SONOMA COUNTY SHERIFF'S OFFICE

MARK ESSICK
Sheriff-Coroner

JAMES NAUGLE
Assistant Sheriff
Law Enforcement Division

EDDIE ENGRAM
Assistant Sheriff
Detention Division

HEIDI KEITH
Chief of Financial and Administrative Services

NOTICE OF INTENDED DISCIPLINARY ACTION

July 20, 2020

Dave Berges
Detective Sergeant

As the Appointing Authority for the Sonoma County Sheriff's Office, I am writing to inform you that I propose to take disciplinary action against you consisting of the termination of your employment as a Detective Sergeant with the Sonoma County Sheriff's Office.

The proposed disciplinary action, which is based on your conduct (described below and referenced in 19-IA-0005), in the opinion of your appointing authority constitutes grounds for disciplinary action pursuant to the Rules of the Civil Service Commission, County of Sonoma, and/or pursuant to the General Rules and Regulations of the Sonoma County Sheriff's Office, as listed below.

Rules of the Civil Service Commission

Rule 10.3**: Dismissals**

1. **Dismissal of Permanent Employee**

Any employee who has attained permanent status may be dismissed for reasonable cause including, but not limited to:

(3) conduct which brings discredit to the County;
(11) neglect of duty;
(14) failure to meet reasonable work performance standards and requirements;
(16) hostile and discourteous treatment of the public or other employee;
(22) sexual harassment of or unlawful discrimination against another employee or applicant for employment.

And the following Sonoma County Sheriff's Office Office-Wide Policies and Procedures:

Rules and Regulations Regarding Conduct

5. PROCEDURES

B. DUTIES, CONDUCT AND RESPONSIBILITY

3. Obey Policies and Procedures: Members shall obey and carry out all lawful Sheriff's Office and County policies, procedures, and other orders whether written or oral. Specifically:

Discrimination and Harassment, Specifically:

Discrimination and harassment are defined under this policy as verbal, visual, or physical conduct that ridicules, insults, intimidates, or shows hostility or aversion toward an individual because of his **race, religion, color, gender, sexual orientation, disability, medical condition, marital status, age, military status, national origin or ancestry**.

11. Conduct Toward Other Members: All members shall treat superior officers, subordinates and associates with respect. They shall be courteous and civil at all times in their relationships with one another.

17. Insubordination: Failure or deliberate refusal of any member to obey a lawful order given by a supervisor is insubordination. Giving false or misleading statements, misrepresenting or omitting material information to a supervisor or other person in a position of authority in connection with any investigation or in the reporting of Sheriff's Office related business. Ridiculing a supervisor or his order is also insubordination.

C. ADDITIONAL DUTIES OF SHERIFF'S OFFICE MANAGERS AND SUPERVISORS

1. Supervise and/or manage subordinates, so as to improve their efficiency and quality of performance by:

c. Provide effective leadership, guidance and control conducive to effective performance and high morale.

e. Assume responsibility for the proper conduct and discipline of subordinates.

Your conduct also constitutes a violation of the County of Sonoma Equal Employment Opportunity Policy and Complaint Procedure, including, but not limited to Section III, subsections:

A:The County of Sonoma is committed to the principle that equal employment opportunity in the public service of the County must be afforded to all persons regardless of race, color, ancestry (including language use), national origin, citizenship, . . . sex (which is defined to include gender (including sex stereotyping), and also including a person's gender identity (i.e. a person's identification as male, female, a gender different from the person's sex at birth, or transgender); gender expression (i.e. a person's gender-related appearance or behavior, whether or not stereo-typically associated with the person's sex at birth); transgender (i.e. a person whose gender identity differs from the person's sex at birth); pregnancy or medical conditions related to pregnancy; childbirth or medical conditions related to childbirth; breastfeeding or medical conditions related to breastfeeding; and sexual orientation), marital or domestic partner status. . . or any other legally protected category, as required by applicable federal and state laws. No person shall suffer discrimination, harassment, or retaliation in his or her employment or with respect to any term or condition of employment by any County employee, manager or supervisor

or by any volunteer, vendor, contractor or other third party who may be in the workplace by reason of such person's status in one or more of the protected classifications as enumerated above.

C. It is the policy of the County of Sonoma to provide for a work environment free from unwelcome harassment resulting from an individual's status in one or more of the protected classes enumerated in Paragraph A above. This policy includes, but is not limited to, ensuring that the workplace is free from behavior constituting sexual harassment as defined below. This anti-harassment policy applies to all employees, including permanent, probationary, extra help, part-time and temporary employees and volunteers and paid and unpaid interns. Harassment of an individual because of their status in a protected class, including but not limited to sexual harassment, is an unlawful employment practice prohibited by state and federal law. It is also unapproved and unacceptable work behavior that will not be tolerated by the County. County employees, managers, supervisors, contractors, vendors, volunteers, interns and all other third parties who may be in the workplace are expected to adhere to a standard of conduct while on the job or on County property that consists of respect and courtesy towards other employees and persons. All such persons shall under no circumstances engage in behavior which constitutes harassment of an individual because of their status in a protected classification, including but not limited to, sexual harassment. County officials and employees who are found to committed workplace harassment will be subject to firm disciplinary action up to and including termination of employment. Anyone who engages in unlawful workplace harassment may be personally liable for such conduct and will not be entitled to indemnification and defense in those cases in which the Board of Supervisors determines that such conduct falls outside the scope of employment.

E. Prohibited Conduct: Under no circumstances shall employees engage in behavior which constitutes discrimination or harassment (including, but not limited to sexual harassment) of an individual because of their membership in a protected category or retaliation against an employee who, in good faith, makes a complaint, raises a concern, provides information, or otherwise assists in an EEO investigation, complaint or proceeding related to any alleged violation of this policy. Employees who engage in such conduct may be subject to disciplinary action, up to and including termination of employment.

Section IV defines "sexual harassment" and "other unlawful harassment" to include: Where unlawful conduct unreasonably interferes with an employee's work performance or creates an intimidating, hostile or otherwise offensive working environment. The type of conduct that may constitute sexual harassment when it occurs under the foregoing circumstances includes making unsolicited written or oral communications and physical or visual contact with sexual overtones (e.g. making, sending, or displaying sexually suggestive or obscene letters, notes, invitations, slurs, jokes, gestures, objects, pictures, cartoons or posters). Note that conduct may constitute sexual harassment even when the harassing conduct was not motivated by sexual desire. Unlawful harassment is unwelcome or offensive conduct with the purpose or effect of unreasonably interfering with an individual's work performance, or which creates an intimidating, hostile or offensive working environment that is motivated by or directed to an employee on the basis of the employee's race, color, ancestry, national origin, religious creed, belief or grooming, sex (including sexual orientation, gender identity, gender expression, transgender, pregnancy, childbirth, medical conditions related to pregnancy, childbirth or breast feeding), marital status, age, medical condition, physical or mental disability, genetic information, military or veteran status, or any other legally protected category.

SUMMARY OF CONDUCT SERVING AS THE BASIS FOR DISCILINARY ACTION

During this investigation, it was determined you ridiculed and insulted other members of the Sheriff's Office, spoke disparagingly about a Black captain, and failed to provide effective leadership as a sergeant.

INNAPRORIATE COMMENTS REGARDING SEXUAL ORIENTATION AND RACE IN VIOLATION OF COUNTY AND SHERIFF'S OFFICE POLICIES

As discussed in more detail below, you used the words "fag" and "gay" on many occasions, including around a deputy who is homosexual. This caused the deputy (an instructor) to be uncomfortable while working around you, which is difficult since you are his supervisor of the Emergency Vehicle Operations Course (EVOC). Regardless of the sexual orientation of your audience, those comments are offensive and inappropriate for any county employee, but especially for a peace officer who supervises other peace officers. You also called Captain [redacted], who is Black, a "porch monkey" because you were upset at management. You admitted to using these words and terms. This conduct, in and of itself, is so egregious as to warrant termination.

INSUBORDINATION

You admitted making the comment about Captain [redacted] and said you did so because you were angry with decisions he made regarding an investigation. This behavior is inappropriate for a peace officer, especially a supervisor, and is considered insubordination under department policy.

FAILURE TO ADEQUATELY PERFORM AS A SUPERVISOR

Further, as discussed in more detail below, in addition to your conduct above, you failed to be an effective leader. You were expected to perform the duties as a sergeant in a training setting. Instead, you made the above comments.

Incident (19-IA-0005):

On April 23, 2019, an anonymous letter was left (placed under the door) of Lieutenant Shawn Murphy's office. It appears to have been written by a deputy. The letter alleged that you, while supervising at EVOC training, used the words "fag," "gay," and "porch monkey" in a group setting.

You said the words "fag" and "gay" in front of other EVOC instructors, one of whom is homosexual. In regards to the "porch monkey" comment, you said this when venting about the recent [redacted] investigation where your unit was assigned to conduct a criminal investigation. This comment was in reference to the Sheriff's Office employee who gave you the assignment you were complaining about, Captain (then Lieutenant) [redacted], who is Black. The term "porch monkey" is a racial slue used to connote a lazy Black person.

In light of the serious nature of the allegations and the fact there was Due to the potentially egregious comments being made in a group setting where you were the supervisor, you were placed on Administrative Leave. This occurred after investigators were able to verify through interviews that you had in fact made the comments that were indicated in the anonymous letter.

Several instructors were interviewed during the ensuing investigation. Investigators focused on those training dates between January and May 2019, as it was determined the "porch monkey" comment was made by you after two things occurred; the Domestic Violence Sexual Assault (DVSA) detective team was assigned the [redacted] investigation and you were the subject of a different Internal Affairs investigation.

(Note—During a EVOC training date there is usually one EVOC supervisor, four EVOC instructors, and two alternate EVOC instructors.[1])

One of the EVOC instructors interviewed was Deputy [redacted], who is homosexual. Deputy [redacted] was initially reluctant to discuss what he specifically recalled about you using the words "fag" and "gay." However, after he was provided with the anonymous letter; Deputy [redacted] was more forthcoming. He confirmed the specific comments you made, those which Deputy [redacted] also believed were inappropriate, such as "fag" and "gay."

Although Deputy [redacted] did not fell that the words were necessarily directed towards him, he did state that they nonetheless made him feel uncomfortable. He was also aware those words should not be used (amongst deputies) based on policy. Deputy [redacted] believed you used those words between 2 and 4 times during the times Deputy [redacted] was present at EVOC. When questioned about you saying "anal sex," as indicated in the letter, Deputy [redacted] said "…I've heard [you] talk about that sort of stuff." This also occurred between 2 and 4 times during the times he was present at EVOC with you.

Another EVOC instructor interviewed was Deputy [redacted]. Deputy [redacted] recalled you speaking disparagingly about Captain [redacted]. Deputy [redacted] said:

> "I don't remember the exact date or the context of this conversation, but, uh, he threw out the term 'porch monkey.' And I was, I was pa-, or like, like I said, I wasn't really listenin' to the conversation, but that phrase kinda alerted – I was like, what the hell did he just say? So, and then I was led to believe that he was referring to then Lieutenant [redacted]"

You said this in a group setting with other instructors and students.

Deputy [redacted] has also heard you use the word "fag" a "handful of times." When asked about your use of the word "gay," Deputy [redacted] said "Yeah. Another word that he would use. But it's just more like, oh, that was gay or oh what a fag." When asked if these words were ever used in front of Deputy [redacted], Deputy [redacted] said in part:

> "So, yeah, and that's, that's one thing in particular, so, I think pretty much everybody that we work with, especially on our team, especially out at the track, they're aware of [redacted] orientation. Uh, I consider [redacted] a good buddy of mine. We've worked a lot, uh, ended up on the same shifts a lot together over the past 5 years. Uh, I would never want to have, uh, an atmosphere where he didn't feel welcomed or part of the team."

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[1] Alternate instructors are those deputies who haven't attended a POST certified EVOC instructor's course therefore they are unable to sign off deputies after completing course objectives.

Detective [redacted], who is also an EVOC instructor, said since January of 2019, he has worked as an instructor roughly ten times. On most of those occasions, you were the supervising EVOC member. When asked how often (when he was at the track) he heard you use the word "gay," Detective [redacted] responded "…every time." When asked about you using the word "fag," Detective [redacted] said you used it "frequently." While in did not appear as though you were not necessarily directing the word towards any particular deputy, Detective [redacted] indicated that Deputy [redacted] was able to hear your comments. Detective [redacted] then asked to speak "freely" and stated:

> "So, ever since I've, I've worked with Dave, he's said some things that have been a little inappropriate, you know. Um, and he runs that unit. You know, he is the alpha sergeant out there, in my opinion. Um, he, uh, clearly controls the schedule. He clearly was in charge of, um, the paperwork. Uh, it was made very clear to me, right, and so I have never worked with him when I thought that the words coming outa his mouth were completely appropriate, you know. I, I just, it was one of those things where it's like almost the way he talks, um, and him being the sergeant out there, uh, you know, I, I thought it was, yeah, I thought some of it was inappropriate regarding the word that you brought up, fag and the word gay that you said, and specifically with having [redacted] there, you know. I, uh, I remember him saying, I don't remember when, you know, because it happened…frequently. I would kinda feel bad and, um, it didn't seem to offend him. Uh [redacted] that is. Um, but that is the s, the statement I wanna say, that it just seemed like this is the person that, that he is, you know, and he's promoted to a position where he's at and he was in charge of the, of our unit, and so, you know, I was shocked."

Detective [redacted] recalled when your unit was tasked with investigating the [redacted] matter, since you were "…upset because [you] thought it was an internal matter, not a criminal investigation." It was during that time, while passing you Detective [redacted] overheard you say "…something I would say, but it was something about like a, like a porch monkey."

So considering there were six instructors at any given time, at least three recalled you using verbiage that was extremely inappropriate and in violation of Sheriff's Office and County policies, and reported that you used. The words "fag" and/or "gay" were used on more than one occasion.

During your Internal Affairs interview you said during the beginning of this year you became upset over two issues; one, when the DVSA unit, which you supervise, was assigned the [redacted] investigation and second, when you became the subject of an Internal Affairs Investigation. The common denominator of these two issues was Lieutenant, now Captain [redacted].

Captain [redacted] supervised the Internal Affairs Bureau and was present when the [redacted] matter was transferred from an internal investigation to a criminal investigation. Captain [redacted] also asked Sergeant [redacted] to complete an Internal Affairs investigation concerning your handling of your detective's whereabouts one day.

You expressed your displeasure about the above two matters with your detectives, not only in their office, but also at the track where EVOC training occurred. You continued:

> "I may have discussed even with other, uh, other instructors in, in passing about how frustrating it was. Um, it was very frustrating for me in particularly because every, every

> single direction that this investigation went my lieutenant would call me and question and, and tell me the captain or, uh, usually it was the captain was questioning why we're doing something.
>
> "And I, this to me was not a very complicated case…And I said you know I'm sick and tired of this. Sick and tired of being questioned about why we're doing the things we're doing. We're trying to get as close to the truth as we possibly can. And so that was, it was very frustrating for me."

You were asked why you referred to Captain [redacted] as a "porch monkey." You said:

> "Well, um, I, when I was talking to guys about this I, after it was done, I was extremely pissed off. And, um, I believe what I actually said in, in front of, um, that group of people was probably that fucking monkey. And in that same conversation I said, I called [redacted] the same thing."

You then tried to minimize your use of the term "monkey" by stating:

> "I have called my detectives that. And what I mean by that is you're being stupid. Now I know I was pissed off and, uh, is it possible that I said porch monkey? I, I guess it's very possible 'cause I was pissed off. Um, it's a normal phrase that I use and so that's why I think it said, I said, you know, fucking monkey. However, it's very possible I, [redacted], I was pissed and I was pissed that it even, it happened. Um, I was, even though there was no discipline I was pissed with the conclusion of it. Um, and, and I was pissed at [redacted] for never getting back to me."

None of the detectives interviewed said you used the term "fucking monkeys" or "monkey."

You agreed the term "porch monkey" is not an appropriate term to use in front of your detectives in reference to someone who is a part of the Sheriff's Office management team.

You admitted you are familiar with the Department's Harassment policy since you are required to take an updated class every two years as a supervisor as well as discuss with your subordinates the policy when completing their evaluations.

From January to May, 2019, you agreed you were responsible for ensuring your instructors taught and evaluated EVOC training students based on POST standards.

When asked how often you used the word "fag" during training, you said it was a common word for you to say. You admitted, "…I know I use that word. Um, I can't, um, I can't think of a specific like incident but I definitely know I use that word."

When asked about the word "gay," you said the word "…would come out of my mouth too."

You said you were aware Deputy [redacted] is homosexual, claiming you "…hired him." When asked, you said you "most definitely" used the words "fag" and/or "gay" around Deputy [redacted].

When asked if you believed those words were appropriate to use around Deputy [redacted], you responded: "Absolutely not."

Regardless of the sexual orientation of your audience, such comments are inappropriate in the workplace, are prohibited by both County and Sheriff's Office policies, and

In regards to your use of the term "monkey or porch monkey," you responded:

> "Uh, most definitely and, ye, yes, and by the, there was no intent to attack him as a racial slur. It was out of anger. And yes, can I see how that can be taken by somebody? Mo, most definitely, and it's not acceptable."

You were then asked about what you would have done if you had heard one of your subordinates say either the words gay or fag in front of Deputy [redacted] or referred to Captain [redacted] as a porch monkey. You said you would have taken action right away to deal with it. You were then asked who was supposed to "take action" when you were the one making those comments, to which, you responded "probably other deputies."

You, when supervising the EVOC team, not only spoke despairingly about one of your subordinates, you disrespected a superior officer—Captain [redacted].

CONCLUSION

As a sergeant in a training setting, you were expected to perform the duties of a sergeant in a competent manner and to set an example. Instead of being an effective leader and attempting to improve the performance of your subordinates by setting a good example to other, you made the about disparaging comments in form of them. . You could not have effectively promoted responsible conduct of your subordinate over which you had responsibility, as you were unable to control your own conduct, thereby setting a poor example of a leader here at the Sheriff's Office. You admitted that if one of your subordinates had done what you did, you would have taken action. When asked who was responsible for your actions since you were the most senior member of staff, you said, "a deputy." Your conduct was far from being that of an effective leader or exemplary.

There are many leadership traits that you failed to exhibit, including being dependable, tactful, and loyal. While you were expected to competently perform the duties of a sergeant in a training setting, instead you proved you could not be trusted or depended on to achieve the highest standards of performance. You were anything but tactful when you used derogatory words to express yourself. You proved you were not loyal to those managers above you or to your subordinates below you. You failed at being an effective leader.

As a sergeant, you are expected to set an example for not only your subordinates but also to those around you. You admitted racial and homosexual epithets and slurs not only set a bad example of leadership, but cannot be tolerated in light of the fact you a peace officer and supposed to represent the Sheriff's Office.

Your derogatory comments, particularly in light of your position as a supervising peace office, and the standards by which you are expected to perform, constitute a serious violation of County and Sheriff's Office policies that have exposed the County and the Sheriff's Office to liability. Any one of the above-reference actions on its own, is sufficient to warrant termination as the appropriate level of discipline,

and accordingly, the Sheriff's Office need only demonstrate that you engage in conduct on one occasion that violated any of the above-referenced policies; it does not need to prove that you engaged in all of the conduct and violated all of the reference policies. As a peace officer, and in particular, as a supervisor with the Sheriff's Office, you are held to a higher standard that you have failed to meet. As such, I find that ample grounds exist to discharge you from your employment with the Sonoma County Sheriff's Office.

Your Right to a Response:

Under applicable law, and the Rules of the County Civil Service Commission, you have various legal rights in connection with this Notice that you should discuss with your attorney, union representative, or other representative.

You have the right to respond, verbally or in writing, or both, to this Notice. Your verbal or written response must be made within three (3) working days after the day this notice is delivered to you, pursuant to Rule 10, Section 10.5 A of the Rules of the Civil Service Commission. The time to respond may be extended if you make such a request to the appointing authority and the request is granted for a hearing.

Your written or oral response, if any, must be communicated to Captain [redacted] Sonoma County Sheriff's Office, 2777 Ventura Avenue, Santa Rosa, California, 95403, or by phoning him at 565-1607.

IF NO RESPONSE TO THIS WRITTEN NOTICE IS RECEIVED BY CAPTAIN [redacted] WITHIN THREE (3) WORKING DAYS AFTER THE DAY THIS NOTICE IS DELIVERED TO YOU, OR ON THE LAST DAY OF ANY APPROVED EXTENSION OF TIME, YOU WILL HAVE WAIVED YOUR RIGHT TO MAKE SUCH RESPONSE.

If you wish to accept the proposed discipline and not respond to Captain [redacted] please call Sergeant [redacted] at 565-1432 within three (3) working days so he can move forward with the disciplinary process.

This Notice may become part of your permanent personnel record if disciplinary action is, in fact, imposed as a result of the reasons set forth herein. Read this Notice carefully and sign or initial this notice on the line provided below.

MARK ESSICK
Sheriff-Coroner

7/20/2020
Date Signed

DAVE BERGES
Sergeant

7-21-20
Date Received

Prepared by: Sgt. Doherty