



## INTRODUCTION

Pursuant to § 18-11 of the Charter of the City of Rochester, and in the interest of public accountability, the Police Accountability Board has made the following investigative report public. It has been redacted so as not to disclose the identities of the officers and civilians involved.

Pursuant to *Rochester Police Locust Club, Inc. v. City of Rochester*, 41 N.Y.3d 156 (2023), Rochester Police Officers can only be disciplined by the Rochester Police Department. Accordingly, where a finding of police misconduct has been sustained by the Board, the PAB issues disciplinary recommendations to the Chief based on our Disciplinary Matrix.

The final Board decision as to the PAB determination of misconduct and recommended discipline are followed by the investigatory report prepared by PAB staff.

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## BOARD DECISION

**Public Tracking Number (PTN):** 2024-0052

**Date of Panel Review:** 30-Apr-2024 1:00 PM (EDT)

**Board Members Present:** [REDACTED], [REDACTED], [REDACTED], [REDACTED]

**Case Findings:** Sustained

**Disciplinary Recommendation:** 10 day suspension (should be unpaid). Written reprimand and community relations training.

**Dissenting Opinion/Comment:** N/A



## **DEFINITIONS**

**Exonerated:** A finding at the conclusion of an investigation that either the alleged act did not occur, or that although the act at issue occurred, the subject officer's actions were lawful and proper and within the scope of the subject officer's authority under police department guidelines.

**Not Sustained:** A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.

**Sustained:** A finding at the conclusion of an investigation by a preponderance of the evidence that the subject officer committed the act charged in the allegation and that it amounted to misconduct.

**Closed:** Vote to close the case.



**Officer Name- Allegation # 1:**

Officer [REDACTED] Rules and Regulations 2.2 (Identification): [REDACTED] failed to provide [REDACTED] with his name and badge number.

- **Does the Board Agree with the Findings of Fact?** Yes
- **Does the Board Agree with the Substantiated Evidence of Misconduct?** Yes
- **Does the Board Agree with the Proposed Disciplinary Action?** Added reprimand and training

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**Officer Name- Allegation # 2:**

Officer [REDACTED] Rules and Regulations 4.2 (Courtesy): Officer [REDACTED] used harsh and/or insolent language when speaking to [REDACTED].

- **Does the Board Agree with the Findings of Fact?** Yes
- **Does the Board Agree with the Substantiated Evidence of Misconduct?** Yes
- **Does the Board Agree with the Proposed Disciplinary Action?** Added reprimand and training



**CLOSING REPORT**

**STATEMENT OF AUTHORITY**

Article XVIII of the Rochester City Charter defines the authority and duties of the Police Accountability Board. Pursuant to § 18-1, "The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedure...The Police Accountability Board shall provide a nonexclusive alternative to civil litigation."

**EXECUTIVE SUMMARY**

The following events took place on March 13, 2024, at approximately 10:29 am, at or near [REDACTED], Rochester, New York, 14607.

On the above mentioned date and time, Officer [REDACTED] was sitting in [REDACTED] patrol car in the area of East Avenue. [REDACTED] walked past Officer [REDACTED] and stuck [REDACTED] middle finger up at [REDACTED].

Officer [REDACTED] responded by sticking [REDACTED] middle finger up back at [REDACTED] and telling [REDACTED] to "go f\*\*\* [REDACTED]self".

[REDACTED] then enters [REDACTED] building and sets [REDACTED] belongings down. [REDACTED] then exits the building, approaches Officer [REDACTED] in [REDACTED] vehicle, and asks for [REDACTED] name and badge number.

Officer [REDACTED] tells [REDACTED] that [REDACTED] is not going to give [REDACTED] that information. [REDACTED] then reads the name on Officer [REDACTED] name tag. Officer [REDACTED] then tells [REDACTED] to "go away".

**INVOLVED OFFICERS**

Officer Name	Officer Rank	Badge/Employee #	Date of Appointment	Sex	Race/Ethnicity
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**INVOLVED INDIVIDUALS**

Name	Age	Sex	Race/ Ethnicity
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



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### ALLEGATIONS

1	Officer [REDACTED]	Rules and Regulations 2.2 (Identification): Officer [REDACTED] failed to provide [REDACTED] with [REDACTED] name and badge number.
2	Officer [REDACTED]	Rules and Regulations 4.2 (Courtesy): Officer [REDACTED] used harsh and/or insolent language when speaking to [REDACTED]

### INVESTIGATION

The Rochester Police Department notified the Police Accountability Board on April 2, 2024, of an investigation concerning these events, being conducted by the Police Department’s Professional Standards Section.

On April 3, 2024, the Rochester Police Department provided the Police Accountability Board with one photograph, two computer aided dispatch reports, one complaint form, one complaint advisement form, one correspondence authored by [REDACTED] one phone call audio, and eight video recordings.

On April 25, 2024, the Police Accountability Board met with [REDACTED] for an in-person interview.

### EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Notification of Investigation	Rochester Police Department’s notification of a Professional Standards Section investigation	Rochester Police Department	<a href="#">S-SharePoint File Transfer - PAB notify 24-0192.pdf - All Documents</a>
Investigative Documents	Photograph of [REDACTED]	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Middle Finger.jpg - All Documents</a>
Investigative Documents	Computer aided dispatch reports	Rochester Police Department	<a href="#">S-SharePoint File Transfer - 02. ECD Job Cards &amp; Printouts - All Documents</a>
Investigative Documents	Complaint Form	Rochester Police Department	<a href="#">S-SharePoint File Transfer - Signed Complaint Form.pdf - All Documents</a>



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Evidence	Description	Provided by	Filename
Investigative Documents	Complainant Advisement Form	Rochester Police Department	<a href="#">S-SharePoint File Transfer - [REDACTED] Completed Advisement.pdf - All Documents</a>
Investigative Documents	Letter authored by [REDACTED]	Rochester Police Department	<a href="#">S-SharePoint File Transfer - [REDACTED] Reason for Action.pdf - All Documents</a>
Investigative Documents	Phone call between [REDACTED] and [REDACTED]	Rochester Police Department	<a href="#">Conversation 13March24.mp3 (sharepoint.com)</a>
Investigative Documents	Video recordings	Rochester Police Department	<a href="#">Genetec Clearance   Collaborative investigation management</a>
Audio Interview	Interview of [REDACTED]	Police Accountability Board	<a href="#">New Recording 21.m4a (sharepoint.com)</a>

**EVIDENCE DENIED**

Evidence	Description	Reason declined
Personnel Records of the Officers involved	Request from the Police Accountability Board to the Rochester Police Department	No response given.

**APPLICABLE RULES & LAWS**

**Rochester Police Department Rules and Regulations**

2.2 IDENTIFICATION

- a) Officers shall respectfully furnish their name and badge number to any person requesting that information when they are on duty or presenting themselves as police officers. Exceptions may be made for person on special duties and assignments (e.g., undercover, vice assignments) with permission of their supervisor.
- b) Non-sworn employees shall respectfully furnish their names to any person requesting that information when they are on duty or presenting themselves as Rochester Police Department employees.



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#### 4.2 COURTESY

- a) Employees shall be courteous, civil and tactful in the performance of their duties.
- b) Employees shall not express or otherwise manifest any prejudice concerning age, marital status, handicap, disability, race, creed, color, religion, national or ethnic origin, sex, sexual preference, or other personal characteristics.
- c) Employees shall not use harsh, profane, insolent, or intentionally insulting language toward any other employee or other person.

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### **STANDARD OF PROOF**

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The Police Accountability Board is tasked with determining whether or not sworn Rochester Police Department Officers have committed any actions in violation of department policies, order, or training. In order for a finding of misconduct to be considered sustained, the Police Accountability Board is authorized to use a “substantial evidence” standard of proof. See City of Rochester Charter § 18-5(l)(10).

Substantial evidence “is that which a reasonable mind might accept as adequate to support a conclusion”. NLRB v. Int’l Bhd. of Elec. Workers, Local 48, 345 F.3d 1049, 1054 (9th Cir. 2003). This standard is met when there is enough relevant and credible evidence in the record as a whole that a reasonable person could support the conclusion made. See 4 CFR § 28.61(d).

Even though authorized, the Police Accountability Board of Rochester, New York, utilizes the much higher standard of proof, which is a preponderance of evidence. When utilizing the standard of a preponderance of the evidence “the relevant facts must be shown to be more likely true than not” [true]. United States v. Montano, 250 F.3d 709 (9th Cir. 2001). This is commonly understood to mean that there is at least a 51% chance that the allegations made are in fact true.

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### **ANALYSIS**

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The following findings are made based on the above standards:

Allegation 1: Officer [REDACTED] failed to provide [REDACTED] with his name and badge number.

The Rochester Police Department’s Rules and Regulations 2.2. states that Officers shall respectfully furnish their name and badge number to any person requesting that information when they are on duty or presenting themselves as police officers.

[REDACTED] approached Officer [REDACTED] while [REDACTED] was sitting in [REDACTED] fully marked police car and wearing [REDACTED] full police uniform. [REDACTED] asked Officer [REDACTED] for [REDACTED] name and badge number presumably to report their previous interaction. Officer [REDACTED] told [REDACTED] “No. Goodbye” and [REDACTED] did not provide [REDACTED] identifying information. [REDACTED] then read Officer [REDACTED] name tag and asked for [REDACTED] badge number- to which [REDACTED] replied “Nope. Why don’t you just go away”. At no point during their interaction did Officer



█ attempt to provide █ identifying information. Officer █ failed to provide █ with █ name and badge number.

*Allegation 1 against Officer █ █ is sustained.*

Allegation 2: Officer █ used harsh and/or insolent language when speaking to █

The Rochester Police Department’s Rules and Regulations 4.2 states that Officers shall not use harsh, profane, insolent, or intentionally insulting language toward any other employee or person.

█ stuck █ middle finger up at Officer █ as a display of a department-wide grievance. Officer █ responded by sticking █ middle finger back up at █ and telling █ to “go f\*\*\* █ self”. See [Genetec Clearance | Collaborative investigation management](#) beginning at 00:18. Officer █ word choice was disparaging and disrespectful. Officer █ used harsh and/or insolent language when speaking to █

*Allegation 2 against Officer █ █ is sustained.*

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### RECOMMENDED FINDINGS

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#	Officer	Allegation	Finding
1	Officer █ █	Rules and Regulations 2.2 (Identification): Officer █ failed to provide █ with █ name and badge number.	Sustained
2	Officer █ █	Rules and Regulations 4.2 (Courtesy): █ used harsh and/or insolent language when speaking to █	Sustained

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### RECOMMENDED DISCIPLINARY ACTION

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### AUTHORITY

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Article XVIII of the Rochester City Charter further requires that the Police Accountability Board create a “written, consistent, progressive and transparent tool or rubric” that “shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints.” This disciplinary matrix is a non-binding set of guidelines for the Police Accountability Board’s own recommendations regarding officer misconduct.





According to the matrix, the disciplinary history of an officer will be considered when assessing an appropriate penalty resulting from the current investigation. Prior discipline changes the presumptive penalties according to the matrix. Mitigating and aggravating factors related to the misconduct may be considered when determining the level of discipline, so long as an explanation is provided.

The Recommended Disciplinary Action based on the above Recommended Findings is as follows:

Sustained Allegation 1 against Officer [REDACTED]. [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
Rules and Regulations 2.2 (Identification): Officer [REDACTED] failed to provide [REDACTED] with [REDACTED] name and badge number.	3

- Recommended Level: 3 (“Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline **10 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.

Sustained Allegation 2 against Officer [REDACTED]. [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
Rules and Regulations 4.2 (c): Employees shall not use harsh, profane, insolent, or intentionally insulting language toward any person.	3

- Recommended Level: 3 (“Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline **10 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.