



Joseph Hennessey <jhennessey@धारlawllp.com>

Fwd: Assistance requested

1 message

Dhar <jhennessey@धारlawllp.com>

Sat, Aug 9, 2014 at 1:42 PM

To: Joseph Hennessey <jhennessey@धारlawllp.com>

Joseph F. Hennessey, Esq.
2 Atlantic Ave. , 4th floor
Boston, Massachusetts 02110
Tel: 617 880-6155/ 508 881-9500
Fax: 617 880-6160/508 881-9501

Begin forwarded message:

From: Sergeant Ed Pomponio <epomponio@ashlandpd.org>
Date: June 20, 2013 at 11:08:23 PM EDT
To: edpaulajinc@comcast.net
Subject: Fwd: Assistance requested

----- Forwarded message -----

From: Sergeant Ed Pomponio <epomponio@ashlandpd.org>
Date: Tue, Jan 17, 2012 at 12:23 PM
Subject: Assistance requested
To: David Beaudoin <dbeaudoin@ashlandpd.org>

Lt. Beaudoin,

Per our conversation earlier today Tuesday 01-17-2011 I am respectfully forwarding my request / concerns via e-mail:

1) Based upon information disclosed at the last staff meeting but not limited to I am respectfully requesting protection as a public employee under the Massachusetts Whistleblowers Law code section 149 SS 185 for any and all information provided under obligation or not, disclosed or threatened to disclose, or testimony provided towards corrective action. Pending the matter at hand / investigation or any other related matter.

2) I am fearful and feel subjected to a hostile work environment by actions of co-workers in the workplace who are attempting to make it difficult to perform my duties. The treatment in my opinion has been isolation and continuous serve misbehavior with patterns of mistreatment that exist that prevents me from performing task at the desired highest level. The mention of my religious affiliation (which is federally protected) by Sgt. Macquarrie made me extremely uncomfortable. He has singled me out on minor matters while allowing matters much more serve importance with others to go unreported. I



have examples.

I was informed by two separate individuals who attended my Oct 19, 2011 promotion at the Ashland Town Hall that one was approached in an attempt to prevent the party from attending and then efforts were made to express displeasure that they attended.... presuming that a conspired boycott was in place treating me differently. Items of mine being missing or vandalized. Photos of me being placed around the station or other photographs posted that have caused me distress, direct and indirect disparagement.

I have contacted counsel and am waiting to hear back. I am willing to provide any additional information via representation to assist further in any way. Thank you.

Respectfully,

Sgt. Pomponio

Sgt. Ed Pomponio
137 Main Street
Ashland, MA 01721
tel 508 881-1212 ext. 50
fax 508 881-5243

Please remember when writing or responding, the Massachusetts Secretary of State has determined that e-mail is a public record. This e-mail is intended to be conveyed only to the designated recipient(s) named above. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.

I, [Name], an individual, have not
limited in any way the use of this e-mail as a public record.

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Sergeant Ed Pomponio <epomponio@ashlandpd.org>

Formal Complaint

Sergeant Ed Pomponio <epomponio@ashlandpd.org>
To: David Beaudoin <dbeaudoin@ashlandpd.org>
Cc: Chief Scott Rohmer <srohmer@ashlandpd.org>

Tue, Feb 14, 2012 at 12:55 PM

Lt. Beaudoin,

On 01-17-2011 I sent the letter attached below to you stating that I am fearful and feel subjected to a hostile work environment by actions of co-workers in the workplace who are attempting to make it difficult to perform my duties. I asked for protection under the law.

Lt Briggs and Sgt Fawkes are asking co workers if I have spoken with them and ordering subordinates to write statements. I believe that Lt. Briggs and Sgt. Fawkes have filed fabricated reports falsely accusing me of wrongdoing. I feel that Lt. Briggs and Sgt Fawkes are doing this in retaliation for me speaking the truth. I have contacted counsel and I am respectfully requesting the department's help for a second time.

This persistent aggressive, unreasonable behavior and their false accusations are causing me undue stress. Lt. Briggs and Sgt. Fawkes' intimidation is intentional behavior which is causing me fear of injury or harm. I am requesting a formal investigation and for immediate help. Thank you.

Respectfully,

Sgt Pomponio

Lt. Beaudoin,

Per our conversation earlier today Tuesday 01-17-2011 I am respectfully forwarding my request / concerns via e-mail:

1) Based upon information disclosed at the last staff meeting but not limited to I am respectfully requesting protection as a public employee under the Massachusetts Whistleblowers Law code section 149 SS 185 for any and all information provided under obligation or not, disclosed or threatened to disclose, or testimony provided towards corrective action. Pending the matter at hand / investigation or any other related matter.

2) I am fearful and feel subjected to a hostile work environment by actions of co-workers in the workplace who are attempting to make it difficult to perform my duties. The treatment in my opinion has been isolation and continuous serve misbehavior with patterns of mistreatment that exist that prevents me from performing task at the desired highest level. The mention of my religious affiliation (which is federally protected) by Sgt. MacQuarrie made me extremely uncomfortable. He has singled me out on minor matters while allowing matters much more serve importance with others to go unreported. I have examples.

I was informed by two separate individuals who attended my Oct 19,

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2011 promotion at the Ashland Town Hall that one was approached in an attempt to prevent the party from attending and then efforts were made to express displeasure that they attended.... presuming that a conspired boycott was in place treating me differently. Items of mine being missing or vandalized. Photos of me being placed around the station or other photographs posted that have caused me distress, direct and indirect disparagement.

I have contacted counsel and am waiting to hear back. I am willing to provide any additional information via representation to assist further in any way. Thank you.

Respectfully,

Sgt. Pomponio

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Sergeant Ed Pomponio <epomponio@ashlandpd.org>

Interview

Officer Ed Pomponio <epomponio@ashlandpd.org>

Mon, Sep 12, 2011 at 5:55 PM

To: Lieutenant Richard Briggs <rbriggs@ashlandpd.org>, David Beaudoin <dbeaudoin@ashlandpd.org>, Chief Scott Rohmer <srohmer@ashlandpd.org>

Lt. Briggs,

On Friday 09-09-11 in the course of my interview for the position of Sergeant at the Ashland Police Department, in the presence of the Ashland Assistant Town Manager Mark Purple, Deputy Chief Steven Trask of the Framingham Police Department, Lt. David Beaudoin, Executive Secretary Maureen Carmichael and myself you stated that "I happen to personally be aware that officer's that you work with have a problem with you".

Per your assertion Lt. I am respectfully asking to meet with you, Lt Beaudoin (the officer I report to in my chain of command) and Chief Rohmer.

My goal is to gain knowledge regarding your account in order to discover what problem(s) officer(s) hold, and who has the problem(s) as well as if any real concerns ensue so I can design a strategy too effectively deal with any factual issues. Please note that no officer has ever brought any concern before me or made any attempt to inform me of any concern they allegedly hold.. My aim is the betterment and resolve of the subject in the best interest of the organization.

I have four questions that immediately come to mind respectfully:

When did you first become aware that other officers stated they had a problem?

What did you do regarding the problem (prior to informing me at the interview)?

Who are the officer / officers that stated they have a problem?

What specifically in detail are the problem / problems he/she/ they allege that they have?

Thank you in advance for your help in dealing with this matter. It is with confidence that I ask that together we address any obstruction to resolution. I will be out of work upon Tuesday due to an appointment but will be readily available at your request thereafter.

Sincerely,

Officer Ed Pomponio

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Sergeant Ed Pomponio <epomponio@ashlandpd.org>

Email

Chief Scott Rohmer <srohmer@ashlandpd.org>

Wed, Sep 21, 2011 at 3:55 PM

To: Officer Ed Pomponio <epomponio@ashlandpd.org>

Cc: Lieutenant Richard Briggs <rbriggs@ashlandpd.org>, Lieutenant Dave Beaudoin <dbeaudoin@ashlandpd.org>, Chief Scott Rohmer <srohmer@ashlandpd.org>

Officer Pomponio:

I am in receipt of your recent email request for information from Lt. Briggs. I will be setting up a meeting with you, me, Lt. Briggs and Lt. Beaudoin to discuss your request in the near future.

Chief Rohmer

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September 26, 2013

Mr. Edward Pomponio
7 Dynasty Drive
Milford, MA 01757

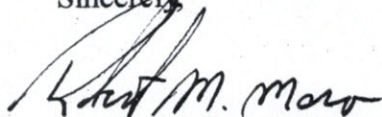
Dear Ed,

As you know, I had the opportunity to work closely with you and Officer Tomaso when I served as school social worker and Project Director for the Ashland Youth Substance Abuse Prevention Initiative and Chair of the Decisions At Every Turn Coalition from June 2007 until I retired in June 2011. I believe you may have come to Ashland around 2008, but Ms Tomaso had served as the APD's liaison to the Ashland School Department throughout my tenure there. It was always a privilege to work with you and Officer Tomaso. I recall vividly how happy she was when you joined the force and began serving beside her as school liaison. It was always great to see how close you two were-it was gratifying to me to see how much you liked each other and how well you two worked together on behalf of the children of Ashland. Ms Tomaso would often tell me how much she appreciated your professional support and personal friendship.

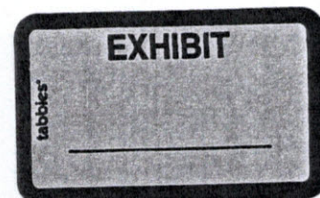
I recall many instances where Ms Tomaso expressed great upset to me over the treatment she was receiving from a number of fellow officers at the time. I cannot say if I recall every one by name, but I know she frequently mentioned Officers Fawkes, Wildman, Briggs, and Alberini as causing problems for her. She rarely mentioned specifics regarding their behavior, but she did say that at least some of the incidents related to sexual harassment. It was apparent to me from both her words and her demeanor that these incidents greatly upset her. She would always tell me that you were a great help to her during this time-she often told me she appreciated your support and friendship towards her in helping her cope with these incidents. I recall her saying to me that you encouraged her to pursue some sort of formal action against them, but she told me she did not want to do that. She seemed resigned to accepting that this pattern of behavior towards her would continue, and she said she felt she could "take it" or words to that effect.

I am writing this note because I feel badly about your current problems with Ashland, and I wanted to offer my support to you. You were always an exceptional partner in working with my Coalition; and you were always there to help me in my work on behalf of troubled children. I had no better ally in Ashland during my time there. You did a spectacular job. Best wishes to you in the days ahead.

Sincerely,



Robert Moro



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MEMORANDUM

To: D. M. Moschos, Counsel, Town of Ashland

From: Jody L. Newman

Date: June 22, 2012

Re: Report of Investigation For the Town of Ashland

I. Introduction

This is a report and summary of the preliminary independent investigation I conducted on behalf of the Town of Ashland involving allegations of harassment of a female police officer within the Ashland Police Department (the "Department" or "APD") to determine whether there was probable cause to initiate a formal investigation. I was appointed as an Investigating Officer on March 22, 2012 by Town Manager John Petrin and asked to determine whether there was probable cause to initiate a formal investigation with appropriate notices to the subject(s) of the investigation.

The allegations of harassment were not brought forward by the alleged victim, Officer Luann Tomaso ("Officer Tomaso") but, rather, by her Officer in Charge ("OIC") Sgt. Edward Pomponio ("Sgt. Pomponio") based on recent and past statements that Officer Tomaso had made to him.

For the reasons described in this report, as well as facts and impressions gleaned from the entire scope of my investigation, including the position taken by the alleged victim, Officer Tomaso, I conclude that there is not probable cause to initiate a formal investigation and that this matter should be closed.

II. Scope

Based upon the nature of the conduct alleged, I have treated the allegations of "harassment" as sexual harassment or gender-based harassment, although neither Officer Tomaso nor Sgt. Pomponio used the term "sexual harassment." I interviewed the key witnesses, Sgt. Pomponio and Officer Tomaso, and others who may have knowledge about the allegations, including members of the Command Staff, Chief Scott Rohmer ("Chief Rohmer" or "the Chief"), Lt. David Beaudoin ("Lt. Beaudoin"), Lt. Richard Briggs ("Lt. Briggs"), Sgt. Robert MacQuarrie ("Sgt. MacQuarrie"), Sgt. Greg Wildman ("Sgt. Wildman"), and the female civilian staff, Maureen Carmichael, Jaime Patriarca and Janice Neitz.

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In addition, I reviewed the following documents:

(1) Sgt. Pomponio's "Conduct Unbecoming" Charge dated February 14, 2012; (2) Officer Tomaso's personnel file; (3) Town of Ashland's Sexual Harassment Policy; (4) Chief Rohmer's notes of his conversations with Officer Tomaso on 12/23/11, 01/05/12, and 01/09/12; (5) Chief Rohmer's letter to Officer Tomaso dated 01/20/12 requesting her cooperation in an investigation of statements she made about "being bullied, blackmailed and harassed"; (6) a "whistleblower" petition dated 01/23/11 signed by Officer Tomaso and other officers alleging "major acts of misconduct" against Chief Rohmer, Lt. Beaudoin, and Sgt. Pomponio; (7) a letter from Officer Tomaso dated 02/01/12 responding to and repudiating statements attributed to her in the Chief's 02/01/12 letter; (8) Lt. Brigg's report dated 12/21/12 concerning Officer Tomaso; and (9) an undelivered letter from Officer Tomaso to Chief Rohmer dated 01/18/12 stating that she did not want to file a complaint against any member of the APD.

I informed each individual witness that I was acting as a neutral, independent investigator and that they had an obligation to the Town to tell the truth. I explained that while this matter was confidential and they should not discuss their interviews with anyone else, I would be reporting my findings to Ashland's outside counsel. Certain members of the patrol officer's union requested that they not be directly questioned about matters which could result in their discipline without union representation present and Lt. Briggs' made the same request with respect to his legal counsel. I agreed.

Key Witnesses Summaries

Sgt. Ed Pomponio

I met with Sgt. Pomponio for approximately two hours on March 22, 2012, in a conference room at Town Hall. He gave me a copy of his February 14, 2012, "Conduct Unbecoming" charge (the "Pomponio Charge") naming Sgt. Fawkes, Sgt. MacQuarrie and Officer Michael Dionne ("Officer Dionne"). The quotations in this section come from the Pomponio Charge.

Sgt. Pomponio joined the APD as a patrol officer in 2008. He was promoted to Provisional Sergeant on October 19, 2011 and became Officer Tomaso's OIC on the day shift. Sgt. Pomponio has known Officer Tomaso his whole life as both grew up in Milford and considers her a friend. Sgt. Pomponio disclosed that he left his prior position as a sergeant in the Milford police department due to his affair with a female officer and has since strived to rehabilitate himself professionally and personally. When Sgt. Pomponio arrived in Ashland, Officer Tomaso held the post of SRO (School Resource Officer) and, in connection with his own community outreach role, Sgt. Pomponio worked with her at the school and mentored her. He observed that Officer

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Tomaso was not treated well by some of the officers and that she had to have a "thick skin."

According to Sgt. Pomponio, he brought forward concerns about Officer Tomaso because of an encounter he had with her in late December of 2011. He saw her in the dayroom, crying, shaking and apparently sick, holding her head and stomach. He asked if she was alright. She said that she was "upset about how she was treated and wanted to tell on people, but that (sic) could not say anything because in the past Officer Dionne had said to her 'you may have a file on us this big (gesturing small) but we have one on you that big (gesturing large)'". She also said that Officer Dionne told her that if "you say anything, you could ruin five officers and their families." Officer Dionne is by all accounts closely aligned with Sgt. Greg Fawkes (Sgt. Fawkes) and has assumed the leadership role in the union.

The source of Officer Tomaso's distress that day was an investigation that Lt. Briggs had done accusing her of multiple misconducts based on her having briefly left town with a cruiser. His report was dated December 21, 2012 and Officer Tomaso asked for and obtained a copy from the Chief's office. Sgt. Pomponio described the situation as a simple miscommunication which was unfairly escalated. According to Sgt. Pomponio, Officer Tomaso, on light duty at the time due to a broken arm, had told Sgt. Pomponio in the beginning of her shift that she needed to pick up a prescription medication. He approved her request, assuming that she was going to the pharmacy in Ashland but instead she went to the pharmacy in Milford. When Lt. Briggs ordered Sgt. Pomponio to write a statement about the incident, he offered to provide verbal counsel to Officer Tomaso but Lt. Briggs insisted on handling the matter.

During the December 2011 encounter in the dayroom, Sgt. Pomponio told Officer Tomaso that she needed to report the problem she was having which was making her so upset. She "appeared to be frightened and didn't want to talk about it anymore." Sgt. Pomponio told her, "I can't just let this go." Shortly after this exchange, Officer Tomaso came back to speak with Sgt. Pomponio in the sergeant's office. He again encouraged her to take action. She was adamant about not wanting to take action and left the office appearing "extremely upset."

Following these two conversations with Officer Tomaso, Sgt. Pomponio, "[a]cting in what [he] believed to be in Officer Tomaso's best interest and knowing that she might be upset with [him]" for doing so, reported her statements about Officer Dionne's comments and her distress to Lt. Beaudoin, then to the Chief. At that time, Sgt. Pomponio also reported past statements made by Officer Tomaso to him in 2009 or 2010 when he was a fellow patrol officer. These past statements described incidents of a sexual nature involving Sgt. Fawkes and Sgt. MacQuarrie. Sgt. Pomponio "felt responsible" to forward Officer's Tomaso's past disclosures because "it now related to

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this new possible issue mentioned by Officer Tomaso", and, as he stated to me, he was now a member of the Command staff and had a duty to report potential misconduct.

The most serious of Officer Tomaso's past statements was that Sgt. Fawkes took her hand and placed it on his penis. (Officer Tomaso also made that same disclosure to two female APD civilian employees). With respect to Sgt. MacQuarrie, she had told Sgt. Pomponio that he hit her on the face with a hot dog at a police event barbeque causing her to cry and he was highly agitated afterwards. She also said that when he was a patrol officer, Sgt. MacQuarrie had showed her two sexually explicit photographs. According to Sgt. Pomponio, he was "completely taken back" by these disclosures and had urged her to report the conduct at the time. Officer Tomaso said she would not because "they know things about me" and she didn't want them "to ruin my life." She also declined then Officer Pomponio's offer to help her or speak with the Chief about it. Officer Tomaso reiterated not wanting to pursue the issue but that "they better not try to hurt her career with all of the information she has on them."

At a January 12, 2012 Command Staff meeting, Chief Rohmer disclosed the issue involving Officer Tomaso and a possible investigation. He issued orders to enforce a professional environment in the Department and convey zero tolerance for violations of the Town's Sexual Harassment policy. There were questions at this meeting by Sgt. Fawkes and Sgt. MacQuarrie whether Officer Tomaso had actually reported sexual harassment to her OIC (Sgt. Pomponio). He denied that she had done so because the past incidents were disclosed when he was not her OIC and Officer Tomaso had not used the term "sexual harassment" in describing the conduct. Sgt. Pomponio subsequently made his "Conduct Unbecoming" report describing all of Officer Tomaso's statements about Sgts. Fawkes and MacQuarrie and Officer Dionne.

Officer Tomaso

I met with Officer Tomaso on April 11, 2012 at the offices of Mirick O'Connell. Officer Tomaso was represented by Tim King, Esq., of the Massachusetts Coalition of Police AFL-CIO, Council 351 ("MassCop"). The interview lasted about 2 ½ hours. On May 30, 2011, I conducted a follow-up interview with Officer Tomaso at the office of Attorney Jon Ceraulo, who had been hired by MassCop to serve as independent counsel for her.

Officer Tomaso joined the APD in 2004. Between 1999 and 2004, she worked in the Milford Police Department as a dispatcher, then auxiliary officer, then full patrol officer. She graduated from the police academy in 2003. She resigned from the Milford Police department to care for her a family member in 2004. She returned to work for the RMV in Framingham and, later that year, Chief Melnick recruited her to join the APD.

She was hired as Ashland's SRO replacing two officers who held the post. She reported that she loved the job, and that it was her "dream job" because she was drawn

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to helping troubled youth (she had worked at DSS for a period) and it was a Monday-Friday day shift. She held the job for 8 years, and had received special training to team the program. She was removed from the special post late last year.

Asked about Lt. Briggs' investigation of her this past December, she became upset and said that he had brought "serious charges" against her which were "bullshit", stating that other officers leave town for a cup of coffee without reprimand and she needed medication and her arm brace and had permission to get both. She added that she has been assured that Lt. Briggs was no longer pursuing the matter, but she was obviously still quite bothered by it.

Officer Tomaso agreed with Sgt. Pomponio's account in two respects. First, she agrees she was in a distressed state over Lt. Briggs' investigation when she talked with Sgt. Pomponio in the day room in December of 2011. The reason she was upset was because "my peers were ganging up on me". She said, "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. Asked why they would want to get her in trouble, she said she didn't know. Second, Officer Tomaso agreed that she told Sgt. Pomponio about Officer Dionne's comment about having a bigger file on her than she had on them, but said that she had misunderstand the comment and that Officer Dionne had recently assured her that it was a joke and there was no file on her. She denied telling Sgt. Pomponio that Officer Dionne had also said that she could ruin five officers and their families. She said she had used those words but Officer Dionne had not. She said that Sgt. Pomponio agreed that the Briggs' report was "bullshit." He told her that these guys were trying to hurt both of them and he said "let's get these guys".

After speaking with Sgt. Pomponio, Officer Tomaso went to talk to the Chief about Lt. Briggs' investigation of her. At this meeting which, according to Chief Rohmer's notes, occurred on December 23, 2012, she learned that Sgt. Pomponio had told the Chief about their recent conversation in the dayroom and had also told him of her past disclosures. According to Officer Tomaso, the Chief said that he had heard that that she was being harassed and subjected to inappropriate behavior. The Chief said it was "classic sexual harassment" and encouraged her to come forward. She indicated she immediately blamed Sgt. Pomponio and was upset that he had talked to the Chief. In her letter of January 20, 2012, she denied that she complained directly to the Chief herself about her treatment but, in her first interview with me, she did not disagree with Chief Rohmer notes reflecting that she told him she was "being bullied, being blackmailed [and] that there was inappropriate behavior going on around here."

Throughout both interviews, she repeatedly lashed out at Sgt. Pomponio complaining that he had "betrayed [her] confidence," and that he was "using her as a vehicle to get rid of the men who were trying to get him fired" (a reference to what she believed to be

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a serious charge pending against Sgt. Pomponio). She claimed to be afraid of Sgt. Pomponio, but I did not find that claim to be credible.

Officer Tomaso emphasized that the incidents she had told Sgt. Pomponio about were in the past and were "stupidity," "jokes" and she hadn't been offended. Asked about the specific past incidents she allegedly disclosed to Sgt. Pomponio which were described in the Pomponio Charge, she did not deny the incidents completely but described them more benignly. She said that Sgt. MacQuarrie was "fooling around" with hot dogs at the Cape Cod police event and hit male officers on the face, including Chief Melnick and Officer Minehan, before he started on her. When asked further questions, however, she conceded she was humiliated, felt disrespected as a woman, and began crying. She described her post-incident conversation with Sgt. MacQuarrie as him apologizing profusely and saying he was wrong to disrespect her as a woman. She denied that Sgt. MacQuarrie showed her a photograph of his penis and said that a random penis picture was floating around the station at some point. She said that he had shown her a photograph of a "dominatrix" and laughed it off as a joke.

She denied that Sgt. Fawkes made her touch his penis, scoffing about the allegation indicating that she would never let that happen. She said a group of officers had been sitting around at lunch in the roll call room discussing whether Italian or Irish had bigger penises. She said, Sgt. Fawkes, who is Irish, reached over to take her hand and she yanked it back.

According to Officer Tomaso, in early January, Chief Rohmer pressured her to file a sexual harassment complaint and ultimately ordered her to do so. At that time, she left the department "hysterically crying," totaled her car and has not been back to work since.

She gave me a letter she wrote to Chief Rohmer dated January 18, 2012. The letter referenced their conversation the prior week about her "private talk with Ed Pomponio" and stated that she did not want to file a complaint against anyone in the APD. She gave it to Officer Dionne and he apparently did not deliver it because it wasn't detailed enough.

Officer Tomaso wrote a second letter to the Town Manager dated February 1, 2012 responding to the Chief's letter of January 20, 2012 asking for her cooperation in a investigation of her statements about being "bullied, blackmailed, harassed," on which letter the Town Manager was copied. She stated:

I would like to be clear regarding this on going situation in response to Chief Scott Rohmer's letter of request.

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I understand that the Chief has heard some information from Sergeant Edward Pomponio that he interpreted as harassment and bullying.

I did share some old information with Sgt. Pomponio from the department in confidence, over a year ago. I never intended for those stories to be brought to the Chief's attention as official allegations nor complaints. Sgt. Pomponio stated to me *"He would never repeat any information I shared with him **without my permission.**"*

Although we have a joking locker room atmosphere within the Police Department, there was never anything that I felt I couldn't take care of on my own. The information that the Chief referred to, were things that happened more than 2-3 years ago. I did not report any incidents because in my opinion there were no incidents that rose to the level of seriousness or concern. If I felt at all that I was being harassed and or bullied at that time, I would have come forward with any sort of information immediately.

In my opinion, I feel Sgt. Pomponio clearly had his own agenda in this situation because they were investigating him for a different complaint that had nothing to do with me. Sgt. Pomponio stated to me *"These guys are out to get my stripes and you (meaning me), think about coming forward, I will help you and the chief will help you as well". "We need to get rid of these guys".* However, these are the same colleagues that he felt were some of the problems.

Since her car accident, Officer Tomaso has signed a January 23, 2012 whistleblower petition to the Town Manager against Chief Rohmer, Lt. Beaudoin and Sgt. Pomponio which Sgt. Fawkes and Sgt. MacQuarrie brought to her. Officer Dionne asked her to go to the union meeting for a "no-confidence" vote against the Chief and she declined because she was "too stressed out."

Chief Rohmer

I met with Chief Rohmer on Friday, April 13, 2012 at the Ashland Library and reviewed his contemporaneous notes of three conversations he had with Officer Tomaso on December 23, 2011, January 5, 2012 and January 9, 2012. According to the Chief, Officer Tomaso made similar statements to him in response to the Briggs investigation which he described as her "being bullied, being blackmailed [and] that there was inappropriate behavior going on around here." It is also clear from his accounts of his

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conversations with Officer Tomaso during this period that she was distraught, crying, feeling high stress and being pulled in different directions. She expressed both resentment towards Officer Dionne suddenly being solicitous of her, distrust of the union and not wanting to get people in trouble. She also expressed anger to the Chief that Sgt. Pomponio had betrayed her confidence and was adamant then that she did not want to pursue a complaint.

Conclusions and Findings

1. It is undisputed that in late December 2011, Officer Tomaso was highly distraught that Lt. Briggs had written her up. She believes that he had grossly exaggerated a minor infraction routinely overlooked with others into serious charges intending serious discipline.
2. I find that in her distraught state about the Briggs report, she made vague statements to Sgt. Pomponio suggesting that she wanted to reveal misconduct by Lt. Briggs's allies but had been warned by Officer Dionne to keep quiet because they knew negative information about her. I find that she made a similar statement about not wanting to complain for that reason when she previously told Sgt. Pomponio of the past incidents of a sexual nature and he had urged her to report them.
3. I find that Sgt. Pomponio reasonably believed that Officer Tomaso's references to Briggs's allies was a reference to the inappropriate conduct of a sexual nature that she had previously complained to Sgt. Pomponio about.
4. I find that that Sgt. Pomponio reported Officer Tomaso's recent and past statements because, as her friend, he genuinely wanted to help her and, as her OIC, he believed he had a duty to report what appeared to be harassment and retaliation. However, it is also clear that the fact that Officer Tomaso's alleged harassers were the same officers opposing Chief Rohmer and Sgt. Pomponio in an underlying power struggle occurring simultaneously. This created the opportunity for Sgt. Pomponio's detractors to cast him as opportunistically using the complaints to further his own agenda. This is the motive that Officer Tomaso ascribes to Sgt. Pomponio.
5. I find also that in late December 2011, Officer Tomaso made statements to Chief Rohmer similar to those she made to Sgt. Pomponio, specifically that she had wanted to report inappropriate conduct in response to the Briggs investigation but that she feared retribution. However, after she learned that Sgt. Pomponio had reported her past statements to the Chief, and after the Chief urged her to file sexual harassment charges, she became extremely agitated and felt undue pressure to act against her will. I find that she then aligned herself with the officers named in the Pomponio Charge and blamed Sgt. Pomponio for creating this ordeal for her.

COLLORA_{LLP}

D. M. Moschos, Counsel, Town of Ashland

June 22, 2012

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6. There is insufficient evidence to conclude that Officer Tomaso has been subjected to sexual harassment in violation of Ashland's Sexual Harassment policy or the law. The policy describes sexual harassment as "behavior which is not welcomed by the employee, which is personally offensive to him or her, and which undermines morale and /or interferes with the ability of the employee to work effectively." Under the legal standard, hostile environment sexual harassment is

"sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when . . . such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment".

See MCAD Guidelines for Sexual Harassment.

Officer Tomaso repeatedly and forcefully maintains that she never wanted to report the incidents she privately told Sgt. Pomponio about. She downplays the past incidents as joking around which did not offend her. She denies that any actual touching with Sgt. Fawkes occurred and describes the incidents with Sgt. MacQuarrie as isolated and benign. In this context, the incidents would not rise to the level of a violation or policy or law as they were not unwelcome and/or not severe or pervasive.

7. Nor is there sufficient evidence that Officer Dionne engaged in unlawful retaliation by his past statement to Officer Tomaso suggesting the release of damaging information about her if she reported inappropriate behavior by his friends. Officer Tomaso says that she misunderstood and that Officer Dionne's comment was merely a joke. She says she was the one to voice a concern about hurting other officers and their families over trivial past behavior. It may well be that Officer Tomaso's decision to not complain was a decision to pick her battles and, without her corroboration of a specific threat or warning, there cannot be a finding of retaliation.

Conclusion

Sexual harassment laws are not intended to purify the workplace of any sexual references or even conduct of a sexual nature; they are intended to eliminate the gender bias which occurs when sexual references or conduct of a sexual nature is severe or frequent enough to deny women equal opportunity in the workplace. It appears that Officer Tomaso made disclosures to her friends about incidents of a sexual nature not because she believed that the incidents were hurting her career, but because she believed that those acts would be embarrassing to the actors and her potential disclosure of them would deter them from causing her problems in the workplace in the

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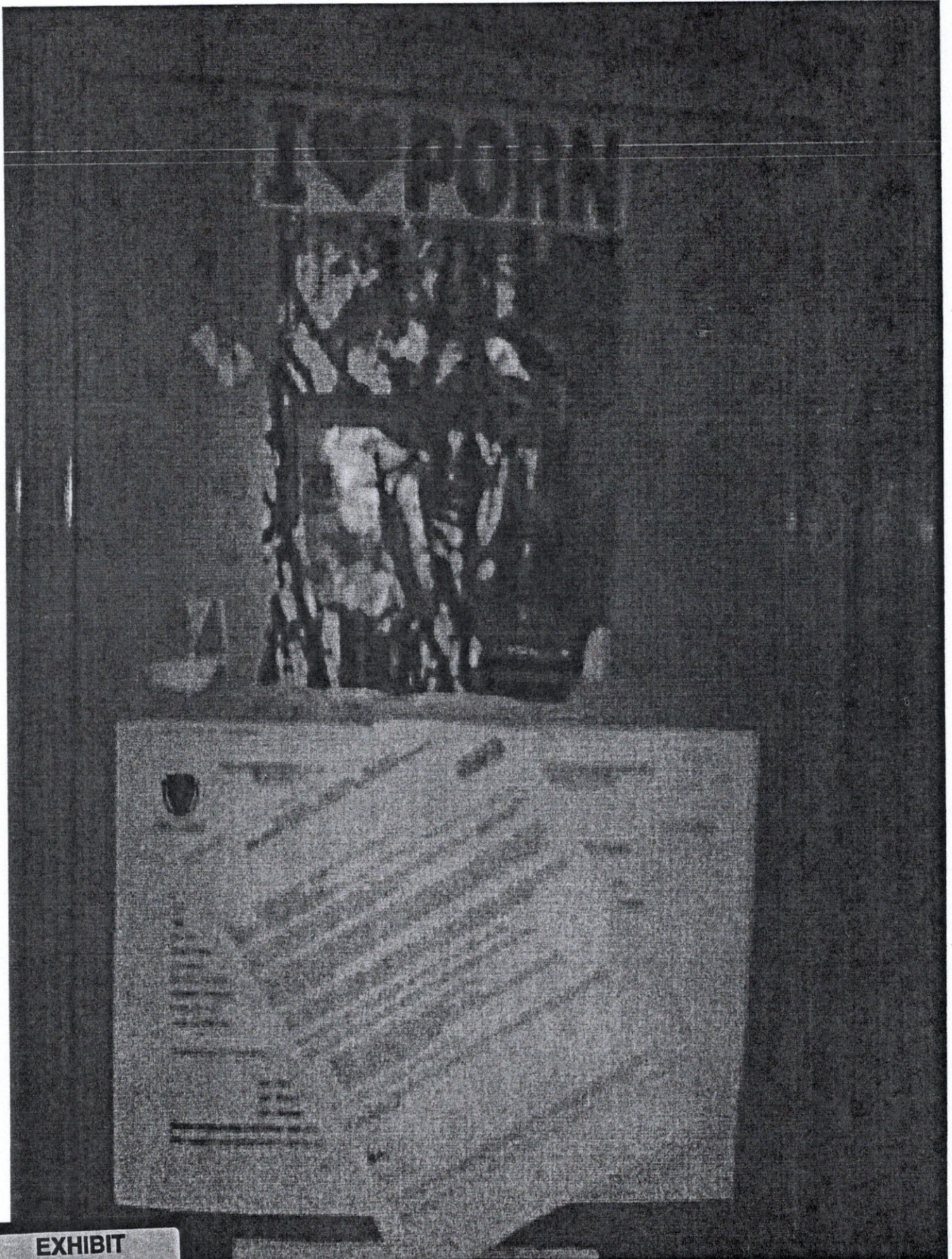
future. She clearly and reasonably perceived the Briggs report as an effort to harm her career. I make no findings in this report as to his motive for doing so.

Accordingly, I find no probable cause to initiate a formal investigation because there is insufficient evidence to establish a violation of the Town's Sexual Harassment Policy or the law.

/s/ Jody L. Newman
Collora LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210
(617) 371-1000

EXHIBIT

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EXHIBIT

tabbles

EXHIBIT

17



Sergeant Ed Pomponio <epomponio@ashlandpd.org>

Request for documentation

Sergeant Ed Pomponio <epomponio@ashlandpd.org>
To: David Beaudoin <dbeaudoin@ashlandpd.org>

Sat, Feb 18, 2012 at 3:28 PM

Lt. Beaudoin,

I am at a disadvantage and concerned regarding how I perceive that I have been treated and am fearful of possible continued defamatory treatment. I have requested to speak up the chain of command via the Chief of Police with the highest police official, the Town Manager Mr. John Petrin and have been denied more than once.

While it is my understanding and has come to my knowledge that other officers, union officials and non-union officials have been allowed an audience with Mr. Petrin, I have not regarding ongoing matters. I have noted the differential treatment.

It is my belief that inferences made in separate past encounters by Lt. Briggs and Mr. Petrin, although I can not say at this time, with certainty, that other officers have spoken against me or mentioned unspecified concerns regarding me and in my opinion I have concerns that these unmentioned persons may have attempted to maliciously defame or damagingly misrepresent me and my efforts here within this organization. I feel that by not being allowed to speak with Mr. Petrin, as they may have been, that I have been treated differently than others and an unjustified, damaging and inaccurate view may have been developed unfairly. Possibly to the point where my good name and reputation may have been injured thus placing me at a possible unfair disadvantage.

In the past I have sent emails and requested clarification and information regarding the treatment I feel that I have suffered and the statements made at the hands of Lt. Briggs at my sergeant's interview. I even requested a meeting and one was held. Yet I have asked for and am still seeking an answer to the questions posed in response to Lt. Briggs statement that he personally had knowledge that officers I work with have a problem with me. (See my past below email regarding the subject).

The recent treatment and attacks that I have undergone is concerning to me. This coupled with the patrol commanders' personal knowledge that others have a problem with me and not being allowed to professionally deal with the matter is an issue of concern. I am respectfully entitled to and seeking protection. How can I and we as an organization take corrective action if the matter is not examined or even clarified or even determined if it is legitimate and or dealt with? The possibility must be considered that to know a problem exists and to do nothing about the problem is inappropriate and a bigger problem.

I am once again asking for help and respectfully requesting a timely investigation into the matter and answers to the questions posed. My initial request was in September of 2011. It is now February of 2012.

EXHIBIT

I am concerned that the unspecified and alleged problem other officers allegedly have with me as stated by Lt. Briggs during my sergeants interview may be based on personal bias and arbitrary and captious attempts in nature tending to unjustly find fault and make trivial and excessive criticisms intended to possibly entrap me in an argument for nefarious purposes to cause injury to my career.

Sincerely,
Sgt. Pomponio

c.c. Attorney Ken Grace, Massachusetts Coalition of Police

Initial Letter to Lt. Briggs:

Lt. Briggs,

On Friday 09-09-11 in the course of my interview for the position of Sergeant at the Ashland Police Department, in the presence of the Ashland Assistant Town Manager Mark Purple, Deputy Chief Steven Trask of the Framingham Police Department, Lt. David Beaudoin, Executive Secretary Maureen Carmichael and myself you stated that "I happen to personally be aware that officer's that you work with have a problem with you".

Per your assertion Lt. I am respectfully asking to meet with you, Lt Beaudoin (the officer I report to in my chain of command) and Chief Rohmer.

My goal is to gain knowledge regarding your account in order to discover what problem(s) officer(s) hold, and who has the problem(s) as well as if any real concerns ensue so I can design a strategy too effectively deal with any factual issues. Please note that no officer has ever brought any concern before me or made any attempt to inform me of any concern they allegedly hold.. My aim is the betterment and resolve of the subject in the best interest of the organization.

I have four questions that immediately come to mind respectfully:

When did you first become aware that other officers stated they had a problem?

What did you do regarding the problem (prior to informing me at the interview)?

Who are the officer / officers that stated they have a problem?

What specifically in detail are the problem / problems he/she/ they allege that they have?

Thank you in advance for your help in dealing with this matter. It is with confidence that I ask that together we address any obstruction to resolution. I will be out of work upon Tuesday due to an appointment but will be readily available at your request thereafter.

Sincerely,

Officer Ed Pomponio

EXHIBIT

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Memo

To: Town Manager Jim Purcell

From: Chief Scott C. Rohmer

Date: December 1, 2012

Re: Threats

On Wednesday November 28, 2012 at the conclusion of the Ashland Town Meeting, I was at the exit door of the Ashland High School Auditorium talking to various community members including Board of Selectmen member, Mr. Robert Hebden.

At one point Mr. Hebden said he wanted to talk to me and we walked down the hall a short distance and I followed him into a side room. At that time Mr. Hebden said something to the effect of I hope you're not mad at me (I believe he was referring to him forwarding an Ashland police officers complaint to the town manager). Discussion continued and we both acknowledged an investigation was imminent (referring to the complaint). Mr. Hebden proceeded to say that "I would lie through his teeth" about saying this, "you could be chief for a long time, for many years, or you could be chief for just a short time", referring to the pending investigation. He said that we have two very obvious and serious issues, a felony and an obstruction of justice charge. I told him that there would be an investigation of the complaint to determine the facts. He agreed. Our conversation casually ended. This is not the first time Mr. Hebden has brought up police department issues in discussion with me. In the past he has made statements that Pomponio is the cause of all the problems (at the PD), and Pomponio needs to go.

Note that I have a long standing relationship with Mr. Hebden, specifically because of a close friendship since childhood with his recently deceased son. I am troubled by Mr. Hebden's innuendo of threats to my livelihood and position as police chief. This has placed me in a stressful and uncomfortable position. Mr. Hebden's comments can be construed as threatening and blackmail, based on his position of authority and influence as a Board of Selectmen member.

EXHIBIT

19



Sergeant Ed Pomponio <epomponio@ashlandpd.org>

Work Environment / Employee Harassment

Sergeant Ed Pomponio <epomponio@ashlandpd.org>

Wed, Dec 19, 2012 at 1:56 PM

To: Lieutenant Dave Beaudoin <dbeaudoin@ashlandpd.org>, Chief Scott Rohmer <srohmer@ashlandpd.org>

Cc: Bryan Decker <bdecker@sandulligrace.com>

To: Lt. David Beaudoin

From: Sgt. Ed Pomponio

c.c. Chief Scott Rohmer

Date: Wednesday December 19, 2012

RE: Work Environment / Employee Harassment

Dear Sir:

I have been caused great emotional and physical injury and have been attacked. I have concerns regarding the distinctive way in which I have been singled out and treated differently than other employees. I have asked for assistance and not been helped.

I was passed over on a short list for promotion to permanent sergeant, treated differently than others. I was informed the town would not be acting on the list. I was the only employee to pass the 2010 exam but had to retake the 2012 exam while a signed list was certified and in place. In spite of the need for five current full time sergeant positions and the Chiefs and Lt. Beaudoin's full recommendations.. In the past Sgt. Zanella, Sgt. Ellis, Fawkes and Lt. Briggs were all promoted on a civil service short list. I was informed that the Former Town Manager Mr. Petrin stated, according to then Chairman of the Board of Selectmen, Mr. Jon Fetherston, who informed me that the reason why I was not being promoted permanently was because the police union (then Fawkes and Officer Dionne) did not like me, stating that Petrin had promised the union that I would not be promoted in spite of stating that he was aware that I was the best person for the job, again according to Mr. Fetherston. Mr. Fetherston provided this account in writing which I forwarded to the town. No action was taken.

In the past an inconsequential and petty charge was brought against me by former employee Robert Maquarrie. The matter was trifling, petty and an apparent attempt to unjustly single me out. The harassment caused me to be forced to agree to have a mark against me on file. I was threatened with being demoted and fired. I was informed that this matter would not affect my promotion status but it is apparent to me that it has. Other employees have been in fact actually untruthful and no action was taken. On January 23, 2011 a letter was signed and forwarded to then Town Manager John Petrin which eleven employees (at the time) untruthfully forwarding a false claim. The letter states that *"We, as employees of the Ashland Police Department have learned of majors acts of misconduct by Chief Rohmer and others of the Ashland police Department"* (the matters they are claiming as acts of misconduct were investigated by an outside independent investigator hired by the town at an expense of over \$45,000.00 was shown to be in reality 130 lies, misrepresentations, falsehoods and untruths). Stating in the report that their goal was to embarrass and cause harm to the Chief and others, causing me much distress and damage

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to my reputation and good standing. Not to mention all of the untruths uncovered in the investigation. Again not one employee to date was held accountable, to my knowledge, for the lies told. All of this has been documented in the reported investigation conducted and concluded by the town. The letter continues and states *"We are certain that Chief Rohmer, Lt Beauboin and Sgt. Pomponio will continue this destructive pattern of retaliation (never stated) until they are able to terminate one or all of us. We are seeking protection under the Massachusetts Whistle Blower's Protection Act"*. **This is a lie signed by eleven employees.** No action was taken. Note: (The law does not provide protection for people who lie). Eleven employees signed this pact of lies. Greg Fawkes, Robert MacQuarrie, Michael Dionne, Gregg Wildman, Richard Briggs, Luann Tomasso, David Muri, Christopher Alberini, Allena Downey, Jonathan Tessier and John Driscoll. No action was taken against them.

Now I am being singled out once again for a matter that was untimely and was disclosed and reported and handled approximately a year ago.

In the past officers have committed serious violations of department policy and procedure and or the law and were not treated as I have been treated. I will cite just a few examples but not be limited to:

- John Driscoll stood by at a citizen's residence while on duty, armed in uniform with a marked police unit while Greg Fawkes while off duty violated the citizen's civil rights. Fawkes was ultimately discharged due to the seriousness of the offenses but Driscoll was not charged or held accountable for engaging in a serious violation of action that he knew or should have known was unlawful.
- It was learned that Det. Sgt. Gregg Wildman committed an alleged felony by placing a GPS device on a suspect's vehicle without probable cause as stated in a search warrant as required by law. No action was taken.
- Officer Christopher Alberini tampered with property being held in safe keeping and engaged in cross dressing while in the police station. He was charged with conduct unbecoming and no action was taken.
- Officer Dionne while on duty texted calling one of the department dispatcher's a **"cunt"**. According to the dispatcher *He initially lied* stating that he was calling someone else who works at T.J.'s Restaurant the name and then admitted to using the profanity against her. He lied no action was taken for the lie.
- Officer Tomasso informed me that Officer Dionne had attempted to blackmail her. She stated that he told her that she may have something on her but that they, meaning several employees have much more on her. Tomasso told me that she wanted to tell on them but it would ruin her life between her husband and her boyfriend. Officer Tomasso was engaged in an affair with A Mr. Steven Finn and according to her Officer Alberini and possibly other employees of the Town of Ashland. No action was taken on Tomasso regarding her ongoing actions / affair(s).
- According to Tomasso, Greg Fawkes, at one point in the past had, grabbed her hand and placed it upon his penis. No action was taken.
- Lt. Briggs had allegedly forced entry his way into his estranged wife's business in Framingham. He was the subject of a domestic Restraining order. No action was taken.
- According to Tomasso, MacQuarrie while on duty showed her a picture of a penis stating it was his penis. According to Tomasso while attending a work related drug conference upon

the Cape he struck her in the face repeatedly with a hot dog in a sexually manner. Crying and begging her not to tell on him. No action was taken.

- John Driscoll released department documents to outside officials without the prior authorization of the Chief and following the proper chain of command. To date no action was taken.
- The police union conducted a fundraiser for Officer Alberini and the K-9, without the Chief of Police's knowledge and or approval, at a local establishment in which alcohol was sold and served resulting in an employee (dispatcher Sara Finnerty), who worked and attended the party, being involved in a motor vehicle crash and seriously injured as result of the crash. Her blood alcohol count was more than three times the legal limit. No town related investigation or action was taken.

These above stated occurrences are examples but not an exhaustive account, only presented to show the differences in treatment.

Now once again I am subject to a second matter, even after a staff meeting in which the town's representative pledged no addition action was to be taken and the department was moving on. I am being treated differently than others. I have been caused great distress. I am once again requesting to speak up the Chain of Command to the Town Manager, (the highest person in my chain of command) asking for assistance. Thank you.

Respectfully submitted,

Sgt. Ed Pomponio
137 Main Street
Ashland, MA 01721
tel 508 881-1212 ext. 50
fax 508 881-5243

EXHIBIT

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In the matter between)

Town of Ashland)

And)

Sgt. Gregory Fawkes)

Hearing Officer Report

Introduction

The undersigned was appointed by Ashland Town Manager John Petrin to act as a hearing officer under Chapter 31, section 41 of the Massachusetts General Laws in the matter of whether just cause exists to terminate the employment of Sergeant Gregory Fawkes. The hearing was held on three different days, April 2, April 12 and April 18, 2012, at the Ashland Town Hall. The employee was present and represented by John Becker, Esq. Representing the Town was attorney Marc Terry and Lieutenant David Beaudoin. The employee requested that the hearing remain private and that request was granted. In addition, the parties entered into a confidentiality agreement, concerning certain documents, which was entered as Joint Exhibit 1. The witnesses were sequestered and gave testimony under oath. The hearing was stenographically recorded and transcriptions were provided. Numerous documents were accepted from the parties. The transcript and documents are attached hereto and incorporated herein.

Based on the evidence provided, I make the following findings of fact:

Findings of Fact

1. Sergeant Gregory Fawkes (hereinafter "Fawkes") has been employed in the Police Department of the Town of Ashland (hereinafter "Town") since 2002. (tr. 575)

EXHIBIT


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2. William Cavanagh (hereinafter "Cavanagh") has been an Ashland resident for twenty years currently residing at [REDACTED]. (tr. 38)
3. Fawkes and Cavanagh have had a bad relationship for several years going back to a complaint Cavanagh made to the Police department concerning Fawkes investigation of a matter concerning Cavanagh' [REDACTED]. (tr. 136-137)
4. [REDACTED], the [REDACTED] of Fawkes, walked [REDACTED] dog by Cavanaugh's home on a regular basis for the past two years, initially every day, but by the time of the June 4th incident only 2 or 3 times per week. (tr., 40, 310, 314).
5. Cavanagh and [REDACTED] engaged in friendly banter during her walks but at some point, which [REDACTED] characterized as after Cavanagh found out she was married to Sgt. Fawkes, Cavanagh's comments became "inappropriate" and "harassing." (tr. 311-314)
6. [REDACTED] became increasingly frightened by Cavanagh and shared her fears with her husband, who told her to be cordial with him and not walk by his house. (tr. 314, 581)
7. During one of [REDACTED] regular walks on June 4, 2011, Cavanagh drove past [REDACTED] and asked her to take his cell phone number and let him know when she would be coming by, but not when she had her "bozo" husband with her. (tr. 40, 315)
8. [REDACTED] told her husband, who was off-duty that day, what Cavanagh had said to her and that she was afraid. (tr. 315-316)
9. Prior to the June 4th incident, [REDACTED] was not physically frightened by Cavanagh, although he had made suggestive remarks to her between 25 - 50 times prior to that date. (tr. 327)
10. Fawkes went to Cavanagh's home to confront him about the comment he had made to [REDACTED] however Cavanagh was not home when he arrived. Fawkes drove up and down Cavanagh's street waiting for him to return and then parked across the street from Cavanagh's home. (tr. 42, 105-106)
11. On the way to Cavanagh's house, Fawkes called the police dispatch and inquired as to what officers were working. He told the dispatcher to have Officer John Driscoll call him. (Dispatch CD, Town Exhibit #8)
12. Officer Driscoll was instructed by dispatch to call Fawkes at home. The officer cleared his call and informed the dispatcher that he was going to assist Fawkes "on an issue." (Dispatch CD, Town Exhibit #8)

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13. Fawkes called dispatch and informed the dispatcher that he had been "flagged down" by Bill Cavanagh but Cavanagh only made eye contact and nodded his chin in Fawkes direction. (tr. 584-585)
 14. Neither Fawkes nor the dispatcher contacted Sergeant Steven Zanella who was the officer in charge on June 4, 2012. (tr. 132-133, 208)
 15. Cavanagh returned home and observed Fawkes in his truck. Cavanagh backed his truck into his driveway, exited his truck and walked towards Fawkes. (tr. 42-45)
 16. Fawkes and Cavanagh were yelling at each other in the middle of the street; Fawkes initiated the confrontation by asking Cavanagh what he had said to [REDACTED]. Fawkes told Cavanagh to "stay the fuck away" from [REDACTED]. (tr. 188, 649)
 17. [REDACTED] who lives across the street from Cavanagh, heard Fawkes tell Cavanagh that this was his town and not to come down to the police station or Fawkes would throw him out. He also heard Cavanagh say something about an event being ten years ago, and assumed it was about Cavanagh. (tr. 109-111)
 18. Cavanagh walked back to his driveway. Fawkes went back to his truck and made a call on his cell phone. (tr. 45)
 19. When Fawkes was walking back to his truck he looked at [REDACTED] as if to say, "what are you looking at, mind your own business." (tr. 113)
 20. Fawkes exited his truck and came onto Cavanagh's driveway and began yelling at Cavanagh about his prior criminal record, his reputation in the Town and that Cavanagh had previously committed a sexual assault against [REDACTED]. (tr. 48-49, 593)
 21. During this confrontation Officer Driscoll arrived. He was on duty and in a department cruiser. He observed them talking loudly to each other and put himself between them in the driveway. (tr. 49, 185-186).
 22. Officer Driscoll heard Fawkes tell Cavanagh to "stay the fuck away from [REDACTED]," and Cavanagh tell him that he gets what he deserved after how he treated [REDACTED] and that he should get a restraining order against him. (tr. 188)
 23. [REDACTED], was in their house at the time of the argument and came outside when she heard Fawkes say that her husband had forced [REDACTED] with him because they were taking care of the [REDACTED]. (tr. 146-148)
 24. The Cavanagh's [REDACTED] were also in the home and the windows were open. Mrs. Cavanagh did not want her [REDACTED] to hear the argument. (tr. 149)

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25. Fawkes believes there was [REDACTED] committed in the incident between Cavanagh and [REDACTED], because there was no report and no investigation. (tr. 594-595)
 26. The confrontation ended when [REDACTED] came out of the house and asked what was going on. Cavanagh grabbed her and told her to get back in the house and told Officer Driscoll and Fawkes to get off his property. Cavanagh then went into his house. (tr. 50 - 51, 189).
 27. Cavanagh felt intimidated by Officer Driscoll's presence and was upset that he did not do anything to resolve the problem. He also felt that the confrontation was about more than Fawkes' [REDACTED] when Fawkes said to him that he (Cavanagh) didn't come from Ashland and Ashland was his town. (tr. 56).
 28. Fawkes agreed on the witness stand that having a police officer show up while a private person was at Cavanagh's home could give the perception to a reasonable person that the private person (in this case Fawkes) could be getting preferential treatment, but he did not believe that Cavanagh is a reasonable person. (tr. 654)
 29. Officer Driscoll suggested to Fawkes that [REDACTED] obtain a harassment order against Cavanagh. Driscoll interviewed [REDACTED] and went to the department to complete a report and run a Board of Probation report (known as a BOP). (tr. 190-191)
 30. Officer Driscoll obtained a harassment order against Cavanagh and he and Officer Foster served it on Cavanagh. (tr. 195, 389)
 31. When Officer Foster served the harassment order on Cavanagh, Cavanagh told him he wanted the order taken off or he would file a complaint with the department. (tr. 390).
 32. Officer Foster wrote a report, Employee Exhibit 10, concerning the serving of the harassment order on Cavanagh because Fawkes asked him to write the report. He normally would not write a report over the serving of an order unless he was the investigating officer. (tr. 389-394).
 33. The town appointed Edward J. McGinn, Jr., a deputy chief in the Worcester Police Department, as a Major in the Ashland Police Department, to conduct an internal investigation into the complaint filed by Cavanagh. (tr. 201-203)
 34. Major McGinn was hired because of relationships that Cavanagh had with members of the command staff in the department (tr. 203-204)
 35. Major McGinn interviewed Fawkes as a part of his investigation. (tr. 207).
 36. Fawkes told Major McGinn that he called Officer Driscoll because he wanted "a good guy," there with him as a witness because he was concerned that Cavanagh might make a false allegation against him. (tr. 208-210)

37. It is generally improper for police officers to act as witness for others, although they may respond to keep the peace or to mediate a situation. (tr. 126, 209, 557)
38. Fawkes admitted to Major McGinn that he went to Cavanagh's home on June 4, 2012, on a personal matter, not on police business. (tr. 215)
39. When Cavanagh returned home on June 4, Fawkes told Major McGinn that Cavanagh had given him a "chin nod" when he saw him. Cavanagh did not flag down Fawkes. (tr. 73, 214).
40. During the course of investigating a crime unrelated to Cavanagh, it was reported to Fawkes that Cavanagh had sexually assaulted [REDACTED]. Fawkes related this information to Major McGinn during his interview and also told Major McGinn that he had tried to investigate this allegation years ago when it was made but that neither the [REDACTED] nor Cavanagh would cooperate in the investigation. (tr. 215-219, 593-594).
41. Fawkes told Major McGinn that no one was present during his confrontation with Cavanagh. (tr. 219-220).
42. On June 7, 2012, Cavanagh filed a complaint against Fawkes, Town Exhibit #2, for acting unprofessionally. (Town Exhibit #2, tr. 64)
43. Cavanagh has not denied the remark he made to [REDACTED] throughout the investigation or these proceedings, nor has he denied that the comment was out of line. (tr. 79)
44. On July 23, 2011, Fawkes ran a BOP on Cavanagh. He told Major McGinn this was a part standard investigatory procedures of the Ashland Police Department, however Fawkes did not tell Major McGinn what he was investigating. (tr. 221) } *
45. Fawkes testified that he ran the BOP and put it in either Driscoll's or Foster's file. (tr. 599)
46. Fawkes testified that there is no rule in the department prohibiting investigating or participating in an investigation in a case in which [REDACTED] is the victim and that he was running the BOP to help an officer out, not for personal gain. (tr. 686-687)
47. Fawkes personally did not file any official reports with the Department relative to the June 4th incident; however he did file several complaints with the Department indicating that he was being harassed by Cavanagh. (tr. 222, 272)
48. Fawkes told Foster to put in his report concerning the serving of the harassment order that Cavanagh told Foster, if the order was not dropped, he would file a complaint because this comment was a threat. (tr. 602)
49. There is an inherent conflict in being an investigator, a witness and a victim. (tr. 272)

50. In September of 2009, [REDACTED] went to court and had the order against Cavanagh extended for one year because [REDACTED] was afraid that Cavanagh was saying things to [REDACTED] as a means to get to [REDACTED] and that she was afraid for [REDACTED] who attend the same school as [REDACTED] (tr. 323-324)
51. On October 26, 2011, Cavanagh went to the Mindess School to pick up [REDACTED] because it was raining. Usually [REDACTED] (tr. 58)
52. Cavanagh did not know where to park, so he stopped in the driveway and asked another parent in an SUV where he should park. She told him he could not park where he was, so he drove through the driveway, which is shaped like a big "U" and parked out on the street. (tr. 58-60, Exhibit Town #5)
53. Also parked in the Mindess School driveway on October 26, 2011 were the Fawkes, who also were [REDACTED] after school. (tr. 324)
54. At the school, Mr. Cavanagh park directly behind the Fawkes car, which has dark tinted windows. Fawkes called police dispatch and asked what officers were on duty. (tr. 325, 665)
55. Finding out that Officer Dionne, a personal friend of his was on duty, he called Officer Dionne on his cell phone and told him that Cavanagh was at the Mindess School, parked close to his vehicle and that he wanted Dionne to advise Cavanagh that the 258 (E) order was still in effect and what the ramifications were for violating that order. (tr. 159-162)
56. Fawkes specifically told Dionne not to arrest Cavanagh and just to tell him to stay away from [REDACTED] as it would be easier on [REDACTED] (tr. 223, 601)
57. Whether a supervisor is on or off-duty, police officers are required to follow the orders of a superior officer. (tr. 691)
58. Fawkes told Dionne that he was not certain that Cavanagh knew that it was his car but that he was "pretty sure" that Cavanagh intentionally parked close to them. (tr. 162)
59. When Dionne arrived at the school, Cavanagh was parked on Concord Street in front of the school. (tr. 164, Town Exhibit 5)
60. Dionne went to Cavanagh's vehicle and told him he was in violation of the order. He did not arrest or summons Cavanagh for violation of the order. Cavanagh told Dionne he did not know the Fawkes were present. (tr. 61-62, 167)
61. An arrest is mandatory for violation of a harassment order under c. 258(E). (tr. 192)
62. The Ashland police department has a history of allowing officers not to arrest in situations where the statute calls for mandatory arrest. (tr. 346-347)
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63. Cavanagh went to Police Chief Rohmer after the incident at the school to complain about being harassed by the department. (tr. 62)
 64. Cavanagh had previously filed a complaint with the Department over the June 4th incident with Fawkes. (tr. 65)
 65. Between June 7, 2011 and November 26, 2011 there were numerous starts and stops to the complaints made by Cavanagh and the subsequent investigation. (tr. 79-90)
 66. After filing the first complaint on June 7th, Cavanagh asked if they could sit down and work things out, but this did not happen. (tr. 66)
 67. On June 10th, Cavanagh sent Chief Rohmer an email indicating that he wanted to withdraw his complaint and for Fawkes to contact him so he could apologize. (tr. 80-81, 528, Employee Exhibit #1)
 68. Cavanagh then told the Chief that he wanted an apology from Fawkes which Fawkes did not agree to. (tr. 528)
 69. Cavanagh asked that a meeting be set up with himself, the Chief and Fawkes. The meeting never took place. The Chief takes responsibility for "dropping the ball" on coordinating this meeting. (tr. 494)
 70. On August 3rd Cavanagh filed another complaint over the June 4th incident. (tr. 66, 83, Town Exhibit #3)
 71. In August of 2011, the Chief assigned Lt. Richard Briggs to investigate his complaint, however, Briggs did not want to do the investigation and was slow in getting started (tr. 397, 456, 534-536)
 72. Cavanagh was upset that Lt. Briggs had been assigned to investigate his complaint because he did not trust him. Cavanagh believes that Briggs filed a false police report against [REDACTED] several years ago. (tr. 67)
 73. Cavanagh was upset that Briggs wanted to handle the investigation over the phone. He felt this was unprofessional and he refused to cooperate with the investigation. (tr. 66-67)
 74. Lt. Briggs filed a written report finding Cavanagh's complaint unfounded due to Cavanagh's failure to cooperate and Briggs' opinion that Cavanagh was not credible in this matter and other matters Briggs was involved with. (tr. 415-416)
 75. Chief Rohmer sent Cavanagh a letter telling him that the investigation was closed and his complaint was deemed unfounded. (tr. 416 and Employee Exhibit #12)
 76. On September 30, 2011, Cavanagh again wrote to Chief Rohmer asking for an investigation of the events of June 4, 2011. (tr. 69-71, Town Exhibit #4)

77. Chief Rohmer asked Briggs to reopen the investigation based upon names of witnesses which Cavanagh provided, however Briggs declined due to his prior lack of credibility finding in his report. (tr. 426, 539 and Town Exhibit #4)

78. Chief Rohmer attempted to mediate the issues between Fawkes and Cavanagh, which contributed to back and forth nature of the complaints and the investigation. (tr. 424-425)

79. On November 26, 2011, Fawkes and Chief Rohmer met at Stone's Public House and Fawkes told the Chief to "just do an investigation and be done with it ... or give me a reprimand, do whatever you have to do." (tr. 609)

80. The following day Chief Rohmer gave Fawkes a letter telling him that the department was re-opening the investigation. (tr. 611-612).

81. After meeting with the town manager and labor counsel, Chief Rohmer selected an outside investigator to do the investigation. (tr. 539)

82. At Fawkes urging, the department sent a package of information concerning the Cavanagh/Fawkes situation to the District Attorney's office for review. The DA reviewed the package and told the department that there was nothing to pursue. (tr. 523)

83. The Chief testified that he had a positive working relationship with Fawkes both before and after the June 4th incident with Cavanagh. This did not change until the January 2012 vote of no confidence. (tr. 526)

84. On January 23, 2012, the police union took a vote of no confidence against Chief Rohmer, which Fawkes, as union president, reported to the newspaper. (tr. 612-613)

85. The next day several people including Jon Featherston, Selectman Mike Campbell, and Cavanagh held signs showing support for the police chief. (tr. 612)

86. After the vote of no confidence, the Chief had no further involvement in this matter. He did not participate in the investigation or in the bringing of charges. (tr. 550)

87. On March 2, 2012, Sergeant Robert MacQuarrie, was the shift commander on the 3-11 shift which Fawkes was working. (tr. 341)

88. Fawkes asked Sgt. MacQuarrie if he could take an hour off during the shift. Sgt. MacQuarrie testified this request had been made by cell phone, but later stated in an email that his phone records did not reflect that a call had been made. (tr. 342, Joint Exhibit #5)

89. Sgt. MacQuarrie recorded Fawkes hour off as personal time, but later had to change it to vacation time as Fawkes had no personal time available. (tr. 343, Town Exhibit #7)

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90. Town Exhibit 7 is the only official document which reflects that Fawkes was using leave time during the time he called Featherston. There was no written leave request and no payroll documents reflecting use of vacation time by Fawkes on that date. (tr. 691-696, Town Exhibit #14)
 91. During the hour Fawkes had requested off, Sgt. MacQuarrie heard him in the police station parking lot speaking to Mr. Featherston asking Mr. Featherston to be unbiased. (tr. 343)
 92. On March 3, 2012, Lt. Briggs gave Fawkes an order telling him that while he was on duty he was to focus on his specific duties as an Ashland police officer. Fawkes did not tell him that he was using leave time at the time he called Featherston. (tr. 674)
 93. On March 3rd, Fawkes also spoke to the town manager about his conversation with Featherston and he did not tell him that he was using leave time when he made the phone call. (tr. 676)
 94. In November of 2011, Sgt. MacQuarrie filed a complaint against Edward Pomponio, another member of the department in which he accused Pomponio of being untruthful during an investigation about remarks Pomponio had made to a dispatcher. (tr. 358-361)
 95. Sgt. MacQuarrie is of the opinion that the Chief was upset that he had filed the complaint against Pomponio because Pomponio is a friend of the Chief and this caused the Chief to retaliate against Fawkes. (tr. 359-363)
 96. Fawkes filed two reports against Cavanagh while Cavanagh's complaint against him was being investigated. Each of these reports are official department forms called "incident reports" and in each case Fawkes checked off the box that no crime had been committed. (tr. 705-706, Employee Exhibits 18 and 19)

Discussion

The Town's letter of charges states that Fawkes' misconduct amounts to conduct unbecoming a police officer and violates numerous departmental standards. Fawkes tried to turn this into a case about William Cavanagh and whether Cavanagh is a nice guy. Cavanagh doesn't deny his comments to [REDACTED] were out of line, but even the most despicable among us (not saying that Cavanagh is that) can still be a victim, and are still entitled to being treated with respect and certainly, when the police are involved, with the same rights accorded to all other citizens.

Looking at the charges individually the first charge is that Fawkes violated Ashland Police Department Rules and Regulations, Rule 4.03 Conflict of Interest, which provides that

members of the department shall not violate any provision of M.G.L. c. 268A. This charge also alleges that Fawkes violated Rule 4.06, Undue Influence, which provides:

"Officers shall not seek or obtain the influence or intervention of any person, outside or from within the department, but not including a lawfully retained attorney, for the purposes of advancement, preferential assignment, transfer, pecuniary advantage or any other type of preferred treatment or advantage, including the disposition of pending charges or findings in a criminal or disciplinary hearing."

And Rule 4.15, Abuse of Position, which provides:

"Officers shall not use the prestige or influence of their official position, or use the time, facilities, equipment or supplies of the department for the private gain or advantage of themselves or another."

And Rule 4.20, Use of Official Position, which provides in pertinent part:

"Officers shall not use their official position, department identification cards or badges: (a) for personal or financial gain ;(b) for obtaining privileges not otherwise available to them except in the performance of duty, or (c) for avoiding consequences of illegal acts."

This portion of Charge #1 relates to alleged violations by Fawkes on June 4, 2012 and actions he took after date which were related to his behavior on that date. What these violations speak to is that Fawkes used the privileges of his office for his personal advantage in a personal matter. Fawkes went to Cavanagh's home to confront him about the comment he had made to [REDACTED] however Cavanagh was not home when he arrived. Fawkes drove up and down Cavanagh's street waiting for him to return and then parked across the street from Cavanagh's home.

On the way to Cavanagh's house, Fawkes called the police dispatch and inquired as to what officers were working because he wanted a witness to the argument he was about to provoke. He did not want any police officer either, but one of his choosing. Why? Because he needed protection or there was a need to keep the peace? No, he told Major McGinn it was because he was afraid Cavanagh would make a complaint against him. Can you or I do this? Of course not. It also constituted a use of his position to intimidate Cavanagh by creating the impression that Fawkes had "the law" on his side. This is improper use of his official position as defined in Rule 4.20 by obtaining a privilege not otherwise available. It is preferred treatment under Rule 4.06 and an abuse of his position under Rule 4.15.

This is just the first of a long list of actions by Fawkes using his position to secure benefits to him and his family which are not available to private citizens. He told Officer Foster first to write a report and then what to say in his official departmental report documenting the service of the harassment order upon Cavanagh. What other victim, or family member of a victim, can dictate the contents of a police report? In the incident at Mindess School, Fawkes again sought out his own personally selected officer (Dionne) to remind Cavanagh he was in violation of the harassment order. And while off-duty, Fawkes told that officer how to dispose of the case, (with a warning and not the required mandatory arrest), so that it [REDACTED] would not have to testify at an enforcement proceeding. Fawkes used official department forms, Incident Reports, to document his run-ins with Cavanagh as if they were official department business. He even checked on the forms that there was no criminal activity. Would a police officer create a document for me if I went to the department and complained someone "flipped me the bird." Fawkes ran a Board of Probation report detailing the criminal history of Cavanagh for no legitimate credible reason. He said it was just to help out another officer.

Fawkes' statements concerning the running of the BOP was some of the most troubling testimony bought forth in this matter. It is clear he doesn't see the line between what's appropriate and what's not when it comes to ethical behavior by a police officer. He didn't blink an eye in testifying there is no rule against investigating or working on a criminal investigation when the victim is [REDACTED]. He testified, "A criminal matter is a criminal matter. The officer is going to need the criminal record for court, regardless of who the victim is." (tr. 68) He said it as if the potential for conflict of interest was inconceivable. After these statements, it became clear Fawkes doesn't know he's stepped over the line because he doesn't know a line exists.

Charge #1 also alleges Fawkes violated Rule 7.5, Dissemination of Official Information, which provides in pertinent part,

"Officers shall treat as confidential that information which is confided to them personally in the course of their official duties.

Officers shall neither disclose nor use for personal interest any confidential information acquired by them in the course of their official duties.

Officers shall treat the official business of the police department as confidential and shall conform to the following guidelines:

- a. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established department procedures..."

These allegations go to the misuse of information obtained by Fawkes during the performance of his official duties when he was dealing with Cavanagh. The first such instance of this was during the argument Fawkes and Cavanagh had on June 4th. During that argument Fawkes yelled at Cavanagh that Cavanagh had prior criminal record and that he had previously sexually assaulted [REDACTED]. Knowledge of his criminal record most likely came from his work as a police officer. Fawkes admitted that knowledge of the alleged prior sexual assault came from his investigation of another case and that he had attempted to investigate the alleged sexual assault with no success. Disclosing this information during an argument with Cavanagh served no legitimate police purpose and was but an attempt by Fawkes to embarrass and intimidate Cavanagh for his own personal purposes.

The first charge also alleges violation of Rule 13.2, Falsifying Records, which provides:

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

Fawkes called dispatch and informed the dispatcher that he had been "flagged down" by Bill Cavanagh. Fawkes had been driving up and down Cavanagh's street essentially lying in wait for him. Cavanagh made eye contact with Fawkes and nodded his chin. An acknowledgement of presence, which a chin nod is, is a far cry from being flagged down, and appears to be an attempt by Fawkes to make Cavanagh the initiator of the confrontation. "Flagging down" requires a response. A nod in someone's direction does not. This is a clear misrepresentation by Fawkes into the dispatch records of the department in an attempt to make his behavior appear less egregious. It is clearly a violation of Rule 13.2.

I find that the Town has sustained its burden of proof as to Charge #1.

The second charge concerns Fawkes conduct on October 26, 2011 when Cavanagh was accused of violating the harassment order. The Town charges that his behavior violated the previous cited Rules 4.03, Violating Conflict of Interest Rule; 4.15 Abuse of Position; 4.20 Use of Official Position; and Rule 4.12, Interfering with Course of Justice,

"Officers shall not interfere with cases being handled by other officers of the department

or other law enforcement agencies. When an officer believes that such involvement is absolutely necessary, he or she shall secure permission from a superior officer. Officers shall not take part in, or be concerned with, either directly or indirectly, any compromise or arrangement with any person whomsoever for the purpose of permitting an accused person to escape the penalty of his or her wrongdoing, or seek to obtain a continuance of any trial or otherwise interfere with the course of justice, except in the normal course or proceedings."

Similar to the June 4th incident, on October 26th, when Fawkes thought Cavanagh was in violation of the harassment order at the Mindess School, he again called dispatch to see who was working and then called a personal friend, Officer Dionne, on his cell phone to handle the matter. As in the first incident, this violates the conflict of interest rules of the department by Fawkes using his position in the department to further his personal interests. This time he went further by instructing Officer Dionne how he wanted the matter handled. Fawkes, who was off-duty, told Dionne to tell Cavanagh that the harassment order was still in effect and what the ramifications were for violating the order. He told Dionne to do this even though he was not certain that Cavanagh knew that [REDACTED] was at the school. He thought Cavanagh knew [REDACTED] vehicle, but was not certain. But even if he knew the vehicle, the windows are tinted. How would he know [REDACTED] was in the car? He specifically told Dionne not to arrest Cavanagh, even though the statute requires mandatory arrest. His reason for not wanting the arrest was personal. He did not want [REDACTED] to have to go through the stress of a court proceeding. There can be no doubt that Fawkes, by his direction to Dionne, interfered in the course of justice.

I find that the Town has sustained its burden of proof as to the second charge.

The Town's third charge is that on several instances Fawkes violated Department Rule 7.7, Truthfulness, which provides in pertinent part

"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."

The Town alleges that Fawkes violated this rule on several occasions during its investigation of these matters. Taking each violation separately:

During the investigation conducted by Major McGinn, Fawkes told the Major that he "didn't direct anybody to do anything." However, during the course of these events Fawkes told, directed, suggested, requested (pick any of these verbs you like, the outcome is the same), officers who were on duty to take certain official acts, regardless of whether Fawkes was on or off duty and generally to benefit him or [REDACTED] their dealings with Cavanagh. As described above, it is not denied by anyone that Fawkes told Dionne not to arrest Cavanagh for the violation of the harassment order at Mindess School. Fawkes directed Officer Driscoll to investigate [REDACTED] complaint against Cavanagh in furtherance of their attempt to get a harassment order against Cavanagh. Fawkes also directed Officer Foster to make a report of the service of the harassment order on Cavanagh and to include in it that Cavanagh had threatened to file a complaint against Fawkes if the order was not dropped.

An order can be phrased many different ways. Fawkes was clearly telling officers how to proceed in matters concerning Cavanagh and officers were obliging his requests. As was testified to at the hearing, officers follow the directives of their supervisors, whether the supervisors are on duty at the time or not. Officers are told what they are to do by their supervisors regardless of the language used. Not every direction starts with, "I direct you," or "I order you," and using a different phrase does not make it any less of a direction in a supervisor/patrolman relationship. Clearly Fawkes was "calling the shots" in the department's dealings with Cavanagh despite his claim to the contrary.

Fawkes denied that anyone was present or within earshot of his confrontation with Cavanagh. However, [REDACTED] lives [REDACTED] from Cavanagh. Fawkes had parked his truck in front of [REDACTED] house. [REDACTED] heard Fawkes tell Cavanagh that this was his town and not to come down to the police station or Fawkes would throw him out. [REDACTED] heard some reference to something being ten years old. When Fawkes walked back to his truck he looked at [REDACTED] as if to say, "what are you looking at, mind your own business." Later in the confrontation both [REDACTED] and [REDACTED] heard Fawkes make reference to the sexual assault allegation concerning Cavanagh [REDACTED]. Because of the issue of publication as it relates to the violation of the rape shield law, it was in Fawkes interest to misrepresent the presence of these individuals.

I find the Town has met its burden of proof concerning this charge.

The Town's fourth charge is that Fawkes by his actions on June 4th violated the rape shield law when he told Cavanagh that he knew that Cavanagh had sexually assaulted [REDACTED]. G.L. c. 26, section 24C provides that it is a crime to "disclose the name of the any individual identified as an alleged victim...in an arrest, investigation, or complaint for rape or assault with intent to rape..." No one denies that during the June 4th confrontation between Fawkes and Cavanagh, Fawkes told Cavanagh that he knew that Cavanagh had sexually assaulted [REDACTED]. The only question is whether that comment meets the requirements of the statute. I find that it does not meet the requirement because Fawkes' comment is more in the nature of repetition of gossip than of knowledge he received making an arrest, investigation or complaint for rape. There was no arrest, no formal investigation or any complaint. Fawkes' knowledge came from a comment made to him during the course of another investigation not from any police activity or other documentation of the alleged event. His comment, though reprehensible, does not violate the statute.

I find there is not sufficient evidence to sustain the fourth charge.

The Town's fifth charge is that Fawkes violated Massachusetts General Laws chapter 6 section 172, as well as the previously cited, Rules 4.03, Conflict of Interest, 4.15 Abuse of Position and 4.20 Abuse of Official Position when he ran a Board of Probation Report (a BOP) on Cavanagh. Fawkes admits to running a BOP on Cavanagh on July 23, 2011. He testified he ran it to put in a file, as a convenience to the officer, but he doesn't recall which one, he just did it in the course of reviewing some reports. I do not find this to be a credible statement. As previously discussed, running the BOP on a person with whom you have a personal dispute is a clear violation of departmental rules concerning conflict of interest. This charge is different because it further alleges that Fawkes violated the state's CORI law in running the BOP. The version of section 172 of chapter 6 which was in effect at the time Fawkes ran Cavanagh's BOP limits "dissemination" of criminal records information to certain authorized agencies for certain authorized purposes. There is no evidence on the record that Fawkes disseminated the information to anyone unauthorized to have the information. The only evidence that he ran the BOP for other than police business is circumstantial---he offered no credible reason why he ran

the BOP. Under these limited facts, I am not inclined to find that Fawkes violated state CORI laws in running the BOP. As to the remainder of the fifth charge I find that the Town has sustained its burden of proof.

The Town's sixth charge is that on March 2, 2012, while on duty, Fawkes violated the previously cited rules concerning Abuse of Position and Abuse of Official Position as well as engaging in Conduct Unbecoming a Police Officer when he made a personal call to Richard Featherston, Chairman of the Board of Selectmen of the Town of Ashland regarding a personal matter. I am unable to conclude that Fawkes was on duty at the time he called Mr. Featherston. The pay records submitted by the town in Town Exhibit 7 show that Fawkes took one hour of vacation leave that day. That there was no leave request makes sense given that this was an unplanned use of leave time and that the department has a practice of granting officers time off within their shifts for family emergencies and the like. Testimony by the Town's own witness that there are problems with the accuracy of leave reporting in the payroll log (which also did not show the one hour of leave time), cause me to conclude that it is more likely than not that Fawkes was on vacation time when he called Mr. Featherston.

Therefore, I find that the Town did not meet its burden of proof with respect to charge #6.

The Town's last charge is that by the totality his behavior in these matters, Fawkes is guilty of conduct unbecoming a police officer, Rule 4.02 of the Ashland Police Department, which provides:

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 Department. Officers shall conduct themselves at all time, both on and off duty, in such manner as to reflect most favorably on the department and its members.

Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continue as a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members.

Conduct unbecoming an officer shall also include off-duty conduct where there is a nexus or connection between the act or acts committed by the officer and that individual's continued fitness or ability to effectively perform his or her required duties and responsibilities and/or the impact or adverse effect said conduct may have on the operation, morale, integrity, reputation or effectiveness of the department

and ability of the officers not involved in said act to effectively perform their required duties and responsibilities."

Police officers are held to a higher standard of conduct both on and off-duty because of the great power society has granted to the police. Because of this great power, great trust is also expected. Charges of dishonesty and lack of integrity, which are the basis of the charges brought here, bring the most serious of consequences. Here, Fawkes repeated use of departmental resources for his personal benefit gives the impression that the powers of police department are at his disposal for his personal use. This behavior casts the department and Fawkes in the most unfavorable light. It cannot be said his ethical decisions are bad because it seems that ethics were never a part of his decision making process. Fawkes' actions seem to have been without consideration of anything but how they benefitted him. He was clear in his testimony that he never gave a second thought to intervening in matters concerning his family's issues with Cavanagh. He testified a crime is a crime, or words to that effect.

Fawkes also was intemperate in confronting Cavanagh publicly, being both loud and profane. In so doing he discredited himself and the department. The confrontation with Cavanagh was not something he was thrown into. He sought Cavanagh out and chose to have a public confrontation rather than handle it privately.

On the issue of integrity as it encompasses the concept of truthfulness, Fawkes' own misrepresentations seal his fate. There is no longer any place in any police department for police officers who lie. In the progeny of *Brady* and *Giglio*, it is clear that police officers who lie in official matters are unable to testify in court with credibility. In addition, prosecutors are required to disclose the officer's prior untruthfulness to the defense, jeopardizing the outcome of criminal cases. Untruthful police officers damage the reputation of the entire department. Continued employment under these circumstances is contrary to public policy in the Commonwealth as expressed by the SJC in *City of Boston v. Boston Police Patrolmen's Association*, 443 Mass. 813, 824 N.E.2d 855, (2005) at 823, 863,

People will not trust the police—on the street or in court—unless they are confident that police officers are genuine in their determination to uphold the law. As the city reminds us, police legitimacy would be damaged severely by reports that the city continued to employ a police officer who had illegally abused his power and repeatedly lied about it under oath. Indeed, DiSciullo's involvement in an investigation could prejudice the public against an otherwise flawless criminal prosecution.

I find that the Town has met the burden of proving that by the totality of his actions Fawkes has engaged in conduct unbecoming a police officer as that term is defined in Rule 4.02 of the Ashland Police Department. This charge is sustained,

The employee's main defense to the charges against him is that the investigation was the result of the Chief and other members of the command staff being friends of Cavanagh and retaliation against Fawkes for his union activities. The union activities are the complaint filed by Sgt. MacQuarrie against Officer Pomponio, who the union alleges is a friend of Chief Rohmer and the vote of no confidence taken by the Union against the Chief on January 23, 2012.

There is insufficient evidence to support that the Chief or anyone on the command staff was friends with Cavanagh. There was no evidence that any of them socialized with Cavanagh. The Chief knows Cavanagh from other departmental business and they may belong to the same gym. Lt. Beaudoin golfed in the same league as Cavanagh. There is no evidence that these "acquaintances" influenced the investigation, or caused it to be reopened. Fawkes himself may have caused the investigation to be reopened. He testified that he received a letter telling him the investigation was being reopened the day after he met with the Chief at the Stone Pub. At that meeting Fawkes told the Chief to do the investigation or give him a reprimand, anything to get the matter over with. Admittedly, the investigation went through various starts and stops as Cavanagh was unable to make up his mind as to whether he wanted to proceed. But there was no evidence supporting any other reason for the way the investigation proceeded.

There is nothing to support that Fawkes was investigated for his union activities. He was not the one who filed the complaint against Pomponio, if one were inclined to believe the Chief re-opened the investigation against Fawkes because of the complaint against Pomponio. The Chief completely removed himself from the investigation and subsequent appointing authority decisions after the vote of no confidence so he certainly has had no influence in this proceeding.

Accordingly, I do not find sufficient evidence to support these defenses raised by the employee.

Recommendation

Having found that the Town met the burden of proving by a preponderance of evidence that Fawkes did commit the acts in charges #1, 2, 3, 5 and 7, just cause exists for serious discipline.

Accordingly, it is my opinion and recommendation that the Town terminate Sergeant Gregory Fawkes' employment.

Respectfully submitted,

Janice Silverman 5/17/12

Janice Silverman, Esq.

Hearing Officer