

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

STEPHEN PETERSON,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 11-MR-291
)	
VILLAGE OF OAK BROOK, ILLINOIS,)	
VILLAGE OF OAK BROOK BOARD OF)	
FIRE AND POLICE COMMISSIONERS,)	
JOHN PIRCON, Member, EDWARD H.)	
NIELSEN, Former Member, JOHN BAAR,)	
Member, EDWARD MAIN, Member,)	
THOMAS SHEAHAN, Former Chief of Police,)	
and JAMES KRUGER, Chief of Police,)	Honorable
)	Terence M. Sheen,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The Board did not err in denying appellant's section 2-615 motion to dismiss the administrative complaint (735 ILCS 5/2-615 (West 2010)). The Board's finding that appellant was guilty of the administrative charge of obstructing justice was not against the manifest weight of the evidence, where he accepted weapons and money from the husband of a missing person and failed to disclose his actions to investigators until expressly asked. The violation(s) constituted cause for discharge. Upon administrative review, the trial court did not cause appellant's due process

rights to be violated when it issued a limited remand for the Board to clarify its decision. Finally, the trial court did not abuse its discretion when it denied appellant's motion to remand the case for the taking of additional evidence (735 ILCS 5/3-111(a)(7) (West 2010)).

¶ 2 In October 2010, Thomas Sheahan, Chief of Police of the Village of Oak Brook, filed a statement of charges against his employee, appellant Stephen Peterson. Stephen was, at that time, a police officer serving the Village of Oak Brook police department. The charges alleged misconduct stemming from Stephen's actions following the 2007 disappearance of Stacy Peterson (fourth wife of his father, Drew Peterson). Stephen's acceptance of weapons and money from Drew formed the basis for the administrative charge of obstructing justice. In February 2011, the Illinois Village of Oak Brook Board of Fire and Police Commissioners (Board) found Stephen guilty of the administrative charge of obstructing justice and determined that the appropriate sanction was discharge from the police department. Upon administrative review, the trial court denied Stephen's motion to remand to the Board for the taking of additional evidence. Then, in August 2012, the court issued a limited remand for the Board to clarify its decision. By that time, only one of the three board members who had issued the February 2011 decision remained serving. Nevertheless, the Board clarified its decision and, in March 2013, the trial court affirmed. For the reasons that follow, we affirm the judgments and orders of the Board and of the trial court.

¶ 3 I. BACKGROUND

¶ 4 We begin our discussion with an overview of Stephen's actions following the disappearance of Stacy Peterson, particularly his acceptance of weapons and money from Drew. As of the filing of this appeal, Stacy's case remains open. With minor discrepancies noted, the parties tend to agree on the facts. They merely dispute the question of Stephen's good faith and judgment, or lack thereof, that may be inferred from the facts.

¶ 5 On October 29, 2007, Stephen, then age 28, received a call from his father, Drew. Drew had news about his wife, Stacy. According to Drew, Stacy called him to say that she had found someone else. For now, she was going on vacation and would “deal” with him when she returned. Again according to Drew, Stacy had taken \$25,000 and title to their house (but had left the children, ages four and two, behind). Stephen believed that Stacy loved her children. However, Stephen accepted Drew’s story. He knew Drew and Stacy’s marriage to be on shaky ground.

¶ 6 Later that evening, Drew called Stephen with more news about Stacy. Drew informed Stephen that Stacy’s family had filed a missing persons report. Drew joked that this could only happen to him.¹

¶ 7 On October 30, 2007, Drew called Stephen early that morning to tell him that Stacy’s disappearance had “hit” the news. At 7:30 a.m., Drew went to Stephen’s house. Drew gave Stephen three guns contained in two cases. According to Stephen, Drew explained that he thought the police would be searching his house, these guns were his favorites, and he did not want anything to happen to them. Stephen accepted the guns and placed them in a bedroom closet.

¶ 8 Later that day, Stephen went to Drew’s house at Drew’s request. Drew told Stephen that, if anything should happen to him, he wanted Stephen to take care of his four minor children. Two of the children were from his marriage with Kathleen Savio (deceased) and two were from his marriage with Stacy. Drew gave Stephen the name of a lawyer to contact and provided Stephen with

¹ Presumably, Drew alluded to the investigation regarding the 2004 death of his third wife, Kathleen Savio. The initial coroner’s inquest resulted in a determination that the manner of death was accidental and the cause was drowning. On November 9, 2007, a Will County judge ordered that Savio’s body be exhumed. Drew was ultimately convicted of Savio’s murder.

information concerning personal bank accounts and trust funds. Drew then provided Stephen with three checks totaling \$236,800. The largest check, in the amount of \$225,000, came from Drew and Stacy's joint checking account, which was funded by a home equity line of credit. Drew instructed Stephen not to deposit the checks until directed. Stephen accepted the checks.

¶ 9 On November 1, 2007, the Illinois State Police (ISP) searched Drew's house. Drew called Stephen and informed him that the search was taking place. The ISP found ammunition for an assault rifle, but not the gun itself. Drew told the ISP that he had given that gun, along with two others, to Stephen. When the ISP left his home, Drew called Stephen and directed Stephen to deposit the \$236,800 in checks.

¶ 10 On Drew's instruction, Stephen attempted to deposit the checks into his personal account. However, the \$225,000 check exceeded the amount of credit available from the home equity line. Drew then wrote Stephen a new check for \$215,000, which Stephen successfully deposited into his own account.

¶ 11 The ISP soon contacted Stephen. Stephen believes the contact occurred via phone on the evening of November 1, 2007; ISP investigator Gary Lawson believes it occurred on the morning of November 2, 2007, at Stephen's home. Either way, Stephen and Lawson both agree that Stephen admitted holding the guns for Drew. Stephen did not want to speak about the matter in front of his wife, and he agreed to bring the guns to the ISP and submit to an interview later on November 2.

¶ 12 On November 2, 2007, before Stephen's scheduled interview with the ISP, Drew drove his motorcycle to Stephen's house. There, Drew drafted a will wherein he bequeathed his entire estate to Stephen, with the understanding that Stephen would watch over the four minor children. Drew also transferred the title of his motorcycle over to Stephen. Stephen then drove Drew home.

¶ 13 At the ISP interview, Stephen turned over the three guns. Stephen explained that Drew did not want them to be damaged in the search. When asked by Lawson whether he had any other relevant information, Stephen informed him of Drew's new will and reported that Drew had given him the name of a lawyer, information concerning personal accounts and trust funds, and title to the motorcycle. However, Stephen did *not* disclose that he had just received over \$200,000 from an account jointly owned by Drew and Stacy.

¶ 14 On November 19, 2007, Oak Brook Deputy Chief Steve Larson (not to be confused with ISP investigator Lawson) and Lieutenant Jason Cates arranged a meeting with Stephen at the Oak Brook Police Department. The purpose of the meeting was to make Stephen aware that they "understood what he was going through." They adjusted Stephen's work responsibilities so that he would spend more time inside the department office so as to protect him from the media. Finally, they asked Stephen if there was anything they should know about the disappearance investigation. Stephen did not tell them about the guns and money he accepted from Drew, nor did he tell them that he had been subpoenaed to appear before a Will County grand jury later that month. Larson found out about Stephen's subpoena because an investigator involved in the grand jury proceedings called the Oak Brook Police Department in search of Stephen.

¶ 15 Without asking permission, Stephen drove to the grand jury proceedings in his Oak Brook squad car and police uniform. The grand jury proceedings took place approximately one month after Stacy's disappearance, in late November and early December 2007. The State called Stephen to testify. As a preliminary matter, the state's attorney asked Stephen, "Now, I see you're in uniform. How are you currently employed?" Stephen reported that he was an officer for the Oak Brook Police Department.

¶ 16 The state's attorney then presented Stephen with his own bank statement and proceeded to question him. This was the first time Stephen had spoken to *anyone* with investigative authority or governmental position about the \$200,000-plus money transfer. The following exchange took place:

“Q.: I'm going to show you *** People's Exhibit 4. []].

A.: This is a checking deposit through my West Suburban Bank account in the sum of \$236,800.

Q.: And whose account is that deposited into?

A.: My account.

Q.: And *** what date is on the deposit slip?

A.: November 1, 2007.

Q.: Whose writing is on that deposit slip?

A.: Mine.

Q.: What types of conversations did you have with [Drew] about why he's giving you suddenly [\$236,800] on November 1[, 2007]?

A.: He wanted me to have this money in case something happened to him.

Q.: Did he say what for?

A.: Anything. So I could use it for raising the children ***.

Q.: I'm going to approach you *** People's Exhibit 5. []].

A.: Correct. This is the check that was for \$225,000 from my father to me.

Q.: And can you tell the ladies and gentlemen of the grand jury, who is on the checking account that that check is written off of?

A.: Drew Peterson and Stacy Peterson.

Q.: So that check for \$225,000 was written from a joint checking account, correct?

A.: Correct.”

¶ 17 Later, the State asked Stephen to read aloud from several e-mails he had written to friends concerning the disappearance of Stacy Peterson:

“Stephen: I’m supposed to go testify at the grand jury tomorrow. The last time the media was filming me but couldn’t confirm who I was so they didn’t air my picture anywhere, but tomorrow I’m working so I have to go there on duty, in uniform, so no doubt I will be in the papers and on [television] tomorrow night.

I don’t plan on talking, even though they will be putting cameras in my face and following me to my car. It should be fun.”

¶ 18 After Stephen attended the November and December 2007 grand jury proceedings, images of him in his Oak Brook Police Department uniform appeared on the news. In February 2008, Chief Sheahan filed with the Board a statement of charges against Stephen (relevant only for background in the instant appeal). In it, Sheahan stated that Stephen should have reasonably anticipated the intense media attention that would be placed on his arrival to the courthouse. Despite this, without asking permission, Stephen drove to the courthouse in an Oak Brook Police Department squad car. Therefore, Sheahan alleged, Stephen violated the following Department Rules: (1) General Order 98-0007 (“Department vehicles will not be used for personal business unless authorized by the Chief

of Police or his designee”); and (2) Department Rule 15.1 (“Members shall conduct themselves in their private and professional lives in such a manner as to avoid bringing themselves or the Department into disrepute. []”). In April 2008, the Board found Stephen had violated the rules. It issued an eight-day suspension without pay, which later was reduced to four days upon administrative review.

¶ 19 On July 11, 2008, the Will County state’s attorney indicted Drew with two counts of unlawful use of a weapon, a Class 3 felony (720 ILCS 5/24-1(a)(7)(ii) (West 2010)). The State alleged that one of the guns that Drew had given to Stephen immediately following Stacy’s disappearance was an illegal weapon due to its improper barrel length. The Oak Brook Police Department learned of the indictment when the Will County state’s attorney asked the Oak Brook Police Department to serve Stephen a subpoena to appear in court on the matter. Chief Sheahan testified before the Board that, at that point, he asked the state’s attorney if there was anything he should know about the indictment as it pertained to Stephen. The state’s attorney provided basic details but told Sheahan he would prefer that Sheahan wait until certain proceedings had taken place in Drew’s case before it released additional information. The state’s attorney ultimately provided Sheahan with the 2007 grand jury transcripts wherein Stephen testified about his acceptance of the weapons and the money. The state’s attorney requested that Sheahan wait to perform any internal, administrative investigation against Stephen until after Stephen had testified in Drew’s weapon case. Wishing to cooperate with the state’s attorney, Sheahan agreed to wait.

¶ 20 On August 23, 2010, Stephen testified in Drew’s weapon case (in which Drew was ultimately acquitted). On August 26, 2010, Sheahan put Stephen on paid leave and initiated an internal investigation.

¶ 21 On October 19, 2010, Chief Sheahan filed with the Board a three-count statement of charges against Stephen. In a 10-page statement of facts, Sheahan detailed Stephen's conversations with Drew, Stephen's acceptance of three guns and \$236,800 in checks, Stephen's contact with the ISP, Stephen's 2007 Grand Jury testimony, Stephen's discussion of the case during the administrative investigation against him, and Stephen's disciplinary history. The first charge, at issue in this appeal, was entitled: "Obstruction of and Failure to Disclose Facts to Law Enforcement Officials (Violation of Illinois Law and Oak Brook Police Department Rules and Regulations)."² Specifically, the first charge alleged:

“[Stephen] violated 720 ILCS 5/31-1(a) and Department Rules [1.14] 7.2, 7.3, 14.11, 14.25, 15.20, 18.2, 18.19, 18.36, 18.39, and 18.40 when he[: (1)] failed to alert law enforcement authorities, including the Oak Brook Police Department, that Drew Peterson was taking steps to conceal his guns[: (2)] concealed Drew Peterson's guns in his home with the specific intention of preventing law enforcement authorities from discovering them during a search of Drew Peterson's home[: and (3)] failed to disclose to law enforcement authorities, including the Department, that Drew Peterson had given him checks totaling \$236,800 the day after Stacy Peterson was reported missing.”

¶ 22 The first charge set forth each of the referenced laws and department rules:

² The second charge concerned Stephen's possession of the gun with an improper barrel length. The third charge concerned Stephen's alleged failure to keep the internal investigation against him confidential. The Board found Stephen not guilty of those charges, and they are not at issue in this appeal.

1. 720 ILCS 5/31-1(a) (West 2010): “A person who knowingly resists or obstructs the performance by one known to be a peace officer *** of any authorized act within his official capacity commits a Class A misdemeanor.”
2. Department Rule 1.14: “Officers *** shall not interfere with cases being handled by other officers *** or by any other governmental agency ***.”
3. Department Rule 7.2: “The integrity of a member must be above reproach. Members shall be truthful.”
4. Department Rule 7.3: “No person has the right to violate the law. When an officer exceeds his/her authority by unreasonable conduct, he/she violates the sanctity of the law which he/she is sworn to uphold. All members shall respect and uphold the law.”
5. Department Rule 14.11: “Members shall conduct themselves in a manner that will foster the greatest harmony and cooperation between each other and between divisions and sections of the Department and other governmental departments and agencies.”
6. Department Rule 14.25: “Members shall report, in writing, to the Chief of Police, through the Investigations Supervisor, all information in their possession regarding persons and places suspected of being involved or connected with violations of federal, state, county or municipal laws and ordinances relating to criminal matters or vice operations. Such reports shall be submitted before the conclusion of the tour of duty during which the member received the information or at the first opportunity in cases where the information was received while the member was off duty.”

7. Department Rule 15.20: “Department personnel shall avoid actions which give the appearance of impropriety. Activities on or off duty engaged by Department members which indicate instability of character or personality shall subject the officer to disciplinary action.”
8. Department Rule 18.2: “Violation of any federal, state, county or municipal ordinance [warrants discipline].”
9. Department Rule 18.19: “Failure to maintain an impartial attitude toward persons coming to the attention of the police [warrants discipline].”
10. Department Rule 18.36: “Violation of Department rules and regulations [warrants discipline].”
11. Department Rule 18.39: “Any act which brings or tends to bring the individual or the Department into disrepute [warrants discipline].”
12. Department Rule 18.40: “Any other act or omission contrary to good order and discipline of the department [warrants discipline].”

¶ 23 Based on the allegations set forth in the first charge, Sheahan stated:

“[Stephen’s] conduct constitutes some substantial shortcoming which renders his continuance and employment in some way detrimental to the discipline and efficiency of the public service and something which the law and sound public opinion recognize as good cause for him to no longer occupy his position.”

¶ 24 On November 15, 2010, Stephen moved to dismiss the charges pursuant to section 2-615 (735 ILCS 5/2-615 (West 2010)). Stephen argued that his actions, as set forth in the statement of charges, could not be construed to have violated any of the listed laws and rules set forth in the first

charge. In his view, Sheahan failed to state “a cause of action” against him. The Board summarily denied the motion to dismiss.

¶ 25 At the hearing before the Board, Stephen explained why he accepted the weapons and money and why he failed to disclose information about the weapons and money until asked. He stated that, at the time he accepted the guns, he had no reason to believe that there was a criminal aspect to Stacy’s disappearance. Moreover, he understood that Drew merely wanted to keep his favorite guns safe, and, when police executed search warrants, they “did not tend to be gentle” with people’s belongings. ISP investigator Lawson, on the other hand, testified that Stephen’s initial statements to him indicated that, at the time he accepted the guns, he knew that he could be keeping the police from finding guns relevant to a criminal investigation.

¶ 26 When asked why he waited until asked at the November 2007 grand jury proceedings to talk about the money, Stephen answered: “Again, I didn’t feel it had any relevance to the case, and I was correct. It was simply my father taking the steps to make sure his kids were taken care of.” Stephen did not think it was unusual for Drew to transfer a large amount of money to him because he knew Drew to be an overly cautious person. For example, Drew often made wills before going on a trip. It made sense to Stephen that Drew would want him to have funds to take care of the children. However, Stephen admitted that Drew had never given him that kind of money before and Drew did not explain what, exactly, might happen to him that would cause him to be unable to raise his children. Lawson, on the other hand, testified that he would have considered the money transfer relevant to his investigation.

¶ 27 Stephen responded to numerous questions regarding his judgment in the days following Stacy’s disappearance:

“Q. [A]s you sit here today, do you leave any room for the possibility that receiving guns from your father on October 30, 2007, was extremely poor judgment on your part?

A. No.”

And,

“Q. [Do you] leave room for the possibility that your excellent relationship with your father may have clouded your judgment [regarding the guns]?

A. No.”

And,

“Q.[D]oes the fact that you failed to disclose to the State Police that your father gave you almost a quarter of a million dollars right after Stacy Peterson’s disappearance constitute[] a lack of cooperation and extremely poor judgment on your part?

A. No, [it] do[es] not.”

When given the opportunity to expound, Stephen stated: “I in no way obstructed any investigation. Whenever I was asked a question, I answered it truthfully. I have given the State Police every bit of knowledge that I have, and I in no way attempted to hide any guns or conceal any money.”

¶ 28 Chief Sheahan disagreed that Stephen’s conduct was acceptable. Sheahan testified that, as a police officer, Stephen should have understood that the first days in a missing persons case are critical. Therefore, Stephen should have reported any unusual circumstances. In Sheahan’s view, the transfer of weapons and money was unusual, and, presumably, the ISP had to waste resources to learn of the transfers independently.

¶ 29 On February 19, 2011, the Board ruled against Stephen, finding him guilty of the violations listed under the first charge. The Board expressly found Stephen’s testimony to be “completely self-

serving and lacking any credibility whatsoever.” The Board considered Stephen’s past and present violations and determined that Stephen should be discharged from the police force. The Board summarized:

“In determining the appropriate discipline, the Board has considered the reasonable level of judgment expected of someone granted the extraordinary legal authority of police power. Moreover, [Stephen’s] continuing claim that the weapons and money were irrelevant to the investigation by the [ISP] [is] self-serving, disingenuous, not credible[,] and demonstrate[s] that [he] lacks the fundamental ability to make sound judgments.”

On March 4, 2011, Stephen filed a complaint for administrative review.

¶ 30 On August 7, 2012, the trial court issued its ruling. It affirmed the Board’s denial of Stephen’s section 2-615 motion to dismiss the statement of charges. However, it ordered a limited remand on the merits, essentially instructing the Board to clarify its order by explaining each rule violation. By this time, however, only one of the three Board members who had issued the initial ruling remained serving.

¶ 31 On October 10, 2012, the Board set forth a more thorough explanation of its ruling. As it had before, the Board set forth certain factual findings upon which it predicated its decision, the last of which was not expressly stated in the first ruling: (1) Stephen knew that a missing persons report had been filed by Stacy’s family; (2) Stephen knew that Drew gave the weapons to him for the sole purpose of concealing them from the ISP; (3) Stephen knew the ISP had searched Drew’s house; and (4) *Stephen knew that Drew thought he was going to be arrested (as opposed to merely searched) in connection with Stacy’s disappearance.* The Board also explained the basis for each rule violation. Because Stephen does not challenge the Board’s finding as to each specific rule violation

on appeal, we set forth only a few of these explanations for context. For example, the Board stated that Stephen violated Department Rule 7.2, which requires officers to be truthful with integrity beyond reproach, in that he “deci[ded] not to notify the ISP or the Department about the large transfer of money, to keep this information concealed for over a month, and to lie to the ISP when he told them he did not have any additional relevant information.” The Board also stated that Stephen violated Rule 7.3, which requires officers to conduct themselves in a reasonable manner so as to uphold the sanctity of the law, in that he made a decision to accept a large amount of money and *privately determined* that this evidence was irrelevant to the ISP’s investigation, thereby exceeding his authority as an officer. The Board stated that any one of these rule violations was cause for discharge. However, here, Stephen had incurred numerous violations and had a significant disciplinary history, including nine prior reprimands. These were: (1) suspension in April 2005 for sending inappropriate messages to another officer regarding a female civilian; (2) written reprimand in January 2007 for failing to report damage to a Department vehicle; (3) suspension in May 2007 for failing to interact with a member of the public in an appropriate manner; (4) written reprimand in May 2007 for failing to arrest an offender when the victim was visibly injured; (5) 4-day suspension in May 2008 for driving the squad car to the November 2007 grand jury proceedings; (6) verbal reprimand in June 2008 for failing to report for training; (7) 25-day suspension (later reduced by agreement) for making unauthorized LEADS inquiries for personal purposes; (8) verbal reprimand in February 2010 for performance shortcomings concerning on-view arrests, citations, and DUI arrests; and (9) written reprimand in June 2010 for a pattern of sick-leave abuse. Finally, the Board reiterated that discharge was appropriate because Stephen did not possess the judgment necessary to be a police officer. Stephen again filed a complaint for administrative review. The trial

court affirmed the Board's findings of misconduct and decision to terminate Stephen's employment. Stephen appealed.

¶ 32 Meanwhile, on August 1, 2011, while the administrative review was pending, Stephen moved the trial court to remand the case to the Board for the taking of additional evidence (735 ILCS 5/3-111(a)(7) (West 2010) (where an administrative hearing has taken place, the court has the power to remand the matter for the purpose of taking newly discovered evidence when the evidence: (1) was in fact discovered subsequent to the termination of the Board's proceedings; (2) could not have been obtained at the Board's proceedings by the exercise of reasonable diligence; and (3) is material and not cumulative). The evidence at issue concerned Chief Sheahan's alleged bias against Stephen and alleged orders made by Sheahan during the Department's internal, administrative investigation to ignore reports from the ISP that Stephen had, at least in part, cooperated with its missing persons investigation.

¶ 33 In a subsequent, related filing, Stephen attached the affidavit of attorney John P. DeRose, providing background on how the evidence was obtained. DeRose attested that he met with Stephen to discuss the possibility of representing him in civil litigation against the Village of Oak Brook. Around the time of those meetings, DeRose received a call from a person identifying himself as Oak Brook police officer Robert Mudra. Mudra told DeRose that retired Deputy Chief Steve Larson had information relevant to the potential lawsuit. DeRose then called Larson. Larson came to DeRose's office and told him "things that [he] believe[d], if true, would constitute serious misconduct by the Oak Brook Police Chief Sheahan." Therefore, when DeRose heard that attorney Tamara L. Cummings had taken the case, he called her to inform her that Larson could have relevant information.

¶ 34 Stephen also attached Cummings' affidavit. Cummings attested that, on June 1, 2011, Larson provided her with the following information about Chief Sheahan's actions during the internal, administrative investigation:

“4. The Chief had a conversation with two [l]ieutenants who he had assigned to investigate the allegations against [Stephen]. The [l]ieutenants told the Chief that they had interviewed several members of the State Police and all of those interviewed said that [Stephen] was cooperative, forthcoming[,] and not obstructive. The Chief became angry and directed the [l]ieutenants NOT to document these interviews or the fact that they occurred, and to make no reports and send no e-mails regarding the interviews. Subsequently, the [l]ieutenants were removed from the [internal] investigation and the Chief hired a private investigator.

5. Chief Sheahan called the Oak Brook Terrace Police Department, which is where [Stephen's] girlfriend works. Chief Sheahan stated words to the effect of 'If your girl does anything at [Stephen's] hearing, I am going to arrest her. She better behave herself.' The Oak Brook Terrace [Police Department] hung up on [Sheahan].

6. Chief Sheahan met with the Chair of the Police Commission and the Village President on various dates while the case against [Stephen] was pending.

7. The Chief stated about [Stephen], 'He will get his job back in the next few years, but in the interim, he'll lose his house, his wife will leave him and his dog will be dead.'

8. The Chief stated about [Stephen], 'I'll bankrupt him.'

9. The Chief stated about [Stephen], 'I'll step on his air hose.'

10. The Chief learned that [Stephen] had attended a fund-raiser for a fellow officer who was being terminated, and stated: ‘I’ll chop off his balls (for attending).’

11. While the [Board] case was pending, Chief Sheahan had a standing order that employees not discuss the matter with anyone.”

¶ 35 Finally, Stephen attached documentation concerning the discovery process, the implication being that Chief Sheahan committed discovery violations. For example, in the motion for discovery, Stephen had requested that Chief Sheahan furnish “[c]omplete and accurate copies of any report of any person(s), department or agency which assisted the Employer in preparing its allegations against [Stephen].” If, as relayed by Larson, Chief Sheahan had told the lieutenants not to document the interviews of ISP officers who stated that Stephen had been forthcoming or the fact that those interviews occurred, then Chief Sheahan likely did not furnish the documentation requested in discovery.

¶ 36 Oak Brook responded that the motion to remand did not satisfy the standards set forth in section 3-111(a)(7) of the Illinois Code of Civil Procedure (735 ILCS 5/3-111(a)(7) (West 2010)). Alternatively, Oak Brook argued that the motion should be denied because Cummings obtained the evidence in violation of Rule 4.2 of the Illinois Rules of Professional Conduct. Ill. S. Ct. R. of Prof. Conduct 4.2 (eff. Jan. 1, 2010). Rule 4.2 provides that, in representing a client, a lawyer shall not communicate about the subject of representation with a person the lawyer knows to be represented by another lawyer in the matter (absent certain exceptions). *Id.* The rule applies even when the represented person, *i.e.*, Larson, initiates the contact. *Id.* at ¶ 3. However, the rule does not apply when the person is not known to be represented in the matter. *Id.* at ¶ 9. In briefing the matter, the parties debated whether Larson, who bore the arguably ambiguous status of retired Deputy Chief and

current independent contractor for the Village, fell under the umbrella of those represented by opposing counsel in Stephen's case and, if so, whether Cummings knew that he did.

¶ 37 The trial court denied Stephen's motion to remand. The court ruled on the merits, identifying the crux of Stephen's argument to be that the Oak Brook Police Department failed to properly disclose material witnesses pursuant to a written discovery request. The court found Stephen's assertion that the witnesses would have anything to add to the case to be too speculative to warrant remand. Additionally, the court found that Stephen knew the officers who had interviewed him, and, if he had wanted, he could have exercised reasonable diligence to gather information from them in preparation for the hearing. The court did not consider the Rule 4.2 argument. Stephen appeals this ruling as well.

¶ 38

II. ANALYSIS

¶ 39 On appeal, Stephen challenges two rulings by the Board: (1) the denial of his section 2-615 motion to dismiss the statement of charges; and (2) the decision on the merits. He also challenges two rulings by the trial court: (1) the limited remand for clarification and the effect that may have had on his due process rights; and (2) the denial of his motion to remand for the taking of additional evidence.

¶ 40

A. Motion to Dismiss Statement of Charges

¶ 41 Stephen argues that the Board erred when it denied his section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2010)). This argument borders on frivolous. Stephen's assertion that his actions, as set forth in the statement of charges, could not be construed to have violated any of the listed laws and rules is simply wrong. Moreover, section 2-615 requirements for civil claims in judicial proceedings do not apply to administrative complaints in administrative proceedings.

Vuagniaux v. Department of Professional Regulation, 208 Ill. 2d 173, 195-96 (2003). Administrative complaints need not be as precisely drawn as civil complaints before a trial court. *Id.* Rather, the administrative complaint need only reasonably advise the respondent as to the charges so that he or she will intelligently be able to prepare a defense. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 93 (1992). Here, Stephen does not say what other information he needed in order to prepare his defense. The charging statement at issue here, as set forth in detail in paragraphs 21 to 23, was sufficient.

¶ 42 B. Board's Decision

¶ 43 Moving on to the merits, we review the final decision of the Board, rather than the trial court. *Village of Stickney v. Board of Trustees of Police Pension Fund of the Village of Stickney*, 347 Ill. App. 3d 845, 848 (2004). Our review of the Board's decision is a two-step process. First, we must determine whether the Board's finding of guilt as to the first charge is against the manifest weight of the evidence. *Walsh v. Board of Fire and Police Commissioners of the Village of Oak Park*, 96 Ill. 2d 101, 104 (1983). Then, we must determine if the Board's factual findings provide sufficient basis for discharge. *Id.* There is a sufficient basis, or cause, for discharge where a substantial shortcoming renders the employee's continued employment detrimental to the discipline and efficiency of the service, and where the substantial shortcoming is recognized by law and public opinion as a good reason for termination. *Launius v. Board of Fire and Police Commissioners of the City of Des Plaines*, 151 Ill. 2d 419, 435 (1992). We will not overturn the Board's decision to discharge an officer unless it is arbitrary, unreasonable, or unrelated to the requirements of service. *Walsh*, 96 Ill. 2d at 105. The question is not whether we would select a more lenient sanction if we

were making the initial determination, but whether the Board acted unreasonably. *Norman v. Board of Fire and Police Commissioners of the City of Zion*, 245 Ill. App. 3d 822, 830 (1993).

¶ 44 i. The Board's Finding of Guilt

¶ 45 Again, here, the first charge was entitled "Obstruction and Failure to Disclose Facts to Law Enforcement Officers." That single charge set forth numerous rule violations. The question is not whether Stephen was found "guilty" in criminal court of obstruction of justice (though that statute was listed in the statement of charges), but whether the Board's finding that Stephen was guilty of the administrative charge based on any number of the listed rule violations was against the manifest weight of the evidence.

¶ 46 In this section, Stephen does not address any one specific rule violation. Instead, he argues against the general premise that he acted unreasonably or obstructed the ISP investigation in any way when he failed to disclose his acceptance of the weapons and the money until asked. He addresses the guns, the money, and the likely relevance of each to the ISP investigation.

¶ 47 As to the guns, Stephen notes that the relevant time-line is a matter of days, October 29 to November 1, 2007 (the date Stephen asserts he first spoke with the ISP over the phone). In Stephen's view, during that time, "there was not the slightest indication that Drew was a suspect" in Stacy's disappearance. According to Stephen, the fact that Stacy's home was being searched should not have aroused suspicion of foul play because the homes of persons reported missing are routinely searched. And, again according to Stephen, "[t]here is nothing unusual about police officers *** giving [guns] to fellow officers for safekeeping." We reject Stephen's premise that the reasonableness of his acceptance of the weapons somehow turns on whether he was aware that Drew was a suspect in Stacy's disappearance. Regardless of whether Stephen suspected Drew was

involved in Stacy's disappearance, Stephen intended to aid his father in preventing the authorities from discovering the guns. The Board reasonably found this to be improper.

¶ 48 As to the money, Stephen argues that “[f]athers make these kinds of arrangements with their children all the time, and, in particular, the gesture of making the money available to [him] should the other children need to be taken care of was consistent with Drew’s overly []cautious prior behavior.” This argument, at least in part, improperly asks this court to overlook the Board’s credibility determination. The Board found Stephen’s explanations to be “self-serving” and “not credible.” Therefore, we must disregard Stephen’s account, that, subjectively, he did not feel that anything was amiss in his acceptance of the money. Even more so than Stephen’s arguably on-the-spot acceptance of the guns, Stephen’s acceptance of the money required his affirmative acts to effectuate the transfer. Stephen kept the transfer secret for over one month, long after he became aware that his father was a suspect in Stacy’s disappearance and after a renewed effort in the Savio investigation began.

¶ 49 As to both the guns and the money, Stephen argues that neither ended up being relevant to Stacy’s disappearance. First, we reject any implication that the reasonableness of Stephen’s acceptance of these items turns on whether he, with the benefit of hindsight, thinks the information is relevant. As the Board noted, whether an unusual occurrence is relevant to the investigation was not for Stephen to decide. Moreover, we do not see how Stephen can stand before this court and argue that the weapons and money had no relevance to the missing person investigation. As Stephen represented in his grand jury testimony to which the Board was later privy, the money came from an account jointly owned *by the missing person*. Relevance does not have to mean that the weapons and money were literally used in furtherance of a crime. Rather, the very fact that the transfer took

place is relevant. Even if the money had been exclusively Drew's, the transfer was relevant. At a minimum, that Drew would give Stephen a large sum of money to care for Stacy's children, when Drew initially stated that Stacy merely went on vacation, raises big questions.

¶ 50 In sum, we reject Stephen's general attempt to construe his own actions as reasonable, and the Board's finding that Stephen interfered with the ISP investigation and exhibited judgment and integrity beneath standards set forth by department rules (if not outright violations of criminal law—for which Stephen was, admittedly, never charged—then, so obviously rules 1.14, 7.2, 14.11, 14.25, 15.20, 18.19, 18.36, 18.39, 18.40) is not against the manifest weight of the evidence.

¶ 51 ii. Cause for Discharge

¶ 52 Stephen argues that, even if he violated the rules, just cause did not exist for his termination from the Oak Brook Police Department. Stephen argues that the off duty misconduct cannot be said to have related to the requirements of service and that, because he had a “virtually unblemished” record, the sanction of discharge was inappropriate. Stephen characterizes the administrative case against him as harassment and as an unfair push on the part of the Oak Brook Police Department to wash their hands of an employee with unsavory familial connections. Stephen points to Chief Sheahan's three-year delay in bringing the administrative case against him, implying that, if he was able to serve effectively as an officer during those three years, there was no cause to discharge him now.

¶ 53 We first address Stephen's assertion that he had a “virtually unblemished” record and that he performed effectively during the three years following the misconduct at issue. To the contrary, Stephen, who began working for the Oak Brook Police Department in 2004, had been disciplined nine times (as set forth in paragraph 31). The first four disciplinary measures were entered prior to

Stacy's disappearance, and, therefore, Stephen cannot possibly claim that those measures were taken as a result of prejudice against him. The next five offenses were entered after Stacy's disappearance, and, even in the face of some positive reviews, certainly contradict Stephen's assertion that he served so effectively as a police officer that any action against him must constitute harassment. As to the three year delay, Chief Sheahan testified that the Will County state's attorney asked him to wait to conduct an internal investigation against Stephen until after it had concluded certain aspects of its case against Drew. When combined with the Board's credibility determinations, the record simply does not support Stephen's portrayal of himself as an unblemished officer facing undeserved charges of misconduct.

¶ 54 We next address Stephen's argument that his conduct had no relation to the requirements of service. Contrary to Stephen's assertion, there is no rule that the misconduct must occur while on duty in order to justify a discharge. Many of the department rules and regulations specifically refer to off duty conduct. For example, Rule 14.25 requires officers to report information concerning criminal activity "at the first opportunity in cases where the information was received while the member was off duty." Rule 15.20 states that "[a]ctivities on or off duty engaged by Department members which indicate instability of character or personality shall subject the officer to disciplinary action." Moreover, although Stephen may have been faced with an unusually great challenge in managing the intersection of personal and professional roles, it is Stephen himself who, at least in part, invited the conflict by drawing media attention to his status as a police officer.

¶ 55 The Oak Brook Police Department has cited several cases upholding discharge where, like here, the officer withheld information about criminal activity. See, e.g., *Valio v. Board of Fire and Police Commissioner's of the Village of Itasca*, 311 Ill. App. 3d 321, 325 (2000) (made false

statements to an officer during an investigation regarding his whereabouts when receiving the dispatch and the thoroughness of his own investigation); *Kinter v. Board of Fire and Police Commissioners for the Village of Palatine*, 194 Ill. App. 3d 126, 132 (1990) (came into possession of a suspect's controlled substance, the pain killer Darvocet, used it, and refused to submit to a urinalysis); and *Van Gerreway v. Chicago Police Board*, 34 Ill. App. 3d 511, 514 (1975) (had knowledge of two impending sales of marijuana and failed to alert any supervisor). These cases establish that withholding information during an investigation certainly relates to the requirements of service. Moreover, it is fair to say that Stephen's actions and omissions are more egregious than those referenced in the cited cases, for the obvious reason that locating a missing person was at stake. As Sheahan testified, as a police officer, Stephen should have known that the first days are critical in any missing person case.

¶ 56 Again, here the Board based its decision to discharge Stephen on the “individual and collective seriousness of the[] violations, [Stephen's] numerous attempts to rationalize his behavior, and [Stephen's] *** disciplinary history.” It considered “the reasonable level of judgment expected of someone granted the extraordinary legal authority of police power” and concluded that Stephen's “continuing claim that the weapons and money were irrelevant to the investigation by the Illinois State Police *** demonstrate that [he] lacks the fundamental ability to make sound judgments.” Given the facts of this case, the Board's decision can hardly be considered arbitrary, unreasonable, or unrelated to the requirements of service.

¶ 57 C. Due Process: Turnover in Board Membership

¶ 58 Regarding the trial court's rulings, Stephen argues that his due process rights were violated when the court issued a limited remand for the Board to clarify the factual basis for its decision to

terminate Stephen. Stephen explains that only one of the three Board members who participated in the hearing remained on the Board. Specifically, Stephen complains that, on remand, the Board made a “new” finding that, when accepting the guns from Drew, Stephen knew Drew thought he was going to be arrested (as opposed to merely searched) in connection with Stacy’s disappearance. Stephen contends that, in order to make this finding, the Board should have been present to hear Stephen testify. This argument is without merit.

¶ 59 Under administrative law, persons charged with making findings of fact, conclusions of law, recommendations, or decisions are *not* required to be personally present to hear the evidence presented at the hearing. *Hickey v. Riera*, 332 Ill. App. 3d 532, 546 (2001). Rather, due process requires that the ruling body consider all the evidence on record. *Abrahamson*, 153 Ill. 2d at 95. When credibility is a determining factor, due process *may* require that the hearing officer participate in the ruling body’s decision. *Daniels v. Police Board of the City of Chicago*, 338 Ill. App. 3d 851, 863 (2003) (no due process violation where the board conferred with the hearing officer on issues of credibility before issuing its decision).

¶ 60 Here, the Board’s membership composition does not trigger a due process concern. In the first ruling, all three members of the Board were present for Stephen’s testimony, and they found his testimony to be “completely self-serving and lacking any credibility whatsoever.” Upon administrative review, the trial court found that the Board failed to sufficiently explain the factual basis for its decision to terminate Stephen’s employment. For that reason, the court ordered a limited remand for the Board to explain how Stephen’s actions violated each listed rule. This limited remand did not undo the Board’s credibility determination, even in light of its “new” finding that

Stephen knew Drew thought he was going to be arrested.³ To whatever extent the Board's amended ruling turned on issues of credibility, the Board *did* exercise the preferred practice of conferring with a hearing officer before issuing the ruling. For example, the one remaining member served both as a co-hearing officer and as a member of the Board that issued the amended ruling. For these reasons, Stephen's due process argument fails.

¶ 61 D. Motion for Remand to Take "New" Evidence

¶ 62 Finally, Stephen argues that the trial court erred when it denied his section 3-111(a)(7) motion to remand to the Board for the taking of new evidence. 735 ILCS 5/3-111(a)(7) (West 2010). Section 3-111(a)(7) states that a trial court reviewing an administrative decision has the power to remand for the purpose of taking additional evidence when it shall appear that such action is just. *Id.* However, no remandment shall be made on the ground of newly discovered evidence unless the evidence: (1) was in fact discovered subsequent to the termination of the Board's proceedings; (2) could not have been obtained at the Board's proceedings by the exercise of reasonable diligence; and (3) is material and not cumulative. *Id.* We will not disturb the trial court's decision on a motion to remand to the administrative tribunal unless it abused its discretion. *Caliendo v. Martin*, 250 Ill. App. 3d 409, 419 (1993).

¶ 63 Here, the "new" evidence at issue is that certain ISP investigators considered Stephen to be forthcoming and cooperative in the disappearance case. Stephen did not offer proof of this evidence through the affidavit(s) of the ISP investigators, but, rather, via a fourth-hand report (Cummings'

³ In any case, as we have already stated, it hardly matters whether Stephen thought Drew was going to be arrested or merely searched. In either scenario, he intended to prevent the police from finding the weapons.

affidavit of what Larson told her of what Oak Brook police staff were told by certain ISP investigators). Stephen contends that he was not privy to this information prior to the hearing because Chief Sheahan did not comply with discovery requests to provide “[c]omplete and accurate copies of any report of any person(s), department or agency which assisted the Employer in preparing its allegations against [Stephen].”

¶ 64 We agree with the trial court’s assessment that Stephen’s assertion that the witnesses would have anything to add to the case to be too speculative to be material. See, e.g., *Wolfe v. Board of Education of the City of Chicago*, 171 Ill. App. 3d 208, 212 (1988) (mere allegation of inadequacy of attorney on administrative review is not material). Admittedly, on the surface, testimony that Stephen had been cooperative and forthcoming would seem to hit the core of the dispute. However, the terms “cooperative” and “forthcoming” are conclusory characterizations without substantiating facts. No one disputes that Stephen was, at least in some respects, cooperative. He answered questions when asked, disclosed information about the last-minute will, and testified for the State in the grand jury proceedings. However, no amount of positive cooperation can overcome the poor judgment that Stephen demonstrated in accepting the weapons and money from Drew, in failing to disclose the acceptance of these items until asked, and in continuing to insist that he did nothing wrong. Stephen does not suggest that the ISP would testify that Stephen did *not* commit these acts. Stephen himself testified that he committed these acts. These acts constituted the basis for his discharge. Therefore, anything else the ISP may have had to say is not material. We also agree with the trial court’s assessment that Stephen could have exercised reasonable diligence to obtain the evidence himself, because he knew which ISP officers had interviewed him.

¶ 65 At the same time, we cannot condone the possibility that Sheahan may not have complied with discovery. We find the allegation of Sheahan’s bias to be troubling. However, even if true, we do not see how it could warrant remand. Again, Stephen himself admits that he accepted weapons and money from Drew and did not disclose accepting these items until asked. Any bias on Sheahan’s part may have, at most, influenced him to recommend a more severe sanction than he otherwise would have to the Board.

¶ 66 Stephen suggests that Sheahan’s alleged bias bled over to the Board when, in paragraph six of Cummings’ affidavit, he represents that “Chief Sheahan met with the Chair of the Police Commission and the Village President on various dates while the case against [Stephen] was pending.” While we understand that Stephen was not able to obtain further information because the trial court denied his request to reopen the evidence, nothing in the record supports that there was anything untoward about the meeting between Sheahan and the Board chair. Stephen did not allege that they discussed the case. Where the standard for remand is whether it “shall appear that such action is just,” we cannot say the trial court abused its discretion in denying the request. The record reflects that the Board conducted a thorough hearing. Additionally, and again, Stephen’s own words constituted the most damaging evidence in this case (*i.e.*, Stephen’s grand jury testimony that he accepted a large amount of money from Drew and Stacy’s joint account, Stephen’s hearing testimony that he knew Drew did not want the police to find the guns—regardless of the reason, and Stephen’s hearing testimony that he still, to that day, believed his actions to be beyond reproach). This supports that the Board independently found discharge to be appropriate. The Board was quite firm in its statement that Stephen’s actions warranted discharge, finding that any one rule violation supported his discharge but that, in the instant case, Stephen committed many rule violations. The Board

further stated that Stephen's actions and rationalizations demonstrated that he did not possess the judgment necessary to be a police officer. The Board's assessment was reasonable and, as it was based on Stephen's own admissions, not the result of bias.

¶ 67 The trial court did not abuse its discretion in denying the motion to remand the case for the taking of new evidence. We need not address the parties' Rule 4.2 arguments concerning Cummings' conversation with Larson.

¶ 68 III. CONCLUSION

¶ 69 For the aforementioned reasons, we affirm the judgments and orders of the Board and the trial court.

¶ 70 Affirmed.