

Brevard County Sheriff's Office Titusville, Florida

MEMORANDUM

Redacted per F.S. 395.3025(4) - Medical Information

DATE:

January 03, 2017

TO:

Chief Michael J. Lewis

FROM:

Agent Kraig Hupfer, Staff Services Unit

RE:

Administrative Investigation 2016-CI-034

I. Summary

On October 15, 2016, Deputy Joseph Carter was assigned to work the "B" night shift at 1800 hours at the Jail Complex. At approximately 1600 hours, Deputy Carter contacted his supervisor, Sergeant Otranto, and left a message on his cellular telephone that he would not be able to report to work that evening due to the fact he had an At approximately 1715 hours, Sergeant Otranto spoke with Deputy Carter directly at which time Deputy Carter advised that he had an and he was not able to take more than five steps without being exhausted and tired. Sergeant Otranto notified the on-duty supervisor, Lieutenant Haman, of Deputy Carter's sick leave status who then directed him to contact Deputy Carter and order him to provide a doctor's note when he returned to work. At approximately 1815 hours, Sergeant Otranto contacted Deputy Carter and advised him of the requirement to provide a doctor's note upon his return to work.

On October 15, 2016, Lieutenant Maggie was in an off-duty capacity and he was attending the St. Teresa's Fair in Titusville. At approximately 1830 hours, Lieutenant Maggie was exiting the fair when he observed Deputy Carter walking into the fair. Lieutenant Maggie briefly spoke with Deputy Carter and he advised that Deputy Carter appeared to be fine with no observable health issues. When Lieutenant Maggie returned to work on October 19, 2016, he learned that Deputy Carter had called out sick on the date that he observed and spoke to him at St. Teresa's Fair. Lieutenant Maggie notified Major Tomblin and he authored a memorandum documenting the incident.

On October 20, 2016, Lieutenant Maggie authored a memorandum titled "Corrections Deputy Carter Policy Violations" to Major Tomblin summarizing the incident involving Deputy Carter.

2016-CI-034 January 03, 2017 Page 2 of 11

On October 28, 2016, Sergeant Otranto authored a memorandum titled "Corrections Deputy Carter" summarizing the incident involving Deputy Carter.

On November 14, 2016, Chief Deputy Michael J. Lewis authorized an Administrative Investigation of this incident.

On November 15, 2016, the Staff Services Office received this case for further investigation.

On December 06, 2016, Deputy Joseph Carter was scheduled to work and I responded to the Jail Complex to serve his Notice of Administrative Investigation. At approximately 1800 hours, I was notified by Sergeant Otranto that Carter had called in sick and would not be reporting to duty as scheduled. At approximately 2300 hours, I was again contacted by Sergeant Otranto who advised that he had received information that Deputy Carter had recently bought a new motorcycle and he was supposed to travel to Jacksonville on this date to take ownership of it.

On December 09, 2016, Deputy Carter was served his Notice of Administrative Investigation.

II. Possible Policy Violations:

- 400.00 General Professional Responsibilities
- 400.68 Truthfulness
- 300.06D Sick Leave

III. Witness Interview:

Lieutenant Brock Maggie Jail Complex

On December 05, 2016, I conducted a sworn, audio-recorded interview with Lieutenant Brock Maggie at the Four Corners Fire Station in Sharpes, Florida. Details of the interview are as follows:

Lieutenant Maggie stated that, on October 15, 2016, he was off-duty attending the St. Teresa's Fair in Titusville with his family. At approximately 1830 hours, he decided to leave when he observed Deputy Carter entering into the fair. Upon seeing him, Lieutenant Maggie stated that Deputy Carter attempted to ignore and turn away from him. Thinking this was strange, Lieutenant Maggie made contact with Deputy Carter and he briefly spoke with him. While speaking with him, Lieutenant Maggie said that Deputy Carter appeared to be nervous. As he continued to talk with him, Lieutenant Maggie stated Deputy Carter looked and appeared to be healthy and he did not observe any

2016-CI-034 January 03, 2017 Page 3 of 11

physical ailments as he walked into the fair. It was not until Lieutenant Maggie left the fair that he realized Deputy Carter's shift was scheduled to work that evening. Lieutenant Maggie had been on annual leave at the time of the incident so he was unsure of Deputy Carter's work/leave status. When he returned to work on October 19, 2016, Lieutenant Maggie learned that Deputy Carter had, in fact, called in sick that evening just prior to seeing him at the fair. When Deputy Carter returned to work on October 19, 2016, Lieutenant Maggie stated that he did provide a doctor's note however the note indicated that he was seen on October 18, 2016 with a return date for the following day.

Lieutenant Maggie stated he believes that Deputy Carter has established a pattern of sick leave abuse. Whenever a balance of sick leave is attained, Deputy Carter has established a trend to use that leave as it is accumulated therefore leaving him with a limited amount of sick leave hours. Due to his frequent sick leave usage, Deputy Carter has been directed to provide doctor's notes for any usage of his sick leave. Lieutenant Maggie further stated that on the last couple of occasions, Deputy Carter has used his sick time in conjunction with Saturday work days. An audit of Deputy Carter's time cards revealed that he called out sick on Saturday, October 15, 2016 and Saturday, November 12, 2016.

Sergeant Richard Otranto Jail Complex

On December 05, 2016, I conducted a sworn, audio-recorded interview with Sergeant Richard Otranto at the Jail Complex in Sharpes, Florida. Details of the interview are as follows:

On October 15, 2016, Sergeant Otranto received a message from Deputy Carter stating he would be unable to report to work. At approximately 1715 hours, Sergeant Otranto stated Deputy Carter advised him that he had an while sleeping and he was unable to take more than five steps without having difficulty breathing. As Sergeant Otranto was speaking with him on the telephone, he said that it did sound as though Deputy Carter was short of breath as he spoke with him. Sergeant Otranto directed Deputy Carter to provide a doctor's note when he returned to work. When Deputy Carter returned to work on October 19, 2016, Sergeant Otranto stated he was on annual leave so he was unaware of Deputy Carter being seen at the fair by Lieutenant Maggie until after he returned from his annual leave.

Sergeant Otranto advised he has been Deputy Carter's supervisor for approximately one year. During that time, he has verbally counselled him on a least two occasions about adhering to the allotted dinner or break times. Sergeant Otranto stated Deputy Carter had a tendency to go out to his vehicle during breaks to listen to music and then not return to his post within the required amount of time. Since being verbally counselled, Sergeant Otranto advised he has not had any repeat infractions in regards to his breaks. This counselling was documented in PMP on October 27, 2016. Sergeant Otranto stated he has also had to verbally counsel Deputy Carter on at least two occasions in regards to his usage of sick leave. Sergeant Otranto advised that Deputy Carter has established a

2016-CI-034 January 03, 2017 Page 4 of 11

pattern of sick leave abuse while working for him. Sergeant Otranto stated that Deputy Carter has a history of using his sick time as he accrues it therefore leaving him with balances below fifty hours.

Lieutenant Kelly Haman Jail Complex

On December 06, 2016, I conducted a sworn, audio-recorded interview with Lieutenant Kelly Haman at the Jail Complex in Sharpes, Florida. Details of the interview are as follows:

On October 15, 2016, Lieutenant Haman advised she was the acting supervisor for the "B" nights shift due to Lieutenant Maggie being out on annual leave. On that date, she stated she was contacted by Sergeant Otranto who advised her that Deputy Carter had called in sick citing that he had an She recalled that Deputy Carter had told Sergeant Otranto that every time he stood up he felt like he was going to lose consciousness due to his Due to his history of sick leave usage, Lieutenant Haman reiterated to Sergeant Otranto that Deputy Carter was required to provide a doctor's note upon his return to work. Lieutenant Haman also had concerns that this most recent sick leave by Deputy Carter was in conjunction with an annual leave day that had already been pre-approved. A time card audit revealed that Deputy Carter utilized sick leave on Saturday, October 15, 2016 and annual leave on Sunday, October 16, 2016. She then sent an email to Lieutenant Maggie apprising him of Deputy Carter's recent usage of sick leave. When Lieutenant Maggie returned to work on October 19, 2016, Lieutenant Haman learned that Deputy Carter was observed at the St. Teresa's Fair on the evening that he had called in sick.

Lieutenant Haman also learned the following week that Deputy Carter may have told another deputy that he planned on not working the weekend of October 15, 2016. Deputy Jennifer Perez told Lieutenant Haman that Deputy Carter had made a statement on October 14, 2016 that he was not going to be in the rest of the weekend.

Deputy Jennifer Perez Jail Complex

On December 06, 2016, I conducted a sworn, audio-recorded interview with Deputy Jennifer Perez at the Jail Complex in Sharpes, Florida. Details of the interview are as follows:

Deputy Perez advised that she attended the Corrections Academy with Deputy Carter and that she has been assigned to the same shift, "B" nights, for approximately the last two years with him. During the last year, Deputy Perez stated that Deputy Carter has told her on numerous occasions that he was going to "bang out" (call in sick) on upcoming work days. She advised that Deputy Carter has told her on a regular basis that if he had

2016-CI-034 January 03, 2017 Page 5 of 11

personal plans and/or if he had the sick leave time accrued he would "bang out." Although she could not remember any specific dates, Deputy Perez stated she recalled at least five times when Deputy Carter told her he was going to "bang out" and he actually followed through on calling in sick the following work day. Deputy Perez said she did not believe Deputy Carter took his job serious and she felt let down by his behavior due to the fact that she believed it created a safety issue with their squad being left understaffed when he called in sick.

Sergeant Evelyn Denardo Jail Complex

On December 09, 2016, I conducted a sworn, audio-recorded interview with Sergeant Evelyn Denardo at the Jail Complex in Sharpes, Florida. Details of the interview are as follows:

Sergeant Denardo advised she has been assigned to the "B" nights shift since January Although she is not his direct supervisor, Sergeant Denardo has had the opportunity to supervise Deputy Carter during that time period. On December 06, 2016, Sergeant Denardo stated Deputy Carter contacted her to advise he would not be able to report to his assigned shift due to the fact he was sick. Deputy Carter told her that he had been having "flu like symptoms" all week and he was too sick to report to work on this date. Sergeant Denardo asked if he had seen a doctor to which Deputy Carter told her he planned on seeing his doctor on Wednesday or Thursday. Due to his sick leave balance being so low, Sergeant Denardo directed Deputy Carter to provide a doctor's note upon his return to work. Sergeant Denardo stated she was aware of Deputy Carter's condition but she advised that she did not observe any flu like symptoms or health related issues the previous night that they worked together. Sergeant Denardo stated she has had concerns of Deputy Carter's usage of sick leave in the past. When Deputy Carter accumulates enough sick leave, Sergeant Denardo advised he has established a tendency to call in sick when his sick balance allows for him to take a day off. Due to his sick leave balance remaining below fifty hours, Sergeant Denardo stated Deputy Carter is required to provide a note from his doctor anytime he utilizes his sick leave.

Deputy Brian Adams Jail Complex

On December 10, 2016, I conducted a sworn, audio-recorded interview with Deputy Brian Adams at the Jail Complex in Sharpes, Florida. Details of the interview are as follows:

Deputy Adams advised that he has been assigned to "B" nights for approximately the last ten months with Deputy Carter. Deputy Adams and Deputy Carter are both motorcycle enthusiasts and during that time, Deputy Adams stated that he has had several conversations with Deputy Carter about motorcycles. Deputy Adams said he recently learned from Deputy Carter that he had sold his Suzuki Hayabusa and he was searching

2016-CI-034 January 03, 2017 Page 6 of 11

for a BMW S1000 to purchase as a replacement. Deputy Adams said that Deputy Carter had located two dealers, one in the Tampa area and one in Jacksonville that had his desired motorcycle for sale.

On Monday, December 05, 2016, during their roll call, Deputy Adams stated that Deputy Carter told him that he was going to purchase his motorcycle in Jacksonville. Knowing that they were scheduled to work the following date, Deputy Adams asked if Deputy Carter was planning on picking the motorcycle up on their day off, Wednesday, December 07, 2016. Deputy Adams said that Deputy Carter was smiling when he responded, "Yeah, yeah, yeah, I'll be here tomorrow." Based on Deputy Carter's response and demeanor, Deputy Adams immediately knew that he was going to call in sick the next day to go pick the motorcycle up. The next day, December 06, 2016, Deputy Carter did in fact call in sick at which time Deputy Adams stated he knew that he was going to get the motorcycle. On Wednesday, December 07, 2016, Deputy Adams advised that Deputy Carter sent him a picture of the new motorcycle through Facebook. Deputy Adams provided the Facebook picture to me which will be included as an enclosure to the investigative case file. A vehicle registration check through DAVID revealed that the Carter's (Joseph and his wife) purchased a 2012 BMW motorcycle from a dealership in Jacksonville on December 06, 2016.

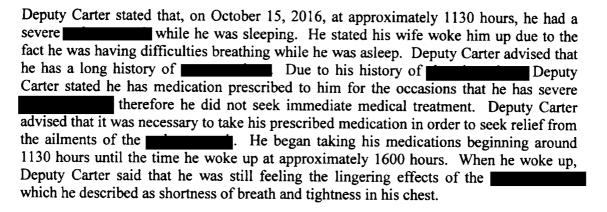
Deputy Adams said that Deputy Carter has established a reputation with the shift of consistently calling out sick. When he does show up for his assigned shift, Deputy Adams stated that other deputies joke with Deputy Carter making statements like, "Hey, Carter's here." Deputy Adams said it seems as though Deputy Carter uses his sick leave at least once a month

IV. Subject Interview:

Deputy Joseph Carter Jail Complex Subject Interview

On December 14, 2016, Agent Vecchio and I met with Deputy Carter at the Brevard County Sheriff's Office Staff Services Office to conduct a sworn audio-recorded interview with him. Once Deputy Carter reviewed the case file to his satisfaction, I initiated a sworn interview with him. Prior to asking Deputy Carter any questions, he was read the "Administrative Investigation Warnings", which he acknowledged he understood and signed. Deputy Carter also acknowledged he understood he could have a representative with him during the interview but chose not to. I explained to Deputy Carter the nature of this investigation and asked him to explain his usage of sick leave on October 15, 2016 and December 06, 2016. The following is a summary of the interview:

2016-CI-034 January 03, 2017 Page 7 of 11



At approximately 1600 hours, he contacted the on-duty Unit #1 Supervisor and Sergeant Otranto via a text message to advise that he was unable to report to work as scheduled. At approximately 1715 hours, Deputy Carter said he spoke with Sergeant Otranto at which time he told him that he had a severe while sleeping and that he was struggling to move around the house without having breathing difficulties. At approximately 1815 hours, Deputy Carter remembered speaking with Sergeant Otranto a second time who reminded him that he would have to provide a doctor's note when he returned to work. Deputy Carter advised that he has previously been advised by supervision of the requirement to provide medical notes whenever he utilizes his sick leave because of his consistent and perceived abuse of it.

After speaking with Sergeant Otranto, Deputy Carter stated he called his wife to ascertain her whereabouts at which time he learned that she was at the fair with his child. At that time, Deputy Carter told her that he did not feel well enough to go to work that evening. A short time later, he again called her stating he was feeling better after taking his medications so he decided to go to the fair to meet with his family. Deputy Carter stated that he did not initially see Lieutenant Maggie and he was surprised to see him when Lieutenant Maggie made contact with him. After a brief conversation, Deputy Carter went to go look for his family. Deputy Carter stated he stayed at the fair for approximately forty-five minutes to one hour before leaving.

Looking back on the incident, and knowing he was being scrutinized for his sick leave usage, Deputy Carter admitted that he should have reported to work that date. Deputy Carter stated he definitely was sick when he initially called into the jail complex at 1600 hours and when he first spoke with Sergeant Otranto. However after taking his medications, he stated his health had improved to the point where he could have been able to work that evening. Deputy Carter said his intent was not to be deceitful to his supervisors but he understood why they believed he was abusing his sick leave. When asked directly as to why he did not report to work upon feeling better, Deputy Carter could not provide an explanation other than he had already called in sick so he decided to go to the fair instead. He stated he realized now that if he was healthy enough to attend the fair then he should have reported to work.

2016-CI-034 January 03, 2017 Page 8 of 11

As it pertained to Deputy Perez's interview, Deputy Carter stated his conversations may have been perceived in the wrong context. While in squad meetings, he said that there is constant joking amongst his peers about many topics to include usage of his sick leave. Deputy Carter stated there have been conversations where he has stated that he was going to call out sick in a joking manner but he has never made those statements and then actually called in sick. Based on his frequent sick leave usage and joking conversations amongst his peers, Deputy Carter understood why Deputy Perez may have perceived those conversations as being serious when he did actually call out sick. Deputy Carter took exception to Deputy Perez's perception that he did not take his job serious. He stated that he does in fact take his job serious and that he completes his job assignment professionally to the best of his abilities.

On Monday, December 05, 2016, Deputy Carter recalled having a conversation with Deputy Adams during squad meeting about his intended purchase of a new motorcycle in Jacksonville. Deputy Carter stated that Deputy Adams has a tendency to joke around during their conversations. He disputed Deputy Adams assertion that he was smiling with a joking demeanor when he told him that he would be at work the following date, Tuesday, December 06, 2016. When Deputy Adams asked him if he was going to wait until Wednesday to purchase the motorcycle, Deputy Carter stated that it was his original intent to wait until their day off to complete the purchase of the motorcycle.

On December 06, 2016, Deputy Carter stated he contacted Sergeant Denardo to advise her that he was unable to report to work as scheduled stating that he had been having flu like symptoms all week. Sergeant Denardo had made a statement during her interview that Deputy Carter did not display any signs of illness the previous date while at work. Deputy Carter said he is always an upbeat person who can display a positive demeanor even though he may be suffering from the effects of the flu or the stated that he tries not to have his illness effect his work product so he understood why Sergeant Denardo may have mistaken his demeanor as being healthy the previous shift.

On December 06, 2016, Deputy Carter said that he woke up sick that morning with continued flu like symptoms. By approximately 1200 hours, he felt better so he decided to travel to Jacksonville to complete the purchase of the motorcycle. Deputy Carter made the statement that he had already called out sick so that was why he decided to get the motorcycle at that time. When asked the time he contacted Sergeant Denardo, Deputy Carter could not remember the time but believed it would have been around 1600 to 1800 hours. Deputy Carter stated that he wanted to pick up his motorcycle sooner rather than later so he made the decision to travel to Jacksonville to complete the purchase. Deputy Carter admitted that he could have reported to work but chose not to and he admitted to being less than truthful in his conversation with Sergeant Denardo. Reflecting back on his actions, Deputy Carter acknowledged his behavior was in violation of Sheriff's Office policies and he regretted the decisions he made knowing now how it affected his squad.

2016-CI-034 January 03, 2017 Page 9 of 11

V. Other Investigative Efforts

I obtained an audit from the Finance Unit of Deputy Carter's time cards dating December 20, 2014 through December 01, 2016. The audit revealed that Deputy Carter has continuously utilized his sick leave time as he has accumulated it. In September 2015, Deputy Carter exhausted all of his leave balances while using the Family Medical/Leave Act. On October 22, 2015, Deputy Carter attempted to use additional leave time for which he did not have the required time or authorization from his supervision. On November 15, 2016, Lieutenant Maggie served Deputy Carter a Letter of Reprimand for a violation of 300.06G Leave Without Pay.

As of the pay period 10/16/16 through 11/06/16, Deputy Carter had the following leave balances:

Sick Leave-28.63 hours Annual Leave-37.94 hours Holiday Leave-4 hours Emergency Comp-36.5 hours

Since the October 15, 2016, incident, Deputy Carter utilized his sick leave on two additional occasions of November 12, 2016 and December 06, 2016.

On December 05, 2016, I went to Doctor Kodesch's office in Titusville to verify the validity of the "Return to Work" forms provided by Deputy Carter. I spoke with Doctor Kodesch

Specifically, I had Doctor Kodesch validate a doctor's note provided by Deputy Carter on June 13, 2016. After examining and initialing the note, Doctor Kodesch recalled and confirmed seeing Deputy Carter on May 23, 2016. She remembered Deputy Carter "called" her office requesting the note that she then provided to him dated for June 13, 2016. She also recalled recently that Deputy Carter "called" into her office requesting a doctor's note for work. Deputy Carter called in sick on November 12, 2016, and she provided a note for him dated November 15, 2016. During his subject interview, Deputy Carter advised that in the instances the doctor provided him a note without seeing him, she mandated that he schedule an appointment to complete a follow-up physical examination.

On December 12, 2016, I conducted a DAVID audit of Deputy Carter's vehicle registrations. The audit revealed that the Carter's (Deputy Carter and his wife) had purchased a BMW motorcycle on December 06, 2016 from Cycle Image & Accessories Inc. located in Jacksonville and he registered the motorcycle in his wife's name.

VI. Recommendation

On August 27, 2016, at 1800 hours, Deputy Carter was assigned to work the "B" night shift at the Jail Complex. At approximately 1715 hours that date, Deputy Carter

2016-CI-034 January 03, 2017 Page 10 of 11

contacted his supervisor, Sergeant Otranto, to advise him he was unable to report to his scheduled shift due to the fact he was sick. When Sergeant Otranto spoke with Deputy Carter, he stated that he had a severe while he was sleeping and he was unable to walk without feeling like he was going to pass out. Sergeant Otranto directed him to provide a doctor's note when he returned to work.

At approximately 1830 hours, Lieutenant Maggie was leaving the St. Teresa's Fair in Titusville where he observed Deputy Carter walking into the fair. Lieutenant Maggie stated that Deputy Carter initially attempted to avoid him and that he appeared to be nervous when he did briefly speak with him. Lieutenant Maggie later learned Deputy Carter had been scheduled to work that evening and that he had just called in sick to the shift supervisor citing a severe just prior to seeing him at the fair. When he returned to work on October 19, 2016, Deputy Carter did provide a doctor's note for his absence from work.

On December 06, 2016, at 1800 hours, Deputy Carter was schedule to work the "B" night shift at the Jail Complex. Sometime between 1600 to 1800 hours, Deputy Carter contacted Sergeant Denardo to advise her he was unable to report to his scheduled shift due to the fact he was sick with flu like symptoms. Through Deputy Carter's own admission, he had in fact traveled to Jacksonville to purchase a motorcycle contrary to what he advised Sergeant Denardo.

This investigation revealed that Deputy Carter has established a pattern of sick leave abuse. Deputy Carter has shown a tendency to utilize his sick leave hours as he accumulates it therefore leaving him with leave balances consistently less than fifty hours. Due to his sick leave usage, Deputy Carter has been counseled by his supervision on the sick leave policy on multiple occasions and he has been directed to provide doctor's notes on every occasion that he does call in sick.

On October 15, 2016, and December 06, 2016, Deputy Carter called into the jail advising he was unable to report to work because of health related issues. During his subject interview, Deputy Carter admitted on both occasions that he could have and should have reported to his assigned shift ultimately stating he understood he was in violation of **Sheriff's Policy 300.06D - Sick Leave**.

As it pertains to the truthfulness allegation, Deputy Carter believed he was being truthful when he called in sick on October 15, 2016. He stated that he did have a severe that date and he had to use his prescribed medicine to assist in his recovery. When he was speaking with Sergeant Otranto at approximately 1715 hours, Deputy Carter advised that he still had not fully recovered. However, at approximately 1800 hours, his medication had helped him recover to the point where he could have reported to work instead of meeting his family at the fair.

On December 06, 2016, Deputy Carter admitted that he was not "100 percent" truthful when speaking with Sergeant Denardo. He advised that he did initially have flu like

2016-CI-034 January 03, 2017 Page 11 of 11

symptoms when he woke up that date however he admitted to feeling better by the time he contacted Sergeant Denardo at approximately 1600 hours. Deputy Carter admitted that he was in the "now" moment and he did not want to wait until his day off to take possession of his newly purchased motorcycle.

Based on the facts set forth in this administrative investigation, I recommend the following:

That the allegation against Deputy Carter that he violated 300.06D Sick Leave be closed as "Sustained."

That the allegation against Deputy Carter that he violated 400.00 General Professional Responsibilities be closed as "Sustained."

That the allegation against Deputy Carter that he violated 400.68 Truthfulness be closed as "Sustained."

VII. Enclosures

- Memorandum from Lieutenant Maggie to Major Tomblin titled "Corrections Deputy Carter Policy Violation."
- Memorandum from Sergeant Otranto to Lieutenant Maggie titled "Corrections Deputy Carter"
- Notice of Administrative Investigation
- Administrative Investigation Warning

VIII. Oath

I, Agent Kraig Hupfer, do hereby swear, under penalty of perjury, that to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes.

Signed Agent Kraig Hupfer, ID 210

Sworn to and subscribed before me, the undersigned authority, this 03rd day of January, 2017.

Signature

NOTARY PUBLIC/LAW ENFORCEMENT OFFICER IN PERFORMANCE OF OFFICIAL DUTIES