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November 12, 2025

Deputy Commissioner - Trials
One Police Plaza – 9th Floor
New York, New York 10038

Re: NYPD v. Detective Jaenice Smith
Disciplinary Case No. C-034320

Dear Commissioner:

After the conclusion of the trial in NYPD v. Detective Jaenice Smith, Disciplinary Case No. C-034320, held on November 5, 2025, the parties were asked to submit relevant rules, procedures, and caselaw regarding leave procedures applicable to the circumstances underlying the disciplinary case, as well as caselaw applicable to proving the *mens rea* elements of the pending disciplinary charges. Accordingly, the Department respectfully submits the following:

The essential facts elicited during the trial prove that the investigation of this matter focused on five (5) subjects: (1) Respondent; (2) Assistant Chief Scott Henderson, tax #915880, PBBN Borough Commander; (3) Lieutenant Latisha Witten, tax #929499, PBBN Security Detail Operations Coordinator; Sergeant Jun Fong, tax #932651; and Sergeant Donovan Hunt, tax #930378. Sergeant Fong and Sergeant Hunt were assigned as Respondent's supervisors at PBBN Security Detail during relevant periods in this case.

Respondent's mother, Barbara Smith, had been active and involved in community affairs and policing, particularly in the 83rd Precinct and PBBN, for approximately fifty (50) years, and had been the long-time president of the 83rd Precinct's Community Board. There is no question that Barbara Smith was an exceedingly loved, valued, and respected hard-working member of the community, and that her death was a significant loss to not only her family, but to the community she served. There also is no question that Respondent shared her mother's suffering during her long illness, and that she also suffered great personal loss. None of those facts are in dispute, and they were considered significantly in the handling of this disciplinary case prior to its proceeding to trial. While the Department extends its condolences and sympathies to Respondent for her loss, her mother's stature in the community is not relevant in the evaluation of the evidence presented at trial.

According to Assistant Chief Henderson, after Ms. Smith was diagnosed with terminal cancer and required additional medical care, Respondent, who was assigned to the Personnel Services Bureau ("PSB") Wheel at 1 Police Plaza, contacted Assistant Chief Henderson, and asked him to transfer her to a "midnight tour security position" at PBBN, so she would have her days free to care for her mother. Assistant Chief Henderson arranged for this transfer, and in February 2024, told Respondent that she could work from home, do whatever she needed to do to care for her mother, and to not worry about work. When interviewed, Assistant Chief Henderson said that he considered this transfer an accommodation,

and believed that he had the authority to direct this sort of accommodation without getting any other permission or arranging for long-term leave through any official Department channels. Assistant Chief Henderson did not contact any family assistance units or the Military and Extended Leave Desk (“MELD”), but instead left arranging any details of the accommodation to Respondent, because she previously worked for Police Organization Providing Peer Assistance (“POPPA”). Assistant Chief Henderson said that he understood that Respondent relied upon his authority, and requested no extended leave through official channels.

Assistant Chief Henderson took responsibility for the arrangement, but said that he did not expect her to behave “unprofessionally” and abuse what he had allowed her to do. Assistant Chief Henderson said that, if he had known that Respondent would take advantage of, abuse the arrangement, or would be untrustworthy, he never would have allowed it. He emphasized that his concern in this matter was for Respondent’s mother.

Respondent testified that she was assigned to the PBBN Wheel in May 2021 when her mother was diagnosed with cancer. Respondent’s assignment moved from Brooklyn to Manhattan in 2023, which created a hardship in caring for her mother, so she contacted Assistant Chief Henderson, to help her. Essentially, Respondent initiated the “accommodation” by contacting Assistant Chief Henderson, and in doing so bypassed the official means of requesting the relief that she sought.

According to Respondent, Assistant Chief Henderson then arranged a temporary assignment for Respondent to the PBBN security detail in Brooklyn. According to Respondent, Assistant Chief Henderson visited her residence in March 2024 and instructed her not to come to work, and to take as much time as she needed to care for her mother. Respondent said that she did not know which of her supervisors had been made aware of the arrangement, but said that “everyone knew.” Respondent said that she was expected to contact work each day -- at the beginning and end of her scheduled tours -- but was not to be assigned any tasks. Respondent said that she occasionally requested time off when she had to leave her residence for personal reasons. Under this arrangement, Respondent failed to appear at work from February 7, 2024 to March 25, 2025, but continued to receive pay and benefits as if she had been at work performing her official duties.

Assistant Chief Henderson said that he personally directed that Respondent was to be “accounted for” in the attendance application each workday, despite her not actually reporting for work. He said that he did not know of any other way of “accounting for her” so he directed that she be marked present for duty in the application each workday, since there was no “traditional roll call which would account for her in any other way.”

None of Respondent’s official duties could be performed from home, and she did no Department-related work at all from home. Assistant Chief Henderson said that he thought that Respondent would only be at home a few days each week, but Respondent actually remained at home, continuously, for approximately one hundred eighty-four (184) tours, through March 2025. Respondent telephoned or otherwise contacted her command twice each workday, to ask a co-worker to enter her in the attendance application manually as present for duty, and for the completion of her assigned tour. Several police officers assigned to the command did this task, at the direction of a supervisor. (The records/logs indicate that Respondent was signed “in” and “out” manually at the PBBN command for a tour of 0800 x 1600 hours.) Respondent periodically requested days off by sending messages to her supervisors (Sergeant

Fong and his replacement, Sergeant Hunt) to have UF-28s prepared and approved for her. Respondent did not accrue any overtime during this time. However, Respondent continued to get paid and accrue pensionable time during this period, despite never reporting to work, and believed that Assistant Chief Henderson had arranged for this “accommodation.”

According to Lieutenant Witten, the Operations Coordinator at PBBN, Assistant Chief Henderson told her in February 2024 that Respondent would be working from home. However, during his official interview, Assistant Chief Henderson said that he did not remember speaking to Lieutenant Witten about the arrangement, but only spoke to Sergeant Fong, Respondent’s immediate supervisor. Sergeant Fong, however, testified that, upon Respondent’s transfer to the security detail in Brooklyn, he was approached by Lieutenant Witten, not Assistant Chief Henderson, and told that, as per Assistant Chief Henderson, Respondent had an “accommodation” to work from home since she was the only caregiver for her sick mother. Sergeant Fong said that he never saw any paperwork regarding the “accommodation” for Respondent.

Sergeant Hunt testified that he replaced Sergeant Fong, who was transferred from the security detail in November 2024. Sergeant Hunt also said that Sergeant Fong told him that, as per Assistant Chief Henderson, Respondent was given a “special accommodation” to work from home because her mother was sick. Sergeant Hunt said that he spoke to no other supervisor regarding this matter, but continued to have subordinates document Respondent’s start and end of tours as had been done by Sergeant Fong. Sergeant Hunt also said that he never saw Respondent at work, except for going into Assistant Chief Henderson’s office about a week after he (Sergeant Hunt) asked Lieutenant Witten if Respondent would be returning to work after her mother died in December 2024. Sergeant testified that he made this inquiry because Police Officer Wilson Richard, tax #942426, who was the Police Benevolent Association (“PBA”) delegate at the Command, was concerned that he and other police officers were being asked to make false or questionable entries in Department records, and because he believed that Respondent should have returned to work after Respondent’s mother’s funeral. Police Officer Richard also testified that he refused to continue to make such entries for Respondent after the funeral.

Assistant Chief Henderson said that he did not tell Lieutenant Witten specifically how to implement the arrangement for Respondent. Lieutenant Witten testified that both Sergeant Fong and Sergeant Hunt “somehow” learned about the arrangement, and both ensured that Respondent was entered in the attendance application each workday. None of Respondent’s co-workers or supervisors knew of any work performed by uniformed members of their command that could be done from home, but no one questioned Assistant Chief Henderson or reported their concerns about the arrangement to IAB. None of Respondent’s supervisors saw any paperwork regarding Respondent’s working from home, accommodation, or any extended leave of absence. Towards the end of February 2025, about two (2) months after Respondent’s mother had died (on December 6, 2024), Sergeant Hunt asked Lieutenant Witten when Respondent was going to return to work. Lieutenant Witten told Sergeant Hunt that she would check with Assistant Chief Henderson, but never did so. Lieutenant Witten testified that she forgot to ask Assistant Chief Henderson as she had indicated to Sergeant Hunt she would.

During the progression of Ms. Smith’s illness, Respondent maintained contact with Assistant Chief Henderson via frequent telephone calls and text messages. Assistant Chief Henderson made about three (3) in-person visits to Ms. Smith’s residence during this period. After Ms. Smith died on December 6, 2024, Assistant Chief Henderson spoke at her funeral, but did not discuss with Respondent her returning

to work. Assistant Chief Henderson testified that he assumed that Respondent would return to work after the death of her mother, and said that he “trusted in her professionalism.” Respondent did not return to work (yet continued to get paid), and instead sent several messages to Assistant Chief Henderson saying that she was not yet ready to deal with returning to her workplace, which brought back “difficult-to-deal-with” memories of her mother. Respondent said that she was in therapy and working through her issues. Despite these messages, Assistant Chief Henderson testified that he was not aware that Respondent had not returned to work, but also said that he never specifically instructed her to return to work. Assistant Chief Henderson also said that he was not aware of anyone else who directed Respondent to return to work.

Respondent said that she came to the PBBN Command on or about December 26, 2024 and again on or about March 6, 2025 to meet with Assistant Chief Henderson, and they “agreed” that she would return to work on April 18, 2025, over four (4) months after the death of Respondent’s mother. Further, Respondent said that it was agreed that, if she still had issues with working at her assigned location, she could be transferred elsewhere. Assistant Chief Henderson testified that when he met personally with Respondent after the death of her mother, Respondent said that she was planning to “run her time and leave the job.” Assistant Chief Henderson said that, based upon his conversations with Respondent when she visited him in his office, he assumed, relying on her integrity and “knowledge of how the job worked,” that she already had returned to work. According to Assistant Chief Henderson, when Respondent told him she was having problems returning to work and “struggling to be in the building,” he thought that meant that she already had done so. Assistant Chief Henderson added that he did not discuss Respondent’s situation with other people because he was trying to keep her “personal business” as “confidential as possible.” Assistant Chief Henderson said that he never asked Respondent’s supervisors if she had returned to work, but said that he personally had not seen her back at work. Assistant Chief Henderson added that, because Respondent was a responsible person, he believed that, if she had not returned to work, she had a good reason and that he was “operating on the honor system.”

IAB investigators went to Respondent’s residence on March 25, 2025, and placed her on modified assignment. Respondent immediately sent a text message regarding the incident to Assistant Chief Henderson.

Respondent testified that she never prepared or submitted, or requested the preparation or submission, of any application for any accommodation, family care leave, family medical leave, bereavement leave, or any other kind of extended paid or unpaid leave under any Department, City, State, or federal law, program, or procedure. Respondent’s position, as stated through her counsel, is that (1) she was entitled to rely upon the statements (as she interpreted them) of Assistant Chief Henderson; and (2) any burden to accommodate Respondent’s family care situation, specifically including the application for and arranging of any paid or unpaid extended authorized leave for Respondent, rested on the Department, or specifically Assistant Chief Henderson, but not at all on Respondent. Respondent is incorrect on both grounds.

Assistant Chief Henderson, even as Borough Commander of Patrol Borough Brooklyn North, did not possess the requisite authority to approve an open-ended no-show job which included the falsification of Department records in order to implement. ***Assistant Chief Henderson was not Respondent’s employer.*** Assistant Chief Henderson was not in charge of any Command which made final decisions of any requests for “reasonable” accommodations, family care, or other types of extended leave.

Respondent's arrangement clearly was violative of Department rules and procedures, as well as various criminal statutes. Essentially, the Department's position is that Assistant Chief Henderson legally could not authorize the commission of criminal conduct. Veteran law enforcement officers such as Assistant Chief Henderson and Respondent knew or should have known that a paid no-show law enforcement job for the City of New York for over thirteen (13) months without any authorizing documentation was unlawful. Accordingly, and as detailed below through discussion of various leave options available to Respondent at the time of her extended absence, Respondent bore the responsibility to apply for her own leave and to do so in compliance with all applicable rules and procedures.

Had Respondent followed applicable rules and procedures, she may have qualified for several different types of leave, under Department, City/State, and federal guidelines and law. Each will be discussed below – but none of them would have afforded Respondent the ability to receive pay and service time credit for over thirteen (13) months.

The relevant sections of the Administrative Guide (“AG”) which govern leave requests which would have been appropriate in this matter are AG 324-05 “Authorized Leave;” AG 324-06 “Bereavement Leave;” and AG 332-21 “Reasonable Accommodations for Employees and Applicants.” Each of these sections clearly states that the *employee requesting leave must initiate the procedure, request the specific leave, and prepare the particular forms requesting the leave*. In addition, AG 324-05, which deals with authorized leave generally, states in paragraph 6 that a “*member of the service (uniformed or civilian) applying for any extended leave, e.g. educational leave with or without pay, hardship leave, etc., is required to communicate with the Military and Extended Leave Desk for instructions.*” Bereavement leave, as described in AG 324-06, paragraph 3, also *must be initiated by the employee requesting the leave* and, if approved by the Commanding Officer, “will permit four (4) consecutive tours of duty with full pay.”

AG 332-21, which requires *the employee* to request the *reasonable* accommodation, actually does not apply to the type of time and leave arrangement sought and put in place by Respondent. A *reasonable* accommodation is defined as “[a]ny modification or *reasonable* adjustment provided by the employer that assists employees and qualified applicants to perform the essential functions of their jobs and enjoy the benefits and privileges of employment. The accommodation cannot create an undue hardship to the Department.” All of the evidence presented at trial, including Respondent's own admissions, clearly demonstrates that Respondent never performed, attempted to perform, or even wanted to perform the “essential functions” of her job. As demonstrated by her asking Sergeant Hunt in March 2025 what her duties would be at the PBBN Security Detail, Respondent never performed or even attempted to learn the duties of her job, despite being assigned to the Security Detail for over thirteen (13) months. Moreover, even if Respondent did qualify for a *reasonable* accommodation within the meaning of AG 332-21, paragraph 1 makes clear that *she had the burden of completing the written request* for such an accommodation and submitting that request to the Office of Equal Employment Opportunity (“OEEO”).

The City of New York's Reasonable Accommodation Process mirrors that described in AG 332-21, but limits the bases for requesting such an accommodation to (1) disability; (2) religion; (3) status as a victim of domestic violence, sex offenses, or stalking; and (4) pregnancy, childbirth, or related medical conditions (including lactation needs). Given these limitations, Respondent did not qualify for any “reasonable accommodation” within New York City's own guidelines.

Respondent, as an employee of a public employer in New York State (defined as the State, any political subdivision of the State, a public authority, or any government agency or instrumentality), may have been eligible for New York Paid Family Leave, had she applied for such leave. All Department Commands post a Notice of Compliance indicating to employees that they have Paid Family Leave Insurance. However, the employee must request Paid Family Leave, and must complete a form which is available upon request or on the Paid Family Leave website. Under the Paid Family Leave procedures, the employee must, whenever possible, provide the employer with thirty (30) days advance notice of his/her intent to use Paid Family Leave and, after completing the employee part of the application, request the employer to complete its part. Moreover, when the employer completes its part and returns the application to the employee, it is the employee's responsibility to submit his/her request directly to the insurer. It is made abundantly clear to the applying employee on the Paid Family Leave websites and downloads, usually in large print, that "[i]t is YOUR responsibility to submit the forms to the insurance carrier. It is NOT your employer's responsibility. (emphasis in original.)"

Respondent has cited purported protections for workers with caregiving responsibilities pursuant to the New York City Commission on Human Rights. While it is true that, under New York City Human Rights Law, an employer may not discriminate against an employee or job applicant because of his/her caregiving responsibilities, ***that law does not require employers to offer accommodations to employees because of their caregiving responsibilities***, as stated in the attached NYC Commission on Human Rights Factsheet.

Lastly, if properly sought by her, Respondent may have qualified for leave under the Family and Medical Leave Act ["FMLA"], overseen by the Wage and Hour Division of the United States Department of Labor, which describes its mission thusly:

Since its enactment in 1993, the Family and Medical Leave Act (FMLA) has served as the cornerstone of the Department of Labor's efforts to promote work-life balance and we have worked in support of the principle that no worker should have to choose between the job they need and the family they love. With the FMLA, our country made it a priority to give workers the ability to balance the demands of work and family. It made the healthy development of babies, healthy families, and healthy workplaces a priority. It was a remarkable accomplishment at the time and, since its enactment, the FMLA has been used more than 100 million times to help workers balance the demands of the workplace with the needs of their families and their own health.

Like New York's Paid Family Leave procedures, those of the FMLA also mandate an employer providing general notice to its employees. However, page 14 of The Employer's Guide to The Family and Medical Leave Act, promulgated by the United States Department of Labor, clearly states:

An Employee's Obligation to Provide Notice of the Need for Leave

Employees must provide notice of their need for FMLA leave. In general, an employer may require that employees comply with the employer's usual and customary policies for requesting leave, unless unusual circumstances prevent the employee from doing so. The employer can take action under its internal rules and procedures if the employee fails to follow its usual and customary rules for requesting leave. Employers may not, however,

discriminate against employees taking FMLA leave. An employer may also choose to waive the employee's notice requirement or its own internal rules about leave requests.

Essentially, the Department's requirement that leave requests be submitted in writing, and pursuant to relevant AG procedures which are in compliance with local, state, and federal laws, governs. Instead of requesting leave in the manner required, Respondent intentionally chose instead *to seek out an executive Member of the Department who was known well to her family, and to seek special favors and treatment far above and beyond what any other similarly-situated Department employee would receive*. Respondent specifically requested a transfer to a different Command at a different location, and to a different tour of duty. She then requested a specific assignment and intentionally chose to never appear for work for over thirteen (13) months, including over three (3) months after the death of her mother, with a clear benefit to herself, leaving the City of New York to pay her for a job she never performed. Respondent's misconduct did not develop or grow to this level of abandonment. This misconduct only ceased because Department investigators put a stop to it. If anything, Respondent's official misconduct actually became more acute after the death of her mother on **December 6, 2024**, when she actually planned to continue her illegal conduct through at least **April 18, 2025**, the date she claimed she and Assistant Chief Henderson agreed that she would return to work. All that time, Respondent continued to get paid, accrue leave and pensionable time, and enjoy the benefits of being Member of the Service, without having to perform any actual police work. Respondent was given special treatment so that she could stay home to take care of her ailing mother. After her mother's death and funeral, any possible pretense of a purportedly approved "accommodation"¹ was over. By failing to return to work for several months, and planning to remain on a paid no-show job through April 18, 2025, Respondent explicitly demonstrated that she did not believe that Department rules and procedures, and the law, applied to her. She clearly planned to abuse her special arrangement as much as possible. Simply put, it is inconceivable that Respondent did not knowingly and intentionally engage in all of the charged misconduct.

Respondent offered only incredible self-serving statements regarding her awareness that her paid no-show job, documented with false entries in official records, violated multiple rules, procedures, and laws. In fact, throughout the trial, she and her counsel explicitly blamed everyone – Assistant Chief Henderson, Lieutenant Whitten, Sergeant Fong, Sergeant Hunt, and even Police Officer Richard – for not applying for a leave on behalf of Respondent. Respondent has argued that she was entitled to whatever leave she wanted merely by asking for it, and the burden to put her request in place fell on her co-workers. The boldness of Respondent's deflection of responsibility is shocking, and wholly inconsistent with the actual various leave application requirements, discussed above.

Since Respondent did not admit that she committed her acts of misconduct knowingly or intentionally, and has chosen instead to either deny responsibility and knowledge, or to claim that she relied upon the purported statements of Assistant Chief Henderson, or to blame everyone else working at PBBN offices, the mens rea must be proven with other evidence. That evidence is persuasive.

Department Exhibit 6 contains text messages between Respondent and Assistant Chief Henderson, which prove that Respondent intended to use her and her mother's relationship with Assistant Chief Henderson to their advantage, and to receive special and unique favors based upon that relationship. Respondent initiated the arrangement of her transfer to the PBBN Security Detail, and received it based

¹ To be clear, an "accommodation" actually must be *reasonable* under controlling law. Under any realistic or sensible interpretation of the law, Respondent's arrangement *was not reasonable*.

upon the efforts of Assistant Chief Henderson. Even before the transfer, Respondent was contemplating the transfer so that she did not have to continue to use her own leave time to address her mother's medical needs. This evidence of premeditation clearly shows Respondent's intent to engage in the charged misconduct, including the requisite intent to commit criminal acts.

During an exchange of messages on February 5, 2024, before Respondent was transferred to the PBBN Security Desk, Respondent asked Assistant Chief Henderson to arrange the transfer to the Security Desk. Respondent texted, "So if you can help with me being assigned to the Boro so I don't have to keep using all my days. I can sign in and out there if necessary." On February 17, 2024, after being transferred temporarily to the Security Desk, Respondent texted Assistant Chief Henderson, stating, "Hi Chief, I wanted to thank you again for your support. It was a tremendous help. I would have used up a lot of time if it were up to anyone else. I appreciate it. Unfortunately, he home health care/nurse is still not in place. I return to the JOC [Joint Operations Center] Monday but might need to take off if I don't find a suitable person to tend to her at night. If anything, I'll contact my Sgt so he knows I'm not awol. Thank you gain (sic). You've been a God send." Thereafter, Assistant Chief Henderson arranged for Respondent to remain temporarily assigned to the Security Desk (without actually appearing for work or using any of her time), through February 25, 2025, and communicated that to her via text message. Shortly thereafter, on February 24, 2024, Respondent texted to Assistant Chief Henderson, "Hi chief, I hate to even ask, but I'm in a bind. Can I extend just 3 more days, please? I know you've gone above and beyond and I can not begin to express how grateful we are."² Assistant Chief Henderson replied, "Do what you need." Shortly thereafter, after Respondent sent Assistant Chief Henderson a message detailing her mother's medical condition, Assistant Chief Henderson texted, "I know you and your mother too well to know that you would never use your mother's health to take advantage of not coming to work." On April 10, 2024, Assistant Chief Henderson sent Respondent a "screen shot" of a Finest Message indicating that she had been permanently transferred, effective April 12, 2024, to the PBBN Security Desk, and also texted, "Satisfied?" Respondent then texted her a message of thanks to Assistant Chief Henderson. On July 18, 2024, Respondent texted Assistant Chief Henderson and, among other things, thanked him for allowing her mother to remain in her position as the 83rd Precinct Community Board President during her illness. Also, on December 9, 2025 after her mother's death, Respondent texted to Assistant Chief Henderson, "Mom did not have a lot of insurance, so I'm discreetly telling folks who ask what can they do that I'll accept a cash donation in lew (sic) of flowers. It will cover the catering etc. This is NOT for you because their (sic) is no price tag for what you have done. Being with my mom these last 10 months has changed me FOREVER. I CAN NEVER THANK OR REPAY YOU ENOUGH (3 hearts). You're my new God father lol (sic).

The Court should reject Respondent's denials of knowledge and responsibility. Even if it were true that some morally questionable or clearly illegal practices may have been part of Department "culture" for many years, as suggested by Respondent's counsel, those practices are now rejected and recognized for what they always have been – misconduct at best and criminal acts at worst. For many years, Members of the Service may have enjoyed special treatment or received gratuities "on the cuff" from businesses in areas they patrolled. Similarly, alleged unjustified cash overtime submitted by uniformed supervisors who performed only limited administrative duties for executives has been curtailed.

² This statement by Respondent is especially revealing. In it, she admits that she knows and fully understands that she had and continued to received special and disparate treatment, and that the arrangement was due to her and/or her mother's relationship with Assistant Chief Henderson. Respondent's expressing gratitude for Assistant Chief Henderson's "above and beyond" arrangement is her admission of guilt.

Likewise, the assignment of uniformed Members of the Service to perform duties wholly unrelated to official Department business is unacceptable. These abhorrent practices do not represent the Department “taking care of its own” but are now recognized for what they are – stealing from the people of the City of New York. Respondent is asking the Court to accept that she should be excused from her self-serving misdeeds because they were authorized by Assistant Chief Henderson (who pled guilty to charges of misconduct related to his behavior in this matter), and because, she claims, others before her had been allowed to engage in similar acts. Respondent’s counsel even argued that Respondent should be found not guilty of the disciplinary charges because the Police Commissioner wrongfully decided to restore trust and integrity to the Police Department. Further, Respondent has attempted to suggest that she was “targeted” in this matter due to her gender, race, and age, or membership in some “protected class” without offering any evidence whatsoever to support this outrageous claim.³ The record contains no suggestion of bias in any way. The Department cannot tolerate Members of the Service who violate rules, procedures, and laws.

Respectfully submitted,

David H. Green

David H. Green
Agency Attorney
Department Advocate’s Office

cc: Eric Sanders, Esq.

³ It is appalling that Respondent – through counsel - claims that she is the victim of unlawful discrimination based upon her race, gender, age, or membership in a protected classification of people. There absolutely is nothing to support that claim. The fact that Respondent’s counsel uttered the accusation does not make it so, or somehow create evidence of malfeasance where none exists. Additionally, Respondent’s counsel has made the contemptable claim that Police Commissioner Tisch and her administration have engaged in racially-biased discipline. The Department respectfully submits that this offensive assertion is nothing more than a weak attempt to employ well-worn techniques to distract a fact-finder from truth. The Department must state, so that its silence is not perceived as acceptance, that the efforts by Respondent’s counsel to transfer a straightforward “time theft” case into a retaliatory attack on his client based on race, or membership in some other protected classification, is insulting, desperate, and unbecoming.

The Department needs to provide the process for an employee to obtain a “reasonable” accommodation. This means that the Department need not accommodate every issue an employee faces in his/her life, and that not every situation an employee faces need be remedied by the employer. The creation of a “no-show” job is *not* “reasonable.”

Respondent cites numerous cases in his submission which deal with plaintiffs who allegedly were the victims of unlawful employment action and discrimination when their accommodations did not affect their core job responsibilities. Clearly that is not the case here, as Respondent performed no police work while at home, and no evidence of unlawful discrimination has been presented. Additionally, Respondent cites numerous cases stemming from employment actions taken against employees with disabilities, managing addiction, or with other medical conditions. That, too, is not the case here. There is no evidence that Respondent was unable to perform police work during her absence from work.