

**BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE**

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**In the Matter of the Appeal of Daniel J. Vidmar  
Personnel Order 2014-01**

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Hearing Dates:        May 12, 2014  
                              June 17, 2014

Hearing Location:    809 North Broadway, First Floor Boardroom  
                              Milwaukee, Wisconsin

Commissioners:       Marisabel Cabrera  
                              Steven M. DeVougas  
                              Michael M. O'Hear

Hearing Examiner:   Michael M. O'Hear

Appearances:         Adam B. Stephens, Assistant City Attorney  
                              For the Milwaukee Police Department

Attorney Brendan P. Matthews  
For Appellant Daniel J. Vidmar

**PROCEDURAL HISTORY**

The Chief of Police, Edward A. Flynn, charged Police Officer Daniel J. Vidmar in Personnel Order 2014-01 dated January 8, 2014, with the following violations of Milwaukee Police Department Rules and Procedures:

1.     Core Value 3.00 – Integrity, referencing Guiding Principle 3.05: Failure to obey the laws in effect in the State of Wisconsin.
2.     Core Value 3.00 – Integrity, referencing Guiding Principle 3.10: Failure to be forthright and candid on an official department report.
3.     Core Value 1.00 – Competence, referencing Guiding Principle 1.02: Lacking the capacity to enforce federal and state laws, and city ordinances.

Vidmar, the Appellant in this matter, filed an appeal with the Milwaukee Fire and Police Commission from the order of the Chief of Police and a hearing was held.

### **SUMMARY OF HEARING PROCEEDINGS**

The hearing was conducted on May 12 and June 17, 2014. The hearing was recorded by a stenographic reporter. Testimony was taken from the following witnesses:

For the Chief of Police:      Police Officer David Ziebell, Milwaukee Police Department  
Police Officer Daniel Vidmar, Milwaukee Police Department  
Deputy District Attorney Kent Lovern, Milwaukee County District  
Attorney's Office  
Sergeant Anthony Schmitz, Milwaukee Police Department  
Lieutenant Johnny Sgrignuoli, Milwaukee Police Department  
Assistant Chief James Harpole, Milwaukee Police Department

For the Appellant:            Captain Regina Howard, Milwaukee Police Department  
Investigator Cheryl Patane, Milwaukee Fire and Police  
Commission  
Retired Chief Deputy City Attorney Rudolph Konrad, Milwaukee  
City Attorney's Office  
Police Officer Carrie Radtke, Milwaukee Police Department  
Police Officer Daniel Roufus, Milwaukee Police Department  
Sergeant Kieran Sawyer, Milwaukee Police Department  
Lieutenant Steven Kelly, Milwaukee Police Department  
Sergeant Lawrence Mueller, Milwaukee Police Department  
Lieutenant Johnny Sgrignuoli, Milwaukee Police Department  
Lieutenant Robert Menzel, Milwaukee Police Department  
Attorney Daniel Sanders, Kohler & Hart, SC  
Shawn Lauda, Milwaukee Police Association  
Police Officer Daniel Vidmar, Milwaukee Police Department

Based upon the evidence received at the hearing, the Commission makes the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. At the time of his discharge in January 2014, Police Officer Daniel Vidmar ("Vidmar") had worked for the Milwaukee Police Department for more than nine years. During that time, he established a commendable record of service to the Department and the people of Milwaukee. (Exhibits 36 and 37) By all accounts, Vidmar was a good officer, as even Counsel for the City conceded in his closing argument in this proceeding.
2. The events giving rise to this appeal began in August 2012. At that time, Vidmar served on a bicycle unit in District 7.

3. On August 18, 2012, Police Officer Joseph Newell took possession of a dirt bike in connection with an arrest for disorderly conduct. (Ex. 1) The bike was brought to District 7 for storage until such time as it was claimed by its rightful owner.
4. Vidmar first saw the dirt bike in the garage of District 7 some time in late August 2012. The bike was marked with a police inventory sticker, as indicated in Exhibit 2. Vidmar looked the bike over and thought it would be good for his son. (Vidmar testimony, May 12)
5. Vidmar testified that he later called the Department's centralized Property Control Section ("PCS") to ask how he could get the bike. The Department does have a Standard Operating Procedure dealing with this issue (SOP 560, Ex. 17). However, Vidmar testified that he chose to ask the "experts" at the PCS, rather than consulting the SOP himself. (Vidmar testimony, May 12)
6. Vidmar did not document his alleged call with the PCS, but asserts he was told by an unidentified male officer that (a) he would have to wait at least 30 days to see if anyone else claimed the bike, and (b) that he could not claim the bike himself, but would have to have someone else claim it on his behalf. (Ex. 3)
7. The City raises some doubt as to whether Vidmar actually called the PCS and received this advice. Investigators later contacted male officers in the PCS to ask if any had received calls from Vidmar or any other male officer about how to claim a bicycle; none recalled such a communication. (Ex. 13, p. 8) We do not think it necessary to resolve this factual dispute in order to decide this appeal. We will simply assume for present purposes that Vidmar made the call and received the response as indicated in Exhibit 3.
8. Once Vidmar believed that the bike had been in police possession for at least 30 days, he took steps to take possession of it for his son. Specifically, he filled out a PO-5 "Order for Property" form. (This PO-5 is reproduced within the bottom half of Exhibit 1.) The PO-5 contained numerous omissions and inaccuracies. For instance, Lieutenant Robert Menzel ("Menzel") of the PCS noted that the PO-5 was undated and lacked a description of the item being claimed. (Menzel testimony) More important for present purposes, though, were the false statements made on the form. Vidmar wrote that the property was being requested to be "[r]eturned to owner Mark Dempski." This statement was false and misleading in several respects. First, "Mark Dempski" was not the owner of the bike. However, Vidmar did have a friend named "Mark Demski ('Demski')." Vidmar has admitted that this was the name he meant to place on the form. (Ex. 3) Yet, Demski had not given permission for his name to be used in this way and had no connection to the bike. (Ex. 13, pp. 4, 8) Nor did Vidmar intend to "return" the bike to him, but rather sought the bike for his own purposes. (Vidmar testimony, May 12)
9. Vidmar took the PO-5 to his supervisor, Sergeant Lawrence Mueller ("Mueller"). Vidmar states that he did not provide any verbal explanation or clarification of the form, but simply put the form in front of Mueller for Mueller's signature, which was required. (Vidmar testimony, May 12) Mueller remembers things differently, stating that Vidmar told him the property was going to the owner, who was there to pick it up. (Mueller

testimony) In any event, that is what Mueller believed the situation was when he signed the form. (Mueller testimony) Vidmar brought the bike home with him a few days later. (Vidmar testimony, May 12)

10. Vidmar does not dispute that he intentionally lied on the PO-5, but he does attempt to downplay his dishonesty as largely inconsequential, at least based on his understanding of the situation at the time. On his account, he was informed by the PCS that it was permissible for a third party to claim a bike on his behalf. His belief, he suggests, was that he could have gotten the bike by simply having his friend Demski go to District 7 and pick it up for him. He thought that Demski would have done so if he had been asked. His lies on the PO-5 were thus only intended to save Demski the “inconvenience” of a trip to the station. (Ex. 3)
11. We are not much impressed with this line of thinking. Even assuming that Vidmar had a good-faith belief that someone could claim a bike on his behalf, we do not understand Vidmar to be asserting that someone in the PCS counseled him to affirmatively lie on an official police form by misidentifying the third-party claimant as the owner or by stating that the bike would go to a person who might never even lay eyes on it. If Vidmar is making such an assertion, we would consider it highly implausible that a PCS officer would actually recommend such a course of action or that Vidmar would in good-faith believe that it was okay for him to make blatantly false representations on an official form. Even granting that someone in the PCS told Vidmar that he could obtain a bike by use of a third-party claimant, we believe that this advice must have contemplated that Vidmar would act transparently with supervisors. District-level commanding officers apparently had, or thought they had, some discretion to give away bicycles at some point in time, (Captain Regina Howard (“Howard”) testimony), and this discretion was to a limited extent also recognized in the governing rules, (SOP 506.85(A)). If Vidmar had filled out the PO-5 honestly, there seems a good chance that this would have triggered further supervisory review and a consideration of whether the commanding officer’s discretion could and should be exercised in his favor. By filling out the form the way he did, however, Vidmar must have known that he was making supervisory scrutiny quite unlikely; why would anyone question the return of a bicycle to its rightful owner? In short, we see in the false PO-5 not merely an effort to spare a friend from some minor inconvenience, but a calculated effort to ensure that Vidmar would get the bike without having to face any hard questions about whether this was a permissible and appropriate outcome.
12. The PO-5 eventually found its way back to Officer David Ziebell (“Ziebell”) in the PCS, who was responsible for managing the paperwork. Ziebell noted the discrepancy between the name of the person on the “drop sheet” from whom the bike was taken, (Ex. 1), and the name of the person on the PO-5 who allegedly claimed the bike. He also happened to be personally acquainted with both Demski and Vidmar. Suspecting that “Dempski” was really “Demski,” he called Demski to confirm that he had in fact claimed the bike. Demski, however, had no knowledge of the bike. Ziebell decided to return the PO-5 to District 7 in order to get more information about the person who actually had the bike. (Ziebell testimony)

13. Back in District 7, the matter came to the attention of Sergeant (now Lieutenant) Steven Kelly (“Kelly”). Kelly discussed the issue with Howard, his commanding officer, and Mueller. Mueller was instructed to get to the bicycle back. He contacted Vidmar, and within a short period of time Vidmar returned the bike to District 7. (Ex. 13, pp. 3-4)
14. Howard met with Vidmar regarding the incident. (There is some conflict in the evidence as to who initiated the meeting, but we do not regard that to be a material issue.) This was a closed-door meeting. Howard advised Vidmar that it was improper for him to try to take a bike for personal use. In Vidmar’s recollection, Howard also informed him that this conversation would be the end of the matter. (Ex. 3) In her own mind, Howard also thought that “this whole incident was done.” (Howard testimony, trans. at 26) After the meeting, she supplied Vidmar with a copy of SOP 560 and the Code of Conduct. (Trans. at 26)
15. Howard could have referred the matter to Internal Affairs for further investigation, but chose not to do so. She made this decision based on Vidmar’s representation that someone from the PCS said he could obtain a bike and based on her personal experience of getting inconsistent answers from the PCS about her own authority to give out bikes. (Trans. at 24, 30-31)
16. Howard’s meeting with Vidmar would indeed have been the end of the matter, but for an anonymous letter to the Fire and Police Commission complaining about how the situation had been handled. (Ex. 15) The letter eventually triggered a more thorough investigation by the Department and the imposition of the discipline at issue in this appeal.

### CONCLUSIONS OF LAW

17. In this appeal, we are first required to determine whether “by a preponderance of the evidence . . . there is just cause to sustain the charge[s].” Fire and Police Commission Rule XVI, § 12(b). In so doing, we take into account the first five of the seven just cause standards set forth at Wis. Stat. §62.50(17)(b), to the extent they are applicable. In order for us to sustain a charge in this case, the City must prove each of the first five just cause standards by a preponderance of the evidence. If the charge is sustained, we must then determine “whether the good of the service requires that the appellant be . . . discharged.” Fire and Police Commission Rule XVI, § 14. If not, then we must determine some lesser discipline that is consistent with what the good of the service requires. In making the determination about what discipline to impose, we must take into account the sixth and seventh just cause standards set forth at Wis. Stat. §62.50(17)(b), to the extent they are applicable. We may also consider evidence “regarding the member’s character, work record, and the impact of the misconduct on the complainant, department, and community.” Fire and Police Commission Rule XVI, § 14. Below, we separately apply these various standards to each of the three charges against Vidmar.

#### First Charge: Failure to Obey State Law

18. The first just cause standard asks “[w]hether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.”

In essence, the first charge alleges that Vidmar committed a criminal theft when he took the bike from District 7. We note that the Milwaukee County District Attorney considered, but declined, filing theft charges against Vidmar. The Deputy District Attorney opined as follows, “[T]he very thorough investigation by Internal Affairs indicates that there was a lack of clarity within District 7, even by the captain herself, about the policy and procedure for retaining and returning the many bicycles routinely recovered by the Milwaukee Police Department. Therefore, it could be argued that Vidmar sincerely believed that he could at some point take possession of an unclaimed bicycle that otherwise might be scrapped or recycled.” (Ex. 7) We believe that the Deputy District Attorney’s opinion finds ample support in our evidentiary record. We recognize that a prosecutor must take into account the very high burden of proof that applies in criminal cases, but we nonetheless conclude for the same reasons identified by the Deputy District Attorney that the first just cause standard is not satisfied as to the first charge. Although the question is a close one, we do not believe the City has proven by a preponderance of the evidence that Vidmar “could reasonably be expected to have had knowledge of the probable consequences” of taking an unclaimed bicycle from District 7. Therefore, we need not provide any further analysis of the first charge.

#### Second Charge: Failure to Be Forthright and Candid on an Official Department Report

19. It is one thing to take an unclaimed bike, and quite another to do so by means of false statements on an official form, which is the focus of the second charge. Here, we have no difficulty concluding that the first just cause standard is satisfied. It is a very grave matter for a police officer to lie, as evidenced, for instance, by the letters contained in Exhibits 7-9, and we do not understand Vidmar to seriously contest the point. We further detail the seriousness of police dishonesty in Paragraphs 37 and 39 below. We conclude that the City has established by a preponderance of the evidence that Vidmar “could reasonably be expected to have had knowledge of the probable consequences” of lying on the PO-5.
20. The second just cause standard asks “[w]hether the rule or order the subordinate allegedly violated is reasonable.” Again, it seems to us that one cannot seriously contest, and that Vidmar does not contest, the reasonability of a rule requiring honesty on police reports—these are simply too critical to the just and effective operation of the Police Department and of the criminal justice system more generally. We conclude that the City has satisfied the second standard by a preponderance of the evidence.
21. The third just cause standard asks “[w]hether the Chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.” Sergeant Anthony Schmitz (“Schmitz”) and Lieutenant Johnny Sgrignuoli (“Sgrignuoli”) testified at length regarding the Chief’s “effort[s]” in this case. The depth of the investigation is reflected in Schmitz’s thorough report. (Ex. 13) We conclude that the City has satisfied the third standard by a preponderance of the evidence.
22. The fourth just cause standard asks “[w]hether the effort . . . was fair and objective.” This presents a closer question than the first three just cause standards. Although the thoroughness of the investigation supports an inference of care and neutrality, Vidmar

does raise a concern regarding the fairness of the process. Specifically, he has presented what he styles a “double jeopardy” defense. He testified that he thought the scolding he received from Howard was the end of the matter. Yet, a few months later, he found himself suddenly in the midst of a new, career-threatening investigation for the same misconduct that Howard decided not to refer to Internal Affairs. By analogy to the Fifth Amendment Double Jeopardy doctrine, Vidmar might say that it is as if he were convicted of a crime and given probation by one judge and then re-prosecuted for the same crime and given a long prison sentence by a different judge in the same courthouse. Such a re-prosecution would plainly be barred in criminal cases by the Double Jeopardy Clause.

23. Of course, this is not a criminal proceeding, and the Fifth Amendment Double Jeopardy Clause does not apply. However, Vidmar has identified a number of (nonbinding) authorities that indicate that something like the constitutional Double Jeopardy doctrine applies in employment cases involving a just cause standard. These authorities reason that it is fundamentally unfair to impose two separate disciplinary sanctions on an employee for the same conduct, and that this unfairness precludes a finding of just cause for the second sanction. Although these authorities are not binding on us, we will accept for the sake of argument that a second disciplinary process for the same conduct would be unfair in violation of the fourth just cause standard. We must thus consider whether Vidmar was, in fact, disciplined by Howard for the same conduct that is the subject of the second charge in this proceeding.
24. Even assuming his scolding by Howard constituted discipline, one difficulty with Vidmar’s argument is that it is not entirely clear what he was disciplined for in that first “proceeding.” There is no contemporaneous documentation of what Howard said to Vidmar, and the recollections of both seem to center on the subject matter of the first charge (taking the bicycle) rather than the second (lying on the PO-5). It might be argued that the two charges are so factually interrelated that discipline for the one necessarily constitutes discipline for the other, but such a loose “transactional” test has been rejected by the United States Supreme Court in the Fifth Amendment context, *United States v. Dixon*, 509 U.S. 688 (1993), and it would seem odd to say that defendants in this sort of an administrative proceeding get stronger procedural protections than defendants in criminal cases.
25. We need not, and do not, resolve this conundrum about the scope of the first “proceeding,” because we do not believe, whatever its scope, that the encounter between Howard and Vidmar constituted discipline for double jeopardy purposes. We would suggest a different analogy than the one presented in Paragraph 22. A closer, though admittedly still imperfect, analogy would be to a situation in which a prosecutor initially tells an offender that charges will not be filed at all, but then changes her mind, or is overruled by a supervisor. While we might sympathize with the offender’s disappointed expectation that the matter was over, there would be no colorable Double Jeopardy claim in such a case. Rather, the Double Jeopardy Clause protections are triggered—that is, jeopardy “attaches”—only when a criminal case has been formally initiated and reached a particular, well-defined stage in the process. See *Martinez v. Illinois*, 134 S. Ct. 2070 (2014). Among other benefits, this formalistic, objective approach serves to make it

crystal clear what the subject matter of the first proceeding was, thus mitigating the sorts of difficulties highlighted in the previous paragraph. Additionally, this approach serves to reduce the risk that the public's interest in holding offenders appropriately accountable will be defeated by a prosecutor's over-hasty and ill-considered decision to show lenience at the initial charging stage.

26. We do not think it necessary or appropriate at this time to mark out a precise line at which jeopardy attaches in the Milwaukee Police Department's disciplinary process. We simply conclude, in light of the following considerations, that the conversation between Howard and Vidmar did not constitute discipline. First, there was no written complaint or other documentation of charges against Vidmar. Second, there was no permanent record made of the incident or Howard's response to it in Vidmar's personnel records. (Trans. at 33) Third, Internal Affairs had no involvement in the matter. Fourth, the Police Chief, the only person in the Department with the authority to discharge or suspend an officer without pay, also had no involvement. And, fifth, Howard's response to the misconduct seemed hasty and off-the-cuff; for instance, on Vidmar's own account, (Ex. 3), Howard informed him that it was the end of the matter immediately after she heard his side of the story, without taking any time to reflect on the best course of action or confer with others. While we do not necessarily see any single one of these considerations as dispositive, we do think that, taken as a whole, they deprive Howard's interaction with Vidmar of the gravity, formality, and deliberateness that we would associate with true discipline in a bureaucratic, hierarchical organization like a police department. Put differently, we do not think that a reasonable police officer in Vidmar's situation could conclude that he had undergone a disciplinary process or received discipline.
27. We recognize that counseling and policy review *can* be imposed at the end of a formal disciplinary process, but that does not logically mean every time there is counseling or policy review that discipline has been imposed. Indeed, supervisors often issue verbal corrections to employees, (*see, e.g.*, trans. at 32), and it cannot be the case that each time this occurs there has been discipline that categorically precludes additional sanctions. Nor do we think it relevant that Howard changed District 7's bicycle-giveaway policies after the incident with Vidmar; this obviously reflects her sense, which we share, that past practices in this area had been inconsistent and out of step with written policies, but this does not bear on the question of whether Howard had disciplined Vidmar for lying on the PO-5. If anything, it serves to strengthen our sense that Howard was really more focused on the fact that Vidmar had tried to obtain a bicycle for personal use than she was on the dishonest method by which he had done so, which is the subject of the second charge.
28. In the absence of a serious double jeopardy problem, we think all indications point to a fair and objective process, and we conclude that the City has satisfied the fourth standard by a preponderance of the evidence.
29. The fifth just cause standard asks "[w]hether the Chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate." Vidmar has admitted to dishonesty on the PO-5, which very nearly satisfies the fifth standard in and of itself. The only (slight) difficulty is Vidmar's

suggestion that maybe the PO-5 was not a “report.” After all, Guiding Principle 3.10 does not require Department members to be forthright and candid as a general matter, but only “in connection with any administrative inquiry or report.” However, Vidmar has not proposed a definition of “report,” and it seems to us that the information contained in a PO-5, while brief and formulaic, nonetheless qualifies. For instance, the most pertinent definition of “report” in *Webster’s* is “a usually detailed account or statement,” as in a news report. *Webster’s Ninth New Collegiate Dictionary* 999 (1987). The PO-5 offers an “account or statement” of who is collecting which items of property, including a range of details, such as the property’s inventory number, a description of the item, the name and additional identifying information of the person collecting the item, and the name of the officer filling out the form. The “report” issue thus addressed, we conclude that the fifth just cause standard is satisfied by a preponderance of the evidence as to the second charge.

30. Having now determined that there is just cause to sustain the second charge, we must consider whether the good of the service requires Vidmar’s discharge, taking into account the sixth and seventh just cause standards.
31. The sixth just cause standard asks “[w]hether the Chief is applying the rule or order fairly and without discrimination against the subordinate.” This standard is similar to the fourth just cause standard, particularly in relation to the shared emphasis on fairness. Again, the testimony (particularly that of Sgrignuoli, Schmitz, and Assistant Chief James Harpole “Harpole”) and documentary evidence (particularly Exhibits 13, 19, and 28) easily support an inference of a fair, nondiscriminatory investigation and disciplinary process. The double jeopardy argument may also be relevant to this just cause standard, but we have already explained why we are not persuaded by that argument.
32. In evaluating the sixth just cause standard, we often look to “comparables,” that is, the discipline imposed in earlier cases that are similar to the case under review. Large, unexplained differences in the severity of the discipline imposed in similar cases can constitute significant evidence of unfair or discriminatory treatment. At the same time, the weight we ascribed to comparables is limited by at least two considerations. First, there are no two cases that are ever exactly alike, so some variation in the penalties imposed for violating a single rule is both expected and desirable. Second, we believe that the Chief should have the discretion to modify the penalties that he imposes for particular categories of violations over time based on new information or changed circumstances in the Department.
33. The comparables considered by the Chief are listed in Exhibit 29. More specifically, as to the second charge, the relevant comparables are those listed on the pages stamped 170-71. The Chief imposed the following discipline in these comparables: 1-day suspension (Serio), discharge (Copeland), discharge (Moeller), reprimand (Clark), Alston (2 days), Lutz (1 day), Jenkins (10 days), and dismissal of charges (Yaghnam). In some of these cases, the discipline imposed by the Chief was later reduced by this Commission. Some additional procedural history has been supplied by the Milwaukee Police Association in Exhibits 34-35 and through the testimony of its Secretary-Treasurer, Shawn Lauda. Notably, both of the prior discharges were later, in some sense, revised. Copeland, we

are told, took a duty disability retirement while his appeal was pending, while Moeller succeeded in having his discharge reduced to a 5-day suspension by this Commission. However, it is at least arguable whether these subsequent developments are relevant to our analysis of the sixth just cause standard, which focuses our attention on whether “the Chief” has acted in a fair, nondiscriminatory fashion. Whatever subsequently happened to Copeland and Moeller, their cases still supply evidence that the Chief has in the past viewed dishonesty as a dischargeable offense; it is not as if Vidmar is the first and only person the Chief has ever sought to discharge for this sort of misconduct.

34. We are nonetheless a bit troubled by the fact that Vidmar has been discharged when so many others guilty of dishonesty have merely been suspended. At the hearing, the City seemed to emphasize as a distinguishing factor that Vidmar was motivated by personal gain. It seems to us, however, that some of the other suspended officers also acted for personal gain, such as Serio, who apparently lied on a time card, and Lutz and Jenkins, who seem to have lied on sick reports. If we understand these prior cases correctly, the dishonest officers were able to devote time that should have been the Department’s to personal pursuits. That one officer was motivated by a desire to secure a tangible item (the bike) and others were motivated by a desire for less tangible benefits does not seem a persuasive basis for distinguishing the cases.
35. It is a close question, but in the end we are convinced that the evidence tips in support of a finding that the Chief acted in a fair, nondiscriminatory fashion. This evidence includes that noted in Paragraph 31, as well as the fact that the Chief has attempted to discharge officers for dishonesty in the past.
36. The seventh and final just cause standard asks “[w]hether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate’s record of service with the chief’s department.” To help us answer this question, we may receive and consider evidence “regarding the member’s character, work record, and the impact of the misconduct on the complainant, department, and community.” Fire and Police Commission Rule XVI, § 14.
37. As to the seriousness of the violation, we generally view police dishonesty on official reports as an extremely grave matter. Police reports are often relied on as a justification for the most serious official infringements on the life, liberty, and property of citizens; lying on such reports can produce momentous injustices. Moreover, if the police acquire a reputation for dishonesty, then the ability of police and prosecutors to hold offenders accountable through the legal system may be undermined; it is imperative that judges and jurors have confidence in the reliability of what police officers tell them.
38. Although *categorically* police dishonesty is a very serious offense, Vidmar’s particular falsehoods were—fortunately—far short of a worst-case scenario in their harmfulness. They were not lies, for instance, on a criminal complaint or an application for a warrant. Nor were Vidmar’s actions part of a cover-up for an excessive use of force or some other especially egregious misconduct. The only direct harm from his falsehoods was the Department’s loss of an unclaimed bike that likely would have been thrown out, scrapped, or auctioned off for a small sum. On its face, this level of harm does not seem

to warrant a discharge, which is the most severe penalty that can be imposed in the Department's disciplinary process.

39. To be sure, there are also *indirect* harms that should be considered. In particular, we are concerned that lies on even small matters can contribute to a District- or even Department-wide culture of dishonesty. In our view, it is important for the Department and this Commission to send a clear message through the disciplinary process that intentional dishonesty on police reports is unacceptable, regardless of the nature of the report.
40. There is at least one other serious harm that has resulted from Vidmar's dishonesty: he has lost his ability to testify for state prosecutors in criminal cases. (Ex. 7) However, this harm is the subject of the third charge. Since the Chief has chosen to disaggregate this harm and treat it as its own offense, we will not double-count it by also holding it against Vidmar as an aggravating factor in connection with the second charge.
41. We must also take into account Vidmar's record of service and character, and these are clearly mitigating, as indicated in Paragraph 1 above and documented at length in Exhibits 36 and 37. Likewise, we count in Vidmar's favor that he has accepted responsibility for his offense. Counting against him is the intentional nature of the offense and the motivation (personal gain).
42. In light of all of the foregoing, we cannot conclude that a discharge reasonably relates to the seriousness of the second charge and to Vidmar's record of service with the Department, or that it is required for the good of the service. Rather, we believe that a 60-day suspension without pay better comports with these legal standards. As the second-most serious discipline available in this case, a 60-day suspension sends the requisite message to others in the Department that lying on any police report is unacceptable, but it also keeps a good police officer in the Department. We conclude, by a preponderance of the evidence, that a 60-day suspension reasonably relates to the seriousness of the second charge and to Vidmar's record of service with the Department, and that it is required for the good of the service.

#### Third Charge: Lacking Capacity to Enforce Laws

43. The third charge overlaps in many respects with the second. In essence, the Chief charges that Vidmar's dishonesty has deeply impaired his ability to provide testimony in future cases, and that this impairment means that he now lacks the capacity to enforce the law, as he is required to do pursuant to Guiding Principle 1.02.
44. The first three just cause standards present no great difficulty, and we find that all three have been established by a preponderance of the evidence. It should be self-evident that a police officer who impairs his ability to serve as a witness must expect severe disciplinary consequences. Nor do we see the possibility of any real dispute over the reasonableness of Guiding Principle 1.02, which restates widely recognized understandings of the police function. Likewise, we have already discussed the evidence supporting the reasonableness of the Chief's investigative efforts in this matter. (¶21)

45. We find the fourth just cause standard has been satisfied for the same reasons we found it to be satisfied as to the second charge. (¶¶22-28)
46. The fifth just cause standard presents a close question. The evidence establishes that the Milwaukee County District Attorney (“DA”) will not call Vidmar as a witness in a criminal case. (Ex. 7) This evidence is not undermined by the fact that Vidmar has received some automatically generated subpoenas or that he was called by the State Department of Justice in a victim compensation case. (Ex. 10) Nor is it undermined by the fact that the DA’s position goes beyond what is strictly required by federal constitutional law. (Attorney Daniel Sanders (“Sanders”) testimony) Whatever the wisdom of its decision, the DA’s Office has decided that Vidmar’s credibility has been so badly compromised that he will not be used as a witness by that Office in the future. The evidence also establishes that Vidmar may be used as a witness by the United States Attorney’s Office, (Exs. 8-9), but that the present incident would have to be disclosed to defense counsel and that Vidmar’s “severe credibility issues” would have to be considered by that Office on a case-by-case basis. Finally, the evidence also establishes that the City Attorney’s Office “would not rely or call on [Vidmar] as a witness in a case pending in municipal court.” (Ex. 14)
47. These considerations would make it extremely problematic for the Department to use Vidmar in any direct law-enforcement capacity, for he could not be called on to testify in support of his arrests and investigations except possibly and in deeply impaired ways by the U.S. Attorney’s Office.
48. But does this mean that Vidmar lacks “the capacity to enforce federal and state laws, and city ordinances,” as the Chief charges? It is clearly much harder now for him to play an effective law-enforcement role, but it is much less clear whether he has crossed the line into true incapacity. The evidence establishes that officers can and do contribute to the Department’s law-enforcement efforts even when they have had their police powers temporarily suspended or have suffered an injury that prevents them from working in the field. Vidmar himself testified to the work he did for the Department in both sorts of capacities. For instance, his evaluation report from June 2013 (after his police powers were suspended) states, “For the last (3) months of this rating period, Officer VIDMAR has been assigned to desk duties at the District. He has become an asset to the office crew and works well [with] the other Officer[s] and Clerks. He can be given special projects that he completes in a timely manner with positive results.” (Ex. 36)
49. Still, we are persuaded that, for a police officer, “enforcing the law” really implies working in the field—patrol, investigation, arrests, and the like. We conclude that the Chief has “discovered substantial evidence,” as set forth in Exhibits 7, 8, 9, and 14, that Vidmar violated Guiding Principle 1.02 by rendering himself unable, as a practical matter, to enforce the law. The fifth just cause standard is satisfied by a preponderance of the evidence.
50. We find the sixth just cause standard satisfied for substantially the reasons indicated in Paragraphs 31 and 35 above. With respect to comparables, we note that the Chief

attempted last year to discharge Police Officer Kurt Kezeske on the same incapacity theory that he used in this case. (Ex. 29) Although the Commission overturned that decision, the case is distinguishable: the City failed to produce a clear statement from the DA's Office, as it did here, that Kezeske would not be called to testify in the future.

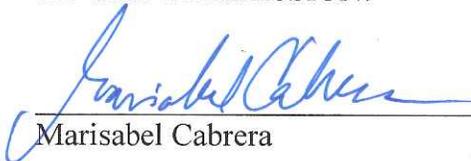
51. This brings us to the seventh just cause standard. We reiterate that there are significant mitigating considerations in this case, as set forth in Paragraph 41. However, there is one crucial difference in our consideration of the second and third charges: we now take into account the impairment of Vidmar's ability to enforce the law. In our mind, this tips the balance decisively in favor of discharge. The harm to the Department from Vidmar's *de facto* incapacitation as a law-enforcement officer is far greater than the harm caused by the loss of the bike. Given the burdens on the Department of continuing to carry an officer on the force who cannot truly function as a police officer, we have little difficulty concluding the good of the service requires discharge. Although there is certainly plenty of back-office work to do in a police department, there are other employees available for this sort of work, including civilians, police aides, and officers in a temporary disability or suspension of police powers situation. We credit Harpole's testimony that it is not an appropriate use of Department resources to put police officers to work in this way on an indefinite basis, and that it is apt to lead to a make-work scenario. We conclude, by a preponderance of the evidence, that the seventh just cause standard is satisfied and that the good of the service requires that Vidmar be discharged.

### DECISION

The Appellant, Daniel J. Vidmar, is ordered suspended for 60 days without pay for the second charge, and ordered discharged from the Department for the third charge.

Dated at Milwaukee, Wisconsin.

BY THE COMMISSION:

  
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Marisabel Cabrera

6/26, 2014

  
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Steven M. DeVougas

6-26, 2014

  
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Michael M. O'Hear

6-26, 2014