

2010-118.1



# San Diego County SHERIFF'S DEPARTMENT

## NOTICE OF PROPOSED DISCIPLINARY ACTION

|   |   |                           |                |
|---|---|---------------------------|----------------|
| TO: Sheriff William D. Gore   |   | DATE: October 20, 2010    |                |
| It is recommended that the following disciplinary action be administered to the below named employee: |   |                           |                |
| EMPLOYEE'S NAME:  | Todd S. Biller, Sr.                             | TITLE:                    | Deputy Sheriff |
| DEPARTMENT POLICY AND /<br>OR PROCEDURE SECTION(S)<br>VIOLATED:                                       | 2.4 Unbecoming Conduct                          | 2.41 Departmental Reports |                |
|   | 2.27 Neglect of Duty                            | 2.46 Truthfulness         |                |
|   | 2.30 Failure to Meet Standards                  |                           |                |
| RECOMMENDED DISCIPLINE:   | Termination                                     |                           |                |
| SECOND LEVEL SUPERVISOR:  | <i>M. D. Mull</i> LT                            | DATE:                     | 10/20/10       |
| LIST PRIOR FORMAL<br>DISCIPLINE WITHIN LAST FIVE<br>YEARS WITH DATE                                   | [REDACTED]                                      |                           |                |
|   | [REDACTED]                                      |                           |                |
|   | [REDACTED]                                      |                           |                |
| I have been advised of the above charges and recommended discipline:                                  |   |                           |                |
| EMPLOYEE'S SIGNATURE:   | <i>Todd S. Biller</i>                           | DATE:                     | 10/28/10       |
| 2 <sup>nd</sup> LEVEL SUPERVISOR SIGNATURE:   | <i>M. D. Mull</i> LT                            | DATE:                     | 10/28/10       |
| 3 <sup>rd</sup> LEVEL SUPERVISOR SIGNATURE:   | <i>W. D. Gore</i> CAPTAIN                       | DATE:                     | 11/4/10        |
| COMMENTS:   |   |                           |                |
| REVIEWED BY INTERNAL AFFAIRS:   | <i>P. J. Duke</i>                               | DATE:                     | 12-16-2010     |
| 4 <sup>th</sup> LEVEL SUPERVISOR SIGNATURE:   | Patricia J. Duke, Commander                     | DATE:                     | 12/27/2010     |
| COMMENTS:   |   |                           |                |
| ADDITIONAL REVIEW:  | <i>P. J. Duke</i> Pendergast, Assistant Sheriff | DATE:                     | 12/27/10       |
| ADDITIONAL REVIEW:  | <i>W. D. Gore</i> Undersheriff                  | DATE:                     | 1/3/11         |
| ADDITIONAL REVIEW:  | <i>W. D. Gore</i> Gore, Sheriff                 | DATE:                     | 1/3/11         |
| INTERNAL AFFAIRS SECTION  |   |                           |                |
| <input type="checkbox"/> WRITTEN REPRIMAND BY:  |   | DATE:                     |                |
| <input checked="" type="checkbox"/> NOTICE OF INTENT AND CHARGES:                                     | Sergeant D. Brislin                             | DATE:                     | 11-04-2010     |
| <input checked="" type="checkbox"/> ORDER SERVED:   | <i>BERBLINGER</i>                               | DATE:                     | 1-3-2011       |
| <input checked="" type="checkbox"/> CIVIL SERVICE NOTIFIED:   | P. Lorenz, AdminSecII                           | DATE:                     | 01-04-2011     |
| <input type="checkbox"/> PAYROLL NOTIFIED:  |   | DATE:                     |                |
| FINAL ACTION TAKEN:   | TERMINATION                                     | DATE:                     | 01-03-2011     |

RELEASED FROM  
I.A. FILES  
TO: *13*

**BOBBITT, PINCKARD & FIELDS**

A Professional Corporation  
8388 Vickers Street  
San Diego, California 92111

RICHARD L. PINCKARD  
BRADLEY M. FIELDS

Telephone  
(858) 467-1199  
Facsimile  
(858) 467-1285  
www.coplaw.org

ROBERT W. KRAUSE  
CHARLES B. WALKER  
PONZIO OLIVERIO

EVERETT L. BOBBITT  
(1946-2007)

ANNETTE BURSTEIN  
LEGAL ADMINISTRATOR

**FACSIMILE TRANSMISSION**

**DATE:** February 15, 2011

**TO:** Robert P. Faigin, Esq.  
Chief Legal Advisor  
San Diego County Sheriff's Dept.

**RECIPIENT'S FAX NO.:** 858-974-2262

**FROM:** [REDACTED]

**SENDERS FAX NO.:** 858-467-1285

**Re:** Todd Biller - Disciplinary Agreement re: Case No. 2010-131.1

**Total number of pages including this cover page:** 4

**COMMENTS:**

\* Original to follow via U.S. Mail.

**\*\*\* WARNING \*\*\***

The information contained in this facsimile message is confidential information (and may be a privileged attorney-client communication) intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or distribution of this communication to anyone other than the intended recipient is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you ...

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San Diego, California 92111-2109

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ANNETTE BURSTEIN  
LEGAL ADMINISTRATOR

February 15, 2011

Via U.S. Mail & Facsimile

Robert Faigin, Esq., Legal Advisor  
San Diego Sheriff's Department  
P.O. Box 939062  
San Diego, CA 92193

Re: Todd Biller - Disciplinary Agreement re: Case No. 2010-131.1

Dear Mr. Faigin:

Enclosed please find the original Disciplinary Agreement signed by our client, Todd Biller, regarding the above-referenced matter. If you have any questions regarding this letter or wish to discuss this matter further, please contact attorney Ponzio Oliverio directly.

Sincerely,



Catherine Bond  
Paralegal

/cb

cc: Todd Biller

Enclosure



William D. Gore, Sheriff

## San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



Thomas J. Cooke, Undersheriff

February 9, 2011

Ponzio Oliverio  
Bobbitt, Pinckard, and Fields  
8388 Vickers Street  
San Diego, California 92111

Re: Todd Biller Agreement Case #2010-131.1

Dear Mr. Oliverio:

This letter serves to memorialize the disciplinary agreement between the San Diego County Sheriff's Department and your client, Todd Biller. Specifically, Mr. Biller agrees to tender a written resignation to the Department, effective January 3, 2011. As a result of Mr. Biller's resignation, the Department will enter the reason for his leaving Department service as RLT (Resignation in lieu of termination).

In exchange for the agreement as described above, Mr. Biller will, and does by his signature below, waive his right to any further administrative review or appeals. Additionally, Mr. Biller will notify the San Diego County Civil Service Commission of the resolution of this matter, and the withdrawal of his request for a Civil Service hearing. Finally, Mr. Biller waives any right to seek judicial review of the process or substance of this disciplinary resolution.

This agreement governs only the above case number, and does not alter or affect any previous discipline imposed. This agreement is valid for ten (10) days from the date of this letter.

*"Keeping the Peace Since 1850"*



Ponzio Oliverio

-2-

February 9, 2011

All terms of this agreement are contained within this document, and any alteration or modification of this agreement must be done in writing.

Sincerely,

WILLIAM D. GORE, Sheriff

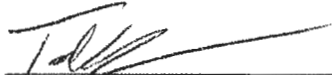


Robert P. Faigin, Esq.  
Chief Legal Advisor

RPF:aeb

---

I, Todd Biller, hereby stipulate that I have read and agree to the terms set forth in the above disciplinary agreement and I have had the opportunity to confer with my legal counsel.



Todd Biller

2/14/11  
Date

FROM THE OFFICE OF

**INTERNAL AFFAIRS – CONFIDENTIAL**

**RECEIVED**

January 4, 2011  
IA# 2010-118.1

JAN 07 2011

**CIVIL SERVICE  
COMMISSION**

TO: Civil Service Commission

FROM: William Donahue, Lieutenant  
Internal Affairs Unit

**ORDER OF TERMINATION AND CHARGES – TODD BILLER, Sr.**

The Order of Termination and Charges dated 12-28-2010 filed against Todd Biller, Sr. has been received by the Civil Service Commission on: 1/7/11

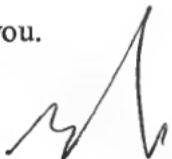
Date

Commission Response:

- ☒ The above individual **HAS** appealed the Order of Termination and Charges.
- ☐ The above individual **HAS NOT** appealed the Order of Termination and Charges.

Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.

  
William Donahue, Lieutenant  
Internal Affairs Unit  
(858) 974-2065

Attachment

**BOBBITT PINCKARD & FIELDS**

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ANNETTE BURSTEIN  
Legal Administrator

## FAX TRANSMISSION

**Date:** January 4, 2011  
**To:** Sheriff Gore  
**From:** Annette Burstein  
**Re:** Appeal of Deputy Todd Biller

**FAX No. Sending to:** (858) 974-2244

**FAX No. Sending from:** (858) 467-1285

Total number of sheets **including** this page: 2

**COMMENTS:**

- ☒ Original being mailed via U.S. Mail
- ☐ Original **NOT** being mailed
- ☐ Please confirm receipt by calling (858) 467-1199.

### WARNING

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ANNETTE BURSTEIN  
LEGAL ADMINISTRATOR

January 4, 2011

Civil Service Commission  
County of San Diego  
1600 Pacific Highway, Room 458  
San Diego, CA 92101

Via Fax and U.S Mail  
(619) 685-2422

Re: Deputy Todd Biller - Order of Termination and Charges

Ladies and Gentlemen:

Our office represents Deputy Todd Biller in the matter of the order of termination and charges served him on January 3, 2011 by the San Diego County Sheriff's Department. Based on the information available to us at this time, on behalf of our client we deny the allegations on which this action is based. In the alternative we will appeal the level of discipline. We hereby request an appeal hearing at the earliest opportunity. It is further requested that this appeal hearing be closed to the public. Ponzio Oliverio will serve as Deputy Biller's representative.

Thank you for your consideration of this matter.

Sincerely,

  
Annette Burstein

//RAB

cc: San Diego County Sheriff's Department -- via facsimile

FROM THE OFFICE OF

**INTERNAL AFFAIRS – CONFIDENTIAL**

January 4, 2011  
IA# 2010-118.1

TO: Civil Service Commission

FROM: William Donahue, Lieutenant  
Internal Affairs Unit

**ORDER OF TERMINATION AND CHARGES – TODD BILLER, Sr.**

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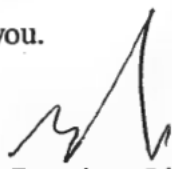
Date

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Please return this form to the Sheriff's Internal Affairs Unit (MS-O41) as soon as possible.

Thank you.

  
William Donahue, Lieutenant  
Internal Affairs Unit  
(858) 974-2065

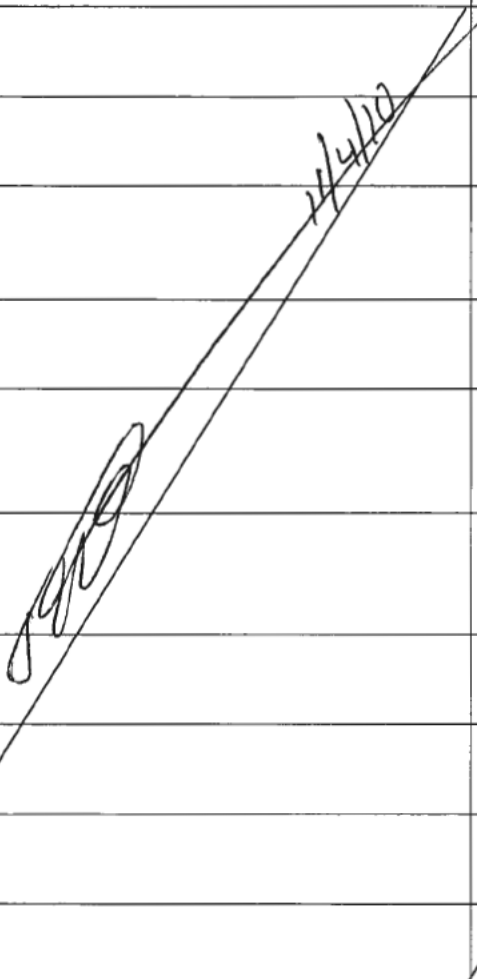
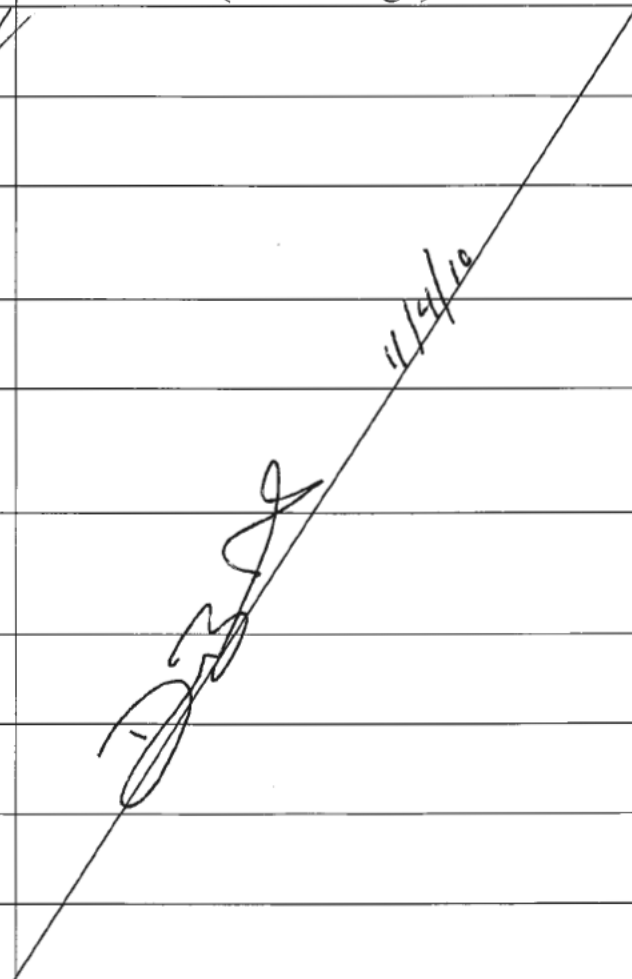


Attachment



## RECEIPT OF MATERIALS

EMPLOYEE: Todd Biller, Sr. #4761 / 003106

Case # 2010-118.1

| DESCRIPTION OF DOCUMENT   | EMPLOYEE RECEIVED<br>(DATE & INITIAL)  | APPOINTING AUTHORITY<br>(Date & Sign)   |
|---|--|---|
| Notice of Proposed Disciplinary Action to Todd Biller dated 10-20-2010                            | <br>11/4/10 | <br>11/4/10 |
| Notice of Intent to Terminate and Charges to Todd Biller dated 11-02-2010                         |  |   |
| Discipline Recommendation & Rationale to Sheriff Gore from Lieutenant M. McClain dated 10-20-2010 |  |   |
| One (1) CD-R of Pre-Discipline Conference   |  |   |
|                  |  |   |
|                  |  |   |
| Investigative Reports by Sergeant J. Maryon dated 08-06-2010 and attachments                      |  |   |
| Two (2) CD-R's  |  |   |
| Skelly Conference Letter to Todd Biller   |  |   |
| Order Not to Disclose Materials to Todd Biller  |  |   |







# San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

Thomas J. Cooke, Undersheriff

December 28, 2010

Todd S. Biller Sr.

[REDACTED]  
[REDACTED]

Dear Deputy Todd S. Biller Sr.:

## ORDER OF TERMINATION AND CHARGES, CASE #2010-131.1

I hereby order that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes:

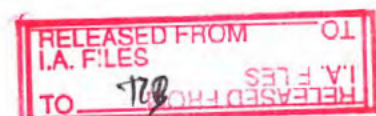
### CAUSE I

You are guilty of dishonesty as set forth under Section 7.2 (d) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.46 – Truthfulness**, in that: On June 18, 2010, you failed to respond to a radio call at [REDACTED] City of San Marcos. After failing to respond to the radio call, in the "Actions taken" section of your Daily Patrol Log, you wrote, "*suspect minding his own business and not committing any crimes.*" You knowingly wrote untruthful information in an official report to disguise the fact you did not respond to the radio call.

### CAUSE II

You are guilty of dishonesty as set forth under Section 7.2 (d) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.41 – Departmental Reports**, in that: On June 18, 2010, you failed to respond to a radio call at [REDACTED] in the City of San Marcos. After failing to respond to the radio call, in the "Actions taken" section of your Daily Patrol Log, you wrote, "*suspect minding his own business and not committing any crimes.*" You knowingly submitted an official report which contained false and untruthful information.

*"Keeping the Peace Since 1850"*



### CAUSE III

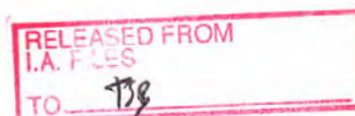
You are guilty of inefficiency as set forth under Section 7.2 (b) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.30 – Failure to Meet Standards**, in that: On June 18, 2010, you failed to properly perform your duties as a deputy sheriff when you failed to respond to a radio call at [REDACTED] in the City of San Marcos. Your failure to take appropriate action does not establish and maintain the highest standards of efficiency in carrying out the mission, functions, and objectives of this Department.

### CAUSE IV

You are guilty of conduct unbecoming an officer of the County of San Diego as set forth under Section 7.2 (m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.4 – Unbecoming Conduct**, in that: On June 18, 2010, you failed to respond to a call for assistance by [REDACTED] the resident of [REDACTED] in the City of San Marcos. According to [REDACTED] you had an obligation and/or duty to respond to his call for assistance. Your failure to respond to [REDACTED] request for assistance brought discredit to you and the San Diego County Sheriff's Department.

### CAUSE V

You are guilty of inefficiency as set forth under Section 7.2(b) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.27 Neglect of Duty**, in that: On June 18, 2010, you failed to respond to a radio call at [REDACTED] in the City of San Marcos. Instead of responding to the radio call, you chose to spend over one hour at a Starbucks Coffee Company store and four hours at the San Marcos Patrol Station for no reason other than being what you said was a "*malcontent*." These superfluous activities caused you to neglect your duties.



**CAUSE VI**

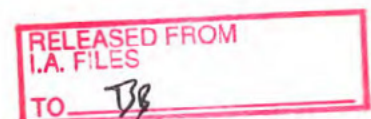
You are guilty of acts, which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is that set forth under Causes I through V above.

[REDACTED] :

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

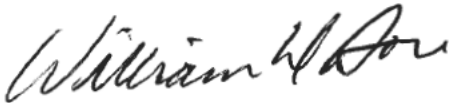
Your attention is directed to Sections 904.1, 904.2, 909, 909.1, 910.1(k), and 910 (k)(l) of the Charter of the County of San Diego and Rule VII of the Civil Services Rules. If you wish to appeal this order to the Civil Service Commission of the County of San Diego, you must file such an appeal and an answer in writing with the Commission within ten (10) calendar days after this order is presented to you. Such an appeal and answer must be in writing and delivered to the Civil Service Commission at its offices at 1600 Pacific Highway, Room 458, San Diego, California 92101, within such ten (10) calendar day period. An appeal is not valid unless it is actually received by the Commission within such ten (10) calendar day period. A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the undersigned within the same ten (10) calendar day period.



Order of Termination and Charges, IA Case#2010-131.1  
Deputy Todd Biller  
December 28, 2010

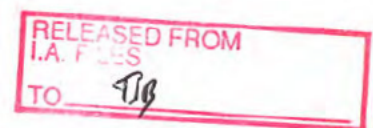
Page 4

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Gore".

William D. Gore, Sheriff

WDG:jem



FROM THE OFFICE OF

**INTERNAL AFFAIRS – CONFIDENTIAL**

**DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE**

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

- ☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**
- ☐ **NOTICE OF INTENT TO TERMINATE AND CHARGES**
  
- ☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **ORDER OF SUSPENSION AND CHARGES**
- ☒ **ORDER OF TERMINATION AND CHARGES**
  
- ☐ **NOTICE REGARDING RESTRAINING ORDER DATED**  
\_\_\_\_\_

of which a true copy is attached hereto, by delivering a copy thereof to

TODD BILLER personally at SAN DIEGO on  
JANUARY 3, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 3 day of JANUARY, 2011, at SAN DIEGO, California.

[Signature]  
Signature of person making personal service

**ACKNOWLEDGEMENT OF SERVICE**

I do hereby acknowledge receipt of the above noted document.

Executed this 3 day of JANUARY, 2011.

SIGNED [Signature]

IA# 2010-118.1

Released from I.A. Files

To: BSP





# San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

Thomas J. Cooke, Undersheriff

November 2, 2010

Todd S. Biller Sr.



Dear Deputy Todd S. Biller Sr.:

## NOTICE OF INTENT TO TERMINATE AND CHARGES, CASE #2010-118.1

Please take notice that it is my intention to recommend to the Sheriff that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes:

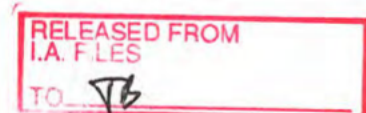
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"Keeping the Peace Since 1850"



### CAUSE III

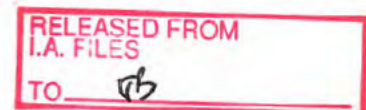
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### CAUSE V

You are guilty of failure of inefficiency as set forth under Section 7.2(b) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure **Section 2.27 Neglect of Duty**, in that: On June 18, 2010, you failed to respond to a radio call at [REDACTED] in the City of San Marcos. Instead of responding to the radio call, you chose to spend over one hour at a Starbucks Coffee Company store and four hours at the San Marcos Patrol Station for no reason other than being what you said was a "*malcontent*." These superfluous activities caused you to neglect your duties.





## CAUSE VI

You are guilty of acts, which are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is that set forth under Causes I through V above.

[REDACTED]

[REDACTED]

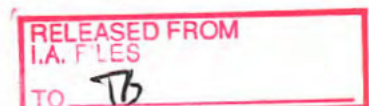
[REDACTED]

[REDACTED]

You have **five (5)** regular business days to request a Skelly Conference. You may respond either orally, in writing or both, regarding the above proposed charges and discipline. Your response will be considered by the Sheriff before final action is initiated. Upon receipt of this notice, you will be provided with all documents possessed by this department upon which this proposed action is based. If you have any questions of said documents, please contact Lieutenant Conway of the Internal Affairs Unit.

You have until 4:30 p.m. on 11/12/10, to contact Internal Affairs at (858) 974-2065 if you wish to respond to the above charges and discipline. Internal Affairs will provide you the name of a Skelly Officer, whom you should contact without delay, as the conference must be held within ten (10) days, unless waived by mutual agreement. If there are extenuating circumstances precluding you from staying within this time limit, contact Internal Affairs immediately.

If you fail to respond, or your response is unsatisfactory, an Order of Termination and Charges will be served upon you and the discipline initiated.



Notice of Intent to Terminate and Charges, IA Case#2010-118.1  
Deputy Todd Biller  
November 2, 2010

Page 4

Sincerely,

**WILLIAM D. GORE, SHERIFF**

  
Kirby Beyer, Captain  
San Marcos Station

WDG:KB:jm



FROM THE OFFICE OF

## INTERNAL AFFAIRS – CONFIDENTIAL

### DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

- ☐ **NOTICE OF INTENT OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **NOTICE OF INTENT TO SUSPEND AND CHARGES**
- ☒ **NOTICE OF INTENT TO TERMINATE AND CHARGES**
  
- ☐ **ORDER OF PAY-STEP REDUCTION AND CHARGES**
- ☐ **ORDER OF SUSPENSION AND CHARGES**
- ☐ **ORDER OF TERMINATION AND CHARGES**
  
- ☐ **NOTICE REGARDING RESTRAINING ORDER DATED**  
\_\_\_\_\_

of which a true copy is attached hereto, by delivering a copy thereof to

TOOD BAKER personally at INTERNAL AFFAIRS on  
11/4/10.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4 day of NOVEMBER, 2010, at SAN DIEGO, California.

[Signature] SGT  
Signature of person making personal service

---

### ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 11/4 day of NOVEMBER 2010.

SIGNED [Signature]

IA# 2010-118.1

Released from I.A. Files

To: TB

*From the Office of*

## ***INTERNAL AFFAIRS - CONFIDENTIAL***

### **ORDER NOT TO DISCLOSE MATERIALS**

Pursuant to Department Policy, materials are being furnished to you upon which your proposed discipline is based. These materials are reproductions and are a part of the confidential employee personnel records of the San Diego Sheriff's Department. Dissemination of this information is restricted to a need and a right to know.

You are ordered not to disclose, release, or copy these materials to or for anyone, other than your attorney and/or association representative, without the written authorization of the Internal Affairs Lieutenant. Materials include all written documentation, tape recordings, and videotapes.

Any unauthorized release of information contained in these documents compromises the confidentiality of your personnel file, and may impede the Department's ability to protect your confidentiality in future discovery motions. This could subject you and the County to unnecessary liability and criticism, to which the Department may be required to defend in a public forum.

You are strongly encouraged to destroy or return these materials when they no longer serve a useful purpose. Should you desire to review material related to your discipline at a later time, you may make arrangements with the Internal Affairs Unit.

Failure to abide by this order could result in a charge of insubordination, and subject you to disciplinary action up to and including termination.

I have received a copy of this order.

  
\_\_\_\_\_  
Todd Biller

**I.A. Case # 2010-118.1**

Released from I.A. Files:  
To:

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From the Office of

**INTERNAL AFFAIRS - CONFIDENTIAL**

**Skelly Conference Letter**

**IA# 2010-118.1**

As indicated on the "Notice of Intent" to discipline, which you are receiving, disciplinary action against you is being considered. If you wish to invoke your right to a pre-disciplinary due process hearing on this matter (*Skelly Conference*), you must make the request within five (5) regular business days. The Skelly Conference is a relatively informal hearing, not an adversarial evidentiary trial. The final date to request a hearing is indicated on your "Notice of Intent". Your request should be made by calling the Internal Affairs Unit at (858) 974-2065.

*If you do not request the conference within that time, your right to a Skelly Conference will have been waived, and the recommended discipline may be imposed.*

Your Skelly rights are:

1. To receive a written "Notice of Intent" to discipline, that may be served upon you, either in person or by mail. That notice will include the level of proposed discipline, the charges, and a brief explanation of the reason for the discipline.
2. To receive a copy of the materials upon which the proposed discipline is based, including reports, tape/digital recordings, photographs, etc. Any item certified as confidential and withheld from you by the department cannot be used as a basis for discipline.
3. To have sufficient time to review the supporting materials so that your response can be prepared.
4. To respond orally, in writing, or both to the proposed discipline and charges.
5. To a hearing officer who is not in your chain of command.
6. To have a representative or attorney present at the hearing.
7. To receive copies of all materials prepared as a result of the Skelly Conference.
8. To receive a new Skelly Conference for any new charges or increased discipline, which arise from the Skelly Conference.

I have read and understand my Skelly rights.

  
\_\_\_\_\_  
Todd Biller

  
\_\_\_\_\_  
Witness

11/4/10  
\_\_\_\_\_  
Date

Released from I.A. Files:

To:







# COUNTY OF SAN DIEGO

## INTER-DEPARTMENTAL CORRESPONDENCE

December 12, 2010

TO: William D. Gore, Sheriff

FROM: Edward A Musgrove, Captain  
Santee Patrol Station

VIA: Chain of Command

### SKELLY CONFERENCE – DEPUTY TODD BILLER I.A. CASE # 2010-118.1

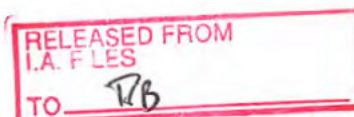
#### SYNOPSIS

On June 18, 2010, Deputy Todd Biller was assigned to patrol duties in the city of San Marcos. The following information was gleaned by the investigating sergeant from Biller's Computer Aided Dispatch (CAD) history, Automated Vehicle Locator (AVL) data, and statements made by Biller subsequent to the events in question, but specific to that date.

On that morning, Biller received two calls regarding a suspicious person at or near [REDACTED] San Marcos. Deputy Biller was dispatched the first call at 0648. The reporting party (and later complainant, [REDACTED]) asked for extra patrol near his home at [REDACTED] to evaluate for an unknown man rummaging through curbside recycling cans. These cans are placed along the roadside for scheduled pick up by the contracted waste management agency. At 0652 hours, Biller closed the call with a disposition of "XP" indicating he would provide extra patrol to the area for the stated complaint.

Deputy Biller's AVL history showed his patrol car two miles from [REDACTED] residence, traveling in the area of westbound State Route 78 when he closed the call, "XP."

At 0741 hours, [REDACTED] caused the generation of another patrol service call to his home for the same reason. The unknown subject returned and [REDACTED] requested contact by the responding deputy. Deputy Biller acknowledged the call at 0742 hours. Biller's AVL history showed his patrol car static at or near the intersection of Descanso Road and South Rancho Santa Fe Road, San Marcos at this time. Biller later told Internal Affairs Sergeant Maryon he was stopped at a Starbucks coffee house at that intersection.



At 0813 hours, Deputy Biller closed the call by typing data into his patrol car's MDC. In the "Actions Taken" field, Biller entered, "SUSP IS MINDING HIS OWN BUSINESS AND NOT COMMITTING ANY CRIMES." When Biller closed this second radio call, he was stationary at the Starbucks, never having left the location. The Starbucks is approximately three miles from [REDACTED] residence. After spending approximately one hour at Starbucks, Biller drove away. Between 1032 and 1057 hours, Biller had his vehicle serviced. Biller's next CAD entry was at 1515 hours. On June 18, 2010, Biller neither contacted [REDACTED] provided extra patrol suggested by the first call's disposition, nor did not cause any other deputy from the San Marcos Patrol Station to provide extra patrol for [REDACTED].

At approximately 1200 June 18, 2010, [REDACTED] drove to the San Marcos Patrol Station to see why no deputy responded to his call for service. [REDACTED] spoke with Sergeant Dave Schaller and explained the morning's events. Initially Schaller relied on the CAD entries made by Biller to suggest to [REDACTED] the first call was set for extra patrol and the second call resulted in a deputy's response with a report of no criminal activity. [REDACTED] waited at the entrance to his gated community and knew a deputy never responded to his calls.

After conducting a preliminary inquiry, Schaller acknowledged the deputy dispatched the calls did not respond as directed. Schaller suggested to [REDACTED] a complaint for the lack of service was an option. The complaint was completed by [REDACTED] and received at sheriff's internal affairs on June 23, 2010. The case was assigned to Internal Affairs Sergeant John Maryon for investigation.

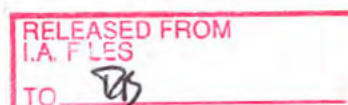
### **COMMAND RECOMMENDATION**

The internal affairs investigation concluded Deputy Biller Neglected his Duties, Failed to Meet Standards of the Department, and engaged in Unbecoming Conduct by failing to respond a call for service to [REDACTED], San Marcos; that Biller knowingly entered false information in CAD, thereby creating a false Departmental Report and in doing so, was Untruthful. As a result of the sustained findings, Deputy Biller's command recommended he be terminated from employment.

### **CONDUCT OF SKELLY CONFERENCE**

By mutual agreement, the Skelly Conference was scheduled for 1400 hours, Wednesday, November 24, 2010. It was held in my office, behind closed doors, at the Santee Patrol Station. Present were Deputy Biller, Biller's attorney, Ponzio Oliverio, and myself as the Hearing Officer.

The Skelly Conference convened at approximately 1353 hours. I digitally recorded the conference and the recording was subsequently downloaded onto a compact disk and submitted with this report. Attorney Oliverio audio recorded the conference with a separate device.





Deputy Biller acknowledged he reviewed and received copies of the following documents:

- Notice of Proposed Disciplinary Action
- Notice of Intent to suspend and the charges
- Investigative reports and any other materials relevant to this matter

After confirming all documents related to this matter were reviewed, Mr. Oliverio stated they were prepared to proceed with the conference with me as the Hearing Officer.

### **RESPONSE TO CHARGES**

Mr. Oliverio began by stating, "...he (Deputy Biller) does not contest the fact that he did not go to this call and that he should have gone to the call; okay, that's, that's uncontroverted. The concern that Deputy Biller has is the untruthfulness and the part about the reports, um, so what (unintelligible) the dereliction of duty – he should have gone to the call, and that's not, you know, that's not really an issue."

Mr. Oliverio continued by stating Deputy Biller was not untruthful and that the investigation does not support his allegation. Oliverio wanted to discuss key points in the investigation he contends are flawed and therefore fail to support the truthfulness allegation and thusly the recommendation of termination.

Mr. Oliverio has points of contention with the investigation and subsequent disciplinary recommendation:

- Sergeant Maryon relied heavily on Sergeant Schaller's opinion (Synopsis, p.3) that Deputy Biller made the false log entry into the CAD system to make it appear Biller responded to the call; that this belief by Schaller was key to Maryon's sustained finding of Truthfulness against Biller.

As to the issue of whether or not Sergeant Maryon "relied heavily" on Schaller's opinion of what motivated Biller's false entry is not material to the allegation. The sustained finding is based on Biller's documented and admitted acts and failures to act in violation of Sheriff's P&P Section 2.46 Truthfulness as it relates to Civil Service Rule VII, Section 7.2(d).

There is nothing to suggest Sergeant Maryon relied upon or even considered Schaller's opinion when determining the sufficiency of evidence to support the sustained finding. I find this point of mitigation by Oliverio unsupported by any facts. Its presence in the Investigation and Synopsis serves no apparent purpose other than to offer the reader an opinion by Biller's immediate supervisor, of what might have motivated Biller's conduct. It does not rise to the level of offering material facts of Biller's acts or failures to act. Absent this comment, there remains a preponderance of evidence in the Investigation and Recommendation and Rationale to support the finding and disciplinary recommendation.

- When confronted by Sergeant Schaller, Deputy Biller readily acknowledged he did not go to the call and was therefore not untruthful.

The sustained finding by Sergeant Maryon and subsequent disciplinary recommendation from Lieutenant McClain are based on the entirety of the investigation. In this case, all allegations against Deputy Biller were sustained. There is no evidence in the investigation, findings, or disciplinary recommendation to suggest Deputy Biller be punished for providing Sergeant Schaller with a dishonest verbal statement.

- Sergeant Schaller failed to inform Deputy Biller the questions he asked (Investigation pp 7&8) regarding his response to the call for service could lead to discipline.

Sergeant Schaller was called to the front counter of the San Marcos Station to meet with [REDACTED] to hear his complaint regarding a lack of service and contact. Before meeting with [REDACTED] Schaller reviewed the radio call and CAD messaged Biller to confirm his entry. Biller admitted he neither responded to the location to check on the suspicious person nor did he make contact with [REDACTED]. Sergeant Schaller appropriately asked his subordinate employee to verify the entry into CAD before speaking with [REDACTED]. Government Code Section 3303 states in part:

*i)...This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.*

The conflict with Biller's CAD entry and the nature of [REDACTED] complaint supports Schaller's approach as preliminary in nature and meant to confirm Biller's entry as accurate, not as the initiation of an investigative interrogation. [REDACTED] initial complaint is consistent with many received in that it offered a one-sided perspective of events. Sergeant Schaller reviewed the CAD entry by Biller that suggested an outcome different than the one offered by Biller. Schaller was educating himself to the facts so he could address [REDACTED] concerns in an appropriate and informed manner.

[REDACTED]

[REDACTED]

- Deputy Biller did not believe CAD was an official report; it is only for taking notes and not subject to subpoena.

The finding is for untruthfulness as it relates to Departmental Reports and specifically to the CAD entry made by Deputy Biller. Sergeant Maryon addressed this when he asked Deputy Biller (Synopsis p. 3) about his CAD entry. When asked why he entered, “suspect is minding his own business and not committing any crimes” Biller said he “believed” that was what would have occurred. When asked about the Cad entry:

JM: This is an official report correct? Reviewed by your supervisor?

TB: Yes. Yeah. Yes.

JM: Okay, so why would you put something in there that you did not do under actions taken that is false? You did not contact him. Why would you write that?

TB: I have no idea.

- [REDACTED]

[REDACTED]

[REDACTED] Biller offered to Sergeant Maryon a reason why he was having issues as a patrol deputy. Biller stated in part, “...*holding previous incidents for years just when I should have let them go as the past....I was under the belief people were after me, out to get me, and when I went on vacation I let all this go...*” Biller said he took vacation shortly after the events of June 18<sup>th</sup>. During his time away, he had a long talk with an aunt and during this time away, he realized he needed to reevaluate himself as a deputy. He returned from vacation revitalized, a consistently high producer, and with a newfound zeal for work.



There is some information in these reports to suggest Deputy Biller's general level of efficiency as a deputy sheriff prior to this incident. In his report, Lieutenant McClain quotes Biller's former supervisor, Sergeant Charles Cinamo, in his Employee Performance Report (EPR) for Deputy Biller from May 2008 to May 2009. In an unidentified anchor, Cinamo wrote,

*"Deputy Biller's application of effort is often questionable due to his lackadaisical approach to work....In conversations I have had with him regarding this issue, Deputy Biller has admitted he 'seeks the low road' to avoid getting himself in trouble."*

In Cinamo's EPR for Deputy Biller from May 2007 to May 2008, he wrote,

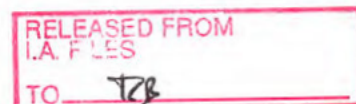
*"It was noted [Deputy Biller's] best efforts are inequitably given to those tasks he likes to do, versus those he does not...his actions were not always consistent with the Department Mission, Vision and Core Values statements"*

Lieutenant McClain reviewed Deputy Biller's station file and located a Performance Impact log entry dated July 2, 2010. It was generated by Biller's then supervisor, Sergeant Mike Blevins, and serves to memorialize a conversation Blevins had with Biller where they discussed P&P Section 2.27, Neglect of Duty. McClain spoke with Blevins about this log entry and was told that on more than one occasion, Blevins has found Biller sitting in the station's report writing room browsing the Internet. On each occasion, Biller was supposed to be responding to a radio call for service, but was instead conducting personal business on a Department computer.

Mr. Oliverio believes the recommendation to terminate Deputy Biller hinges solely on the truthfulness allegation. Oliverio believes the policy regarding truthfulness in reports does not extend to CAD entries and therefore the investigation does not support the recommendation of Billers' termination.

Before closing the Skelly conference, I offered Deputy Biller the opportunity to present any mitigating information not already submitted. Deputy Biller offered his position as a changed man, how he now has a clear view of his duties and his dedication to remain a productive worker.

Mr. Oliverio ended the conference by stating the termination is unsupported and suggested discipline other than Deputy Biller's termination. The conference ended at approximately 1445 hours.



**DISCUSSION**

In reviewing the investigation by Sergeant Maryon, the Recommendation and Rationale by Lieutenant McClain, and during the Skelly Conference with Mr. Oliverio and Deputy Biller, I found nothing to suggest bias or differential treatment.

It was evident by the nature of Deputy Biller's evasive answers to Sergeant Maryon he did not grasp the seriousness of this investigation. That is to say, the circumstances he created by his conduct on June 18, 2010 and where it would logically lead. It wasn't until Maryon drew the line between falsified entries in CAD to truthfulness in reporting that Biller realized what jeopardy he created for himself.

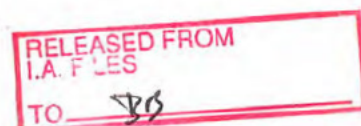
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

### CONCLUSIONS

[REDACTED]

[REDACTED]

It is clearly established Deputy Biller, by his acts and failures to act, demonstrate behavior in which he:

- Abused his position of trust
- Falsified departmental reports to avoid his duties
- Undermined the public trust and the trust of other County employees
- Exercised extremely poor judgment
- Exemplified inefficiency in the performance of his duties.

There is no question a deputy who is willing to falsify a report to avoid the basic duties of his or her position is incapable of the trust needed to work independently and within a team to serve the public with the integrity, respect and honesty demanded of a San Diego County Deputy Sheriff.

In this investigation, I find no factors in mitigation warranting a modification of Deputy Biller's termination from County Service as a Deputy Sheriff.

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TO: TS

**RECOMMENDATION**


With respect to the Notice of Intent to Terminate and Charges:

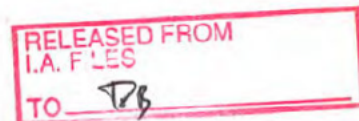
Cause V reads in part, "*You are guilty of failure of inefficiency as set forth...*"  
Change to read: "*You are guilty of inefficiency as set forth...*"

I conclude from my review of the Internal Affairs investigation and my conference with Deputy Biller that the Disciplinary Recommendation & Rationale completed by Lieutenant McClain and endorsed by Captain Beyer is supported by the Investigation completed by Sergeant Maryon. I affirm findings of the following P&P Violations as charged:

- 2.4 Unbecoming Conduct
- 2.27 Neglect of Duty
- 2.30 Failure to Meet Standards
- 2.41 Departmental Reports
- 2.46 Truthfulness

and likewise AFFIRM the recommended TERMINATION of Deputy Biller.

  
Edward A Musgrove, Captain  
Santee Patrol Station





I.A. Case: 2010-118.1

December 12, 2010

Patricia J. Duke

Patricia J. Duke, Commander  
Law Enforcement Services Bureau

(☒) Approve

( ) Disapprove

Date: 12/27/2010

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Ed Prendergast

Ed Prendergast, Assistant Sheriff  
Law Enforcement Services Bureau

(☒) Approve

( ) Disapprove

Date: 12/27/10

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Jim Cooke

Jim Cooke, Undersheriff

(☒) Approve

( ) Disapprove

Date: 1/3/11

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

William D. Gore

William D. Gore, Sheriff

(☒) Approve

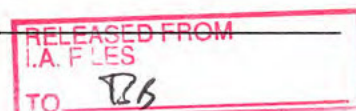
( ) Disapprove

Date: 1/3/11

Comments: \_\_\_\_\_

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\_\_\_\_\_





## COUNTY OF SAN DIEGO

### INTER-DEPARTMENTAL CORRESPONDENCE

October 20, 2010

**TO:** William D. Gore, Sheriff  
San Diego County

**FROM:** Michael D. McClain, Lieutenant  
Court Services Bureau - Vista

**VIA:** Chain-of-Command

**Disciplinary Recommendation and Rationale – Deputy Sheriff Todd Biller**

**RE: Internal Affairs Case #2010-118.1**

#### RECOMMENDATION

I have read the investigation prepared by Sergeant John Maryon of the Internal Affairs Unit. Sergeant Maryon found Deputy Biller in violation of the following Department Policy and Procedure sections:

- 2.4 Unbecoming Conduct
- 2.27 Neglect of Duty
- 2.30 Failure to Meet Standards
- 2.41 Departmental Reports
- 2.46 Truthfulness

I concur with Sergeant Maryon's conclusions and with his findings. Based upon the nature of the conduct and after weighing the aggravating and mitigating factors, I recommend that Deputy Biller be terminated.

#### RATIONALE

Sergeant Maryon's investigation was thorough and fair. There is a preponderance of evidence to believe the alleged misconduct occurred. In reviewing the investigation, I found no evidence of bias by Sergeant Maryon. Deputy Biller's misconduct was independent of any verbal or written order by a Department supervisor.



Disciplinary Recommendation and Rationale  
Deputy Sheriff Todd Biller  
Internal Affairs Case #2010-118.1

Sergeant Maryon's investigation was completed on August 6, 2010, and I received it from Captain Kirby Beyer on August 13, 2010, for review and recommendation.

On August 17, 2010, I reviewed the case in its entirety.

On August 18, 2010, at about 10:39 a.m., I sent an e-mail to Deputy Biller notifying him that I had scheduled a Pre-Disciplinary Hearing regarding this case for Wednesday, August 25, 2010, at 10:00 a.m. in the Internal Affairs Conference Room at the Sheriff's Administrative Office Building. In the e-mail, I requested that Deputy Biller arrange for representation, if desired, and to notify me in writing that he had received my correspondence.

At 11:25 a.m., I received an e-mail response from Deputy Biller stating that he would be at the meeting along with his attorney.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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I.A. FILES  
TO: TB

[REDACTED]

[REDACTED]

[REDACTED]

On August 25, 2010, at about 10:00 a.m., I met with Deputy Biller and his attorney, Ponzio Oliverio, in the Internal Affairs Conference Room at the Sheriff's Administrative Office Building. Deputy Biller and Attorney Oliverio were given the Internal Affairs case file (2010-118.1) to review. In turn, they asked for approximately 15 minutes to discuss the findings prior to speaking with me about the case.

At about 10:15 a.m., I again met with Deputy Biller and Attorney Oliverio to discuss the investigation and any mitigating factors. From this point until the conclusion of our meeting, the complete audio contents were digitally recorded and have been attached to this case file (on compact disc) for reference.

At the onset of our meeting, Deputy Biller did not dispute his failure to respond to the call regarding the Asian male transient going through the complainant's trash. Deputy Biller readily admitted that he should have responded to the scene to investigate the incident and that he was in violation of the following policy and procedure sections: 2.4 – Unbecoming Conduct, 2.27 – Neglect of Duty, and 2.30 – Failure to Meet Standards.

What Deputy Biller took exception to was the investigator's conclusion that his documentation of the incident in his Patrol Log was "untruthful." Deputy Biller stated that his entry in the Patrol Log was based upon his belief that the subject would have done what he wrote. I questioned how Deputy Biller could make such an assumption, when he previously admitted he had never responded to the scene. Deputy Biller explained that he generally determines his need to respond to calls based upon the information he has received from the CAD (computer aided dispatch) text.

Disciplinary Recommendation and Rationale  
Deputy Sheriff Todd Biller  
Internal Affairs Case #2010-118.1

While Deputy Biller acknowledged that CAD information is not always reflective of the circumstances found at a scene, in this case, he based his non-response upon the CAD text and background information from his "beat partner" days prior. Deputy Biller claimed that another deputy had told him a similarly described subject had been frequenting the same location of the call a week earlier, but "was never at the scene when deputies arrived." Deputy Biller stated that he "knew" the subject would not be at the scene and that is the reason why he cleared the call the way he did. When I pointed out to Deputy Biller that this was not in alignment with his Patrol Log entry, "[suspect] is minding his own business and not committing any crime (Attachment D)," Deputy Biller became evasive and blamed inaccurate CAD information and former training officers as the cause for the misleading and falsified entry.

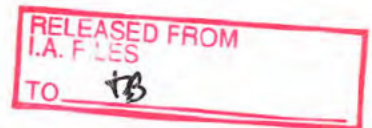
As our discussion continued, Deputy Biller and Attorney Oliverio both eventually admitted that Deputy Biller had inaccurately entered information into his Patrol Log. This admission verified the validity of the sustained finding regarding section 2.41 – Departmental Reports. The false information, which Deputy Biller entered into his Patrol Log, was the basis for Sergeant Schaller's initial belief that Deputy Biller had responded to the scene. Deputy Biller contended that he "never lied" about responding to the scene nor to contact the reporting party; however, these facts would not have been revealed if the complainant had not come to the San Marcos Station to speak to Sergeant Schaller and Sergeant Schaller had not directly asked Deputy Biller if he had responded to the scene to investigate and contact the reporting party. This discovery was made through the exchange of CAD messages between Sergeant Schaller and Deputy Biller the day of the complaint (Exhibit G).

Additionally, when asked directly if he had ever had a discussion with a supervisor regarding his failure to respond to a call for service, Deputy Biller initially indicated that he had spoken with his immediate supervisor, Sergeant Mike Blevins, about this incident. Attorney Oliverio interjected at this point and clarified the question for Deputy Biller to indicate I was asking if he had ever spoken to a supervisor about the failure to respond to calls for service, prior to this incident. In response, Deputy Biller replied, "I cannot recall....I'm sure I have." Deputy Biller's response caused me to question his credibility.

[REDACTED]  
[REDACTED] I believed that any deputy would have been able to answer this question directly and immediately.

As the conversation continued, I asked Deputy Biller to explain how his admittedly false Patrol Log entry was an accurate description of his actions that day. Deputy Biller never addressed the question and appeared to be intentionally avoiding the question. Deputy Biller's evasive responses indicated that he had no intention of answering in a forthright manner and led me to believe that he knew his entry was an act of untruthfulness.

The meeting with Deputy Biller and Attorney Oliverio concluded around 10:45 a.m.





Disciplinary Recommendation and Rationale  
Deputy Sheriff Todd Biller  
Internal Affairs Case #2010-118.1

Shortly after the meeting, I visited Sheriff's Personnel and reviewed Deputy Biller's personnel file.

During my review of his personnel file, I found that Deputy Biller had continued the same pattern of behavior [REDACTED] leading up to this most recent incident. Deputy Biller's failure to consistently perform his duties was documented in each of the annual employee performance evaluations (EPRs).

In Deputy Biller's EPR for the period covering May 2, 2008, through May 1, 2009, Sergeant Charles Cinnamo stated:

*"Deputy Biller's application of effort is often questioned due to his lackadaisical approach to work....In conversations I have had with him regarding this issue, Deputy Biller has admitted he 'seeks the low road' to avoid getting himself in trouble."*

In the EPR documenting Deputy Biller's performance between May 2, 2007, and May 1, 2008, Sergeant Cinnamo stated:

*"It was noted [Deputy Biller's] best efforts are inequitably given to those tasks he likes to do, versus those he does not...his actions were not always consistent with the Departmental Mission, Vision and Core Value statements."*

On August 26, 2010, I reviewed Deputy Biller's Station File. Again, I discovered documentation from another of Deputy Biller's supervisors regarding poor performance. The following was contained inside:

A signed log entry from Deputy Biller's Performance Impact account, dated July 2, 2010, documenting a conversation between Sergeant Mike Blevins and Deputy Biller about Department Policy section 2.27 – Neglect of Duty.

On August 27, 2010, at about 5:00 p.m., I spoke directly with Sergeant Blevins about the specifics behind this latest documentation. Sergeant Blevins told me that, on more than one occasion, he had found Deputy Biller sitting in the Report Writing Room browsing the internet. Each time, Deputy Biller was supposed to have been responding to calls for service, but chose to conduct personal business, utilizing Departmental equipment, in lieu of responding to a citizen's request for assistance.



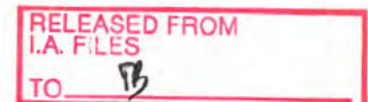
Disciplinary Recommendation and Rationale  
Deputy Sheriff Todd Biller  
Internal Affairs Case #2010-118.1

Given the level of documented evidence of willful neglect of duty and repeated lack of compliance with Departmental regulations, I believe Deputy Biller has demonstrated his unwillingness to carry out the Mission of "providing the highest quality public safety services in an effort to make San Diego the safest urban county in the nation." This alone would justify his separation from the Department; however, when added to his falsification of official reports and untruthfulness, Deputy Biller has proven he does not share the Department's Core Values of honesty, integrity, trust, respect, fairness, and loyalty and should be terminated.

Submitted by:

M.D. McClain 1LT 10/20/10  
(Michael D. McClain, Lieutenant) Date

MDM:mdm





Disciplinary Recommendation and Rationale  
Deputy Sheriff Todd Biller  
Internal Affairs Case #2010-118.1

ENDORSEMENTS

(☒) Approve ( ) Disapprove

  
\_\_\_\_\_  
Kirby Beyer, Captain  
San Marcos Station

10-26-10  
Date

Comments: APPROPRIATE DISCIPLINE GIVEN   


( ) Approve ( ) Disapprove

\_\_\_\_\_  
Patricia Duke, Commander  
Law Enforcement Services Bureau, Area 1

\_\_\_\_\_  
Date

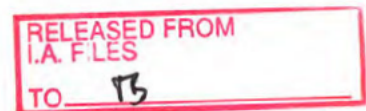
Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) Approve ( ) Disapprove

\_\_\_\_\_  
Ed Prendergast, Assistant Sheriff  
Law Enforcement Services Bureau

\_\_\_\_\_  
Date

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Disciplinary Recommendation and Rationale  
Deputy Sheriff Todd Biller  
Internal Affairs Case #2010-118.1

( ) Approve ( ) Disapprove

\_\_\_\_\_  
Jim Cooke, Undersheriff  
San Diego County

\_\_\_\_\_  
Date

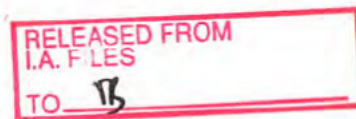
Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) Approve ( ) Disapprove

\_\_\_\_\_  
William D. Gore, Sheriff  
San Diego County

\_\_\_\_\_  
Date

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





# San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

Thomas J. Cooke, Undersheriff

November 10, 2010

Law Offices of Bobbitt, Pinckard & Fields  
8388 Vickers Street  
San Diego, CA 92111

Re: Deputy Todd Biller  
IA# 2010-118.1

Dear Mr. Pinckard:

Your discovery request was received in the Internal Affairs Unit on November 11, 2010.

With regard to your discovery request in the matter of Deputy Biller, Deputy Biller was provided copies of all materials upon which the proposed action is based, including copies of all audio recordings.

A copy of Sheriff's Policy and Procedure, Section 2 (Rules of Conduct) is enclosed, containing the policy sections charged in this case.

Sincerely,

WILLIAM D. GORE, SHERIFF



Brian Conway, Lieutenant  
Internal Affairs Unit

WDG:BC:pgl



**BOBBITT PINCKARD & FIELDS**

A Professional Corporation  
8388 Vickers Street  
San Diego, California 92111-2109

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ANNETTE BURSTEIN  
LEGAL ADMINISTRATOR

November 10, 2010

Sheriff William Gore  
San Diego County Sheriff's Department  
P.O. Box 939062  
San Diego, CA 92193-9062

VIA US MAIL & FASCIMILE  
(858) 974-2244

Re: Deputy Todd Biller

Dear Sheriff Gore:

Our office represents Deputy Todd Biller for the purpose of appeal from the advance notice of adverse action served him November 4, 2010. Based on the information available to us at this time, on behalf of our client we deny the allegations on which this action is based and request an opportunity to respond to the allegations at the earliest opportunity. Ponzio Oliverio will serve as Deputy Biller's representative in this matter. Please contact our office regarding the scheduling of this oral reply at the earliest opportunity either by phone or email to [Ponzio@coplaw.org](mailto:Ponzio@coplaw.org).

Because our client is a peace officer, he is entitled to the protections afforded under Penal Code section 135.5. Accordingly, prior to any disciplinary proceeding our client is entitled to any relevant information related to the proposed discipline. Relevant information includes evidence that has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action, or the truthfulness of a witness's testimony or of a declarant's hearsay statement. (See Evidence Code §§ 210, 780 & 1202). Penal Code § 135.5<sup>1</sup> has expanded the nature of information that must be provided to a public safety officer during any disciplinary proceeding. It is now unlawful to conceal any relevant evidence during the disciplinary process. Concealment would include knowingly not providing any relevant evidence.

I recognize some information that may not be relevant to the appointing authority in order to make a decision regarding discipline of a public safety officer would be relevant to my client to disprove the allegations or mitigate the facts or level of discipline. Therefore, I have provided a list of information that we consider relevant to defending our client from the allegations alleged in the proposed notice of discipline. Relevant evidence also includes evidence, which may assist in mitigation of the level of discipline. Please keep in mind the information we are requesting is in addition to that information that must be provided pursuant to *Skelly v. State Personnel Board*, (1975) 15 Cal. 3d 194.

On behalf of our client, we request the following information:


<sup>1</sup> Penal Code § 135.5 states "Any person who knowingly alters, tampers with, **conceals**, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor.

1. A current copy of all policies and procedures alleged to have been violated by our client.
2. All written reports (as defined by *San Diego Police Officers Assn. v. City of San Diego*, (2002) 98 Cal. App. 4<sup>th</sup> 779) prepared as a result of the allegations against our client.
3. All investigator notes.
4. A copy of all radio transmissions related to this investigation.
5. All written or recorded statements of any potential witness.
6. All prior criminal history of any known potential witness related to this investigation.
7. All information that could lead to or tends to mitigate the conclusions as set forth in the proposed notice of discipline. Information includes any information known to members of your agency whether in a written form or merely within the knowledge of members of your staff.
8. All statements or utterances by our client, oral or written, however recorded or preserved, whether or not signed or acknowledged by our client.
9. The names and addresses of any witness who may have knowledge of the events that caused the discipline to be proposed.
10. An opportunity to examine all physical evidence obtained in the investigation against our client.
11. All laboratory, technician, and other reports concerning the testing and examination of any physical evidence.
12. All reports of experts made in conjunction with the case, involving the results of physical or mental examinations, scientific tests, experimental or comparisons which relate to the allegations as set forth in the notice of proposed discipline.
13. All photographs, motion pictures, or videotapes taken during the investigation.
14. Any exculpatory or mitigating evidence in the possession of your agency.
15. Any information relevant to the credibility of any witness.
16. Any potential rebuttal evidence in the possession of your agency.
17. Any and all relevant evidence known or in the possession of your agency.
18. Any recommendations from supervisory or management staff that differ or contradict the current conclusions or recommendation of discipline.
19. All performance evaluations for the past ten (10) years.
20. Any and all materials reflecting documentation of positive or negative performance maintained in any department files (including Internal Affairs files).
21. Any and all notes, minutes and/or materials from any meetings or discussions involving captains or chiefs in the process of determining the level of discipline to be proposed.
22. Any and all electronically stored data including email and any other computer generated files.
23. Any and all findings of the Citizen's Law Enforcement Review Board relating to this proposed discipline.
24. All discoverable information under Penal Code §1054 as required by *San Diego Police Officers Association v. City of San Diego*, supra, 98 Cal App. 4<sup>th</sup> 779.

Any information not provided violates Government Code § 3303(g) and subjects your agency to penalty of up to twenty-five thousand dollars plus attorney fees.

Please treat this request as a continuing request until this matter has been settled or adjudicated. Thank you for your anticipated cooperation.

Sincerely,

  
ral Richard L. Pinckard

RLP/rab

cc: Internal Affairs

DEPUTY TODD BILKER  
SKELLY CONFERENCE

11.24.2010

CPT E. MISERONE 1812

- DECISION ON TRUTHFULNESS BASED ON SCHALLER'S OPINION - BY MAYOR
- ADMITTED HE DID NOT GO TO CALL - WAS NOT UNTRUTHFUL
- FAILED TO INFORM OF POTENTIAL DISCIPLINE WHEN ASKED IF HE WENT TO THE CALL  
SGT SCHALLER
- MC CLAIN MISSTATED JAILOR OFFENSE RELATED TO RESPONDING TO CALLS.

P-788  
OF INVEST.



- DID NOT BELIEVE CAD WAS AN OFFICIAL POLICE REPORT - ONLY FOR NOTES/RECOLLECTION

2.4 CUBO

2.27 NEGLECT

2.30 FAILURE TO MEET

2.41 DEPT REPORTS

2.46 TRUTHFULNESS