

# **EXHIBIT**

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June 6, 2013

**BY CERTIFIED MAIL**

Steven Mitchell, Chairman  
Board of Selectmen  
Town of Ashland  
101 Main Street  
Ashland, MA 01721

Anthony Schiavi  
Ashland Town Manager  
101 Main Street  
Ashland, MA 01721

Stephen Doherty, Police Chief  
Ashland Police Department  
137 Main Street  
Ashland, MA 01721

Ashland Police Association  
137 Main Street  
Ashland, MA 01721

**Ashland Police Officers:**

Sgt. Gregory Fawkes  
Michael Dionne  
Sgt. John Driscoll  
Christopher Alberini  
Louanne Tomaso  
Jonathan Tessier

Allena Downey  
Lt. Richard Briggs  
Former Sgt. Robert McQaurrie  
David Muri  
Former Sgt. Greg Wildman

RE: Notice of intent to file suit for violations of civil rights, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation of character, harassment, libel, slander, allowing a pervasively hostile workplace and all other actions to be determined at a later time.



To whom it may concern:

Please be advised this firm has been retained by Edward Pomponio ("Mr. Pomponio") and Paula Pomponio ("Mrs. Pomponio") to represent their legal interests and I am writing to give notice of intent to file a civil action against all of the departments and individuals listed above, the town departments members involved, and all supervisors for violations of Mr. Pomponio's and Mrs. Pomponio's civil rights, along with intentional infliction of emotional distress, negligent infliction of emotional distress, defamation of character, harassment, libel, slander, loss of consortium and other applicable causes of action. The time period in which these violations occurred all range from 2008 to the present, and are still ongoing.

### **BACKGROUND INFORMATION**

As you are aware, in June 2012, Jody Newman, Esq. of the law firm Collora, LLP investigated the allegations of sexual harassment by certain officers within the Ashland Police Department. These allegations were formally brought forward by Mr. Pomponio and presented to Chief Scott Rohmer after obtaining statements from the complaining female officer<sup>1</sup> after he saw her in the dayroom, crying, shaking and apparently sick, holding her head and stomach. It was reported by this female to Mr. Pomponio that Officer Dionne was blackmailing her, holding things against her and making her do bad things. This female stated that she was in fear of her safety if she reported the harassment to her supervisors and that these actions by the male officers had been occurring over a period of time. She felt threatened and feared for her safety because Officer Dionne told her that 5 families would be hurt if she said anything, and then referencing that the male officers had much more on her. This female officer also stated in the past that she was struck in the face with hotdogs by Sgt. MacQuarrie while referencing the hotdog as a penis as the officers attended a New England Narcotic Enforcement Officers Association Banquet in Barnstable. In addition, Sgt. MacQuarrie sent photographs of a penis and she was told by Sgt. MacQuarrie that the photograph was his own penis, and she also reported that one day while in the day room having lunch Sgt. Fawkes began a discussion of who had larger penises between the Italians and Irish. She stated that Fawkes then grabbed her hand and pulled her hand towards his penis. Mr. Pomponio reported these heinous acts by these officers in the Ashland Police Department as required by the department rules and regulations. Chief Scott Rohmer in turn reported it to his superior, the Ashland Town Manager at the time, as required by the mandated chain of command. At no time did Mr. Pomponio induce this female officer to come forward. Her statements, though intended to be in confidence, were clear indicators of sexual harassment and improper conduct by his subordinates mandating Mr. Pomponio to take appropriate action not only as her immediate supervisor but as a supervisor within the Ashland Police Department. This female officer did not want to have this brought forward because of her affair with Westborough resident Steven Finn, and ostensibly feared that bringing this forward would impact her marriage. This was obviously troubling to this female officer but the actions of Mr. Pomponio were appropriate as he was acting not only in her best interests, but also the town's best interests.

Attorney Newman found through the interviews of those involved that the incidents the female officer privately told Mr. Pomponio about were downplayed as joking around which did

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<sup>1</sup> named purposely left off to protect her identity



not offend her. The female officer was visibly upset by her treatment by the officers within the department stating to Ms. Newman that the reason she was upset was because "my peers were ganging up on me." She further stated, "Kavanaugh (who initially reported her leaving town with the cruiser) and his little group wanted to reprimand me." She identified the "group" as Officers Muri, Dionne, Alberini and Sgts. Fawkes and Wildman. This clearly supports our position that a hostile work atmosphere was in existence within the Ashland Police Department and nothing was being done to control this.

The female officer denies that any actual touching with Sgt. Fawkes occurred when Sgt. Fawkes grabbed her hand during a discussion during lunch in the day room as to "who had bigger penises, Italians or Irish". She states that she pulled her hand away prior to her hand actually touching Sgt. Fawkes's penis. The mere fact that he actually spoke of penises, grabbed her hand while doing so, and attempted to move her hand towards his penis area *while in uniform and on duty* is highly troublesome. Consequently, Mr. Pomponio took the appropriate action by informing his superiors after learning of potential blackmailing by Mr. Dionne. Not only is this conduct spelled out in the rules and regulations as constituting conduct unbecoming of any Ashland Police officer, regardless of on or off duty at the time of its occurrence, but that the conduct is criminal in nature and was ultimately ignored by the Town Managers and Board of Selectmen. Based upon statements made by the female officer it was reasonable for Mr. Pomponio to believe that Officer Dionne attempted to blackmail the female officer in an effort to control her disclosure of the harassment by telling the female officer that he had negative information about her and by referencing the thickness of the file he had on her.<sup>2</sup>

Attorney Newman found that no sexual harassment took place since the female officer was not offended by the acts of Ashland Police Sgt. Fawkes and Sgt. MacQuarrie. However, these findings are hard to believe that these acts were perceived in jest since the female officer admitted in her interview with Ms. Newman that she pulled away before her hand could reach Sgt. Fawkes's penis area. The fact that she pulled away is an indicator that she did not want to participate in the touching and that she pulled away was indicative that she was not consenting to the touching and is therefore an indecent assault and battery. The fact that this topic is being discussed during official Ashland Police business time by officers in uniform raised concerns that Mr. Pomponio brought to his supervisors attention who in turn brought it to the attention of the Town Managers and the board of selectmen who chose that no action should be taken.

In addition to the reporting of the grabbing of the hand incident, this female officer also described an incident at the New England Narcotics Enforcement Officers Association banquet in Barnstable where Sgt. MacQuarrie repeatedly struck her in the face with a hot dog while making reference to the "hot dog resembling a penis." Attorney Newman describes the incidents with Sgt. MacQuarrie as "isolated and benign" even though she felt degraded and humiliated. In this context, the incidents would in fact rise to the level of a violation of policy and/or law as they were unwelcome and/or severe or pervasive." This was an official event for Ashland officers to receive training. Sgt. MacQuarrie and the female officer were both attending this event in their capacity representing the Ashland Police Department. If the events occurred as Mr. Pomponio reported them, then the acts were clearly sexual harassment in nature. If they occurred as investigated by Attorney Newman, then both officers including the female officer are guilty of conduct unbecoming and deserving of reprimand. Mr. Pomponio did what he was

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<sup>2</sup> Information included but was not limited to information that centered on her affair with Steven Finn.



mandated to do, report all misconduct. The conduct of these officers is without a doubt sexual harassment even though the female officer states that she perceived it to be done in jest. Even if the female officer desired that it not be reported, Mr. Pomponio was not in a position that he could ignore such behavior of any officer. In fact, this conduct violated the Town's sexual harassment policy along with Rule 11.11 of the Ashland Police Departments policy on Immorality stating "Officers shall not engage in grossly immoral conduct or public lewdness."

The Town Of Ashland Policies on Sexual Harassment dated October 4, 2006 state, "It is important to note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment." Conduct outlined in this policy references verbal abuse of a sexual nature; use of sexually degrading words; jokes or language of a sexual nature<sup>3</sup>; conversation or gossip with sexual overtones<sup>4</sup>; obscene or suggestive gestures or sounds; sexually-oriented teasing<sup>5</sup>; verbal comments of a sexual nature about an individual's appearance or sexual terms used to describe an individual; inquiries into one's sexual experiences; discussion of one's sexual activities<sup>6</sup>; comments, jokes or threats directed at a person because of his/her sexual preference; unwelcome and repeated invitations (for lunch, dinner, drinks, dates, sexual relations); demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment; physical contact such as touching, hugging, kissing, stroking, fondling, patting, pinching or repeated brushing up against one's body<sup>7</sup>; deliberate bumping, cornering, mauling, grabbing; assaults, molestations or coerced sexual acts; posting or distributing sexually suggestive objects, pictures, cartoons or other materials; sexually-oriented letters or notes; sending offensive or discriminatory messages or materials through the use of electronic communications (e.g. electronic mail, including the Internet, voice mail and facsimile) which contain overt sexual language<sup>8</sup>, sexual implications or innuendo, or comments that offensively address someone's sexual orientation; staring at parts of a person's body; sexually suggestive gestures, leering, stalking; and condoning sexual harassment.

The officer's conduct was undoubtedly conduct unbecoming of any police officer that the Board of Selectmen and the Town Managers refused to act upon. As a result of the town's refusal to act, Mr. Pomponio has been the victim of continuous harassment and hostile work place from the officers within the police department. This continuous and relentless harassment has resulted in health issues upon Sgt. Pomponio that will be proven at trial.

Mr. Pomponio has been forced to endure numerous events of harassment, out casting, hostile work atmosphere as a result of not only reporting sexual harassment but also events that hinged on criminal activity, violations of civil rights and conduct that was undoubtedly unbecoming of any Ashland Police Officer. Sgt. Pomponio, as required by the rules and

<sup>3</sup> Though the female stated that the actions were in jest, the officers' actions were clearly in violation of the policy.

<sup>4</sup> The gossip included this female going to the Kentucky Derby with someone other than her husband and name calling of "the mistress" by Sgt. Wildman.

<sup>5</sup> The use of the hotdog striking in her face as if a penis.

<sup>6</sup> Mr. Pomponio was told by this female that her trip to the Kentucky Derby with her boyfriend and not her husband was used to blackmail her by Officer Dionne.

<sup>7</sup> Sgt. Fawkes's grabbing of the females hand and moving toward his penis.

<sup>8</sup> Texting of photographs of a penis by Sgt. MacQaurrie.



regulations of the Ashland Police, reported the events through the chain of command landing ultimately on the desk of the Town Manager and the Board of Selectmen. In fact, Rule 13.5 of the Ashland Police Rules and Regulations states: Officers shall, upon observing or otherwise becoming aware of a violation by another officer or employee of the department's Rules and Regulations or Policies and Procedures, as set forth in this Manual or by other departmental directives or as governed by law, report said violations to their superior officer who will be responsible for appropriate action, report submission and follow-up. The Town Managers (Petrin, Purple, Purcell, and now Mr. Schiavi) failed to take the appropriate action and as a result Mr. Pomponio has endured years of intentional and negligent infliction of emotional distress causing documented health issues.

Mr. Pomponio reported that Sgt. Wildman in 2012 was using GPS tracking devices on an individual's vehicle and tracking their locations without obtaining a lawful search warrant and that person's knowledge. This activity was clearly in violation of this person's civil rights even though a Middlesex District Attorney deemed Wildman's activities as an unsanctioned training exercise. At no time did Chief Rohmer sanction this training exercise, nor did Mr. Pomponio have any knowledge of this civil rights violation prior to it taking place. Massachusetts's highest reigning court has ruled on the legality of the use of GPS tracking devices. GPS devices without a valid search warrant, constitutes an illegal search and seizure under the Fourth Amendment of the US Constitution and Article 14 of the Massachusetts Declaration of Rights. Police officers are required to obtain a court ordered warrant and follow proper protocol before using the tracking system. In this case, Mr. Pomponio recognizing that an individual's constitutional rights were being violated took the appropriate actions of informing his superiors who in turn reported the violations to the Town Manager and the Board of Selectmen who again failed to take any action. Mr. Pomponio was further subjected to ridicule, harassment, and hostile work atmosphere as a result of the Town Manager's failure and outright refusal to act appropriately.

On 1/17/11, Mr. Pomponio brought it to the attention of the Chief Rohmer that he was being harassed by Lt. Briggs and Sgt. Fawkes as the two officers were trying to elicit officers to write statements about Sgt. Pomponio. Mr. Pomponio reported that the aggressive, unreasonable behavior of falsely accusing Mr. Pomponio of wrong doing and that the actions of his direct supervisor was creating undue stress upon him. Again, Chief Rohmer took the appropriate steps of reporting to his superiors, the Town Manager and the Board of Selectmen, who again refused to act on this harassment complaint. This was not the only case of these officers taking direct steps to alienate Mr. Pomponio from the other officers. On October 19, 2011, Mr. Pomponio was appointed to sergeant. Officer Alberini actively pursued other officers to boycott Mr. Pomponio's swearing in ceremony. In fact, Mr. Alberini's grandfather was a Board of Selectmen at the time and told Chief Rohmer that things would go his way if he simply got rid of Mr. Pomponio. This unethical attempt to coerce Chief Rohmer to terminating Mr. Pomponio further perpetuated the hostile work atmosphere. In fact, Officers through postings on blogs on the Metrowest Daily News knew of Sgt. Fawkes reinstatement prior to the announcing and also posted facts of a criminal investigation on Mr. Pomponio though it was in direct violation of orders of Chief Stephen Doherty. Neither Chief Doherty, Town Manager Schiavi or the Board of Selectmen have initiated any form of investigation into this dissemination of department information in violation of the orders, information that was defamatory in nature continuing the harassment on Mr. Pomponio and Mrs. Pomponio.



Not only was Mr. Pomponio forced to endure years of harassment for work-related issues, he also reported humiliating comments by Sgt. MacQuarrie and Fawkes regarding Sgt. Pomponio's religious affiliations causing great discomfort. Mr. Pomponio reported to the Town Managers and Board of Selectmen that in January 2011, the officers had been making negative and humiliating comments regarding Mr. Pomponio's religious beliefs. He reported that these humiliating comments were upsetting to him. Chief Rohmer reported to the Board of Selectmen and the Town Managers that Mr. Pomponio's protected civil rights concern his religious affiliation were being offended by Sgt. MacQuarrie and Fawkes yet no investigation was ever conducted. This activity has created undue stress upon Sgt. Pomponio.

During Sgt. Zanella's retirement party, Sgt. Fawkes served as the master of ceremonies. In public, and in front of women, children and town officials, Sgt. Fawkes used obscene language such as the F--k and C--t words, and told inappropriate stories about Sgt. Zanella that were unsuitable for the public, particularly children and family members of Sgt. Zanella. This conduct was most undoubtedly conduct unbecoming of any police officer. See Rule 4.02<sup>9</sup> covering both on and off duty conduct. Mr. Pomponio reported this conduct through the chain of command which was directed to the town manager and the Board of Selectmen. No action was taken by the town manager against Sgt. Fawkes and Mr. Pomponio was further subjected to harassment, humiliation, and alienation from the officers.

In March of 2012, Mr. Pomponio reported through the chain of command of being physically assaulted by Sgt. Fawkes at a union meeting. At this meeting the complaint against Sgt. Fawkes was passed around to the officers at this meeting. As Mr. Pomponio was leaving the meeting and reading the complaint, Sgt. Fawkes physically grabbed the papers from his hand. This was an assault and battery as defined under G.L. c. 265 section 13, that Mr. Pomponio again reported to the chain of command which was again reported to the Town Manager and the Board of Selectmen who again refused to take action. Mr. Pomponio was subject to continuous harassment, humiliation and alienation as a result of reporting this behavior by Sgt. Fawkes.

On August 6, 2012, Sgt. Wildman reported to the town that there must be some updating of the evidence policy and also clarification on the drug destruction policy. This is a clear indicator that the handling and destruction of drug seizures was unclear. Sgt. Pomponio, as evidence officer, drafted an evidence practice and presented it to the officers for future handling of evidence. Mr. Pomponio is now the target of a criminal investigation for the destruction of several small bags of marijuana. The manner in which he destroyed these small pieces of marijuana was the past practice of the department and was the manner in which Mr. Pomponio was trained. The one piece of evidence that he has been accused by Officer Driscoll of destroying were pieces that were accidentally destroyed and self-reported by Mr. Pomponio to the district attorney's office. The other items destroyed had no evidentiary value as no case was existent for the small pieces of marijuana. All items destroyed were properly recorded by Mr. Pomponio into the IMC computer data base in good faith and the items were destroyed in good

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<sup>9</sup> Rule 4.02: Officers shall not commit any specific act or acts of improper, unlawful, disorderly or intemperate conduct, whether on or off duty, which reflect(s) discredit or reflect(s) unfavorably upon the officer, upon other officers or upon the police department. Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department and its members.



faith. No cases were assigned to these items that were destroyed and it is clearly apparent that these items were not destroyed maliciously. None of these pieces had any evidentiary value as no case existed. Sgt. Driscoll knew of this evidence destruction many months ago and did not take action when he actually knew that the pieces were destroyed. No action was taken and no criminal investigation took place until pressed upon by Sgt. Driscoll approximately 2 years later.

In October 2009, Mr. Pomponio and Officer Charles Garbarino (now retired) reported to Chief Rohmer that Sgt. Fawkes was observed and pictures were circulating showing him smoking a cigar while attending the New England Narcotics Enforcement Officers Association banquet in Barnstable. Mass. General Laws does not permit discretion of the appointing authority in the handling of this type of violation. Under Mass. General Laws c. 41, section 101A states that any officer appointed after January 1, 1988 shall not smoke or use tobacco products of any kind whether on or off duty.<sup>10</sup> Whoever violates said statute is subject to dismissal. This photograph was obtained by now Framingham Detective Matt Gutwill formerly an Ashland Police Officer. Witnesses that were present have also come forward stating that Sgt. Fawkes was smoking on that date. Sgt. Fawkes in turn threatened Matt Gutwill and both the smoking and threatening activity of Sgt. Fawkes was reported through the chain of command ultimately landing on the Town Manager's desk and the Board of Selectmen. Contained within that complaint was an opinion drafted by Attorney Patrick Rogers stating that smoking mandates termination. Again, no action was taken by the Town Managers and the Board of Selectmen that were all aware of this complaint and again Mr. Pomponio was subjected to harassment, ridicule and hostile work atmosphere for this reporting.

In December of 2012, Mr. Pomponio reported to the Chief Rohmer that Sgt. John Driscoll was removing department documents from the station and disseminating without obtaining authorization. This was in direct violation of Department rules 7.5, 7.11, and 11.4. Again, this activity by Sgt. Driscoll went uninvestigated by the Town Managers and the Board of Selectmen and again Mr. Pomponio was forced to endure a hostile work atmosphere by many of the police officers.

Mr. Pomponio is currently a provisional sergeant though he has topped the last two sergeant's exams. In fact, he was the only officer to pass the sergeants exams yet the town fails to or refuses to promote him while other provisional sergeants are appointed. Though the town manager has the authority to pass on a short list, this town has set a past precedence in appointing from the short lists. Why has the town bypassed the permanent appointing of Mr. Pomponio though 5 sergeant's positions were available? This is a police officer that has received stellar evaluations in the past years; in fact, the most recent evaluation was conducted by Lt. Richard Briggs. Sgt. Fawkes was Sgt. Pomponio's background investigator, and who recommended him for the job up to the final hour.

Mr. Pomponio was not permitted to read the complaint that was filed by eleven officers until it appeared in the Metrowest Daily News. Named as having committed potential criminal

<sup>10</sup> Gen. Laws. C. 41Section 101A: Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator shall promulgate regulations for the implementation of this section.



and ethical violations were Mr. Pomponio and Mrs. Pomponio. This complaint was subsequently investigated by an independent investigator and Attorney Doocey who subsequently determined that of the 144 allegations made against Chief Rohmer, Stephanie Rohmer, Mr. Pomponio, Mrs. Pomponio and Lt. David Beaudoin, that 138 were complete fabrication. It was clear by Attorney Doocey and confirmed by Sgt. Fawkes, who had full editorial powers, and Officer Dionne that the intentions of writing the letter of accusations that were deemed false was to embarrass the named persons in an effort to embarrass them and force them to resign. Sgt. Fawkes, the creator of the complaint, admitted to Attorney Doocey, that he solicited information from the officers in the department to be used against not only Scott Rohmer but Lt. Beaudoin, Mr. Pomponio, Mrs. Pomponio and Stephanie Rohmer. It was admitted by Sgt. Fawkes that the intention was to present the information to embarrass and force those named to resign their positions, and to obtain whistleblower protections. It was subsequently learned that Town Manager John Petrin directed these officers to draft the allegations in an effort to obtain whistleblower protection.

Sgt. Fawkes, in the position of Ashland Police Association president, exercised sole editorial discretion of the facts. He simply drafted the complaint without taking any due diligence to determine the legitimacy of the information provided to him. Most of the facts outlined in the complaint were facts fabricated by Fawkes even though every police officers had a duty to be truthful. Many of the officers interviewed denied being the source of the information though these 11 officers knowingly and willingly signed that complaint as being truthful and accurate. It was determined that Fawkes invented situations in the complaint that had no basis of fact. This was elicited by Attorney Doocey while speaking with Sgt. Fawkes and Officer Michael Dionne. Mr. Pomponio demanded an investigation and action by the town as a result of these malicious lies yet no action was taken by the town in particular the board of selectmen and the town managers while Mr. Pomponio has been forced to endure ridicule, harassment not only from the 11 officers that signed those lies, but he has been forced to endure outright harassment from the Metrowest Daily News from information obviously received from inside sources within the police department. In fact, it is known that Town Manager Purcell sent Mr. Fawkes a letter informing him that based upon the Doocey report that he was going to be subject to termination for untruthfulness and lying should the arbitrator order Mr. Fawkes back to work. Mr. Schiavi rescinded that letter, reinstated Mr. Fawkes without waiting for arbitrators decision, and has ordered Mr. Fawkes back pay be paid to him.

**Rule 13.0** of the Ashland Police Department rules and regulations states, "Officers are required to promptly and accurately complete all required reports and forms. Failure to complete a required report or falsification of a police report or record, by submitting false written or oral information, may result in disciplinary action against the officer. Police reports and records include such things as affidavits, incident reports, time sheets, condition of the officer's health, doctor's slips, IAD investigation reports, and citations based on lawful authority.

Report filing requirements are an essential duty of a police officer. Additionally, credibility is an essential characteristic of every officer, due to the nature of police work where public interaction and testimony at judicial proceedings are required.

#### **RULE 13.1 - FILING REPORTS**

Officers shall promptly, truthfully and accurately complete all reports and forms as required by this Manual, by law, and by department regulations or policies and procedures.



### **RULE 13.2 - FALSIFYING RECORDS**

Officers shall not knowingly enter or cause to be entered upon a police report or police record any inaccurate, false or improper information.

The investigation by Attorney Doocey is clear and convincing that not only did Sgt. Fawkes knowingly file a false report, the 11 officers who signed this complaint knowingly violated the department's policies without fear of disciplinary action because Town Manager John Petrin assured no action would be taken against them. In fact, these officers were promised Whistleblower Protection by the Mr. Petrin even though the complaint was filled with lies and embellishment. In addition these 11 officers have purposely and maliciously fabricated facts and unsubstantiated claims against Mrs. Pomponio creating undue stress upon Mr. Pomponio and Mrs. Pomponio. This has impacted their love and affection towards each other and it is our intention to also file a loss of consortium claim and a defamation of character claim on behalf of Mrs. Pomponio.

Mr. Pomponio also became aware that \$40.00 was not reported into evidence after it had been turned into the evidence room. Ms. Dollaway entered the station to retrieve the money but no record could be located further demonstrating that there problems with the evidence retention policies. This money was ultimately located by Sgt. Fawkes in an unknown location. A clear indicator that there was a troubling issue with the entry of evidence into the evidence logs. Mr. Pomponio again took the appropriate steps of reporting this wrong and again he was subjected to harassment, ridicule, alienation and hostile work atmosphere.

As a supervisor, Mr. Pomponio was responsible for reporting conduct that would be perceived as unbecoming of any Ashland Police officer regardless of whether the conduct occurred on or off duty. One particular incident involved Officer Alberini dressing up in an Ashland High School cheerleader's outfit that was laughed off as a Halloween stunt. However, the Ashland High School cheerleading uniform was actually property that was kept at the station for safe keeping and was to be returned to the former cheerleading coach. In review of the photographs that were passed around to many outside the police department, the photographs were taken at the Ashland Police Station at the door between the day room and the men's locker room in the background. The mere fact that a photograph of an Ashland police officer taken in the Ashland police station while in women's clothing is indicative of conduct unbecoming of any police officer and said activity was perceived by the Board of Selectmen and the Town Managers as being acceptable. This has resulted in a continuing hostile work atmosphere of Mr. Pomponio whose only interest was in the best interests of the town and the police department.

In March 2012, Sgt. Fawkes falsely accused Mr. Pomponio of leaking information to the Metrowest Daily News of dispatcher Finnerty's arrest for OUI. Mr. Pomponio was the investigating officer of an accident involving Ashland Police Dispatcher Finnerty. In addition, Sgt. Fawkes accused Lt. Beaudoin of monitoring department computers as this being an unethical and corrupt behavior. Mr. Pomponio was the investigating officer of the accident and had no involvement of contacting the Metrowest Daily News. Lt. Beaudoin confirmed through the reporter refuting Sgt. Fawkes claim. This false accusation by Sgt. Fawkes created undue stress upon Sgt. Pomponio, and Sgt. Fawkes behavior of making false accusations has further created a hostile atmosphere that the town managers and the Board of Selectmen knew or should



have known would cause such a hostile work atmosphere and again they refused to act upon. The inactions of the town managers and Board of Selectmen of refusing to investigate the allegations brought forward by Mr. Pomponio and refusing to discipline over the years has further perpetuated the hostile work atmosphere making it impossible for Mr. Pomponio to work at the Ashland Police Department creating health issues that will be proven at trial.

To establish a claim under the Massachusetts Civil Rights Act (MCRA), a plaintiff must prove (1) his exercise or enjoyment of her rights secured by the Constitution or the laws of either the United States or the Commonwealth; (2) has been subjected to interference, or attempted interference; and (3) that the interference or attempted interference was by "threats, intimidation or coercion."<sup>11</sup> Mr. Pomponio was subjected to years of harassment, intimidation, threats by members of the Ashland Police Association, in particular Sgt. Fawkes, and the town's failure and outright refusal to investigate and take appropriate action clearly violated his civil rights.

In January 2013, Mr. Pomponio again brought to the attention of the town's administrators that he was being maliciously attacked by members of the police department that was affecting his ability to perform his duties. In particular, Mr. Pomponio, reported that Lt. Briggs had personal knowledge of the attacks on Mr. Pomponio but purposely turned his back and permitted this activity to openly occur, and Lt. Briggs also participate in. This behavior of failing to act when a hostile work atmosphere was present perpetuated the stress on Mr. Pomponio to the breaking point.

To prevail on a claim for defamation, the plaintiff must show that: (1) the defendant made a statement concerning the plaintiff to a third party, (2) the statement could damage the plaintiff's reputation in the community, (3) the defendant was at least negligent in making the statement, and (4) the statement caused the plaintiff economic harm or is actionable without proof of economic loss<sup>12</sup>. When the speech at issue is a matter of public concern, the plaintiff "must prove not only that the statements were defamatory but also that they were false."<sup>13</sup> I draw your attention to the Doocey report which contained 144 allegations against not only Mr. Pomponio but also Mrs. Pomponio, Scott Rohmer, Stephanie Rohmer, and David Beaudoin. 138 of these alleged complaints that was drafted by Sgt. Fawkes and supported by 10 other officers was deemed to be outright fabrications. The town and its managers had a duty to take appropriate actions knowing that a false allegation was made yet the town and the managers refused to take the appropriate actions.

To prevail on a claim for intentional infliction of emotional distress, the plaintiff must show "(1) that the defendants intended to inflict emotional distress, or knew or should have known that emotional distress v/as the likely result of [the] conduct, ... (2) that the defendant's conduct was extreme and outrageous, beyond all possible bounds of decency and utterly intolerable in a civilized community, (3) the actions of the defendant were the cause of the plaintiff's distress, and (4) the emotional distress suffered by the plaintiff was severe and of such a nature that no reasonable person could be expected to endure it."<sup>14</sup>

<sup>11</sup> *Bally v. Northeastern Univ.*, 403 Mass. 713, 717, 532 N.E.2d 49 (1989)

<sup>12</sup> *Ravnikar v. Bogojavlensky*, 438 Mass. 627, 629-630 (2003).

<sup>13</sup> *Dulgarian v. Stone*, 420 Mass. 843, 847 (1995), quoting *Friedman v. Boston Broadcasters, Inc.*, 402 Mass. 376, 381 (1988).

<sup>14</sup> *Tetrault v. Mahoney, Hawkes & Goldings*, 425 Mass. 456, 466 (1997)



The mere fact that these individuals knowingly and intentionally filed a complaint filled with 138 false allegations with the intent of embarrassing and compelling my client to resign from his position is reasonable to believe that no reasonable person could be expected to endure this type of wrongful action by a police officer and the supervisors that he works with, along with the fact that the outcome of the Doocey investigation was blatantly ignored after it was clear and without a doubt that the facts contained in that report were knowingly false and in direct violation of department policy 7.7 on truthfulness.<sup>15</sup>

Like all violent crime, workplace violence including intentional infliction of emotional distress creates ripples that go beyond what is done to a particular victim. It damages trust, community, and the sense of security every police officer has a right to feel while on the job. My client lost the trust for his supervisors, town managers and selectmen, when those supervisors refused to take appropriate action knowing that the allegations being made against Mr. Pomponio were false. Every employee has a stake in efforts to stopping workplace violence including harassment from happening yet each and every person named in this letter refused to act appropriately, including the town managers and board of selectmen.

Employers such as the Ashland Town Managers, Chief Doherty and the Board of Selectmen had a legal and ethical obligation to promote a work environment free from threats, harassment and violence. One necessary step the town's administrators such as Chief Doherty, Town Managers, and Board<sup>16</sup> of Selectmen failed to do was adopting and practicing fair and consistent disciplinary procedures. All of which is clear and convincing that the handling of discipline within the Ashland Police was non-existent or even consistent. The Town Managers and Board of Selectmen had a duty to provide regular training and adopting preventive measures when signs of harassment and intimidation were taking place. Mr. Pomponio made repeated efforts to bring conduct and criminal complaints forward and said information was forwarded up the chain of command to the Board of Selectmen and the Town Managers who purposely chose to take no appropriate action. This failure to act not only perpetuated the harassment for many years but caused the harassment by officers inside the department to escalate. Supporting, not punishing, victims of workplace violence or fostering a climate of trust and respect among the officers in the department did not exist. In fact, since harassment and alienation was allowed to take place without fear of discipline, Mr. Pomponio was forced to endure many years of abuse. Mr. Pomponio had the right to expect a work environment that was free from violence, threats, and harassment.

In forming an effective handling of a job filled with violence, threats, harassment and alienation there must be support from the top. The top consists of the Board of Selectmen and

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<sup>15</sup> Officers shall speak the truth at all times when on duty or when discussing a matter arising out of or related to the officers duties or the operation, organization or business of the department. In cases in which an officer is not allowed by the regulations of the department to divulge facts within his or her knowledge, the officer will decline to speak on the subject. Officers shall not fabricate, withhold, or destroy any evidence of any kind.

<sup>16</sup> Critical Incident Response Group, National Center for the Analysis of Violent Crime, FBI Academy, Quantico, Virginia. This is a group that Chief Stephen Doherty participated in.



the Town Managers. The Town had a duty upon hearing of the toxic environment of bullying, intimidation, threats, lack of trust, lying and the inconsistent discipline to take remedial action. Due to the failure of the town, selectmen and town managers, to act, my client has been forced to endure years of behavior that would never had been tolerated in any other police department. The town, Board of Selectmen, and Town Managers willfully turned their back to the police department misconduct along with the town's no threats and violence policy and all other policies associated with bullying, threats, harassment. There were no consistent handling of threats and threatening behavior.

Webster's Dictionary defines a threat as "a statement or expression of intention to hurt, destroy, punish, etc., as in retaliation or intimidation." It is very clear that the actions of the officers within the department have not only harassed, but also threatened Mr. Pomponio. With regard to workplace harassment, threats, or even violence, the Board of Selectmen, the Town Managers had a duty to make clear that zero tolerance in the original sense of the phrase applies—that is, no threatening or violent behavior is acceptable and no violent incident will be ignored. However, Mr. Pomponio reported incidents of violence, sexual harassment, sexual misconduct, violations of rules and regulations as required by the department policies. In doing so, he was subjected to many instances of abuse that the town had a duty to take action on all reports of violence, threats, and harassment, without exception.

"[A] complaint alleging that a police supervisor has notice of past culpable conduct of his subordinates and has failed to prevent a recurrence of such misconduct states a § 1983 claim." *Sims v. Adams*, 537 F.2d 829, 832 (5th Cir.1976). The town managers and selectmen are the supervisors of the police department. They knew or should have known of Sgt. Fawkes and other police officers of making false allegations against not only town residents but also other officers within the department and failed to take the appropriate actions. As a result, Mr. Pomponio's civil rights were violated. It would be expected that you will claim that this case falls within an exemption from such liability for "any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, whether or not the discretion involved is abused." G.L. c. 258, § 10(b) (1986 ed.). In the context of the well-established principle whether, construing the evidence and all reasonable inferences flowing therefrom in a light most favorable to the plaintiff, it is our position that a jury would be warranted in finding that the Board of Selectmen, the town managers, Sgt. Fawkes, Lt. Briggs, the 9 other officers formally signing the complaint and the other town's agents were negligent in their performance of nondiscretionary duties.

Mr. Pomponio was subjected to a one day suspension for not being candid with another officer within the police department. This one day suspension for failing to be forthcoming to Sgt. MacQaurrie who demanded to know what was stated during a private conversation with another officer. This conversation was not under oath, not a result of courtroom testimony, and not a formal investigation. This was simply a private conversation between two officers within the department. However, Mr. Pomponio admitted to this as he recognized that officers must be candid with each other. This one day suspension, issued by the Town Manager, is indicative of inconsistent discipline being issued by the Town Managers and Board of Selectmen. In fact, Mr. Petrin's intentions when disciplining Mr. Pomponio was to have him removed from the police



department for not being forthcoming with another officer. 11 officers presented a complaint of 144 allegations against Sgt. Pomponio, Mrs. Pomponio Scott Rohmer, Stephanie Rohmer and Lt. David Beaudoin. An outside investigator confirmed that those 138 allegations were fabrications by the 11 officers, 5 were deemed to be unsubstantiated statements, and 1 was shown to be valid against Scott Rohmer yet none of those 11 officers were disciplined for being untruthful when filing an official complaint to the police department. Mass. General Laws c. 269, Section 13A states that whoever intentionally and knowingly makes or causes to be made a false report of a crime to police officers shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment in a jail or house of correction for not more than one year, or both. Town managers and the board of selectmen refused to take action knowing that a criminal violation took place. This complaint submitted by the 11 officers whose malicious intentions were to embarrass Mr. Pomponio to the point of resignation have gone unpunished knowing that the false allegations were troubling to Mr. Pomponio causing undue stress and having impact on his personal relationships.

Sgt. Fawkes, Lt Briggs, Officer Dionne and others have purposely gone out of their way to harass, intimidate, and humiliate our client and to create a hostile work atmosphere since 2008. Mr. Pomponio was purposely harassed by officers around the station when the officers posted photographs and statements around the station that were designed to harass our client creating undue stress. Sgt. Driscoll, Sgt. Fawkes, Officer Tessier and others took it upon their own powers in violation of the department policies Rule 7.11<sup>17</sup> to report Mr. Pomponio to the Ethics commission, the Attorney General's Office and the Middlesex County District Attorney's Office without direct permission from Chief Rohmer. In addition, officers in direct violation of Department Regulations 7.5 regarding dissemination of information to outside source, have released information to the media such as Metrowest Daily News and WCVB Channel 5.<sup>18</sup> Mr. Pomponio and Mrs. Pomponio have been subject to public ridicule, harassment, and hostile situations as a result of this violation and the town's failure to investigate and take remedial action.

There have been many instances that criminal activity has been brought to the attention of the Board of Selectmen and the Town Managers that has been ignored. In 2008, Lt. Briggs was accused of breaking into his wife's business and damaging property as the two went through a divorce. The matter was reported to the Framingham Police and referred to the Ashland Police and Town of Selectmen. No criminal charges were filed and no disciplinary action was taken for this criminal conduct. Again, this town turned their backs on criminal activity within the Ashland Police Department.

At this time we have introduced only a small presentation of our case but more than sufficient to demonstrate the appalling workplace atmosphere endured by Mr. Pomponio over the years. Our case includes many more instances of gross misconduct, harassment, intentional

<sup>17</sup> Rule 7.11: Officers shall not confer with or forward communications to governmental officials on police matters without first notifying the Chief of Police, except as otherwise provided by statute.

<sup>18</sup> Rule 7.5 No information shall be released, given or issued to the news media or to any members of the press concerning department operations, or the evidentiary aspects of any criminal investigations, without the prior approval of the Chief of Police.



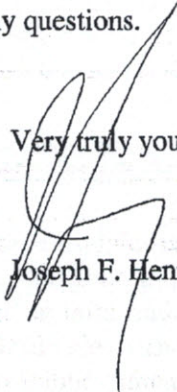
infliction of emotional distress, failure to act, and more and we will be prepared to introduce at trial.

At this time I am forwarding a copy of this letter to the Attorney General's Office requesting an investigation into this matter. The evidence is clear, that the Board of Selectmen, the named officers, named town managers did in fact commit the allegations named in this letter. If settlement negotiations are not underway you may expect these claims to be filed in the United States District Court of Massachusetts or an appropriate Superior Court depending upon the claims we elect to pursue in the lawsuit.

We have purposely left Selectmen Joseph Magnani off all intentions of filing suit since he has consciously recused himself of all involvement within the police department as his election to the board of selectmen would have been a direct conflict of interest.

Please feel free to contact me if you have any questions.

Very truly yours,

  
Joseph F. Hennessey, Esq.

JFH/ms

cc: Vikas S. Dhar, Esq.



# EXHIBIT

2







# **EXHIBIT**

**3**



Date: Fri, 01 Jan 2010 11:06:14 -0500

Subject: Letter

January 01, 2010

Sgt. Fawkes,

In direct prompt and accurate compliance with your lawful order to commit in writing a verbal request forwarded to you by this officer and directed to submission prior to the end of my next scheduled shift. I am seeking your assistance in rendering swift inquiry and if true corrective action in a matter of justifiable concern to me.

It was my reasonable intention to have this matter addressed in a verbal manner so as to adopt the alleged party responsible and if found to be factual to have the disrespectful, discourteous and untruthful remarks brought to my attention to simply stop. Per your order I am under requirement to submit them in writing and willfully act in full compliance.

Five separate officers approached me on distinct occasions and informed me that Officer Downey was forwarding inconsiderate and discourteous remarks directed towards me.

Officer Kavanagh stated that Officer Downey was speaking badly regarding my efforts in directing the Citizens' Police Academy. He informed me, to the best of my recollection, that she told him something along the line that she was going to withhold her participation in the Honor Guard hoping that we did not have enough officers to conduct the ceremony stating to him "wait until he ask me to be involved so I can say that I'm busy".

Officer Langmeyer informed me that Officer Downey was questioning him in allowing me to wear a department approved CPSS shirt. He stated that she called me Officer Pompous and other names. Stating "who did I think I was".

Officer Garbarino also informed me as I best recall that Officer Downey had approached him and called me several disrespectful names included but not limited to Officer Pompous also stating that Officer Downey said that I authored the job description of the recently posted Community Outreach Officer which is disparaging and an untruth.

Officer Testa also informed me that officer Downey had on several occasion said things that were disrespectful and directed towards me.

Officer Araujo also told me that Officer Downey was telling malicious insulting remarks regarding this officer.

I brought the matter to the attention of my supervising officer Sgt. MacQuarrie and then with his permission spoke to you regarding the matter. These personal acts if committed are unprofessional unwelcome and unwarranted. I simply desire that if the information is accurate the party responsible be addressed and they stop forthwith without further incident. The statements alleged if found to be true are unwelcome unprofessional and if they are being said I desire that they be addressed and correctly adjusted so that they stop. Thank you for your assistance in the matter.

Sincerely,

Officer Ed Pomponio  
c.c. Chief Rohner  
Sgt. MacQuarrie





# EXHIBIT

# 4





# Town of Ashland Police Department



**David Beaudoin**  
Lieutenant

**Scott C. Rohmer**  
Chief of Police

**Maureen Carmichael**  
Executive Secretary

**Richard Briggs**  
Lieutenant

Sgt. Steve Zanella ~ Sgt. Roy Testa ~ Sgt. Gregg Wildman ~ Sgt. Brendan Ellis ~ Sgt. Greg Fawkes

To: Lt. Richard Briggs  
From: Sgt. Greg Fawkes  
Re: Investigation  
Date: January 1, 2010

Sir:

I am writing to brief you on two related personnel complaints brought to my attention recently. The first complaint relates to Officer Allena Downey. I made Chief Rohmer aware of this complaint on December 26, 2009. I informed him that I would attempt to rectify the situation verbally on my own. On this date Officer Downey pulled me aside and told me that she needed to speak with me. Officer Downey immediately began crying when she spoke with me. She said that she was very upset and felt as though nobody likes her. She stated that she hates to come to work and feels as though she is being harassed by Officer Edward Pomponio. Specifically, Officer Downey informed me that approximately a day or two prior to our conversation the following incident took place.

Officer Downey stated that she and Officer Pomponio both operate cruiser number A16. Officer Downey said that when she got in to her vehicle at the start of her 7X3 shift after Officer Pomponio drove the vehicle on the 11X7 shift, she observed the following. The windshield wipers were on high despite the fact that there was no precipitation the night before. The air conditioner was on high, despite the fact that temperature was 23 degrees at the time. The radio was also on a very high setting. The following day Officer Downey again approached me very upset. She stated that when she entered cruiser A16 at the start of her 7X3 shift, after Officer Pomponio drove the vehicle on the 11X7 shift, she observed the following. Officer Downey located a large sewing pin on the driver's seat. Officer Downey said that she believed Officer Pomponio placed the pin on the seat intentionally, so that it would stick in her when she sat down.

Officer Downey also informed me that she was aware that Officer Pomponio hates her. She said that he stares her down when he sees her at work. She also said that he had pushed her out of being an Honor Guard member, as he is the coordinator of the team. Officer Downey further stated that she is in fear of Officer Pomponio and is afraid of coming to work because of him. She said that she feels he treats her this way because she is a female. I explained to Officer Downey that I would speak with Officer Pomponio about the situation. On December 31, 2009 I spoke with Officer Pomponio at 11/7 - 7/3 shift change. At this time Officer Pomponio approached me and stated "Hey Sergeant Fawkes" "I want to let you know that Allena has been talking about me." I explained to him that a lot of people talk about each other at work. Officer Pomponio then told me that he heard Officer Downey was complaining that he did something to her vehicle to mess with her. I explained to him what she reported and Officer Pomponio denied having done it. He stated "Some times I put the AC on." Officer Pomponio then requested that I check cruiser A16 to be a witness that everything was in order. I then checked the vehicle prior to the start of my shift.

Main Street ~ Ashland, MA 01721-1153 ~ Tel: (508) 881-1212 ~ Fax: (508) 881-5243

EXHIBIT



Officer Pomponio also complained to Sergeant MacQuarrie about the situation. Then again on January 1, 2010, during 11/7-7/3 shift change Officer Pomponio complained to me that Officer Downey was talking about him. I again explained that things like this happen. Officer Pomponio complained to me with Officer Charles Garbarino present. Officer Pomponio further stated "I want some corrective action taken against her for this." I then explained to Officer Pomponio that if he would like to make the matter formal he needed to reduce his complaint to writing. I then followed up with a phone call to him later in the day, directing him to provide the complaint to me in writing by the end of his next tour of duty. I then also contacted Officer Downey and directed her to do the same. I also recommended to Sergeant MacQuarrie that he assign Officer Pomponio to a different cruiser until an investigation is completed. I have forwarded copies of the emails that I received to you.

As you can see, both officers are alleging misconduct by the other. Also Officer Downey is stating that she is afraid to come to work and feels as though she is being treated unfairly because of her gender. Because this brings the Ashland Police Sexual Harassment Policy in to play I am obligated to forward the complaint to you for further investigation. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Sgt. Greg Fawkes # 33



# **EXHIBIT**

# **5**



**COPY**

**TOWN OF ASHLAND POLICE DEPARTMENT**

**CONFIDENTIAL MEMORANDUM**

**TO:** Chief Scott Rohmer

**FROM:** Lieutenant Richard Briggs, Investigating Officer  
Lieutenant David Beaudoin, Investigating Officer

**DATE:** April 8, 2010

**RE:** January 2010 Complaint of Officer Pomponio

**I. Introduction**

On January 12, 2010, the Chief assigned us to conduct a formal investigation of a complaint made by Officer Edward Pomponio against Officer Allena Downey. Officer Pomponio originally complained to Sgt. MacQuarrie who is his immediate supervisor. Sgt. MacQuarrie told Officer Pomponio to report his complaint to Sgt. Greg Fawkes who is Officer Downey's immediate supervisor. After speaking with Officer Pomponio, Sgt. Fawkes ordered him to file a written report. Sgt. Fawkes wrote a report and sent it in an email with Officer Pomponio's complaint to Lieutenant Briggs who then forwarded the information to the Chief of Police. The Chief ordered that a formal investigation be conducted by the Department.

Officer Pomponio's complaint alleges that he has learned that Officer Downey made disrespectful, discourteous, and untruthful remarks about his character.

The allegations contained in Officer Pomponio's complaint have been formally investigated, and this Memorandum constitutes our Investigative Report.

**II. Form of Investigation**

In connection with this internal investigation we interviewed the following individuals:

1. Officer Edward Pomponio, Ashland Police Department
2. Officer Allena Downey, Ashland Police Department
3. Officer Robert Araujo, Ashland Police Department
4. Officer Roy Testa, Ashland Police Department<sup>1</sup>

<sup>1</sup> Two other officers, Officer Langmeyer and Officer Garbarino, were named by Officer Pomponio as having some knowledge related to this matter; however, neither officer was available to interview because Officer Langmeyer has been retired since January 1, 2010, and Officer Garbarino is out on extended leave pending his retirement on April 3, 2010.

**EXHIBIT**



In addition, we reviewed the report filed by Officer Pomponio, Officer Downey's report and complaint, and a report by Sgt. Fawkes. We also reviewed the Department's Policies and Procedures referring to Public Statements - 7.0, Public Criticism of the Department Rule 7.1 and Courtesy- Rule 7.3

### **III. Initial complaint to Sergeant Fawkes and Sergeant MacQuarrie**

Late December 2009, Officer Pomponio spoke to Sgt. Fawkes and Sgt. MacQuarrie to report that Officer Downey was acting disrespectful and discourteous towards him and making untruthful statements about him. Officer Pomponio requested in writing that no action be taken other than a verbal warning and for Officer Downey to discontinue her behavior.

Officer Pomponio stated the he was approached by several officers in the Ashland Police Department who told him Officer Downey was making inconsiderate and discourteous remarks about him and making false statements about him.

Officer Pomponio stated that Officer Kavanagh told him that Officer Downey was speaking poorly about the Citizens Police Academy that Officer Pomponio was directing. Officer Pomponio stated Officer Kavanagh also told him Officer Downey was going to "withhold" her participation in the Ashland Police Honor Guard for the Citizens Police Academy opening ceremony, hoping not enough officers would participate in the ceremony.

Officer Pomponio stated Officer Langmeyer told him that Officer Downey was questioning him about the polo shirt Officer Pomponio was wearing. Officer Pomponio was wearing a polo shirt that was authorized to wear on duty while he was conducting child passenger safety seat inspections. Officer Langmeyer told Officer Pomponio that Officer Downey stated "who does he think he is" referring to Officer Pomponio.

Officer Pomponio stated that Officer Garbarino heard Officer Downey refer to Officer Pomponio using several different disrespectful names such as "Officer Pompus." Officer Pomponio also stated that Officer Garbarino also told him that Officer Downey made a statement that Officer Pomponio wrote the job description for the recently posted Community Outreach Officer position.

Officer Pomponio stated that Officer Testa told him that on several occasions he heard Officer Downey make remarks about Officer Pomponio that were disrespectful. Officer Pomponio also stated that Officer Araujo told him that Officer Downey was making insulting remarks about him [Officer Pomponio].

### **IV. Summary of Evidence**

#### **A. Interview of Officer Edward Pomponio**

On Wednesday January 13, 2010 we interviewed Officer Pomponio. We explained the reason for the interview and because there was a cross complaint from Officer Downey, we offered him the opportunity to have a union representative present during the interview. Officer Pomponio requested that Detective Joe Magnani be present during the interview as his union representative.



Officer Pomponio, was advised of his Garrity Rights, and signed a form stating he understood them.

Officer Pomponio stated he does not have a problem with Officer Downey and does not want it to be working in a hostile working environment. Officer Pomponio could not remember specific dates, but reports that over the past year people have been coming up to him and advising him that Officer Downey is speaking poorly of him. Officer Pomponio believes it all began approximately a year ago when Officer Downey made a comment about him, "the new guy," allegedly being late. Officer Pomponio stated he did not wish to file a formal complaint and but only wanted Officer Downey to stop talking about him.

#### B. Interview of Officer Allena Downey

On Wednesday January 13, 2010, we met with Officer Allena Downey at the Town Hall. Officer Downey was accompanied by Sgt. Greg Fawkes, as her Union representative at her request. Initially, Officer Downey advised Lt. Beaudoin that she was not comfortable with him being present due to "how the last discussion went" (referring to a meeting she attended with Lt. Beaudoin and Chief Rohmer). Additionally, she felt that Lt. Beaudoin and Officer Pomponio were friends. Lt. Beaudoin explained that he was instructed by the Chief to conduct the investigation jointly with Lt. Briggs and was tasked with that responsibility.<sup>2</sup>

Officer Downey states in her interview that she and Officer Pomponio used to be friends. Officer Downey states she believes their dispute started a long time ago when she made a comment about Officer Pomponio coming in late. Officer Downey states she made the comment in passing "must be nice that the new guy comes to work late." Officer Downey states in her interview that he; Officer Pomponio "put that on the back burner and then once he was comfortable, its like all of a sudden he changed and he dug that out or something. I don't know."

Officer Downey wrote in her statement that "to some extent its true" referring to the claim that she was talking about Officer Pomponio behind his back. Officer Downey wrote "don't we all talk about everyone behind each others back." When Officer Downey was asked about her written statement and the fact that she made negative comments about Officer Pomponio, Officer Downey admits to calling Officer Pomponio "pompous ass" to his face. Officer Downey stated she didn't mean it in a negative way, she called him the name to his face and that he didn't seem upset about it.

Officer Downey stated in her interview that she didn't remember specifically talking negatively or criticizing the citizens police academy but "if he had pissed me off one day I might have."

When Officer Downey was asked about having a conversation with Officer Langmeyer about Officer Pomponio wearing a polo shirt, she stated "I don't remember"

Officer Downey could not remember conversations with Officer Araujo, Officer Garbarino or anyone else specifically regarding Officer Pomponio

<sup>2</sup> Lt. Beaudoin did not withdraw from the investigation or interview of Officer Downey because there was no specific bias alleged by Officer Downey about him.



**C. Interview of Officer Robert Araujo**

On Monday, March 29, 2010, Officer Araujo was interviewed. He was asked if he ever heard Officer Downey make malicious or insulting remarks about Officer Pomponio. Officer Araujo stated that he knows that Officer Downey and Officer Pomponio do not like each other, but he does not remember any specific negative comments made by Officer Downey about Officer Pomponio.

Officer Araujo stated that Officer Downey told him some time ago that she does not like Officer Pomponio, but he could not remember when she told him this.

Officer Araujo also stated that he heard Officer Downey refer to Pomponio as "Pomp."

**D. Interview of Officer Roy Testa**

On Monday, March 29, 2010, Officer Testa was interviewed. Officer Testa was asked if he ever heard Officer Downey say anything negative or disrespectful about Officer Pomponio. Officer Testa stated that he does not remember anything specific, but Officer Downey "often spoke poorly of Officer Pomponio."

Officer Testa stated that he does remember Officer Downey calling Officer Pomponio names. Officer Testa stated he thought it was kind of a jealousy thing, as Officer Downey would always say, "why does he get to do this and that."

Officer Testa further stated that the only specific thing he can remember Officer Downey complaining about was the job description for the Community Officer position - she thought Officer Pomponio wrote it. Officer Testa went on to say "I like Officer Pomponio, I really don't remember anything specific, she was always negative about Officer Pomponio, but I really didn't listen to her. I didn't want to get involved, I have enough problems of my own."

**E. Community Officer Job Descriptions**

Chief Rohmer, Lieutenant Briggs and Lieutenant Beaudoin heard that several different officers shared the belief or opinion that Officer Pomponio wrote the job description for the Community Officer assignment. However, this job description was prepared by Lieutenant Beaudoin based on other job descriptions already contained in the Ashland Police Department Rules and Regulations.

**V. Findings of Fact**

1. We find that on January 1, 2010, Officer Pomponio filed a written complaint with Sgt. Fawkes as instructed. The complaint was forwarded by Sgt. Fawkes to the Chief of Police, who ordered that a formal investigation be conducted.
2. We find that Officer Pomponio's complaint alleged that Officer Downey was making disrespectful, discourteous and ~~was making~~ untruthful statements about Officer Pomponio.



3. We find that Officer Downey admitted to calling Officer Pomponio a derogatory name to his face. Specifically, Officer Downey admits calling Officer Pomponio "pompus ass" a word play on his last name which is considered derogatory.
4. We find that Officer Pomponio considered the derogatory name he was called by Officer Downey to be disrespectful.
5. We also find that Officer Downey claims she had no intent to harm Officer Pomponio and was only joking with him.
6. We find that there was a misconception within the Police Department that Officer Pomponio authored the job description for Community Affairs Officer assignment. This job description was prepared by Lieutenant Beaudoin, and not Officer Pomponio.
7. Ashland Police Department rule 7.0 Public Statements states in part "A police department is a quasi-military organization which is unique in the public service, and, as such, has a justifiable need for *esprit de corps*, harmony, discipline and confidentiality. Close personal or confidential relationships are often required. Extremely disrespectful and/or grossly offensive remarks are inconsistent with fostering and maintaining such relationships."
8. Ashland Police Department Rule 7.3 Courtesy, states in part "Officers shall not be discourteous or inconsiderate to the public, to their superior officers, or to their fellow officers and employees of the police department as well as other law enforcement and governmental agencies. They shall be tactful in the performance of their duties and are expected to exercise the utmost patience and discretion even under the most trying circumstances."
9. We find that a work conflict does exist between Officer Downey and Officer Pomponio.

## **VI. Conclusion**

Based on the findings of fact, we conclude the following:

1. Officer Downey was disrespectful toward Officer Pomponio when she called him a derogatory name even though she meant it in a joking manner. We do not find that this one comment was "extremely disrespectful and/or grossly offensive" in violation of Rule 7.0-Public Statements; however, Officer Downey should be advised that any future derogatory names or statements could be considered a violation of this Rule because she is now aware that Officer Pomponio was offended by her comments.
2. Officer Downey violated Rule 7.3-Courtesy by calling Officer Pomponio a derogatory name, which he found disrespectful.

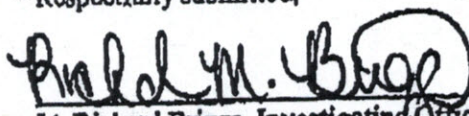


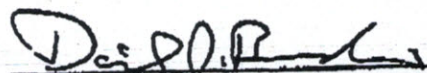
## **VII. Recommendation**

As a result of this investigation, it is clear that Officer Downey and Officer Pomponio do not get along. Therefore, based on the evidence that a work conflict exists between Officer Downey and Officer Pomponio, we recommend that an outside human resources consultant, experienced in work conflicts, be retained to facilitate a better working relationship between Officer Downey and Officer Pomponio.

We do not recommend that Officer Downey be disciplined for her admitted name calling of Officer Pomponio, but that she be reminded of the requirement that all officers are to be courteous and respectful to one another.

Respectfully submitted,

  
Lt. Richard Briggs, Investigating Officer

  
Lt. David Beaudoin, Investigating Officer



# **EXHIBIT**

**6**



October 2009  
Lieutenant David Beaudoin  
137 Main Street  
Ashland, MA 01721

Dear Lieutenant Beaudoin:

This is a formal report to you that is mandated by the Ashland Police Department's Rules and Regulations, RULE 13.5, to report Rule Violations and Law violations by employees to Superior Officers such as you.

COPY

### **RULE 13.5 - REPORT RULE VIOLATIONS**

Officers shall, upon observing or otherwise becoming aware of a violation by another officer or employee of the department's Rules and Regulations or Policies and Procedures, as set forth in this Manual or by other departmental directives or as governed by law, report said violations to their superior officer who will be responsible for appropriate action, report submission and follow-up.

### **RULE 14.8 - USE OF TOBACCO**

Officers appointed after January 1, 1988 shall not smoke or use tobacco products of any kind whether on or off-duty. Whoever violates said statute is subject to dismissal as specified in Chapter 41 section 101A of the Massachusetts General Laws.

On October 1, 2009, at approx. 7:00 AM, Sgt. Gregory Fawkes said to me, "Tell Matt Gutwill that he should stick to police work because he makes a lousy photographer." As I recall another Officer questioned Sgt. Fawkes's comment to me and Sgt. Fawkes said "Matt went to far this time."

I took Sgt. Fawkes's comment to mean that he thought that Matt Gutwill had taken photo's of Sgt. Fawkes smoking a cigar on May 27, 2009, in violation of the Rules and Regulations and M.G.L. Chapter 41 Section 101A. As far as I know, Matt Gutwill did not take any pictures of Sgt.

EXHIBIT

tabbies



Fawkes smoking the cigar but that a female attendee, her identity unknown to me, may have taken pictures.

On October 1, 2009, I in fact called Matt Gutwill and gave him Sgt. Fawkes's message. Framingham Detective Matt Gutwill told me that he felt threatened and intimidated and feared retaliation by Sgt. Fawkes's or other officers, because he had witnessed Sgt. Fawkes and other Ashland Officers smoking cigars on May 27, 2009, at a Clambake sponsored by the New England Narcotics Officer Association in Hyannis.

Matt Gutwill is an Ashland resident and a former Ashland Police Officer and when he witnessed Sgt. Fawkes smoking a cigar on May 27, 2009, he realized that Sgt. Fawkes and other Ashland Officers (Except for Magnani) smoking cigars were in violation of M.G.L. Chapter 41, Section 101A because they were hired after 1988.

In September, Officer Roy Testa and I when to see Attorney James W. Simpson who attended the May 27, 2009, New England Narcotics Association Clam Bake. The purpose of this meeting was to bring Jim up to date on Roy Testa's two (2) suspensions and demotion and to talk about Attorney Jim Simpson witnessing Sgt. Fawkes and other Ashland officers smoking cigars at the NENOA Clam Bake event.

Attorney Jim Simpson told us that he was with Matthew Gutwill at the Clam Bake and knew Sgt. Fawkes by sight as he had heard Sgt. Fawkes testify in person while he was at Framingham District Court on Court business. Attorney Jim Simpson saw Sgt. Fawkes over a period of time smoking a cigar from the time that it was "long" to the time that it was "short". Attorney Simpson saw other Ashland Officers smoking cigars also. He does not know their names but that they were Ashland Officers with Sgt. Fawkes at the Clam Bake.

Attorney James W. Simpson  
100 Concord Street,  
Suite 3B  
Framingham, MA 02702  
ph: 508-872-0002

Framingham Detective Matt Guwill told me that the following members of the Ashland Police Department were present at the Convention.

Sgt. Gregory Wildman (Senior Sergeant had an obligation to report)  
Sgt. Gregory Fawkes  
Detective Robert MacQuarrie  
Detective Joseph Magnani ---Exempt Because Hired prior to 1988.  
Ptlm Doug Grout



Ptln. Christopher Alberini

All should be ordered to write reports.

Please find the following document can be obtained and is attached as part of this complaint of Chapter 41 S 101A and rule violations:

<http://www.commonwealthpolice.net/news/smoking.pdf>

# Smoking Requires Mandatory Termination

**Any Officer Hired After January 1, 1988  
Will Be Within The Statute**

*written by Attorney Patrick Michael Rogers*

## **Smoking Requires Mandatory Termination (Hired After 1/1/88)**

### **Officers Hired After January 1, 1988 Will Be Within The Statute**

In *Town of Plymouth v. Civil Service Commission*, 426 Mass. 1 (1997), the SJC held that a police officer hired after or promoted after January 1, 1988 who smokes or otherwise uses tobacco products shall be subject to mandatory termination.

*G.L. C. 41, § 101A reads as follows:*

"Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator shall promulgate regulations for implementation of this section."

### **The Rules Of The Personnel Administrator Pertaining To Smoking**

On appeal, the SJC upheld her termination. In fact, they held that based on the language used in the statute and the promulgated rules of the Personnel Administrator, **termination was mandatory**. Because her appointment occurred after January 1, 1988, she was subject to the smoking prohibition contained in the statute. As a civil service employee, she was also subject to the smoking prohibition rule, contained in paragraph 23 of the personnel administration rules, promulgated on October 6, 1988, by the personnel administrator to implement G.L. c. 41, § 101A. Paragraphs 23.2, 23.5, and 23.6 of this rule, **which read as follows:**

**23.2** No person appointed to a covered position [subsequent to January 1, 1988] shall, subsequent to appointment, smoke any tobacco product at any time during his or her employment in any position covered by section 94 of chapter 32 of the General Laws. This prohibition includes all time off the job as well as all time on the job.

**23.5** Appointing authorities have the responsibility to enforce the prohibition against smoking tobacco products. Any employee subject to the prohibition who is found, after a hearing ... to have smoked any tobacco product subsequent to appointment shall be terminated.

**23.6** Before an employee is terminated pursuant to this Rule, such employee shall be given a written notice by the appointing authority which shall include the contemplated termination and the specific reason or reasons for the termination, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority.... [A]n employee also has any rights to hearing or appeals procedures to which he or she may be entitled under chapter 31 or a collective bargaining agreement. If ... a finding is made that an employee did smoke a tobacco product subsequent to appointment to a covered position, termination from that position or any subsequent promotional position is mandatory.

**Alcohol Versus Tobacco**



G.L. c. 31, § 50, states that "[n]o person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position...." Rossborough argued that it was unreasonable to allow an employee with a serious alcohol problem to remain in office following rehabilitation, while requiring mandatory termination of an employee for smoking cigarettes. The SJC stated that, "[t]here are important differences between both the language and legislative purposes of §§ 50 and 101A.

**DISCRETION IN THE ALCOHOL LAW:** The alcohol chapter, C. 31 § 50, directs that "[n]o person habitually using intoxicating liquors to excess shall be appointed to or employed or retained in any civil service position ..." This language allows for discretion by the appointing authority and the commission in evaluating whether an employee's alcohol consumption has reached a chronic level that violates the statute. By contrast, § 101A contains no such discretionary language and, unlike § 50, expressly delegates to the personnel administrator the authority to enforce the statute in a manner that obviates the case-by-case determinations usually made under § 50.

**LEGISLATIVE PURPOSES BEHIND THE STATUTES ARE DIFFERENT:** The SJC stated that while the legislative history is sparse, C. 31 § 50 was likely enacted because serious abuse of alcohol presumptively has a negative effect on job performance.

Allowing an employee to be reinstated after completion of an alcohol rehabilitation program and demonstration of satisfactory job performance is consistent with ameliorating deficient job performance.

**SMOKING STATUTE CONCERNS INCREASED RISK OF HYPERTENSION & HEART DISEASE:** The purpose of C. 41 § 101A is to prevent police officers and fire fighters from increasing their risk of hypertension and heart disease by smoking and, therefore, their eligibility for disability retirement benefits under G.L. C. 32, § 94. Unlike C. 31 § 50, § 101A does not apply to all civil service employees, but only to police officers and fire fighters who, because of the nature of their jobs, are already at high risk for developing hypertension and heart disease. The Legislature appears to have made a policy decision, based on financial interests, that employment in these positions should no longer be open, after January 1, 1988, to persons who smoke tobacco products so that, over a period of time, police and fire departments will have a workforce free of a serious disease-causing addiction. It is common knowledge that tobacco smoking has been identified as a contributing risk factor in both of these conditions, and heart disease is a leading cause of disability retirement among public safety personnel. The Legislature apparently enacted C. 41 § 101A in an effort to reduce the number of police officers and fire fighters who obtain substantial disability benefits from public funds under G.L. c. 32, § 94, also known as the "Heart Law," as a result of heart disease due to smoking.

#### **Questions & Answers From Civil Service On Smoking**

**Q: What is the authority for the Smoking Prohibition for municipal Police and Fire Departments under Civil Service?**

**A:** The rule has been adopted under the authority of the Pension Reform Act, Ch. 697 of the Acts of 1987. Section 117 of the Act adds the following to Chapter 41 of the General Laws: "Section 101A. Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator shall promulgate regulations for the implementation of this section."

**Q. Who is covered by the Smoking Prohibition Rule (Personnel Administration Rules, PAR.23)?**

**A.** The smoking prohibition applies to all police and firefighter appointments made from eligible lists established after January 1, 1988. Employees appointed prior to the coverage date, January 1, 1988, are "grand-fathered". Note that this includes ALL personnel REGARDLESS of status: provisional, temporary or permanent; full-time, part-time, and intermittent, call or reserve.

**Q. What happens when a police officer or firefighter is promoted in regards to the Smoking Prohibition Rule (Personnel Administration Rules, PAR. 23)**

**A.** The Smoking Prohibition Rule will not affect the promotion status of any person if their original appointment was before 1/1/88. However, any such person who accepts a new original appointment to any covered title on or after 1/1/88 is covered by the Smoking Prohibition Rule no matter when they originally started working, and must quit the use of tobacco on or before the date of appointment.

**Q. What Smoking Prohibition conduct is prohibited?**

**A.** Employees to whom the prohibition applies may not, subsequent to appointment, smoke any tobacco product at any time whatsoever. This includes cigars, cigarettes, pipes or any other tobacco product; and includes time when the employee is on duty, off duty, on sick leave, vacation, leave of absence, and any and all other status.



**Q. Who enforces the Smoking Prohibition Rule?**

A. The appointing authority is responsible for enforcement of the smoking prohibition rule.

**Q. What happens if a covered employee violates the Smoking Prohibition Rule?**

A. He or she is entitled to a hearing, procedures for which are outlined in the rule. If it is established that the rule was violated, the employee must be terminated from his or her position. The employee could, however, be retained in another capacity not covered by the smoking prohibition. (Personnel Administration Rules, PAR. 23)

**Q. How are prospective employees notified about the Smoking Prohibition Rule?**

A. Applicants for civil service examinations for covered positions will be notified by the appointing authority at the time of Certification/Interview. Further, it is recommended that appointing authorities confirm that candidates selected for appointment understand the Smoking Prohibition Rule and the consequences of violation. They may wish to have appointees acknowledge notification in writing. A sample form might include the text of Ch. 41, sec. 101A the following, to be signed and dated:

"I understand that I am prohibited by law from smoking tobacco products, at any time, as long as I am employed by the (city/town of [blank]) as a (police officer/fire fighter), regardless of rank, and that I must be terminated if I smoke,"

**Q. Why was the Smoking Prohibition law enacted and this rule adopted?**

A. Police officers and firefighters are eligible for special retirement benefits for impairment of health due to hypertension or heart disease, under the provisions of MGL Ch. 32 sec. 94, known as the "Heart Law." Tobacco smoking has been identified as a contributing risk factor in heart disease and hypertension; and heart disease is a leading cause of disability retirement among public safety personnel. The legislature has determined that henceforth employment in positions with "Heart Law" benefits will not be available to persons who by smoking increase their own risk of heart disease and hypertension.

**Q. Where should specific Smoking Prohibition questions be addressed?**

A. Specific questions regarding Smoking Prohibition should be directed to the Legal Department of the Human Resources Division at (617) 727-3777.

end.

In closing, I do not want to be retaliated against in any way for bringing this issue to your attention. I expect to be protected by any and all Police Department superior officers, Town Officials and claim protection under M.G.L Chapter 149 Section 185 (Copy Attached) to this complaint.

Sincerely,

---

Ptlm. Charles Garbarino # 11  
Ashland Police Department  
137 Main Street  
Ashland, MA 01721



# EXHIBIT

# 7



TOWN OF ASHLAND POLICE DEPARTMENT  
CONFIDENTIAL MEMORANDUM

ORIGINAL

TO: Chief Scott Rohmer  
FROM: Lieutenant Richard Briggs, Investigating Officer  
Lieutenant David Beaudoin, Investigating Officer  
DATE: January 15, 2010  
RE: November 2009 Complaint of [REDACTED]

---

I. Introduction

On November 23, 2009, we were assigned by the Chief of Police to conduct a formal investigation of a complaint filed by [REDACTED] of the [REDACTED]. [REDACTED] filed a written complaint, dated November 9, 2009, alleging that Sergeant Gregory Fawkes, along with other Ashland Police officers, were seen smoking cigars at the New England Narcotics Officers Association meeting held in May 2009 in Hyannis, MA. The complaint alleges that Sergeant Fawkes and the other Ashland Police officers violated M.G.L. Chapter 41, Section 101A, Department Rule 14.8 - Use of Tobacco, by smoking cigars and that they violated Department Rule 13.5 - Report Rule Violations, by not reporting the alleged violation of Rule 14.8.

This memorandum constitutes our Investigative Report.

II. Form of Investigation

In connection with this internal investigation we interviewed the following individuals:

1. [REDACTED], Complainant, [REDACTED]
2. Sergeant Gregory Fawkes, Ashland Police Department
3. [REDACTED]
4. [REDACTED]



5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]

In addition, we reviewed the written complaint of [REDACTED], the photographs provided by [REDACTED], and the photographs provided by [REDACTED]. We also reviewed the Department's Rules & Regulations and M.G.L. Chapter 41, Section 101A.

### **III. The Complaint**

[REDACTED] complaint states as follows:

This is a formal report to you that is mandated by the Ashland Police Department's Rules and Regulations, RULE 13.5, to report Rule Violations and Law violations by employees of the Ashland Police Department to Superior Officers such as you.

### **COPY**

### **RULES 13.5 - REPORT RULE VIOLATIONS**

Officers shall, upon observing or otherwise becoming aware of a violation by another officer or employee of the department's Rules and Regulations or Policies and Procedures, as set forth in this Manual or by other departmental directives or as governed by law, report said violations to their superior officer who will be responsible for appropriate action, report submission and follow-up.

### **ASHLAND P. D. RULE 14.8 - USE OF TOBACCO**

Officers appointed after January 1, 1988 shall not smoke or use tobacco products of any kind whether on or off-duty. Whoever violates said statute is subject to dismissal as specified in Chapter 41 section 101A of the Massachusetts General Laws.

I have become aware that Sgt. Gregory Fawkes, along with other Ashland Police Officers were seen smoking cigars at the New England Narcotics Officers Assn. meeting held in May of this year in Hyannis, MA.



On October 1, 2009, at approx. 7:00 AM, Sgt. Gregory Fawkes said to me, "Tell [REDACTED] that he should stick to police work because he makes a lousy photographer." As I recall another Officer questioned Sgt. Fawkes's comments to me and Sgt. Fawkes said "[REDACTED] went too far this time."

I took Sgt. Fawkes's comment to mean that he thought that [REDACTED] had taken photo's of Sgt. Fawkes smoking a cigar on May 27, 2009, in violation of the Rules and Regulations and M.G.L. Chapter 41 Section 101A. As far as I know, [REDACTED] did not take any pictures of Sgt. Fawkes smoking the cigar but that a female attendee, her identity unknown to me, may have taken pictures of Sgt. Fawkes Smoking the cigar.

On October 1, 2009, I in fact called [REDACTED] and gave him Sgt. Fawkes's message. [REDACTED] told me that he felt threatened and intimidated and feared retaliation by Sgt. Fawkes and/or other officers, because he had witnessed Sgt. Fawkes smoking a cigar with other Ashland Officers on May 27, 2009, at a Clambake sponsored by the New England Narcotics Officer Association in Hyannis.

[REDACTED] is an [REDACTED] resident and a former [REDACTED] and when he witnessed Sgt. Fawkes smoking a cigar on May 27, 2009, he realized that Sgt. Fawkes and other Ashland Officers smoking cigars were in violation of M.G.L. Chapter 41, Section 101A because they were hired after 1988.

I was told that the following members of the Ashland Police Department were present at the Convention in Hyannis:

[REDACTED] present had a clear obligation to report a Rule Violation, Rule 14.8, use of tobacco and a violation of M.G.L. Chapter 41 Section 101A as a superior and eye witness, if he did not consume tobacco products himself.

Sgt. Gregory Fawkes

[REDACTED]  
[REDACTED]  
[REDACTED] -- Exempt Because Hired Prior to 1988.

All had an obligation to report Rule and Law violations.

All should be ordered to write reports regarding their use of tobacco or as witnesses to who smoked cigar on May 27, 2009.

In closing, I do not want to be harassed or retaliated against in any way for bringing this issue to your attention per the rules of the Ashland Police Department. I expect to be protected by any and all Police Department superior



officers, Town Officials and claim protection under M.G.L. Chapter 149 Section 185 (Copy Attached) to this complaint.

#### IV. Evidence

We received the following information through the interviews conducted and the photographs received:

##### A. Interview of [REDACTED]

On December 2, 2009, at 23:02 hours, I [Lt. Briggs] met with [REDACTED] in my office at the police station. I explained that I was assigned as the investigating officer for his complaint and asked him to provide me with details of the alleged incident.

[REDACTED] stated that [REDACTED] was talking with [REDACTED] "right after [REDACTED] got demoted" (referring to the demotion of [REDACTED] in or around September). [REDACTED] stated that during the discussion, [REDACTED] had asked [REDACTED] "what's been going on?" when [REDACTED] advised him that [REDACTED] had been demoted. [REDACTED] stated that [REDACTED] advised [REDACTED] at that time that he had observed several Ashland Police Officers smoking cigars at the drug conference in May.

[REDACTED] stated that [REDACTED] advised [REDACTED] that the Ashland officers who were observed smoking were: [REDACTED], Sgt. Gregory Fawkes, [REDACTED] and [REDACTED]. [REDACTED] said [REDACTED] also advised [REDACTED] that [REDACTED] was present, but was not observed smoking. [REDACTED] stated several times that [REDACTED] had personally witnessed the officers smoking cigars and had "some blonde girl" take photos for him.

[REDACTED] further advised me that [REDACTED] [REDACTED] was present at the conference and had witnessed several Ashland Officers smoking cigars as well. [REDACTED] stated that [REDACTED] and [REDACTED] had visited [REDACTED] for legal reasons on September 28, 2009 at approximately 10am, and that [REDACTED] had stated to them both that he had witnessed several Ashland Police Officer smoking cigars at the New England Narcotics Enforcement Officers Association conference on Cape Cod.



██████████ provided me with photographs that depicted Sgt. Gregory Fawkes holding what appears to be a lit cigar in his hand. ██████████ also provided me with several additional photos that were merely close-ups of the original two photos. I asked ██████████ who provided ██████████ with these photographs and ██████████ stated that ██████████ did. I asked ██████████ who took the photographs and ██████████ advised me that a female who was at the conference had allegedly taken the photos. ██████████ was unable to provide me with her name, but stated that ██████████ knew her and would know her name.

I asked ██████████ again when ██████████ initially received this information from ██████████ and ██████████ again stated that "this transpired after the complaint was filed against ██████████. When ██████████ (referring to ██████████) heard that ██████████ got demoted, that's when he told me what happened." I advised ██████████ that the demotion of ██████████ was sometime in September and ██████████ agreed. I asked ██████████ why ██████████ did not report it to the command staff when ██████████ first received the information. ██████████ stated, "It involved union officials and we wanted to get the vote on ██████████ arbitration passed before we brought it forward." ██████████ continued, "Nobody would've known about this if ██████████ didn't get demoted."

██████████ advised me that ██████████ had provided guidance for ██████████ in drafting his complaint to Chief Rohmer.

B. Interview of ██████████

On December 2, 2009, at approximately 23:25 hours, I [Lt. Briggs] spoke with ██████████. ██████████ stated that he was with ██████████ at ██████████ office, and that ██████████ had advised them both that he was at the drug conference and had witnessed several officers smoking cigars.

██████████ stated that ██████████ specifically named Sgt. Fawkes, as he recognized him from court. I asked ██████████ what ██████████ said to him, and he stated, "That Fawkes had a cigar. At first it was long and then it was short." ██████████ continued, stating that ██████████ also advised him that several other Ashland Officers were also smoking, but that he didn't know their names, only recognized them as Ashland Police Officers.



I asked [REDACTED] if he had viewed the photographs and he stated that he had seen them, and that [REDACTED] had shown them to him.

C. Interview of Sergeant Fawkes

On December 3, 2009, I [Lt. Briggs] interviewed Sergeant Gregory Fawkes. Sgt. Fawkes was advised of his Garrity Warnings, he was also advised that he may have a Union representative present for the interview, and he was informed of the purpose for the interview. He declined to have a Union representative present during the interview.

Sgt. Fawkes stated that he attended the conference and the clambake on the first night of the conference. Also present was [REDACTED], and [REDACTED] and [REDACTED]. The clambake was held at an outdoor venue. At some point, an attendee of the conference began handing out cigars to all of the participants. Sgt. Fawkes stated that he did in fact take a cigar. Sgt. Fawkes stated that he took a few puffs of the cigar, but didn't finish it. Sgt. Fawkes stated that he has never smoked tobacco products in his life.

Sgt. Fawkes stated that he also observed [REDACTED] with a lit cigar. Sgt. Fawkes stated that he did not observe any other Ashland Officers in possession of cigars. Additionally, Sgt. Fawkes stated that [REDACTED] was not present at the clambake and did not arrive until the following morning. Sgt. Fawkes stated that he observed [REDACTED] taking photos of them. He said that, at one point, he witnessed [REDACTED] speaking with a female ([REDACTED]), pointing at the Ashland officers, and handing her the camera. Sgt. Fawkes advised me that he felt [REDACTED] was asking her to continue taking photos of the group.

Sgt. Fawkes stated that Chief Rohmer arrived the following morning. At that time, he advised the Chief what had occurred with regards to the cigars. The Chief verbally counseled the officers and advised them that it should not occur again.

D. Interview of [REDACTED]

On December 3, 2009, I [Lt. Briggs] interviewed [REDACTED]. He was advised of his Garrity Warnings, he was also advised that he may have a Union representative present for the interview,



and he was informed of the purpose for the interview. [REDACTED] opted to have [REDACTED] sit in on the interview as his Union representative.

[REDACTED] stated that he also attended the conference and the clambake on the first night of the conference. Also present were Sgt. Fawkes, [REDACTED] and [REDACTED] and [REDACTED]. [REDACTED] also stated that another attendee had handed out cigars to all participants. He stated that he took one, lit it and took "a few puffs" from it before discarding it. When asked, [REDACTED] stated that he doesn't smoke and has never smoked tobacco products in the past.

[REDACTED] advised me that he also observed Sgt. Fawkes taking a few puffs, but did not observe any other Ashland Officers in possession of cigars. When asked, [REDACTED] explained that [REDACTED] was not present at the clambake and did not arrive to the conference until the following day. [REDACTED] stated that at one point he and the others had observed [REDACTED] taking photos of them. [REDACTED] then observed [REDACTED] conversing with two females and had passed them the camera.

[REDACTED] stated that Chief Rohmer arrived the following day. Upon his arrival, he and Sgt. Fawkes had conversation with Chief Rohmer and explained what had transpired. [REDACTED] stated that the Chief had advised them not to do it again.

#### B. Interview of [REDACTED]

On December 3, 2009, I [Lt. Briggs] interviewed [REDACTED]. He was advised of his Garrity Warnings; he was also advised that he may have a Union representative present for the interview; and he was informed of the purpose for the interview. He declined to have a Union representative present during the interview.

[REDACTED] stated that he was present at the clambake on the first night of the conference. He also explained that the clambake was held at an outside venue and that someone had distributed cigars to attendees. [REDACTED] stated that he observed Sgt. Fawkes and [REDACTED] in possession of a cigar and at some point observed both "puffing on it." [REDACTED] stated, "I don't even think they had a whole one." He also stated that



██████████ and ██████████ were also present, but he did not observe them in possession of a cigar at any point in the evening. Additionally, ██████████ stated that ██████████ was not present for the clambake and did not arrive until the following morning, as he only attended for the awards ceremony. ██████████ stated that he does not know Sgt. Fawkes or ██████████ to smoke regularly and has never seen them smoke in the past. ██████████ stated that he did not smoke any tobacco products while in attendance at the drug conference.

██████████ also stated that he and the rest of the group of Ashland officers observed ██████████ taking photos of them with a camera. He stated that, at some point, ██████████ walked up to a girl, whispered in her ear, and she immediately looked at the group of Ashland officers, and took the camera from ██████████. ██████████ stated that he "heard" this female was employed by ██████████. ██████████ stated, "We knew ██████████ was up to something."

██████████ stated that the next morning he was present for a conversation between Sgt. Fawkes, ██████████ and Chief Rohmer. Sgt. Fawkes and ██████████ told the Chief what had occurred. ██████████ stated that Chief Rohmer asked Sgt. Fawkes and ██████████ if they normally smoke. Both answered that they did not. ██████████ stated he heard the Chief stated, "Consider this a verbal counseling session."

F. Interview of ██████████

On December 3, 2009, I [Lt. Briggs] interviewed ██████████. He was advised of his Garrity Warnings, he was also advised that he may have a Union representative present for the interview, and he was informed of the purpose for the interview. He declined to have a Union representative present during the interview.

██████████ stated that he was not present at the clambake and did not arrive at the conference until the following day, merely to attend the awards ceremony and remained overnight.

██████████ stated that he did not observe anyone smoking any tobacco products while he was present at the conference, nor did he smoke any tobacco products while at the conference. He



stated that he knew [REDACTED] and Sgt. Fawkes did not smoke tobacco products normally, and has never observed them doing so in the past.

[REDACTED] stated that he was present for a conversation between Chief Rohmer and Sgt. Fawkes, [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED]. He stated that the officers appeared upset and alleged that [REDACTED] was taking photos of them and/or having a female attendee take photos of them. [REDACTED] stated that he heard a rumor that this female was a vendor from [REDACTED]. He stated that the officers had a large discussion with Chief Rohmer regarding the incident involving the cigars.

G. Interview of [REDACTED]

On December 3, 2009, I [Lt. Briggs] interviewed [REDACTED]. He was advised of his Garrity Warnings, he was also advised that he may have a Union representative present for the interview, and he was informed of the purpose for the interview. He declined to have a Union representative present during the interview.

[REDACTED] stated that he was present for the clambake on the first night of the conference and that it was held at an outside venue, which was new for this year's conference. Normally it is held inside.

[REDACTED] stated that another police officer who was attending (identity unknown) the conference began handing out cigars to all attendees and many began smoking them. [REDACTED]

[REDACTED] stated that he was offered one, but declined to accept it and did not smoke any tobacco products while in attendance at the drug conference.

[REDACTED] stated that [REDACTED] and Sgt. Fawkes did accept one and he had observed them. He stated that they took a few puffs from it and "didn't even finish it." He stated that [REDACTED] and [REDACTED] were also present and observed the two [REDACTED] [REDACTED] with the cigars.

[REDACTED] stated that [REDACTED] was not present for the clambake and did not arrive until the following morning for the awards banquet.



██████████ stated that the group of Ashland Officers observed ██████████ taking photos of them at the clambake. He stated that he saw a flash. ██████████ stated that ██████████ approached two females, who he believed to be employed by ██████████, and put down the camera in front of them, pointed towards the group of Ashland Officers and they looked in the direction of the group of Ashland officers. ██████████ stated that he never observed the females actually take any photos.

██████████ stated that Chief Rohmer arrived the next morning for the conference. He stated that Sgt. Fawkes and ██████████ informed the Chief of the incident surrounding the cigars. Chief Rohmer advised the officers not to do it again.

#### H. Interview of ██████████

On December 3, 2009, I [Lt. Briggs] interviewed ██████████. He was advised of his Garrity Warnings, he was also advised that he may have a Union representative present for the interview, and he was informed of the purpose for the interview. He declined to have a Union representative present during the interview.

██████████ stated that he was present for the clambake at the drug conference back in May. He stated that another attendee had handed out cigars to the entire membership at the clambake. He stated that he observed ██████████ and Sgt. Fawkes each take a cigar. ██████████ stated that he "doesn't know if they actually smoked the cigars or just held them." When asked, he stated that he wasn't sure if ██████████ was present at that time or not and could not recall.

When asked about photos, ██████████ stated that the group observed ██████████ taking photos of them at the dinner. He stated that "██████████ was watching us." He continued stating that ██████████ had approached or was standing near two females "from ██████████" and that he whispered to one of them, and she immediately looked at the group of Ashland officers. ██████████ stated, "I took it as he was talking about us to her." ██████████ stated that one of the females immediately got up and walked to a table near the Ashland officers and sat down at the table. He stated that "she appeared to be trying to take photos of us. She had a camera in her hand."



██████████ stated that he did not smoke any cigars at the conference and that he doesn't know Sgt. Fawkes and ██████████ to have ever smoked in the past. ██████████ stated that Chief Rohmer arrived the next day, but could not recall any details of a conversation with him surrounding the cigar incident.

I. Interview of ██████████

On December 7, 2009, at approximately 16:00 hours, Chief Rohmer advised me [Lt. Briggs] that he had contacted ██████████ to advise him of the internal affairs investigation and that ██████████ was a primary witness to the event and that we would need to speak with him.

At 17:00 hours, I contacted ██████████ via his cell phone. I explained to him that I was assigned to investigate an allegation of Ashland Officers allegedly smoking at the drug conference, and that I had received information that he (██████████) was a primary witness to the event. I told him that I'd like to speak with him regarding the incident if possible. ██████████ chuckled and stated, "If you guys wanna talk to me, you'll have to set it up with my Attorney ██████████. I have no problem talking to you, but you need to talk to my attorney to set it up." I told him that I understood and he stated, "Nothing personal, but I don't trust you guys. I'm afraid that you'll try to turn it around on me." At that point, I thanked ██████████ for his time and ended the phone call.

On December 16, 2009, I interviewed ██████████ in the presence of his attorney, ██████████, at the offices of ██████████. Also present for the interview was D. M. Moschos, Esq., Labor Counsel for the Town of Ashland.

██████████ confirmed that he was employed by the ██████████, but he said that this matter had no connection with the ██████████. He stated that he holds the rank of ██████████.

██████████ said that he attended the clambake on May 20, 2009, not May 27, 2009, in connection with the New England Narcotics Enforcement Association. He said the purpose of the meeting was for a clambake and a meeting of New England's narcotics officers.



██████████ said that during the clambake he saw some police officers from the Ashland Police Department smoking cigars. He said it was at the clambake, which was held on Cape Cod, possibly in the town of Sandwich. It was on a Wednesday, which he thought the date of May 20, 2009, not May 27, 2009, and he confirmed this with his calendar.

He said he was not sure of all the names of the officers that he saw, but he believes their names are Greg Fawkes, "██████████" ██████████ and ██████████. He said that the officers were smoking while people were eating, and people were talking about why officers were smoking. ██████████ stated that there were 380 people in attendance, but he does not know who else would have witnessed the officers smoking.

██████████ stated that he did not know how long each officer smoked, but he said Fawkes was clearly holding the cigar and smoking the cigar. He said he did not see any of the officers dispose of the cigars. He said he did not know where the cigars came from, but he was sure that no one from the New England Narcotics Enforcement Officers' Association would be handing out cigars. He said he could not remember other people that were seated with him, but he did state that there were two females present, ██████████, from ██████████.

██████████ said that he did take pictures at the clambake. When first asked whether he asked other people to take pictures, he said he did, but he would not tell who it was. Later on he stated that he did ask for a camera, and one of the females gave him a camera to take the pictures. He said he took about 50 pictures at the conference, but only the four pictures that he provided to me involved smoking.

██████████ stated he took the pictures because he pays the salary of the officers as a resident of the ██████████ and they were smoking. He said he had no pictures of any other officers not associated with the Ashland Police Department. He said he did not file a complaint with any other police department about any other police officer at the clambake. He said he provided copies of the pictures to ██████████ and ██████████.

██████████ stated that the only person he has had conversations with about the incident are ██████████ and ██████████. He said that ██████████ told him ██████████ filed a complaint with the Ashland Police Department. ██████████ said that he was the one that



brought the complaint to [REDACTED]. He said he could not recall what officers he told, other than [REDACTED], about who was smoking at the clambake. He said that the Ashland Police Officers that were present while the four officers [Fawkes, [REDACTED], [REDACTED], and [REDACTED]] were smoking included [REDACTED] and [REDACTED].

[REDACTED] stated that he did not go to Chief Rohmer because the Chief is telling people that he is not a credible witness. He said he could not talk to the Chief, and there have been prior incidents where the Ashland Police Department is after him. He mentioned a time when some females got pulled over.

[REDACTED] said he did not work with "Greg" [Fawkes] in corrections. He said he did not work directly with the complainant or the Ashland officers whom he identified as smoking at the clambake. He said he could not recall if there was any other time he saw them smoking at the conference. He said the camera was borrowed from one of the females from [REDACTED]. He said there were only four photographs. He said he took the photographs because they were smoking. He said he downloaded them at the conference by getting a copy of the sim card and downloading it.

[REDACTED] was asked again if could recall who else was there at the time. He said he could not recall anyone else being there. He said that he has talked to [REDACTED] about this incident after he gave him the information and [REDACTED] told him that [REDACTED] had filed a complaint. He said [REDACTED] was not at the conference.

#### J. Interview of [REDACTED]

On or about December 16, 2009, I [Lt. Beaudoin] spoke with [REDACTED] and asked her if she would speak to me about a complaint that the Ashland Police Department received about Ashland police officers smoking at the NENOA convention. [REDACTED] told me she is an employee for [REDACTED] and was assigned to work at the NENOA convention. [REDACTED] told me that she attended the convention clambake on Wednesday May 20<sup>th</sup> 2009.

[REDACTED] told me that she was talking with a group of officers who were pointing out and discussing other police officers that were smoking cigars at the clambake. [REDACTED] told me



that she didn't know what the big deal was until someone told her that it was illegal for those officers to smoke cigars. [REDACTED] told me she did not take any photographs and that I should talk to [REDACTED], [REDACTED] that worked with her at the convention. [REDACTED] could not recall who was specifically pointing out the officers or what officers were smoking.

[REDACTED] told me she would contact [REDACTED] and ask her to call me at the Ashland Police Department. After a few days passed, I had not heard from [REDACTED] so I called [REDACTED] again and she told me that [REDACTED] did not want to get involved, but she would give me her telephone number.

#### K. Interview of [REDACTED]

On or about December 21, 2009, I [Lt. Beaudoin] called [REDACTED] and asked her if I could meet with her to talk about a complaint that I received concerning Ashland Police Officers smoking cigars at a clambake while attending a convention in May 2009. [REDACTED] told me that she did not want to get involved or anyone in trouble and that she did not want to meet with me, but she would answer any questions over the telephone.

[REDACTED] told me that she was employed by [REDACTED] in May 2009, and she did attend the clambake and convention. [REDACTED] told me that [REDACTED] asked to use her camera to take pictures of police officers smoking cigars. [REDACTED] told me that she did not take any pictures of police officers smoking cigars. [REDACTED] told me that later on [REDACTED] asked her for the camera so he could download the photos on his computer. [REDACTED] stated that after [REDACTED] gave her the camera back, she erased the photographs. [REDACTED] told me she never saw any of the photographs.

#### V. Findings of Fact

After review of all the evidence, we find the following facts:

1. We find that on May 20, 2009, a clambake was held by the New England Narcotics Enforcement Officers' Association on Cape Cod.



2. We find that the following Ashland Police Department employees were in attendance at the May 20, 2009, clambake: Sgt. Fawkes, [REDACTED], [REDACTED], [REDACTED].
3. We find that [REDACTED] was not in attendance at the May 20, 2009, clambake as alleged in the Complaint; [REDACTED] arrived at the conference the day after the clambake.
4. We find that Sgt. Fawkes was offered and accepted a cigar at the clambake, and that he admitted taking a few puffs of the cigar.<sup>1</sup>
5. We find that the photographic evidence shows Sgt. Fawkes with a lit cigar in his hand, but not smoking. We further find that there are no pictures of any other officers with cigars or smoking cigars.
6. We find that [REDACTED] was offered and accepted a cigar at the clambake, and that he admitted taking a few puffs of the cigar.
7. We find that [REDACTED] did not accept or smoke a cigar at the clambake.
8. We find that [REDACTED] did not accept or smoke a cigar at the clambake.
9. We find that [REDACTED] did not accept or smoke a cigar at the clambake.
10. We find that Sgt. Fawkes, [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] all met with the Chief of Police on May 21, 2009, and reported the incident to him.
11. We find that [REDACTED] filed [REDACTED] complaint only after the demotion of [REDACTED] and in response to such demotion.

<sup>1</sup> Cigars have long signified victory. Celebratory cigars have been smoked since days of yore, at least since the height of many pre-Columbian cultures in Central America. Today the tradition carries on. A cigar is smoked following a great success. [Source: <http://www.expensive-cigars.com/celebratory-cigars.html>]



12. We find that [REDACTED] is not a credible witness because he accused officers of smoking who did not smoke; he accused Sergeant Wildman of being present at the clambake when he not yet even arrived for the convention; he failed to report the alleged violations of the law to the Ashland Police Chief or the Department; he only informed [REDACTED] of the alleged smoking violations after [REDACTED] demotion and not contemporaneously with the alleged incident; he could not recall any officers, other than the Ashland officers, that had allegedly smoked a cigar at the clambake even though there were approximately 380 attendees; he could not recall the names of any other police officers at the clambake except for Ashland police officers; although he claimed Ashland officers were smoking and took pictures of Ashland officers, there are no pictures of Ashland officers actually smoking.

#### VI. Conclusion

Based on the findings of fact, we conclude the following:

1. The allegation that [REDACTED] violated Rule 13.5 - Report Rule Violations of the Department's Rules and Regulations is unfounded because he was not even present at the May 20, 2009 clambake held by the New England Narcotics Enforcement Officers' Association.
2. The allegation that Sgt. Fawkes, [REDACTED] and [REDACTED] violated Rule 13.5 - Report Rule Violations of the Department's Rules and Regulations is unfounded because they all reported the May 20, 2009 incident to the Chief of Police.
3. There is no evidence to support the allegation that [REDACTED] were smoking cigars at the May 20, 2009 clambake held by the New England Narcotics Enforcement Officers' Association. This allegation is, therefore, unfounded.
4. The evidence indicates that Sgt. Fawkes and [REDACTED] both accepted and took a few puffs of a cigar at the May 20, 2009 clambake held by the New England Narcotics




Enforcement Officers' Association. Whether this constitutes a violation of the law is a legal question. Therefore, we recommend that this report be referred to the Police Department's special counsel to determine if taking a few puffs is "smoking" for purposes of violating the law.

5. There is a question of whether [REDACTED] filed the complaint in retaliation for the demotion of former [REDACTED].
6. There is a question as to the motivation of [REDACTED] because his allegation that all of the Ashland officers were smoking was unsupported by the evidence; he did not bring this matter forward contemporaneous with the alleged incident, but rather, months later after the demotion of [REDACTED]; his allegation that [REDACTED] was present at the clam bake was unsupported by any evidence; he could not recall any officers, other than the Ashland officers, that had allegedly smoked a cigar at the clam bake; and he could not identify the names of any other officers at the clam bake except for the Ashland officers.

Respectfully submitted,

  
Lt. Richard Briggs, Investigating Officer

  
Lt. David Beaudoin, Investigating Officer



# **EXHIBIT**

**8**





EXHIBIT

5210012