THE SANDERS FIRM, PC
30 Wall Street, 8th Floor
New York, NY 10005
212-652-2782
212-652-2783

September 26, 2026

Police Commissioner Jessica S. Tisch
Police Department City of New York
One Police Plaza, 14th Floor
New York, N.Y. 10038

Re: Deputy Chief Winston M. Faison
Disciplinary Case No. C-035016
Demand to Cease Interference with
Withdrawal of Service Retirement
Application

Commissioner Tisch:

I represent Deputy Chief Winston M. Faison. I write concerning an extraordinary position taken yesterday by the New York City Police Department concerning his pending application for service retirement. On September 25, 2026, Deputy Chief Faison reported to Police Headquarters for the express purpose of stopping the retirement process associated with the service-retirement application that presently identifies November 26, 2026 as his anticipated retirement date. Personnel Orders advised him, in substance, that the Department would not permit the retirement process to be stopped because the Negotiated Plea Agreement in Disciplinary Case No. C-035016 purportedly prohibits him from withdrawing or rescinding that application.

Deputy Chief Faison thereafter sought to stop the retirement process through the New York City Police Pension Fund. The Police Pension Fund likewise refused to stop processing his retirement, advising him, in substance, that it would not do so unless and until the Personnel Orders Section of the New York City Police Department approved the withdrawal. That position presents a separate statutory problem. The Police Pension Fund is not merely an administrative extension of Personnel Orders, and its obligations concerning the administration of Deputy Chief Faison's pension rights do not depend upon whether Personnel Orders agrees with his decision to withdraw a retirement application that has not yet become effective.

Deputy Chief Faison rejects that position. His legal position is that the purported agreement is **void and unenforceable** and, independently, that the Department lacks statutory authority to transform a still-pending service-retirement application into an irrevocable retirement merely because the Department included such a restriction within a disciplinary settlement. Those are related but distinct issues. The first concerns the validity of the agreement itself. The second concerns the scope of the Police Commissioner's statutory power. Neither permits Personnel Orders to convert a pending retirement application into an accomplished retirement more than two months before its stated effective date.

The agreement upon which the Department now relies provides that Deputy Chief Faison "agree[s] to not withdraw or rescind" the service-retirement application filed on July 25, 2025. It further requires him to forfeit sixty vacation days, use specified leave balances, retire upon exhaustion of those balances, submit to dismissal probation, and release claims against the City of New York and the New York City Police Department. The Department is therefore not relying upon an independent pension statute or regulation that makes the application irrevocable. It is relying upon a contractual provision embedded within an integrated disciplinary settlement whose legality Deputy Chief Faison expressly disputes. The executed agreement itself places the nonwithdrawal provision among the components of the "penalty" subject to Police Commissioner approval.

1. The retirement application remains pending and subject to withdrawal

The distinction matters because Deputy Chief Faison has not yet retired. His stated effective retirement date is November 26, 2026. New York City Administrative Code § 13-246 itself distinguishes between the filing of an application for service retirement and "the date the retirement becomes effective." The statutory architecture therefore does not treat the filing of an application as the legal equivalent of completed retirement. That distinction is reinforced by the Police Pension Fund's own retirement procedures, which expressly contemplate withdrawal of a pending service-retirement application before the scheduled retirement date.

New York decisional law likewise recognizes the legal significance of the retirement's effective date. In *Matter of Sanders v. New York State & Local Employees' Retirement System*, 126 A.D.3d 1281, 1282, 6 N.Y.S.3d 309 (3d Dep't 2015), the court addressed a member's attempted withdrawal of a service-retirement application and treated the operative deadline as the effective date of retirement. The withdrawal there failed because the required written withdrawal was not completed before the retirement became effective. The point is particularly significant here because Deputy Chief Faison acted on September 25, 2026, more than two months before the November 26, 2026 effective date identified in his pending application.

New York City Administrative Code § 13-261 further demonstrates that the statutory pension system distinguishes the commencement of retirement processing from the point at which retirement elections become final. Section 13-261 permits a member to alter the form in which a retirement allowance will be received until the first payment is made. Although § 13-261 addresses pension-option elections rather than withdrawal of the service-retirement application itself, it forms part of the same statutory structure and confirms that pension elections do not become irrevocable merely because administrative processing has begun.

The Court of Appeals' reasoning in *Caravaggio v. Retirement Board of Teachers' Retirement System*, 36 N.Y.2d 348, 368 N.Y.S.2d 477 (1975), is also directly relevant to the Department's attempt to rely upon contract language to alter a statutory pension right. There, the Court addressed an agreement purporting to restrict a retirement-system member's statutory ability to change a beneficiary designation. The Court held that the statutory right remained "ambulatory" and emphasized the strong public policy surrounding public pension systems. *Id.* at 353–58. While *Caravaggio* involved a beneficiary designation rather than withdrawal of a retirement application, its central principle is important here: a contractual promise cannot simply be assumed to alter the legal operation of a statutory pension system or make irrevocable an election that the governing retirement framework otherwise permits the member to change.

That principle becomes even more important because the Department is not merely asserting that Deputy Chief Faison breached a contractual promise. Personnel Orders is apparently treating the agreement itself as governmental authority to prevent the withdrawal from occurring. Those propositions are not interchangeable. Even assuming arguendo that the agreement was otherwise enforceable, an alleged contractual breach would present a question concerning what remedies the Department lawfully possesses under that agreement. It does not necessarily establish that NYPD may administratively prevent the Police Pension Fund from recognizing a withdrawal that the governing retirement framework otherwise permits.

2. New York City Administrative Code § 14-115 does not authorize compelled or irrevocable retirement

New York City Administrative Code § 14-115 presents a separate and fundamental limitation upon the Department's position. The Police Commissioner unquestionably possesses broad authority to discipline members of the Department. But that authority is statutory, not inherent, and the same statute that grants disciplinary power defines the sanctions the Commissioner may impose and the limitations accompanying that authority. Section 14-115 authorizes reprimand, forfeiture or withholding of pay for a specified time, suspension without pay, and dismissal. It additionally provides that no more than thirty days' salary may be forfeited or deducted for any offense and separately authorizes dismissal probation following a guilty plea or finding of guilt. The statute does not identify compelled retirement as a disciplinary sanction, does not authorize the Commissioner to convert a voluntary service-retirement application into an irrevocable one, and does not purport to confer upon the Commissioner authority to alter the rules governing administration of the Police Pension Fund.

This is not a theoretical limitation. New York courts have repeatedly enforced the boundaries of the Commissioner's statutory authority even while recognizing that the Commissioner possesses exceptionally broad disciplinary discretion. As discussed in the historical and statutory analysis of § 14-115, the governing regime identifies both the source and the boundaries of the Commissioner's disciplinary jurisdiction.

In *Matter of Murphy v. Murphy*, 47 A.D.2d 516, 363 N.Y.S.2d 591 (1st Dep't 1975), aff'd, 38 N.Y.2d 690, 382 N.Y.S.2d 33 (1976), the Commissioner unquestionably possessed jurisdiction to discipline the officer, but the First Department nevertheless modified a ninety-day financial punishment because the governing statute limited the permissible punitive forfeiture. The significance of *Murphy* is not confined to the particular amount involved. It demonstrates that broad disciplinary discretion does not permit the Commissioner to select a consequence outside the boundaries established by the Legislature.

The Court of Appeals reached the same structural conclusion in *Budd v. Valentine*, 283 N.Y. 508, 29 N.E.2d 65 (1940). There, the predecessor statute authorized disciplinary punishment during a defined probationary period. Once the legislatively authorized period expired, the Commissioner could not continue exercising the same disciplinary authority merely because the underlying disciplinary matter remained within the Department's administrative control. The statute created the authority and also supplied its outer limit. The statutory history underlying present § 14-115 reflects that same legislative structure.

Likewise, *Dubins v. City of New York*, 177 Misc. 675, 31 N.Y.S.2d 390 (N.Y. Mun. Ct. 1941), rejected the proposition that the Commissioner's general status as head of the Police Department independently supplied authority to withhold compensation where the governing statute did not authorize the particular withholding. The importance of *Dubins* here is straightforward. The fact that a consequence has been approved by the Police Commissioner, Personnel Orders, the Department Advocate's Office, or another component of the Department identifies the administrative actor responsible for the decision. It does not identify the source of legal authority for that decision.

That is precisely the problem presented by the Department's conduct. Personnel Orders apparently believes that the existence of the Plea Agreement ends the inquiry. It does not. The antecedent question is what law gives the Department power to prevent Deputy Chief Faison from withdrawing a pending retirement application that has not yet reached its statutory effective date. If the Department relies upon § 14-115, the statute contains no such authority. If the Department relies upon some other statute, rule, regulation, Pension Fund provision, or contractual authority, then the Department should identify it.

The First Department's decision in *Vink v. New York State Division of Housing & Community Renewal*, 285 A.D.2d 203, 210, 729 N.Y.S.2d 697 (1st Dep't 2001), states the broader administrative-law rule clearly: an agency cannot "engraft additional requirements or assume additional powers not contained in the enabling legislation." That principle applies before ordinary administrative deference becomes relevant. The question presented here is not merely whether the Commissioner has rationally exercised a conceded power. The threshold question is whether the Commissioner possesses the asserted power at all. Your department cannot create substantive governmental authority merely by placing a restriction in a disciplinary settlement and thereafter treating that contractual language as though the Legislature had enacted it. The distinction between discretionary authority and statutory jurisdiction is central to § 14-115.

3. The purported agreement is independently defective under the OWBPA

The Department's reliance upon the Negotiated Plea Agreement is additionally problematic because the agreement is facially defective under the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f). Congress expressly provided that an individual may not waive a right or claim under the Age Discrimination in Employment Act unless the waiver satisfies specified statutory safeguards. Among other things, an enforceable ADEA waiver must specifically refer to rights or claims arising under the ADEA, provide the required consideration period, and afford the employee the mandatory seven-day revocation period.

The agreement executed by Deputy Chief Faison contains none of those protections. It does not specifically identify the ADEA. It does not provide the statutory consideration period applicable to an individual waiver. It does not provide a seven-day revocation period. Nevertheless, the Department drafted the agreement to obtain a sweeping release of employment-related claims while simultaneously requiring Deputy Chief Faison to surrender sixty vacation days, submit to dismissal probation, leave City service on a predetermined timetable, and purportedly relinquish his ability to withdraw the retirement application that would accomplish that separation. The executed version continues to contain the same expansive release and waiver language.

In *Oubre v. Entergy Operations, Inc.*, 522 U.S. 422, 426–28 (1998), the Supreme Court held that the OWBPA's requirements are mandatory statutory conditions governing waiver of ADEA rights. The Court rejected the notion that ordinary contract principles could be used to circumvent Congress's express requirements. Deputy Chief Faison's position is that the release, disciplinary concessions, economic forfeitures, and compelled-retirement provisions constituted an integrated bargain. The Department cannot obtain the benefits of that bargain through a release that fails to satisfy mandatory federal law and then selectively enforce the compulsory-retirement restriction as though the federal defect were irrelevant to the validity of the agreement as a whole.

4. The executed agreement confirms Police Commissioner approval of the disciplinary penalty

The agreement provides that, "[i]f this Negotiated Settlement is approved by the Police Commissioner, the penalty against me will be as follows." The provisions immediately following that language include forfeiture of sixty vacation days; Deputy Chief Faison's agreement "to not withdraw or rescind" his application for service retirement, which carries an effective date of November 26, 2026; the disposition of terminal and accrued leave balances; and dismissal from the New York City Police Department with judgment suspended during a period of dismissal probation.

The agreement further states that the Negotiated Settlement "is in lieu of other lawful sanctions that the Police Commissioner may have imposed after trial and upon a finding of guilt for the charged misconduct." The executed document then reflects Police Commissioner approval immediately beneath the statement, "I hereby approve the penalty recommended herein."

Thus, the Department's own executed agreement places the restriction against withdrawing or rescinding Deputy Chief Faison's service-retirement application within the disciplinary penalty approved by the Police Commissioner. The existence of that approval does not resolve the separate question presented here: what statutory authority authorized that retirement restriction as part of the disciplinary penalty imposed in Disciplinary Case No. C-035016?

5. The Police Pension Fund has separate statutory obligations that cannot be delegated to Personnel Orders

The Police Pension Fund's refusal to recognize Deputy Chief Faison's withdrawal unless Personnel Orders first approves it presents an independent legal problem. New York City Administrative Code § 13-216 establishes the Police Pension Fund as a statutorily administered retirement system whose Board of Trustees is responsible, subject to law, for establishing rules and regulations governing administration and transaction of the Fund's business. More significantly, the New York City Administrative Code expressly provides that "[t]he pension fund shall be considered an entity separate from the city of New York police department," while requiring the Board of Trustees to work closely with NYPD. New York City Administrative Code § 13-216(e)(5)(i). The Legislature therefore expressly distinguished cooperation between the two entities from legal subordination of the Pension Fund to the Police Department.

That statutory distinction directly bears upon what occurred here. The Police Pension Fund cannot simply defer its own statutory responsibility for administering a pending pension application to Personnel Orders without identifying some law that makes Personnel Orders' approval a prerequisite to withdrawal. Nothing in § 13-216 makes Personnel Orders the decisionmaker concerning whether a member may withdraw a pending service-retirement application. To the contrary, the statute places administration of the Police Pension Fund in its Board of Trustees and expressly declares the Fund to be an entity separate from NYPD. The fact that the Police Commissioner serves as Chairperson of the Board does not eliminate the statutory separation between the Pension Fund and the Police Department or transform Personnel Orders into the Pension Fund's governing authority.

The Court of Appeals has likewise emphasized the distinct statutory obligations governing administration of the Police Pension Fund. In *Caruso v. New York City Police Department Pension Funds, Articles 1 & 2*, 72 N.Y.2d 568, 575, 535 N.Y.S.2d 349 (1988), the Court explained that members of the Board of Trustees act in a fiduciary capacity and that the authority of the Board and its individual members is determined by the statutory structure establishing the Fund. The Court characterized the statutory provisions creating the Fund as the "terms of the trust" that both confer and limit the Board's powers and emphasized that § 13-216 requires the Fund to be administered by its Board of Trustees "subject to the provisions of law."

The Police Pension Fund's own published retirement procedures are equally direct. Its current Annual Comprehensive Financial Report states under "Application Withdrawal" that "[a] member being processed for Vested or Service Retirement may withdraw the retirement application while it is still pending by appearing at PPF in person at least one business day prior to the scheduled retirement date." The published procedure does not state that withdrawal is conditioned upon authorization from Personnel Orders, approval by NYPD, or consent of the Police Commissioner.

Deputy Chief Faison sought to exercise that withdrawal right on September 25, 2026, more than two months before his November 26, 2026 retirement date. Nevertheless, the Police Pension Fund refused to stop the retirement process and conditioned further action upon approval from Personnel Orders. If the Pension Fund contends that Personnel Orders possesses statutory or regulatory authority to veto, approve, or otherwise control withdrawal of a pending service-retirement application, then the Pension Fund must identify that authority. An internal coordination practice between NYPD and the Police Pension Fund cannot substitute for the statutory authority required to condition the exercise of a pension right upon the approval of an entirely separate administrative component.

The Pension Fund's position is particularly consequential because it effectively gives Personnel Orders control over both sides of the transaction. Personnel Orders has taken the position that the disciplinary agreement prohibits Deputy Chief Faison from withdrawing his retirement application, while the Pension Fund has now taken the position that it will not process the withdrawal unless Personnel Orders approves it. That circular administrative arrangement cannot itself establish legal authority. The relevant question remains whether the governing pension statutes, Pension Fund rules, or some other provision of law actually authorize Personnel Orders to prevent the Pension Fund from processing an otherwise timely withdrawal.

6. The Department and Police Pension Fund must identify the legal authority for their refusals

The present controversy therefore cannot be reduced to an assertion that Deputy Chief Faison "agreed not to withdraw" his retirement. The legal questions are substantially more serious. His retirement has not become effective. The governing retirement framework recognizes a distinction between a pending application and an effective retirement. The Police Pension Fund permits withdrawal while the application remains pending. New York pension law recognizes that public retirement rights are governed by statute and that contractual provisions cannot simply be assumed to rewrite that statutory framework. Section 14-115 does not identify compulsory retirement or irrevocability of a retirement application as a disciplinary sanction. The purported agreement itself contains substantial federal-law defects. And the executed version confirms that the restriction against withdrawing or rescinding the pending service-retirement application was included among the provisions of the disciplinary penalty approved by the Police Commissioner.

The Police Pension Fund, which is receiving a copy of this letter, is likewise placed on formal notice that Deputy Chief Faison disputes its refusal to process his withdrawal pending approval from Personnel Orders. The Pension Fund must identify the precise statute, rule, regulation, Board resolution, or other legal authority that permits it to condition withdrawal of a pending service-retirement application upon authorization from Personnel Orders notwithstanding its own published withdrawal procedure and its independent statutory obligations under Administrative Code § 13-216. If no such authority exists, the Pension Fund must immediately recognize and process Deputy Chief Faison's September 25, 2026 withdrawal.

Deputy Chief Faison also demands preservation of every communication between NYPD, Personnel Orders, the Police Pension Fund, its Executive Director, its Board of Trustees, and any other City official concerning his retirement, his September 25, 2026 withdrawal, the determination not to process that withdrawal, and any requirement that Personnel Orders approve or authorize the Pension Fund's recognition of the withdrawal. This demand includes all emails, memoranda, notes, electronic communications, internal Pension Fund records, retirement-processing records, instructions, directives, and communications identifying every person who participated in, approved, communicated, or implemented either agency's refusal.

If the Department maintains its present position, it must identify in writing the precise statute, rule, regulation, Pension Fund provision, or other legal authority upon which it contends Deputy Chief Faison's application became irrevocable before November 26, 2026. It must likewise identify the statutory authority under § 14-115, or any other provision of law, that authorizes the Police Commissioner to compel retirement or extinguish a member's ability to withdraw a still-pending retirement application as a disciplinary consequence, including the authority permitting the Commissioner to approve the restriction against withdrawing or rescinding Deputy Chief Faison's service-retirement application as part of the disciplinary penalty imposed in Disciplinary Case No. C-035016. Deputy Chief Faison also demands preservation of every communication between NYPD and the Police Pension Fund concerning his retirement, every document concerning yesterday's refusal, and the identity of every official who participated in or approved that determination.

7. Deadline for corrective action

Please provide written confirmation no later than 5:00 p.m. on Monday, September 28, 2026, that the Department has ceased processing Deputy Chief Faison's November 26, 2026 retirement, that the New York City Police Pension Fund has accepted and processed his withdrawal of the pending service-retirement application, and that neither entity will take further action to effectuate that retirement. If either the Department or the Police Pension Fund maintains a contrary position, it must identify by the same deadline the legal authority and information requested above supporting that position.

Absent such confirmation, Deputy Chief Faison will seek immediate judicial relief, including, as appropriate, declaratory and injunctive relief and relief pursuant to CPLR article 78, challenging the actions of the Department and the Police Pension Fund as contrary to law and in excess of statutory authority, and challenging the Department's reliance upon a purported agreement that Deputy Chief Faison contends is void and unenforceable.

Nothing in this letter waives any statutory, contractual, constitutional, pension, civil-rights, or other claim, defense, argument, or remedy available to Deputy Chief Faison. All rights and remedies are expressly reserved.

Respectfully submitted,

By: s/Eric Sanders
Attorney for Deputy Chief Winston M. Faison

THE SANDERS FIRM, P.C.
30 Wall Street, 8th Floor
New York, NY 10005
(212) 652-2782 (Business Telephone)
(212) 652-2783 (Facsimile)

Website: http://www.thesandersfirmpc.com

cc: Kevin Holloran, Executive Director
New York City Police Pension Fund
233 Broadway, 25th Floor
New York, New York 10279

Board of Trustees
New York City Police Pension Fund
233 Broadway, 25th Floor
New York, New York 10279