



## City of Spokane

October 4, 2013

Kevin Smathers  
[REDACTED]

Re: Termination of Employment

Dear Kevin:

The City of Spokane notified you on September 12, 2013, that disciplinary action was being considered for the following alleged violations of City policies and Civil Service Rules:

1. Violation of Civil Service Rule IX, Section 5 (e-f) and the City's policies on Workplace Threats and Violence and General Harassment by sending an inappropriate (threatening and retaliatory) e-mail to [REDACTED] on April 19, 2013.
2. Violation of Civil Service Rule IX, Section 5 (d-f) and the City's policy on Workplace Threats and Violence by possessing unlawful metal knuckles in your City vehicle for approximately two to three years from 2010 or 2011 to April 2013.
3. Violation of Civil Service Rule IX, Section 5 (d-f) and the City's policy on Workplace Threats and Violence by improper retention and storage of firearms issued by the Spokane Police Department to the Spokane Fire Department SIU for almost six years from June 2007 to April 2013.

Along with the Notification of Loudermill Hearing, the City provided you with a complete copy of the report of independent investigator Richard Kaiser, which included copies of all relevant City policies and Civil Service Rules. The report was prepared after an extensive investigation into each of these three allegations.

*"Spokane – Near Nature, Near Perfect"*

808 W. Spokane Falls Blvd., Spokane, Washington 99201-3335  
Phone: (509) 625-6250 FAX: (509) 625-6563

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The City held a Loudermill Hearing on September 16, 2013, to give you and your representatives an opportunity to provide the City with any information that you believed to be relevant to the noticed allegations prior to the City making a disciplinary decision. You attended the Loudermill hearing with Local 29 representatives President Don Waller, Secretary-Treasurer Thad Frater, and Attorney SaNni M-K Lemonidis. Fire Chief Bobby Williams and Human Resources Director Heather Lowe were present for the City.

Prior to the Loudermill hearing on the morning of September 16, Ms. Lemonidis provided the City with a letter (dated September 13, 2013) containing Local 29's responses to each of the allegations. At the hearing, you provided a written statement (also dated September 13, 2013) containing your own detailed responses to each allegation.

The City has fully considered Richard Kaiser's independent investigative report, as well as all of the responsive information provided by you and your representatives, and makes the following findings. As to the second and third allegations, the City finds that you did in fact violate City policy and Civil Service Rules in your possession and retention of metal knuckles and City firearms; however, due to mitigating information provided by you and your representatives, the City would not impose discipline more severe than a letter of reprimand for these violations. As to the first allegation, the City finds flagrant, deliberate, and unmitigated policy and rule violations that warrant the termination of your employment.

**Possession of Unlawful Metal Knuckles in City Vehicle**

There is no dispute of fact as to your possession of unlawful metal knuckles, for approximately two to three years, in your assigned City vehicle. You admitted picking them up off a City street in 2010 or 2011, storing them inside the driver's door pocket of your assigned City vehicle, removing them from your City vehicle in April of 2013, and then keeping them in your home until finally turning them over to law enforcement in June of 2013.

Your possession of metal knuckles in your assigned City vehicle was illegal (RCW 9.41.250) and violated the City's policy on Workplace Threats and Violence, which prohibits employees from bringing "a weapon into the City workplace or onto any City property unless the weapon is required to fulfill the employee's job duties, such as those of a police officer, or the Deputy Mayor grants a prior exception in writing." No such exception exists here, as the City was unaware of the existence of the metal knuckles in

your assigned City vehicle until witnesses observed them there after you turned over your assigned vehicle when the City placed you on administrative leave in February of 2013.

In addition to violating the above-quoted policy, your careless possession of an unlawful and unapproved weapon in your assigned City vehicle represents a violation of Civil Service Rule IX, Section 5(d): "Is willfully careless or negligent of the property of the City."

Even if the City is to believe your response that you forgot about the metal knuckles for two to three years, your possession of the metal knuckles demonstrates careless lack of judgment and poor decision making and exposed you and the City to unnecessary and avoidable risk. Since there is no evidence that you possessed them with malicious intentions, however, this policy and rule violation would warrant discipline short of suspension and no more than a letter of reprimand.

#### **Improper Retention and Storage of City Firearms**

There is no dispute that you stored three City firearms, first in an unsecured desk drawer and then in an unapproved personal safe within your assigned City vehicle, during your entire tenure in SIU. Nor is there dispute that you failed to return the firearms even after being notified by the Spokane Police Department that three SIU firearms were missing; instead you removed the three firearms from your City vehicle and continued to retain them in your home even after you were reassigned out of SIU.

You were notified on March 13, 2013, that three SIU firearms remained unaccounted for, at which time you indicated that they might have been in a desk drawer at SIU. You later admitted that you had long since removed them from the drawer and stored them in an unapproved personal safe in your City vehicle and then in your home, but claimed to have forgotten about them when SPD inquired about the three missing firearms. Your version of events surrounding these three firearms again discloses careless lack of judgment and negligence with respect to City property, representing additional examples of the same policy and rule violations described above.

Mitigating your careless behavior is the fact that neither SPD nor SFD had specific policies or practices regarding storage and retention of SIU firearms. With or without a policy, however, it was reasonable to expect that you would have demonstrated more concern for the safekeeping of SIU firearms and, in the absence of written policy, sought guidance for proper storage of firearms through your chain of command in SFD

or through your contacts in SPD. Indeed, it is difficult to comprehend how anyone with your years of experience and police training could assume that it was reasonable and appropriate to store firearms belonging to the City in this manner. Therefore, your improper retention and storage of the firearms warrant discipline for your careless lack of judgment and poor decision making, but based on your mitigating information and lack of evidence of any malicious intent, the appropriate level of discipline would be less severe than suspension and no more than a letter of reprimand.

### **Threatening and Retaliatory E-mail to Subordinate**

Against the backdrop of the above-described events related to your carelessness and poor decision making with respect to your improper possession of metal knuckles and City firearms, you made a deliberate decision on April 19, 2013, to send a demeaning, threatening, and retaliatory e-mail to [REDACTED] a subordinate officer. You wrote:

"I kept waiting to see if you had the decency to contact me and to no one's surprise (certainly not mine) you didn't. You are a passive aggressive, cowardly little "man" who doesn't have the guts to do the right thing. Everyone (HR, the Union, other investigators, etc.) know why you did what you did; purely out of revenge for my notifying the Admin about your being under the influence of alcohol and driving a City vehicle TWICE, once while carrying a gun. And you're worried about my driving code and safety issues with my gun. If that isn't the pot calling the kettle black; I don't know what is.

You are an [REDACTED] who blames everyone for your problem except for yourself. Go back and read the twelve steps; you need to.

I am going to sue you for everything I can get from you. I have retained a law firm and they both say I have textbook case for slander, libel and defamation of character. The dollar amount of damages to be requested is being calculated. I have the resources and witnesses to prove all I need to. My mission for the remainder of my life is to pay you back for what you did. Everything I do will be legal and above board; but it will be incredibly painful and life changing for you. I am more motivated and focused on this than on anything else I have decided to do in my life. I will not fail ... but you will.



You are the lowest, most deceitful human being I have ever known in my life. I plan on letting every person I know; what you did and why. Many already do. You are not a "little bastard"; you are just a little, cowardly, bad person (you aren't even a man).

See you in court."

You admitted that this e-mail was threatening and disparaging toward [REDACTED] [REDACTED] sent in anger for a prior, fully resolved complaint that he had brought against you. In fact, you admitted that you avoided using the City e-mail system because you knew that this message violated City policies: "If you're going to send a threatening or disparaging email, you don't do it on the City's system."

Your only defense was that you sent it off-duty on personal e-mail and that you and [REDACTED] had developed a "pattern" of communicating by personal e-mail. [REDACTED] denied the latter argument, and you failed to provide any evidence of such a pattern. The fact that you chose to make your threat while off-duty is also unavailing. Regardless of the forum for the communication, this threatening message has a clear nexus to your employment in that it resulted from and referenced on-duty disputes and negatively impacts any potential for a productive working relationship between the two of you.

Local 29 argued on your behalf that your threatening e-mail did not violate City policy because [REDACTED] stated that he was able to perform his job, and it did not threaten physical harm. Neither argument mitigates your offense.

While it is true that, during Mr. Kaiser's investigation, [REDACTED] stated that he could still do his job, he also admitted changing his patterns because he was fearful for his safety and for that of his family. The text of your e-mail may have referenced "legal" retaliation, but it is clear that [REDACTED] perceived it as a physical threat as well and has been forced to change his behavior to protect the safety of himself and his family. Moreover, your threatening e-mail violates the City's legitimate workplace expectations. There can be no dispute that your decision to threaten [REDACTED] resulted in a hostile, offensive, and intimidating work environment for him. A reasonable supervisor would understand, with or without specific policy language, that he cannot demean a subordinate in this manner and threaten him with life changing pain.

Therefore, your e-mail represents general harassment by a supervisor toward a subordinate in violation of City policy; willful violation of personnel policies prohibited by

Civil Service Rule IX, Section 5(e); and conduct unbecoming an officer or employee in violation of Civil Service Rule IX, Section 5(f).

Prior to the disintegration of your supervisory relationship with [REDACTED] which culminated in you threatening him via e-mail, you received positive performance evaluations and were given every opportunity to be successful within the SFD and specifically within your role as Captain in SIU. The City counseled you on November 21, 2011, for your similar poor judgment shown in a verbal altercation with [REDACTED] on the job. Your interaction with [REDACTED] was so aggressive that it caused nearby staff members to become fearful and evacuate the office. The City put you on clear notice at that time that this type of interaction with [REDACTED] was unacceptable, and that you were responsible for setting the example for your subordinate employees, including [REDACTED]. Instead of setting a good example as a superior officer and supervisor, you escalated to threatening your subordinate, which the City simply cannot tolerate by you or any other supervisor.

Finally, it is important to note that during this entire investigatory process, you have not shown any remorse or accepted any responsibility for your actions. You steadfastly maintained throughout the process that you had every right to disparage and threaten [REDACTED] and you remain committed to making [REDACTED] life "incredibly painful." Your blatant and unapologetic conduct renders it impossible for the City to retain your employment, particularly considering you were vested with the responsibility to lead and supervise this employee, whom you instead chose to demean and threaten. The City has an important obligation to its employees, including [REDACTED] to provide a safe, appropriate work environment. You have not demonstrated that the City could fulfill that obligation while retaining your employment.

Therefore, you are terminated from employment with the City effective the end of your scheduled administrative leave shift on October 4, 2013. Your accrued leave will be cashed out per the terms of City policy and the Local 29 collective bargaining agreement, and your medical benefits will continue through October 31, 2013.

You may appeal this decision to the Civil Service Commission, as provided in Civil Service Rule XI, Section 5:

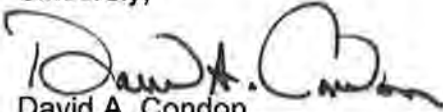
"Any employee in the classified service who has been suspended, reduced in rank or discharged as provided in Rule IX may appeal such action to the Commission. All appeals must be in writing and filed with the Secretary within 10 working days from date of filing of such order with the

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Commission or from date of service of such order on the employee, whichever is later. The Secretary shall provide a copy to the Human Resources Director of any appeal so filed. Failure to file within the prescribed time shall be considered as acceptance of the action and the action shall be deemed complete."

Please contact your Local 29 representatives for any further rights you may have under the collective bargaining agreement.

Sincerely,

  
David A. Condon  
Mayor

  
Bobby Williams  
Fire Chief

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DUNN BLACK & ROBERTS

LAWYERS

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111 North Post, Suite 300  
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*A Professional Service Corporation with Offices in Seattle and Spokane*

September 4, 2013

Mayor David Condon  
Spokane City Hall  
808 W. Spokane Falls Blvd.  
Spokane, WA, 99201

**RE: Requested Whistleblower Protection for Capt. Kevin Smathers –  
Spokane Fire Dept.**

Dear Mayor Condon:

This is to advise you that our office now represents Capt. Kevin Smathers of the Spokane Fire Department. Pursuant to City of Spokane Administrative Policy and Procedure ADMIN 0620-06-37-Section 6.1.2a., we are providing this notice to you on behalf of Capt. Smathers requesting your intervention and protection of Capt. Smathers from further unlawful retaliation to which he is presently being subjected for having reported a fellow Fire Department employee who was under the influence of alcohol while on duty.

The days of “cronyism” and “protectionism” are long past when it comes to exposing improper or unlawful conduct within the ranks of Spokane’s Police and Fire Departments. Despite the notion of transparency that supposedly is the new governing philosophy of the City Administration, Caption Smathers is being vilified and victimized for reporting an intoxicated co-worker. As you likely know, **“It is the policy of the City to take those steps necessary to ensure that its employees are free of the influence of alcohol and drugs while in the performance of their duties.”** See ADMIN 0620-06-10-Sec. 5.1. Supervisors under no circumstance are to allow an employee who appears to be under the influence of alcohol drive any vehicle. See ADMIN 0620-06-10- Sec. 5.7.1.

Yet, when Capt. Smathers, a highly decorated and long time (28 years) Spokane firefighter, reported in May 2011, that a subordinate employee had admitted to driving a City vehicle under the influence of alcohol, Fire Chief Williams and Asst. Chief Schaeffer took no action against that employee. This clearly was a violation of City



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policy itself. Several months later the subordinate officer once again reported to work while armed and under the influence. This conduct was again observed by Capt. Smathers who later confronted the offending employee. When Captain Smathers again reported the serious City policy violation to Williams and Schaeffer, the employee was placed on administrative leave for a time.

However, when that employee returned to the Department he promptly retaliated against Captain Smathers by filing a written complaint for "unsafe" practices. Williams and Schaeffer made Captain Smathers aware of this retaliatory complaint on February 5, 2013. Smathers in defense of himself attempted to point out that in his former position as the Fire Department Internal Affairs Officer he had learned the difference between contrived and/or pretextual complaints versus real policy violations. Captain Smathers cited to certain past acts of policy misconduct by Schaeffer to illustrate his point. Within two days, Smathers was retaliated against further by being placed on administrative leave. Smathers was later fully exonerated of all claims of the spurious and retaliatory claims of misconduct that were made against him. Nonetheless, he was further punished for being a whistleblower by being removed, to his detriment, from the Arson Investigation Unit. Captain Smathers in turn, addressed this unlawful retaliation by writing the subordinate employee a private email, on off-duty time, advising that he was going to sue the employee for the damages done to his career. The subordinate disclosed that communication to Williams and Schaeffer who took it upon themselves to further continue and accelerate the retaliatory conduct against Captain Smathers claiming he violated some as yet undisclosed City policies and procedures. These retaliatory actions against Captain Smathers are absolutely forbidden under the City Policy protecting whistleblowers. See ADMIN 0620-06-37-Sec. 4.3.

Indeed, the City's retaliatory misconduct is appealable to the City Hearing Examiner under Sec. 5.1. However, it is not Captain Smathers' preference to commence a formal "Whistleblower Complaint" much less a lawsuit to protect his interests, as he believes that you are imbued with the authority under City Policy to intervene to ensure that illegal treatment against him ceases immediately. Captain Smathers, a loyal and highly regarded firefighter, believes that the significant matters at issue here are best left to internal remedies as opposed to outside intervention and public exposure.

In order to resolve his complaints Captain Smathers is requesting to be reinstated immediately to active duty from his Administrative Leave Status and reinstated back to his position in the Arson Investigation Unit.

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If Captain Smathers is not reinstated to the AIU forthwith to rectify the retaliatory actions against him, he has instructed me to proceed accordingly. As you may be aware, I have absolutely no reluctance in representing aggrieved City employees who have been subjected to abusive, hostile and retaliatory misconduct by Administrators who have become confused about their duties and role as public servants. However, based upon your past pro-active approach to addressing these types of personnel issues, I am confident that this matter can be handled quietly and effectively internally.

Very truly yours,

DUNN BLACK & ROBERTS, P.S.



ROBERT A. DUNN

cc: Theresa Sanders, City Administrator

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FROM KEVIN  
9-16-13  
10:00 AM

September 13, 2013

To Whom It May Concern:

The following is my written statement addressing each of the three allegations levied against me in Chief Bobby Williams' September 9, 2013 Notification of Loudermill Hearing.

First, my right to due process has been violated insofar as I have been deprived of the opportunity to have and consult a copy of any and all written Fire Department policies and procedures that are supposed to be in force and effect.

Second, be advised that I strongly believe these allegations were clearly brought against me as retaliation for my whistleblowing activities complaining about unlawful job-related conduct by a subordinate firefighter.

Third, and moreover, as Assistant City Attorney Erin Jacobson has threatened my reputation with pre-ordained "sustained" findings regarding these allegations, I believe my constitutional right to due process in that regard has also been impeded and my job security threatened. On August 6, 2013, Jacobson advised my union attorney that a refusal to negotiate a severance package would result in my ruined reputation and termination from the Fire Department. However, as stated below, I have not violated any policy, procedure, or directive in the workplace and adamantly refuse to be bullied or harassed into terminating my career.

1. My April 19, 2013 email to [REDACTED] does not constitute a violation of Civil Service Rule IX, Section 5(e-f) and the City's policies on Workplace Threats and Violence and General Harassment.

I have never disputed sending a personal and private email to [REDACTED] on April 19, 2013.

However, the email I sent [REDACTED] was in fact sent from my personal email account, during personal time, to his personal email account. Indeed [REDACTED] and I had previously engaged in personal email communications utilizing our personal email accounts.

Moreover, the email was not sent via City equipment. The email was sent to [REDACTED] in his personal capacity and was not addressed to him as a [REDACTED] of the Spokane Fire Department.

Further, given the contentious relationship that exists between [REDACTED] and myself, which the Fire Department Administration refused to initially address as I had requested,

we developed a private pattern and practice of venting our frustrations against each other. That is precisely what the April 19, 2013 email was. There is no Civil Service Rule or City Policy preventing such communications, and as such, the April 19, 2013 email does not constitute a violation of kind or nature.

**City's policy on Workplace Threats and Violence; (ADMIN 0620-06-48 Effective Date September 1, 1998; Revision Effective Date February 9, 2008).** The policy at issue contains the following key provisions:

“Workplace Violence” means “acts of physical, verbal or written aggression... which would cause a reasonable person to feel threatened by an employee or non-employee in the workplace.”

“Threat” is defined as “an expression by word or conduct of intent to commit violence that places the listener or reader in fear of imminent bodily harm...”

POLICY: “The City will not tolerate any workplace acts of violence... Any employee who commits or threatens an act of workplace violence will be subject to investigation and discipline. ...”

First and foremost, [REDACTED] has already testified that he did not feel threatened by my April 19, 2013 email. Second, my email does not contain any expressions of intent to commit violence. Third, as the email was sent on my own time, using my own equipment and vented to [REDACTED] that I intended to file a civil suit against him, under no circumstances does the email correspondence constitute a “workplace act of violence.”

Accordingly, the April 19, 2013 email does not constitute a violation of any City policy on workplace threats and violence, nor was it ever intended to.

**City's policy on General Harassment; (ADMIN 0620-05-53 Effective Date May 1, 1998; Revision Date December 2, 2005).** The policy at issue contains the following key provisions:

General “Harassment of or by employees or towards a member of the public, that interferes with work performance, and/or delivery of services is prohibited.”

As [REDACTED] has previously testified, the April 19, 2013 email did not affect his ability to perform his work duties, thus no violation of the City's policy on general harassment has occurred. Again, the lack of violation is underscored by the fact that the April 19, 2013 email was solely a means off-duty to personally express my frustrations against [REDACTED] conduct against me and to do so via personal email as had become a pattern and practice between us.

**Civil Service Rule IX, Section 5 (e)** states:

Any willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisors, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City.

In no way is my April 19, 2013 email communication to [REDACTED] a willful violation of any written personnel policy, written departmental rule or procedures or reasonable or proper order or direction given by a supervisor. As such, the April 19, 2013 email does not constitute a violation of Civil Service Rule IX, Section 5(e).

**Civil Service Rule IX, Section 5(f)** states:

Has been guilty of conduct unbecoming an officer or employee of the City.

As I have never been found guilty of conduct unbecoming an officer or employee of the City, there cannot be any violation of Civil Service Rule IX, Section 5(f). Indeed, historically conduct unbecoming an officer or employee of the City has been deemed to be conduct that erodes public trust, conduct that would bring the Department into disrepute such as being convicted of a crime, engaging in perjury, embezzlement, etc. None of these scenarios is applicable here. I have not violated Civil Service Rule IX, Section 5(f).

2. **My seizure and storage of metal knuckles in the performance of my official duties as a City of Spokane Fire Department Investigator does not constitute a violation of Civil Service Rule IX, Section 5 (d-f) or the City's policy on Workplace Threats and Violence.**

The metal knuckles at issue were discovered and collected by me in the performance of my duties as City of Spokane Fire Department Investigator. There is absolutely no evidence to the contrary. As my department, SIU, has no written policy and procedure manual available for guidance in the official performance of my duties, I employed common sense and stored the metal knuckles in my City vehicle rather than risking improper disposal of them; then frankly forgot about their existence which remained in safekeeping within the vehicle.

**Civil Service Rule IX, Section 5 (d):**

Is willfully careless or negligent of the property of the City



As the metal knuckles at issue were not property of the City, my decision to seize them and store them in my City vehicle in order to ensure public safety is not subject to Civil Service Rule IX, Section 5(d). I have not engaged in any conduct that could be construed as a violation of this policy.

**Civil Service Rule IX, Section 5 (e)** states:

Any willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisors, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City.

In no way does my seizure of metal knuckles and securing them in my City vehicle during the exercise and course of my duties and responsibilities constitute a willful violation of any written personnel policy, written departmental rule or procedures or reasonable or proper order or direction given by a supervisor. In fact, there is no written policy, departmental rule or procedure, nor was there any order or direction given to me regarding the seizure of metal knuckles, much less their storage. As such, there is no conduct at issue that rises to the level of violating Civil Service Rule IX, Section 5(e).

**Civil Service Rule IX, Section 5(f)** states:

Has been guilty of conduct unbecoming an officer or employee of the City.

As I have never been found guilty of conduct unbecoming an officer or employee of the City there cannot be any violation of Civil Service Rule IX, Section 5(f). Indeed, historically, conduct unbecoming an officer or employee of the City has been deemed to be conduct that erodes public trust, conduct that would bring the Department into disrepute such as being convicted of a crime, engaging in perjury, embezzlement, etc. None of these scenarios is applicable here. I have not violated Civil Service Rule IX, Section 5(f).

3. **My storage of firearms in a locked safe in the confines of my City vehicle does not constitute a violation of Civil Service Rule IX, Section 5 (d-f).**

Quite clearly, the City of Spokane Fire Department SIU has no written policy and/or procedural manual available for guidance in the official performance of a Fire Investigator's duties. Additionally, there is no Fire Department policy that governs the retention and storage of such firearms.

I was never advised that another department's policies, specifically the Police Department's Lexipol Policy Manual, would govern my conduct as a Fire Department employee. Moreover, given the Lexipol Policy Manual is negotiated between the City of Spokane and the City of Spokane Police Guild, it would strike me as a gross violation of my union's bargaining rights, and therefore my right to bargain, for this manual to apply to me.

Furthermore, as there is no gun safe in the SIU office permitting the safe storage of firearms, I once again employed common sense and utilized a personal gun safe that had been given to me as a gift. I brought the safe into work, deposited the firearms within the safe, and stored the safe in my City vehicle. I firmly believe my conduct was in line with overall City safety directive, particularly the mandate that employees are prohibited from ignoring safety. See attached. In order to ensure those weapons and others assigned to my co-workers were adequately tracked, I in fact developed an annual inventory of firearms procedure and ensured the results of the inventory were adequately labeled and stored in the SIU office file cabinet.

**Civil Service Rule IX, Section 5 (d):**

Is willfully careless or negligent of the property of the City.

Inventorying firearms and locking them securely in a gun safe does not constitute willfully careless or negligent treatment of City property. In ensuring the safekeeping of departmental firearms, I have not engaged in any conduct that could reasonably or otherwise be construed as a violation of Civil Service Rule IX, Section 5(d).

**Civil Service Rule IX, Section 5 (e) states:**

Any willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisors, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City.

There exists no written policy, departmental rule or procedure, order or direction regarding the storage of Fire Department firearms. As such, there can be no violation, much less willful violation, of Civil Service Rule IX, Section 5(e).

**Civil Service Rule IX, Section 5(f) states:**

Has been guilty of conduct unbecoming an officer or employee of the City.

As I have never been found guilty of conduct unbecoming an officer or employee of the City there cannot be any violation of Civil Service Rule IX, Section 5(f). Indeed, historically, conduct unbecoming an officer or employee of the City has been deemed to be conduct that erodes public trust, conduct that would bring the Department into disrepute such as being convicted of a crime, engaging in perjury, embezzlement, etc. None of these scenarios is applicable here. I have not violated Civil Service Rule IX, Section 5(f).

In conclusion, I believe the charges against me are clearly a pretextual attempt to terminate my employment in retaliation for my protected whistleblowing activities.

I have been employed by the City of Spokane for 28 years. To date, my career has been unblemished. My Performance Evaluation Reports have consistently been positive. Indeed, my scores have been in the upper end of the numerical scale for each applicable category.

I never had any employment disputes, problems, or discipline imposed upon me until shortly after I reported a subordinate Fire Department employee's unlawful conduct and clear violation of City policy and procedure relating to alcohol abuse and the incumbent safety concerns over this employee's intoxication while driving a City vehicle and carrying a firearm.

Sincerely,



Captain Kevin Smathers  
City of Spokane Fire Department SIU

# **CONGRATULATIONS . . .**

*You are a member of a team of 2000 members who are committed to providing service to the 197,400 residents of the City of Spokane. You are a part of a dedicated group of people with a variety of skills, ranging from asphalt crews to zamboni operators, refuse collectors to bridge designers.*

*Our parks, golf courses and library system are comparable to the best in the nation. Spokane placed #6 among midsize cities as "Best Cities" in the West, second most "kid friendly" of large cities in the U.S, received the All-America City Award, and one of the best "Porch-Swing" Communities in the nation to name but a few. The diversity of the City's programs and services is such that we even operate a power generating plant.*

*Your contribution as an employee is what makes this complex organization work. Your skills allow us to serve our customers (the citizenry) with pride, honesty, innovativeness, loyalty and respect. The diversity you bring to our organization allows each of us to be personally and professionally enriched and to problem-solve in creative and meaningful ways.*

*We hope you find your tenure with the City satisfying and rewarding.*

## **SAFETY**

The City of Spokane considers employees to be its most valuable asset and makes every effort to maintain a safe and healthful work environment. Employees are responsible for their own safety and health. Every employee is responsible for following its department's safety rules and regulations and for taking an active part in protecting themselves, other employees and the work area.

No employee can ignore safety. Accidents are too costly. They cost employees physical pain, possible disability, loss of income and loss of equipment. Accidents don't just happen—they are caused—because someone did something they shouldn't have done, or failed to do something they should have done or because a hazard was not recognized. Be an active participant in accident prevention. Watch for potential safety hazards and report unsafe conditions or practices to your supervisor.

Remember - the safe way to do a job is the most efficient way to do it and safe performance - a good safety record - is a mark of job skill.

For more specific information, please refer to the Risk Management & Safety Manual in your department.

## **WORKERS' COMPENSATION**

The City of Spokane is self-insured for Workers' Compensation benefits. This means the City pays for your medical treatment, wage replacement and other benefits mandated by the State of Washington when you are injured on the job. The City is also self-administered, which means your claim for Workers' Compensation benefits will be handled by a claims examiner in Risk Management.

If you are injured on the job, no matter how slight the injury, notify your supervisor immediately. Before you leave the work site, complete the injury report forms provided by your supervisor. If you need medical attention, your supervisor will see that qualified personnel provide necessary first aid, or you will be assisted or directed to the nearest emergency medical facility or to your own physician.



September 10, 2013

Mayor David Condon  
City of Spokane  
808 W. Spokane Falls Blvd  
Spokane, WA. 99201

**Re: Smathers v. City of Spokane, et al.**

Dear Mayor Condon:

As we advised previously, we represent Captain Kevin Smathers of the Spokane Fire Department. Incredibly, despite our prior letter to you, we have learned that the City intends on continuing with its spurious, retaliatory Internal Affairs investigation against Capt. Smathers, including a pretextual Loudermill Hearing. Be advised, any completion of that investigation resulting in discipline will necessitate filing a civil Complaint for the numerous violations of Capt. Smathers' Fourteenth Amendment procedural due process rights pursuant to 42 U.S.C. § 1983, hostile work environment, and retaliation. Because of the retaliatory nature of the current investigation, we request to be informed as soon as the Spokane Fire Department Internal Affairs Committee has concluded the pending investigation and how matters are to proceed.

We understand that you personally may have your own legal counsel to advise you as to certain City matters. As to this employment matter, that may be prudent especially based upon past ill-advised and misinformed employment advice provided by the City Attorney's Office, and specifically Assistant City Attorney Erin Jacobson. Further, we have heard that Jacobson has a personal friendship with Asst. Chief Schaeffer that has likely affected any impartial and unbiased assessment of matters within the Fire Department, including how and by whom the investigation to date has been conducted.

Controlling legal authority makes it abundantly clear that having placed Capt. Smathers on paid leave, while simultaneously announcing the City's pre-ordained intent to terminate his career before any due process has been accorded him exceeds any authority the City, Chief Williams, and/or Asst. Chief Schaeffer have under the law.

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Further, the retaliatory conduct against Capt. Smathers is particularly troubling given that Schaeffer is on record commenting upon Capt. Smathers purportedly vying for the Asst. Chief position. Retaliatory conduct and questionable impartiality of certain City administrators makes it highly doubtful that any decisions as to Capt. Smathers can be made fairly and objectively as required by law.

### **Retaliation**

The Fire Department's initiation of an Internal Affairs investigation and Jacobson's September 6, 2013 communication broadcasting the City's intent to impose discipline upon Capt. Smathers, up to and including termination, are obvious acts of pre-ordained retaliation in reprisal for his whistleblowing activities.

Under Washington law, it is an unfair practice for any employer to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by law. To establish a prima facie case for retaliatory discharge, an employee must establish three elements: (1) that he engaged in statutorily protected activity, (2) that he was discharged, and (3) that retaliation was a substantial factor behind the discharge. Blinka v. Washington State Bar Ass'n, 109 Wn. App. 575 (2001). A statutorily protected activity is an activity in opposition to conduct that is arguably a violation of the law. It is indisputable that Capt. Smathers took permissible actions in response to another employee's illegal acts, including driving while intoxicated.

A discharge of Capt. Smathers arising out of the facts at issue will be seen as nothing less than a clear violation of Washington law prohibiting the termination of an employee in retaliation for reporting misconduct, i.e. whistleblowing. See Gardner v. Loomis Armored, Inc., 128 Wn.2d 931 (1996).

### **Hostile Work Environment.**

We also believe the current IA investigation is further evidence of the hostile work environment and retaliation Williams and Schaeffer have conspired to engage in against Capt. Smathers due to his whistleblowing activities. Jacobson's September 6, 2013 correspondence broadcasting the City's intent to discipline and/or terminate Capt. Smathers constitutes substantial evidence of the illegal retaliatory animus at issue.

Indeed, for the past several months, Capt. Smathers has endured a course of conduct and treatment that has become increasingly confrontational and demeaning. Jacobson's September 6, 2013 communications only serve to highlight the extent to which the City is willing to go in order to threaten and intimidate a seasoned Fire

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Department employee into resigning. Indeed, Jacobson has ignorantly threatened to ruin Capt. Smathers' reputation if he fails and refuses to capitulate to the City's heavy-handed demands for his resignation. Most troubling is the fact that Jacobson's pronouncement makes it clear that there is no impartial decision maker involved in this matter and that any Loudermill Hearing will be conducted as a pretext in utter disregard for procedural due process guaranteed under the law. "[T]he Fourteenth Amendment require[s] ...an opportunity... granted at a meaningful time and in a meaningful manner ...for a hearing appropriate to the nature of the case."

Logan v. Zimmerman Brush Co., 455 U.S. 422, 437 (1982).

Further, the Washington Court of Appeals has found that civil service employees, dischargeable only for cause, have protected property interests in continued employment. Payne v. Mount, 41 Wn. App. 627, 633 (1985); Punton v. Seattle Pub. Safety Comm'n., 32 Wn. App. 959, 964 (1982). Given recent history, the City seemingly would be more sensitive to the Constitutional due process rights guaranteed to citizens and more relevantly the ramifications of illegally ignoring them. Indeed, given the recent unanimous jury verdict against the City of Spokane and ex-Police Chief Anne Kirkpatrick, including punitive damages, as well as Jacobson's role in that outcome as acting HR Director, the City has absolutely no excuse in not knowing what is legally impermissible employment conduct.

It is indisputable that Capt. Smathers possesses protected property interests in his employment as a fire Captain for the City of Spokane that arises from his position as a "*classified*" employee pursuant to RCW 41.12, et seq.; the City of Spokane, City Charter, Article VI: Civil Service, Section 55, Suspension, Reduction in Rank and Discharge – Appeals; and the Merit System Rules of the Civil Service Commission City of Spokane, as adopted August 19, 2008, pp. 19-21.

The City Charter makes it indisputably clear that Capt. Smathers is guaranteed protection from dismissal absent just cause. Capt. Smathers has a protected interest in the continuation of his employment and cannot legally be summarily terminated without the appropriate notice, presentation of evidence, and opportunity to speak before a neutral, unbiased decision-maker. Such is absolutely required, free from conflicts and the appearance of unfairness, as well as undue influence in the process.

Since Jacobson's September 6, 2013 correspondence makes it clear that Capt. Smathers has already been deprived of these safeguards based upon the announced decision to discipline him, up to and including terminating his career, he has clearly been

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deprived of a fair pre-termination hearing in direct violation of the Fourteenth Amendment, the City Charter, the Merit System Rules of the Civil Service Commission, and RCW 41.12, et seq.

Since you obviously have chosen not to exercise your responsibility to intercede on Capt. Smathers' behalf to end the retaliation against him, we trust that you will advise us as soon as the Spokane Fire Department Internal Affairs Committee has reached a finding in the pending investigation, so we can proceed accordingly.

Very truly yours,

DUNN & BLACK, P.S.



SUSAN C. NELSON  
ROBERT A. DUNN

SCN:sg  
cc: Kevin Smathers

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September 13, 2013

Erin Jacobson, Assistant City Attorney  
City of Spokane  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201

Re: Kevin Smathers Investigation  
Union Response to Loudermill Notice  
Our File No. 3246-028

Dear Erin:

Please accept this letter as the Union's response to the Loudermill Notice. As initially outlined in our August 30, 2013 letter, the Union is vehemently opposed to the City's possible decision to discipline, let alone terminate, Captain Smathers based on any of the findings in the investigative report. As outlined below, the alleged rule and policy violations contained in Capt. Smathers' Loudermill Notice are not supported by the facts.

**ALLEGATION NO. 1:**

- As an initial matter, this allegation involves off-duty conduct that is not violative of any criminal or civil laws. This email was sent to [REDACTED] personal email address and was not a work-related communication. Despite these facts, the City's allegations that this private communication violates any City policy or Civil Service rule are without merit.
- For example, this email does not violate the Workplace Threats and Violence Policy (Admin 0620-06-48):
  - [REDACTED] stated the email did not put him in imminent fear (P. 16 of Investigative Report).
  - No finding that email put [REDACTED] in imminent bodily harm as required to constitute a "threat" covered by this policy (Section 4.3).
  - Factual findings in the Investigative Report do not amount to a violation of this policy.

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- Similarly, this email does not violate the General Harassment Policy (Admin 0620-05-53):
  - Policy prohibits harassment that “interferes with work performance, and/or delivery of services” (Section 1.1).
  - ██████ stated that the email did not affect his ability to do his job (P. 16 of Investigative Report).
  - ██████ did not file a complaint under the policy’s complaint procedures.
  - Although ██████ stated that the email was a “clear case of retaliation,” the policy’s prohibition against “retaliation” is specific to retaliation for filing a harassment complaint (Section 5.3)
  - Factual findings in the Investigative Report do not amount to a violation of this policy.
- There are no factual findings that Capt. Smathers “willfully” violated either policy (Workplace Threats and Violence or General Harassment).
- Thus, no factual findings that the allegations contained herein amount to “[a]ny willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisor, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City” (Rule IX, Section 5 (d)).
- Finally, there are no factual findings that the allegations contained herein amount to Capt. Smathers being “guilty of conduct unbecoming an officer or employee of the City” (Rule IX, Section 5 (f)).

**ALLEGATION NO. 2:**

- The Union acknowledges that possession of metal knuckles is prohibited under the “Employee Responsibilities” section of the Workplace Threats and Violence Policy (Section 5.2.2). However, possession of the metal knuckles by itself does not constitute “workplace violence” as defined under the policy (Section 4.1).
- Capt. Smathers admitted to possession of the metal knuckles but explained that his possession of such was inadvertent. Capt. Smathers collected the metal knuckles while on scene during the course of his SIU duties. Despite the fact that there are no factual findings to the contrary, the Investigative Report concludes that Capt. Smathers’ version

of events was not credible. The Investigator's credibility determinations of Capt. Smathers are likely prejudiced given the Investigator's stated bias against Capt. Smathers during the course of the investigation.

- There are no factual findings that Capt. Smathers willfully stored metal knuckles in his city-owned vehicle or that he ever engaged in any purposeful or knowing threatening behavior with the metal knuckles.
- There are no factual findings that the metal knuckles constituted property of the City. Thus, no factual findings that Capt. Smathers' possession of the metal knuckles was "willfully careless or negligent of the property of the City" (Rule IX, Section 5 (d)).
- There are no factual findings that Capt. Smathers "willfully" violated the Workplace Threats and Violence policy.
- Thus, no factual findings that the allegations contained herein amount to "[a]ny willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisor, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City" (Rule IX, Section 5 (e)).
- Finally, there are no factual findings that the allegations contained herein amount to Capt. Smathers being "guilty of conduct unbecoming an officer or employee of the City" (Rule IX, Section 5 (f)).

**ALLEGATION NO. 3:**

- The factual findings conclude that there were not any policies or procedures that governed the retention and storage of firearms issued to SIU. "SPD and the Fire Department did not have a written intra-agency agreement that governed the Commission or set forth the rights and responsibilities of SIU Investigators who were assigned weapons. The Fire Department also did not promulgate any policies, regulations, or training material for SIU Investigators to account for their weapons or their use of them." (Report at p. 7).
- Although the Investigative Report states that a former SIU Captain said that storage of the weapons in the desk drawer was a "huge" safety issue (Report at p. 8), there are no

factual findings as to how or where the former SIU Captain stored those weapons prior to Capt. Smathers' tenure. Nor are there any factual findings that suggest there was a management accepted practice or method of storing the weapons that differed from Capt. Smathers' practices.

- The factual findings conclude that when Capt. Smathers started at SIU in June 2007, he found three unassigned Glock pistols in his desk drawer, which had a lock. Capt. Smathers then reported to Assistant Chief Brian Schaeffer that he had three unassigned weapons in his desk. (Report at p. 8) Thus, management had direct knowledge of Capt. Smathers' possession of these weapons since June 2007.
- There are no factual findings that anyone in management gave Capt. Smathers instructions or directives on how he should be storing these unassigned weapons. Nor did anyone in management inquire as to how or where the weapons were being stored.
- Capt. Smathers did not try to conceal his possession of the three unassigned firearms. In January 2013, Capt. Smathers emailed two SIU supplementals and informed them that he had their firearms for when they started the Police Academy. (Report at Exhibit I) Both Chief Bobby Williams and Asst. Chief Schaeffer were copied on this email. Neither Williams nor Schaeffer questioned why Capt. Smathers had weapons in his possession to assign to the SIU supplementals.
- There are no factual findings that Capt. Smathers' possession of the SIU firearms was "willfully careless or negligent of the property of the City" at any point during the 2007-2013 time frame. At most, the Investigative Report concludes that Capt. Smathers "knew storing them in Spokane 52 was problematic." However, Capt. Smathers only stored the weapons in the guns safe from 2012 until April 2013. Even if this conclusion was supported by the facts, which it is not, "problematic" is not synonymous with a violation of the Merit Rules (Rule IX, Section 5 (e)). There are no factual findings that Capt. Smathers' storage of the guns in his desk drawer from 2007-2012 was "willfully careless or negligent of the property of the City."
- There are no factual findings that Capt. Smathers "willfully" violated the Workplace Threats and Violence policy in his retention or storage of firearms issued to SIU.
- Even if Capt. Smathers' actions amounted to improper storage and retention of the firearms, which they do not, this does not amount to any violation of the City's Workplace Threats and Violence policy.

Erin Jacobson  
September 13, 2013  
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- Thus, there are no factual findings that the allegations contained herein amounts to “[a]ny willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisor, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City” (Rule IX, Section 5 (d)).
- Finally, there are no factual findings that the allegations contained herein amount to Capt. Smathers being “guilty of conduct unbecoming an officer or employee of the City” (Rule IX, Section 5 (f)).

For each of the above-noted reasons, the Union does not believe that Capt. Smathers’ actions as outlined in the Investigative Report violate any City rule or policy that covered Capt. Smathers’ employment. If the City elects to discipline, or worse yet, terminate Capt. Smathers based on the facts contained in the Investigative Report, the Union does not believe the City has just cause to do so. Accordingly, the Union will oppose any severe disciplinary action against Capt. Smathers that the City may seek. Please feel free to contact me if you wish to discuss this matter further.

Sincerely,



Sanni Lemonidis

SL:as

cc: Don Waller  
John Goodman  
Thad Frater

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July 9, 2013

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Ms. Erin A. Jacobson  
Assistant City Attorney—Labor Relations  
City of Spokane  
5th Floor, City Hall  
808 W. Spokane Falls Boulevard  
Spokane, Washington 99201

Re: *Captain Kevin Smathers, Fire Department, City of Spokane*

Dear Ms. Jacobson:

You retained me to investigate Captain Kevin Smathers, who works for the City of Spokane's Fire Department. I investigated Captain Smathers for allegedly:

1. Mistreating another employee of the Fire Department;
2. Failing to properly secure and account for firearms assigned to the Fire Department;
3. Attempting to compromise the Fire Department's investigation of the missing firearms;
4. Illegally possessing a dangerous weapon and bringing it onto City property;
5. Wrongfully attempting to influence the City Administrator; and
6. Failing to properly secure evidence and/or personal property of the public.

This is an executive summary report.

**I. Investigative Procedure—Persons Interviewed.**

I formally interviewed the following people on the specified dates.

1. Fire Chief Bobby Williams, Fire Department, City of Spokane, Washington (5/10/13);
2. Assistant Fire Chief Brian Schaeffer, Fire Department, City of Spokane, Washington (5/10/13);



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3. Deputy Fire Chief Bob Hanna, Fire Department, City of Spokane, Washington (5/10/13);
4. Ms. Heather Lowe, Director of Human Resources, City of Spokane, Washington (5/10/13);
5. Ms. Chris Cavanaugh, Program and Process Manager, City of Spokane, Washington (5/10/13);
6. Deputy Chief Dave Leavenworth, Fire Department, City of Spokane, Washington (5/10/13);
7. Firefighter Darin Neiwert, Fire Department, City of Spokane, Washington (5/22/13);
8. Training Captain Dave Pointer, Fire Department, City of Spokane, Washington (5/22/13);
9. [REDACTED] Fire Department, City of Spokane, Washington (5/22/13 and 6/19/13);
10. Communication Division Chief Jay Atwood, Fire Department, City of Spokane, Washington (5/22/13);
11. Sergeant Matthew Cowles, Police Department, City of Spokane, Washington (5/22/13);
12. Mr. Mike Zambryski, Retired Captain, Fire Department, City of Spokane, Washington (5/22/13);
13. Captain Kevin Smathers, Fire Department, City of Spokane, Washington (5/23/13, 6/19/13, and 6/20/13);
14. SIU Supplemental Investigator Steve Jones, Fire Department, City of Spokane, Washington (6/20/13);
15. SIU Supplemental Investigator Paul Gortler, Fire Department, City of Spokane, Washington (6/20/13);
16. SIU Supplemental Investigator Jason Recer, Fire Department, City of Spokane, Washington (6/20/13); and
17. Ms. Theresa Sanders, City Administrator, City of Spokane, Washington (6/20/13).

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On June 19, 2013, I informally interviewed Ms. Dawn Smathers, who is Captain Smathers' former Wife.

**II. Investigative Procedure—Documents Reviewed.**

I reviewed the following documents:

1. Relevant City Policies;
2. Merit System Rules of the Civil Service Commission;
3. Captain Smathers' Personnel File;
4. Emails (and Attachments) on the Fire Department Email Account Assigned to Captain Smathers and Other Witnesses;
5. Captain Smathers' Emails to other Fire Department Employees; and
6. Witness Statements and Notes.

**III. Findings of Fact—Governing Authority.**

**A. The City's Merit System Rules of the Civil Service Commission.**

The City's Merit System Rules govern this investigation. They provide, in relevant part:

**Section 5. Cause:** Merit principles of employment shall be the primary consideration in any disciplinary action. Employees may be disciplined only for actions which would affect their ability or fitness to satisfactorily perform their assigned duties. ... The following conditions are compatible to the principles of merit and may be considered as cause for any classified employee to be suspended, discharged, or otherwise disciplined.

...

(d) Is willfully careless or negligent of the property of the City;

(e) Any willful violation of the Charter, these Rules, any written personnel policies, written department rules or procedures, or any reasonable and proper order or direction given by a supervisor, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public.

(f) Has been guilty of conduct unbecoming an officer or employee of the City;

...

(l) Has been convicted of a felony or a gross misdemeanor;

...

(n) Has committed, or has induced or has attempted to induce an officer or employee of the City to commit an unlawful act or to act in violation of any reasonable and lawful departmental order or official regulation or order ...

Exhibit A (Merit System Rules).

**B. The City's Workplace Threats and Violence Policy.**

The City's Workplace Threats and Violence Policy also governs this investigation. It provides, in relevant part:

4.3 "Threat" is defined as an expression by word or conduct of intent to commit violence that places the listener or reader in fear of imminent bodily harm, or is of such character that another individual could be placed in fear of imminent bodily harm. The overall context of statement, including nonverbal communications will be taken into account to determine if such an expression is a threat covered by this policy. There are generally three types of threats recognized by the City: veiled, conditional and direct.

- A veiled threat involves reference to a violent act and an association with the present situation.
- A conditional threat contains words such as "if" or "or" and references a violent act with the conditions.
- A direct threat is a warning of a pending violent act.

...

5.2.2 Employees are not permitted to bring a weapon into the City workplace or onto any City property unless the weapon is required to fulfill the employee's job duties, such as those of a police officer, or the Deputy Mayor grants a prior exception in writing.

Exhibit B (Relevant City Policies).

**C. The City's Whistleblower Protection Policy.**

The City's Whistleblower Protection Policy also governs this investigation. It provides, in relevant part:

6.2 Retaliatory Action Forbidden

6.2.2 If an employee believes she or he has been retaliated against in violation of this policy, the employee must provide a written notice of the charge or retaliatory action to the Hearing Examiner of the City. The notice must specify the alleged retaliatory action, and the relief is requested.

*Id.*

**D. The City's General Harassment Policy.**

The City's General Harassment Policy also governs this investigation. It provides, in relevant part:

4.1 Harassment is defined as any unwelcome action by any person whether verbal or physical, on a single or repeated basis, which humiliates, insults or degrades.

"Unwelcome" or "unwanted" in this context means any actions which the harasser knows or should reasonably know are not desired by the victim of the harassment.

4.2 Several examples of this type of behavior include but are not limited to the following:

- Verbal Harassment: Verbal threat toward persons or property; the use of vulgar or profane language toward others, disparaging or derogatory comments or slurs, verbal intimidation, exaggerated criticism, and name calling.
- Non-Verbal Harassment: Derogatory or offensive posters, cartoons, publications, drawings or gestures.

...

5.1 It is the City of Spokane's policy that there shall be no harassment of or by employees, or towards members of the public as defined below.

Mutual respect must be the basis of interaction among City employees in addition to cooperation and understanding. The City of Spokane will neither tolerate nor condone behavior that is likely to undermine the dignity or self-esteem of an individual, or create an intimidating, hostile or offensive environment.

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- 5.2 All employees are expected to abide by this policy. Anyone who violates this policy will be subject to disciplinary action up to and including discharge.
- 5.3 The City will not condone retaliation against anyone who files a harassment complaint or who participates in a complaint investigation.

*Id.*

**E. The City's Discrimination in the Workplace Policy.**

The City's Discrimination in the Workplace Policy also governs this investigation. It provides, in relevant part:

- 5.1 It is the policy of the City of Spokane to maintain a work environment free of discrimination in any form, whether it is blatant or subtle. It is the responsibility of all employees of the City to help provide a work environment free of illegal discriminatory practices, intimidation or coercion.
- 5.2 Examples of Discrimination
  - ...
  - 5.2.2 Examples of discriminatory behavior include but are not limited to racial and ethnic jokes, slurs, cartoons, gestures and other disrespectful comments directed at or about persons because of their ... disability.

*Id.*

**F. Notice to Captain Smathers.**

Captain Smathers' personnel file and civil service files do not indicate that the City has provided him with copies of the Merit System Rules or City Policies governing this investigation. However, they are available on the City's website, which constitutes constructive notice of the responsibilities and rights enumerated in these Rules and Policies.

**IV. Findings of Fact—Conclusions and Credibility Determinations.**

The facts are not in material dispute, unless otherwise noted.

**A. Captain Smathers' Tenure in the Fire Department.**

- 1. On September 16, 1985, the City hired Captain Smathers as a Firefighter. Captain Smathers' personnel file only contains three Annual Evaluations. None of the Evaluations indicate that Fire Department Administrators had any substantive

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concerns about his job performance. To the contrary, the Evaluations are generally positive. *See* Exhibit C (Annual Evaluations).

2. On October 9, 2006, Captain Smathers began working in the SIU, which is an acronym for the Spokane Investigations Unit. As Captain of the SIU, Captain Smathers was assigned a Department vehicle, which is commonly known as Spokane 52. The vehicle was a Ford F-250 Truck adorned with Department decals. It was a twin cab and had a covered bed with locking doors on the side that allowed Captain Smathers to retrieve gear he needed to perform his duties as an SIU Investigator. The Fire Department allowed Captain Smathers to drive Spokane 52 home every night. Captain Smathers parked Spokane 52 in his driveway. He did not remove the Fire Department property and other items in it every night.

**B. Captain Smathers Finds Three Firearms in a Desk Drawer.**

3. The SIU previously operated under a Level III Commission from the Spokane Police Department. The Commission allowed SIU Investigators to carry firearms after they completed a basic certification course at the Spokane Police Department's Academy. SPD and the Fire Department did not have a written intra-agency agreement that governed the Commission or set forth the rights and responsibilities of SIU Investigators who were assigned weapons. The Fire Department also did not promulgate any policies, regulations, or training material for SIU Investigators to account for their weapons or their use of them.
4. As relevant here, Section 312.3.2 of the SPD's Policy Manual governs Captain Smathers' use and care of his firearm. The Manual provides, in relevant part: "Officers shall ensure that all department firearms are stored in a manner that ensures the safety of others." *See* Exhibit D (SPD Manual-Excerpt).
5. As an Officer in the Fire Department, Captain Smathers is arguably not subject to the Spokane Police Department's Policies. However, the SPD Academy and the SPD Policies governing the use and care of firearms set forth a standard of care that does apply to Captain Smathers, who was assigned a firearm when he worked in the SIU.
6. In June 2007, Captain Smathers found three unassigned Glock pistols in his desk drawer, which had a lock. Captain Smathers assumed the firearms were for other putative SIU Investigators. Around the same time, Captain Smathers told Assistant Chief Schaeffer that he had unassigned firearms. However, Captain Smathers kept them in the desk drawer even though he knew it could be opened with a butter knife. Captain Smathers did not tell Assistant Chief Schaeffer about this method of securing the firearms. Instead, he continued to store them in the desk drawer.



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7. Captain Smathers told me that he did not tell Assistant Chief Schaeffer about this method because he was “overwhelmed” with the duties of his job. Captain Smathers related that he thought the firearms were safer in a desk drawer rather than in an evidence locker or elsewhere. Captain Smathers added that he was concerned about the safety of Department-issued firearms and actually documented and tracked the other SIU Investigators’ firearms on an annual basis. *See Exhibit E (Smathers 2/3/12 Email).*

8. (Former) SIU Captain Mike Zambryski contradicts Captain Smathers’ rationale. According to Captain Zambryski, he never would leave firearms in the same desk drawer, which he used when he was in the SIU. Captain Zambryski said this was a “huge” safety issue.

**C. 2010-11: Captain Smathers Retains Brass Knuckles.**

9. Sometime between 2010 and 2011, Captain Smathers was using Spokane 52 to work in West Central Spokane. He came upon some unattended brass knuckles on a City street. Captain Smathers thought they were not safe. He took custody of the weapon and placed it in the driver’s door pocket of Spokane 52. *See Exhibit F (Brass Knuckles).* Captain Smathers failed to document or report his discovery. He also did not immediately give the weapon to a law enforcement agency to dispose. Instead, he kept the weapon in Spokane 52.

10. Captain Smathers told me that he took custody of the weapon by virtue of his authority as a fully commissioned police officer. Captain Smathers added that he then forgot he had the weapon in Spokane 52.

**D. November 2011: Captain Smathers and [REDACTED] Have an Altercation.**

11. On November 1, 2011, Captain Smathers and [REDACTED] named [REDACTED] had a conversation that resulted in Captain Smathers yelling and swearing. Captain Smathers’ outbursts were so severe that Staff Members near the SIU Office evacuated to a different floor of the building and sought the help of Staff Members at Fire Station 1.

On November 21, 2011, the Fire Department gave Captain Smathers a verbal warning for his conduct. The warning noted that Captain Smathers’ conduct was a lapse in judgment and decision-making ability. It also noted that Captain Smathers was responsible for setting a good example for people he supervised. *See Exhibit G (Verbal Warning).* Captain Smathers did not grieve the warning.

12. Captain Smathers told me that he took this warning seriously. Captain Smathers related that he attended 15-20 counseling sessions that were 50 minutes long. He added that he benefited from these sessions. This discipline and the subsequent

counseling put Captain Smathers on notice that his interpersonal deficits were interfering with his job performance.

**E. January-April 2012: Captain Smathers Takes the Firearms from the Desk.**

13. Sometime between January and April 2012, Captain Smathers became uncomfortable leaving the three firearms in his desk drawer. Captain Smathers removed the firearms from his desk drawer and placed them in a locked safe inside Spokane 52. Captain Smathers then placed the safe inside a storage bin and covered it with other Fire-Department-issued gear.
14. Captain Smathers told me that he thought putting the firearms in this new location was the safest thing to do. Captain Smathers did not tell any Fire Department Administrators about his plan. He stated, "I was not in a cover my ass mode. I thought it was the safest thing to do." Captain Smathers also did not tell the SPD Range, which had initially issued the firearms, about his plan. He stated, "I tried to do what I thought was best without bothering them." Captain Smathers' rationale speaks for itself.

**F. October 2012: Captain Smathers' First Acknowledgement about the Firearms.**

15. On October 30, 2012, Captain Smathers emailed two Firefighters who were going to join the SIU. In the email, Captain Smathers notified them about their required participation in the SPD Academy, which was scheduled to begin on February 25, 2013. *See* Exhibit H (Smathers 10/30/12 Email). On January 10, 2013, Captain Smathers sent the Firefighters a second email. In that email, he wrote, "I have your weapons for when you attend the academy. Unfortunately, I can't give them to you until you start the Academy. Get in touch with me about two weeks or so before Academy starts; we'll need to go to Blumenthals and get some things you will be required to have for the Academy. Thanks." *See* Exhibit I (Smathers 1/10/13 Email). Unfortunately for Captain Smathers, other intervening events prevented that exchange.

**G. January 2013: [REDACTED] Complaint against Captain Smathers.**

16. On or about January 31, 2013 [REDACTED] filed a Complaint against Captain Smathers. In the Complaint, [REDACTED] alleged that Captain Smathers was engaging in unsafe and unprofessional conduct toward other SIU Investigators and the public. The alleged conduct included an incident in which Captain Smathers stopped the driver of a vehicle that he suspected of carrying stolen Fire Department property. Captain Smathers drew his firearm during the stop. Captain Smathers' stop was a mistake: the driver and the vehicle belonged to a local church and did not have the property.

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**H. February 2013: Captain Smathers Contacts the City Administrator.**

17. During the week of February 4, 2013, Captain Smathers learned that the City was going to place him on a paid leave of absence while it investigated [REDACTED] Complaint. Captain Smathers contacted Ms. Theresa Sanders, who is his Sister-in-Law and the City's Administrator. Captain Smathers asked Ms. Sanders to lunch. They met at the SIU, and Captain Smathers introduced Ms. Sanders to Fire Department Staff Members as his Sister-in-Law and the City's Administrator. Ms. Sanders felt this was unusual because she had socialized with Captain Smathers approximately six times in the past 20 years. She told me, "I felt a bit paraded." At lunch, they talked more about Captain Smathers' personal life rather than his work. After lunch, Captain Smathers sent Ms. Sanders two emails in which he apologized for his conduct at lunch and then briefly disclosed some of his problems at work. See Exhibit J (Smathers 2/6/13 Emails). Ms. Sanders replied to the emails, but did not engage Captain Smathers on his problems. *Id.*
18. On February 6, 2013, Captain Smathers learned that the City was going to place him on a paid leave the next day. Again, he emailed Ms. Sanders. This time he stated, in full: "It appears as though they are putting me on Admin Leave tomorrow morning. One of the worse things that has ever happened to me." *Id.* Ms. Sanders did not reply. *Id.*

Ms. Sanders told me that she did not think the lunch meeting or any of the emails pressured her to intervene on Captain Smathers' behalf. She stated, "I felt as if he were trying to create a connection and potentially use the relationship on his behalf."

**I. February 2013: The City Places Captain Smathers on Leave.**

On February 7, 2013, the City placed Captain Smathers on a paid leave of absence while the City's Human Resources Department conducted an investigation of [REDACTED] Complaint. According to Captain Smathers, [REDACTED] Complaint was a payback for a Complaint he previously made against [REDACTED] for having alcohol in his system while was on duty.

While Captain Smathers was on leave, Fire Department personnel secured Spokane 52. Several personnel observed the brass knuckles in Spokane 52 when it was in a secure site during the investigation. This meant that the brass knuckles had been in Spokane 52 for two to three years.

**J. Investigating the Disappearance of the Firearms.**

19. During the investigation of Captain Smathers, the Fire Department learned that it could not account for three firearms assigned to the SIU. The SIU and SPD

Sergeant Matthew Cowles began to investigate the disappearance of these firearms.

20. On February 20, 2013, Captain Smathers text messaged the two Firefighters who were scheduled to attend the Academy. In the text message exchange, Captain Smathers reiterated that he had the firearms the Firefighters would use when they joined the SIU. *See Exhibit K (2/20/13 Text Message Exchange)*. This was Captain Smathers' second unofficial acknowledgement that he still had the three firearms.

**K. February 2013: The City Completes Its Investigation.**

21. On February 25, 2013, the Human Resources Department completed its investigation of [REDACTED] Complaint. *See Exhibit L (2/25/13 Executive Summary and 2/21/13 Report)*. The City did not discipline Captain Smathers for any conduct discovered during the investigation. The Investigator told me that she also thought [REDACTED] was "very insincere" but was sufficiently concerned about the unsafe way Captain Smathers was operating.
22. The investigation is incomplete. The City's Investigator did not interview any SPD representative about Captain Smathers' conduct to ascertain whether it was consistent with the training he received at Academy or acceptable for a fully commissioned Police Officer. The Investigator also did not document whether Captain Smathers had filed any incident reports about his questionable interactions with the public. The Investigator told me that she did not exonerate Captain Smathers. She related that SPD needed to review his conduct as a fully commissioned Police Officer.
23. The City's Investigator also failed to direct Captain Smathers not to retaliate against [REDACTED] for making his allegations. In fact, no City or Fire Department Administrator ever gave Captain Smathers this directive at any time.

**L. March 2013: Tracking the Missing Firearms.**

24. On March 13, 2013, Sergeant Cowles called Captain Smathers, who was still on a paid leave of absence while the City reviewed the results of the investigation. Sergeant Cowles and Captain Smathers discussed the missing firearms. According to Captain Smathers, he told Sergeant Cowles that he kept a written inventory of firearms in a file on his desk.<sup>1</sup> Captain Smathers did not tell Sergeant Cowles that he also had three SIU firearms in Spokane 52.
25. Captain Smathers told me that he did not even think about the firearms in Spokane 52 during that conversation. Captain Smathers related that he did not even think about it and that his mind was not working right.

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<sup>1</sup> During this investigation, I did not find this inventory.

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26. Sergeant Cowles provided more information about that conversation. According to Sergeant Cowles, Captain Smathers indicated that he heard the firearms might actually be in a desk drawer, but added that he had never actually seen the guns in the desk drawer. *See* Exhibit M (Cowles 3/13/13 Email).
27. In light of Captain Smathers' communications to the two Firefighters, Sergeant Cowles and his statements to me, it is reasonable to conclude that he did not "forget" about the firearms and that he knew storing them in Spokane 52 was problematic. It is also reasonable to conclude that Captain Smathers failed to disclose this to Sergeant Cowles because he wanted to avoid the scrutiny this would create.

**M. March 2013: Emails between Captain Smathers and Ms. Sanders.**

28. On March 25-26, 2013, Captain Smathers resumed his emails to Ms. Sanders. This time, he used his personal email account. One email provided, in relevant part, "I am not asking for any favoritism, just fairness. Although simply by sending you this email it would be hard for me to say that I am not reaching out for any help that you could provide."<sup>2</sup> Another email provided, in relevant part: "As I said, I didn't want favoritism from you, just fairness. ... Thank you for trying to make sure that 'fairness occurs.'" *See* Exhibit N (Smathers 3/26/13 Emails). In her replies, Ms. Sanders did not engage Captain Smathers about his concerns. Instead, she referred the emails to the City's Legal Department. *Id.*
29. Captain Smathers told me that he used his personal email account because he was talking "about things that might be sensitive." Captain Smathers added that he emailed Ms. Sanders because the Director of Human Resources did not reply to his email. Captain Smathers stated, "I wanted to talk to her (Ms. Sanders) about it. She's the City Administrator. She's my Sister-In-Law."

Ms. Sanders told me that no other City employee had contacted her in this fashion. She added, "I would punt any email like this." Ms. Sanders added that she viewed Captain Smathers' emails as another attempt to create a relationship to help him.

**N. April 2013: Captain Smathers Returns to Duty and Returns the Firearms.**

30. On April 1, 2013, the Fire Department returned Captain Smathers to active duty, but transferred him out of the SIU. On April 9, 2013, Captain Smathers removed all of his personal property from Spokane 52. This included the brass knuckles. Captain Smathers also removed the three firearms that were in his safe inside of

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<sup>2</sup> Captain Smathers also forwarded an email he previously sent to Chief Williams. That email recounts Captain Smathers' interpersonal transgressions with a female Staff Member of the Fire Department as well as his statement that he wanted to have a "productive working relationship" with [REDACTED]

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Spokane 52. Captain Smathers kept these weapons in the safe at his home. Captain Smathers still did not tell anyone about any of these weapons.

31. In early April 2013, City and Fire Department Administrators met with Lieutenant Don Waller, who is President of the Firefighters' Bargaining Unit. In that meeting, they discussed the missing three firearms. After the meeting, Lieutenant Waller sent out a group email and text message to SIU Investigators about the missing firearms. Captain Smathers received these messages.

On April 13, 2013, Captain Smathers emailed Assistant Chief Schaefer. In the email, Captain Smathers indicated that he had moved the firearms from his desk drawer to Spokane 52 "several months ago." Captain Smathers added that he "spaced out" these firearms when he was cleaning out Spokane 52 on April 9. Captain Smathers subsequently returned the three firearms to the Fire Department. *See Exhibit O (Smathers 4/13/13 Email).*

32. Captain Smathers told me that he did not mislead Assistant Chief Schaefer when he indicated that he had moved the firearms to Spokane 52 "several months ago." Captain Smathers' account is not persuasive. It is reasonable to conclude that Captain Smathers did not want Assistant Chief Schaeffer to know that he had stored the firearms in Spokane 52 for the actual period of time, which was much longer than "several months ago."

**O. April 2013: Captain Smathers' Email to Battalion Chief Joel Fielder.**

33. On April 14, 2013, Captain Smathers emailed Battalion Chief Joel Fielder. In the email, Captain Smathers defended his conduct that the Human Resources Department previously investigated. Captain Smathers also wrote, "As far as [REDACTED] goes; his own words spoken to others, betray his true motivation. All I can say is I'm reminded of a saying that applies here with regards to [REDACTED] 'If revenge is your motivation; dig two graves, for one will be for yourself.'" *See Exhibit P (Smathers 4/14/13 Email).*

34. Captain Smathers told me that this was a famous quote and denied that he was suggesting a violent confrontation with [REDACTED]. Captain Smathers subsequently produced a webpage printout attributing the quote to Confucius, the Chinese Philosopher. *See Exhibit Q (Confucius Printout).*

[REDACTED] told me that Battalion Chief Fielder told him about this email. When [REDACTED] reviewed the email with me, he indicated that it was not surprising and thought that it was a veiled threat under the City's Workplace Threats and Violence Policy. He stated, "I dread the day when I see him face-to face."

**P. April 2013: Captain Smathers' Email to [REDACTED]**



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35. On April 19, 2013, Captain Smathers used his personal email account to email [REDACTED] on his personal email account. See Exhibit R (Smathers 4/19/13 Email). In the email, Captain Smathers disparaged [REDACTED] for making his Complaint. The email provided, in relevant part: “You are a passive aggressive, cowardly little ‘man’ who doesn’t have the guts to do the right thing. Everyone ... knows why you did what you did; purely out of revenge for my notifying Admin about your being under the influence of alcohol and driving a City vehicle TWICE ...” *Id.*

The email further provided, “You are [REDACTED] who blames everyone for your problem except for yourself. Go back and read the twelve steps; you need to.” *Id.*

The email further provided, “I am going to sue you for everything I can get from you. I have retained a law firm and they both say I have a textbook case for slander, libel, and defamation of character. ... My mission for the remainder of my life is to pay you back for what you did. Everything I do will be legal and above board; but it will be incredibly painful and life changing for you. I am more motivated and focused on this than anything else I have decided to do in my life. I will not fail ... but you will.” *Id.*

The email further provided, “You are the lowest, most deceitful human being I have ever known in my life. I plan on letting every person know; what you did and why. Many already do. You are not a ‘little bastard’; you are just a little cowardly bad person (you aren’t even a man).”<sup>3</sup> *Id.*

36. [REDACTED] did not report the email to any Administrator. Instead, he made a copy of it on the SIU photocopying machine. At the time [REDACTED] was not prepared to report the email to Assistant Chief Schaefer. However, he planned on reporting it to Human Resources. [REDACTED] told me that he mistakenly left the original on the photocopier, where someone else found it and gave it to Assistant Chief Schaefer.

**1. Captain Smathers’ Statement about This Email.**

37. Captain Smathers gave me two contradictory answers about his conduct before he sent this email. He initially told me that he did not consult with anyone before sending it. Captain Smathers subsequently told me that his Counselor told him to email [REDACTED] because a face-to-face meeting might not go very well. Captain Smathers told me that he used his personal email account because he knew that the City’s Policies prohibited certain kinds of emails in its system. He then stated, “If you’re going to send a threatening or disparaging email, you don’t do it on the City’s system.” Captain Smathers also told me that he sent the email to [REDACTED] because he was angry with him. Captain Smathers stated,

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<sup>3</sup> [REDACTED] personal email address is [REDACTED]

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“He did not have the decency to contact me. He has destroyed my life. I just wanted him to know ... I felt stabbed in the back. I am angry with him as a person for not reaching out to me. All I wanted was an explanation, especially when there was no validity to the Complaint.” Captain Smathers also stated, “I’m angry, but I don’t want to be angry. If [REDACTED] and I had an opportunity to sit down and talk, I would do it. I would like to mediate my relationship with him. I asked Chief Williams and never got a response.”

I asked Captain Smathers to rate the seriousness of the email on a scale of 1 (not serious) to 10 (very serious). Captain Smathers rated it a 1. He stated, “It’s not work-related.”

Captain Smathers also told me that he did not send the email because [REDACTED] made the Complaint against him. He stated, “No. I had been exonerated.”

Captain Smathers told me that he called [REDACTED] and [REDACTED] because he thought [REDACTED] was an [REDACTED]. Captain Smathers stated, “He’s a self-admitted [REDACTED]. He admits he’s an [REDACTED] and has an [REDACTED].”

Captain Smathers told me that he had not retained a law firm to sue [REDACTED]. He stated, “‘Retain’ is an overstatement.”

I read to Captain Smathers the part of the email indicating that his life mission was to pay back [REDACTED] for making his allegations. I asked Captain Smathers if he would still make that statement. Captain Smathers answered, “I would say the same thing if he were sitting here right now.”

Captain Smathers told me that he did not intend to physically harm [REDACTED]. He stated, “If I could legally harm him the way he harmed me, it would not bother me. I would never lay a hand on him.”

Captain Smathers’ account for sending the email is not credible. The email also is not about a follow-up conversation. It is retaliatory, threatening, and harassing on the basis of disability and gender in that Captain Smathers stereotypically asserts [REDACTED] is not a “man” for making his Complaint.

**2. [REDACTED] Statement about the Email.**

38. [REDACTED] told me that the email reinforced his conclusion that Captain Smathers was hostile and vindictive.

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[REDACTED] who had reported to Captain Smathers for five years, stated, "He has no self-control. No impulse control." [REDACTED] added that he was concerned for his own safety as well as that of his family. [REDACTED] stated, "I'm more concerned about this guy than any other criminal I've run across. ... He may not do anything today, but maybe next month. Maybe five years from now."<sup>4</sup> [REDACTED] also told me that Captain Smathers once told him, "If I was going to assault you, you would not see it coming. I would not say a word."<sup>5</sup> Notwithstanding those sentiments, [REDACTED] told me that he was not in imminent fear when he received the email.

[REDACTED] told me that the email did not affect his ability to do his job. However, [REDACTED] also indicated that he changed his patterns. [REDACTED] stated, "I park in a different spot; I come through a different door; I make sure my hands are free; I visually clear a room."

[REDACTED] also told me that the email was a clear case of retaliation, even though he had not filed his Complaint under any City Policy. I asked [REDACTED] to rate the seriousness of the email on a scale of 1 (not serious) to 10 (very serious). [REDACTED] rated it a 7.5-8.

[REDACTED] also told me that Captain Smathers' statements about him being an [REDACTED] were unwelcome. [REDACTED] stated, "I've had issues with [REDACTED] in the past. But, Kevin Smathers doesn't know me from Adam. He's not qualified to make that distinction."

**Q. April 2013: The Email to SIU Investigators.**

39. On April 25, 2013, Captain Smathers emailed all of the SIU Investigators except [REDACTED]. In the email, Captain Smathers indicated that the Human Resources investigation had fully exonerated him. He also indicated that he had retained an attorney and implied that he would sue [REDACTED]. The email also provided, in relevant part, "I need to tell each of you that I treated [REDACTED] with the same degree of respect that I treated all of you. ... I tried to make him comfortable in police work and in the office. But, similar to an addict, you cannot help someone who chooses not help themselves." See Exhibit S (4/25/13 Email). For the same reasons, this email is retaliatory and harassing on the basis of disability.

<sup>4</sup> Fire Department Administrators are concerned about [REDACTED] safety. Sometime in late Winter or early Spring 2013, Captain Smathers became agitated during a meeting with Chief Williams. Captain Smathers became so agitated that a Deputy Fire Chief named Bob Hanna went to the SIU office, which is on the same floor as Chief Williams' office. Deputy Chief Hanna located [REDACTED] and told him that he needed to leave the building until Captain Smathers could calm down.

<sup>5</sup> [REDACTED] told me that he had reported this statement to Assistant Chief Schaeffer. [REDACTED] did not think Assistant Chief Schaeffer investigated it.

40. [REDACTED] told me that he had not previously seen this email, which I showed to him during this investigation. [REDACTED] stated, "He's trying to put me in a light that is not very favorable." [REDACTED] told me that he thought it was a discriminatory act under the City's Discrimination in the Workplace Policy.

**R. May 2013: The City Places Captain Smathers on Leave.**

41. On May 1, 2013, the City placed Captain Smathers on a second paid leave of absence so it could investigate his email to [REDACTED] his possession of the brass knuckles, and his conduct as it related to the three Department-issued firearms. On or about May 3, 2013, the City notified Captain Smathers and his Union Representatives about these allegations.

When Captain Smathers was placed on leave, he emailed Fire Department Administrators and stated, "I look forward to clearing my name once again."

42. Despite knowing about these allegations, Captain Smathers still did not come forward and produce the brass knuckles. Captain Smathers told me that he still did not realize that he had them. Even when Captain Smathers "realized" that he still had the brass knuckles, he continued to retain them on the advice of his Union Representative.
43. On June 10, 2013, Captain Smathers reportedly provided the brass knuckles to the Washington State Patrol.
44. Captain Smathers' statements that he forgot about the brass knuckles when they were in Spokane 52, when he took them to his home, and when he was put on notice of the allegation are not credible and may not be consistent with his training as a fully commissioned police officer. Captain Smathers' conduct fell within the scope of RCW 9.41.250(1)(a), which outlaws the possession of this weapon.

**S. Investigating Captain Smathers.**

45. During this investigation, I examined Captain Smathers' former office and his desk. I observed two wallets in the desk. They did not appear to belong to Captain Smathers. Under the circumstances, I advised Assistant Chief Schaeffer about this issue. An SIU Investigator named Jason Recer subsequently documented the contents of the wallets. See Exhibit T (Inventory and Recer 5/24/13 Email). Investigator Recer subsequently ran the names of the wallets' owners. They were not related to any Fire Department cases. *Id.*

Captain Smathers told me that from time to time, he would find items like the wallets at a fire.

He did not consider them evidence and did not log them in as evidence. Instead, he planned on trying to contact the wallets' owners so they could recover their property. Captain Smathers' account is credible, but is an example of lackadaisical attitude toward the personal property of the public.

46. Toward the end of my second interview of Captain Smathers, I asked him to tell me if any of his conduct violated the City's applicable Policies or the Merit System Rules.

Regarding the email to [REDACTED] Captain Smathers maintained that it was a private email. He stated, "If I had sent it through the City's system, yes [it would violate the City's Merit System Rules]. If I had sent it on my City account, I would have more explaining to do."

Regarding his statements about [REDACTED] being an [REDACTED] in his email, Captain Smathers denied that they violated the Merit System Rules or the City's Discrimination in the Workplace or Civility Policies. He stated, "I've heard that [REDACTED] is a disability and it violates the City's Policy, but it was on a private email account."

Regarding his email to Battalion Chief Fielder, Captain Smathers continued to deny any violation of the Merit System Rules or the Discrimination or Civility Policies. He stated, "No. It just shows the depth of a deteriorated relationship."

Regarding the brass knuckles, Captain Smathers denied that his conduct violated the Merit Rules or the City's Workplace Threats and Violence Policy. He stated, "I did what was best at the time. It was an oversight. If I was aware of how to dispose of it or had taken the time to research it, I would have [properly taken care of it]."

Regarding his conduct involving the firearms, Captain Smathers denied that it violated the Merit Rules. He stated, "No. Through my expertise, training, and knowledge, it was the safest thing to do."

**T. Can Captain Smathers and [REDACTED] Work Together?**

47. Captain Smathers repeatedly told the Fire Department Administrators and me that he thought he still wanted to work with [REDACTED]. He stated, "We did not get the support we needed. ... I have an anger management problem. I'm working on it. I'm sorry it turned out this way."
48. [REDACTED] disagreed with Captain Smathers' statements about working together. He stated, "No. In the totality of everything, our history, and his belief that I am out to get him and seek revenge, it would never work. If they attempted to put me with him, I would not go."

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49. The City placed Captain Smathers on paid administrative leave at the start of this investigation. It is awaiting this report before it decides its next course of action.

**V. Conclusion.**

It is not my role to determine if Captain Smathers has violated the City's Merit System Rules and its Policies. However, I do find that the Fire Department has not conducted enough oversight of the SIU.

Nevertheless, an enduring theme in this investigation is that Captain Smathers unnecessarily and surreptitiously operates on his own, without sufficient regard for the Fire Department's Chain of Command, the City's Merit System Rules, or its Policies. Other Fire Department Personnel do not engage in this constellation of misconduct. Merely blaming Administration for its loose oversight ignores the obvious: Captain Smathers' problems are homegrown. He only accounts for them when there is no escape.

Captain Smathers absurdly asserts that his conduct is private or truthful to rationalize his mistreatment of [REDACTED]. Captain Smathers also sends email confessionals or cites his stressful work conditions to rationalize his other misconduct.

Captain Smathers has adopted a pattern of behavior that prioritizes after-the-fact explaining rather than behaving in the first place. Captain Smathers engages in this misconduct despite previous discipline and multiple visits to a therapist. As a result, I question whether Captain Smathers is fit for duty.

Sincerely,

LAW OFFICES OF RICHARD H. KAISER



Richard H. Kaiser

RHK/td

Enclosures



# EXHIBIT A

**MERIT SYSTEM RULES  
OF THE  
CIVIL SERVICE COMMISSION  
CITY OF SPOKANE**

**State of Washington**

**As Adopted August 19, 2008**

**COMMISSIONERS**

**Carol Lawton  
Mary Doran  
Ron Stanley  
Cheryl Beckett  
Phyllis Gabel**

**RULE IX  
SUSPENSION, DISCHARGE, LAY OFF**

Reference: Charter, Sec. 53 (l) and Sec. 55.

**Section 1. GENERAL:** An employee in the classified service may be suspended, demoted, or discharged for disciplinary purposes by the Mayor. Notice thereof, together with a full statement of the reasons, shall be immediately filed with the Commission through the Human Resources Director who shall also serve a copy upon the employee to include notice of appeal rights. PROVIDED: No employee may be disciplined twice for the same act.

**Section 2. APPEAL:** Any employee disciplined under this Rule shall have the right of appeal under the procedures prescribed in Rule XI.

**Section 3. HEARING:** The Commission shall conduct hearings as provided in Rule XI. The Commission may sustain the disciplinary order or may order the employee reinstated.

**Section 4. CONDITIONS:** Employees may be suspended or discharged under the following conditions:

- (a) Any employee may be suspended for a period of not more than sixty days for cause and with loss of salary.
- (b) Any employee may be permanently discharged from the service for cause.

**Section 5. CAUSE:** Merit principles of employment shall be the primary consideration in any disciplinary action. Employees may be disciplined only for actions which would affect their ability or fitness to satisfactorily perform their assigned duties. Non-merit factors such as race, creed, color, affiliation, national origin, sex, sexual orientation, age, marital status, or the presence of any physical or mental disability may not be considered. The following conditions are compatible to the principles of merit and may be considered as cause for any classified employee to be suspended, discharged or otherwise disciplined.

(a) Has been absent from duty without approved official leave contrary to the Civil Service rules or the City personnel regulations, or has failed to report after any such leave has been officially disapproved or revoked;

(b) Has willfully or corruptly, alone or in cooperation with one or more persons, defeated, deceived or obstructed any person in respect to their right of examination; or has willfully or corruptly furnished to any person so examined any special or secret information for the purpose of either improving or injuring the prospects or chances of persons so examined, or to be examined, being examined, employed or promoted in the operation of the Civil Service and Personnel programs of the City;

(c) Is incompetent or inefficient in the performance of the duties and responsibilities of the position held;

(d) Is willfully careless or negligent of the property of the City;

(e) Any willful violation of the Charter, these Rules, any written personnel policies, written departmental rules or procedures, or of any reasonable and proper order or direction given by a supervisor, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline or resulted or might reasonably be expected to result in loss or injury to the City, or the public, or to the prisoners or wards of the City;

(f) Has been guilty of conduct unbecoming an officer or employee of the City;

(g) While on duty, if an officer or an employee has aided in any manner in soliciting or collecting money from an officer or employee of the City for any purpose prohibited by the Mayor; provided, contributions solicited for approved purposes must be voluntary and no discrimination shall be permitted against an employee engaged in such acts;

(h) Has engaged, while in uniform or on duty, in the solicitation of funds or sale of tickets for any purpose except as provided in (g) above;

(i) Has used or threatened to use or attempted to use political influence in securing promotion, leave of absence, transfer, change of grade, pay, or character of work;

(j) Political activity as follows is prohibited:

- (1) While fulfilling the duties of City employment to actively engage in a political campaign for Mayor, City Council or other elective City office.
- (2) While fulfilling the duties of City employment to take an active part in securing or contributing monies toward the election of any candidate for elective City office.
- (3) Use of City position, office, facilities or public resources to attempt to persuade any other employee or other person to participate in or contribute to any political campaign, for Mayor, City Council, or other elective City office.

Nothing contained herein shall prohibit an employee from exercising voting rights, and expressing opinions on all political sub-

jects, nor prohibit the officers of employee associations from soliciting dues or contributions from members of their associations.

(k) Political activity of employees of the City whose positions are financed in total or primarily by Federal grant-in-aid funds, shall also be regulated by the rules and regulations of the Federal Civil Service. A violation of such rules shall be cause for discipline under these rules.

(l) Has been convicted of a felony or a gross misdemeanor;

(m) Excessive absenteeism or habitual pattern of failure to report for duty on time without good and sufficient reason;

(n) Has committed, or has induced or has attempted to induce an officer or employee of the City, to commit an unlawful act or to act in violation of any reasonable and lawful departmental or official regulation or order, or has taken any fee, gift or other valuable thing in the course of work or in connection with it, for personal use from any citizen, when such gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens;

(o) Has beneficial interest, directly or indirectly, in any contract, sale, lease or purchase with or for use of the City; or accepts, directly or indirectly, any compensation, gratuity or reward from any person beneficially interested therein.

**Section 6. LAY OFF:** Whenever it becomes necessary in any department, through lack of work or funds, abolishment of the job, or other good cause to reduce the work force in that department, or for re-employment or extended leave of absence as provided in Rule X, Section 3 and 4 (d), personnel shall be laid off or reduced in grade according to the procedures established in this Rule.

(a) Reductions in force shall be confined to the department affected; except that employees who have been promoted or transferred to their present classification directly from a classification in another department may be returned to such previously held classification in the other department. No classified employee shall be laid off or reduced in grade under these conditions while there are employees not within the classified service who are serving in the same department in the same relative job or classification. For the purpose of this rule, "classified employee" includes both permanent and probationary appointees.

(b) Classification seniority tenure shall be the primary factor in determining a reduction in force, should this tenure be the same, then, in order, shall be considered the departmental seniority and the City seniority. The Commission may grant permission for lay off out of the regular order upon showing by the department head in writing through the Human Resources Director of a necessity in the interest of efficient operation of the department, after giving the employee affected an opportunity for a hearing.

(c) At the time of lay off, permanent and promotional probationary employees shall, at their option, be reduced to the next lower classification within the department, or they may be transferred as provided in Rule VIII; provided such reduction or transfer shall not displace an employee with greater seniority; and provided further, that such reduction or transfer is to a classification in which the employee previously held status, or a classification in which a vacancy exists and for which the character and standards are similar or related to those required in the employee's present classification. Seniority in this instance shall be determined by combining time spent in present classification and time served in classification to which reduction or transfer is contemplated.

(d) Any employee who has been formally charged with a felony may be laid off without pay pending court trial determination. In this instance normal lay off and reinstatement procedures will not apply; however, the appointing officer shall notify the employee and process the necessary records and forms. If the employee is found not guilty of the charge, the employee shall be immediately restored to duty and shall be entitled to all back salary, and benefits due. In other instances the Mayor shall immediately make a determination as to restoration to duty and of pay.

**Section 7. LAY OFF PROCEDURE:** The person with the least seniority in the classification within a department shall be the first laid off or reduced except that this provision shall not apply in the event lay off action is taken in connection with an extended leave of absence in accordance with Rule X, Sec. 4 (d). The appointing officer shall notify the affected employee in writing a minimum of 10 working days prior to the effective date, prepare the order of change with copies to the Commission and the Human Resources Director on a form provided and shall obtain the approval of the Commission prior to the effective date of such order.

**Section 8. REINSTATEMENT:** The names of persons laid off or reduced in accordance with Section 6 (a-c), shall be placed on a laid off register, to be prepared jointly by the Commission and the Human Resources Director, with copies for both, in the inverse order of lay off; that is, the last person laid off shall be the number one person on the lay off register. Persons on the lay off register shall be given preference over all others in certification and appointment as set out in Rule V, Section 3, and Rule VI, Section 12. The names of such persons shall also be placed at the top of the Citywide promotion or open eligible list for that classification and grade in which they were employed at the time of lay off. If no eligible list exists, the names of such employees shall constitute the eligible list. In order to facilitate reinstatement, the names of such persons may also be placed on transfer lists to other classifications at the same or lower grade level to be certified as transfer requests in accordance with Rule V, Section 3, provided that the persons meet the qualifications for such other classifications. For employees who have been reduced in grade and are employed by the City, there is no limit to the duration of a laid off list; however, those hired from the laid off list after three years from the date placed thereon shall be required to serve a six-month probationary period. For employees separated from service due to layoff, there is a three-year limit to the length of time a name may be on the laid off list. All employees hired in a department other than from which they were laid off shall be required to serve a six-month probationary period.

**Section 9. REINSTATEMENT PROCEDURE:** Upon receipt of a requisition from a department or division, names will be certified from the laid off register in accordance with Rule V, Section 3, and Rule VI, Section 12. The appointing officer shall have no choice in the appointment, and shall appoint the person so certified within 10 days of the certification. If for good and sufficient rea-

# EXHIBIT B

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1-25-06  
CITY CLERK'S OFFICE  
SPOKANE, WA

CITY OF SPOKANE ADMINISTRATIVE POLICY AND PROCEDURE	ADMIN 0620-06-48 LGL 2006-12
TITLE: <b>WORKPLACE THREATS AND VIOLENCE</b> EFFECTIVE DATE: September 1, 1998 REVISION EFFECTIVE DATE: February 9, 2006	

1.0 GENERAL

1.1 Workplace violence continues to be a significant problem.

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- 5.0 POLICY
- 6.0 PROCEDURE
- 7.0 RESPONSIBILITIES
- 8.0 APPENDICES

2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy shall apply to all City divisions and departments.

3.0 REFERENCES

None

4.0 DEFINITIONS

4.1 "Workplace Violence" as used in this policy means acts of physical, verbal or written aggression, threats to inflict physical harm, or damage to property, or any purposeful or knowing behavior which would cause a reasonable person to feel threatened by an employee or non-employee in the workplace. "Workplace Violence" does not include reasonable force in the defense of oneself or others. "Workplace Violence" also does not include the appropriate use of force or weapons by law enforcement officers, duly assigned security guards, or others acting lawfully to protect and defend life and property.



4.2 **"Weapon" means any firearm, switchblade knife, or knife with a blade longer than four inches, dangerous chemicals, explosive devices of any kind, chains, and other objects intended to injure or intimidate others.**

4.3 **"Threat" is defined as an expression by word or conduct of intent to commit violence that places the listener or reader in fear of imminent bodily harm, or is of such character that another individual could be placed in fear of imminent bodily harm. The overall context of statement, including nonverbal communications will be taken into account to determine if such an expression is a threat covered by this policy. There are generally three types of threats recognized by the City: veiled, conditional and direct.**

- **A veiled threat involves reference to a violent act and an association with the present situation.**
- **A conditional threat contains words such as "if" or "or" and references a violent act with the condition.**
- **A direct threat is a warning of a pending violent act.**

## **5.0 POLICY**

5.1 **The City will not tolerate any workplace acts of violence to persons whether they are employees or members of the public, or to property. Any employee who commits or threatens an act of workplace violence will be subject to investigation and discipline. It is the goal of the City to provide a workplace that is free from intimidation, threats or violence.**

### **5.2 Employee Responsibilities**

5.2.1 **Employees are expected to treat co-workers, members of the public and property with respect. No employee is permitted to commit or threaten violence against any other employee or member of the public. Examples of prohibited conduct include but are not limited to physical abuse, verbal threats to inflict physical harm, vandalism, arson, and use of weapons.**

5.2.2 **Employees are not permitted to bring a weapon into the City workplace or onto any City property unless the weapon is required to fulfill the employee's job duties, such as those of a police officer, or the Deputy Mayor grants a prior exception in writing.**

### **5.3 Supervisory / Management Responsibilities**

**5.3.1 Supervisors, managers and department/division directors shall attend training on identifying and defusing workplace problems and conflicts.**

**5.3.2 Supervisors are expected to appropriately intervene when they see an employee on the receiving end of abuse, whether from another employee or a member of the public.**

**5.3.3 The responding supervisor, manager or director, shall establish command, and immediately assess whether there is a current significant risk of violence that could result in physical harm to people or property. He/she shall determine the appropriate level of emergency response. The supervisor, manager or director's efforts should include the following actions:**

- Assuring that 9-911 has been called, if necessary.**
- Alerting other employees in the immediate area about the situation.**
- Attempting to move individuals at risk to a safer location.**
- Implementing the appropriate evacuation proceeding if rapid evacuation of the building seems warranted.**
- Controlling staff involved so that they do not interfere with or hinder the efforts of law enforcement or other emergency personnel who may respond to the incident.**
- Assuring that necessary immediate medical attention and/or emotional support is provided to employees affected by the incident.**

**5.4 City Responsibilities**

**5.4.1 Due to the need to allow public access to City facilities and services, the City cannot guarantee the protection of employees or members of the public against random acts of violence that may occur.**

**5.4.2 The City subscribes to the concept of a safe work environment and supports the prevention of workplace violence. Prevention efforts include, but are not limited to informing employees of this policy, instructing employees regarding the dangers of workplace violence, communicating the sanctions imposed for violating this policy and providing a**

reporting hierarchy within which to report incidents of violence without fear of reprisal.

**5.5 Disciplinary Action**

**5.5.1 Any employee who violates this policy may be subject to disciplinary action, up to and including discharge, depending on the severity of the violation.**

**5.6 Members of the Public**

**5.6.1 Any member of the public who violates this policy may be denied access to City business locations.**

**6.0 PROCEDURE**

**6.1 Employee Responsibilities**

**6.1.1 Employees shall be alert to and immediately report suspicious or threatening behavior and incidents of workplace violence to their supervisor, or contact law enforcement, fire and/or emergency medical personnel by dialing 9-911 in the case of immediate serious threat or commission of a crime, and using the attached reporting form to the Human Resources Director and the Risk Manager. In the event of imminent danger to persons or property, employees shall take action to safeguard persons or property before making the formal report.**

**6.1.2 Employees shall report to the Human Resources Director, the Risk Manager, or 9-1-1 as appropriate, any behavior they have witnessed which they regard as threatening or violent.**

**6.1.3 Employees are responsible for making the report required in the two preceding paragraphs regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons who were threatened or were the focus of the threatening behavior.**

**6.1.4 Except as noted above, reports shall be made immediately after a threat or act of workplace violence has occurred.**

**6.1.5 Employees are to retreat from situations when in fear of imminent physical harm.**

6.1.6 All individuals who apply for, or obtain a protective or restraining order which lists City work locations as being protected areas, shall immediately notify their department director.

**6.2 Supervisory / Management Responsibilities**

6.2.1 The supervisor, manager or director contacted regarding workplace violence shall respond immediately and notify the Human Resources Director of the situation as soon as possible.

6.2.2 When a department director is notified of an employee having identified City work locations as being protected areas for purposes of restraining or protective orders, OR of a domestic violence situation for which the employee is requesting protection, the Human Resources Director and the Risk Manager are to be consulted immediately, to determine what actions may be appropriate.

6.2.3 Department directors are responsible for periodic examinations of the escape routes of the work area and for communicating any changes to all employees in the area. On an as needed basis, the department/division director may request a security audit from the Police Department to determine whether additional security measures are necessary.

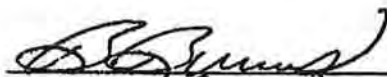
**7.0 RESPONSIBILITIES**

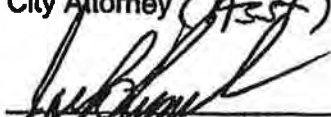
The Human Resources and Risk Management departments shall be responsible for administering this policy.

**8.0 APPENDICES**

**Workplace Threat / Violence Report**

APPROVED BY:

  
\_\_\_\_\_  
City Attorney (ASST)

  
\_\_\_\_\_  
Deputy Mayor

  
\_\_\_\_\_  
Director

1-25-06  
\_\_\_\_\_  
Date

RECEIVED  
1-25-06  
CITY CLERK'S OFFICE  
SPOKANE, WA

CITY OF SPOKANE ADMINISTRATIVE POLICY AND PROCEDURE	ADMIN 0620-06-37 LGL 2005-64
TITLE: WHISTLEBLOWER PROTECTION EFFECTIVE DATE: January 2, 1993 REVISION DATE: February 9, 2006	

**1.0 GENERAL**

1.1 This policy implements Washington State's Local Government Whistleblower Protection Act.

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- 8.0 APPENDICES

**2.0 DEPARTMENTS/DIVISIONS AFFECTED**

This policy shall apply to all City divisions and departments.

**3.0 REFERENCES**

RCW 42.41

**4.0 DEFINITIONS**

- 4.1 "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.
- 4.2 "Improper governmental action" means any action by a local government officer or employee:

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- a. that is undertaken in the performance of the officer's or employee's official duties, whether or not within the scope of the employee's employment, and
- b. that is in violation of any federal, state or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds. The phrase does not include any personnel or labor actions.

4.3 "Retaliatory action" means:

- a. any adverse change in an employee's employment status or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or
- b. hostile actions by another employee towards the employee that were encouraged by a supervisor or senior manager or official.

5.0 POLICY

- 5.1 It is the policy of the City of Spokane to encourage employees to report information concerning any allegedly improper action by the City's officers or employees. It is further the policy of the City to prevent retaliation against any employee who in good faith reports such allegedly improper action. Employees who feel they have been retaliated against may appeal to the Hearing Examiner.

6.0 PROCEDURE

6.1 Reporting Allegedly Improper Action

- 6.1.1 Every City employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.
- 6.1.2 Any City employee who desires to report allegedly improper governmental action shall first report in writing such action to the following persons:

- a. Mayor, or;
- b. Human Resources Director, or;
- c. City Attorney; or
- d. County Prosecuting Attorney.

It is the responsibility of the receiving official to notify the Human Resources Director who will pass the information on to the Whistleblower Panel comprised of the City Auditor, a representative from the Human Resources Department, Office of the City Attorney and the employee's bargaining unit representative.

- 6.1.3 The Whistleblower Panel shall investigate the received complaint (to include the hiring of outside investigators, if needed) and make a final report to the complainant and the Human Resources Director.
- 6.1.4 Except in the case of an emergency, an employee shall NOT provide information of an improper governmental action to a person or an entity who is not a public official or person listed in subsection 6.1.2 above. An employee who fails to make a good faith attempt to follow this procedure shall not receive the protections of the policy or the State Whistleblower Protection Act.
- 6.1.5 The City *shall* keep confidential the identity of the person reporting to the extent possible under law, unless the employee authorizes in writing the disclosure of his or her identity.

## 6.2 Retaliatory Action Forbidden

- 6.2.1 No City official or employee may take retaliatory action against a City employee because the employee provided information in good faith in accordance with the provisions of this policy that an improper governmental action occurred.
- 6.2.2 If an employee believes she or he has been retaliated against in violation of this policy, the employee must provide a written notice of the charge or retaliatory action to the Hearing Examiner of the City. The notice must specify the alleged retaliatory action, and the relief requested.
- 6.2.3 The charge must be delivered to the Hearing Examiner no later than thirty (30) calendar days after the occurrence of the alleged retaliatory action. The City will then have thirty (30) calendar days to respond to the charge and the request for relief.

- 6.2.4 Upon receipt of either the response by the City or after the lapse of the thirty (30) calendar days, the employee may request a hearing to determine whether a retaliatory action has occurred and to obtain appropriate relief. The request for a hearing must be made within fifteen (15) calendar days of receipt of the response by the City or the lapse of the City's thirty (30) calendar day response time. Requests must be in writing and made to the City Hearing Examiner.
- 6.2.5 If the claimant has met all the time requirements, the Hearing Examiner will hold a hearing. The burden of proof is on the employee to prove his or her claim by a preponderance of the evidence. The Hearing Examiner will issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five (45) calendar days following the request for hearing. The Hearing Examiner may grant extensions of time upon the request of either party upon a showing of good cause or on his or her own motion.
- 6.2.6 The Hearing Examiner may grant the following relief, as appropriate: reinstatement, with or without back pay, and injunctive relief as may be necessary to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The Hearing Examiner may award costs and reasonable attorneys' fees to the prevailing party. The Hearing Examiner may also impose a civil penalty of up to three thousand dollars (\$3,000) payable by each person found to have retaliated against the employee and may recommend to the City that the person found to have retaliated be suspended or discharged.
- 6.2.7 Either party may appeal to Superior Court from an adverse determination by the Hearing Examiner. The Hearing Examiner's decision is subject to judicial review under the arbitrary and capricious standard.

## 7.0 RESPONSIBILITIES

The Human Resources Department shall administer this policy.


## 8.0 APPENDICES

Whistleblower Complaint Form  
Whistleblower Retaliation Complaint Form



APPROVED BY:

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Deputy Mayor

  
\_\_\_\_\_  
Director

1-25-06  
\_\_\_\_\_  
Date

RECEIVED

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CITY CLERK'S OFFICE  
SPOKANE, IDAHO

CITY OF SPOKANE ADMINISTRATIVE POLICY AND PROCEDURE	ADMIN 0520-05-53 LGL 05-65
TITLE: GENERAL HARASSMENT EFFECTIVE DATE: May 1, 1998 REVISION DATE: DECEMBER 2, 2005	

1.0 GENERAL

1.1 Harassment of or by employees or towards a member of the public, that interferes with work performance, and/or delivery of services is prohibited.

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- 8.0 APPENDICES

2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy shall apply to all City divisions and departments.

3.0 REFERENCES

None

4.0 DEFINITIONS

4.1 Harassment is defined as any unwelcome action by any person whether verbal or physical, on a single or repeated basis, which humiliates, insults or degrades.

"Unwelcome" or "unwanted" in this context means any actions which the harasser knows or should reasonably know are not desired by the victim of the harassment.

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**4.2 Several examples of this type of behavior include but are not limited to the following:**

- **Verbal Harassment:** Verbal threat toward persons or property; the use of vulgar or profane language toward others, disparaging or derogatory comments or slurs, verbal intimidation, exaggerated criticism, and name calling.
- **Non-Verbal Harassment:** Derogatory or offensive posters, cartoons, publications, drawings or gestures.
- **Physical Harassment:** Any physical assault such as hitting, pushing, kicking, holding, impeding or blocking the movement of another person.

## **5.0 POLICY**

**5.1 It is the City of Spokane's policy that there shall be no harassment of or by employees, or towards members of the public as defined below.**

**Mutual respect must be the basis of interaction among City employees in addition to cooperation and understanding. The City of Spokane will neither tolerate nor condone behavior that is likely to undermine the dignity or self-esteem of an individual, or create an intimidating, hostile or offensive environment.**

**5.2 All employees are expected to abide by this policy. Anyone who violates this policy will be subject to disciplinary action up to and including discharge.**

**5.3 The City will not condone retaliation against anyone who files a harassment complaint or who participates in a complaint investigation.**

## **6.0 PROCEDURE**

### **6.1 Complaint Procedure**

**6.1.1 A complainant is encouraged to use the City's complaint procedures to resolve harassment complaints. For certain harassment complaints, dealing with race, color, religion, sex, age, national origin, veteran status and disability, a complainant may also file, within certain time frames, with appropriate state and federal agencies, such as:**

**State of Washington**

Washington State Human Rights Commission, Rockpointe Plaza 3,  
1330 North Washington Street, Suite 2460, Spokane, WA 99201.  
(509) 568-3196, TDD (800) 300-7575, Voice (800) 233-3247.

**Federal Government**

U.S. Equal Employment Opportunity Commission, 909 First  
Avenue, Suite 400, Seattle, WA 98104-1061, (206) 220-6883,  
TDD (206) 220-6882, FAX (206) 220-6911, Voice (800) 669-4000.

Office of Federal Contract Compliance Program, District IX & X, 71  
Stevenson Street, Suite 1700, San Francisco. CA 94105. (415)  
848-6969.

*For Discrimination and Sexual Harassment complaint procedures,  
please refer to City Policies ADMIN 0620-05-016 AND ADMIN  
0620-05-035.*

- 6.1.2 The Harassment Complaint Procedures do not limit any procedures available under any existing federal or state laws.
- 6.1.3 Complaints may be submitted in writing or by any other means accessible to the complainant. All complaints must, however, be signed or attested to by the individual receiving the complaint and dated upon receipt. Complaint forms are available in the Human Resources Department .
- 6.1.4 Violations of the City's policy against harassment will ideally be resolved at the lowest appropriate level, informally and effectively.
- 6.1.5 An employee exposed to harassment may assertively tell the offending person that the conduct is unwelcome and must cease immediately.
- 6.1.6 If the above step 6.1.5 is not effective or feasible, and the employee desires an internal resolution of the complaint, the process outlined below shall be followed:
  - a. The complainant should bring the issue to the complainant's immediate supervisor's attention in a timely manner. If the supervisor is the one engaging in the harassing behavior, or the individual does not wish to tell the supervisor, the situation must be brought to the attention of that person's supervisor.

**b. When supervisors are notified of alleged harassment, they shall immediately:**

- 1. Document and report the incident to the Department Head.**
- 2. Investigate the complaint.**
- 3. Take appropriate corrective action.**
- 4. Forward the results of the investigation to the Human Resources Director.**
- 5. Provide official findings and comments to the complainant, in writing, within ten (10) working days of receipt of the complaint.**

**6.1.7 If the above step 6.1.6 is not effective, or if the complainant is not satisfied with the action taken, the issue must be brought by the complainant to the attention of the department head within five (5) working days of receipt of the supervisor's response. The department head is responsible for further investigation and must respond in writing to the complainant within ten (10) working days of receiving the complaint. A copy of all correspondence shall be sent confidentially to the Human Resources Director.**

**6.1.8 Alternatively, a complaint may be submitted at any time directly to the Human Resources Director.**

**6.1.9 No individual will be retaliated against or otherwise adversely affected in employment as a result of making a harassment complaint or for participating in a complaint investigation or as a result of being erroneously accused of harassment.**

## **6.2 Employee Rights**

**6.2.1 Employee rights with respect to harassment directed at an individual because of a protected classification (race, color, religion, sex, age, national origin, veteran status, or disability) are also protected under Washington State Law Against Discrimination, RCW 49.60, the U.S. Civil Rights Acts of 1964 and 1991, and Spokane Municipal Code Chapter 1.06.**

## **6.3. Complainant's Responsibilities**

- 6.3.1 Occasionally, the offender may not be aware that a behavior is offensive. If at all possible, advise the offending individual that the conduct in question is offensive, and request that it be discontinued immediately.
- 6.3.2 If the complainant is not comfortable talking to the offending person and/or the offending conduct continues or recurs, the matter should be immediately reported to the complainant's immediate supervisor, Department Head or the Human Resources Director.
- 6.3.3 Employees who see this type of behavior, hear of it, or know of its occurrence, should immediately report it to a supervisor, the department head, or the Human Resources Director.
- 6.3.4 Employees are required to cooperate fully in the processing of the complaint. Employees may be allowed to be accompanied by a Union representative, or a person of comfort. If the employee chooses to have an attorney present, the cost of the attorney will be the sole responsibility of the employee.
- 6.3.5 An employee who files a false or malicious complaint of harassment may also be disciplined. Discipline may include dismissal.

#### 6.4 Administration

- 6.4.1 If a violation of harassment continues, the Human Resources Director shall be consulted immediately. The Human Resources Director shall be notified of all harassment complaints so that a record may be maintained.

### 7.0 RESPONSIBILITIES

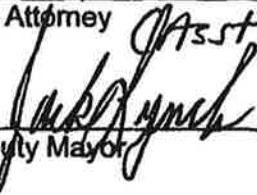
The Human Resources Department shall administer this policy.

### 8.0 APPENDICES

Harassment Complaint Form

APPROVED BY:

  
\_\_\_\_\_  
City Attorney (Asst.)

  
\_\_\_\_\_  
Deputy Mayor

  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Date 11/17/05

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RECEIVED  
06-13-06  
CITY CLERK'S OFFICE  
SPOKANE, WA

CITY OF SPOKANE ADMINISTRATIVE POLICY AND PROCEDURE	ADMIN 0620-06-16 LGL 2006-26
TITLE: <b>DISCRIMINATION IN THE WORKPLACE</b> EFFECTIVE DATE: March 3, 1986 REVISION EFFECTIVE DATE: June 28, 2006	

## 1.0 GENERAL

1.1 The City of Spokane is legally required to adhere to personnel policies that are in accord with federal equal employment opportunity laws, executive orders, state laws and local ordinances forbidding illegal discrimination against employees. Employees have the right to work in an environment free from discrimination.

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- 8.0 APPENDICES

## 2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy shall apply to all City divisions and departments.

## 3.0 REFERENCES

42 USC 2000e et. seq.  
RCW chapter 49.60  
SMC chapter 1.06

## 4.0 DEFINITIONS

4.1 "Discrimination" means different or unequal treatment on the basis of race, religion, color, national origin, gender, sexual orientation, marital status, age, familial status or disability.

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## **5.0 POLICY**

**5.1 It is the policy of the City of Spokane to maintain a work environment free of discrimination in any form, whether it is blatant or subtle. It is the responsibility of all employees of the City to help provide a work environment free of illegal discriminatory practices, intimidation or coercion.**

### **5.2 Examples of Discrimination**

**5.2.1 Discrimination in employment occurs when an employer hires, promotes, disciplines, demotes or terminates an employee or makes any employment related decision solely or in part on the basis of that person's race, religion, color, national origin, gender, marital status, sexual orientation, age, familial status or disability.**

**5.2.2 Examples of discriminatory behavior include but are not limited to racial and ethnic jokes, slurs, cartoons, gestures and other disrespectful comments directed at or about persons because of their race, religion, color, national origin, gender, sexual orientation, marital status, age, familial status or disability.**

### **5.3 Potential Liability of Employer**

**5.3.1 The City and individual employees can be held liable for discrimination.**

**5.3.2 The City may be liable for discrimination by supervisors regardless of whether or not the City is aware of the discrimination.**

**5.3.3 The City may also be liable for discrimination by employees against non-employees in the workplace if the City is or should be aware of the conduct and does not take corrective measures.**

**5.3.4 Supervisors may be personally liable for failure to take corrective action.**

## **6.0 PROCEDURE**

### **6.1 Responsibilities**

**6.1.1 Each employee is responsible for maintaining a work environment free of discrimination, including discrimination against a co-worker.**

**6.1.2 Managers and supervisors are responsible for taking prompt, appropriate corrective action whenever they know of or should know of conduct that could be considered discriminatory.**

- 6.1.3 When the Human Resources Director is notified of discrimination, he or she is responsible for taking the action necessary to ensure that the discrimination stops and that appropriate disciplinary action is taken.

## 6.2 Complaint Procedure

- 6.2.1 A complainant is encouraged to use the City's complaint procedure to resolve discrimination complaints. Complaints may be made in writing or by any means accessible to the complainant. Complaint forms are available in the Human Resources Department. Complainants may also file with appropriate state and federal agencies such as:

### State of Washington

Washington State Human Rights Commission; Rockpointe Plaza 3, 1330 North Washington Street, Suite 2460, Spokane, WA 99201, (509) 568-3196, TDD (800) 300-7575, Voice (800) 233-3247.

### Federal Government

U.S. Equal Employment Opportunity Commission, 909 First Avenue, Suite 400, Seattle, WA 98104-1061, (206) 220-6883, TDD (206) 220-6882, FAX (206) 220-6911, Voice (800) 669-4000

Office of Federal Contract Compliance Programs, Districts IX & X, 71 Stevenson Street, Suite 1700, San Francisco, CA 94105, (415) 848-6969

- 6.2.2 Violations of this policy against discrimination will ideally be resolved at the lowest level, informally and effectively. All employees of the City of Spokane are encouraged to use the internal complaint procedure whenever it is believed that discrimination has occurred.
- 6.2.3 An employee exposed to discrimination may assertively tell the offending person that the conduct is unwelcome and must cease immediately.
- 6.2.4 If the above step 6.2.3 is not effective or feasible and the employee desires an internal resolution of the complaint, the process outlined below shall be followed:
- a. The complainant should bring the issue to the supervisor's attention in a timely manner. If the supervisor is the one engaging in the discriminatory conduct, or the individual does not wish to tell the supervisor, the situation should be brought to the attention of that person's supervisor.

b. When supervisors are notified of alleged discrimination, they shall immediately:

1. Document and report the incident to the department head.
2. Investigate the complaint.
3. Take appropriate corrective action.
4. Forward the results of the investigation to the Human Resources Department.
5. Provide official findings and comments to the complainant, in writing, within ten (10) working days of receipt of complaint.

6.2.5 If the above step 6.2.4 is not effective, or if the complainant is not satisfied with the action taken, the issue must be brought to the attention of the Department Head within five (5) working days of receipt of the supervisor's response. The Department Head is responsible for further investigation and must respond in writing to the complainant within ten (10) working days of receiving the complaint. A copy of all correspondence shall be sent confidentially to the Human Resources Director.

6.2.6 Complaints may also be made directly to the Human Resources Director.

6.2.7 No individual will be retaliated against or otherwise adversely affected in employment as a result of making a discrimination complaint or for participating in a complaint investigation or as a result of being erroneously accused of discrimination.

### 6.3 Employee Rights

6.3.1 Employee rights are also protected through the remedies available under the Washington State Laws Against Discrimination, RCW 49.60, the U.S. Civil Rights Act of 1964, the Civil Rights Act of 1991, the Spokane Municipal Code Chapter 1.06, and other laws such as the Age Discrimination in Employment Act of 1967, the Pregnancy Discrimination Act of 1974 and the American with Disabilities Act of 1990, and other laws.

000071

**6.4 Employee Responsibilities**

**6.4.1** Employees are required to cooperate fully in the processing of the complaint. Employees may be allowed to be accompanied by a union representative or a person of comfort. If the employee chooses to have an attorney present, the cost of the attorney will be the sole responsibility of the employee.

**6.5 Administration**

**6.5.1** When a violation continues, the Human Resources Department shall be consulted immediately. The Human Resources Department is to be notified of all discrimination complaints so that a record may be maintained as required by the Equal Employment Opportunity Commission.

**7.0 RESPONSIBILITIES**

The Human Resources Department shall administer this policy.

**8.0 APPENDICES**

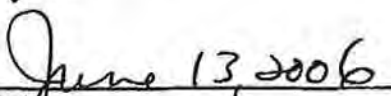
**Discrimination / Harassment Complaint Form**

**APPROVED BY:**

  
\_\_\_\_\_  
City Attorney (Asst)

  
\_\_\_\_\_  
Deputy Mayor

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Date

000072

# EXHIBIT C

000073

# EXHIBIT D

000089

# Spokane Police Department

## Policy Manual

### *Firearms and Qualification*

---

#### **312.2.4 ALCOHOL AND DRUGS**

Authorized firearms shall not be carried by any officer who has consumed an amount of an alcoholic beverage or taken any drugs that result in being under the influence as defined in ART25, Section C.2 of the collective bargaining agreement.

An officer shall not carry a department issued handgun/firearm to a place or event where he/she anticipates consuming alcohol.

#### **312.2.5 LASER SIGHTS**

Laser sights may be installed on a department issued or authorized firearm carried on or off-duty after they have been examined and approved by the Rangemaster.

- (a) Any approved laser sight shall only be installed in strict accordance with manufacturer specifications.
- (b) Once approved laser sights have been properly installed on any firearm, the officer shall qualify with the firearm to ensure proper functionality and sighting of the firearm prior to carrying it on duty.

Except during approved training or during a function check situation, an officer may only activate a laser sight when the officer would otherwise be justified in pointing a firearm at an individual or other authorized target.

#### **312.3 SAFE HANDLING OF FIREARMS**

The intent of this policy is to promote proper firearm safety on and off-duty. Employees shall maintain the highest level of safety when handling firearms and shall consider the following:

##### **312.3.1 SAFETY CONSIDERATIONS**

- (a) Officers shall not unnecessarily display or handle any firearm.
- (b) Officers shall be governed by all rules and regulations pertaining to the use of the range and shall obey all orders issued by the Rangemaster. Officers shall not dry fire or practice quick draws except under Rangemaster supervision.
- (c) Officers shall not clean, repair, load or unload a firearm anywhere in the Department, except where clearing barrels are present.
- (d) Shotguns or rifles removed from vehicles or the equipment storage room shall be loaded and unloaded in the parking lot and outside of the vehicle.
- (e) Officers shall not place or store any firearm or other weapon on Department premises except where the place of storage is locked. No one shall carry firearms into the jail section or any part thereof when securing or processing a prisoner, but shall place all firearms in a secured location. It shall be the responsibility of the releasing officer to make sure that persons from outside agencies do not enter the jail section with any firearm.
- (f) Officers shall not use any automatic weapon, heavy caliber rifle, gas or other type of chemical weapon from the armory, except with approval of a supervisor.
- (g) Any weapon authorized by the Department to be carried on- or off-duty, that is found by the officer to be malfunctioning or needing service, shall not be carried. It shall be promptly presented to the Department or Rangemaster for inspection. Any weapon determined to be in need of service or repair during an inspection by the Rangemaster, will be immediately removed from service. If the weapon is the officer's primary duty

# Spokane Police Department

## Policy Manual

### *Firearms and Qualification*

---

weapon, a replacement weapon will be issued to the officer until the duty weapon is serviceable.

#### **312.3.2 STORAGE OF FIREARMS AT HOME**

Officers shall ensure that all department firearms are stored in a manner that ensures the safety of others.

#### **312.4 FIREARMS QUALIFICATIONS**

All sworn personnel are required to qualify bi-annually with their duty firearm on an approved range course. The Rangemaster shall keep accurate records of qualifications, repairs, maintenance, and training. In addition to regular qualification schedules, the Rangemaster shall be responsible for providing all sworn personnel with annual practical training designed to simulate field situations. At least annually, all personnel carrying a firearm will receive training on the department Use of Force policy.

##### **312.4.1 NON QUALIFICATION**

If any officer is unable to attend qualification for any reason, including injury, illness, duty status, or scheduling conflict, that officer shall submit a written notification to his/her immediate supervisor and Rangemaster prior to the end of the required shooting period.

- (a) Members who fail to qualify during two successive qualification courses will be relieved from field assignment and appropriate disciplinary action may follow.
  - 1. The Rangemaster or designee will issue a written order directing the officer to use only the firearm for practice or training.
  - 2. The Rangemaster or designee will notify his/her chain of command of the failure and officer status change.
- (b) Sworn members who fail to qualify on their first shooting attempt shall be provided remedial training until proficiency is demonstrated and will be subject to the following requirements:
  - 1. Additional range assignments may be required until consistent firearm proficiency is demonstrated.
  - 2. Members shall be given credit for a range qualification after remedial training and a qualifying score is obtained.
  - 3. No range credit will be given for the following:
    - (a) Unauthorized range make-up.
    - (b) Failure to qualify after remedial training.

#### **312.5 WARNING AND OTHER SHOTS**

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the officer reasonably believes that they appear necessary, effective and reasonably safe.

#### **312.6 DESTRUCTION OF ANIMALS**

Officers are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.



# Spokane Police Department

## Policy Manual

### *Patrol Rifles*

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#### **432.6 DEPLOYMENT OF THE PATROL RIFLE**

Officers may deploy the patrol rifle in any circumstance where the officer can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

- (a) Situations where the officer reasonably anticipates an armed encounter.
- (b) When an officer is faced with a situation that may require the delivery of accurate and effective fire at long range.
- (c) Situations where an officer reasonably expects the need to meet or exceed a suspect's firepower.
- (d) When an officer reasonably believes that there may be a need to deliver fire on a barricaded suspect or a suspect with a hostage.
- (e) When an officer reasonably believes that a suspect may be wearing body armor.
- (f) When authorized or requested by a supervisor.
- (g) When needed to euthanize an animal.

#### **432.7 DISCHARGE OF THE PATROL RIFLE**

The discharge of the Patrol rifle shall be governed by the department's Deadly Force Policy, Policy Manual § 300.

#### **432.8 PATROL READY**

Any qualified officer carrying a patrol rifle in the field shall maintain the weapon in the "patrol ready" until deployed. A rifle is considered "patrol ready" when it has been inspected by the assigned officer and meets the following conditions:

- (a) The chamber is empty.
- (b) The rifle safety is on.
- (c) There is a fully loaded magazine in the rifle.
- (d) The rifle is stored in the locked patrol vehicle's rifle rack or trunk.

#### **432.9 RIFLE STORAGE**

- (a) When not in use, patrol rifles will be stored in the department armory. Personally owned rifles may be stored in the armory or at the officer's home in accordance with Policy 312.
- (b) At the end of the assigned officer's shift, the department patrol rifle will be returned and secured in the department armory.
- (c) Officers assigned with take home cars may store department and personally owned rifles (patrol and specialty team rifles) in:
  - 1. The department armory;
  - 2. The police vehicle if the vehicle is stored within a secure garage and the rifle is secured in a locking device or in the locked vehicle trunk; or
  - 3. The officer's home and secured in accordance with Policy 312.

# EXHIBIT E

000093

**Message: SIU Stuff**

■ **SIU Stuff**

**From** Smathers, Kevin      **Date** Friday, February 03, 2012 2:08 PM  
**To**  
**Cc**  
**Bcc** SFD Investigations

It is that time of year again:

{1} Please email me the model and serial number of your service weapon. Please make sure that the serial numbers are all the same (frame, barrel and slide). If there are different serial numbers on any part of the weapon, we will have to address that.

**EXAMPLE:**

**Glock 22 (.40 caliber)**  
**Serial Number: BAN353**

{2} If you have decided to carry a personal backup weapon I will need the make, model, caliber and serial number of that weapon as well.

{3} Please take the time to review your assigned shelf in the evidence room and discard anything you have received the prosecutor's permission to do so or if you believe nothing will ever come of that case. Another option is to package up some of your dated evidence and move it to the evidence room (cage) at the Field House. Bowen and I have keys to get into that caged area. The evidence room at Station One is getting pretty full.

Thanks.

Kevin Smathers  
Captain, Special Investigation Unit  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
Office: (509) 625-7052  
E-Mail: ksmathers@spokanefire.org

Saturday, May 4, 2013 5:12:26 AM Pacific Daylight Time

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**Subject:** FW:

**Date:** Wednesday, April 3, 2013 3:27:08 PM Pacific Daylight Time

**From:** Schaeffer, Brian

**To:** Jacobson, Erin

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**From:** Percy, Dean

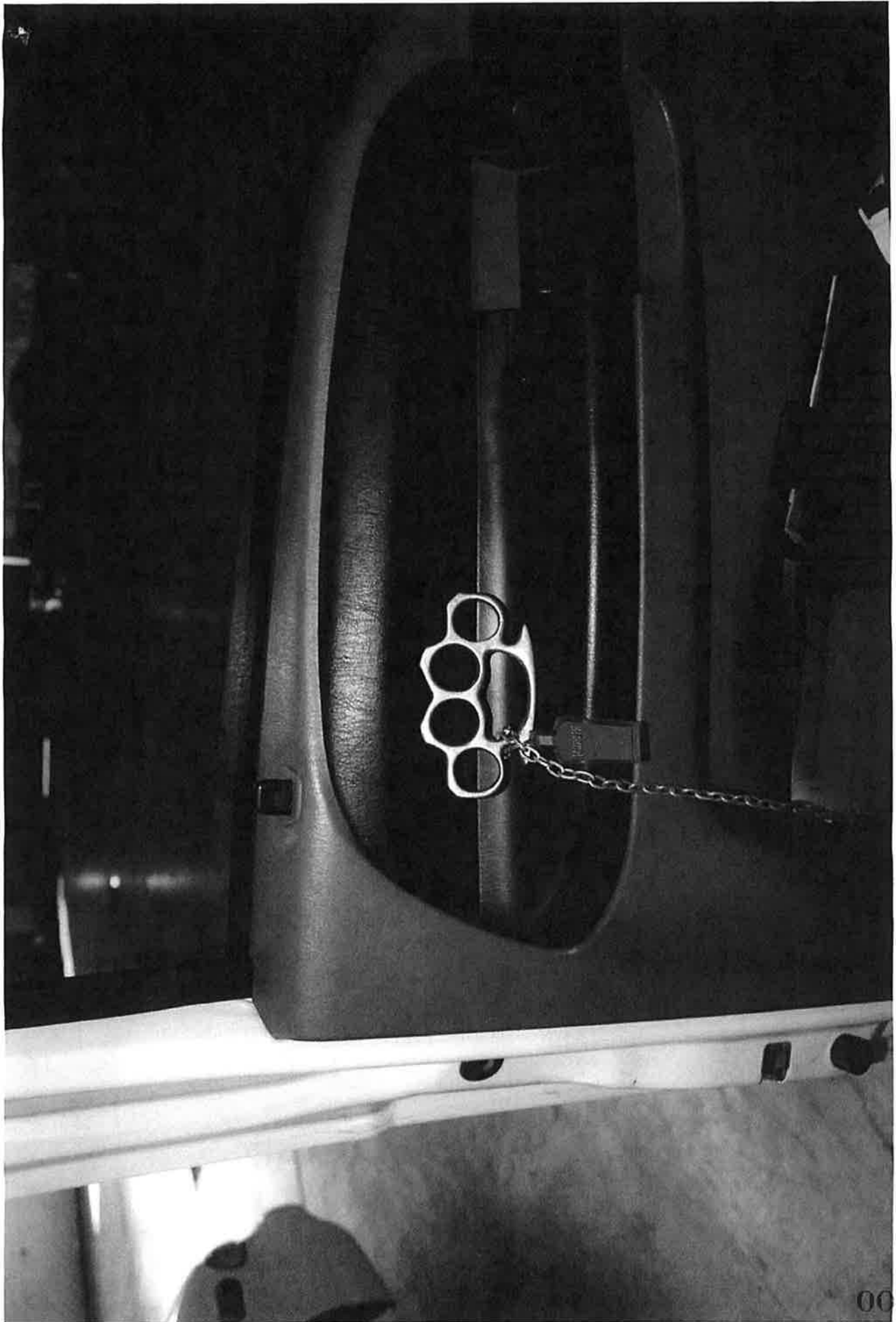
**Sent:** April 03, 2013 15:23

**To:** Schaeffer, Brian

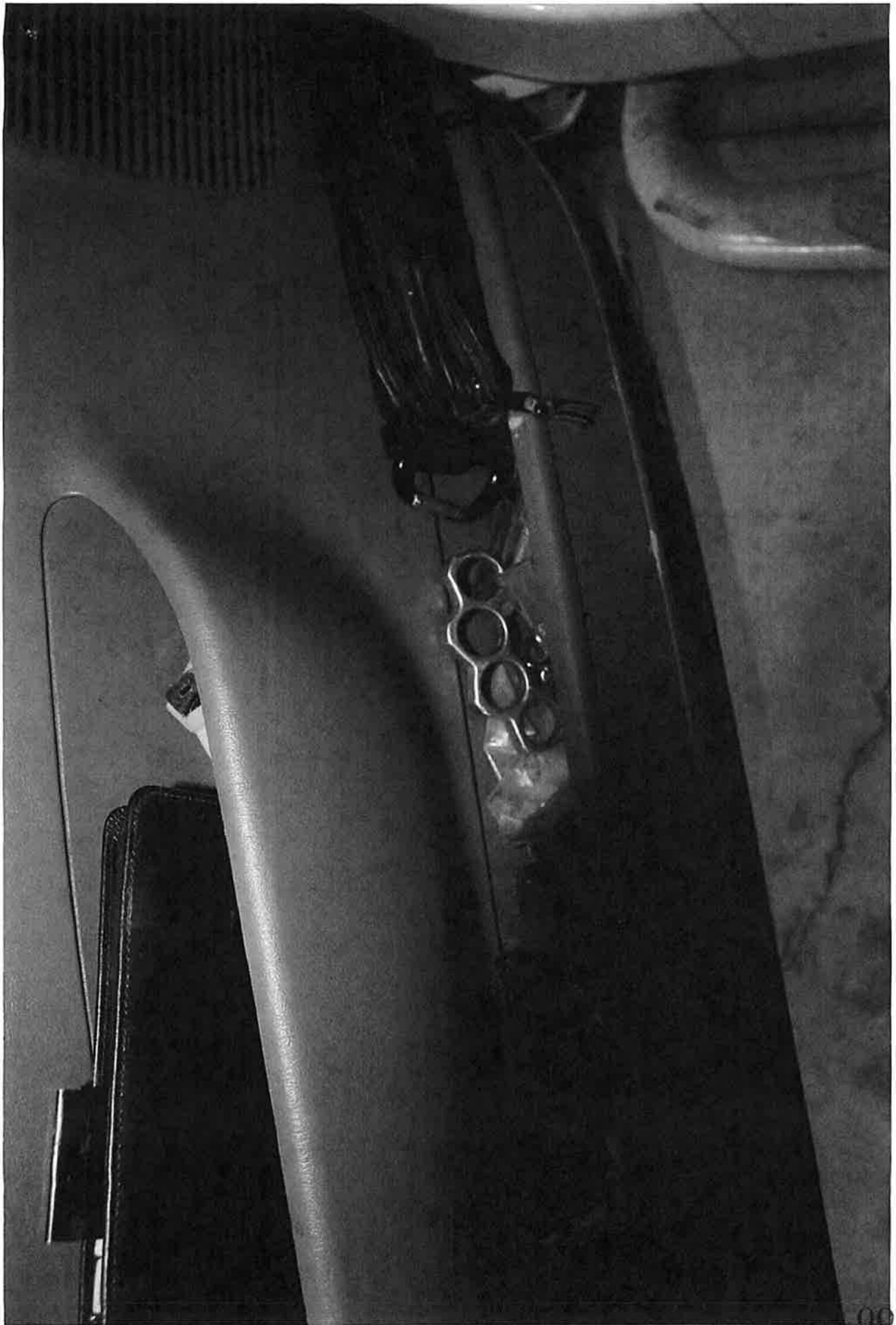
**Subject:**

000095

# EXHIBIT F



000097



860009

# EXHIBIT G



# SPOKANE FIRE DEPARTMENT RECORD OF EMPLOYEE COUNSELING

Principal Purpose: To provide a record of personnel counseling.

Routine Uses: To record recognition given for outstanding achievement, to be used and referenced for preparation of performance appraisal review reports, awards and to record counseling regarding substandard duty performance, defective attitude or acts of misconduct which may substantiate the need for disciplinary action.

## PART I - PERSONAL DATA

Name: Kevin Smathers  
Position: Captain

Date of Counseling: 11/21/11  
Division: SIU

## PART II - REASON FOR COUNSELING

- |  |  |
|--|--|
| <input type="checkbox"/> Achievement/Laudable Performance              | <input type="checkbox"/> Physical Work Performance |
| <input checked="" type="checkbox"/> Cooperation: Supervisor/Co-Workers | <input type="checkbox"/> Progress                  |
| <input type="checkbox"/> General Attitude                              | <input type="checkbox"/> Job Interest              |
| <input type="checkbox"/> Substandard Duty Performance                  | <input type="checkbox"/> Ability to Learn/Adapt    |
| <input type="checkbox"/> Attendance/Punctuality                        | <input type="checkbox"/> Safety                    |
| <input checked="" type="checkbox"/> Poor Judgment                      | <input type="checkbox"/> Job Orientation           |
| <input type="checkbox"/> Other   |  |

## PART III - COUNSELING

Summary of Counseling - Why employee is being counseled. Be specific. (Use additional pages if needed). During a strident counseling session involving [REDACTED] on November 1, 2011; it has been determined that you utilized inappropriate measures including yelling and profanity. Written statements and follow-up interviews with staff revealed a situation that led multiple staff members feeling fearful and resulted in many evacuating to lower levels of the building and contacting Fire Station 1 for assistance.

On August 21, 2011 you admit to having a reasonable suspicion of alcohol consumption by [REDACTED] at a fire scene, while he was armed. Although he denied the consumption of alcohol, you observed alcohol on his breath and allowed him to participate in the investigation. Although you had concerns for [REDACTED] level of intoxication, you did not follow the procedure outlined in Administrative Order #4 and may have put the employee, City and public at unnecessary risk.

Employee's Response to Situation

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SEE REVERSE SIDE

**FINDINGS**

(Based on Information from Front Page)

DISCIPLINARY ACTION

(Mark One)

000100

Documentation of verbal warning/oral admonishment - Notice that additional infractions will lead to further corrective action, including a written reprimand or suspension. (Original to employee. Copy to: Fire Dept. file.)

Written reprimand - Notice that additional infraction will lead to further corrective action which may include suspension or discharge. (Original to employee. Copy to: Fire Dept. file, City Personnel Dept, Civil Service.)

**THE FOLLOWING ACTIONS REQUIRE APPROVAL OF FIRE CHIEF AND REVIEW BY PERSONNEL.**


Suspension for \_\_\_ working day(s) from \_\_\_\_\_ through \_\_\_\_\_. Return at scheduled starting time \_\_\_\_\_. (Original to employee. Copy to: Dept. file, Personnel, Civil Service.)

Discharge. (Original to employee. Copy to: Dept. file, Personnel, Civil Service.)

Other (specify). (Original to employee. Copy to: Dept. file, Personnel, Civil Service.)

Solution/Action Plan Necessary for Employee to Improve: As a Captain, your judgment and decision making abilities are a key part of you adequately and appropriately performing your job. Lapses in either can be detrimental to the public, your unit and other members of this department. Additionally, you are aware that you are responsible for setting a good example for the people you supervise. In the first quarter of 2012, I will make arrangements for you to attend an educational seminar or training to help you develop better tools to better prepare you for managing difficult people and situations.

Printed Name, Title of Counselor: Brian Schaeffer AC

Signature: 

Witness:

Employee's Reaction to Counseling:

Excellent     Good     Satisfactory     Poor     Indifferent

**PART IV - ACKNOWLEDGMENT**

Acknowledge receipt of the counseling recorded above. I (do)\_\_\_ (do not)\_\_\_ submit comments.

Printed Name and Position of Person Counseled: Captain Kevin Smathers, SIU

Signature: 

# EXHIBIT H

**Message: Police Academy**

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■ **Police Academy**

**From** Smathers, Kevin

**Date** Tuesday, October 30, 2012 9:26 AM

**To** Nelwert, Darin; Gortler, Paul C

**Cc** Schaeffer, Brian

---

 **Police Academy.docx** (82 Kb HTML)

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**Please see attached file. If you have any questions; please contact me.**

**Neither of you will be required to go through a background check or polygraph, because you are already hired City employees.**

**Kevin Smathers  
Captain, Special Investigation Unit  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
Office: (509) 625-7052  
E-Mail: ksmathers@spokanefire.org**

<p style="text-align: center;"><b>Spokane Police Department</b></p> <p style="text-align: center;"><b>Scott A. Stephens</b></p> <p style="text-align: center;">ASSISTANT CHIEF of POLICE</p>
--

**2013 Spokane Police Reserve Officer Academy**

The Spokane Police Department will be hosting a WSCJTC Reserve Academy at the Spokane Police Academy. The Reserve Academy will start on February 25<sup>th</sup>, 2013 with a graduation date of June 8<sup>th</sup>, 2013.

Training will occur every Monday, Wednesday, and Friday from 1800 to 2200 hours and Saturdays from 0800 to 1630 hours.

We would like to invite your agency to send recruits to attend this training. The cost per recruit will be \$500 each. It is your agency's responsibility to do a complete background investigation and polygraph for your applicants prior to the start of the Reserve Academy.

Please contact SPO Doug Strosahl with the Spokane Police Department for more information regarding this training.

2302 N Waterworks

Spokane, WA 99212

(509) 625-3306

000104

# EXHIBIT I

000105

## Kevin Smathers

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**From:** Smathers, Kevin <KSmathers@spokanecity.org>  
**Sent:** Sunday, May 05, 2013 10:03 AM  
**To:** [REDACTED]  
**Subject:** FW: Misc Academy Stuff

---

**From:** Smathers, Kevin  
**Sent:** January 10, 2013 13:37  
**To:** Gortler, Paul C; Neiwert, Darin  
**Cc:** Williams, Bobby; Schaeffer, Brian  
**Subject:** Misc Academy Stuff

Darin and Paul,

I have your weapons for when you attend the academy. Unfortunately I can't give them you until you start the Academy. Get in touch with me about two weeks or so before the Academy starts; we will need to go to Blumenthals and get some things you will required to have for the Academy. Thanks.

Kevin Smathers  
Captain, Special Investigation Unit  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
Office: (509) 625-7052  
E-Mail: [ksmathers@spokanefire.org](mailto:ksmathers@spokanefire.org)

000106

# EXHIBIT J



**Subject:** RE: Problem

**Date:** Wednesday, February 6, 2013 5:39:58 PM Pacific Standard Time

**From:** Sanders, Theresa

**To:** Smathers, Kevin

Hi Kevin – I spoke with Chief Williams earlier today and he had already recommended that this concern be taken up by HR as you had indicated that you felt Fire leadership may not be treating you fairly. I believe that is a sound recommendation to ensure the discussion and process is as objective as possible.

I'm sure it's challenging not to be stressed but I believe you will find HR very helpful in this process. I know they will work hard to reach an equitable solution.

Theresa



Theresa Sanders | City of Spokane | City Administrator  
509.625.6250 | fax 509.625.6563 | [tsanders@spokanecity.org](mailto:tsanders@spokanecity.org) | [spokanecity.org](http://spokanecity.org)



FIND US



LIKE US



FOLLOW US

**From:** Smathers, Kevin

**Sent:** Wednesday, February 6, 2013 1:58 PM

**To:** Sanders, Theresa

**Subject:** Problem

Theresa,

Sorry to bother you; but I wanted you to know that there are some really bad things going on in the fire department regarding the FD Admin (Williams and Schaeffer) and me. Human Resources (Gita George-Hatcher and Heather Lowe) and Local 29 are involved but I am so stressed right now I can't think straight. Heather Lowe just ordered Gita to send her everything that I have given Gita including items I marked confidential. I have been treated so poorly by Schaeffer, and to a lesser degree Williams, that I don't know where to turn or what to do.

Kevin Smathers  
Captain, Special Investigation Unit  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
Office: (509) 625-7052  
E-Mail: [kmathers@spokanefire.org](mailto:kmathers@spokanefire.org)

000108

**From:** Sanders, Theresa  
**Sent:** Wednesday, February 06, 2013 17:23  
**To:** Jacobson, Erin; Lowe, Heather; Williams, Bobby; Schaeffer, Brian  
**Subject:** FW: Problem  
**Attachments:** RE: Problem

Theresa Sanders | City of Spokane | City Administrator  
509.625.6250 | fax 509.625.6563 | [tsanders@spokanecity.org](mailto:tsanders@spokanecity.org) | [spokanecity.org](http://spokanecity.org)

**From:** Smathers, Kevin  
**Sent:** Wednesday, February 6, 2013 5:21 PM  
**To:** Sanders, Theresa  
**Subject:** RE: Problem

Thank you. I'm sorry to have contacted you, but I am truly at the end of my rope. I have tried my very best under incredibly stressful times (obviously some self inflicted) to deal with the issues with Chief Schaeffer, but for the past four years it has truly been one thing after another and I so physically ill because of the stress he puts me under that I am at my wit's end.

In my own bumbling, stumbling way I was trying to tell you there were problems with Chief Schaeffer when we went to lunch. I know you are a straight forward person and I should have just been more direct.

Again, I apologize.

Kevin Smathers  
Captain, Special Investigation Unit  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
Office: (509) 625-7052  
E-Mail: [kmathers@spokanefire.org](mailto:kmathers@spokanefire.org)

000109

**Subject:** FW: Problem

**Date:** Thursday, February 7, 2013 3:02:05 PM Pacific Standard Time

**From:** Sanders, Theresa

**To:** Lowe, Heather, Williams, Bobby, Schaeffer, Brian, Jacobson, Erin

I'm just sending these to you as I receive them. Not responding.



Theresa Sanders | City of Spokane | City Administrator  
509.625.6250 | fax 509.625.6563 | [tsanders@spokanecity.org](mailto:tsanders@spokanecity.org) | [spokanecity.org](http://spokanecity.org)



**From:** Smathers, Kevin

**Sent:** Wednesday, February 6, 2013 6:26 PM

**To:** Sanders, Theresa

**Subject:** RE: Problem

It appears as though they are putting me on Admin Leave tomorrow morning. One of the worse things that has ever happened to me.

Kevin Smathers  
Captain, Special Investigation Unit  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
Office: (509) 625-7052  
E-Mail: [kmathers@spokanefire.org](mailto:kmathers@spokanefire.org)

000110

# EXHIBIT K

Messages

Darin Neiwert

Edit

FEB 20, 2015, 5:57 PM

Paul texted and said you guys have all your stuff. True?

that stuff at the public safety building today.

We have a belt, cuff holder, radio holder, holster, glove pouch, baton holder, ammo pouch and vest. Is this all we need? If so, then yes we do

000112

Messages

Darin Neiwert

Edit

Information isn't exactly forth coming lately if you know what I mean.

Oh I know. So no gun?

No and no real answer to that except that we will we get it in the academy.

000113

I have your guns. I

Messages

Darin Neiwert

Edit

No and no real answer to that except that we will we get it in the academy.

I have your guns. I will just hang onto them until I hear that you need them or you get them in some other way.

Feb 20, 2013, 5:05 PM

OK. Thank you.

000114

# MEMORANDUM

TO: Heather Lowe, Human Resources Director

FROM: Chris Cavanaugh, Human Resources Process & Program Manager

CC: Erin Jacobson, Assistant City Attorney

DATE: February 21, 2013

THIS DOCUMENT IS DRAFT IN NATURE AND A CONFIDENTIAL COMMUNICATION

On February 6, 2013 Heather Lowe, Human Resources Director directed an investigation into concerns brought forward by SIU Arson Investigator [REDACTED] regarding his supervisor SIU Capt. Kevin Smathers. [REDACTED] provided 3 written narratives describing behaviors exhibited by Capt. Smathers that he has concerns with. Those narratives are attached. The written narratives describe safety concerns and questions about proper procedure being followed during the course of an investigation.

Interviews were conducted, background and clarifying information gathered. During the course of interview [REDACTED] described a fourth example of behavior he had a safety concern with. A summary of each of the narratives written by [REDACTED] as well as additional information gathered, follow.

**Narrative #1 – Dated January 31, 2013 -** [REDACTED] writes that on 11/29/2012 Capt. Smathers and Supplemental Investigator Steve Jones were scheduled to arrest a juvenile. [REDACTED] writes he observed that from the time he began work in the SIU Smathers has a tendency to become very “amped up” when he was going to do police work or make a contact that had the potential to become confrontational. [REDACTED] writes in recent months this level of “excitability and or edginess had increased.” [REDACTED] writes that on this “morning Kevin was talking louder and faster than he normally does. He seemed fidgety and got up and down from his seat often and paced about the office. When seated at his desk, I noticed that he was hitting the keys on his keyboard harder than normal. I noticed that he was tapping his fingers on his desk incessantly. He was playing music on his computer that morning; a habit that he had very recently started; however, this morning he had trouble keeping the volume even.” Based on these observations [REDACTED] became concerned about the planned arrest. [REDACTED] telephoned Jones to apprise him of Smathers behavior. “My primary concern was Steve’s safety and I wanted him to be aware that Kevin was very amped up this morning.” [REDACTED] writes that he turned his scanner to the SPD North Channel so he could monitor the channel. [REDACTED] writes that at about 1100 hours Smathers and Jones returned to the office.



**Supplemental Information** - [REDACTED] states there is no policy or procedure for reporting safety concerns. [REDACTED] states he believes he acted appropriately with regards to his safety concern by contacting Jones before the arrest took place. When [REDACTED] was asked why he did not contact Administration with his concerns for Jones' safety he responded that he does not trust Administration because of issues outlined in previously asked questions. (See information contained in the response to Question #1, beginning on page 6 of this document).

**Narrative #1 – continued** – [REDACTED] writes on that same day (11/29/2012), a conversation commenced between Supplemental Investigator Jason Reser and Smathers. [REDACTED] writes the subject was weapon holsters. [REDACTED] writes that Smathers was demonstrating for Reser how the holstered weapon retention mechanism works. [REDACTED] writes "Kevin pulled the live weapon from his holster and placed it into the second holster to demonstrate the retention mechanism on the alternative holster". [REDACTED] writes he felt nervous but said nothing. [REDACTED] writes next "I watched Kevin approach Steve (Jones) from an angle. Steve was still wearing his holstered service weapon on his belt. I watched Kevin place both of his hands around Steve's weapon. Kevin tugged slightly at his holster and Steve recoiled slightly. Kevin let go and backed up. The holster with weapon was not removed from Steve's belt at that time, nor was the weapon taken from the holster at that time". "Perhaps 30 seconds later Kevin again approached Steve in the same manner. Kevin once again cupped Steve's holstered weapon with both hands. This time, Kevin pulled the live service weapon from Steve's holster. The weapon fully cleared the holster and was clearly in Kevin's hand. After the weapon was removed from the holster, Kevin handed it back to Steve. Steve promptly re-holstered the weapon."

**Supplemental information** – [REDACTED] states there is no written policy or procedure on firearm safety. Capt. Smathers states there was a conversation in the SIU office about holster safety. Smathers states he believes it was him, [REDACTED] Steve Jones and one other person in the room. Smathers states he definitely remembers asking Jones if the weapon was loaded. Smathers recalls Jones replied "it's dead". Smathers states he asked Jones if he could demonstrate. Smathers states this part of the conversation was between only him and Jones. Smathers states he stepped into Jones and pulled the weapon, which barely cleared the holster. Smathers states he was under the impression that Jones knew what he was going to do as Smathers put his hand on Jones' shoulder. Smathers states he pulled the weapon, barely cleared the holster, and then put the weapon back in the holster. Smathers states his intention was using this as a training demonstration to show how easily it is to get the weapon out of the holster. In a written statement Investigator Jones: "On November 29<sup>th</sup> at approximately 10am, myself, Capt. Kevin Smathers, [REDACTED] Lt. Tom Oliver, and Retired Capt. Mike Zambryski were in the SFD investigations office. Capt. Smathers and I were getting

ready to leave the office and interview an arson suspect. We were both armed and the subject of retention holsters came up and how easy it would be to disarm one of us in a fight with the current paddle holsters we normally wear due to being plain clothes. (I do not remember the exact words or details due to the amount of time lapse.) As I turned to face the door which was approximately three feet away, Capt. Smathers said something that I did not hear and quickly pulled my firearm out of my holster and reinserted it back into the holster. I was taken by surprise at how quickly it could be done but I was not overly alarmed at the action since I normally carry my weapon without a round in the chamber"...Having been a patrol officer with the Spokane County Sheriff's Office, I did feel this was not the proper time or place for such an action with a potentially loaded weapon and needs to be conducted in a proper training environment with the proper training and equipment." Jason Reser states he did observe Smathers reach over and pull the weapon out of Jones' holster. Reser states Smathers was demonstrating the ease with which a weapon can be pulled from a holster after a discussion about different safety levels of holsters. Reser states Smathers reached over and pulled the weapon out of the holster. Reser does not specifically remember but thinks Smathers handed the weapon back to Jones. Mike Zambryski, retired SFD Captain states he is in the SIU office on many occasions since his retirement and has no specific recollection of this event. All individuals' state there is no written firearm safety policy or procedure.

**Narrative #2: Dated February 3, 2013** - [REDACTED] writes that on October 2, 2012, after a phone call from Rusty Stewart, he and Capt. Smathers pursued a white van that may have been used in a theft that occurred from Engine 18 on September 24, 2012. [REDACTED] writes of several concerns. Those concerns are identified as follows:

- **WRITTEN NARRATIVE:** After the phone call from Stewart "We took Kevin's staff vehicle; Kevin drove. As we turned onto Division from Riverside, Kevin told me that we were going to respond "semi code". He turned his lights on as we approached the first intersections. He bumped the siren on and off to clear the intersection. We travelled to the location going northbound on Division, east on Francis and north on Nevada to the Alberstons. Kevin used the "semi-code" version of response during the entire route. Kevin's emergency lights remained on during the entire response; the siren was used intermittently. The method in which we responded caused me to feel some anxiety. I was assuming that our purpose was to investigate some suspicious activity and that it did not warrant a red and blue light response."
- **SUPPLEMENTAL INFORMATION:** [REDACTED] and Capt. Smathers both state there are no written policy or procedures regarding pursuing, stopping or searching vehicles. In an interview Capt. Smathers states "thousands of dollars of equipment was stolen from Engine 18 – including a radio-which poses a

security risk. Smathers states he had spoken with Assistant Chief Schaeffer about the theft and understood from Schaeffer that this was a high priority case. Smathers states on the day in question he did not use excessive speed and was at no time unsafe as he drove towards the Albertsons.

- **WRITTEN NARRATIVE:** "We spotted the van traveling southbound on Nevada. We caught up to it when the van caught a red light at Nevada and Illinois. Kevin's emergency lights were still on when he got immediately behind the van at the intersection. When the light turned green, Kevin stayed behind the van and bumped his siren several times. The van pulled westbound onto Illinois and pulled over at the curb." Upon returning to Station 1 after the van had been stopped [REDACTED] found information that had been emailed to both he and Capt. Smathers with a description of the driver of the white van. The description did not fit the driver of the van that Capt. Smathers pulled over. [REDACTED] writes "I was concerned because I feel that the detainment was questionable. Based on information that should have been known, there may not have been reasonable suspicion of a crime to warrant a detainment of the van driver. I also have serious concerns and questions regarding police procedure. The vehicle was not stopped on a traffic violation. Even if the vehicle had made a traffic violation, based on my training and experience, I do not believe that we (SFD/SIU) should conduct traffic stops; certainly not procedurally. If exigent circumstances existed, maybe a stop could be warranted and articulated.
- **SUPPLEMENTAL INFORMATION:** Capt. Smathers states he did pull the white van over. Smathers states he did ask the driver permission to search the vehicle. Smathers states after searching the vehicle and determining it was not the van he was looking for he explained the circumstances to the driver and apologized several times for inconveniencing him. Smathers states the van driver was very understanding and not at all upset at being stopped or the van being searched.

**Narrative #3: Dated February 5, 2013** – [REDACTED] writes "On Tuesday, December 4, 2013, Lt. Darin Neiwert reported to me the following: On Tuesday November 27, 2012 at approximately 0200 hours, he responded as an investigator trainee to a house fire located at 2602 N. Hogan Street. Kevin Smathers was the assigned fire investigator." "Darin said that the female occupant of the home was upset, agitated and perhaps even belligerent towards the remaining fire department personnel... According to Darin, Kevin became extremely confrontational with the female tenant. Darin reported that the exchange between Kevin and the tenant became so uncomfortable for him that he took shelter in a bathroom of the home."

**Supplemental Information:** In an interview Lt. Neiwert stated that during the firefighting effort some ceiling materials were pulled down. Neiwert states a female

occupant of the home "went nuts" with the fire crew from Ladder 2. Neiwert states the female was yelling and swearing at the crew. Neiwert states Capt. Smathers placed himself between the woman and the fire crew – and tried to encourage the woman to leave the residence and he would explain to her what was going on. Neiwert states a male resident then entered the conversation and was equally confrontational with Capt. Smathers. Neiwert states the female left and then Smathers was able to calm down the male and explain the situation to him. Neiwert states he was at no time uncomfortable with the way Capt. Smathers handled himself.

**Additional Concern from** [REDACTED] During his interview [REDACTED] expressed concern at an incident related and subsequent to the search of the white van. [REDACTED] states that about a week after the search of the van Capt. Smathers left the office to continue his attempt to locate the correct vehicle. [REDACTED] states Capt. Smathers told him the following: Smathers located the van in Hillyard parked near the shop whose owner had reported receiving some of the articles stolen from Engine 18. The shop owner recognized Smathers and alerted him that the driver of the van was the individual who had brought in the items stolen from Engine 18. While Smathers was attempting to detain that individual he pulled his weapon. The individual did not stop – instead he and a woman he was with got into the van and sped away so quickly the doors on the back of the van were opening and closing. Smathers got back into his vehicle, began pursuit and called Fire dispatch for assistance. Deputy Chief Hanna heard Smathers' call for assistance on a scanner and alerted [REDACTED] and Tom Oliver. [REDACTED] and Oliver reported to the shop to assist but the van could not be found. [REDACTED] states that afterwards he told Hanna he was uncomfortable with the way that Smathers had handled the incident and was concerned about the way Smathers "ramped up" during these events.

Capt. Smathers states several times a week he would leave the office a little early and drive through Hillyard looking for the white van. Smathers states he did not take anyone with him because he did not know where the van was – he was spending time looking for it before heading for home. Smathers states on one of these occasions he was driving past the shop where stolen items had been taken and noticed a white van parked nearby. Smathers states he saw a man and a woman leaving the shop, with the shop owner behind them. Smathers states the shop owner recognized him and made a pointing motion at the man. Smathers states he understood this to be a signal to him that this was the man who had brought in the stolen items. Smathers states he got out of his vehicle, identified himself as a police officer, and asked the couple to stop so he could ask them some questions. Smathers states the couple ran towards the van. Smathers states he pulled his weapon and shouted for the people to stop. Smathers states he got back into his vehicle and called the SIU office, requesting [REDACTED] to report to the scene. Smathers states he then pursued the white van but lost sight of the

vehicle. Smathers states he was waiting for backup to approach the van in order to be safe. Smathers states he did update Assistant Chief Schaeffer about this incident.

In a follow up interview [REDACTED] states Capt. Smathers did not call the SIU office requesting back up. [REDACTED] states Smathers called Fire dispatch.

Deputy Chief Hanna states he did hear Capt. Smathers call for assistance on the scanner. Hanna states he did go to the SIU office and dispatch [REDACTED] and Oliver to assist Smathers. Hanna states [REDACTED] did tell him of his concerns regarding Capt. Smathers. Hanna states he reported those concerns to Assistant Chief Schaeffer and to Chief Williams.

After reviewing the written concerns brought forward by [REDACTED] but before any interviews were conducted I asked Chief Williams to define any further specific issues he would like answered. The issues defined by Chief Williams were:

1. Is there a reason you didn't bring the weapon issue forward to either Capt. Smathers or Assistant Chief Schaeffer?
2. What caused you to go speak with Chief Schaeffer?
3. Did you tell Kevin you would "get back at him"?
4. Did Capt. Smathers ask you to take him to a meeting with the Mayor?

**Question #1:** [REDACTED] states there are four reasons he did not immediately bring his issues forward to Captain Smathers or to Assistant Chief Schaeffer.

1. [REDACTED] states that Capt. Smathers has lately been unapproachable. [REDACTED] states Capt. Smathers is not open-minded when approached with issues. [REDACTED] states his experience has been that Smathers will become angry (red face, posture leaning forward, very loud) when he is questioned. [REDACTED] states he believes Smathers become unstable ("these are not baseline behaviors for Kevin") – pointing to the following behaviors:
  - a. New tattoos on both arms
  - b. Wearing too small, short-sleeved under armor t-shirts and jeans to work every day.
  - c. Being more impatient and short with most people.
  - d. Being unfocused. Seeming to be unable to focus on reports.
  - e. Taking significant amounts of unscheduled time off – taking vacation days with little to no notice.
  - f. Posting inappropriate signs outside of the SIU door:
    - i. "No Gun Pulls Its Own Trigger"
    - ii. "You are either a master of yourself, or a slave to your impulses"

- iii. A sign with a picture of a single bale of hay in a field with the caption "Corn Maze for Blondes"
2. [REDACTED] states he does not trust Assistant Chief Schaeffer for the following reasons:
- a. In March 2012 Capt. Smathers was gone for a week of vacation, [REDACTED] was scheduled to be gone the following week. While Smathers was gone [REDACTED] was working to fill in his shifts with Supplemental Investigators. [REDACTED] filled all but a Wednesday evening shift – a shift that had been traditionally difficult to fill. [REDACTED] states when Smathers discovered the gap in coverage he became "enraged". [REDACTED] states Smathers "pushed himself back from his desk, stood up, hollered and pointed and said 'don't start with me'". [REDACTED] states Smathers went on to tell him that [REDACTED] was not fit to be an investigator and he was going down to the end of the hall to tell Brian (Schaeffer) and have [REDACTED] removed as an investigator. [REDACTED] states he went to Schaeffer and described what Smathers had said. [REDACTED] states he took Assistant Chief Schaeffer into his confidence regarding his need for the following week off – asking Schaeffer not to break the confidence. [REDACTED] states he told Schaeffer he would like the opportunity to defend his work before a decision had been made. [REDACTED] states Schaeffer agreed to this and said they would meet to talk about the whole situation the Monday [REDACTED] came back to work. [REDACTED] states he came back to work and the meeting with Schaeffer never occurred. On April 4, 2012, Smathers handed [REDACTED] a counseling form citing concern that [REDACTED] had violated the City e-mail policy. [REDACTED] states Smathers told him he did not agree with the "discipline" but that Schaeffer had insisted. Smathers further told [REDACTED] that Schaeffer had asked for every email [REDACTED] had sent to Smathers. Smathers told Schaeffer there were close to 300 of them. Schaeffer then told Smathers to gather the emails that mentioned Brian Schaeffer in them – there were about 20 of those. [REDACTED] states he did "dis" Schaeffer in some of those emails. [REDACTED] states that the emails were intended only for Smathers and not for other eyes – but he does now understand that it was inappropriate and email is not private.
    - i. Assistant Chief Schaeffer states he does not specifically recall one conversation about emails. Schaeffer states his recollection is that Capt. Smathers brought the issue of emails to him.
    - ii. Capt. Smathers states that during a time in the fall of 2012, while Lt. Bowen was on Administrative Leave, conversations about the appropriateness of keeping [REDACTED] in the SIU office were held between him and Schaeffer. Smathers states within the context of

those conversations- questions about whether there were trust issues regarding [REDACTED] were discussed. Smathers states comments from emails written by [REDACTED] were cited as examples of behaviors there were concerns about. Smathers states his recollection is that several conversations were held over a lengthy period of time.

- b. [REDACTED] states during the week he was on vacation interviews were held for new Supplemental Investigators. [REDACTED] states Smathers told him Schaeffer quizzed Tom Oliver & Jason Reser about [REDACTED]. Smathers told [REDACTED] he was uncomfortable with this questioning and had left the room so that Oliver & Reser could speak freely.
    - i. Assistant Chief Schaeffer states during the interview process Capt. Smathers told the Supplemental Investigators who were part of the interview panel to speak freely with Chief Schaeffer about Lt. [REDACTED]. Schaeffer states Smathers then left the room.
    - ii. Capt. Smathers states Supplemental Investigators had come to him with concerns about [REDACTED] job performance. Smathers states that during the interview process he did ask the investigators to speak with Schaeffer about their concerns. Capt. Smathers states he does not recall saying to [REDACTED] that Schaeffer initiated the interviews.
  - c. [REDACTED] states Smathers told him during that same week Schaeffer came into the office and told him "I think it's time to remove [REDACTED] from the office, I don't know how we can trust him again". [REDACTED] states Smathers told him he had "saved" [REDACTED] telling Schaeffer he wanted [REDACTED] to remain in the SIU office.
    - i. Assistant Chief Schaeffer states there were conversations between he and Smathers about whether to keep [REDACTED] in SIU. Schaeffer states that ultimately Smathers requested keeping [REDACTED] in the office and Schaeffer approved the request.
    - ii. Capt. Smathers states he did make the decision to request [REDACTED] remain in SIU.
  - d. [REDACTED] states this all feels like "a dirt finding mission" directed at him by Schaeffer.
3. [REDACTED] states that he has also not come forward because no one had been hurt and he felt if he did bring his concerns forward Capt. Smathers career would be over – and [REDACTED] did not want that to happen.
  4. Until recently [REDACTED] believed that Capt. Smathers may be voluntarily leaving the SIU office.

**Question #2:** [REDACTED] states he decided to come forward now because Capt. Smathers "is not going anywhere" and because he is concerned about Smathers' stability. [REDACTED] also states he had considered leaving the SIU office but decided not to do that because "if I leave this will happen to the next person who goes into the office". [REDACTED] states he is concerned about the safety of others and citizens. [REDACTED] states he believes that Smathers is "looking for a fight" and he believes "he will get that fight sooner rather than later".

**Question #3:** [REDACTED] states he never told Smathers "I will get you". [REDACTED] also states he has never threatened Capt. Smathers.

**Question #4:** [REDACTED] states in mid-December 2012 Capt. Smathers told him his sister-in-law Theresa Sanders, (who is the City Administrator) called him to express concern at the amount of work time Smathers was missing. [REDACTED] states Smathers told Ms. Sanders he'd had a meeting with Assistant Chief Schaeffer that had not gone well. [REDACTED] states Smathers told him Ms. Sanders called him and asked if he would like to speak with the Mayor about the meeting. [REDACTED] states Smathers asked him to take any calls that came in while he was gone because he was going to meet with the Mayor. [REDACTED] states that he drove Smathers to City Hall on December 20, 2012 and picked him up at City Hall later that same day. [REDACTED] states Smathers asked for the ride so he did not have to park at City Hall. [REDACTED] states Smathers did tell him he had met with the Mayor.

Ms. Sanders states that she did not coordinate a meeting between the Mayor and Capt. Smathers.

Capt. Smathers states he did not ever tell [REDACTED] that Ms. Sanders arranged a meeting between him and the Mayor. Smathers states he did not ever tell [REDACTED] that he had a meeting with the Mayor. Smathers states in December he did ask [REDACTED] to drive him to City Hall for a meeting, but that the meeting was with Gita Hatcher from Human Resources. Smathers states he did not tell [REDACTED] his meeting that day was with the Mayor.

## **CONCLUSIONS**

1. The concerns brought forward by [REDACTED] are safety or police procedure in nature. [REDACTED] states he brings this information forward due to a concern for the safety of co-workers and citizens. I found no reason to doubt [REDACTED] stated reason for bringing his concerns forward. This investigator does not have the training or experience to determine if the described incidents pose a safety concern or are procedurally correct.
2. Although he did not bring forward all of his examples, in fall 2012 [REDACTED] did speak with a Deputy Chief about his concerns with Capt. Smathers' behavior. [REDACTED]



██████████ states he did not bring his safety concerns forward sooner due to a lack of trust in Fire Administration. The initial description of this trust issue seemed to indicate untruthful communication. Further investigation shows that while there may have been misunderstandings about comments made in conversation eleven months ago, I cannot find deliberate untruthfulness.

- a. There is one area of complete disagreement between ██████████ and Capt. Smathers. ██████████ states Smathers did tell him he was meeting with the Mayor and ask ██████████ to drive him to City Hall. Smathers states he did not tell ██████████ he was meeting with the Mayor but did ask for a ride to City Hall for a meeting with another party.
3. There are no policy or procedure documents defining procedure in the SIU office.
4. There is no formal training protocol in the SIU office.

## **RECOMMENDATIONS**

1. That an investigator with the appropriate training and experience review the safety/procedure incidents in question.
2. That policy and procedure documents be written and adopted or alternatively that Spokane Police Department policy and procedure be adopted.
3. That information about Capt. Smathers provided to the City of Spokane from the Employee Assistance Program is shared with the Spokane Police Department psychiatrist for that person's assessment of fitness for duty.
4. That all investigators be required to attend ongoing "in-service" training. The appropriate type and amount of training should be determined by subject matter experts.
5. There are published expectations for the Investigation Division of the Spokane Fire Department. One of those expectations is titled "Professionalism". When I interviewed him I did observe that Capt. Smathers has extensive tattoos on his arms. As Smathers is engaging in police activity I recommend following SPD protocol on the acceptance of visible tattoos while on duty.
6. That a professional in team building/trust building be engaged to lead development of a functional working relationship between ██████████ and Captain Smathers and also with the SIU unit and Assistant Chief Schaeffer.

# EXHIBIT L

## MEMORANDUM – EXECUTIVE SUMMARY

TO: Heather Lowe, Human Resources Director

FROM: Chris Cavanaugh, Human Resources Process & Program Manager

CC: Erin Jacobson, Assistant City Attorney

DATE: February 25, 2013

On February 6, 2013 Heather Lowe, Human Resources Director directed an investigation into concerns brought forward by SIU Arson Investigator [REDACTED] regarding his supervisor SIU Capt. Kevin Smathers. [REDACTED] provided 3 written narratives describing behaviors exhibited by Capt. Smathers that he has concerns with. The written narratives describe safety concerns and questions about proper procedure being followed during the course of an investigation. Interviews were conducted, background and clarifying information gathered. During the course of interview [REDACTED] described a fourth example of behavior he had a safety concern with. The behaviors described took place in October – November of 2012.

When he was asked, [REDACTED] states he brings this information forward now due to a concern for the safety of co-workers and citizens. I find no reason to doubt [REDACTED] stated reason for bringing his concerns forward. However, I do not have the training or experience to determine if the described incidents pose a safety concern or are procedurally correct; because of this I am unable to make a finding of cause or no cause. Based upon the information gathered I am able to make several recommendations for the resolution of the issues brought forward by [REDACTED] Those recommendations are as follows:

1. That an investigator with the appropriate training and experience review the safety/procedure incidents in question.
2. That policy and procedure documents be written and adopted or alternatively that Spokane Police Department policy and procedure be adopted.
3. That information about Capt. Smathers provided to the City of Spokane from the Employee Assistance Program is shared with the Spokane Police Department psychiatrist for that person's assessment of fitness for duty.

4. That all investigators be required to attend ongoing "in-service" training. The appropriate type and amount of training should be determined by subject matter experts.
5. There are published expectations for the Investigation Division of the Spokane Fire Department. One of those expectations is titled "Professionalism". When I interviewed him I did observe that Capt. Smathers has extensive tattoos on his arms. As Smathers is engaging in police activity I recommend following SPD protocol on the acceptance of visible tattoos while on duty.
6. That a professional in team building/trust building be engaged to lead development of a functional working relationship between [REDACTED] and Captain Smathers and also with the SIU unit and Assistant Chief Schaeffer.
7. That future applicants for the work of Arson Investigator or Supplemental Arson Investigator meet the same physical and psychological requirements as applicants to the Spokane Police Department.

# EXHIBIT M

**Subject:** FW:

**Date:** Monday, April 15, 2013 8:55:50 AM Pacific Daylight Time

**From:** Schaeffer, Brian

**To:** Jacobson, Erin, Isserlis, Nancy, Straub, Frank

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**From:** [REDACTED]  
**Sent:** Monday, April 15, 2013 8:37 AM  
**To:** Schaeffer, Brian  
**Subject:**

See below.

Immediately upon receiving this email from Matt, I conducted follow up with Mike Zambryski. Zambryski was dumbfounded and stated that he never kept unassigned pistols in his desk; only his own and only while he was sitting at his desk. Mike said that he had never had a conversation with Kevin about storing pistols in the desk.

[REDACTED]  
Spokane Fire Department  
Special Investigations Unit  
44 W. Riverside Avenue  
Spokane, WA 99201  
(509) 625-[REDACTED]  
[REDACTED]@spokanefire.org

---

**From:** Cowles, Matthew  
**Sent:** March 13, 2013 16:21  
**To:** [REDACTED]  
**Subject:** Pistols

Hi [REDACTED]

I talked to Kevin today. He told me that he has never actually seen the pistols. He had heard that they were in the lower left hand drawer of his desk. He explained to me that Michael Zam..... Had put them there. (Or he had *heard* that Mike had stored them there.) He said that the drawer was pretty deep and he thought the pistols were probably in the back where there were some hand-cuffs, magazines, and pouches.

He told me that he had the keys to his desk, and I let him know that I would ask someone to check for me but that if there was an issue with keys I would be in touch.

He was initially a little surprised by my call, but was cooperative and helpful.

Let me know.

Matt

"Best Range in the West!"

SGT. MATTHEW COWLES  
RANGEMASTER

000129

SPOKANE POLICE ACADEMY  
2302 N. WATERWORKS  
SPOKANE, WA 99212

TUE-FRI 0600-1600  
509-742-8116 (OFFICE)  
509-742-8184 (FAX)

FIND YOUR TRAINING HERE:

<http://www.spokanepolice.org/services/training/default.aspx>

000130

# EXHIBIT N

000131



**From:** Sanders, Theresa  
**Sent:** Tuesday, March 26, 2013 14:52  
**To:** Jacobson, Erin; Isserlis, Nancy  
**Subject:** FW: Please Read

FYI

Theresa Sanders | City of Spokane | City Administrator  
509.625.6250 | fax 509.625.6563 | [tsanders@spokanecity.org](mailto:tsanders@spokanecity.org) | [spokanecity.org](http://spokanecity.org)

**From:** Kevin Smathers [mailto:████████████████████]  
**Sent:** Tuesday, March 26, 2013 10:04 AM  
**To:** Sanders, Theresa  
**Subject:** RE: Please Read

Theresa,

Several other items; I never stated I was unhappy with the investigation. I think Chris Cavanaugh conducted a fair, professional and through investigation. The way the FD Admin has chosen to disregard her findings and conclusions and handling of this unfounded complaint is what bothers me.

Also, I have not retained an attorney or spoken to any media or citizen outlets; but that is an option I cannot rule out. The handling of this has caused me thousands of dollars in lost income (granted mostly OT, but for the past 6 years that income has been consistent), caused documented emotional and physical distress and created a nearly daily hostile work environment. I am not perfect and have made many mistakes; but this is not one of those times.

I am not, nor have I ever been, a "problem child" for the City or FD. I was always one of the "golden boys" until Chief Schaeffer took over the direct supervision of the Investigation Unit about 1-2 years after I began in that position. Since then (about 18-24 months ago); direct supervision of the Investigation Unit was taken away from Chief Schaeffer and placed under Chief Williams.

For 28+ years; I eagerly came to work every day, did more than was expected, gave countless uncompensated hours to the FD and was available 24/7 even though I was on 10 hour days; only to be treated in this manner. This pattern of treating FD employees in this this manner is far more common than you may or other City Officials may think or want to believe. I'm just the latest; but I am also the one that won't stand by and let this treatment go unknown.

I have the full support of those who know me (fellow investigators, current and retired fire fighters, current and retired Response Chiefs, union officials and my friends/family). As I said, this will not be a case of "I said, They said".

As I said; I didn't want favoritism from you, just fairness. Administrators need to be just as, if not more, willing to recognize they make mistakes and mishandle things like we all do. Rather than a "CYA" mentality; they need to own their mistakes and not punish the next person down on the totem pole. Thank you for trying to make sure that "fairness" happens.

000132

Kevin

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**From:** Sanders, Theresa [<mailto:tsanders@spokanecity.org>]  
**Sent:** Tuesday, March 26, 2013 9:00 AM  
**To:** 'Kevin Smathers'  
**Cc:** Jacobson, Erin; Isserlis, Nancy  
**Subject:** RE: Please Read

Hi Kevin – sorry to hear you're not happy with the investigation. I am not in a position to provide direct help to you or any City employee. But I have forwarded your concerns to Legal, as I would for anyone who brings such issues to my attention. Legal staff will evaluate and follow up as necessary.

Best,

Theresa

Theresa Sanders | City of Spokane | City Administrator  
509.625.6250 | fax 509.625.6563 | [tsanders@spokanecity.org](mailto:tsanders@spokanecity.org) | [spokanecity.org](http://spokanecity.org)

**From:** Kevin Smathers [<mailto:>   
**Sent:** Monday, March 25, 2013 11:43 AM  
**To:** Sanders, Theresa  
**Subject:** Please Read

Hi Theresa,

I am not trying to ask for any favoritism, just fairness. Although simply by sending you this email it would be hard for me to say that I am not reaching out for any help you could provide. Please read the email below that I sent to Bobby Williams a week ago or so. The idea of an independent, objective investigation by HR seems to have been window dressing. Although I have not read the HR report; it is my understanding that there were no proven issues of wrongdoing by me. It appears as though the lack of policies and procedures in place by the FD was the main conclusion of the investigation and yet it is likely that I will be removed from my position.

000133

I have never been untruthful with you Theresa and the email below (sent to Chief Williams) should show that. When Administrators make mistakes; they should admit those mistakes and not make the employee the "fall guy".

To say I am frustrated as to the way I have been treated by Chief Schaeffer (and to a far lesser degree; Chief Williams) would be a great understatement. I was in a unique position to see many inappropriate actions, decisions, abuses and poor behavior. As long as Chief Williams continues to give Chief Schaeffer his **unconditional** support, I have no choice but to consider litigation and fully informing the public about this prejudicial double standard. This won't be a case of "I said" and "they said". Many of these abuses took place in front of witnesses (including Response Chiefs, HR, citizens, etc.) via email and other proven documentation.

Thank you.

Kevin  
[REDACTED]

**Thank you Kevin!**

*Bobby Williams*

Fire Chief  
Spokane Fire Department  
44 W. Riverside  
Spokane, WA 99201-0189  
Office: 509-625-7001  
FAX: 509-625-7039

**From:** Kevin Smathers [mailto:[REDACTED]]  
**Sent:** Wednesday, March 13, 2013 7:23 PM  
**To:** Williams, Bobby  
**Subject:**

Chief Williams,

*I hope you will take the time to read this. If not, at least I will be able to say I tried to communicate with you and offer a resolution.*

*First; I cannot stress strongly enough that I know I have made mistakes; both personally and professionally. I have always admitted when I made mistakes. Despite some personal human failings; I know I am an honest person who has to rebuild the integrity within my personal life.*

*Some of what I type here is personal, but as every employee is a human being ... there is no reasonable way to separate the two.*

1. *When I began in the Investigation Office in October of 2006; Michael Zambryski's main objective was to teach me fire investigation (during the time we were together*

000134


before he retired in March of 2007). The majority of the time Mike was still there I was in the Police Academy; not in the office or at fire scenes. After graduating from the Police Academy in June of 2007, I can still vividly remember the feeling of walking into the office on that Monday morning. While feeling somewhat overwhelmed and with so much "on the job training" ahead of me everything felt very daunting. Not only did I have to figure things out "on the fly" and I had to supervise 3-5 other investigators who had less experience than I did. There are times when I should have asked for help, but I wanted to deal with everything so you and others wouldn't have to.

2. Michael Zambryski stated to me that he had given the SFD Administration between 18-24 months notice that he was planning on retiring in March of 2007. The interview process for the selection of a new Captain and Lieutenant of Fire Investigation occurred in the middle of 2006 (sometime between June 2006 and September 2006). The basic summary of this time frame is that I did not have the luxury of an experienced investigator to work with during my first year or so; so that I could fully understand the position, procedures and policies. You may recall that Lt. Chris Phillips also left the SIU office in approximately October of 2006; so his experience also wasn't available to me.
3. I was prepared for many of the "problems" that arose; but I can say without hesitation that I was not prepared to deal with Lt. McClatchey's [REDACTED] or [REDACTED] issues. I do not fully understand the addiction aspects of substance abuse or how to help someone with those problems. My mother is and has been an alcoholic for as long as I can remember and I spent most of my time avoiding her; so dealing with a person with an addiction problem was not something I had a good understanding of.
4. In May of 2011, when the first instance of [REDACTED] operating a city vehicle under the influence of alcohol occurred (and after confirming the facts with Jason Reser); you may recall that I informed both you and Chief Schaeffer about the incident. It was decided that I would talk to [REDACTED] about the incident and get his agreement that there would not be a reoccurrence. In hindsight; having him placed into an alcohol abuse program, after the first incident, would have been a better solution.
5. It is my sincere belief that [REDACTED] deeply resented my informing you and Chief Schaeffer about this first alcohol related incident. Virtually all lines of communication ceased and when the 2<sup>nd</sup> episode of driving a city vehicle under the influence of alcohol (and carrying his service weapon the second time) became known in November of 2011; I had no choice but to inform you and Chief Schaeffer again. After this incident he was placed on Administrative Leave.
6. I was asked several times by Chief Schaeffer if I wanted to continue to work with [REDACTED] and I replied in the affirmative each time. I did then and still do believe that a productive working relationship is possible with [REDACTED]
7. Upon [REDACTED] return from Administrative Leave; the approximately 10-15 minute meeting in Chief Schaeffer's office (with Chief Schaeffer, [REDACTED] and myself in attendance) provided to be insufficient to transverse the chasm of ill feelings and mistrust [REDACTED] had towards me and my belief that I had to watch him carefully in order to watch for any possible signs of alcohol abuse. Once again, in hindsight; a professional mediator with experience in damaged workplace relationships would have been very beneficial, in my opinion.

**From:** Sanders, Theresa  
**Sent:** Tuesday, March 26, 2013 14:52  
**To:** Jacobson, Erin; Isserlis, Nancy  
**Subject:** FW: Please Read

FYI

Theresa Sanders | City of Spokane | City Administrator  
509.625.6250 | fax 509.625.6563 | [tsanders@spokanecity.org](mailto:tsanders@spokanecity.org) | [spokanecity.org](http://spokanecity.org)

**From:** Kevin Smathers [mailto:   
**Sent:** Tuesday, March 26, 2013 10:04 AM  
**To:** Sanders, Theresa  
**Subject:** RE: Please Read

Theresa,

Several other items; I never stated I was unhappy with the investigation. I think Chris Cavanaugh conducted a fair, professional and through investigation. The way the FD Admin has chosen to disregard her findings and conclusions and handling of this unfounded complaint is what bothers me.

Also, I have not retained an attorney or spoken to any media or citizen outlets; but that is an option I cannot rule out. The handling of this has caused me thousands of dollars in lost income (granted mostly OT, but for the past 6 years that income has been consistent), caused documented emotional and physical distress and created a nearly daily hostile work environment. I am not perfect and have made many mistakes; but this is not one of those times.

I am not, nor have I ever been, a "problem child" for the City or FD. I was always one of the "golden boys" until Chief Schaeffer took over the direct supervision of the Investigation Unit about 1-2 years after I began in that position. Since then (about 18-24 months ago); direct supervision of the Investigation Unit was taken away from Chief Schaeffer and placed under Chief Williams.

For 28+ years; I eagerly came to work every day, did more than was expected, gave countless uncompensated hours to the FD and was available 24/7 even though I was on 10 hour days; only to be treated in this manner. This pattern of treating FD employees in this this manner is far more common than you may or other City Officials may think or want to believe. I'm just the latest; but I am also the one that won't stand by and let this treatment go unknown.

I have the full support of those who know me (fellow investigators, current and retired fire fighters, current and retired Response Chiefs, union officials and my friends/family). As I said, this will not be a case of "I said, They said".

As I said; I didn't want favoritism from you, just fairness. Administrators need to be just as, if not more, willing to recognize they make mistakes and mishandle things like we all do. Rather than a "CYA" mentality; they need to own their mistakes and not punish the next person down on the totem pole. Thank you for trying to make sure that "fairness" happens.

000136

Kevin

---


**From:** Sanders, Theresa [<mailto:tsanders@spokanecity.org>]  
**Sent:** Tuesday, March 26, 2013 9:00 AM  
**To:** 'Kevin Smathers'  
**Cc:** Jacobson, Erin; Isserlis, Nancy  
**Subject:** RE: Please Read

Hi Kevin – sorry to hear you're not happy with the investigation. I am not in a position to provide direct help to you or any City employee. But I have forwarded your concerns to Legal, as I would for anyone who brings such issues to my attention. Legal staff will evaluate and follow up as necessary.

Best,

Theresa

Theresa Sanders | City of Spokane | City Administrator  
509.625.6250 | fax 509.625.6563 | [tsanders@spokanecity.org](mailto:tsanders@spokanecity.org) | [spokanecity.org](http://spokanecity.org)

**From:** Kevin Smathers [<mailto:>   
**Sent:** Monday, March 25, 2013 11:43 AM  
**To:** Sanders, Theresa  
**Subject:** Please Read

Hi Theresa,

I am not trying to ask for any favoritism, just fairness. Although simply by sending you this email it would be hard for me to say that I am not reaching out for any help you could provide. Please read the email below that I sent to Bobby Williams a week ago or so. The idea of an independent, objective investigation by HR seems to have been window dressing. Although I have not read the HR report; it is my understanding that there were no proven issues of wrongdoing by me. It appears as though the lack of policies and procedures in place by the FD was the main conclusion of the investigation and yet it is likely that I will be removed from my position.

000137

I have never been untruthful with you Theresa and the email below (sent to Chief Williams) should show that. When Administrators make mistakes; they should admit those mistakes and not make the employee the "fall guy".

To say I am frustrated as to the way I have been treated by Chief Schaeffer (and to a far lesser degree; Chief Williams) would be a great understatement. I was in a unique position to see many inappropriate actions, decisions, abuses and poor behavior. As long as Chief Williams continues to give Chief Schaeffer his unconditional support, I have no choice but to consider litigation and fully informing the public about this prejudicial double standard. This won't be a case of "I said" and "they said". Many of these abuses took place in front of witnesses (including Response Chiefs, HR, citizens, etc.) via email and other proven documentation.

Thank you.

Kevin  
[REDACTED]

**Thank you Kevin!**

***Bobby Williams***

*Fire Chief  
Spokane Fire Department  
44 W. Riverside  
Spokane, WA 99201-0189  
Office: 509-625-7001  
FAX: 509-625-7039*

**From:** Kevin Smathers [mailto:[REDACTED]]  
**Sent:** Wednesday, March 13, 2013 7:23 PM  
**To:** Williams, Bobby  
**Subject:**

Chief Williams,

*I hope you will take the time to read this. If not, at least I will be able to say I tried to communicate with you and offer a resolution.*

*First; I cannot stress strongly enough that I know I have made mistakes; both personally and professionally. I have always admitted when I made mistakes. Despite some personal human failings; I know I am an honest person who has to rebuild the integrity within my personal life.*

*Some of what I type here is personal, but as every employee is a human being ... there is no reasonable way to separate the two.*

1. *When I began in the Investigation Office in October of 2006; Michael Zambryski's main objective was to teach me fire investigation (during the time we were together*

000138

before he retired in March of 2007). The majority of the time Mike was still there I was in the Police Academy; not in the office or at fire scenes. After graduating from the Police Academy in June of 2007, I can still vividly remember the feeling of walking into the office on that Monday morning. While feeling somewhat overwhelmed and with so much "on the job training" ahead of me everything felt very daunting. Not only did I have to figure things out "on the fly" and I had to supervise 3-5 other investigators who had less experience than I did. There are times when I should have asked for help, but I wanted to deal with everything so you and others wouldn't have to.

2. Michael Zambryski stated to me that he had given the SFD Administration between 18-24 months notice that he was planning on retiring in March of 2007. The interview process for the selection of a new Captain and Lieutenant of Fire Investigation occurred in the middle of 2006 (sometime between June 2006 and September 2006). The basic summary of this time frame is that I did not have the luxury of an experienced investigator to work with during my first year or so; so that I could fully understand the position, procedures and policies. You may recall that Lt. Chris Phillips also left the SIU office in approximately October of 2006; so his experience also wasn't available to me.
3. I was prepared for many of the "problems" that arose; but I can say without hesitation that I was not prepared to deal with Lt. McClatchey's [REDACTED] or [REDACTED]. I do not fully understand the addiction aspects of substance abuse or how to help someone with those problems. My mother is and has been an [REDACTED] for as long as I can remember and I spent most of my time avoiding her; so dealing with a person with an addiction problem was not something I had a good understanding of.
4. In May of 2011, when the first instance of [REDACTED] operating a city vehicle under the influence of alcohol occurred (and after confirming the facts with Jason Reser); you may recall that I informed both you and Chief Schaeffer about the incident. It was decided that I would talk to [REDACTED] about the incident and get his agreement that there would not be a reoccurrence. In hindsight; having him placed into an alcohol abuse program, after the first incident, would have been a better solution.
5. It is my sincere belief that [REDACTED] deeply resented my informing you and Chief Schaeffer about this first alcohol related incident. Virtually all lines of communication ceased and when the 2<sup>nd</sup> episode of driving a city vehicle under the influence of alcohol (and carrying his service weapon the second time) became known in November of 2011; I had no choice but to inform you and Chief Schaeffer again. After this incident he was placed on Administrative Leave.
6. I was asked several times by Chief Schaeffer if I wanted to continue to work with [REDACTED] and I replied in the affirmative each time. I did then and still do believe that a productive working relationship is possible with [REDACTED].
7. Upon [REDACTED] return from Administrative Leave; the approximately 10-15 minute meeting in Chief Schaeffer's office (with Chief Schaeffer, [REDACTED] and myself in attendance) provided to be insufficient to transverse the chasm of ill feelings and mistrust [REDACTED] had towards me and my belief that I had to watch him carefully in order to watch for any possible signs of alcohol abuse. Once again, in hindsight; a professional mediator with experience in damaged workplace relationships would have been very beneficial, in my opinion.



8. Upon returning from Administrative Leave the work environment between [REDACTED] and myself deteriorated even further. Communication, except that which was essential, was nonexistent. He verbally expressed that he thought Chief Schaeffer was "gunning" for his job and was just looking for a reason to get him out of the Unit. I told him on a continual basis that Chief Schaeffer had never expressed that to me; but at this time I believe he had little trust in me because I had twice previously reported his alcohol issues to the SFD Administration.
9. I tried several times, behind closed doors, to speak with [REDACTED] about the work place environment; but I did not have the necessary tools or resources to make progress. One of the supplemental investigators told me that it was their opinion that [REDACTED] was going to 'pay me back' for the two times I informed the Administration about his alcohol related incidents. When I asked why he felt that way; he was not able to give specifics, but instead stated it was just a "gut feeling" or that he [REDACTED] had made unusual "comments" to him about me. Without specifics, I chose to not be overly influenced by his concerns.
10. Although I have not personally seen the investigative report completed by Human Resources; my understanding is that there are no proven specific incidents of wrongdoing as expressed in the complaint by [REDACTED] against me.
11. As I have previously admitted; I did have an inappropriate extra martial affair with another city employee (assigned to the fire department). While inappropriate, the relationship was consensual and an intensely private and personal matter. There seems to be a lot of interest from some as to when the affair started; but that is not a topic for public dissemination.
12. I have vehemently denied (and will continue to do so) that I have not been a part, in any way, the belief by some that I have given unwanted attention to the female employee since the affair became known and ended.
13. My singular concern since the affair was found out about on May 17<sup>th</sup>, 2012; was to try and have my spouse somehow find it in her heart to forgive me and work on a reconciliation. Sadly, but understandable, that scenario never materialized. But I know that I would never have done anything to show the female employee any wanted or unwanted attention in any fashion. This would have been absolutely counterproductive to my ultimate goal of salvaging my marriage. I went so far as to meet with the female employee's husband (in person and at his urging) and gave him my word that the affair was over and I would not stand in the way of their trying to rebuild their marriage. I have kept my word to him.
14. Being the target of inference and speculation, that I was somehow involved in these incidents, created a great amount of stress in my life. Almost continuous suppositions of my involvement caused me to become angry for numerous reasons; {1} despite 27+ years of dedicated, truthful and honorable service to the fire department and citizens; I was not believed when I said I was not involved, {2} Any rumors that I was somehow involved that could have and did get back to my spouse; created additional problems with any possible reconciliation of our marriage and {3} the unproven speculation by my superiors that I might be involved caused a level of mistrust between the Administration and myself.
15. Based on the level of stress, depression and anger that I felt towards the speculation referenced above; I voluntarily entered counseling through the City's EAP Program. I continue to attend weekly counseling sessions. I have battled [REDACTED] for most of my life and was placed on prescription [REDACTED] medication approximately 15

years ago. In late February 2013; due to the recent events in my life (work and personal); my physician has changed the dosage of the [REDACTED] medication and temporarily placed me on a second medication to help me through what he has described as [REDACTED]

16. *In late December 2012 or early January 2013 when I met with you (Chief Williams) and discussed the speculation; you may recall asking me if I thought I was being "set up" by someone because the "circumstantial evidence" seemed directed towards me. I told you the only person who I think of who might be capable of "setting me" up would be [REDACTED] but that I sincerely didn't believe he would do that. In hindsight; with the complaint since filed by [REDACTED] against me ... I have changed my position on the thought of being "set up". I now truly believe that it is more than just a possibility, but likely a reality.*
17. *Despite all the above; I enjoy my position and believe I have done an above average if not an excellent job. This is supported by highly rated yearly PERs (Performance Evaluation Reports), letters and emails of appreciation for a job well done by the ATF, FBI, WSP, SPD, outlying fire districts, prosecutors, private insurance companies, private fire investigators as well as from you (Chief Williams). Many of these letters/emails of appreciation were placed into my SFD personnel file.*
18. *This is not to imply that I am above making mistakes; I have made many and will make more in the future. But I can also say that I have never intentional made a mistake, especially with regards to safety issues.*
19. *I still believe a productive working relationship can be possible with [REDACTED] It would take effort on both of our parts (which I am willing to do). I also believe that a professionally trained counselor or mediator should be utilized. You (Chief Williams) may recall that you offered this suggestion at our meeting on February 5, 2013. I have an excellent working relationship with all of the other investigators in the unit and I believe they would say the same thing if asked how they view their relationship with me.*

*My relationship with Chief Schaeffer is another matter, that would best be dealt with at another time so as not to make this email any longer than it already is. I have tried many times to improve my relationship with him; but my efforts have not been successful thus far.*

*Please feel free to forward this email to anyone you would like (not to imply that you need my permission to do so) and I will do the same.*

*Thank you for taking your time to read this.*

*Kevin Smathers*

000141

# EXHIBIT O

**Subject:** FW: Guns  
**Date:** Monday, April 15, 2013 7:38:03 AM Pacific Daylight Time  
**From:** Schaeffer, Brian  
**To:** Jacobson, Erin, Isserlis, Nancy, Straub, Frank

---

**From:** Smathers, Kevin  
**Sent:** April 15, 2013 07:37  
**To:** Schaeffer, Brian  
**Cc:** Waller, Donald  
**Subject:** RE: Guns

Dropped off at 0715 to Sgt. Anderson.

---

**From:** Schaeffer, Brian  
**Sent:** Saturday, April 13, 2013 2:20 PM  
**To:** Smathers, Kevin  
**Cc:** Cowles, Matthew  
**Subject:** RE: Guns

Thank you Kevin. Matt Cowles is off Monday, but please return the weapons to the PD Training Staff/Academy Monday morning. I will let FD Training know in case you are delayed. Please make this a priority in the morning.

---

**From:** Smathers, Kevin  
**Sent:** April 13, 2013 13:49  
**To:** Schaeffer, Brian  
**Cc:** Waller, Donald  
**Subject:** Guns

Chief Schaeffer,

I received a text and email from Don Waller as I was on my way back home from Pendleton, Oregon today (4-13-2013) about some "missing" guns assigned to SIU including one gun which he described as a "baby" Glock.

On Tuesday AM (4-9-2013); as soon as I arrived at training, Chief Leavenworth requested that I remove all of my personal items (clothing, Rubbermaid containers, briefcases, fire fighting PPE) from the S52 vehicle so it could be cleaned and detailed out. I moved my personal vehicle into the field house and transferred to my personal vehicle everything that was mine inside the passenger and bed compartments of the S52 truck. One of these items was a Sentry Gun safe that I personally purchased to have a secure place to store my service weapon; while on fire scenes and at home. This safe has been in the S52 vehicle since I was placed on Admin leave on 2-7-2013 until I removed it on 4-9-2013. With the amount of upheaval and stress I was under after being placed on Admin Leave, the safe being inside the S52; was completely spaced out by me.

You may recall that we opted not to install gun safes in the investigators vehicles several years ago

due to mounting (bolting) concerns. I was uneasy leaving my gun inside the passenger compartment of the vehicle while I was digging out a fire; so I personally purchased the Sentry Gun safe and "hid" it inside a large Rubbermaid container and placed turnout gear over the safe and Rubbermaid container.

Several months ago I had placed three additional guns inside this safe as I felt the current storage of the guns in my office desk was not the safest as the locking part of my office desk could be easily opened with a butter knife.

Additionally; I was preparing "kits" for the new supplementals for when they attended the academy. Each of these "kits" included one gun (unloaded), gun clips, handcuffs, handcuff cases and other misc items they would need. These kits were also stored in the S52 vehicle inside the locked gun safe. I emailed them and told them I had their guns and other equipment; but I could not give them the guns until they started the academy.

Immediately upon arriving home today at about 1300 hours; I went and checked the safe. There are three Glock guns in there (including one "baby" Glock). Whether these are the three "missing" guns they are referring to; I have no idea. I was never given an inventory of the guns assigned to the FD. I did my own inventory of the guns assigned to the investigators once a year. If someone wants to give me the serial numbers of the missing guns; I will verify those numbers with what I have here.

I do have the guns in my possession at this time and will secure them back in the safe until I hear what to do with them.

Kevin Smathers  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
E-Mail: [ksmathers@spokanefire.org](mailto:ksmathers@spokanefire.org)

000144

# EXHIBIT P

000145

**Message: Hillyard****Hillyard**

**From** Smathers, Kevin      **Date** Sunday, April 14, 2013 1:23 PM  
**To** Fielder, Joel  
**Cc**

Chief Fielder,

After last Tuesday at the Training Center; I thought a lot about our short talk regarding the Hillyard incident and [REDACTED] motivation.

Either I did a poor job of explaining the circumstances of that day in Hillyard or what I said was misunderstood. I was the one that was there and I know what happened. Days later, when I discussed the incident with veteran PD officers; they unanimously said that my actions were tactically sound and they would have done the same thing, under similar circumstances.

As far as [REDACTED] goes; his own words spoken to others, betray his true motivation. All I can say is I'm reminded of a saying that applies here with regards to [REDACTED]; "If revenge is your motivation; dig two graves, for one will be for yourself".

If you would like to discuss this further; I would like to do so. If not; I am okay with that as well ... I am far from a perfect human being and have made many mistakes and will do so in the future. But in Hillyard and with [REDACTED] I did the best I could with the support, training and guidance I was given.

Thank you.

Kevin Smathers  
Spokane Fire Department  
44 W. Riverside Avenue  
Spokane, WA 99201  
E-Mail: [kmathers@spokanefire.org](mailto:kmathers@spokanefire.org)

000146

# EXHIBIT Q

000147



“Before you embark on a journey of revenge, dig two graves.” *Confucius*

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Quote - Before you embark on a journey of revenge, dig two graves ...

quotationsbook.com/quote/34360/

Before you embark on a journey of revenge, dig two graves. Confucius. This quote is about revenge - Search on Google Books to find all references and sources ...

Confucius - Wikiquote

en.wikiquote.org/wiki/Confucius

Confucius [Chinese: 孔夫子, transliterated Kong Fu Zi or K'ung-fu-tzu, literally "Master Kong"] ..... Before you embark on a journey of revenge, dig two graves.

Confucius Quotes - The Quotations Page

www.quotationspage.com/quotes/Confucius/

Confucius. - More quotations on: [Mistakes]. Before you embark on a journey of revenge, dig two graves. [info] · [add] · [mail] · [note]. Confucius; Everything has its ...

What does Confucius mean by, When you plan revenge best dig tw...

answers.yahoo.com

Oct 12, 2008 - When you destroy another you destroy your own soul. Even what some consider merely gossip is actually murder (of that person's reputation) ...

- When plotting for revenge, should you be prepared ... 5 answers Jun 19, 2011
What is the meaning of these quotes? - Yahoo! Answers 2 answers Jun 1, 2011
What does the quote "before you embark on a ... 3 answers Aug 26, 2008

Before you embark on a journey of revenge, dig two graves.

thinkexist.com/quotation/before\_you...revenge...two/326253.html

"Before you embark on a journey of revenge, dig two graves." Confucius quotes (China's most famous teacher, philosopher, and political theorist, 551-479 BC) ...

"Before You Embark On A Journey Of Revenge, Dig Two Graves ...

www.experienceproject.com

Feb 24, 2012 - Revenge is always a pointless quest of self-defeat...Find answers to the question, "Before You Embark On A Journey Of Revenge, Dig Two ...

The 3 Rules of Revenge | xoJane

www.xojane.com/relationships/the-3-rules-of-revenge

The 3 Rules of Revenge. Before you embark on a journey of revenge, dig two graves. - Confucius. India-Jewel. Sep 24, 2012 at 12:30pm | Leave a comment ...

Before you embark on a journey of revenge, dig two graves ...

abstractorganizedchaosliterally.wordpress.com/.../before-you-embark-on...

Apr 6, 2013 - The rain was pouring down and all I can see are bodies huddled together. I stayed against the wall watching as to avoid getting wet. But my ...

Quote by Confucius: Before you embark on a journey of revenge, di...

www.goodreads.com/.../36051-before-you-embark-on-a-journey-of-rev...

"Before you embark on a journey of revenge, dig two graves." - Confucius. tags: foolishness, other-people. Read more quotes from Confucius. Share this quote: ...

When seeking revenge, remember to dig two graves (Confucius ...

000149

loverhusbandfathermonster.com/.../when-seeking-revenge-remember-dl... -  
From Melbourne Herald Sun, Thurs May 5, 2011) www.heraldsun.com.au. A MAN who  
today admitted murdering his two-year-old daughter posted a message ...

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000150

# EXHIBIT R

000151

## Kevin Smathers

---

**From:** Kevin Smathers [REDACTED]  
**Sent:** Friday, April 19, 2013 12:20 PM  
**To:** [REDACTED]

I kept waiting to see if you had the decency to contact me and to no one's surprise (certainly not mine) you didn't. You are a passive aggressive, cowardly little "man" who doesn't have the guts to do the right thing. Everyone (HR, the Union, other investigators, etc.) know why you did what you did; purely out of revenge for my notifying the Admin about your being under the influence of alcohol and driving a City vehicle TWICE, once while carrying a gun. And you're worried about my driving code and safety issues with my gun. If that isn't the pot calling the kettle black; I don't know what is.

You are an [REDACTED] who blames everyone for your problem except for yourself. Go back and read the twelve steps; you need to.

I am going to sue you for everything I can get from you. I have retained a law firm and they both say I have textbook case for slander, libel and defamation of character. The dollar amount of damages to be requested is being calculated. I have the resources and witnesses to prove all I need to. My mission for the remainder of my life is to pay you back for what you did. Everything I do will be legal and above board; but it will be incredibly painful and life changing for you. I am more motivated and focused on this than on anything else I have decided to do in my life. I will not fail ... but you will.

You are the lowest, most deceitful human being I have ever known in my life. I plan on letting every person I know; what you did and why. Many already do. You are not a "little bastard"; you are just a little, cowardly, bad person (you aren't even a man).

See you in court.

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