, radio, buy gas or go to any Sheriff's facility that day. (Tr. 95)

Chief Donald Morrison (hereinafter after referred to as "Chief Morrison") testified that on that he had been retired for two years at the time of the hearing. (Tr. 10) From 1977 until the

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MILAN STOJKOVIC
Star # 495

time of his retirement, he was a Cook County Sheriff's Police Officer. (Tr. 11) At the end of his career he worked in the Fugitives Unit where he had responsibilities to try and bring back any of the people who had escaped from home electronic monitoring. (Tr. 11, 12) He supervised respondent. (Tr. 14-15) They all had the responsibility to investigate and retrieve fugitives or persons that had warrants out. (Tr. 16) He is not certain as to whether the officers needed to report a 10-8 when they went on duty and off duty. (Tr. 22) He testified that Christmas, Fourth of July and Thanksgiving were dangerous days to be inside a family home trying to apprehend someone. (Tr. 35) He states that officers were told not to make lock ups on Christmas Day if possible. (R. 36) The reason for this policy was that family would be around, it would be a very highly emotional situation considering the holidays, alcohol consumption. (Tr. 37) The Respondent did not report directly to him but to Sgt. Caridei. (Tr. 40) He believed that the officers also carried paper files in their trunks upwards up to 300 files and that they would work on the paperwork when they were not actively searching for fugitives. (Tr. 52) He believes that the official policy of the Sheriff's Office is to work and attempt to apprehend fugitives on every day and it was only his unofficial policy regarding not working on Christmas Day in terms of going into people's homes. (Tr. 60, 61) It was his unwritten policy that an officer could do surveillance on his own. (Tr. 64) He would give lee way for officers who lived far away and let them remain on duty while they were driving home and not be officially quote "off duty" until they left Cook County. (Tr. 93, 94) It is his understanding that there was never a time when the officers did not have any work that they could be doing whether it be file review, updating or searching for criminals. (Tr. 107, 108) Chief Morrison testified that the North team, the entire time that I was with them, or as their boss anyway, before I took over from Teddy Stajura, I

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Police Officer
MILAN STOJKOVIC
Star # 495

didn't worry about them. They had so much activity, you know, so many arrests that they doubled and tripled the arrests of the South team. They basically were workaholics. (Tr. 17)

Inspector John Sullivan (hereinafter after referred to as "Inspector Sullivan") testified that he has been with the Cook County Sheriff's Office for 26 years. (Tr. 622) His duties are to conduct administrative investigations of alleged wrongdoing by Sheriff's employees. (Tr. 634) Upon being assigned to this investigation to looked at everything that was already gathered, all the evidence, all the interviews that were conducted, and determine if any further investigation was warranted. (Tr. 625) He relied on all of the Sheriff's exhibits including the memorandums by the Respondents, the vehicle information from the gas card, I-Pass, Mi-Fi [internet access] puck and computers. (R. 631-633) Inspector Sullivan testified that he did not interview Respondent's supervisors, Commander O'Neill nor Sgt. Caridei, regarding orders to Respondent not to make arrests on Christmas Day. (Tr. 687 thru 689) Inspector Sullivan testified that he did not know if the Respondent was to report to a Cook County facility each day for work because he did not interview Respondent's supervisors, Commander O'Neill or Commander Morrison. (Tr. 711, 755-756) Inspector Sullivan testified that he did not try to subpoena Respondent's cell phone tower records. (Tr. 744)

Keith Morrison (hereinafter after referred to as "Mr. Morrison") testified that he has been with the Cook County Sheriff's Office since 1995 where he spent 7 years in corrections, 3 years in patrol, a year at the Academy and the remainder in the Sheriff's IT Department since approximately 2005. (Tr. 828) His responsibilities have included everything from delivering computers to data base work up until his current role which is Director of all Information Security. (Tr. 828) One of the contract vendors is Verizon that does both telephones and

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something called the Mifi puck which is a small device the size of a hockey puck which allows for connectivity to other devices and the internet for computers. (R. 830) The Mi-Fi puck has a specialized identification number that is given to each employee that utilizes them. (Tr. 831, 832) He testified that there was no data usage by Respondent for December 25, 2014. (Tr. 833) When the Mi-Fi pucks are set up it is not supposed to be used for personal devices, only Sheriff's devices. (Tr. 834) He was asked to check on email activity as well as Mi-Fi puck activity and he learned that there was no ongoing email from any of these accounts. (Tr. 837)

Robert O'Neil (hereinafter after referred to as "Commander O'Neil") testified that he has been with the Cook County Sheriff's Office since September 2012. (Tr. 947) He has been a police officer for 20 years as a Patrolman, Tact Officer, Special Operations Officer, Sergeant, Gun Team, Patrol Sergeant and worked in the Police Academy. (Tr. 947) He has been on assignments and teams that have looked for people with warrants out on them. (Tr. 948) With the Sheriff's Office, he worked in the Central Warrant Division which had three sections including Child Support, Electronic Monitoring fugitives and Sheriff's Police fugitives. (Tr. 948) He was a supervisor over the fugitive unit in December 2014 and still holds that position today. (Tr. 949) In December 2014, all of the Respondents were members of the Fugitive Unit on the North Team. (Tr. 950, 951) At any given time in 2014, there were 44,000 warrants in Cook County so each officer probably was holding over 200 cases. (Tr. 953) Commander O'Neil testified that his policy was for officers to hit multiple houses on Christmas morning for low level warrants because that would not be good for the Sheriff's department. He testified that by of low level warrants he meant probation violations, violation of supervision, narcotics and traffic arrest warrants.

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MILAN STOJKOVIC
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Conclusion

Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Board finds the Respondent's actions did not violate:

1. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: PER-03-01-A (Effective Date: March 1, 2003) PAYROLL AND TIMEKEEPING MANUAL;
2. COOK COUNTY SHERIFF"S POLICE DEPARTMENT GENERAL ORDER, G.O. NUMBER: ROC-00-01-A (Effective Date: April 3, 2001) RULES AND REGULATIONS;
3. SHERIFF'S ORDER 11.2.20.0 (Effective Date: January 25, 2013) RULES OF CONDUCT;
4. SHERIFF'S ORDER 11.2.20.1 (Effective Date: March 12, 2015) CONDUCT POLICY;
5. COOK COUNTY SHERIFF'S DEPARTMENT MERIT BOARD RULES AND REGULATIONS – ARTICLE X.

This is a proceeding arising from an anonymous letter that was received by the Central Warrants - Fugitive Apprehension Unit alleging that members of the Fugitive Apprehension Unit 1) did not report to work on Christmas Day; 2) were allowed to use their covert cars for personal use, and 3) left work early every day. Respondent, MILAN STOJKOVIC, is one of several police officers assigned to the Fugitive Apprehension - North Unit. An investigation was conducted by the Office of Professional Review and a formal complaint filed by the Sheriff on September 16, 2016. The Sheriff's complaint alleges that the Respondent failed to report to

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work as required and did not work his tour of duty on December 25, 2014. That Respondent did not enter any Cook County Facility on December 25, 2014. That Respondent did not meet with his Supervisor, Sergeant Mark Caridei on December 25, 2014. That Respondent had no I-Pass transponder, cell phone, computer or Mi-Fi puck usage on December 25, 2014. That Respondent falsified timekeeping/ attendance on December 25, 2014. That on March 11, 2015, Respondent submitted a memorandum detailing his activities for December 25, 2014 which contained false information. That on July 23, 2015, Respondent provided false statements to Investigator John Sullivan. That Respondent's conduct does not reflect favorably on the Cook County Sheriff's Office. A heavily contested and vigorously litigated 13 day trial was conducted and this decision is rendered by the Board.

A key defense by the Respondent was that the duties of a Fugitive Apprehension Officer are substantially different than those of a Correctional Officer, Deputy Sheriff or Sheriff's Police Officer. The position of Fugitive Apprehension Officer requires that the Respondent have much more discretion in the performance of those duties. This is not to say that the Respondent is free from accountability. In fact, Chief Donald Morrison testified that the Respondent's unit had so much activity, so many arrests that they doubled and tripled the arrests of the South team, going on to describe members of the Fugitive Apprehension North Unit as workaholics. Additionally, there was no testimony presented indicating that Respondent had a pattern of not reporting for work or leaving work early as alleged in the anonymous letter. Respondent's verbal and written statements reported that he worked on his files in the presence of Investigators Mendez and Badon for the entire day on December 25, 2014. Respondent's immediate supervisor at that time, Sergeant Caridei, has since retired and did not appear at trial to testify. In light of the

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Respondent's discretion in performing his daily duties and the testimony presented of an unofficial order from Respondent's immediate chain of command to lay low on this specific holiday, the Sheriff's evidence that Respondent had no gas card charges, no I-Pass/ radio and/or computer usage for the day in question was relevant, but not persuasive, that no work was performed by the Respondent on December 25, 2014.

Order

Wherefore, based on the foregoing, it is hereby ordered that Respondent, MILAN STOJKOVIC, be reinstated to the Cook County Sheriff's Department effective September 16, 2016.

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MB1932
Correctional Officer
Milan Stojkovic
Star 495

James P. Nally, Chairman

Byron Brazier, Vice-Chairman

John Palicandro, Secretary

Kim R. Widup, Board Member

Vincent T. Winters, Board Member

Juan L. Saltierres, Board Member

Patrick M. Brady, Board Member

Kimberly Pate Godden, Board Member

Date July 10, 2019

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Telephone: 312-603-0170
Fax: 312-603-9665

Sheriff.MeritBoard@cookcountyil.gov

COOK COUNTY
SHERIFF'S MERIT BOARD
69 West Washington - Suite 1100
Chicago, IL 60602

PROOF OF SERVICE OF MERIT BOARD ORDER

I Mary Anne Nash Sebby, certify a copy of this Final Merit Board Order was served upon the parties in this matter as follows:

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Via Certified Mail

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There are no Cook County Sheriff's Merit Board Rules requiring a motion for reconsideration before this order is a final administration decision reviewable pursuant to the Illinois Administrative Review Act.

FOR THE BOARD

July 10, 2019

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corrected copy

Lwyrs

2019 IL App (1st) 181646

THIRD DIVISION
June 19, 2019

No. 1-18-1646

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, FRANK DONIS, and LASHON SHAFFER, on Behalf of Themselves and Others Similarly Situated, Plaintiffs-Appellants, v. THOMAS J. DART, Individually and in His Official Capacity as Cook County Sheriff; COOK COUNTY, ILLINOIS; THE COOK COUNTY SHERIFF'S MERIT BOARD; and TONI PRECKWINCKLE, Individually and in Her Official Capacity as President of the Cook County Board of Commissioners, Defendants-Appellees	Appeal from the Circuit Court of Cook County. No. 17 CH 15546 Honorable Sophia H. Hall, Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court, with opinion.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs here are employees of the Cook County Sheriff, whom the Sheriff has charged with disciplinary infractions. From the outset of their administrative cases before the Cook County Sheriff's Merit Board (Board), almost all of which remain pending, plaintiffs have challenged the authority of the Board to hear their cases, based on claims that the Board is

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illegally constituted. They also filed a separate lawsuit—the one before us—likewise challenging the Board's authority to adjudicate their cases.

¶2 The trial court dismissed the complaint for lack of subject-matter jurisdiction, reasoning that plaintiffs were required to first exhaust their administrative remedies before proceeding with this claim.

¶3 In addition to urging us to affirm on this basis, the Sheriff principally argues that the complaint's challenge to the Board's authority is barred by the "*de facto* officer" doctrine, which this court has employed to reject several similar challenges by Sheriff's employees to the Board's authority in the last two years.

¶4 We hold that plaintiffs may proceed with nearly all of their claims in this lawsuit, notwithstanding their failure to exhaust administrative remedies. And we find the "*de facto* officer" doctrine inapplicable to this matter. We affirm in part as modified, reverse in part, and remand with directions.

¶5 BACKGROUND

¶6 The sequence of events is critical to our analysis. Some of the facts are subject to judicial notice. See *Thurman v. Department of Public Aid*, 25 Ill. App. 3d 367, 370 (1974). Others come from allegations in the complaint, which we accept as true, as the complaint was dismissed at the pleading stage. See *Callaghan v. Village of Clarendon Hills*, 401 Ill. App. 3d 287, 290 (2010).

¶7 In September 2016, the Sheriff filed individual complaints against four plaintiffs in this case—Matthew Goral, Kevin Badon, Michael Mendez, and Milan Stojkovic—seeking to terminate each employee.

¶8 Five days after Goral, Badon, Mendez, and Stojkovic were charged, on September 23, 2016, we issued our first decision in *Taylor v. Dart*, 2016 IL App (1st) 143684, *vacated in part*,

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No. 121507 (Ill. Jan. 25, 2017) (supervisory order). Taylor, the Sheriff's employee who was terminated by the Board in a final administrative decision, argued in court that the Board's actions were void because the Board's composition violated state law. He argued that one of the Board members, Mr. Rosales, had been appointed on an interim basis, but state law did not provide for interim appointments. *Id.* ¶¶ 7-8.

¶ 9 We agreed. We held that the interim appointment of Rosales violated state law. *Id.* ¶ 36. And we held that the illegal composition fatally compromised the Board's authority to act, rendering its final decision against Taylor void. *Id.* ¶ 47.

¶ 10 The Sheriff appealed. On January 25, 2017, the supreme court denied review but, in a supervisory order, directed this court to vacate our judgment and decide an issue we had declined to consider regarding Cook County's home-rule authority. *Taylor v. Dart*, No. 121507 (Ill. Jan. 25, 2017) (supervisory order).

¶ 11 On February 21, 2017, the Sheriff suspended plaintiff David Evans III. The next day, the Sheriff filed a complaint against Evans with the Board, seeking his termination.

¶ 12 Our second decision in *Taylor v. Dart*, 2017 IL App (1st) 143684-B, was issued on May 12, 2017. Our holding was the same: the interim appointment of Rosales violated state law, and the Board's final decision terminating Taylor was void, because the Board lacked statutory authority to issue the decision. *Id.* ¶¶ 37, 46.

¶ 13 On July 20, 2017, the Sheriff suspended without pay the last of our plaintiffs, Lashon Shaffer, and filed a complaint with the Board seeking Shaffer's termination.

¶ 14 During the preliminary stages of their administrative proceedings before the Board, plaintiffs raised arguments challenging the Board's statutory authority to hear their cases, based in part but not entirely on *Taylor*. The Board thus far has declined to consider those arguments.

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¶ 15 More importantly, in November 2017, plaintiffs initiated this lawsuit by filing a verified complaint for declaratory, injunctive, and monetary relief against the Sheriff. At least in part, the complaint challenged the legal composition of the Board, and thus the Board's authority to enter final decisions against them.

¶ 16 The General Assembly, in response to our decision in *Taylor*, amended the state law governing Board appointments. See Pub. Act 100-562, § 5 (eff. Dec. 8, 2017) (amending 55 ILCS 5/3-7002). The amendment worked three changes: (1) it permitted the Sheriff to make interim appointments to the Board, (2) it abolished all existing terms of each member of the Board, and (3) it created a new schedule for staggering terms. *Id.*

¶ 17 On December 13, 2017, the Sheriff appointed a new Board (many of whom had been on the previous Board as well).

¶ 18 On January 23, 2018, the Sheriff filed, and the new Board received, "amended" complaints against each of the plaintiffs.

¶ 19 On February 26, 2018, plaintiffs filed a second amended verified complaint against the Sheriff, the one before this court now, to which we will refer simply as the "complaint." The complaint, among other things, challenged the legal composition of the Board—both the previous Board before which their charges were originally brought and the new Board, which was hearing the "amended" charges against them.

¶ 20 The complaint's allegations involving the previous Board were that (a) some members were illegal interim appointees, essentially a *Taylor* objection; (b) the Board had only five members, not the required seven; (c) some of the members' terms were not staggered as required by state law; and (d) the Board's chairperson and secretary held their positions longer than permitted under state law.

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¶ 21 The complaint's allegations against the new Board were (a) the Board's previous lack of authority could not be "cured" by filing "amended" charges with a new Board; (b) the Board's political composition violates state law; (c) the Board's chairperson and secretary continue to hold their positions longer than permitted under state law; (d) the Board created "fatal due process problems" by now requiring plaintiffs to pay the costs of their own hearing transcripts; and (e) the Board is biased, in "lockstep" with the Sheriff's wishes.

¶ 22 On the Sheriff's motion, the circuit court dismissed the complaint for lack of subject-matter jurisdiction. The court ruled that plaintiffs were required to exhaust their administrative remedies before raising these claims outside the context of administrative review.

¶ 23 Since that ruling and while this appeal was pending, the Board decided Evans's case. The Board found in favor of Evans and ordered him reinstated effective February 22, 2017. The Sheriff has appealed that decision, but that decision is not before us.

¶ 24 ANALYSIS

¶ 25 The trial court dismissed the complaint for lack of subject-matter jurisdiction pursuant to section 2-619(a)(1) of the Code of Civil Procedure. See 735 ILCS 5/2-619(a)(1) (West 2016). A section 2-619 motion admits the legal sufficiency of the complaint; we accept as true the complaint's allegations and interpret them in the light most favorable to plaintiffs. *American Family Mutual Insurance Co. v. Krop*, 2018 IL 122556, ¶ 13. Our review is *de novo*. *Krop*, 2018 IL 122556, ¶ 13.

¶ 26 The basis for the trial court's ruling was that each plaintiff had pending an administrative hearing that had not been completed, and that plaintiffs were required to exhaust their administrative remedies before they could challenge the agency's statutory authority before a court. The Sheriff defends that ruling but adds other bases for affirmance as well, as we may

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affirm on any basis in the record. *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 14. We will begin with trial court's articulated basis, lack of subject-matter jurisdiction based on plaintiffs' failure to exhaust administrative remedies, because the question of the court's jurisdiction should be resolved as a threshold question. See *People v. Shinaul*, 2017 IL 120162, ¶ 7.

¶ 27 I

¶ 28 The court's subject-matter jurisdiction refers to its power to hear and resolve cases. *In re Luis R.*, 239 Ill. 2d 295, 300 (2010). Generally, the constitution gives the court original subject-matter jurisdiction over all "justiciable matters." Ill. Const. 1970, art. VI, § 9. One exception, however, is the review of administrative actions, which is governed by statute. *Id.*; see *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002).

¶ 29 The Administrative Review Law governs judicial review of most final administrative decisions, including final decisions of the Board here. See 735 ILCS 5/3-101 *et seq.* (West 2016). More to the point, the Administrative Review Law is "the sole and exclusive method to obtain judicial review of a final administrative decision" by the Board. *Stykel v. City of Freeport*, 318 Ill. App. 3d 839, 843 (2001).

¶ 30 Thus, generally speaking, a party aggrieved by agency action cannot involve the courts until the administrative process has run its course—that is, until the plaintiff has exhausted all administrative remedies. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308 (1989). But the exhaustion requirement is subject to six exceptions. *Id.* at 309. Two are relevant here. First, a party need not exhaust when "the agency's jurisdiction is attacked because it is not authorized by statute." *Id.* Second, exhaustion is excused when "the agency cannot provide an adequate remedy or where it is patently futile to seek relief before the agency." *Id.*

¶ 31 A

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¶ 32 We first consider whether the exhaustion exception for challenges to an agency's authority applies to this case. In the context of administrative agencies, the term "jurisdiction" refers to an agency's statutory authority to act. *Van Dyke v. White*, 2019 IL 121452, ¶ 43 n.4; *Business & Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 243 (1989); *Mercury Sightseeing Boats, Inc. v. County of Cook*, 2019 IL App (1st) 180439, ¶ 55 ("When we speak of an administrative agency's 'jurisdiction,' we mean its authority to act."). Agencies have no inherent or common-law authority; their power is limited to that given them by the legislative body that created them. *Mercury*, 2019 IL App (1st) 180439, ¶ 55. So if an agency acts beyond its statutory authority—if it acts without "jurisdiction"—its actions are invalid and void.

¶ 33 At oral argument, the Sheriff's counsel suggested that agency jurisdiction is merely a question of whether the enabling statute granted the agency power to regulate in a particular field. But that only tells half the story. True enough, as counsel argues, agency jurisdiction often involves a question of whether and to what extent an agency is substantively empowered to act. See, *e.g.*, *Crittenden v. Cook County Comm'n on Human Rights*, 2013 IL 114876, ¶ 34 (rejecting agency's claim that it possessed statutory authority to award punitive damages); *Abatron, Inc. v. Department of Labor*, 162 Ill. App. 3d 697, 701 (1987) (holding that Department of Labor was not authorized to initiate enforcement proceedings under authorizing statute); *City of Chicago v. Fair Employment Practices Comm'n*, 65 Ill. 2d 108, 115 (1976) ("We hold the Commission was without power to award attorney fees and that its order doing so was void and subject to the collateral attack made upon it in the circuit court.").

¶ 34 But there's also a procedural aspect to agency authority. Sometimes, an agency's enabling statute creates procedural steps that an agency—or the parties wishing to appear before

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the agency—must follow. The failure to follow those steps deprives the agency of authority—*i.e.*, jurisdiction—to hear the case. *Mercury*, 2019 IL App (1st) 180439, ¶¶ 57-61; *Austin Gardens, LLC v. City of Chicago Department of Administrative Hearings*, 2018 IL App (1st) 163120, ¶ 23; *Modrytzkji v. City of Chicago*, 2015 IL App (1st) 141874, ¶ 14.

¶ 35 Indeed, in *Taylor*, 2017 IL App (1st) 143684-B, ¶¶ 37, 46, we found the Sheriff's interim appointment of Rosales procedurally impermissible under the Counties Code (55 ILCS 5/3-7002 (West 2012)), which rendered the entire validity of the Board's proceedings in Taylor's case void, rather than voidable—a telling distinction, because only decisions that were entered without jurisdiction are void.

¶ 36 Likewise, in *Vuagniaux v. Department of Professional Regulation*, 208 Ill. 2d 173, 186 (2003), our supreme court invalidated the decision of a board to fine and reprimand Vuagniaux because that board had appointed a temporary member to replace a disqualified one in hearing Vuagniaux's case. The enabling statute (the Medical Practice Act) allowed only the governor to appoint members to the board, and the board's authority, derived from that statute, was thus limited by that statute. *Id.* at 185-86. Because the board "had no authority" to appoint the temporary member, "it was not lawfully constituted at the time it recommended that Vuagniaux be reprimanded and fined." *Id.* at 186. As a result, our supreme court held that the Department's decision was "invalid and cannot be given effect." *Id.*

¶ 37 Similarly, in *Daniels v. Industrial Comm'n*, 201 Ill. 2d 160, 166-67 (2002), the supreme court held that two members of the Industrial Commission were illegally appointed, and thus that commission's final decision was invalid and void.

¶ 38 As in *Vuagniaux*, *Daniels*, and *Taylor*, the complaint here alleges several defects in the Board's composition, which plaintiffs claim would nullify the Board's authority to adjudicate the

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administrative actions against plaintiffs. As noted earlier, plaintiffs allege that "the Board has either had illegally appointed members with unlawful terms of less than six years, had illegally-appointed members with non-staggered terms, been composed of only five members, failed to meet the Act's political affiliation requirements, and/or had a chairperson and secretary who occupied such positions in excess of the statutory limit."

¶ 39 At this stage, the merit of these allegations is beside the point. The important point here is that these allegations unquestionably challenge the Board's lawful composition, and thus its authority to act. They clearly fit within the authority exception to the exhaustion requirement. See *Castaneda*, 132 Ill. 2d at 308-09.

¶ 40 The reasons that parties need not exhaust administrative remedies before challenging the statutory authority of the agency should be obvious. For one thing, if the Board lacks the authority to hear the case, the merits of the underlying case are irrelevant, so there is no reason why a court should wait for a developed underlying record to decide that legal question. See *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 552 (1999) ("This court has explained that where an agency's statutory authority to exercise jurisdiction is at issue, no questions of fact are involved. The agency's particular expertise is not implicated in the necessary statutory interpretation."). And second, agencies generally do not decide questions of their own statutory authority. *Id.* at 554 ("The determination of the scope of the agency's power and authority is a judicial function and is not a question to be finally determined by the agency itself."); see also *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008) ("[A]n agency's decision on a question of law is not binding on a reviewing court. For example, an agency's interpretation of the meaning of the language of a statute constitutes a pure question of law. Thus, the court's review is independent and not deferential.").

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¶ 41 This case is a perfect example. The complaint alleges that each plaintiff has raised statutory-authority questions before the Board, but the Sheriff has taken the position that the Board can't decide such questions, and thus far the Board has not. The Board's (alleged) refusal to even address plaintiffs' statutory authority claim within the confines of the agency's hearing process is strong evidence that the claim is not subject to the usual exhaustion requirement. See *Mercury*, 2019 IL App (1st) 180439, ¶¶ 70-71. And anyway, even if an agency were inclined to decide such an issue, these questions would be subject to *de novo* review by a court.

¶ 42 That is not to say that a party *can't* exhaust its administrative remedies before raising such questions. To the contrary, parties often exhaust their administrative remedies and then raise the statutory-authority question to the court on administrative review. One such example is *Taylor*, 2017 IL App (1st) 143684-B, ¶ 10. Another is *Daniels*, 201 Ill. 2d at 162. Each of those plaintiffs played out the administrative proceeding to its conclusion, then raised the statutory-authorization question on administrative review. It is a perfectly appropriate course of action. But the law does not *require* that of a party challenging the legal composition of the governing agency or board. The law allows parties to go straight to court, in advance of the conclusion of administrative proceedings, should it choose to do so. See *Castaneda*, 132 Ill. 2d at 308-09.

¶ 43 Having found that the authority exception to the exhaustion requirement applies, we must determine which of plaintiffs' claims actually challenge the Board's authority.

¶ 44 1

¶ 45 First and most obviously, as already noted, plaintiffs' allegations that the Board "had illegally appointed members," that the Board's members were not "legal members," and that the Board was "illegal and unlawfully constituted" all call into question the propriety of the Board's composition and thus authority to act. Those claims are not barred by the exhaustion doctrine.

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¶46 2

¶47 We also find that plaintiffs' claims for backpay are included within this exception to the exhaustion requirement, though at first blush that might not appear to be the case.

¶48 The gist of plaintiffs' backpay claim is this: Because the Board was improperly constituted when the Sheriff originally filed charges with the Board (per *Taylor*), the filing of those charges was a nullity—the Board couldn't transact any business. And at that time, state law, according to plaintiffs, did not permit the Sheriff to suspend an employee for more than 30 days without filing written charges. They claim, in other words, that the Sheriff had only two choices as of day 31 of an employees' suspension: file written charges or reinstate the employee. Because he couldn't file written charges without a valid Board in place, his only option was reinstatement of these employees. Thus, plaintiffs claim, they are entitled to their salaries (backpay, at this point) for every day they were suspended after day 30.

¶49 Even stopping right there, the backpay claim argues a lack of statutory authority in two distinct ways. First, the written charges were invalid, because the Board was invalid and lacked authority to act, per *Taylor*. And second, the *Sheriff* lacked authority to suspend for more than 30 days without formally charging them, which he could not do absent a validly composed Board.

¶50 Plaintiffs further claim that nothing changed when the Sheriff reconstituted the new Board under the new state law and filed "amended" charges against them. First, because the new Board also has fatal composition defects, so the charges remain a nullity. And second, they say, because you can't "amend" a charge that was a nullity in the first place.

¶51 We express no opinion whatsoever on the merits of this claim. It was difficult to untangle, and it has not been fully briefed. But the merits are beside the point. The salient point is that the claim for backpay is based, in more ways than one, on the Board's or the Sheriff's

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statutory authority (or lack thereof) to act, and thus this claim is also excepted from the exhaustion doctrine.

¶ 52 The Sheriff says the backpay claim requires exhaustion, because the Board, and not a circuit court, is the proper entity to enter an award of backpay. That would be true if the question was a factual one that "required the taking of additional evidence." *Cole v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 396 Ill. App. 3d 357, 372 (2009) (discussing *Mitchem v. Cook County Sheriff's Merit Board*, 196 Ill. App. 3d 528 (1990)). But the predominant questions here are legal questions—questions of the Board's and the Sheriff's statutory authority to act—which as we have already noted, are claims that need not be raised before the agency and would be subject to *de novo* review, in any event. *Highlands, L.L.C.*, 188 Ill. 2d at 554 (scope of agency's power is ultimately judicial determination). They are not barred by the exhaustion doctrine.

¶ 53 And the Sheriff's argument misunderstands the nature of the backpay claim. Plaintiffs do not want the Board to do anything, because they do not think the Board has the power to do anything. Plaintiffs instead claim that they were suspended by the Sheriff without lawful authority, and that they are therefore entitled to compensation to make them whole for the period of time that they were unlawfully suspended (which they say continues on even today), *regardless* of whether they win or lose their administrative hearings. We find no barrier to the circuit court's review of this question.

¶ 54 3

¶ 55 For many of the same reasons, we find that counts 4 and 5 survive the exhaustion doctrine. These are claims against the Sheriff for negligent misrepresentation and common-law

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fraud. Again, at first blush, they appear to have little to do with the Board's lack of statutory authority. But in fact, that statutory-authority argument is the foundation of each count.

¶ 56 Both counts allege that, by filing charges with a Board that was in fact invalid (per *Taylor*) and in permitting those cases to go forward, the Sheriff and the Board made false representations to plaintiffs regarding the validity and legality of the Board's composition—and thus to its ability to legally conduct business. These counts cannot be prosecuted without first litigating the underlying question of the Board's statutory authority.

¶ 57 We emphatically restate that we are not saying that these counts state a claim, or that various arguments that the Sheriff or the Board might raise against these tort claims would or would not succeed. Our only question is one of jurisdiction, and these tort claims are inherently based on the Board's lack of statutory authority. Thus, they survive the exhaustion bar.

¶ 58 B

¶ 59 That leaves three claims, all sounding in due process. One is that the Board's new fee on hearing transcripts violates plaintiff's right to a fair hearing and due process. Another is that the Board is inherently biased against plaintiffs, as the person charging them with infractions—the Sheriff—is the one who appointed the members of the Board. And third, the Board is biased against plaintiffs for filing this lawsuit, as evidenced by several unflattering comments the Sheriff (in a brief adopted by the Board) has made about plaintiffs in this litigation.

¶ 60 Plaintiffs claim that it would be futile to exhaust administrative remedies as to these claims. Futility is another exception to the exhaustion doctrine. *Castaneda*, 132 Ill. 2d at 308-09. As these three due-process arguments are different, the application of the futility doctrine to each of them must be considered separately.

¶ 61 1

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¶ 62 First, we consider plaintiffs' claim that the Board is irretrievably biased against them and in favor of the Sheriff, because each Board member owes his or her appointment to the Sheriff. One might view this as a facial due process challenge to the statute that permits the Sheriff to appoint members of the Board, because what is true for plaintiffs is true for every litigant who comes before the Board: they are facing a Board appointed by the Sheriff—the prosecutor, so to speak. See *People v. Thompson*, 2015 IL 118151, ¶ 36 (discussing facial, compared to as-applied, constitutional challenges). That distinction is important, because a facial challenge to government action is another exception to the exhaustion bar. See *Castaneda*, 132 Ill. 2d at 309.

¶ 63 But plaintiffs emphatically disavow any suggestion that they are raising a facial challenge. They claim to be raising an as-applied challenge, which means that they seek only a determination that *their* due process rights have been violated. *Thompson*, 2015 IL 118151, ¶ 36. And as we've said, they rely not on the facial-challenge exception to the exhaustion bar but on the futility exception.

¶ 64 "An aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion of remedies doctrine *** where the agency cannot provide an adequate remedy or where it is patently futile to seek relief before the agency ***." *Castaneda*, 132 Ill. 2d at 308-09. Plaintiffs are claiming here that they can't get a fair hearing before a Board that was appointed by the very person who wants them fired, the Sheriff.

¶ 65 The parties have cited little case law on this topic, and in this specific context, little exists within this jurisdiction. There is no doubt, however, that an agency's bias could, in the proper setting, serve as a basis for claiming that going through the exercise of an administrative hearing before that agency is pointless, a preordained outcome—futile. See *McCarthy v. Madigan*, 503

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U.S. 140, 148 (1992) ("[A]n administrative remedy may be inadequate where the administrative body is shown to be biased or has otherwise predetermined the issue before it.").

¶ 66 For example, if the agency or agency head has already publicly stated the outcome, the litigant has demonstrated the futility of going through a kangaroo hearing. See, *e.g.*, *Houghton v. Shafer*, 392 U.S. 639, 640 (1968) (*per curiam*) (in view of attorney general's submission that challenged prison rules were "validly and correctly applied to petitioner," requiring administrative review through a process culminating with attorney general "would be to demand a futile act"); *Carter v. Signode Industries, Inc.*, 688 F. Supp. 1283, 1287 (N.D. Ill. 1988) (Employee Retirement Income Security Act claim seeking adjustment of benefits was not barred by failure to exhaust administrative remedies; exhaustion was futile, as plan director had already "made it clear that no adjustments were forthcoming").

¶ 67 We don't have that situation here. The complaint does not allege that the Board has preannounced its conclusions. Plaintiffs merely allege a conflict of interest, nothing more. Yes, that opens the door to the possibility of bias—as is true of any conflict of interest—but courts that have considered the question have never found the possibility of bias to be sufficient.

¶ 68 "Administrative review is not futile if the plaintiff's allegations of bias are purely speculative." *Joint Board of Control of the Flathead, Mission & Jocko Irrigation Districts v. United States*, 862 F.2d 195, 200 (9th Cir. 1988). Courts require "[o]bjective and undisputed evidence of administrative bias [that] would render pursuit of an administrative remedy futile." (Internal quotation marks omitted.) *Artis v. Greenspan*, 223 F. Supp. 2d 149, 154-55 (D.D.C. 2002). "A pessimistic prediction or a hunch that further administrative proceedings will prove unproductive" is not enough to bypass the exhaustion requirement. *Portela-Gonzalez v. Secretary of the Navy*, 109 F.3d 74, 78-79 (1st Cir. 1997). In the Seventh Circuit, the futility

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exception requires plaintiffs to show " 'that it is certain that their claim will be denied on appeal, not merely that they doubt an appeal will result in a different decision.' " *Citadel Securities, LLC v. Chicago Board Options Exchange, Inc.*, 808 F.3d 694, 700 (7th Cir. 2015) (quoting *Smith v. Blue Cross & Blue Shield United of Wisconsin*, 959 F.2d 655, 659 (7th Cir. 1992)).

¶ 69 The fact that the Board members adjudicating plaintiffs' cases were appointed by one of the parties to the administrative proceeding, the Sheriff, certainly leaves open the possibility that the Board members may be biased in favor of the Sheriff. But that is not nearly enough to avoid the exhaustion bar. And we hasten to take judicial notice (without objection from the parties) that one of the plaintiffs in this case, Evans, has now had his case adjudicated by the Board, and he prevailed. True, there appears to be some unhappiness with the victory relating to backpay, but the point remains that this allegedly biased Board ruled, at least in large part, in favor of one of the plaintiffs and against the Sheriff. This only underscores that plaintiffs have alleged nothing more than the possibility of bias, which is not sufficient to overcome the exhaustion bar.

¶ 70 Thus, plaintiffs' due process argument relating to the Board's bias, based on the Sheriff's appointment of the Board members to their positions, is barred and was properly dismissed.

¶ 71 2

¶ 72 We would say the same of plaintiffs' other due process argument sounding in bias, namely the Board members' hostility to plaintiffs stemming from this lawsuit, and the Board's joining of the Sheriff's appellate briefs, which contain unflattering remarks about plaintiffs.

¶ 73 The fact remains that it is mere speculation that the Board members will not do their jobs and give plaintiffs fair hearings. And speculation is not enough. "[A] party's suspicion of 'bias on the part of a *** commission,' based on members' allegedly hostile comments, 'does not render pursuit of administrative remedies futile.' " *Holt v. Town of Stonington*, 765 F.3d 127, 132

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(2d Cir. 2014) (*per curiam*) (quoting *Simko v. Ervin*, 661 A.2d 1018, 1023 (Conn. 1995)). As plaintiff Evans's victory shows, it is nowhere near a preordained conclusion that plaintiffs will lose their cases.

¶ 74 This due process claim, likewise sounding in bias, was also properly dismissed based on failure to exhaust administrative remedies.

¶ 75 3

¶ 76 That leaves one final due process claim, which is different than the "bias" claims. Plaintiffs allege that during the pendency of their cases before the Board, the Board amended its rules to require that the party requesting a hearing transcript pay for the transcript. The complaint in this regard is short on details; plaintiffs simply allege that imposing the transcript fee on them would "violate[ ] their right to due process and fundamental fairness, and unconstitutionally burden[ ] their right to a hearing."

¶ 77 We again note that this could be a facial due process challenge to the transcript-fee rule, as it appears to apply equally to all litigants before the Board, but again plaintiffs insist they are raising no such claim. This is an as-applied challenge, they say, so the facial-constitutional-challenge exception to exhaustion is not in play. Instead, they again raise what we call the futility exception, albeit a slight variation on it, where the exhaustion requirement is waived because the administrative action "cannot provide an adequate remedy." See *Castaneda*, 132 Ill. 2d at 308-09.

¶ 78 We see this claim differently than the other due process claims. Plaintiffs allege that they have suffered financially by being suspended without pay for a quite lengthy time, and that imposing this additional financial cost (mid-stream during the administrative action, no less) injures their right to a fair hearing. No doubt, parties in litigation often want access to transcripts

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of their hearings for various reasons, including preparing for the next day's hearing, drafting cross-examinations of witnesses by reviewing their previous direct testimony, and if nothing else having the transcripts to prepare proposed findings of fact at the close of the case.

¶ 79 We are sympathetic to plaintiffs who have gone months if not years without a paycheck, who must hire lawyers to fight for their jobs, and who now are tasked with yet another financial burden. And we agree that if the imposition of the transcript fee prevents them from obtaining the transcripts, then in a very real sense they are being denied the right to a fair hearing. It would be illogical to require plaintiffs to exhaust their administrative remedies in that event, because their whole point is that they *can't* exhaust them, at least not in a fair and meaningful way, not without one hand tied behind their back. In a real sense, plaintiffs could establish that the administrative action "cannot provide an adequate remedy." See *id.*

¶ 80 But plaintiffs haven't pleaded that they can't afford the transcript fees and thus will be denied the transcripts. They have pleaded that this fee is unfair and burdensome, but unless they can plead that they are unable to afford the fees, and thus unable to acquire hearing transcripts, we do not see how they can fit into this exception to the exhaustion requirement.

¶ 81 Plaintiffs should be given an opportunity to amend their pleading in this regard, if they can do so in good faith, of course. If they do not so amend, this due process claim should be dismissed for failure to exhaust administrative remedies. If they so plead, then the exhaustion requirement does not bar this claim, and the court has jurisdiction to consider it. As always throughout this discussion, we express no opinion on the merits of the claim.

¶ 82 C

¶ 83 To summarize: The court has subject-matter jurisdiction over counts 1 (declaratory judgment), 2 (injunctive relief), and 3 (mandamus), except insofar as plaintiffs raise due process

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challenges based on the Board's bias. To the extent those counts include these bias claims, the exhaustion doctrine bars them, and those claims should be dismissed. Otherwise, those counts survive the exhaustion requirement.

¶ 84 As for the due process claim related to the Board's imposition of a fee on hearing transcripts, the exhaustion doctrine would not bar it, provided that plaintiffs can allege in good faith that this fee will prevent them from obtaining hearing transcripts. Plaintiffs should be given the option to replead if they so wish. If they properly do so, that due process claim is not barred by the failure to exhaust. If they decline that option or fail to properly plead it, that claim should be dismissed for failure to exhaust administrative remedies.

¶ 85 The court has subject-matter jurisdiction over counts 4 and 5, the rather creative tort claims plaintiffs assert. The exhaustion requirement does not bar them.

¶ 86 Count 6 is a prayer for class certification. At this juncture, there is no basis to dismiss that count, given that much of the complaint from which it derives has survived.

¶ 87 II

¶ 88 The Sheriff next argues that, even if the court had jurisdiction to hear these challenges, we should affirm the dismissal of the complaint because it is barred by the "*de facto* officer" doctrine.

¶ 89 "The *de facto* officer doctrine confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person's appointment or election to office is deficient." *Ryder v. United States*, 515 U.S. 177, 180 (1995). "Under the *de facto* officer doctrine, a person actually performing the duties of an office under color of title is considered to be an officer *de facto*, and his acts as such an officer are valid so far as the public or third parties who have an interest in them are concerned." *Vuagniaux*, 208 Ill. 2d

at 186-87. The doctrine " 'springs from the fear of the chaos that would result from multiple and repetitious suits challenging every action taken by every official whose claim to office could be open to question, and seeks to protect the public by insuring the orderly functioning of the government despite technical defects in title to office.' " *Ryder*, 515 U.S. at 180-81 (quoting 63A Am. Jur. 2d, *Public Officers and Employees* § 578 (1984)).

¶ 90 Simply put, the "*de facto* officer" doctrine protects the integrity of final agency decisions handed down *before* a court has declared a board's composition illegal. Though in hindsight we know that those decisions were rendered by an agency with an invalid composition, the law validates those old decisions, because it would be chaotic to uproot what could be hundreds or thousands of prior decisions, as parties spring out of the woodwork to piggyback onto the court ruling. To avoid that floodgate and to protect the finality of previous judgments, the law holds its nose and deems those old decisions valid, even though in a technical sense they were not.

¶ 91 There is a catch, however, in Illinois. In this state, the first party to identify a legal defect is entitled to relief, but once that first party secures the court ruling invalidating the Board's composition (and gets relief for having done so), any previous final decisions from that illegally constituted board are insulated from challenge, at least on that same legal theory. The reason for this dichotomy is to incentivize parties to identify legal defects in appointed bodies—thus giving the first one to identify the problem relief—but then promoting the finality of judgments and the orderly administration of government by denying relief to Johnnies-come-lately.

¶ 92 That has been our take, at least, on some splintered decisions from our supreme court. In *Daniels*, 201 Ill. 2d at 166-67, two justices held that Daniels was correct in arguing that the Industrial Commission was illegally composed—two of the members were improperly appointed—and thus the Commission's final decision against Daniels was void. *Id.* Two other

justices, in a concurring opinion by Justice McMorrow, believed that Daniels was, indeed, correct and entitled to relief, but that no other parties should be allowed to challenge Commission decisions on the same ground under the "*de facto* officer" rule. *Id.* at 173-78 (McMorrow, J., specially concurring, joined by Freeman, J.). One justice believed that the "*de facto* officer" doctrine barred *all* challenges to the Commission's authority—even that of Daniels. *Id.* at 178-81 (Fitzgerald, J., dissenting).

¶ 93 And that same year, in *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187 (2002), a case involving that same commission but not originally involving this doctrine, the losing party sought a rehearing based on the same legal defect in the commission's composition as in *Daniels*. While the majority denied the petition for rehearing without comment, three justices would have granted it and sharply criticized the notion that the denial might be based on Justice McMorrow's belief that the first party to identify the commission's legal defect would be entitled to relief, but any later litigant would not. *Id.* at 204-05 (Thomas, J., dissenting upon denial of rehearing, joined by Fitzgerald and Garman, JJ.).

¶ 94 We have taken Justice McMorrow's special concurrence in *Daniels* as the current statement of the law. See *Lopez v. Dart*, 2018 IL App (1st) 170733, ¶ 58; *Cruz v. Dart*, 2019 IL App (1st) 170915, ¶ 37. That is, under the "*de facto* officer" doctrine, the first party to correctly identify a legal defect in an agency's composition is entitled to relief—a voiding of the agency decision—while others who later raise that same challenge are not.

¶ 95 And thus it has proceeded in cases involving the very Board before us. The first person to successfully challenge the Board's composition, Percy Taylor, got the relief he requested as a result of winning his argument—the Board's final decision was declared void. See *Taylor*, 2017 IL App (1st) 143684-B, ¶¶ 37, 46. But other Sheriff's employees, trying to invalidate previous

final judgments based on the same or nearly same argument as in *Taylor*, were barred from doing so under the "*de facto* officer" doctrine. See *Lopez*, 2018 IL App (1st) 170733, ¶ 59 ("[s]ince [Lopez] is not the first claimant to have brought the illegal appointment of Rosales to light," *de facto* officer doctrine denied Lopez relief); *Cruz*, 2019 IL App (1st) 170915, ¶ 37 (quoting *Lopez* for same point with regard to Cruz); *Acevedo v. Cook County Sheriff's Merit Board*, 2019 IL App (1st) 181128, ¶ 25 (applying "*de facto* officer" doctrine to Acevedo's claim because "he is not the first one" to challenge appointment irregularity).

¶ 96 The Sheriff, then, argues here for a simple application of the "*de facto* officer" doctrine, requiring a dismissal of this complaint. For two reasons, however, we find the "*de facto* officer" doctrine inapplicable in this case.

¶ 97 First, there is a significant procedural difference between this case and the decisions cited above. In each of those decisions, the Sheriff's employee did not challenge the Board's authority until *after* the Board's final decision was issued. See *Acevedo*, 2019 IL App (1st) 181128, ¶¶ 3-4; *Cruz*, 2019 IL App (1st) 170915, ¶ 34; *Lopez*, 2018 IL App (1st) 170733, ¶¶ 37-39, 63.

¶ 98 So those employees' challenges raised the very specter that the "*de facto* officer" doctrine seeks to avoid—parties trying to revive *concluded* administrative actions based on a new court ruling that declares invalid the board's composition. See *Lopez*, 2018 IL App (1st) 170733, ¶ 58; *Daniels*, 201 Ill. 2d at 176 (McMorrow, J., specially concurring, joined by Freeman, J.). Those employees' cases weren't particularly old, but they had been concluded at the administrative level before the statutory-authorization issue was raised in court. From the standpoint of the "*de facto* officer doctrine," it would make no difference whether their administrative cases had been concluded six months ago or six years ago.

¶ 99 Here, in contrast, at the time the complaint was filed, none of plaintiffs' administrative actions had gone to a final decision. Plaintiffs have been raising statutory-authorization arguments before the Board since their cases began, they continue to raise them, and they raised them in this separate lawsuit. They have all but shouted them from the mountaintop—*before* a final administrative was rendered.

¶ 100 That makes all the difference in the world. The "*de facto* officer" doctrine is concerned with the fear of unearthing old decisions, possibly hundreds or thousands of them (depending on how many decisions the illegally constituted board decided in the past). But that doctrine is not—and could not—be concerned with pending or brand-new cases. Once a court decides that a board is illegally constituted, that board can't keep hearing pending cases, much less entertain newly filed ones. To say otherwise would be to say that court decisions mean nothing.

¶ 101 The "*de facto* officer" doctrine looks backward. It does not look forward. Once a court declares a board's composition invalid, we may protect its old decisions, but we absolutely do *not* allow it to keep doing business—illegally—as if we had never issued our ruling.

¶ 102 It so happens that here, the General Assembly responded rather promptly to the *Taylor* decision and changed the statute governing Board appointments. And the Sheriff acted promptly in appointing a new Board. But what if those things hadn't happened? What if the Board had remained in its invalid state for years? Under the Sheriff's argument before this court, the "*de facto* officer" doctrine would allow that Board to continue processing and deciding pending and new cases forever—as if *Taylor* was just an interesting discussion and not a binding decision of a court.

¶ 103 To their credit, the Board and the Sheriff seemed to recognize this very point. The complaint alleges that the Board, and the Sheriff, essentially held plaintiffs' pending cases in

abeyance after *Taylor* was decided. And after the General Assembly amended the statute governing Board appointments, and a new Board was appointed, the Sheriff filed "amended" charges against plaintiffs, though they were essentially the same charges. The Board and the Sheriff, in other words, properly waited for a new Board before advancing the pending cases against plaintiffs.

¶ 104 But before this court, the Sheriff is arguing that the "*de facto* officer" doctrine protects these *pending* cases from a statutory-authority argument like that in *Taylor*. That position, if accepted, would inflate the "*de facto* officer" rule from a practical doctrine that avoids chaos and promotes finality of old administrative decisions into a doctrine that provides a board with *carte blanche* immunity to *continue* violating the law, going forward, and perhaps forever, brushing aside the *Taylor* decision like a piece of lint on a suit coat.

¶ 105 To put it plainly: Once *Taylor* was decided, any Sheriff's employee whose case was then-pending before the Board, or who was charged in a new case post-*Taylor*, had every right to challenge the Board's composition for the same reasons as in *Taylor* (or for different reasons). Old cases already finally decided, no, but pending or new administrative cases, yes. Plaintiffs' cases were pending at the time of the *Taylor*, and the "*de facto* officer" doctrine did not prevent them from challenging the Board's composition.

¶ 106 And even if what we have said above were not true, there is a separate and independent reason that we would not apply the "*de facto* officer doctrine" here: The statute governing the Board's appointments has now changed, and the Sheriff has appointed a new Board. A new statute, a new Board—but plaintiffs can't challenge the composition of this Board because Percy Taylor challenged the composition of a different Board under a different statute a few years ago? Nonsense.

¶ 107 It was one thing to prevent countless previous decisions from being challenged under the same theory as *Taylor*—the same Board, governed by the same statute, with the same legal defect. That is the very point of the "*de facto* officer" doctrine. Like it or not, it rewards the first party to correctly identify the legal defect in a board's composition, and parties aggrieved by previous final decisions who then try to piggyback on that same legal argument are out of luck. See, *e.g.*, *Lopez*, 2018 IL App (1st) 170733, ¶ 59; *Daniels*, 201 Ill. 2d at 176 (McMorrow, J., specially concurring, joined by Freeman, J.).

¶ 108 But once a new statute governing Board appointments has been enacted, and a new Board has been appointed pursuant to that new statute, the *status quo* is re-set. *Taylor* might have precedential value, but it no longer directly governs the outcome. A party who challenges the *new* Board's composition under a *new* statute is that "first" party to whom *Lopez* and Justice McMorrow were referring, bringing to the court's attention potential illegalities in the new Board's composition. Those claims might look a lot like those in *Taylor*, with regard to the old Board under the old statute, but they are by definition new arguments.

¶ 109 Consider if it were otherwise. Here, the new statute governing Board appointments is not all that different from its predecessor, but it certainly could have been. The General Assembly could have made sweeping, wholesale changes to Board appointments. It could have provided, for example, that members of the Board would now be appointed by the Governor, with the advice and consent of the Illinois Senate. Imagine that it did, and that plaintiffs' legal argument here was that one of the members was not validly appointed because the Senate never confirmed him or her. Would we even dream of barring that argument under the "*de facto* officer" doctrine because a few years ago, Percy Taylor obtained a ruling from this court based on a completely different legal theory under a different statute governing a different board? Of course not.

¶ 110 The difference between that hypothetical and the matter before us is simply one of degree. A new statute brings with it new requirements (even if only slightly new), and ultimately a new Board (even if some of the members overlapped). The legal theories attacking this new Board's composition may resemble those in *Taylor*, but they are not the same.

¶ 111 If we were to accept the Sheriff's application of the "*de facto* officer" doctrine in this context, it would have no principled end. No matter how many times the statute governing Board appointments changed, no matter how *much* it changed, no matter how many new Board members came and left, no matter how much time passed, nobody could ever again raise a challenge to the Board's composition, because Percy Taylor once won a case challenging the Board's composition in 2017. That is an untenable result, to say the least.

¶ 112 For these reasons, the "*de facto*" officer doctrine does not bar a consideration of the claims in the complaint.

¶ 113 CONCLUSION

¶ 114 For the foregoing reasons, we affirm the circuit court's judgment to the extent it dismissed with prejudice plaintiffs' claims of a due process violation based on the Board's bias. With respect to plaintiffs' due process claim based on the transcript fee, pursuant to our power under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we affirm the court's order but modify the dismissal to be without prejudice. If plaintiffs can plead that they cannot afford to pay the transcript fee, then the futility exception to the exhaustion requirement would then apply to this claim; if they cannot so plead, then this claim should be dismissed for failure to exhaust. With respect to all other claims, we reverse the court's judgment, finding that neither the exhaustion doctrine nor the "*de facto* officer" rule bar the complaint.

¶ 115 Affirmed in part as modified, reversed in part, and remanded with directions.

No. _____

IN THE SUPREME COURT OF ILLINOIS

MATTHEW GORAL, KEVIN BADON, MICHAEL MENDEZ, MILAN STOJKOVIC, DAVID EVANS III, and LASHON SHAFFER, on behalf of themselves and others similarly-situated, Plaintiffs-Respondents, v. THOMAS J. DART, Sheriff of Cook County; COOK COUNTY, ILLINOIS; and THE COOK COUNTY SHERIFF'S MERIT BOARD. Defendants-Petitioners.	Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District No. 1-18-1646 There Heard on Appeal From The Circuit Court of Cook County, No. 17-CH-15546 The Hon. Sophia H. Hall, Judge Presiding

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on July 22, 2019, we caused to be electronically submitted to the Clerk of the Supreme Court of Illinois, the attached **Petition for Leave to Appeal.**

Respectfully submitted,

/s/ Stephanie A. Scharf
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Special State's Attorneys for Defendant-Petitioner, Thomas J. Dart, Sheriff of Cook County

CERTIFICATE OF SERVICE

I, Stephanie Scharf, an attorney, state that a copy of the foregoing Notice and associated documents were served via the Court's electronic filing system and by email to the attorneys listed below on **July 22, 2019**. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Respectfully submitted,

/s/ Stephanie A. Scharf

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IN THE SUPREME COURT OF ILLINOIS

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PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statement set forth in this instrument are true and correct. On December 4, 2019, the foregoing **Brief and Appendix of Defendants – Petitioners Thomas J. Dart, The Cook County Sheriff's Merit Board and Cook County, Illinois** was at the same time (1) filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and (2) served by transmitting a copy from my e-mail address to the e-mail addresses of the persons named below:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail thirteen copies of the Brief and Appendix to the Clerk of the Supreme Court of Illinois, Supreme Court Building, 200 East Capitol Avenue, Springfield, Illinois 62701.

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