

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU

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| JOSEPH HAZELAAR,<br><br><p style="text-align: center;">Appellant,</p> <p style="text-align: center;">v.</p> ALASKA POLICE STANDARDS<br>COUNCIL,<br><br><p style="text-align: center;">Appellee.</p> | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Case No. 1JU-14-883 CI |
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**DECISION ON APPEAL**

**I. INTRODUCTION**

Joseph Hazelaar appeals the decision of the Alaska Police Standards Council (“Council”), dated August 27, 2014, to the Superior Court pursuant to AS 44.62.560(a) and Alaska Appellate Procedure Rule 602(a)(1). Hazelaar’s points on appeal are as follows:

- 1) There is no substantial evidence to support the decision of the Agency. The decision is based on speculation and presumptions.
- 2) There is no reasonable basis to support the decision of the Agency, that the Appellant lacks the moral character to be a police officer.
- 3) There is no reasonable basis to support the decision of the Agency, that the Appellant was not trustworthy to be a police officer.

**II. BACKGROUND**

Administrative Law Judge (“ALJ”) Slotnick found the facts to be as follows:<sup>1</sup>

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<sup>1</sup> Excerpt of Record (“R.”) at 299-330. These facts are taken verbatim from ALJ Slotnick’s “Decision” dated April 10, 2014 and found at these pages in the Record. All citations to the Record in this Order are based on Hazelaar’s submission and pagination.

## **1. Hazelaar served as a Task Force Officer with DEA**

Joseph Hazelaar joined the Alaska State Troopers in 2000. Over the years, he achieved some renown regarding his ability to handle dogs for the K-9 unit, and in his ability to pursue drug interdiction. His supervisors and colleagues considered him a very hard worker who was single-minded and dedicated to working his cases.

In August 2007, Trooper Hazelaar was assigned to work as a Task Force Officer with the federal Drug Enforcement Administration (DEA). This meant that his job duties involved working drug cases under the jurisdiction of DEA. As an administrative matter, however, he was still an employee of the Alaska State Troopers. The Troopers paid his salary and his chain of command remained with the Troopers. On a day-to-day basis, the drug cases that he worked were run by the DEA, and he took orders from his DEA supervisors.

## **2. Hazelaar becomes the handler of confidential source T.Q.**

In 2008, a woman with the initials T.Q. contacted the DEA. She explained that her ex-boyfriend had beaten her up and stolen money from her. She wanted to provide information regarding his drug connections. The DEA determined that T.Q.'s information related to drug cases being worked by Inv. Hazelaar, and assigned him to be T.Q.'s handler. Inv. Hazelaar had never served as a handler before, and he received only on-the-job training on handling informants.

In handling T.Q. over the next year, Inv. Hazelaar frequently texted or talked with her on the telephone. She did not like to meet in person with law-enforcement personnel. In Inv. Hazelaar's opinion, T.Q. was a valuable but frustrating informant. He was working on what he called a "major organized crime multi-jurisdictional drug case," and she provided useful

information about some of the players. Inv. Hazelaar believed she had more information than she was giving. Yet, because she had never been charged with a crime, and was only a volunteer citizen informant, he had no leverage on her. At times, T.Q. would be difficult to reach. She worked at a phone kiosk and had many different phones, and Inv. Hazelaar would have to leave messages on a string of phones because he never knew which one was in play.

### **3. Administrative Investigation I: the allegation of sexual misconduct**

On August 21, 2009, a woman with the initials M.X. was arrested on a drug offense. In an attempt to act as a cooperating witness, M.X. volunteered information about alleged police misconduct. M.X. explained that she was T.Q.'s close friend, and that T.Q. had confided in her that T.Q. was having sexual relations with a law enforcement officer. This allegation was relayed to supervisory personnel at both DEA and the Troopers. Both entities began to investigate the allegation. The investigations focused on Inv. Hazelaar as the most likely law enforcement agent to have been involved with T.Q. The Troopers opened an administrative investigation of Inv. Hazelaar ("Administrative Investigation I"). The investigation was assigned to Sgt. Scott Johnson. On August 25, 2009, Alaska State Trooper Lt. Andrew Greenstreet orally instructed Inv. Hazelaar that Hazelaar was to have no further contact with T.Q. while the investigation was pending. Lt. Greenstreet followed up this order with an email.

Inv. Hazelaar testified that the no-contact order was very disruptive to his work. He stressed that he was working on a major organized-crime drug investigation, and that "every drug enforcement agency in Anchorage was working on that case" and that "agents in other states were waiting for me to take action." In his opinion, everything was put on pause as a result of the no-contact order.

#### **4. The events of September 3<sup>rd</sup>**

During this time, Inv. Hazelaar was not the only officer working on a major case involving T.Q. Earlier in the summer—before the no-contact order was put in place—T.Q. had been contacted by a notorious drug distributor named Wilber Daniel Meza, who asked T.Q. to distribute a kilogram of cocaine. Inv. Hazelaar’s colleague, Cpl. Eric Spitzer, who was also a Task Force Officer assigned to DEA, was working the case involving Mr. Meza. Cpl. Spitzer and his colleagues on the Meza case immediately began working on setting up a sting involving T.Q. and Mr. Meza. T.Q. preferred to communicate with Inv. Hazelaar, so even though he was not working on the Meza case, he would sometimes facilitate communication. T.Q. met Meza at two monitored meetings in Anchorage restaurants. At one of these meetings, Mr. Meza was accompanied by another gentleman whom Cpl. Spitzer referred to as “Frank the Soldier.” After the meeting, Mr. Meza demanded to be taken to T.Q.’s house, with the implied threat of “now I know where you live.” T.Q. took Mr. Meza to her [no name]’s house. She went inside and returned with a glass of water, to demonstrate that she lived in the home.

At the time the no-contact order was issued—August 25<sup>th</sup>—Cpl. Spitzer and his fellow agents were still working out the details on how the cocaine was going to be transferred to T.Q. They were expecting it to be a “dead drop” (meaning without contact between Meza and T.Q.) in a warehouse at some time in the future. Although the no-contact order issued by the Troopers applied only to Inv. Hazelaar, the DEA had ordered all officers involved in Anchorage drug cases to cease contact with T.Q. while the investigation was pending. This meant that Cpl. Spitzer also had to stop contact with T.Q., even though she now had a pivotal role in the Meza case.

At 3:58 p.m. on September 3, 2009, Cpl. Spitzer was at DEA's office when he received a phone call from T.Q. The call came in on a number that he did not recognize, so he answered it. Cpl. Spitzer testified that T.Q. first asked him where Joseph [Hazelaar] was and why he was not returning her calls. Cpl. Spitzer told T.Q. that Joseph was on vacation. She then informed him that she had run into Meza that day, Meza had been subsequently calling her, and he was coming to her house with Frank the Soldier, and that he had "work" for her—meaning cocaine.

This was a startling event for Cpl. Spitzer—so startling that he compared it to 9/11. And testified that he remembers exactly where he was when he received the call. A flurry of events occurred, including his trying to get permission to contact her, his receiving instructions that the drop should not take place that night if it was possible to avoid it, and his working to put a surveillance team in place in case the drop did occur. After he received permission to contact T.Q., and had devised an exit strategy so that T.Q. could give Meza a story for why the drop could not occur that night, Cpl. Spitzer called T.Q. back. She said that she wanted to talk with Joseph. Cpl. Spitzer's DEA supervisor then authorized Cpl. Spitzer to call Inv. Hazelaar and authorize Inv. Hazelaar to contact T.Q.

At 6:14 p.m., Cpl. Spitzer called Inv. Hazelaar and left a message. Inv. Hazelaar was coaching his son's football game. He returned Cpl. Spitzer's call at 6:17, and they spoke for 14 minutes. Inv. Hazelaar's phone tolls show that Inv. Hazelaar called Cpl. Spitzer again at 6:44 for one minute (likely a voice message or no call) and then again at 6:57 for four minutes. No other voice calls were made by Inv. Hazelaar from his work cell phone during this interval. According to Cpl. Spitzer, Inv. Hazelaar said that he had tried to contact T.Q. by text messages and by phone.

At 6:56, T.Q. sent the following text message to both Inv. Hazelaar and Cpl. Spitzer:

Joseph n eric- obviously I feel very betrayed by the both u-wen I decided 2 work wit D.E.A. “voluntarily” by providing accurate information 2 help u both no matter whom it was from, joseph . . . u always assured me about safety as well as my family dats y I’ve come to trust work’n wit u within time I’ve always said I DO NOT feel comfortable work’n wit any 1 else-u assured about work’n wit eric- so I pursued wit da ‘daniel’ situat’n. I’ve tried 2 make contact wit u bcuz I am in fear 4 da safety of me n my family afr I’ve shown dis man where my family resides n I’ve gotten no return call n I feel dat all eric is worried about is getn a recording – this isn’t rite to me n “U BOTH” have made me feel dat people have always been rite wen dey say “D.E.A.” only works 4 themselves n will screw people over after dey get da informat’n dey need!

Cpl. Spitzer replied to this message, asking T.Q. to contact him again. He did not hear back from her. Later that evening, DEA shut the operation down.

Although Inv. Hazelaar has laps in his memory, he remembered some of the events of September 3<sup>rd</sup>. He testified that he remembered receiving messages about T.Q. at a football game at Bartlett High School. He remembered receiving text messages, the first of which was from T.Q. herself, about the situation with Meza. He remembered that T.Q. was concerned for her safety. He specifically remembered that T.Q. was sending a message or messages from the basement of a house, locked in a bathroom, while Mr. Meza was also in the house. He could not say for certain whether he learned about T.Q. being locked in a bathroom from T.Q. herself, through a text message, phone call, or voicemail, or whether he learned it from someone else, such as Cpl. Spitzer. Cpl. Spitzer testified at the hearing that he did not remember hearing from T.Q. while she was locked in a bathroom in the basement of a house, and his memorandum and earlier testimony do not mention any such detail.

Inv. Hazelaar testified that after he first heard from T.Q. about the situation, he was very agitated and concerned for her safety. He recalled pacing in a gravel parking lot. He recalled

that he called the DEA from the parking lot, and spoke to at least two DEA agents, Todd Jones and Marc Schmidt, and possibly Cpl. Spitzer as well, on speakerphone. He has a very vivid memory of telling these agents that someone needs to contact T.Q. and if they did not do it he would. He recalled that they told him that whatever he did, he should not contact her.

**5. Texts from Inv. Hazelaar to T.Q. from September 4<sup>th</sup> through September 8<sup>th</sup>**

Although T.Q. had many phones, only one phone was recovered from her and subjected to forensic analysis: 907-999-XXXX. The forensic analysis of this phone does not show any relevant text traffic on September 3<sup>rd</sup>. From September 4-8, 2009, however, the following text traffic occurred between 907-XXX-XXXX and Inv. Hazelaar’s work-issued cell phone (907-XXX-XXXX):

| Date           | Type     | Text  |
|----------------|----------|---|
| 9/4, 8:48 a.m. | Incoming | Give me a call  |
| 9/4, 9:35 a.m. | Incoming | I am waiting 2 talk 2 u on other phone but only have 30 min left before I will be around others. Please call. |
| 9/8, 8:22 a.m. | Incoming | Give me a call on other line  |
| 9/8, 9:38 a.m. | Incoming | Can u call me on other line?  |
| 9/8, 1:37 p.m. | Incoming | Can u call me on other line?  |

At the hearing, Inv. Hazelaar contested the dates of these texts, arguing that the date of an incoming text reflects when the phone was powered up, not when the text was sent. The forensic analysis indicates that the last text before the first September 4<sup>th</sup> Hazelaar text was dated August 22, 2009, so it is possible that the first September 4<sup>th</sup> Hazelaar text may have been sent before the August 25<sup>th</sup> no-contact order. The second September 4<sup>th</sup> text came 47 minutes after the first, so it is unlikely that this text was sent before August 25<sup>th</sup>. The texts

received on September 8<sup>th</sup> were sent after noon on September 7<sup>th</sup> because the telephone was powered up at noon on September 7<sup>th</sup> when a text from an unrelated number was received.

## **6. Contact with T.Q. on September 9<sup>th</sup>**

On September 9, 2009, Sgt. Johnson was trying to finish up his investigation of the alleged sexual misconduct involving T.Q. He needed to interview T.Q. herself, but she did not respond to his attempts to contact her. He asked Inv. Hazelaar to see if he could arrange for the interview. At 5:29 p.m., Inv. Hazelaar sent the following text message to T.Q.: "Can u please call me i just got back from vacation and got ur text." At 5:33, T.Q. called Inv. Hazelaar back (from a different telephone). Without T.Q.'s knowledge, Hazelaar put her on speakerphone so that Sgt. Johnson and Senior Inspector Bruce Balzano of DEA could hear the conversation. The arrangements for the meeting were made. Shortly thereafter, all three met with T.Q., and Sgt. Johnson and S.I. Balzano interviewed T.Q. that evening while Inv. Hazelaar looked after T.Q.'s child. In the interview, T.Q. denied that she and Inv. Hazelaar had a sexual relationship.

## **7. The September 10<sup>th</sup> interview of Hazelaar**

Sgt. Johnson and S.I. Balzano interview Inv. Hazelaar on September 10, 2009, at 9:25 a.m. At the beginning of the interview, after putting Inv. Hazelaar on notice that this interview was part of an official investigation involving his fitness for duty, Sgt. Johnson asked the following question:

Okay. Okay. And I'm just gonna get started here. Um, obviously, you know what the complaint is that – that I'm looking into. Uh, since being ordered to do so by Lieutenant (Greenstreet), uh, when he served you with that – the notice of administrative investigation, uh, where he ordered you not to have any contact with the, uh, and you guys call them CS's. I'll try to call them CS's. I call them CI's, confidential informant. Um, have you had any contact with the CS by any means other than yesterday when, uh, Bruce and I had you text or call her to, uh, to talk to her.



Inv. Hazelaar's response to this question was "No." He did not elaborate or explain, and neither Sgt. Johnson nor S.I. Balzano inquired further about contact with T.Q. The interview then continued for quite some time, but was focused on other subjects, including the alleged sexual misconduct, and other issues involving T.Q.

Based on his investigation, Sgt. Johnson determined that no basis existed for the accusations of sexual misconduct or other misconduct by Inv. Hazelaar involving T.Q. About one hour after the interview, two high-ranking officials met with Inv. Hazelaar. They informed him of the conclusion that the accusations were unfounded and that the investigation would be closed. Sgt. Johnson completed his report on Nov. 13, 2009. Not long after the investigation closed, Inv. Hazelaar ceased being a Task Force Officer with the DEA, and was reassigned to other work in the Trooper organization.

#### **8. The federal investigation continues: the July 14, 2010 taped conversation**

Although the Troopers had closed their investigation, the DEA continued its investigation of whether Inv. Hazelaar had a sexual relationship with T.Q. In July 2010, T.Q. recanted her earlier denial of the relationship, and told M.X.'s attorney, Rex Butler, that she did have sexual relations with Inv. Hazelaar. Mr. Butler informed the DEA. T.Q. submitted to an interview and a polygraph with federal authorities. In the interview, she provided details of the alleged sexual relationship. The polygraph was evaluated as not deceptive to the relevant questions.

On July 14, 2010, DEA authorities had T.Q. place a recorded call to Inv. Hazelaar. The purpose of the call was to try to induce Inv. Hazelaar into admitting the illicit relationship. Inv. Hazelaar did not know that the call was being recorded and he did not know that T.Q. had

changed her story or already taken a polygraph. In the call, T.Q. told Inv. Hazelaar that a federal official had left a message on her answering machine telling her that she must either go before a grand jury or take a polygraph. She said that “I mean obviously the allegation is about when I, you know, being intimate or whatever the case is.” During the course of the recording, which lasted about 38 minutes over two calls, she mentioned seven times that she had lied to federal officials, including statements that “obviously I lied to them about that situation” and then later “obviously like I lied to DEA in the situation with us.” Inv. Hazelaar did not ask her what she had lied about or question her assertion that she had lied.

Inv. Hazelaar understood that the issue T.Q. was concerned about was their relationship and he seemed to accept her assertion that he knew the truth:

MR. HAZELAAR: All they’re trying to find out is whether or not you had a relationship or not. That’s it.

[T.Q.]: I know, but that’s the thing, though.

MR. HAZELAAR: There’s no law—there’s no law—

[T.Q.]: Okay, but that’s the thing is that you and I know the truth, and we know what happened, but that’s the thing is that like if they give me a polygraph—that’s my main concern because I already –

MR. HAZELAAR: Why do you have to take a polygraph?

[S.P.]: Because I don’t want to get subpoenaed to a Grand Jury.

MR. HAZELAAR: You’re not going to get subpoenaed to a Grand Jury.

Early in the call, Inv. Hazelaar told T.Q. that she could tell them whatever she wanted to tell them. He also said “I don’t want to persuade you one way or another.” He suggested that the Grand Jury threat was likely a bluff, and told her “you don’t even have to call him back” and that she could say “I don’t want anything to do with you anymore. Stop calling.” He assured her that there was nothing to worry about. Later in the conversation, when T.Q. was continuing to express concern that there might be charges coming to her, Inv. Hazelaar said “Okay. So go – go tell everybody. Tell anybody you

want to – tell the truth about everything. It doesn't bother me one bit. All right. There is nothing – you can go – go call the guy back and say hey I'll take a polygraph. Call the guy back and tell him say you want to change your story up and tell him something different.” After giving that advice, however, he then advised that if someone left him a voicemail asking him to take a polygraph, “[w]hat I would probably do is I probably wouldn't respond to it.”

When T.Q. said “I have lied and I have covered up,” Mr. Hazelaar responded “what would they know?” and “[e]verything else out there is backing you up. My statements back you up.” He also repeated, however, that “I haven't done – anything that neither one of us have done wrong. There is nothing out there okay.” And “[t]here's nothing wrong or inappropriate. There is nothing out there.”

Following this call, Inv. Hazelaar called Sgt. Johnson and told him that T.Q. had called out of the blue. He asked Sgt. Johnson whether the investigation was still open. He told Sgt. Johnson that T.Q. disclosed that she was being pressured to testify and that he told her to tell the truth.

#### **9. Administrative Investigation II: Hazelaar takes and passes a polygraph**

Shortly after the July 14, 2010, call from T.Q., S.I. Balzano called Inv. Hazelaar and told him that the federal investigation was ongoing. S.I. Balzano asked Inv. Hazelaar to take a polygraph. Inv. Hazelaar was willing to do so at first, but after he learned that the DEA was investigating whether he had committed a federal crime by lying to a federal investigator, he approached Capt. Mallard. Capt. Mallard arranged for Inv. Hazelaar to take a state polygraph instead. He opened a second administrative investigation and assigned Sgt. Johnson to

investigate. Inv. Hazelaar took the state polygraph and was asked whether he had sexual contact with T.Q. and whether he was untruthful in this investigation. The polygraphist who administered the polygraph determined that his answers were consistent with a person not attempting deception. Federal authorities did not cooperate with Sgt. Johnson regarding the information that they were relying on in their investigation. Despite repeated attempts, he was not able to re-interview T.Q. On October 6, 2010, Sgt. Johnson closed Administrative Investigation II with findings that the concerns raised regarding Inv. Hazelaar's truthfulness and conduct were unfounded. That month, Inv. Hazelaar was promoted to Corporal.

#### **10. Administrative Investigation III: the Inv. Brown interview**

On January 19, 2011, Lt. Greenstreet received a summary of the federal investigation. That investigation concluded that Inv. Hazelaar was untruthful during the investigation and that he violated a direct order from his supervisor to not have contact with T.Q. Lt. Greenstreet requested that the Troopers open a third administrative investigation of Inv. Hazelaar. This investigation was assigned to Inv. Jeff Brown.

On February 15, 2011, Inv. Brown interviewed Cpl. Hazelaar. In the interview, Cpl. Hazelaar admitted that he had contact with T.Q. after the date of the no-contact order, but first said that he had no idea whether the conversations were before or after the administrative investigations were closed. When asked specifically about contact in the time period shortly after receiving the no-contact order, Cpl. Hazelaar first replied "I can only assume yes." Later, as he started to recall more about the crisis involving Meza, he confirmed that "she was calling, uh, saying uh, hey uh, you know, I'm scared for my life uh, you know, where are you, so on and so forth." He explained about the call to the DEA officials in which he advised "if you

guys don't talk to her, I'm going to talk to her," to which they responded, "Joseph, whatever you do, don't uh, talk to her." When Inv. Brown asked whether he continued to have the contact after that point, Cpl. Hazelaar responded affirmatively.

Inv. Brown had earlier asked Cpl. Hazelaar about why he had the contact, and Cpl. Hazelaar had explained about his concern for T.Q.'s safety and about his frustration with what he considered an unfair investigation of him. Then, when Inv. Brown asked why Cpl. Hazelaar continued to have contact after the DEA officials had reiterated the no-contact order, Cpl. Hazelaar said, "I'll take that on the chin I guess." When asked about his "no" answer to Sgt. Johnson's question about contact with T.Q. after the no-contact order, Cpl. Hazelaar said, "it looks completely bad as far as if I did make those statements versus what I'm saying right now and I have no excuse for that but uh, uh, it is not – that was never my intent at all."

When asked about the September 8, 2009, text messages in which he asked T.Q. to call him, Cpl. Hazelaar said "okay," asked whether Inv. Brown had any of T.Q.'s texts to him, then said "I apologize, I apologize" then "fair enough, fair enough," and then admitted, "I violated uh, uh, the order." Cpl. Hazelaar did not tell Inv. Brown that he had been authorized by Todd Jones through Cpl. Spitzer to contact T.Q. on the night of September 3<sup>rd</sup>.

Later in the interview, Inv. Brown, turned to the subject of the July 14, 2010, call with T.Q. When Inv. Brown first asked Cpl. Hazelaar about the call, Cpl. Hazelaar still did not know that the call had been recorded. He said that as he remembered it, his concern during the call was that he thought the person who left a voice message on T.Q.'s telephone might have been an attorney for one of the drug dealers, and that it was a trick to determine whether T.Q. was a snitch. Inv. Brown then told Cpl. Hazelaar that the call had been recorded, and played

the recording. After hearing the recording, Cpl. Hazelaar expressed anger, frustration, and embarrassment. He characterized his responses during the recording as “piss poor” and “completely unprofessional.” He wondered whether he might have been multitasking during the conversation and noted that T.Q. never came out and asked a direct question like “what do you want me to tell them about me and you having sex?” He continued to adamantly deny that he had a sexual relationship with T.Q.

After the interview ended, Cpl. Hazelaar was told by Captain Mallard that he was not being investigated for sexual misconduct—he was being investigated for untruthfulness. He requested a follow-up interview with Inv. Brown, which Inv. Brown granted. Cpl. Hazelaar stated that he wanted to put on the record that “nowhere in there did I intentionally or knowingly, uh you know, deceive, uh anybody.” He said that it was embarrassing, and acknowledged that Inv. Brown had made a good point about “how could [I] have – not have known?” He confirmed that he had contact with T.Q., but emphasized that he did not lie, did not try to thwart the investigation, and did not deliberately disobey an order. He was not able to offer an explanation for his conduct other than to say “it never came into my, uh, my brain.”

On March 16, 2011, Inv. Brown issued his report and findings. He sustained all of the allegations against Cpl. Hazelaar, finding violations of professional standards relating to truthfulness and conformance to the law, insubordination, failure to comply with directions, professional standards of behavior, unbecoming conduct, personal conduct, and violation of rules. Based on this report, Capt. Mallard terminated Cpl. Hazelaar effective April 11, 2011.

## **11. Administrative Investigation IV: the reinstatement of Cpl. Hazelaar**

Cpl. Hazelaar contested his dismissal, and requested arbitration. As Human Resources officials were preparing for arbitration, they became aware of the fact that Cpl. Hazelaar had been given permission to contact T.Q. on the evening of September 3, 2009. Col. Mallard testified that this evidence was significant to him, and he requested an additional administrative investigation in order to determine whether Inv. Brown's findings were valid. At Col. Mallard's request, Inv. Brown's supervisor, Angella Long, opened an additional administrative investigation. After interviewing Cpl. Hazelaar and reviewing the record, Inv. Long finished a draft of her report on March 4, 2013. It concluded that "[a]fter reviewing the case, I have found no reason to revise the Statement of Findings issued on March 16, 2011 [by Inv. Brown]."

After completing his own review, however, Col. Mallard concluded that Cpl. Hazelaar had not committed the violations that were described in Inv. Brown's report. On March 28, 2013, Col. Mallard drafted a memorandum superseding Inv. Brown's findings. Col. Mallard found that the charge of insubordination/failure to comply with direction was mitigated because "he was following the direction provided by him by his DEA Group Supervisor." He found that Inv. Brown's conclusion that Cpl. Hazelaar was untruthful in his "no" answer to Sgt. Johnson's question about contact with T.Q. was "inaccurate." Col. Mallard based this conclusion in part on the fact that Cpl. Hazelaar had given only a one-word answer, "no." He also found that the question asked about completed contact, not attempted contact, and therefore the fact that Cpl. Hazelaar had sent text messages to which no responses were received did not make the "no" answer untruthful. Finally, Col. Mallard found that Cpl. Hazelaar had not committed the violations of the rules or standards of professional behavior

that had been found by Inv. Brown. He stated that he had known in April 2011 what he knew in March 2013, he would not have terminated Cpl. Hazelaar. Based on Col. Mallard's decision, the Division of Personnel reinstated Cpl. Hazelaar to his position as a Trooper.

## **12. The Alaska Police Standards Council process**

After learning that Cpl. Hazelaar had been terminated, and that the termination was for reasons relating to Cpl. Hazelaar's moral character, the Executive Director began to investigate whether to revoke Cpl. Hazelaar's certificate. After Cpl. Hazelaar was reinstated, the investigations focused on his acts, not his termination. The final accusation in this matter alleged that Cpl. Hazelaar had committed acts that demonstrated that he did not have good moral character. The alleged acts included his

- answer of "no" to Sgt. Johnson's question of whether had [sic] contact with T.Q. after the August 25, 2009, no-contact order;
- responses to T.Q.'s admissions and concerns made during the taped telephone call of July 14, 2012;
- characterization of his advice to T.Q. during that July 14<sup>th</sup> call, as made to Sgt. Johnson later that day; and
- statements to investigators in interviews.

The accusation alleged that under these facts, Cpl. Hazelaar "is not of good moral character and is dishonest." The accusation concluded that the Council should exercise its discretion under 13 AAC 85.110(a)(3) to revoke the certificate for a police officer who does not meet the minimum standard of good moral character under 13 AAC 85.010(a).



A five-day in-person hearing was held before the Office of Administrative Hearings over July 16-17, November 26-27, and December 20, 2013, in Anchorage and Juneau. Closing arguments were heard on February 26, 2014. Cpl. Hazelaar was represented by Stephen F. Sorensen and Megan Carmichael. The Executive Director was represented by Assistant Attorney General Susan McLean.<sup>2</sup>

ALJ Slotnick authored a thirty-two page advisory decision, setting out his reasons for the recommendation that the Council exercise its discretion and not revoke Hazelaar's certificate. ALJ Slotnick summarized his decision in the following manner:

The Executive Director of the Alaska Police Standards Council filed an accusation alleging that Alaska State Trooper Corporal Joseph Hazelaar had committed acts that showed he was not of good moral character. The Executive Director asked that the Council exercise its discretion to revoke Cpl. Hazelaar's police certificate.

The Executive Director proved that Cpl. Hazelaar committed acts that give rise to substantial doubt about his honesty. These include giving an incorrect answer during an official investigation, an implicit approval of false testimony, a misleading characterization of advice given to a confidential informant, and a disowning of his own statements and characterization of himself as a person who is not truthful. *Taken as a whole, the facts raise substantial doubt about Cpl. Hazelaar's honesty and prove that he lacks good moral character* [emphasis added].

*The evidence does not establish, however, that the Council should exercise its discretion to revoke Cpl. Hazelaar's certificate* [emphasis added]. His incorrect answer may have been an inadvertent error rather than a deliberate attempt to deceive. The evidence that raised doubt about his honesty included a recorded call with a confidential informant, which normally would not be relied on as the basis for revocation. In addition, Cpl. Hazelaar's lack of good moral character may be limited to a unique set circumstances [sic] related to highly unusual, stressful, and

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<sup>2</sup> End of fact section taken from ALJ Slotnick's "Decision" dated April 10, 2014 and found at R. at 299-330.

personal events. His other police work has been excellent. Accordingly, the Council will allow him to retain his certificate.<sup>3</sup>

Subsequently, on April 27, 2014, Special Counsel for the Executive Director issued a document titled Executive Director's Proposal for Action, describing Counsel's conclusion that the Council should revise ALJ's proposed enforcement action by rejecting ALJ Slotnick's interpretation of 13 AAC 110(a)(3) and revoke Hazelaar's police certificate in light of ALJ Slotnick's factual findings.

On August 27, 2014, the Council decided to vote against the ALJ's recommendation and revoke Hazelaar's police certificate in agreeance with the Executive Director's Proposal for Action.<sup>4</sup> The Council determined that Hazelaar's certificate should be revoked under 13 AAC 85.110 because he had been dishonest and found unfit to serve as a police officer. Hazelaar had been employed as an Alaska State corporal and stationed at the Alaska Public Safety Academy in Sitka, as an instructor. Under 13 AAC 85.020, Appellant is unable to work in Alaska as a police officer without a Council certificate. This resulted in the Alaska State Troopers having to terminate Hazelaar for a second time.<sup>5</sup>

The Council issued its Order Adopting the Executive Director's Proposal for Action and the Recommended Decision as Revised by this Order, and Revoking Cpl. Hazelaar's Police Certificate on August 27, 2014.<sup>6</sup> The Council wrote that it:

- 1) adopts the factual findings in the recommended decision;

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<sup>3</sup> R. at 299.

<sup>4</sup> R. at 297-98.

<sup>5</sup> The Troopers had once terminated Hazelaar during the course of this investigation, and subsequently reinstated him.

<sup>6</sup> R. 297-98.

- 2) adopts the conclusion that Mr. Hazelaar is lacking good moral character for the reasons expressed in the Executive Director's Proposal for Action and in the recommended decision as revised by this order;
- 3) revises the recommended decision by
  - a. adopting the Executive Director's Proposal for Action;
  - b. rejecting the *Much* analysis that a temporary lack of moral character is acceptable. This council has never held that view and was in error to ever suggesting [sic] otherwise. This council believes that one either has a good moral character or one does not have good moral character.
  - c. The council also rejects the inference that Mr. Hazelaar's dishonest conduct was temporary, limited to one set of circumstances, or otherwise excusable.
  - d. The council concludes from the facts that Mr. Hazelaar cannot be trusted to be truthful in the future.

Pursuant to AS 44.62.560(a) and Alaska Appellate Procedure Rule 602(a)(1), Hazelaar now appeals to the Superior Court the decision of the Council, revoking his certificate. Oral argument took place on November 2, 2015 in front of the Honorable Louis James Menendez. Both parties appeared, represented by counsel, and the Court took the matter under advisement.

### **III. STANDARD OF REVIEW**

Courts review findings of fact in appeals of administrative decisions under the 'substantial evidence' test.<sup>7</sup> Substantial evidence is 'in light of the record as a whole, ... such

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<sup>7</sup> *State, Dep't of Commerce, Cmty. & Econ. Dev., Div. of Corporations, Bus. & Prof'l Licensing v. Wold*, 278 P.3d 266, 281 (Alaska 2012), reh'g denied (June 18, 2012), citing *Wendte v. State, Bd. of Real Estate Appraisers*, 70 P.3d 1089, 1091 (Alaska 2003).

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>8</sup>

“In determining whether evidence is substantial, ... we must take into account whatever in the record fairly detracts from its weight.”<sup>9</sup>

“An agency's interpretation of its own regulation presents a question of law.”<sup>10</sup> “Where an agency interprets its own regulation ... a deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue.”<sup>11</sup> In addition, in *Williams v. Abood*, the Supreme Court held that:

In questions of law involving the agency's expertise, the rational basis standard will be applied and the agency's determination will be deferred to so long as it is reasonable. The rational basis standard is applied where the agency's expertise is involved or where the agency has made a fundamental policy decision. We will substitute our own judgment for questions of law that do not involve agency expertise “or where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute.” We will “adopt the rule of law that is most persuasive in light of precedent, reason, and policy.”<sup>12</sup>

#### IV. DISCUSSION

13 AAC 85.110(a)(3) allows the Council to discretionarily revoke a certificate upon a finding that the holder of the certificate “does not meet the standards in 13 AAC 85.010(a) or (b).” Under 13 AAC 85.010(a)(3), “A participating police department may not hire a person as a police officer unless the person . . . is of good moral character.”

Appellant contends that there is no substantial evidence that his conduct demonstrates a lack of good moral character and there is no reasonable basis to support the revocation of

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<sup>8</sup> *Id.*, citing *Lewis–Walunga v. Municipality of Anchorage*, 249 P.3d 1063, 1069 (Alaska 2011).

<sup>9</sup> *Id.*, citing *Lopez v. Adm'r, Pub. Emps. Ret. Sys.*, 20 P.3d 568, 570 (Alaska 2001).

<sup>10</sup> *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982).

<sup>11</sup> *Usibelli Coal Mine, Inc. v. State, Dep't of Natural Res.*, 921 P.2d 1134, 1147 (Alaska 1996), citing *Rose*, 647 P.2d at 161 (Alaska 1982).

<sup>12</sup> *Williams v. Abood*, 53 P.3d 134, 139 (Alaska 2002) [internal citations omitted].

Hazelaar’s certificate under 13 AAC 85.110(a)(3) for lack of good moral character. As such, Appellant asks this court to overturn Council’s decision to revoke his police certificate.

Appellant begins his briefing by writing that “it is clear that our Alaska Supreme Court has not addressed the issue of a police officer having his certificated revoked by the Alaska Police Standards Council, however, there is guidance from other states, which provides insight into what grounds should be used to revoke a police officer certificate.” However, a recent 2015 Alaska Supreme Court case, issued several months before Appellant filed his Amended Brief, dealt with this very subject—Council revocation of a certificate for a finding of lack of moral character. *Alaska Police Standards Council v. Parcell*,<sup>13</sup> discussed the Council’s authority and the standard of review a superior court, sitting at the intermediate level, must use in reviewing the Council’s decision.

Noting the ‘primary public interest that applicants meet minimum standards for employment as police officers’ the legislature created the Alaska Police Standards Council. The Council may ‘establish minimum standards for employment as a police officer’ and the Council may establish mandatory qualifications for police officers ‘including minimum age, education, physical and mental standards, *moral character*, and experience.’ If an applicant satisfies the Council’s mandatory qualifications, then ‘[t]he [C]ouncil shall issue a certificate evidencing satisfaction of the requirement.’ But if a police officer fails to continue to satisfy the Council’s standards, the Council may revoke the officer’s certificate.<sup>14</sup>

As part of its powers, the Council may, in its discretion, revoke an officer’s certificate if the officer is not “of good moral character.”<sup>15</sup> In its regulations the Council has defined good moral character as:

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

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<sup>13</sup> 348 P.3d 882.

<sup>14</sup> *Parcell*, 348 P.3d at 886-87.

<sup>15</sup> *See* 13 AAC 85.110(a)(3).

rights of others and for the laws of this state and the United States; for purposes of this standard, a determination of lack of ‘good moral character’ may be based upon all aspects of a person’s character. . . .<sup>16</sup>

“Substitution of judgment is not the proper standard of review in this case.”<sup>17</sup> The Council’s revocation decision based on lack of good moral character is a policy determination involving agency expertise, reviewed for reasonable basis.<sup>18</sup> The Court must defer to the Council’s reasonable interpretation and application of its regulations.<sup>19</sup>

Appellant contends that 1) there is no substantial evidence to support the decision of the Council; 2) there is no reasonable basis to support the decision of the Council, that the Appellant lacks the moral character to be a police officer; and 3) that there is no reasonable basis to support the decision of the Council, that the Appellant was not trustworthy to be a police officer. However, Appellant also implicitly contends that the Court must independently evaluate all of the evidence presented in the Record, and use an independent judgment standard and reverse the decision of the Council. Further, Appellant argues that even if this Court finds that he was less than truthful in discrete instances, that there is no reasonable basis to revoke his certificate because there is no broad-brush requirement of absolute honesty for police officers.

The Court, in its review of the agency record, however, *must* give great deference to the agency decision and affirm the decision if it is supported by a reasonable basis. Under the substantial evidence standard, the Court does not reweigh conflicting evidence, but instead views it in favor of the agency’s findings, even if the court might have taken a contrary view

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<sup>16</sup> 13 AAC 85.900(7).

<sup>17</sup> *Parcell*, 348 P.3d at 888.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

of the facts.<sup>20</sup> In reliance of this standard, Appellee points to the *Parcell* decision, cited above, to support its argument that a “revocation decision based on the determination that [the officer] lacked good moral character [is] a policy determination involving agency expertise, properly reviewed for a rational or reasonable basis.”<sup>21</sup> Because the Council’s decision is entitled to great deference, in order to prevail Hazelaar must show that the Council’s conclusion to revoke his certificate was so clearly unfounded that it lacked any reasonable basis. Appellee contends that Hazelaar’s arguments can only fairly be summarized as a plea to this Court to substitute its judgment about whether his conduct was bad enough to warrant revocation of his certificate. The *Parcell* Court definitively closed the door on this argument by Hazelaar.

In support of his case, Appellant points to several pieces of evidence in the Record which are demonstrative of his good moral character. Hazelaar takes issue with the fact that these good traits were not referenced nor discussed in the Council’s final decision. This matter was contemplated and discussed by ALJ Slotnick, however, who found that Hazelaar’s evidence of good moral character outweighed the evidence of any lack of moral character, supporting his recommendation for not revoking Hazelaar’s certificate. Seven witnesses who had extensive working and social relationships with Appellant testified to his good moral character, stating they had no doubts about Hazelaar’s honesty, fairness, or respect for the rights of others.<sup>22</sup> Nevertheless, the Court’s job at this phase is not to reweigh conflicting evidence.

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<sup>20</sup> *Suydam v. State, Commerical Fisheries Entry Comm’n*, 957 P.2d 318. 323 (Alaska 1998).

<sup>21</sup> *Parcell*, 348 P.3d at 888.

<sup>22</sup> Keith Mallard, Tony Henry, Aaron Meyer, and Eric Spitzer all testified on Hazelaar’s behalf, while three further witnesses, Rikk Rambo, James Lewis, and Matthew Heieren, submitted affidavits containing similar statements as to Hazelaar’s good moral character.

There is substantial evidence in the Record to support a finding that Hazelaar was untruthful during the numerous investigations conducted by the Alaska State Troopers and the DEA. First, the ALJ and the Council found that Hazelaar gave the incorrect answer of “no” in response to questioning about contact with T.Q. following a no-contact order during an official investigation. Second, Hazelaar “implicitly approv[ed] T.Q.’s dishonesty to federal officers.” Third, Hazelaar mischaracterized his conversation with T.Q. to a commanding officer. And fourth, Hazelaar disowned prior statements and continuously gave inconsistent statements to investigators and during the administrative hearing. While ALJ Slotnick’s final recommendation was that Hazelaar retain his certificate, even ALJ Slotnick found that Hazelaar was untruthful at these points in time, stating that “[t]aken as a whole, the facts raise substantial doubt about Cpl. Hazelaar’s honesty and prove that he lacks good moral character.”<sup>23</sup>

Upon review of the Record, briefing, and oral argument, this Court finds that substantial evidence exists to support all of these factual findings. For instance, while Hazelaar answered “no” in his interview with Sgt. Johnson when asked whether he had had “any contact with [T.Q.] by any means” since the no-contact order of August 25 had gone into effect,<sup>24</sup> a forensic analysis of T.Q.’s phone showed that Hazelaar sent numerous messages to T.Q. between the dates of September 4 and September 8.<sup>25</sup> Furthermore, Hazelaar admitted to Inv. Brown that “there was plenty of conversations I had with her, not in a malicious way uh, never once um, was I thwarting anything having

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<sup>23</sup> R. at 299.

<sup>24</sup> R. at 815.

<sup>25</sup> R. at 777.



to do with uh, my investigation,”<sup>26</sup> “I guess yes I did have conversations with her but I guess that’s the moral of the story is never once was it in a malicious way ever”<sup>27</sup> and “it looks completely bad as far as if I did make those statements versus what I’m saying right now and I have no excuse for that but uh, uh, it is not—that was never my intent at all.”<sup>28</sup> Finally, in a follow-up interview, when Brown asked, “you knew the fact that you had contact after being ordered not to do so, is that correct?” to which Hazelaar responded “Yes. Yes.”<sup>29</sup>

Given the finding that there was substantial evidence in the Record to support a finding that Hazelaar was dishonest on multiple occasions and during official investigations, this Court also finds there is a reasonable basis for the Council’s decision to revoke his police certificate.

Reversing the superior court’s decision to reinstate an officer’s certificate, the *Parcell* Court found that the Court is to “defer to the Council’s reasonable interpretation and application of its regulations,” including the fact that a “revocation decision based on the determination that [an officer] lack[s] good moral character [is] a policy determination involving agency expertise, properly reviewed for a rational or reasonable basis.”<sup>30</sup>

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<sup>26</sup> R. at 1106.

<sup>27</sup> R. at 1107.

<sup>28</sup> R. at 1113.

<sup>29</sup> R. at 1382.

<sup>30</sup> *Parcell*, 348 P.3d at 888.

Appellant cites to an Alaskan case, *State v. Public Safety Employees Association* (“PSEA”),<sup>31</sup> for the proposition that the Council does not have an explicit, well-defined and dominant public policy that requires police officers to be completely honest.

In light of our adoption of the “explicit, well-defined, and dominant” public policy exception to the enforcement of arbitration awards, we now affirm the superior court. We hold that the State has failed to carry its burden of showing the existence of an explicit, well-defined, and dominant public policy against enforcing the arbitrator's award in this case. While Alaska's laws are *explicit* in favoring an honest police force, they are not explicit in requiring a policy of absolute zero tolerance toward any dishonesty by law enforcement officials, no matter how minor. Nor are Alaska's laws *well-defined* in specifying where, precisely, to draw the line between categorically unacceptable dishonesty and dishonesty that does not require termination. To the extent that Alaska's laws would permit the termination of a police officer for relatively minor acts of dishonesty, this policy is not *dominant*, . . .<sup>32</sup>

Furthermore, Hazelaar asserts that “other than honesty, there was no evidence that raised any substantial doubts about Hazelaar’s good moral character.” However, Appellee is correct that the Council reasonably concluded, consistent with its most recent precedent, that dishonesty alone is sufficient to establish a lack of “good moral character” under its regulations. As Appellee notes, in *PSEA 2014*,<sup>33</sup> the Alaska Supreme Court commented that the trooper from *PSEA 2011*<sup>34</sup> who lied to his superiors about misusing a motorcycle, observing that “[t]he officer’s lying would almost certainly cause a reasonable person to have substantial doubt about the officer’s honesty.”<sup>35</sup> “Lying—even temporarily—to cover up one’s misbehavior should be recognized as conduct unworthy of an Alaska state trooper.”<sup>36</sup>

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<sup>31</sup> 257 P.3d 151 (Alaska 2011).

<sup>32</sup> *State v. Pub. Safety Employees Ass'n*, 257 P.3d 151, 161 (Alaska 2011).

<sup>33</sup> *State v. Pub. Safety Employees Ass'n*, 323 P.3d 670 (Alaska 2014).

<sup>34</sup> *State v. Pub. Safety Employees Ass'n*, 257 P.3d 151 (Alaska 2011).

<sup>35</sup> *PSEA 2014*, 323 P.3d at 681.

<sup>36</sup> *PSEA 2011*, 257 P.3d at 165.

The *Parcell* Court flatly rejected Appellant’s argument that single instances of misconduct or dishonesty are insufficient to support a finding that revocation of a police certificate is necessary.

Parcell argues that “there must be a pattern of behavior to show the lack of good moral character and not one isolated incident.” In support of his argument Parcell cites cases from other jurisdictions, but he fails to point to any precedent or clear statement establishing that this is the law in Alaska. We are not persuaded that a single transgression or incident of misconduct, no matter how egregious, never will be sufficient to support a reasonable determination that a police officer is not of good moral character. And in this case the Council relied on two separate incidents, as well as Parcell’s evasive behavior during the subsequent investigation.<sup>37</sup>

“[T]he fact that there is no legal requirement to terminate a police officer’s employment for minor acts of dishonesty does not limit the Council’s discretion to revoke that officer’s certification.”<sup>38</sup>

Contained in the Executive Director’s Proposal for Action, Special Counsel summarized her argument as the following:

Rather than accept the conclusion that Joseph Hazelaar is likely to tell the truth in the future, the Council should instead choose the Decision’s suggested alternative interpretation of the facts, and conclude that there is too great a risk that, if the Council does not revoke his certificate, it will be keeping a dishonest officer on the force. His certificate should be revoked.

The Court finds that the decision to revoke Hazelaar’s certificate was supported by a reasonable interpretation of 13 AAC 85.110(a)(3). To the extent that competing conclusions and inferences can be drawn from the evidence contained in the record, the Council’s conclusions and inferences are entitled to deference. Under the substantial evidence standard, the Court does not reweigh conflicting evidence. The Council’s finding that Hazelaar engaged

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<sup>37</sup> *Parcell*, 348 P.3d at 888 [internal citations omitted].

<sup>38</sup> *Parcell*, 348 P.3d at 889.

in instances of misconduct is supported by substantial evidence. Having found that Hazelaar had been dishonest, the Council had a rational basis for concluding that a reasonable person would have substantial doubt about his honesty and thus that he lacked good moral character under the regulations.

Finally, Appellee states that Hazelaar's arguments relying on *Brady v. Maryland* and *Giglio* do not need to be reached because the Council's decision to revoke Hazelaar's certificate did not rely on *Brady*. The Court agrees that these arguments do not need to be reached at this time.

## V. CONCLUSION

There is no evidence in the record that the Council considered inappropriate facts or failed to consider relevant facts. This Court concludes that the Council's revocation decision was reasonable and supported by substantial evidence. The revocation of Appellant's police certificate is AFFIRMED.

Entered at Juneau, Alaska this 6<sup>th</sup> day of April, 2016.

*Signed*

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Louis James Menendez  
Superior Court Judge

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