



# Melbourne POLICE

November 10, 2010

Kim Harris, Case Specialist  
Florida Department of Law Enforcement  
Criminal Justice Professionalism Program  
P. O. Box 1489  
Tallahassee, Florida 32302

Re: Officer Frank Carter

Dear Ms. Harris:

Please find enclosed a completed CJSTC 78 form involving Officer Frank Carter and a complete copy of Melbourne Police Department's internal investigation IA-2009-059, Brevard County Sheriff's office investigation #2010-CI-001, which they conducted at our request regarding IA-2009-059, and Florida Department of Law Enforcement's investigation Case #ME-14-0015 (see enclosed CD's of all investigations and in-car video).

Officer Carter was terminated from his position with our agency on August 19, 2010. He has been afforded a grievance process concerning his termination. His grievance was denied by Melbourne City Manager, Jack Schluckebier on October 25, 2010. On November 9, 2010, we received a copy of a letter from Officer Carter's attorney that they are requesting an arbitration hearing (Step 4), which is the final phase of a grievance process. At this time, it is unknown as to when the arbitration hearing will be held. It is possible that it may not occur until after the first of the year due to the process involved in the selection and agreement of the arbitrator and when the arbitrator would be available to conduct the hearing.

**Steve Mimbs, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail : [police@melbourneflorida.org](mailto:police@melbourneflorida.org)

(321) 409-3314 \* Fax : (321) 242-7863

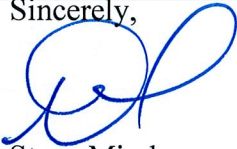
An Equal Opportunity Employer

Page 2

Re: Officer Frank Carter

Please contact our Internal Affairs Sergeant Daniel Lynch at 321-409-3402 or my assistant, Mary Burns at 321-409-3314 if you have any questions or need additional information.

Sincerely,



Steve Mimbs  
Chief of Police

SM:mb

Enclosures

c: Sergeant Daniel Lynch



Please type or print in black or blue and use capital and small letters for names, titles, and address

**OFFICER**

1. Social Security Number: [REDACTED]
2. Officer's Name: CARTER Last FRANCIS First MI
3. Officer's Last Known Address: [REDACTED] City FL State [REDACTED] Zip Code
4. Officer's Telephone Number: [REDACTED]

**AGENCY**

5. Agency ORI: FL 0050700 6. Agency Name: Melbourne Police Department
7. Agency Contact Person: Sergeant Daniel Lynch 8. Agency Contact Person's Telephone Number: 321-409-3402
9. Agency Fax Number: 321-242-7863

**VIOLATION - ALLEGATION**

10. Nature of Allegation(s): Conducting traffic stops and citizen encounters without legitimate probable cause.

11. Agency Disposition: Sustained — (Violation of Section 943.13(4) or (7) or **Rule 11B-27.0011, F.A.C. XXXX**)

Sustained — (Violation of Agency Policy)  Not Sustained  Unfounded  Exonerated

12. Limitation Period for Disciplinary Action: Date Internal Investigation Initiated: 12/22/2009 Date Internal Investigation Completed: 06/15/2010

Exception to limitation period for disciplinary action: Place a check mark by the exceptions to limitations that apply	Days Told
--	-----------

- |  |       |
|--|-------|
| <input type="checkbox"/> Written waiver of limitation by officer                   | _____ |
| <input type="checkbox"/> Ongoing criminal investigation or criminal prosecution    | _____ |
| <input type="checkbox"/> Officer incapacitated or unavailable                      | _____ |
| <input checked="" type="checkbox"/> Multi-jurisdictional investigation             | 42    |
| <input type="checkbox"/> Emergency or natural disaster as declared by the Governor | _____ |

13. Criminal Charges Filed: Falsifying official records or document (third degree felony), and Falsifying a record or paper filed in judicial proceedings (first degree misdemeanor). Arrested by FDLE and charges filed by Brevard County State Attorney's office.

14. Agency Disciplinary Action: Termination

15. If the allegation has been sustained and determined to be a violation of Section 943.13(4) or (7), F.S. or Rule 11B-27.0011, F.A.C., attach and forward the following documentation to the Florida Department of Law Enforcement.

Summary of the Facts	X	Internal Investigation Report	X	Name and Address of Witness	X
Witness Statement/Disposition	X	Certified Court Documents	<input type="checkbox"/>	Other Supportive Information	X

**NOTICE:** Pursuant to Section 943.13(5), F.S., an employing agency must conduct an internal investigation when having cause to suspect that an officer it employs is not in compliance with Section 943.13(4) or (7), F.S. or Rule 11B-27.0011, F.A.C. If the investigation is sustained, the employing agency must forward a report to the Commission as specified by Rule 11B-27.003.

16. Agency administrator's signature

17. Date signed

Steve Mimbs, Chief of Police

11/9/10

18. Agency administrator's name and title

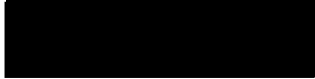


# Melbourne POLICE

HAND DELIVERED

August 19, 2010

Officer Frank Carter



Dear Officer Carter:

On August 14, 2010, I held a hearing regarding the possible termination of your employment. You did not appear for the hearing but you were represented by an attorney. During the hearing your attorney did not present any information to refute the charges outlined in the "Notice of Possible Dismissal and Appeal Rights", dated July 6, 2010. Therefore, effective today, August 19, 2010, you are terminated from your employment as a Police Officer.

Please be advised of your appeal rights under Article 8 (Grievance Procedure), section 8.3 of the collective bargaining contract.

Sincerely,

Steve Mimbs  
Interim Chief of Police

c: Jack M. Schluckebier, City Manager  
Carol Burns, Personnel Manager  
Attorney Richard Torpy  
Deputy Chief Renee Purden  
Maria Conde, Police Personnel Payroll

**Steve Mimbs, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail : [police@melbourneflorida.org](mailto:police@melbourneflorida.org)

(321) 409-3314 \* Fax : (321) 242-7863

An Equal Opportunity Employer



# Melbourne POLICE

## CITY OF MELBOURNE NOTICE OF POSSIBLE DISMISSAL AND APPEAL RIGHTS

To employee: **Officer Frank Carter**

Date: **July 6, 2010**

This is to advise you of possible termination from your employment with the City of Melbourne for the reason(s) stated below:

*An internal investigation (IA-2009-059) has been completed concerning an allegation that you conducted traffic stops and citizen encounters without legitimate probable cause. During this internal investigation it was learned that you issued citations to citizens for infractions they did not commit. These allegations were verified by your in-car video system, which the investigation showed you failed to properly use for the past 3 years. Also, it was learned you trespassed persons from areas where they were not legally eligible to be trespassed.*

*The Florida Department of Law Enforcement conducted a criminal investigation and ultimately arrested you in January of 2010 in connection with these allegations. In addition to FDLE's inquiry into your conduct during traffic stops, they also conducted a criminal investigation concerning an allegation of you extorting nude photographs from a female (former girlfriend) in exchange for money.*

*On March 26, 2010, based on the investigation revolving the traffic stops, the Office of the State Attorney filed an Information charging you with falsifying an official record or document, a third degree felony, and falsifying a record or paper filed in judicial proceedings, a first degree misdemeanor.*

*You also failed to follow verbal and written direct orders which were lawfully given to you by supervisors; these orders were in regards to conducting your interview for this internal investigation. Both federal and state law and Melbourne Police Department policies and procedures make clear that your Police Officer Bill of Rights and "Garrity" rights would be granted and preserved throughout the interview process.*

*The above issues compounded with Internal Affairs Investigation IA-2009-052, where you received an 80 hour suspension for obtaining a free apartment as a unauthorized gratuity, show a consistent and disturbing trend of disregarding Florida State Statutes, Department and City policies. During this investigation you also failed to follow a direct order and respond to an interview.*

Notice of Suspension Prior to Dismissal and Appeal Rights

*Therefore this investigation has sustained the following violations of Department and City Policy:*

**CITY OF MELBOURNE PERSONNEL POLICY, SECTION 13.2**

- (a) Failure to meet prescribed standards of work, morality, and ethics to an extent that makes an employee unsuitable for the kind of employment in City service in which he was serving at the time of the offense.*
- (b) Has committed a criminal offense or misdemeanor involving moral turpitude; or criminal act.*
- (d) Has violated any lawful or reasonable regulations or order, or failed to obey any lawful and reasonable regulation or order, or failed to obey any lawful or reasonable direction made and given by a superior where such violations or failure to obey has or might result in loss or injury to the public or to persons or property in the custody of the City.*
- (f) Has been guilty of acts that amount to insubordination or of disgraceful conduct, whether such acts were committed while on or off duty.*
- (g) Has been offensive in his conduct or language toward the public, toward City officers, or toward other employees.*
- (h) Has been incompetent, negligent, or inefficient in the performance of his duty as determined by the Department Director and approved by the City Manager.*

**MELBOURNE POLICE DEPARTMENT POLICY**

***Policy 1.2 Role and Authority of Police Personnel:***

***1.2.3 Legal Constraints-Officers shall exercise their authority based on legal justification.***

- 1. What is reasonable action by a police officer or what constitutes probable cause varies with each situation. Facts may justify an investigation, detention, search, arrest or no action at all. The requirement that legal justification be present imposes a basic limitation on an officer's actions.***
- 2. Officers must act within the limits of authority as defined by statute and judicial interpretation, ensuring the rights of the individual are protected.***

Page 4

Notice of Suspension Prior to Dismissal and Appeal Rights

At the conclusion of this suspension at 5:00 P.M. on July 13, 2010 it is my intention to dismiss you from City employment.

If you desire a hearing to show cause why you should not be dismissed, you should submit a written request for this to me no later than 5:00P.M. on July 13, 2010. If you make this request, you shall remain suspended without pay until the appeal hearing has been held and a decision has been made.



Steve Mimbs  
Interim Chief of Police

A copy of this written notice was personally delivered to Officer Frank Carter at 8:45 A.M. P.M. on 06/21/2010 by L. O. [Signature].

Received by: 



# Melbourne POLICE

**To:** Officer Frank Carter, Id #181  
**From:** Interim Chief of Police Steve Mimbs  
**Date:** April 16, 2010  
**Subject:** Interview in reference to Internal Affairs Investigation 2009-059

---

As you know, Lt. Alex Fischback of the Brevard County Sheriff's Office has been authorized by the Melbourne Police Department to conduct administrative investigation IA-2009-059.

Lt. Fischback met with you on April 7, 2010 and attempted to schedule an interview with you on April 13 or 14<sup>th</sup>, 2010. Lt. Fischback has informed me that you and/or your representative(s) have failed to respond to this request for an interview or to offer an alternative date and time for the interview.

On April 14, 2010, Lt. Fischback met with you a second time and scheduled you for an interview on Monday, April 19, 2010 at 0900 am. at the Melbourne Police Department located at 650 North Apollo Boulevard in Melbourne.

The purpose of this correspondence is to notify you that your attendance at this interview is mandatory as per existing Melbourne Police Department policies and procedures, **26.2.33 Orders** and **52.2.5 Cooperation with Investigations**. Failure to attend this interview will be grounds for disciplinary action.

Your attendance at this interview is considered time worked and you will be compensated for your attendance.

**Steve Mimbs, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail : [police@melbourneflorida.org](mailto:police@melbourneflorida.org)

(321) 409-3314 \* Fax : (321) 242-7863

*An Equal Opportunity Employer*



IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA

NO CAPIAS

VS.

CASE NUMBER: 052010CF023447AXXX

FRANCIS R. CARTER

INFORMATION

COUNT 1: OFFICIAL MISCONDUCT - FALSIFYING OFFICIAL RECORD(S) OR OFFICIAL DOCUMENT(S) (F3) 838.022(1)(a)

COUNT 2: FALSIFYING RECORD(S) (M1) 839.13


IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA, NORMAN R. WOLFINGER, STATE ATTORNEY, THROUGH THE UNDERSIGNED DESIGNATED ASSISTANT STATE ATTORNEY, CHARGES THAT:

COUNT 1: IN THE COUNTY OF BREVARD, STATE OF FLORIDA, from on or about April 26, 2009, and continuing through on or about September 27, 2009, FRANCIS R. CARTER, being a public servant, did, with corrupt intent to obtain a benefit for persons or to cause harm to others, falsify any official record or official document, to wit: Florida Uniform Traffic Citation 8943-GDW, Florida Uniform Traffic Citation 9362-EVP, Florida Uniform Traffic Citation 8968-GDW, contrary to sections 838.022(1)(a), 838.022(3), Florida Statutes,

COUNT 2: IN THE COUNTY OF BREVARD, STATE OF FLORIDA, from on or about April 26, 2009, and continuing through on or about September 27, 2009, FRANCIS R. CARTER, being a public officer or employee or agent of any public agency, did falsify any record or any paper, to wit: Florida Uniform Traffic Citations 8943-GDW, Florida Uniform Traffic Citation 9362-EVP, Florida Uniform Traffic Citation 8968-GDW, filed in any judicial proceeding in any court of this state, contrary to section 839.13(1), Florida Statutes,

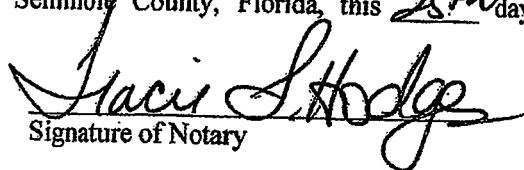
AND against the peace and dignity of the State of Florida.

I hereby state under oath that I am instituting this prosecution in good faith, and I certify that I have received testimony under oath from the material witness or witnesses for the offense(s).

  
Designated Assistant State Attorney  
Eighteenth Judicial Circuit  
Florida Bar No. 0356468

Personally appeared before me, Designated Assistant State Attorney THOMAS W. HASTINGS, who is personally known to me, who being first duly sworn, says that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense(s), and says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true and which, if true, would constitute the offense(s) therein charged. Sworn to and subscribed before me in Seminole County, Florida, this 25<sup>th</sup> day of March, 2010.



  
Signature of Notary

FILED IN VIERA-C  
CLERK OF CIR. COURT  
BREVARD CO. FL

2010 MAR 26 A 10:28

SCOTT ELLIS



# Melbourne POLICE

February 5, 2010

Officer Frank Carter  
[REDACTED]

Dear Officer Carter:


As a result of your recent arrest by FDLE on felony and misdemeanor charges, on February 1, 2010, you were notified that a meeting had been set in my office on February 5, 2010 to review my intent to place you on unpaid status. Yesterday, we were advised through your attorney that you did not plan to attend the meeting.

Effective Monday, February 8, 2010, and until further notice, you are being placed on Administrative Leave without pay. You are reminded that, should you be required by the Police Department to perform certain duties, such as respond to a subpoena or appearance for interviews or statements in an administrative investigation, that you will be placed in a pay status at your current hourly rate for the time spent on those duties.

Your employment benefits while in an unpaid status are also suspended. City of Melbourne Personnel Department will contact you in regards to the continuation of your benefits.

You may contact my office if you have questions.

Sincerely,

  
Donald L. Carey  
Chief of Police



**Don Carey, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)

(321) 409-3314 • Fax: (321) 242-7863

*An Equal Opportunity Employer*



# Melbourne POLICE

COPY

To: Officer Frank Carter  
From: *DC* Donald L. Carey  
Chief of Police  
Date: January 28, 2010  
Subject: Internal Investigation IA-09-059

Effective January 25, 2010, the Internal Investigation IA-09-059 of which you are the subject is no longer active. The investigation has been remanded to FDLE.

DLC:mb

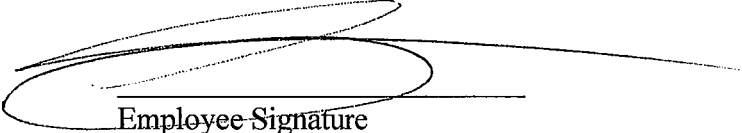
c: Deputy Chief Steve Mimbs  
Internal Affairs Sergeant Daniel Lynch  
Sergeant Randy Young, FOP Representative



Don Carey, Chief of Police  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)  
(321) 409-3314 • Fax: (321) 242-7863  
*An Equal Opportunity Employer*

# RECEIPT

This is to verify that **Officer Frank Carter** has received written notification in reference to Internal Affairs Investigation: **IA-2009-059**.

  
Employee Signature

Date: 1/5/09

Sgt D J Pugh # 356  
Delivered By

Date: 01-05-10

## MEMORANDUM

**DATE:** January 25, 2010  
**TO:** Chief of Police Don Carey  
**FROM:** Sergeant Daniel Lynch  
Internal Affairs Unit  
**SUBJECT:** Investigation of Ofc. Frank Carter/ IA-09-059

COPY

---

During Internal Affairs Investigation 2009-059 I have possibly developed probable cause against Officer Frank Carter for Official Misconduct (F.S.S. 838.022), and Falsifying Official Records (F.S.S 839.13).

It is therefore my recommendation this case be turned over to the Florida Department of Law Enforcement. I also request this administrative investigation be tolled until the Florida Department of Law Enforcement has a chance to review the findings.

If you have any questions about this memorandum please let me know and I will make myself available to you.



# Melbourne POLICE

COPY

COPY

## INTERNAL AFFAIRS INVESTIGATION EMPLOYEE NOTIFICATION

To: Officer Frank Carter

From: *DC* Donald L. Carey  
Chief of Police

Date: January 4, 2010

Subject: Internal Investigation IA-2009-059

An internal investigation is being conducted regarding information of a pattern of conduct of racial profiling.

Sergeant Daniel Lynch will be conducting the internal investigation for the Department as a result of this incident. If you are aware of any pertinent witnesses concerning this incident, please inform Sergeant Lynch immediately.

The investigation will be conducted in accordance with the procedures outlined in Department General Orders. Your rights and responsibilities as an employee in this investigation are outlined in Department General Order 52.2, the "Police Officers Bill of Rights", **Florida State Statutes 112.532**, and the provisions of the current collective bargaining contract.

You are reminded that Department General Orders requires all personnel to treat information concerning complaints and investigations with the utmost confidentiality. **Therefore, you are not to have contact with the complainant or witnesses about the allegation that is the focus of this investigation.**



**Don Carey, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)

(321) 409-3314 • Fax: (321) 242-7863

*An Equal Opportunity Employer*



# Melbourne POLICE

To: Sergeant Daniel Lynch

From: *DC* Donald L. Carey  
Chief of Police

Date: 12/22/09

Subject: Internal Investigation Assignment

Please conduct an internal investigation concerning the attached complaint.

Donald L. Carey  
Chief of Police

c: Deputy Chiefs



**Don Carey, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935

Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)

(321) 409-3314 • Fax: (321) 242-7863

*An Equal Opportunity Employer*

# MEMORANDUM

Received  
Melbourne, FL

**DATE:** December 22, 2009

DEC 22 2009

**TO:** Chief of Police Don Carey

Chief of Police

**FROM:** Sergeant Daniel Lynch  
Internal Affairs Unit



**SUBJECT:** Review of Officer Frank Carter's In Car Video

---

During my investigation in reference to Internal Affairs Investigation IA-2009-052 I reviewed the in car video system for Ofc. Carter's assigned vehicle to see if there was evidence of him spending time at the Melbourne University Apartments while on duty.

I requested the City of Melbourne IT department download all the available video on the video systems hard drive. This request rendered video dating back to April 26, 2009. Due to the possibility of Ofc. Carter being at the apartment anytime during his shift I had to review all the information on the DVD's. There are six DVD's in total.

During the video review I found five instances where Ofc. Carter had questionable probable cause for traffic stops and/or citation issuance. I have outlined the stops below:

1. April 26, 2009 at 1936 hrs Ofc. Carter stopped a vehicle for failing to stop for a stop sign at Line St. and Lipscomb St. in south Melbourne. However, the video clearly shows the vehicle stop then roll past the stop bar in what appears to be a maneuver to see if traffic was coming in either direction. This is permissible under statute 316.123. Ofc. Carter wrote the driver a citation for failing to stop for a stop sign and used this probable cause to make a felony narcotic arrest. Ofc. Carter is heard on the video stating, "There she just rolled through the stop sign".
2. May 5, 2009 at 0123 hrs Ofc. Carter and Ofc. Middendorf stopped a vehicle for unknown reason and wrote a citation for no tag light (9356-EVP). The video clearly shows the tag light was functioning when the car was operating. Ofc. Carter even shut his vehicles headlights off in an attempt to see if the tag light was malfunctioning. At the conclusion of this traffic stop Ofc. Carter wrote the driver a total of 3 tickets.
3. May 18, 2009 at 1711 hrs Ofc. Carter responded to a call where there was a suspicious vehicle. The vehicle was apparently parked at the Melbourne University Apartments. At 1820 hrs Ofc. Carter advises he sees the vehicle moving and heading west on University Blvd. At the time it is raining and the vehicle did not have its headlights on as required by law. However, as you review the video, from the angle Ofc. Carter is facing it would be



difficult if not impossible to see if the vehicles right turn signal was activated. Ofc. Carter wrote the driver a citation for failure to use turn signal (9361-EVP). At the conclusion of this traffic stop Ofc. Carter wrote the driver a total of 7 tickets.

4. On May 28, 2009 at 0146 hrs Ofc. Carter stopped a vehicle for an unknown reason and made contact with the black female passenger. Ofc. Carter had the black female passenger exit the vehicle walk back to rear of the vehicle. During the conversation the female lifted her shirt and exposed what appeared to be her bear breasts, then pulls down her pants to what appears to be her exposed vagina. Ofc. Carter is alone on this traffic stop even though the CAD report states he was with Ofc. Keith Cowart. Ofc. Carter closes this traffic stop out as a "code C".
5. On September 27, 2009 at 1242 hours Ofc. Carter responds to a call of possible drug dealing taking place out of a vehicle on Main Street in south Melbourne. Ofc. Carter responds and locates the vehicle parked in front of the house pulling into a drive way. Ofc. Carter conducts a traffic stop on the vehicle. Ofc. Carter issues the driver 4 window tint citations even though all 4 windows in the vehicle were not checked for compliance. At the conclusion of this traffic stop Ofc. Carter wrote the driver a total of 7 tickets.

Based on my review of these videos I see an issue with Ofc. Carter's ability to objectively patrol. It would appear on the surface there is no probable cause for these stops. Therefore, I would recommend further investigation into possible race based profiling techniques being used by Ofc. Carter.

If you have any further questions regarding this matter please let me know and I will make myself available to you.



# Melbourne POLICE

To: Officer Frank Carter

From: *DC* Donald L. Carey  
Chief of Police

Date: November 25, 2009

Subject: Administrative Leave

---

Effective immediately, you are placed on Administrative Leave with pay pending the outcome of the criminal investigation that is being conducted by the Florida Department of Law Enforcement for violation of Florida State Statute 836.05 (Threats and Extortion).

Upon receipt of this notice, you are to turn in your police identification, badge, and department issued firearms and police radio.

During the course of the Administrative Leave your work hours will be from 8:00 AM to 4:00 PM, Monday through Friday, and you are ordered to make yourself available by phone during those hours.

DLC:mb

DLC:mb

c: Deputy Chief Steve Mimbs  
Commander Renee Purden  
Sergeant Daniel Lynch



**Don Carey, Chief of Police**

650 North Apollo Boulevard, Melbourne, Florida 32935


Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail: [dcarey@melbourneflorida.org](mailto:dcarey@melbourneflorida.org)

(321) 409-3314 • Fax: (321) 242-7863

*An Equal Opportunity Employer*



# Melbourne POLICE

**To:** Officer Frank Carter, Id #181  
**From:** Interim Chief of Police Steve Mimbs   
**Date:** April 16, 2010  
**Subject:** Interview in reference to Internal Affairs Investigation 2009-059

---

As you know, Lt. Alex Fischback of the Brevard County Sheriff's Office has been authorized by the Melbourne Police Department to conduct administrative investigation IA-2009-059.

Lt. Fischback met with you on April 7, 2010 and attempted to schedule an interview with you on April 13 or 14<sup>th</sup>, 2010. Lt. Fischback has informed me that you and/or your representative(s) have failed to respond to this request for an interview or to offer an alternative date and time for the interview.

On April 14, 2010, Lt. Fischback met with you a second time and scheduled you for an interview on Monday, April 19, 2010 at 0900 am. at the Melbourne Police Department located at 650 North Apollo Boulevard in Melbourne.

The purpose of this correspondence is to notify you that your attendance at this interview is mandatory as per existing Melbourne Police Department policies and procedures, **26.2.33 Orders** and **52.2.5 Cooperation with Investigations**. Failure to attend this interview will be grounds for disciplinary action.

Your attendance at this interview is considered time worked and you will be compensated for your attendance.

**Steve Mimbs, Chief of Police**  
650 North Apollo Boulevard, Melbourne, Florida 32935  
Internet: [www.melbourneflorida.org/police](http://www.melbourneflorida.org/police) • E-mail : [police@melbourneflorida.org](mailto:police@melbourneflorida.org)  
(321) 409-3314 \* Fax : (321) 242-7863  
*An Equal Opportunity Employer*



# Melbourne POLICE

## CITY OF MELBOURNE NOTICE OF POSSIBLE DISMISSAL AND APPEAL RIGHTS

To employee: **Officer Frank Carter**

Date: **July 6, 2010**

This is to advise you of possible termination from your employment with the City of Melbourne for the reason(s) stated below:

*An internal investigation (IA-2009-059) has been completed concerning an allegation that you conducted traffic stops and citizen encounters without legitimate probable cause. During this internal investigation it was learned that you issued citations to citizens for infractions they did not commit. These allegations were verified by your in-car video system, which the investigation showed you failed to properly use for the past 3 years. Also, it was learned you trespassed persons from areas where they were not legally eligible to be trespassed.*

*The Florida Department of Law Enforcement conducted a criminal investigation and ultimately arrested you in January of 2010 in connection with these allegations. In addition to FDLE's inquiry into your conduct during traffic stops, they also conducted a criminal investigation concerning an allegation of you extorting nude photographs from a female (former girlfriend) in exchange for money.*

*On March 26, 2010, based on the investigation revolving the traffic stops, the Office of the State Attorney filed an Information charging you with falsifying an official record or document, a third degree felony, and falsifying a record or paper filed in judicial proceedings, a first degree misdemeanor.*

*You also failed to follow verbal and written direct orders which were lawfully given to you by supervisors; these orders were in regards to conducting your interview for this internal investigation. Both federal and state law and Melbourne Police Department policies and procedures make clear that your Police Officer Bill of Rights and "Garrity" rights would be granted and preserved throughout the interview process.*

*The above issues compounded with Internal Affairs Investigation IA-2009-052, where you received an 80 hour suspension for obtaining a free apartment as a unauthorized gratuity, show a consistent and disturbing trend of disregarding Florida State Statutes, Department and City policies. During this investigation you also failed to follow a direct order and respond to an interview.*

*Therefore this investigation has sustained the following violations of Department and City Policy:*

**CITY OF MELBOURNE PERSONNEL POLICY, SECTION 13.2**

- (a) Failure to meet prescribed standards of work, morality, and ethics to an extent that makes an employee unsuitable for the kind of employment in City service in which he was serving at the time of the offense.*
- (b) Has committed a criminal offense or misdemeanor involving moral turpitude; or criminal act.*
- (d) Has violated any lawful or reasonable regulations or order, or failed to obey any lawful and reasonable regulation or order, or failed to obey any lawful or reasonable direction made and given by a superior where such violations or failure to obey has or might result in loss or injury to the public or to persons or property in the custody of the City.*
- (f) Has been guilty of acts that amount to insubordination or of disgraceful conduct, whether such acts were committed while on or off duty.*
- (g) Has been offensive in his conduct or language toward the public, toward City officers, or toward other employees.*
- (h) Has been incompetent, negligent, or inefficient in the performance of his duty as determined by the Department Director and approved by the City Manager.*

**MELBOURNE POLICE DEPARTMENT POLICY**

***Policy 1.2 Role and Authority of Police Personnel:***

***1.2.3 Legal Constraints-****Officers shall exercise their authority based on legal justification.*

***1. What is reasonable action by a police officer or what constitutes probable cause varies with each situation. Facts may justify an investigation, detention, search, arrest or no action at all. The requirement that legal justification be present imposes a basic limitation on an officer's actions.***

***2. Officers must act within the limits of authority as defined by statute and judicial interpretation, ensuring the rights of the individual are protected.***

***Policy 26.2 Professional Conduct and Responsibilities:***

***26.2.2 Conduct on and off duty*** - Personnel shall conduct themselves on-duty and off-duty in such a manner as to reflect most favorably on the Department. Conduct unbecoming an officer or employee shall include conduct that brings the Department into disrepute, or impairs the operation or efficiency of the Department.

***26.2.20 Efficiency*** - Personnel shall constantly direct their best efforts to accomplish the Department functions intelligently and efficiently. They shall not engage in any activity or personal business that may cause them to neglect or be inattentive to duty.

***26.2.23 Professional Competence***- Personnel shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Personnel shall perform their duties in a manner that maintains the established standard of efficiency in carrying out the function and objectives of the Department.

***26.2.33 Orders*** - Personnel shall promptly obey all lawful orders of a supervisor or orders given via police radio, phone or in person. This will include orders relayed from a supervisor by personnel of the same or lesser rank

***26.2.39 Compliance with the law*** - Personnel shall obey all laws of the United States of America and of any state, local, or foreign jurisdiction in which they are present. A conviction for the violation of any criminal law or failing to comply with a civil court order shall be prima-facie evidence of a violation of this section.

***26.2.44 Legal Knowledge*** - Personnel shall familiarize themselves with and have working knowledge of all laws of the United States, the State of Florida and ordinances of the City of Melbourne they are required to enforce.

***Policy 41.7 In Car Video and Audio System***

*Violation of Entire General Order*

***Policy 52.2 Internal Affairs:***

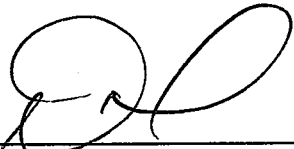
***52.2.5 Cooperation with Investigation***- It shall be the responsibility of all personnel to fully cooperate with the Internal Affairs Investigator or other persons authorized to conduct such investigations in accordance with law.

Page 4

Notice of Suspension Prior to Dismissal and Appeal Rights

At the conclusion of this suspension at **5:00 P.M. on July 13, 2010** it is my intention to dismiss you from City employment.

If you desire a hearing to show cause why you should not be dismissed, you should submit a written request for this to me no later than **5:00P.M. on July 13, 2010**. If you make this request, you shall remain suspended without pay until the appeal hearing has been held and a decision has been made.



\_\_\_\_\_  
**Steve Mimbs**  
**Interim Chief of Police**

A copy of this written notice was personally delivered to Officer Frank Carter at  
8:45 A.M. / P.M. on 06 JUL 2010 by L. O. [Signature].

Received by:  \_\_\_\_\_