

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE ALASKA POLICE STANDARDS COUNCIL**

In the Matter of)
)
RYAN BOWEN) OAH No. 10-0327-POC
) APSC No. 2009-29

DECISION

I. Introduction

In this case the executive director of the Alaska Police Standards Council has filed a two-count accusation seeking the discretionary revocation of the police officer certification of Alaska State Trooper Ryan Bowen, based upon his discharge by his employer effective November 3, 2009, for conduct unbecoming a police officer.

The facts underlying the accusation are substantially undisputed. On the night of April 19, 2009, Trooper Bowen and another officer responded to a welfare check call at the home of JH and MH. JH was arrested and taken into custody on assault charges. Early the next morning, after Trooper Bowen was off duty and had returned to his residence, he sent MH a text message and in return received a telephone call from her. Following the call, he drove back to her residence, where they engaged in sexual intercourse.

The incident lead to an administrative investigation by the Alaska State Troopers and to Trooper Bowen's termination effective November 2, 2009. Following a review of the matter, the executive director of the Alaska Police Standards Council filed an accusation to revoke Trooper Bowen's certificate as a police officer. Trooper Bowen requested a hearing. The assigned administrative law judge conducted a hearing and heard testimony from MH, as well as from Troopers Bowen and Daron Cooper, Sergeants David Herrell and Brian Wassmann, Capt. Dennis Casanovas, Col. Audie Holloway, and Assistant District Attorney Shawn Traini.

While the administrative hearing process was ongoing, Trooper Bowen pursued his contractual right to arbitration. His termination was converted to a suspension by a decision of the arbitrator issued on December 1, 2010.

Because Trooper Bowen was discharged by reason of conduct that adversely affects his ability and fitness to perform his job duties, and which is detrimental to the reputation and

integrity of the Alaska State Troopers, the council has discretion to revoke his police officer certificate. Under the circumstances of this particular case, revocation is appropriate.

II. Facts

Ryan Bowen grew up wanting to be a police officer; he graduated from college with a degree in criminology.¹ He applied for a position with the Alaska State Troopers and was hired in February, 2008. Trooper Bowen attended the standard 18-week training session at the trooper academy in Sitka, completing the program in June, 2008. Upon his graduation, he was assigned to the Matanuska-Susitna post in Palmer, where he participated in the standard four-month field training program. After completing the standard field training program, Trooper Bowen began unsupervised service in October, 2008.

Trooper Bowen was acquainted with a fellow officer named Abraham Garcia. Trooper Garcia had two children and had occasionally employed a local woman named MH as a child care provider to look after his children in her home when he worked nights.² On the night of April 19, 2009, Trooper Garcia received a couple of cryptic calls from MH asking what time he would be bringing his children over.³ Trooper Garcia told her he would not be bringing his children over that evening; he could hear JH in the background and he took MH's calls as an indication that she wanted a trooper to stop by.⁴ Trooper Garcia called the dispatch center and requested a welfare check at the H residence, due to a woman at the home having some sort of problem with her husband.⁵

Trooper Daron Cooper responded to the call at about 10:00 p.m. He parked his patrol vehicle on the street away from the house and approached on foot.⁶ Through a front window, he observed a woman, subsequently identified as MH, who motioned him to come in.⁷ MH opened the door, but as Trooper Cooper was entering the residence, a man, subsequently identified as JH, began yelling at him to get out of the house and attempted to push him out of the doorway.⁸ Trooper Cooper persisted and informed JH that refusing entry was not an option.⁹ JH continued

¹ Hearing Recording #2, Testimony of Ryan Bowen at 3 hours 6-8 minutes (hearing testimony hereinafter cited by the initials of the individual testifying, the number of the recording, and the hour and minutes at which the cited testimony may be found, *e.g.*, RB #2 3:03-10).

² MH #2 2:06.

³ MH #2 2:12.

⁴ R. 62, 85; MH #2 2:09-2:14.

⁵ Trooper Daron Cooper (hereinafter DC) #1 0:27; R. 93.

⁶ DC #1 0:29.

⁷ DC #1 0:31, 0:35.

⁸ DC #1 0:36, 0:38, 0:41; R. 60; MH #2 2:16.

⁹ *Id.*

to resist. Trooper Cooper decided to place JH in custody; a scuffle ensued and Trooper Cooper radioed for backup.¹⁰

Trooper Bowen was in the vicinity and heard Trooper Cooper's call.¹¹ He responded in his patrol vehicle, with lights and siren.¹² Trooper Bowen parked his vehicle just before the driveway, ran up to the house and entered.¹³ By this time, Trooper Cooper had control of JH, who was lying on the living room floor with Trooper Cooper astride him.¹⁴ Trooper Bowen assisted Trooper Cooper in handcuffing JH.¹⁵ Trooper Cooper sat JH down on the sofa, but JH continued to berate him,¹⁶ which was interfering with Trooper Cooper's attempt to interview MH and her eight-year old daughter, who had witnessed the events of the evening, including the subdual of her father.¹⁷

As the initial responding officer, Trooper Cooper was in charge of the on-the-scene investigation.¹⁸ In order to allow the investigation to proceed, Trooper Cooper decided to place JH in secure custody in his patrol vehicle. Troopers Cooper and Bowen transferred JH to the back of Trooper Cooper's vehicle.¹⁹ Trooper Cooper returned to the house while Trooper Bowen parked Trooper Cooper's vehicle in a position where it could be seen from the house. Trooper Cooper completed an interview of MH, who indicated that JH was intoxicated and that he had not hit her but had verbally threatened her and placed her in fear.²⁰ Trooper Cooper decided to charge JH with two counts of assault in the fourth degree, for assaulting MH and himself.²¹ After Trooper Bowen returned to the house, he provided MH with information concerning domestic violence, the Office of Victims' Rights, and the Violent Crimes Compensation Board, as required by law,²² while Trooper Cooper interviewed the H's daughter upstairs.

¹⁰ DC #1 0:38.

¹¹ R. 74; RB #2 3:27.

¹² RB #2 3:26.

¹³ RB #2 3:27.

¹⁴ DC #1 1:08; RB #2 3:27-30; MH #2 2:19.

¹⁵ RB #2 3:27.

¹⁶ DC #1 0:45, 1:10; RB #2 3:28; MH #2 2:20.

¹⁷ DC #1 0:44; RB 3#2 3:28.

¹⁸ DC #1 1:25.

¹⁹ DC #1 1:11.

²⁰ DC #1 0:51, 1:21; MH #2 2:25.

²¹ DC #1 0:52.

²² DC #1 0:57-58; *see* AS 12.61.010(a)(15); AS 18.65.520; AS 18.67.175(b).

While Trooper Cooper spoke with the H's daughter, MH stepped outside onto the deck to smoke a cigarette, where Trooper Bowen provided her with the necessary information.²³ During that time, MH was flirtatious; she told Trooper Bowen that she and some girlfriends had been out driving one day and saw him in his patrol vehicle and whistled at him, and that she thought he was cute.²⁴ Trooper Bowen and MH talked about getting together sometime, perhaps for drinks with Trooper Garcia and his wife.²⁵ MH expressed reluctance at that idea, but indicated she would like to see Trooper Bowen again.²⁶

Trooper Cooper returned to the main floor of the residence and after checking with Trooper Bowen left to transport JH to jail, where in light of the charge of domestic violence assault JH would be held until appearing before a judicial officer the next day.²⁷ Trooper Bowen remained behind for a few minutes.²⁸ Before he left he provided MH with his business contact information, which was standard practice.²⁹ She let him know that she would be calling him.³⁰ In accordance with standard procedure, Trooper Bowen obtained her contact information.³¹ Thereafter, Trooper Bowen left the H residence. He finished his work shift at about 1:00 a.m., went home, and went to bed.³²

At about 5:30 a.m., Trooper Bowen woke up.³³ He decided to touch base with MH to give her his personal cell phone number and let her know that he was interested in getting together with her.³⁴ Trooper Bowen sent her a text message on his personal cell phone.³⁵ MH received the message and called Trooper Bowen; he called her back and the two chatted.³⁶ Trooper Bowen invited MH to come over, but she could not leave her children, so she invited

²³ DC #1 0:56-58; MH #2 2:26; RB #2 3:31.

²⁴ MH #2 2:32; R. 63, 100; RB #2 3:32.

²⁵ Trooper Bowen informed the district attorney's office that MH had asked him out. R. 106. MH told both the paralegal and the troopers' investigator Trooper Bowen invited her out. R. 63, 100.

²⁶ R. 63.

²⁷ Sgt. Brian Wassmann testimony (hereinafter BW) #1 4:06.

²⁸ MH #2 2:30.

²⁹ DC #1 1:21; BW #1 3:55 (stating he provides the information if requested). Trooper Bowen asserted to the investigator that MH had asked for his personal cell phone number and that he declined to give it to her because "we're not allowed" to. R. 74. He stated that instead he provided his business contact information to her. *Id.* MH's statement to the district attorney's paralegal was that he texted her with his personal cell phone because he had forgotten to give it to her previously. R. 101.

³⁰ Trooper Bowen testified that she was "adamant" that she would be contacting him. RB #2 3:38.

³¹ RB #2 4:08.

³² R. 43; RB #2 3:35-38.

³³ R. 74-75.

³⁴ RB #2 3:37, 3:53.

³⁵ MH #2 2:32. Trooper Bowen initially told the district attorney's office that MH had texted to him and he replied, but subsequently stated that he texted her first. R. 75, 106; RB #2 3:37.

³⁶ MH #2 2:34.

him to come over to her house.³⁷ Trooper Bowen drove back to the H residence in his personal vehicle, arriving at around 6:00 a.m. The two talked. MH was still upset. She expressed her feeling that she was “done with” her marriage.³⁸ Trooper Bowen made advances and within a few minutes, the two retired to a bedroom and engaged in consensual sexual intercourse.³⁹ Trooper Bowen left the house within an hour or so of his arrival.⁴⁰ Following this encounter, MH made a number of telephone calls to Trooper Bowen, asking about getting together again. Trooper Bowen did not reply, and the two did not meet again.

JH was charged with two counts of assault in the fourth degree, one for assaulting MH, and the other for assaulting Trooper Cooper. Both charges were fear-based assaults, that is, they involved placing the victim in fear of harm, without the threatened use of a weapon or infliction of any actual physical harm.⁴¹ The first charge, because it was a crime of domestic violence, involved significant collateral consequences, and the second, because it was an assault on a police officer, carried a mandatory 30-day sentence.⁴² Shawn Traini, the assistant district attorney handling the case, reviewed the file and deemed the matter routine.⁴³ However, MH had told her husband about her sexual encounter with Trooper Bowen and on June 17, 2009, the case suddenly grew complicated: JH’s defense counsel contacted Assistant District Attorney Traini and told him of the sexual encounter between MH and Trooper Bowen.⁴⁴ Defense counsel told Assistant District Attorney Traini that the defense at trial would be that MH had falsely claimed that JH had assaulted her in order to get him out of the house, so that she could pursue a sexual relationship with the responding officer.⁴⁵ Assistant District Attorney Traini

³⁷ R. 64; MH #2 2:34. Trooper Bowen testified that he told MH he was tired and didn’t want to leave. RB #2 3:41. MH testified that Trooper Bowen asked her if she wanted to come over, and did not say he told her he was too fatigued to go to her house. MH #2 2:35. She told the district attorney’s investigator that he asked her to come over and she explained that she could not because of her children; again, she did not mention any claim of fatigue. R. 101.

³⁸ MH #2 2:26, 2:36.

³⁹ Trooper Bowen testified that MH told him, when she called him, that she wanted to have sex with him. RB #2 3:40. MH told the troopers’ investigator that she had initially mildly resisted his advances after he arrived at the house. R. 65. However, she testified at the hearing that she was concerned that her husband would have access to that interview and had couched her answers with that in mind. MH #2 2:38, 2:56. She testified that she “wanted to [have sex with him] from the minute he walked in the door [when he returned to the house that morning]” and that “I would have had my way [with him] one way or another.” MH #2 2:42, 3:00.

⁴⁰ MH #2 2:44; RB #2 3:42.

⁴¹ See AS 11.41.230(a)(3).

⁴² Shawn Traini testimony (hereinafter ST) #1 1:50 (noting domestic violence conviction results in loss of firearm privileges under federal law, and a sentence may not be served out of jail), 2:18.

⁴³ ST #1 1:48-49.

⁴⁴ R. 92-94; ST #1 1:53-54,

⁴⁵ ST #1 2:03.

found the assertion that the trooper had engaged in sex with MH “outlandish” and not credible.⁴⁶ He had his paralegal contact MH, who confirmed the encounter.⁴⁷ The paralegal subsequently contacted Trooper Bowen, who admitted he had returned to the house the next morning and engaged in sex with MH.⁴⁸

District Attorney Roman Kalytiak was out of the office, so Assistant District Attorney Traini discussed the situation with Acting District Attorney Rachel Gernat.⁴⁹ She contacted the chief prosecutor’s office, where she talked with Dwyane McConnell, an experienced prosecutor. Mr. McConnell recommended that the charges be dismissed, in order to avoid making Trooper Bowen’s conduct known to the public.⁵⁰ However, when District Attorney Kalytiak returned, he directed Assistant District Attorney Traini to make an offer and try to get some sort of plea agreement.⁵¹ The unanimous view of the prosecutors was that it would be unacceptable to take the case to trial, because a trial would inevitably lead to public disclosure of Trooper Bowen’s conduct, which would be highly detrimental to the reputation of the Alaska State Troopers.⁵² In addition, prosecutors were concerned that if his conduct were publicly known, Trooper Bowen’s participation in future prosecutions for domestic violence or sexual assault could be compromised, since his conduct on this occasion could be used to discredit him.⁵³ Furthermore, his conduct created a concern in Assistant District Attorney Traini’s mind as to whether it must be disclosed as exculpatory evidence in future proceedings.⁵⁴ For all these reasons, and because MH and her husband were attempting to reconcile and JH did not want to embarrass MH by public disclosure of her conduct, the parties entered into a plea agreement in which the charge of assault against a police officer was dismissed, and the charge of assault against MH was reduced

⁴⁶ ST #1 1:54-56.

⁴⁷ R. 100-101.

⁴⁸ ST #1 2:08.

⁴⁹ ST #1 2:00.

⁵⁰ R. 104; ST #1 2:12.

⁵¹ ST #1 2:15.

⁵² Assistant Attorney General Traini characterized the case as “untrialable.” ST #1 2:15-2:17. *See also* R. 104.

⁵³ ST #1 2:03; R. 104; *see also* BW #1 3:12.

⁵⁴ ST #1 2:06, 2:38-39. Notably, however, prosecutors did not find this concern sufficiently serious as to cause them to actually disclose the information; Trooper Bowen continued to respond to and investigate domestic violence calls, and testified in at least one subsequent domestic violence case. RB #2 3:46, 3:52.

to harassment, with no jail time.⁵⁵ The plea agreement was accepted by the court on August 6, 2009.⁵⁶

Immediately thereafter, the Alaska State Troopers initiated an administrative investigation, conducted by Sgt. Brian Wassmann, to determine whether Trooper Bowen's conduct was in violation of the Alaska State Troopers Operations and Procedures Manual (OPM).⁵⁷ Trooper Bowen cooperated with the investigation. Sgt. Wassmann reviewed pertinent records and interviewed MH, Troopers Cooper and Bowen, and Assistant District Attorney Traini. Sgt. Wassmann's written report of his investigation described the incident substantially as described above.⁵⁸ He concluded that Trooper Bowen's conduct was in violation of OPM Sections 101.010(B), 101.020(G), and 101.070(A) and (B).⁵⁹ These portions of the manual call upon troopers to conduct their private activities in a manner that does not "reflect...unfavorably upon the police officer and the police service"⁶⁰ and state that conduct unbecoming of an officer includes conduct that "brings the Department into disrepute, or reflects discredit upon the employee as a member of the Department."⁶¹ The provisions instruct officers to "conduct their personal...affairs in a manner that does not discredit or otherwise bring the department into disrepute or compromise the employee's ability to perform his or her duties."⁶²

The report was provided to the detachment commander, Capt. Dennis Casanovas, for a recommendation regarding the appropriate disciplinary sanction. Capt. Casanovas is a 30+ year veteran of the Alaska State Troopers with extensive experience in a variety of positions throughout the state.⁶³ He has extensive experience in conducting administrative investigations and, as a detachment commander, in making disciplinary recommendations, and is aware of a number of cases involving allegations of on- and off-duty sexual conduct by officers.⁶⁴ He considered two prior cases that he was aware of to be of particular relevance in determining an appropriate disciplinary action in this case. In one, an officer assigned to a homicide case in

⁵⁵ Assistant District Attorney Traini did not assert that but for Trooper Bowen's conduct, he would not have made the same agreement. He did suggest that but for JH's desire to avoid embarrassing his wife, JH would not have agreed to even this resolution, but would have insisted on a trial that he knew the district attorney would not be willing to undergo, with the result that the district attorney would have been compelled to dismiss both charges.

⁵⁶ R. 98.

⁵⁷ BW #1 2:55, 4:05.

⁵⁸ R. 22-23.

⁵⁹ R. 23.

⁶⁰ OPM Section 101.020(G).

⁶¹ OPM Section 101.070(A).

⁶² OPM Section 101.070(B).

⁶³ Capt. Dennis Casanovas (hereinafter CC) testimony #3 0:02.

⁶⁴ CC #3 0:04-05, 0:17, 1:19.

Ketchikan engaged in an ongoing sexual relationship with a witness while the prosecution was pending.⁶⁵ In the other, an officer investigating an allegation of sexual abuse engaged in a single sexual encounter with the female victim.⁶⁶ In both cases, the officers were suspended for periods in excess of 30 days. Capt. Casanovas took into account Trooper Bowen's relatively short tenure as a trooper, the absence of any prior significant disciplinary issues, and his knowledge of prior similar cases, and recommended a suspension as the appropriate sanction for Trooper Bowen.⁶⁷ Capt. Casanovas considered Trooper Bowen to be an average trooper, or slightly below average, in terms of his job performance, in line with his evaluations on file.⁶⁸

Col. Audie Holloway, commander of the Alaska State Troopers at the time, had the authority and responsibility for taking disciplinary action. He considered Capt. Casanovas' recommendation. Col. Holloway, like Capt. Casanovas, was aware of a number of prior instances of on- or off-duty sexual harassment or sexual activity. Like Capt. Casanovas, he considered the most similar past cases to be the one involving a trooper's ongoing sexual relationship with a witness in a murder case and the one involving a trooper's single sexual encounter with a female victim of sexual abuse.⁶⁹ Col. Holloway was of the view that in light of changed attitudes towards crimes of domestic violence, and the specific circumstances of Trooper Bowen's conduct, the discipline in those cases was not appropriate in his case. In particular, Col. Holloway stressed the special status of crime victims and troopers' obligation to provide support and assistance to crime victims as important in determining an appropriate sanction.⁷⁰ Col. Holloway noted that the perception of and approach of the Alaska State Troopers towards domestic violence cases had substantially changed in recent years, from a perception that crimes of domestic violence are family matters ill-suited to the criminal justice system, to the view that enforcement of the criminal laws concerning domestic violence is essential. Col. Holloway believed that public disclosure of Trooper Bowen's conduct would have significantly adverse impacts on the image and reputation of the Alaska State Troopers, as

⁶⁵ CC #3 1:18.

⁶⁶ CC #3 0:15.

⁶⁷ CC #3 0:11,

⁶⁸ CC #3 0:19-20; Ex. M. Capt. Casanovas learned after Trooper Bowen was discharged that he had a large number of unwritten case reports, and had in several cases misplaced or improperly stored evidence. CC #3 0:09, 0:26, 0:32-34. However, Trooper Bowen's direct supervisor, Sgt. David Herrell, testified that Trooper Bowen was a go-getter and hard charger, and that the number of unwritten case reports and, for the most part, the evidence storage issues were not of concern to him. Sgt. David Herrell testimony #3 1:28-37, 1:50.

⁶⁹ Colonel Audie Holloway testimony (hereinafter AH) #1 1:36, 1:57.

⁷⁰ AH #1 1:00.

well as its working relationship with interested third parties.⁷¹ Col. Holloway was of the view that Trooper Bowen's conduct was unacceptable. He rejected Capt. Casanovas' recommendation, and ordered Trooper Bowen discharged. Capt. Casanovas discharged Trooper Bowen on November 2, 2009.⁷²

Trooper Bowen requested arbitration, pursuant to the terms of a collective bargaining agreement. On December 1, 2010, the arbitrator issued a decision concluding that while Trooper Bowen had demonstrated poor judgment and engaged in unprofessional conduct and the employer had just cause to discipline him, the employer did not have just cause to discharge Trooper Bowen.⁷³ The arbitrator found that Trooper Bowen's poor judgment was the result, in part, of his lack of awareness that his off-duty social interactions must be "carefully considered."⁷⁴ The arbitrator found that the employer had "failed to deliver a consistent and coherent message to troopers regarding appropriate social behavior"⁷⁵ and that it "has not been consistent with the discipline that has been administered over the years for similar misconduct."⁷⁶ The arbitrator concluded that "suspension is the appropriate level of discipline that is reasonably related to the seriousness of the...proven offense."⁷⁷

III. Discussion

The two-count accusation in this case identifies two grounds for discretionary revocation of Trooper Bowen's certificate: Count I alleges that Trooper Bowen was discharged from employment as a police officer for conduct warranting discretionary revocation under 13 AAC 85.110(a)(2),⁷⁸ and Count II alleges that he lacks good moral character, which is grounds for discretionary revocation under 13 AAC 85.110(a)(3).⁷⁹

Trooper Bowen contends the council lacks authority to revoke his certificate because (1) his license has lapsed, and is therefore not subject to revocation; (2) his discharge was overturned

⁷¹ AH #1 0:42-0:50.

⁷² R. 16-17.

⁷³ Arbitrator's Opinion and Award (December 1, 2010) at 17 (hereinafter Arbitrator's Decision) (supplement to record). The Arbitrator's Decision was admitted as evidence of the decision made and the reasons for it. Factual findings stated in the decision are not established and are not evidence of the truth of the fact found. Testimony or evidence referenced in the decision is not evidence of a fact (other than the arbitrator's reasons) in this case.

⁷⁴ Arbitrator's Decision at 12.

⁷⁵ Arbitrator's Decision at 14.

⁷⁶ Arbitrator's Decision at 14.

⁷⁷ Arbitrator's Decision at 18.

⁷⁸ Count I of the accusation as filed requests discretionary revocation under 13 AAC 85.110(a)(1). However, the conduct described in the accusation is entirely unrelated to 13 AAC 85.110(a)(1), which concerns discretionary revocation for providing false information in an application. The conduct described falls within the grounds for discretionary revocation stated in 13 AAC 85.110(a)(2), and the accusation is deemed amended accordingly.

⁷⁹ Accusation, page 3.

by an arbitrator; and (3) consideration of his private, off-duty sexual conduct as a ground for revocation would violate his constitutional right to privacy.⁸⁰ He further argues that to the extent there are grounds for discretionary revocation, in light of all of the facts and circumstances, the council should, in its discretion, decline to revoke his police officer certificate.⁸¹

A. The Council Has Authority To Revoke

1. *Trooper Bowen's Lapsed Certificate May Be Revoked*

Trooper Bowen was discharged from employment as a police officer, effective November 2, 2009. Because he was not hired by another police department within 12 months of his discharge, his certificate lapsed effective November 3, 2010, pursuant to 13 AAC 85.120(a). Trooper Bowen argues that a lapsed license may not be revoked.

For purposes of determining whether a lapsed certificate may be revoked, a lapsed certificate may be considered equivalent to an expired license because in both situations the certificate or license is no longer effective due to the passage of time, without regard to any alleged grounds for revocation. In some licensing schemes, language in a statute⁸² or regulation⁸³ expressly provides for disciplinary action after the license has expired. However, in the absence of an express provision in statute or regulation, most courts that have considered the issue have concluded that a license that has expired may be revoked in a disciplinary proceeding commenced prior to the date of expiration.⁸⁴ In this case, the statutes and regulations applicable to police officer certificates do not address revocation after a certificate has lapsed. Consistent with the prevailing view in the courts, when a revocation proceeding is commenced prior to the date of lapse, the council may revoke a lapsed certificate.

⁸⁰ Bowen Brief at 9-10.

⁸¹ Bowen Brief at 1-9; 10-15

⁸² See, Grovovsky v. Board of Medical Examiners, 159 P.3d 1245 (Ore. 2007); Pahl v. Board of Chiropractic Examiners, 993 P.2d 149, 152 n. 2 (Ore. 1999).

⁸³ See, Brown v. State of Washington, 42 P.3d 976, 978 (Wash. App. 2002) (chiropractor's license under regulation providing that "jurisdiction is retained even if an applicant requests to withdraw the application, or a licensee surrenders or fails to renew a license.").

⁸⁴ Nims v. Washington Board of Registration, 53 P.3d 52, 55 n. 17 (Wash. App. 2002) (professional engineer's license; citing cases). See also, Trappers Creek Lodge & Resort, LLC v. Colorado Department of Revenue, 179 P.3d 198, 200 (Col. App. 2007) (liquor license); Sachs v. New York State Racing and Wagering Board, 767 N.Y.S. 2d 144 (N.Y. App. Div.2003) (veterinary license); eVineyard Retail Sales-Massachusetts, Inc. v. Alcoholic Beverage Control Commission, 882 N.E.2d 334 (Mass. 1998); Patel v. Kansas State Board of Healing Arts, 920 P.2d 477, 479-480 (Kan. 1996) (medical license); Vitali v. Smith, 254 A.2d 766 (R.I. 1969); Schurman v. Bureau of Labor, 585 P.2d 758 (Ore. 1978) (*contra*; employment agency license).

2. Trooper Bowen Has Been Discharged

The arbitrator's decision includes an order that the employer "convert Ryan Bowen's discharge into a three-day suspension" and purge its files of any reference to a discharge. Trooper Bowen argues that the arbitrator's decision is binding on the State of Alaska, including the council, and that because the arbitrator ordered reinstatement the certificate may not be revoked.⁸⁵

13 AAC 85.110(f) states:

A personnel action or subsequent personnel action regarding a police officer by the police officer's employer, including a decision resulting from an appeal of the employer's action, does not preclude the council from revoking the police officer's basic, intermediate, or advanced certificate under this section.

The regulation expressly provides that neither an initial nor a subsequent personnel action precludes the council from revoking a certificate. It states that a subsequent personnel action includes a decision resulting from an appeal of the employer's action, but it does not limit the phrase "subsequent personnel action" to only decisions following an appeal. Thus, a personnel action taken in response to an arbitrator's decision may be considered a subsequent personnel action within the meaning of the regulation. Accordingly, the personnel action resulting from the arbitrator's decision (*i.e.*, suspension and reinstatement) does not preclude the council from revoking Trooper Bowen's license based on the initial personnel action (discharge effective November 2, 2009).

That reference to the prior discharge has been purged from the Alaska State Troopers files does not mean that no discharge occurred. Rather, removing reference to the prior discharge means that for purposes of any future personnel action by the employer, the discharge will be treated as if it had never occurred. But the fact remains that the discharge did occur, and the absence of any reference to it in the employer's records does not mean that the council's own records of that discharge have been wiped clean.⁸⁶ The arbitrator has authority under a collective bargaining agreement to bind the Alaska State Troopers to the arbitrator's decision, but lacks any authority to limit the council's disciplinary actions based on information in the council's records. Assuming that the Alaska State Troopers reinstated Trooper Bowen and

⁸⁵ Bowen Brief at 9-10.

⁸⁶ In this respect, Trooper Bowen's situation might be viewed as akin to that of an individual whose conviction has been set aside. A conviction that has been set aside may be taken into account for purposes of an administrative disciplinary proceeding. *See State, Division of Corporations, Business, and Professional Licensing v. Platt*, 169 P.3d 595, 599-600 (Alaska 2007).

purged any reference to the prior discharge in their records, pursuant to 13 AAC 85.110(f) the council may nonetheless revoke his police officer certificate based on his termination effective November 2, 2009.

3. *Trooper Bowen's Conduct Is Not Protected By The Right To Privacy*

Trooper Bowen argues that his private, off-duty sexual conduct is unrelated to his ability to perform his duties⁸⁷ and may not, because of his constitutional right to privacy, be considered in this proceeding.⁸⁸

As the cases cited by Trooper Bowen acknowledge, and as the arbitrator's decision recognizes,⁸⁹ the constitutional right to privacy with respect to private, off-duty sexual conduct is not unlimited; such conduct may be considered in a disciplinary proceeding to the extent that it impacts an individual's ability to perform his or her duties.⁹⁰ In this particular case, Trooper Bowen's private, off-duty sexual conduct bore a direct, close and substantial relationship to his professional duties. MH, the individual with whom he engaged in sexual intercourse, was a crime victim whom he had met in the course of his response to a domestic violence call. Trooper Bowen and MH exchanged contact information in the course of his official conduct, and he used that information to initiate a private, off-duty relationship. His contact with MH and their subsequent sexual encounter followed in close temporal proximity to his official interaction with her. The encounter occurred in her home at a time when JH was absent because he had been arrested and jailed following the incident to which Trooper Bowen had responded. In addition, the sexual encounter occurred during a time when the criminal proceedings were pending prosecution, and thus created a risk of that the prosecution of the crime for which she was the victim would be compromised.

The cases cited by Trooper Bowen in which private, off-duty sexual conduct was deemed unrelated to an officer's job duties do not remotely share these characteristics. Rather, two involved dismissals based on cohabitation as an unmarried person and adultery,⁹¹ one involved a

⁸⁷ Bowen Brief at 11, *citing* City of San Antonio, 90 LA 159-163-164 (Williams 1987); City of St. Paul, 101 LA 265, 266-267 (Neigh 1993).

⁸⁸ See Bowen Brief at 10, 11-12 *citing* Ravin v. State, 537 P.2d 494 (Alaska 1975); Shuman v. City of Philadelphia, 470 F. Supp. 449, 459 (E.D. Pa. 1979); Briggs v. N. Muskegon Police Department, 563 F. Supp. 585, 590 (W.D. Mich. 1983), *affirmed*, 746 F.2d 1475 (6th Cir. 1984); Thorne v. City of El Segundo, 726 F.2d 459, 468 (9th Cir. 1983).

⁸⁹ See Arbitrator's Decision at 17.

⁹⁰ See Shuman, 470 F. Supp. at 459-460; Briggs, 563 F. Supp. at 589-590; Thorne, 726 F.2d 469-470; City of San Antonio at 163; City of Saint Paul at 266.

⁹¹ See Shuman, 470 F. Supp. at 452-454; Briggs, 563 F. Supp. at 586-587; Thorne, 726 F.2d at 461-463.

marital dispute,⁹² one involved a claim of sex discrimination because a woman's sexual history was inquired into during the application process but a male officer's was not, and one involved a criminal conviction for off-duty sexual contact with a minor.⁹³ The cited cases provide no support for the proposition that Trooper Bowen's conduct is insufficiently related to his duties to warrant consideration in a disciplinary proceeding, notwithstanding his constitutional right to privacy.

B. Trooper Bowen's Conduct Violates 13 AAC 85.110(a)(2)

Under 13 AAC 85.110(a)(2), the council may, in its discretion, revoke the certificate of a police officer who has been discharged for conduct "that adversely affects the ability and fitness of the police officer to perform job duties or that is detrimental to the reputation, integrity, or discipline of the police department where the officer worked." Trooper Bowen argues that any detrimental impact of his conduct on his ability or fitness to do his job or on the department is "purely speculative."⁹⁴

As to the effect of his conduct on his ability and fitness to act as a police officer, the preponderance of the evidence is that Trooper Bowen's ability to provide testimony in domestic violence cases would be adversely affected if knowledge of his conduct became known to the public or to the defense bar. More fundamentally, however, even absent any public knowledge of his conduct, that conduct adversely affects his fitness to perform his duties. His conduct affects his fitness to respond to calls for domestic violence because it shows a lack of awareness of and sensitivity to the rights of victims of domestic violence. By engaging in sexual conduct with a woman whose husband had assaulted her, Trooper Bowen placed her at risk of further domestic violence in retaliation for his own conduct. Moreover, by MH's own testimony, it is evident that at the time of the encounter she was particularly vulnerable to his advances as a result of the emotional stress of the assault upon her, even though she was a willing partner.⁹⁵

As to the impact of his conduct on the reputation of the Alaska State Troopers, there is no evidence that Trooper Bowen's conduct has become widely known, but MH testified that she had overheard a comment about it at her workplace and the extent to which it will become known in the future cannot be predicted. But even if the matter remained undisclosed outside of

⁹² See City of San Antonio, 90 LA at 160.

⁹³ City of Saint Paul, 101 LA 265. In that case, an arbitrator concluded that a police officer's conviction on a charge of misdemeanor sexual misconduct (for an off-duty incident involving the officer's fourteen-year-old babysitter) was not grounds for discharge.

⁹⁴ Bowen Brief at 11.

⁹⁵ See note 39, *supra*.

the parties, for purposes of a disciplinary action, actual harm to an agency's reputation is not required if public knowledge of the circumstances could do substantial harm to an agency's reputation.⁹⁶ Similar reasoning applies in the context of this case. To require public knowledge of conduct that discredits the reputation of a police force as a precondition to revocation by the council would expose the employing police force to damage to its reputation in the event the conduct later becomes known to the public. 13 AAC 85.110(a)(2) is therefore construed to authorize revocation based on whether the conduct occurred and is in itself detrimental to the employer's reputation, without regard to whether the conduct is public knowledge. While the precise degree to which public disclosure would damage the reputation of the Alaska State Troopers cannot be specified, there can be no doubt that if Trooper Bowen's conduct were public knowledge, there would be some damage to the reputation of the Alaska State Troopers. Moreover, regardless of the public image and reputation of the organization, Trooper Bowen's conduct is harmful to the integrity of the Alaska State Troopers, because it conflicts with the organization's core values.⁹⁷ Because Trooper Bowen was discharged for reason of conduct that adversely affects his ability and fitness to perform his job duties and that is detrimental to the reputation and integrity of the Alaska State Troopers, the council has authority to revoke his certificate pursuant to 13 AAC 85.110(a)(2).

C. Violation of 13 AAC 85.110(a)(3) Was Not Proved

Under 13 AAC 85.110(a)(3), the council may, in its discretion, revoke the license of an officer who does not meet the standards for issuance of a certificate specified in 13 AAC 85.010(a) or (b). Count II of the accusation asserts that Trooper Bowen does not meet the standard specified at 13 AAC 85.010(a)(3).

Under 13 AAC 85.010(a)(3), a police officer must be "of good moral character." Good moral character, for purposes of this standard, means:

the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States; ...a

⁹⁶ See, Alaska State Employees Association v. State, 74 P.3d 881, 885 (Alaska 2003) (overturning arbitrator's decision to reinstate employee, where "to retain an employee with a conviction of this nature [felony theft of public money] could do substantial damage to the agency's image and reputation and conflicted with [the agency's] mission and responsibilities.").

⁹⁷ Integrity has been defined as "firm adherence to a code of esp. moral or artistic values." Webster's Ninth New Collegiate Dictionary, p. 628 (1990). See generally, CC #3 0:36-38, 1:02; AH #2 0:08, 0:59-1:01.

determination of lack of ‘good moral character’ may be based upon a consideration of all aspects of a person’s character.^[98]

The executive director asserts that Trooper Bowen demonstrated a lack of good moral character by engaging in a legal, off-duty, consensual sexual relationship with a married woman, given the circumstances in which that conduct occurred.⁹⁹ But the definition of good moral character specifies an absence of conduct raising substantial doubts about an individual’s honesty, fairness and respect the rights of others and for the law. To focus on Trooper Bowen’s sexual conduct and the circumstances in which it occurred is to disregard the specific definition provided by regulation. It is not the morality of Trooper Bowen’s private, legal, off-duty, consensual sexual activities that is at issue, but his honesty, fairness, and respect for the rights of others and the law. To warrant discretionary revocation, the executive director must establish that Trooper Bowen’s conduct raises substantial doubt regarding all of these matters.

Quite apart from their individual rights as citizens, crime victims have specific constitutional and statutory rights.¹⁰⁰ In addition, law enforcement personnel hold crime victims as persons to whom they owe special obligations to provide assistance and support. Trooper Bowen’s conduct in this case would certainly cause a reasonable person to have substantial doubt about his respect for the rights of victims of crimes of domestic violence, and possibly of crime victims generally, and to that extent the evidence provides ample support for a finding that he lacks good moral character as defined by 13 AAC 85.900(7). But the definition does not provide for a finding that a person lacks good moral character based on only one of the listed considerations: it calls for conduct that creates a substantial doubt with respect to all of them.

In this case, notwithstanding his conduct on April 20, 2009, Sgt. Wassmann and the other departmental officials who reviewed this matter in connection with the administrative investigation all concluded that Trooper Bowen’s honesty is not in question. He cooperated in the investigation and admitted the conduct alleged. Fairness has been defined as “marked by

⁹⁸ 13 AAC 85.900(7). Several other occupations with a law enforcement or corrections component include similar language in the definition of good moral character. *See* 13 AAC 67.990(3), 13 AAC 96.900(8), 22 AAC 30.900(6) (process server, village public safety officer, and sex offender treatment provider, respectively). In some other licensing contexts, good moral character has been defined as the lack of a criminal record for a particular period of time. *See* 8 AAC 10.915(7) (employment agency; no conviction of a crime involving moral turpitude within the previous 10 years); 12 AAC 04.990(12) (accountant; no incident of a dishonest or felonious act within the previous 5 years); 12 AAC 52.075 (pharmacist; no conviction of a felony or other crime affecting ability to practice pharmacy safely).

⁹⁹ *See* Executive Director’s Brief at 10-11, 15.

¹⁰⁰ Alaska Constitution, Article I, Section 24; AS 12.61.010.

impartiality and honesty: free from self-interest, prejudice, or favoritism,”¹⁰¹ and there has been no showing that Trooper Bowen treats individuals unfairly in that sense. As to respect for law, the executive director suggests that an episode of out-of-bounds skiing by Trooper Bowen indicates a sufficient lack of respect for law as to warrant revocation.¹⁰² This conduct may reasonably be viewed as raising some doubt as to Trooper Bowen’s respect for law, but that doubt is not a substantial one. Accordingly, the executive director did not establish grounds for discretionary revocation under 13 AAC 85.110(a)(3).

D. The Executive Director Requests Mandatory Revocation

Both Count I and Count II of the accusation assert that Trooper Bowen engaged in conduct for which the council is authorized, in its discretion, to revoke Trooper Bowen’s police officer certificate. In his post-hearing brief, however, the executive director asserts that the council should make a specific factual finding upon which the council must revoke his certificate, pursuant to 13 AAC 85.110(b)(3).¹⁰³ Revocation under AAC 85.110(b)(3) is mandatory rather than discretionary. The regulation provides:

The council shall revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate... (3) has been discharged... from employment as a police officer in this state... for cause for conduct that would cause a reasonable person to have substantial doubts about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state... or that is detrimental to the integrity of the police department where the police officer worked.

As can be seen, 13 AAC 85.110(b)(3) provides for mandatory revocation on grounds substantially similar to those stated as grounds for discretionary revocation under 13 AAC 85.110(a)(2). Given that similarity, the choice of one or the other regulatory provision as the basis for revocation carries with it significant consequences for the person charged. Absent the inclusion of any language in the accusation that provides advance notice to the respondent that the executive director seeks mandatory revocation, it would be inappropriate to impose mandatory revocation under 13 AAC 85.110(b)(3).¹⁰⁴

¹⁰¹ Webster’s Ninth New Collegiate Dictionary, p. 445 (1990).

¹⁰² Executive Director’s Brief at 11-12.

¹⁰³ See Executive Director’s Brief at 15, *citing* 13 AAC 85.110 (b)(3).

¹⁰⁴ By contrast, Count I of the accusation expressly requests discretionary revocation, alleges as grounds a discharge, and alleges conduct within the scope of 13 AAC 85.110(a)(2), and thus provides adequate notice to the respondent that that discretionary revocation under 13 AAC 85.110(a)(2) will be at issue at the hearing. Moreover, the testimony and argument at the hearing focused to a large degree on the effect of Trooper Bowen’s conduct on his ability and fitness to perform his duties, and on the reputation and integrity of the Alaska State Troopers, indicating

E. Discretionary Revocation Is Warranted

The executive director has established grounds upon which the council may, in its discretion, revoke Trooper Bowen's certificate pursuant to 13 AAC 85.110(a)(2). In considering whether to exercise its discretion to revoke the certificate, the council should consider its actions in any prior similar certificate revocation cases in order not to make an arbitrary decision. However, the executive director asserts, and there has been no showing to the contrary, that the council has not previously issued a decision addressing revocation under similar circumstances.¹⁰⁵ The fact that the council has not previously considered revocation in a case involving similar circumstances does not mean that it is precluded from revoking Trooper Bowen's license in this case.¹⁰⁶ Thus, the council may exercise its discretion in light of the specific facts of this case, unconstrained by prior decisions.¹⁰⁷

Moreover, in exercising its discretion the council is not constrained by decisions issued by employers in connection with employee disciplinary proceedings. Disciplinary actions by an employer reflect the respective rights and responsibilities of the parties in an employment relationship, typically under the terms of a collective bargaining agreement, and an employer's investment a particular trooper can inhibit termination.¹⁰⁸ In this particular case, the arbitrator's decision expressly finds that the employer bore substantial responsibility for Trooper Bowen's conduct due to the Alaska State Troopers' failure to discipline prior offenders or to provide relevant training.¹⁰⁹ By contrast, the council is a regulator agency, charged with establishing and enforcing minimum standards for certification of police officers that are independent of a particular police department's employment, disciplinary, or training practices.¹¹⁰ It exercises

that those issues were tried by consent. These distinctions explain why the accusation may reasonably be deemed amended as to Count I, but not as to a request for mandatory revocation. *See* note 78, *supra*.

¹⁰⁵ Executive Director's Brief at 13 ("There are no prior decisions of the Office of Administrative Hearings or the Alaska Police Standards Council in past cases.").

¹⁰⁶ *See* Storrs v. State Medical Board, 664 P.2d 547, 552 (Alaska 1983) ("[T]he fact that Storrs is the first physician whose license has been revoked does not, without reliable evidence showing arbitrary or selective enforcement, establish a constitutional violation...").

¹⁰⁷ *See* Rollins v. State, Department of Revenue, 991 P.2d 202, 210 (Alaska 1999) (absent showing of selective enforcement, failure to revoke another individual's license for a more egregious violation does not bar revocation based on this license based on the regulations in effect); In Re Buckalew, 731 P.2d 48, 51 (Alaska 1986) (in absence of comprehensive standards or guidelines, attorney misconduct sanction "determined on a case-by-case basis, grounded upon a 'balanced consideration of [all] relevant factors.'" (citations omitted)).

¹⁰⁸ AH #1 0:28-30.

¹⁰⁹ Arbitrator's Decision at 13-15.

¹¹⁰ AS 18.65.220(2), (6).

discretion based on the general public interest, rather than on circumstances unique to a particular employment relationship.¹¹¹

In arguing for revocation, the executive director's primary focus is on the fact that Ms. [REDACTED] was the victim of a crime of domestic violence. The executive director argues that Trooper Bowen's conduct should be considered in light of the relatively high incidence of domestic violence in Alaska, its impacts on families and the community at large, and the public interest in effective enforcement of domestic violence laws. In that light, the risk that his participation in future prosecutions could be adversely impacted is especially problematic, the executive director suggests. The executive director also notes that the impact of his conduct on the reputation of the Alaska State Troopers is particularly problematic in light of Col. Holloway's testimony that the failure to discharge Trooper Bowen for his conduct would be viewed as symptomatic of a systemic disregard for the rights of victims of domestic violence and sexual assault and would thereby adversely affect law enforcement personnel's working relationships with interested advocacy groups.¹¹²

In addition to focusing on the particular crime and Trooper Bowen's conduct in relation to it, the executive director points out that Trooper Bowen has failed to show an appreciation for the nature and magnitude of the misconduct he engaged in.¹¹³ The executive director also criticizes Trooper Bowen's job performance, outside of this particular matter, suggesting that this supports discretionary revocation under the facts of this case.¹¹⁴

In his own defense, Trooper Bowen points out that he was a relatively inexperienced officer at the time of the incident, and that he had not received any specific training or instruction regarding personal off-duty social or sexual relationships with crime victims or witnesses.¹¹⁵ He adds that in the investigation of the matter he was "honest and forthright."¹¹⁶ He notes that the matter has not become public knowledge and that therefore there has been no actual damage to

¹¹¹ AS 18.65.130. *See generally*, R. Goldman and S. Puro, Revocation Of Police Officer Certification: A Viable Remedy For Police Misconduct?, 45 St. Louis U. L. J. 541 (2001).

¹¹² Executive Director's Brief at 9-10. Among the organizations that law enforcement personnel routinely interact with concerning crimes of domestic violence are the Council of Domestic Violence and Sexual Assault, the Violent Crimes Compensation Board, and the Office of Victims' Rights. Col. Holloway identified women's shelters as partners with law enforcement with respect to domestic violence. AH #1 1:09.

¹¹³ Executive Director's Brief at 10-11.

¹¹⁴ Executive Director's Brief at 11.

¹¹⁵ Bowen Brief at 1-2. The arbitrator's decision pointedly observes: "It may be prudent for the State to incorporate a specific component into its training program as to what social interaction is appropriate, when and where it may occur, with whom it may occur and the consequences of any behaviors that do not comply." Arbitrator's Decision at 14.

¹¹⁶ Bowen Brief at 4.

the reputation of the Alaska State Troopers and that Trooper Bowen's participation in the investigation and prosecution of crimes of domestic violence has not actually been compromised.¹¹⁷ Lastly, he notes that Capt. Casanovas, Trooper Bowen's supervisor and an individual with extensive statewide experience, had recommended only a suspension as a disciplinary action,¹¹⁸ and he asserts that his job performance has not been deficient.¹¹⁹ As an appropriate action, Trooper Bowen argues, the council should not exercise its discretion to revoke his certificate, but rather should treat it as lapsed and place appropriate conditions on reinstatement, pursuant to 13 AAC 85.120(b).¹²⁰

With respect to Trooper Bowen's honesty and forthrightness, it is apparent that he was in no position to deny the allegation against him, and thus his cooperation in the investigation does not significantly mitigate his conduct. Moreover, there is some evidence that his initial characterization of events was more favorable to him than the actual facts would warrant.¹²¹ Finally with respect to his job performance, Capt. Casanovas deemed his performance mid to low acceptable, and in retrospect determined that his performance reflected significant deficiencies.¹²² In summary, the alleged mitigating factors in this particular case do not weigh significantly in favor of Trooper Bowen.

Turning to the core of the matter, the executive director's focus on the context of Trooper Bowen's conduct contrasts sharply with Trooper Bowen's insistence that little more is at issue than private, off-duty, consensual sexual conduct. Trooper Bowen testified that as a result of this experience, he has learned that social contacts with crime witnesses and victims can be problematic to the prosecution of crimes; in his view, the central connection between his conduct and his job is that the prosecution of this particular case might have been in some small way adversely affected.¹²³ Trooper Bowen's insistence that his conduct is merely a matter of private sexual behavior, but for its possible affect on the prosecution of this case, completely disregards the direct, substantial and immediate connection between his conduct and his official duties, and the significantly adverse impact that his conduct could have on the reputation of the Alaska State Troopers. Most importantly, it disregards MH's rights as a victim of domestic violence.

¹¹⁷ Bowen Brief at 5-6. *See* note 54, *supra*.

¹¹⁸ Bowen Brief p. 7.

¹¹⁹ Bowen Brief at 8.

¹²⁰ Bowen Brief at 15.

¹²¹ *See* notes 25, 29, 35, *supra*.

¹²² *See* note 68, *supra*.

¹²³ *See, e.g.*, RB #2 4:38, 4:52; CC #3 0:48, 1:02.

That Trooper Bowen was a relatively inexperienced officer who had not been trained about this specific situation neither explains nor excuses his poor judgment in this case. Common sense cannot be taught. It takes no more than ordinary common sense to understand that engaging in sexual conduct with a married victim of domestic violence creates a risk that the victim will be subject to further domestic violence by his or her spouse as retribution for engaging in extramarital sex. It takes no more than common sense to understand that a police officer who within hours after responding to a crime of domestic violence contacts the crime victim, solicits a social relationship with her, and engages in consensual sexual activity with her has not demonstrated respect for that person's rights as a victim of domestic violence. It takes no more than common sense to know that public disclosure of the conduct that Trooper Bowen engaged in would adversely affect the reputation of the Alaska State Troopers. That Trooper Bowen failed to realize this at the time, and that he has subsequently failed to demonstrate an understanding of the gravity of his misconduct, shows unacceptably poor judgment for a police officer. His conduct and his continuing failure to acknowledge its significance demonstrates a lack of judgment sufficient to warrant discretionary revocation, given the existence of a discharge for grounds specified in 13 AAC 85.110(a)(2).

IV. Conclusion

The executive director proved that Trooper Bowen engaged in conduct that is grounds for discretionary revocation, because he was discharged for conduct that adversely affected his ability and fitness to act as a police officer, and that is detrimental to the reputation and integrity of the Alaska State Troopers. In light of the nature of the conduct, the public interest in effective enforcement of domestic violence laws, Trooper Bowen's poor judgment and lack of respect for the rights of a victim of domestic violence, his failure to identify and acknowledge the nature and magnitude of his misconduct, and the absence of a highly rated job performance, discretionary revocation is warranted. Trooper Bowen's police officer certificate is revoked upon adoption of this decision by the Alaska Police Standards Council, or if a final decision becomes effective pursuant to AS 44.64.070(f).

DATED April 12, 2011.

Signed

Andrew M. Hemenway
Administrative Law Judge

Adoption

The undersigned, on behalf of the Alaska Police Standards Council, adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 16th day of May, 2011.

By: Signed
Signature
Charles Kamai, Jr.
Name
Chair APSC
Title

[This document has been modified to conform to the technical standards for publication.]