

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEALS OF:

**MARK C. ARMAGANIAN**

**Docket #96-D-3**

and

**THEODORE KORONTJIS**

**Docket #96-D-4**

**New Hampshire Division of State Police**

**January 31, 1997**

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Barry) met on September 18, 1996, and October 30, 1996, under the authority of NH RSA 21-I:58, to hear the appeals of Mark Armaganian and Theodore Korontjis, employees of the New Hampshire Department of Safety, Division of State Police. The appellants, who were represented at the hearing by Attorney James W. Donchess, were appealing eleven day suspensions without pay, effective August 7, 1995, on charges that they had conspired to obtain an unauthorized court witness fee for Trooper Armaganian in violation of the Division of State Police Professional Standards of Conduct. Attorney Sherri J. Kelloway-Martin appeared on behalf of the Division of State Police.

The following persons gave sworn testimony at the hearing:

State Police Cpl. Louis Copponi  
State Police Tr. Debra Winters  
State Police Cpl. Charles Winters  
Richard A. Ballou  
Former State Police Col. Lynn Presby  
State Police Sgt. Clayton Young

State Police Tr. Mark C. Armaganian  
State Police Tr. Theodore Korontjis  
State Police Cpl. John Lalacheur  
State Police Tr. Robert Blonigan  
State Police Tr. Mark Thibedault  
State Police Tr. Patrick Palmer

The following exhibits were entered into evidence:

- State's 1: Professional Standards of Conduct (Div. Of State Police)
  - State's 2: Witness Attendance Form
  - State's 3: February 1, 1995 Memorandum from Mark Armaganian to Lt. Colon Forbes
  - State's 4: February 23, 1995 memorandum from Theodore Korontjis to Lt. Colon Forbes
  - State's 5: 1.4.0 Duties and Responsibilities (from State Police Manual)
  - State's 6: August 5, 1995 Final Disciplinary Hearing Report on Mark Armaganian
  - State's 7: August 7, 1995 Notice of Suspension Without Pay - Mark Armaganian
  - State's 8: August 8, 1995 Final Disciplinary Hearing Report on Theodore Korontjis
  - State's 9: August 7, 1995 Notice of Suspension Without Pay - Theodore Korontjis
  - State's 10: 42B - Polygraph Unit and Procedures
  - State's 11: Report of Clayton Young to Capt. Foote re: Korontjis polygraph
  - State's 12: Report of Clayton Young to Capt. Foote re: Armaganian polygraph
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- Appellant's A: Certification of Off-Duty Court/Hearing Attendance
  - Appellant's B: Weekly Duty Report - Mark Armaganian
  - Appellant's C: 6/94 Performance Evaluation (Armaganian)
  - Appellant's D: 6/93 Performance Evaluation (Armaganian)
  - Appellant's E: 6/92 Performance Evaluation (Armaganian)
  - Appellant's F: 6/94 Performance Evaluation (Korontjis)
  - Appellant's G: 5/9/94 Press Release re: Theodore Korontjis (w/attachments)
  - Appellant's H: 10 Letters of Appreciation to M. Armaganian
  - Appellant's I: 6/28/95 Report from Capt. Foote to Col. Presby
  - Appellant's J: Truth and Deception (excerpts)
  - Appellant's K: DSSP 152/rev' 87 on Polygraphs

At the close of the hearing, Ms. Kelloway-Martin submitted the State's Proposed Findings of Fact and Rulings of Law. Mr. Donchess requested leave to file the Appellant's Requests at a later date. In the absence of an objection from the State, the Board allowed the appellants until November 4, 1996, to submit their requests. To the extent that the parties' proposed findings of fact and rulings of law are consistent with the decision below, they are granted.

Otherwise, they are denied. They are sufficiently numerous that the Board has determined that it will not rule on them individually.

Several facts are not in dispute:

1. Trooper Mark Armaganian was scheduled to appear in Hampton District Court on the morning of January 19, 1995, to prosecute a speeding case.
2. At that time, there was no prosecutor assigned to Troop A, and officers were responsible for prosecuting their own cases.
3. Trooper Armaganian was off-duty on January 19, 1995, and hoped to find another trooper to settle the case for him, thereby eliminating the need for him to go to court on his day off.
4. Trooper Theodore Korontjis, who was on duty on January 19, 1995, spoke with Trooper Armaganian by telephone and agreed to handle his speeding case for him.
5. While he was at Hampton District Court on January 19, 1995, Trooper Korontjis entered Trooper Armaganian's name on the court witness list, although he had already settled Trooper Armaganian's case and knew that Trooper Armaganian had not been in the courtroom that day.
6. At Trooper Armaganian's request, Trooper Korontjis completed and signed Trooper Armaganian's name to a certification of off-duty court hearing appearance indicating that Trooper Armaganian was entitled to a witness fee for the case which Trooper Korontjis had settled.
7. Trooper Armaganian completed a weekly duty report indicating that he was entitled to a witness fee for one half day on January 19, 1995, while he was off-duty, in connection with the disposition of a case in Hampton District Court.
8. The Division of State Police conducted an internal investigation to determine if Troopers Mark Armaganian and Theodore Korontjis had conspired to obtain an unauthorized witness fee for Mark Armaganian.
9. Troopers Armaganian and Korontjis were required to submit to polygraph examinations in connection with the internal investigation.

10. Following "final disciplinary hearings," Col. Lynn M. Presby notified both troopers by letters dated August 7, 1995, that they were to be suspended without pay for eleven days on charges that they "...conspired with [one another] to obtain an unauthorized court witness fee [for Trooper Armaganian] when both Trooper Armaganian and Trooper Korontjis knew that Trooper Armaganian was not in attendance in court." (State's Exhibits 7 and 9).
11. Under Division of State Police Rules and Regulations, a suspension in excess of ten days is considered major discipline, making both troopers ineligible for promotion for a period of seven years. Both troopers also were transferred out of Troop A.

Trooper Debra Winters testified that on the morning of January 19, 1995, just before 8:00 a.m. at the Troop A barracks, Trooper Korontjis asked her if she had any cases scheduled that day in Hampton District Court. When she replied that she did not, he informed her that he needed to call the court to see if one of his own cases had been continued. He also commented that he had to be at Hampton District Court to "...take care of something for Mark because he was too [f---ing] lazy to get out of bed." Ms. Winters testified that a short time later, the dispatcher called down to the troopers' room to say that Trooper Armaganian was on the phone, or that Trooper Korontjis should telephone Trooper Armaganian. Although she was unsure who initiated the call, she was present during the ensuing telephone conversation between Troopers Armaganian and Korontjis. Trooper Winters testified that she overheard Trooper Korontjis say, "Don't worry about it, brother, I'll just take care of you," and "I'll take care of it." She testified that later in that same conversation, she heard Trooper Korontjis tell Trooper Armaganian, "Don't worry about it. I'll just sign your name in,"

Trooper Winters testified that she was sufficiently concerned by what she had overheard that she repeated Trooper Korontjis' remarks to her husband Cpl. Charles Winters that evening when she returned home. She believed Trooper Korontjis had agreed to put Mark Armaganian's name on the court witness list even though he knew that Trooper Armaganian

did not intend to be in court that day. When Trooper Winters asked her husband if he had seen Trooper Armaganian at the courthouse that morning, he replied that he had not.

Cpl. Charles Winters, who was a trooper at the time of the incident, testified that after he told his wife that he had not seen Trooper Armaganian at the courthouse, she said she suspected that the appellants were stealing from the court. She described her original conversation with Trooper Korontjis, and those portions of the telephone conversation that she had overheard. Cpl. Winters thought it was possible that Trooper Armaganian might have forgotten to sign himself in on a prior visit to the courthouse, and that Trooper Korontjis was simply agreeing to put his name on the witness list for a day when he actually had been in court. He told his wife he would check the witness lists at Hampton District Court the following morning when he was there for arraignments.

Cpl. Winters testified that after arriving at Hampton District Court the following morning, he went to the clerk's office asking to see the witness lists for January 19<sup>th</sup>. John Clark, the Clerk of Court, told him, "You're looking to see if Mark Armaganian was here. Dick already came in to look." Trooper Winters testified that he thought the clerk meant that Sgt. Dick Burrows, his shift supervisor, had been in to look at the list. He testified that it wasn't until the following Monday or Tuesday that he discovered that John Clark was actually referring to Dick Ballou, the Court Security Officer.

Until questioned by State Police Sgt. Gates during the ensuing investigation, neither Debra nor Charles Winters mentioned the January 19<sup>th</sup> incident to their supervisors. Debra Winters testified that she did not volunteer information to her supervisors about the telephone conversation between Troopers Armaganian and Korontjis because she believed that there would be "serious repercussions," and she did not want it to appear that she was trying to get anyone in trouble. Charles Winters testified that once he knew the incident was under investigation, he believed he had no further responsibility to inform his superiors in the chain of command. He also testified that after learning that investigators were aware that he had

asked to look at the January 19<sup>th</sup> witness lists, he assumed that investigators would eventually want to question him about the incident.

Richard Ballou testified that as Court Security Officer for the Hampton District Court, he certifies witness lists before forwarding them Department of Justice for payment of witness fees. He testified that he normally can verify that those persons whose names appear on the witness lists were actually present in court on the date(s) specified. However, when Mr. Ballou reviewed the witness lists for January 19, 1995, he discovered Trooper Armaganian's name, although he was certain he had not seen Trooper Armaganian in the courthouse that day. He testified that he then spoke with his own supervisor John Clark, Clerk of the Court, who told Mr. Ballou that he also had not seen Trooper Armaganian in or around the court that day. Mr. Ballou testified that he had no further discussion about the issue with anyone until some three or four months later when he was called to speak with State Police Sergeant Gates.'

The appellants argued that during their phone conversation, they did not discuss signing Mark Armaganian in at the Hampton District Court. The appellants asserted that Trooper Armaganian was expecting a return call from Trooper Korontjis on the status of his speeding case, and that he became increasingly nervous about the disposition of that case as the time approached for court to convene. They argued that Trooper Armaganian dressed in appropriate civilian clothing for a court appearance and drove his personal vehicle to the courthouse planning to handle his own case if it became necessary. They argued that Trooper Armaganian knew that he could be disciplined for failing to prosecute the case if Trooper Korontjis had been unable to resolve the matter. They asserted that he took his personal vehicle because he was planning to run personal errands when he left the courthouse.

The appellants asserted that when Trooper Armaganian arrived at the courthouse, Trooper Korontjis was in the parking lot retrieving a file from his car. They contended that once

Trooper Korontjis had informed Trooper Armaganian that his case had been settled without the need of a trial, Trooper Armaganian asked Trooper Korontjis to sign him in. They argued that because Trooper Armaganian went to the courthouse prepared to testify, even though Trooper Korontjis had already settled Trooper Armaganian's case, Trooper Armaganian was entitled to the witness fee, or a minimum of three hours of premium pay under the "portal to portal rule."

The appellants argued that in order to prove that they had conspired to obtain an unauthorized witness fee, the State first had to prove that Mark Armaganian did not drive to the Hampton District Court on the morning of January 19, 1995, prepared to prosecute his own case. The Board does not agree. Simply finding that Mark Armaganian drove to the courthouse on the morning in question does not necessarily negate the State's allegations.

A conspiracy exists when there is an agreement by two or more persons to commit a wrongful or unlawful act, and one or more of those persons commits a deed in furtherance of their agreement. In order to demonstrate that the appellants conspired to obtain an unauthorized witness fee, there must be evidence that Troopers Armaganian and Korontjis agreed to have Theodore Korontjis enter Mark Armaganian's name on the witness list at Hampton District Court when both troopers knew that Mark Armaganian did not intend to appear for court that day. The Board found that there was sufficient, credible evidence<sup>1</sup> of such an agreement to support the State's allegation of a conspiracy. The requisite acts in furtherance of the agreement occurred when Trooper Korontjis entered Trooper Armaganian's name onto the Hampton District Court Witness List, and when he later completed the off-duty certification of court appearance form for Trooper Armaganian.

On the evidence, the Board voted to deny both Trooper Armaganian's and Trooper Korontjis' appeals, finding that they did conspire to obtain an unauthorized witness fee for

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<sup>1</sup> The Board did not treat the polygraph examinations as credible evidence for the purposes of determining what may or may not have transpired during the telephone conversation that Trooper Winters overheard between Troopers Korontjis and Armaganian. Accordingly, the Board gave no weight to the results of those examinations in deciding the instant appeal.

Trooper Armaganian. Although the evidence reflects that this conduct was out of character for both appellants, the weight of the evidence supports the State's allegations. Furthermore, contrary to the appellants' proposed findings of fact, Lt. Forbes did not "verify that under the facts of this case, Trooper Armaganian would be entitled to be paid under the portal to portal rule." Lt. Forbes' testimony related to a hypothetical situation in which there was no prior agreement to document eligibility for a court witness fee for a trooper who had no intention of appearing for court.

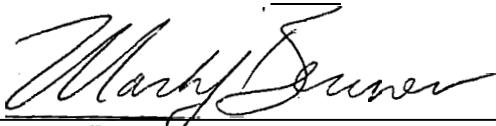
The Board found Trooper Winters' testimony to be credible evidence of the conspiracy. Except for what she discussed with her husband, Trooper Winters did not disclose any information about the telephone conversation between Troopers Korontjis and Armaganian until she was questioned during the internal investigation. The appellants failed to offer any reasonable explanation how Trooper Winters might have misunderstood what she overheard, or why she might misrepresent what she overheard.

Although the discipline imposed in this instance was substantial, the Board found that it was an appropriate sanction in light of nature of the offense. The Board found that imposition of an eleven day suspension without pay, and the resulting loss of eligibility for promotion, constituted a permissible exercise of managerial discretion within the limitations of the Rules and Regulations of the Division of State Police.

By way of comment, the Board recommends that the Division of State Police develop improved management procedures to monitor the scheduling of court appearances and the coverage of those appearances by the troopers involved in the pertinent criminal cases. Under the current system, it appears that a trooper could intentionally schedule arraignments or trials on off-duty days as a means of obtaining additional income in the form of witness fees. It also appears that without any prior supervisory approval, a trooper can arrange for a fellow officer to dispose of one of his or her cases, even when personal convenience is the only reason behind such an arrangement. While we assume that most troopers usually

schedule their cases effectively and responsibly, there is no evidence in this case to suggest that any formal policy, procedure or mechanism for overseeing this system is in place.

THE PERSONNEL APPEALS BOARD



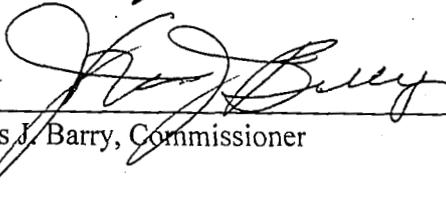
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Mark J. Bennett, Acting Chairman



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Robert J. Johnson, Commissioner



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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Sheri J. Kelloway-Martin, Esq.  
James W. Donchess, Esq.