

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

In the Matter of)	
)	
STEVEN W. MUCH)	OAH No. 13-0288-POC
<hr style="width:30%; margin-left:0"/>)	Agency File No. APSC 2013-05

DECISION

I. Introduction

The Executive Director of the Alaska Police Standards Council alleged that former Anchorage Police Department Officer Steven Much was not of good moral character, and requested that the Council revoke Mr. Much’s police certificate. A hearing was held on the allegations on August 7-8, 2013, in Anchorage. Assistant Attorney General John Novak represented the Executive Director, and Mr. Much represented himself.

At the hearing, the Executive Director proved that Mr. Much had been deceptive during official interviews conducted by a superior officer, and had submitted an official police report that contained false statements. Mr. Much’s actions would cause a reasonable person to have substantial doubt about his honesty, fairness, respect for the rights of others, and respect for the law. The weight of the evidence regarding the doubt about Mr. Much’s good moral character warrants revocation of Mr. Much’s police certificate.

II. Facts

Officer Steven Much joined the Anchorage Police Department (APD) in 2004. Before coming to Alaska, he had worked for the Los Angeles Police Department for 10 years, most of which was spent on specialty squads.¹ Mr. Much worked as a patrol officer for APD for approximately seven years. On May 18, while APD was investigating two incidents involving Mr. Much that occurred in the fall and winter of 2010-11, Mr. Much resigned.

The first investigation involved a telephone call that Mr. Much made to APD dispatch on September 27, 2010. In this call, he inquired whether APD dispatch could ask the police department in Milwaukee, Wisconsin, to do a welfare check on Mr. Much’s girlfriend’s nine-year-old daughter, who lived with her father in the Milwaukee area. The second investigation involved Mr. Much’s response to a dispatch he received on January 16, 2011. In this dispatch, he was directed to investigate a report of an assault that had occurred the previous evening. His

¹ Admin. Rec. at 29.

inadequate inquiry into the matter, and subsequent inaccurate police report, were the subject of APD's second investigation.

When Mr. Much resigned from APD, the investigative stage for these two incidents was completed, but APD had not yet determined any final administrative action or discipline relating to the incidents. Based on Mr. Much's actions in these two incidents, the Executive Director of the Police Standards Council filed an accusation against Mr. Much that asked the Council to revoke Mr. Much's police certificate. The two incidents are described in detail below.

A. Facts relating to the September 2010 welfare check call and the subsequent investigations

During the time relevant to this hearing, Mr. Much lived with his girlfriend, C M, in Eagle River. Ms. M has a daughter from a previous relationship, T, who was nine-years-old in September 2010. Under a child custody order issued by a Florida court in 2006, T's father, R L, has primary custody of T.² Mr. L moved to Milwaukee, Wisconsin in 2008. As of the fall of 2010, the Florida custody order remained the controlling order for T's custody.

During the summer of 2010, T came to Anchorage for a visit. At the end of the summer, around the time that T was due to return to Wisconsin, Ms. M filed a petition for a change of custody in Alaska superior court, and enrolled T in school in Eagle River.³

On the morning of September 8, 2010, a hearing was held before Judge McKay in Alaska superior court in Anchorage on Ms. M's custody petition. Ms. M, Mr. Much, T, and T's grandfather, S M, were present at the start of the hearing. Mr. L was represented by an attorney, and he participated by telephone. At the start of the proceedings, at the Judge's request, Mr. Much took T out of the courtroom, and he and T stayed in the hallway during the hearing on the custody dispute.⁴

Shortly after the hearing began, Judge McKay explained to Ms. M that Alaska did not have jurisdiction over T's custody.⁵ The judge then asked Ms. M whether she wished to put anything further on the record.⁶ Ms. M stated that Mr. L denied a lot of telephonic communication with T, and asked the judge to establish that T would be allowed to use a cell phone that had been given to T to stay in touch with her. Judge McKay explained that "That's

² *Id.* at 347-61.

³ *Id.* at 249.

⁴ M testimony. After the custody hearing ended, Judge McKay had a talk with T off the record, so that T did not "think anybody's lost or anybody's won." Admin. Rec. at 225.

⁵ Admin. Rec. at 229.

⁶ *Id.* at 223.

the type . . . of thing that I can't order.”⁷ Judge McKay, however, then “strongly encouraged” Mr. L “to make sure that [T] has access to the phone.”⁸ When Judge McKay asked, “Do you understand that Mister L?,” Mr. L replied, “yes, sir.”⁹ The judge required that T be back in Wisconsin by Sunday night (September 12) so that she could attend school on Monday morning.¹⁰

Judge McKay then signed an order dismissing the case for lack of jurisdiction. The order also memorialized that T was to be returned to her father in Wisconsin by the evening of September 12, 2010.¹¹

After T left Alaska, T's grandparents became concerned because they were unable to communicate with T.¹² About two weeks after she left, Mr. M called the police in Milwaukee to request that the Milwaukee police department perform a welfare check on T.¹³

A welfare check is a very common police procedure, often done at the request of citizens who have concerns about family, friends, or co-workers whom they have been unable to contact.¹⁴ When a welfare check is requested about a child who may be involved in a custody dispute, however, police departments are cautious because the “welfare check” request might be unwarranted, intended more to harass the parent than to protect the child.¹⁵ For this reason, when child custody is involved, APD will usually send an officer to the home of the requesting party before doing the welfare check, so that the officer can view the court documents regarding custody and contact with the child.¹⁶

The Milwaukee police department apparently also has concerns about welfare checks for children whose parents live apart, and when Mr. M called to request a welfare check, the Milwaukee police informed him that it would only process an out-of-state request if the request came from a law-enforcement agency.¹⁷ Mr. M then called APD. He testified, however, that

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Id.

8

Id. at 223-24.

9

Id. at 224.

10

Id.

11

Id. at 221.

12

M testimony.

13

Id.

14

Ryan testimony.

15

Id.

16

Id.

17

M testimony.

APD told him that it is APD policy to not get involved in out-of-state custody issues.¹⁸ He asked if he could see the policy, but according to his testimony, he was told that it was not available.¹⁹ Mr. M then called Mr. Much and asked him to look into the issue.²⁰

On September 27, 2010, Mr. Much called APD dispatch. The call was answered by dispatch supervisor Sandy Chapman.²¹ Mr. Much explained that he had a couple of questions regarding his fiancée’s daughter, who lived in Milwaukee.²² He said that the child had been sent home with a cell phone, but “now the jackass took the phone away from her, turned it off.”²³ He told her that his fiancée and her parents had called Milwaukee police to request a welfare check, and Milwaukee PD had said it would respond only at the request of a local police department.²⁴

Ms. Chapman at first did not think the situation warranted a welfare check, and described that “it’s custody – not letting me talk ’[to] em – usually we refer ’em back to their attorney . . . [to] have their attorney call [or] contact his attorney that he’s not complying with the order.”²⁵ She explained to Mr. Much the concern that the request might be “just to harass” and that if the issue is really a custody dispute “we shouldn’t waste police time on that.”²⁶

Ms. Chapman then asked Mr. Much, “when and how often is she supposed to talk to her and when did she last talk to her?” Mr. Much answered this question with reference to “the order,” saying “the order is that she is supposed to have contact with her when . . . she’s supposed to be able to get a hold of that child 24/7.”²⁷

Ms. Chapman sought assurance that the father’s action was a violation of a court order: “Okay, but is any of this court ordered?”²⁸ Mr. Much confirmed that the court had ordered the cell phone requirement, saying “yeah, yeah” in answer to her question. She continued asking “That she’s supposed to have access[?]” and he affirmed “Twenty-four, twenty-four seven.”²⁹

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Id.

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Id.

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Id.

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Admin. Rec. at 60; Chapman testimony.

22

Admin. Rec. at 61. Mr. Much later admitted that C was not actually his fiancée, but she was his girlfriend and they did live together. *Id.* at 128.

23

Admin. Rec. at 61.

24

Id. at 61-62.

25

Id. at 62 (dashes inserted).

26

Id.

27

Id.

28

Id. at 63.

29

Id.

Ms. Chapman then assented to make the call to the Milwaukee police, again emphasizing that this request was borderline: “they’ll probably do it once for us” and that “we’ll just do it . . . one time.” She repeated the concern about “harass[ment]” and “playing games with custody.”³⁰ Later that day, after further exchanges of phone calls to provide addresses, and further assurances from Mr. Much to a different dispatcher that “the judge up here ordered that my fiancée is to be able to have twenty-four hours a day, uh, contact with her daughter,” APD dispatch sent an electronic message to Milwaukee police.³¹ The electronic message included the statement that “PER COURT ORDER JUV SHOULD HAVE CELL 907 0000000 ON WHENEVER NOT IN SCHOOL SO BIOL MOM C M CAN CNTC CELL HAS BEEN TAKEN AWAY”³²

The next day, Sergeant Lisa Ibarra, Milwaukee Police Department, called APD. She spoke to dispatcher Karen Pfanmiller, asking for additional information that was not included in the original message. Sgt. Ibarra considered the request improper.³³ She did not dispatch an officer to do the welfare check, but did call the father and ask that he contact Ms. M to resolve the issue.³⁴

After doing the research requested by Sgt. Ibarra, Ms. Pfanmiller, informed her supervisor that Mr. Much had asked dispatch to request a welfare check with no officer responding or being assigned to the case.³⁵ APD Internal Affairs assigned Sgt. Gil Davis to investigate the incident.³⁶ Sgt. Davis scheduled a formal interview with Mr. Much. Before doing the interview, Sgt. Davis informed Mr. Much of the investigation, and asked Mr. Much to listen to the tapes of the calls with dispatch. Sgt. Davis then conducted the interview with Mr. Much on October 7, 2013. Two other officers also attended the interview, a shop steward, and a shop steward trainee.³⁷

Early in the interview, Sgt. Davis delivered a standard pre-interview admonition to Mr. Much.³⁸ This admonition instructs the officer that the interview is part an official investigation, and the officer is *ordered* to answer all questions “truthfully, completely, and without evasion.”³⁹

³⁰ *Id.* at 64.

³¹ *Id.* at 68

³² *Id.* at 58.

³³ *Id.* at 49.

³⁴ *Id.* at 23, 49.

³⁵ *Id.* at 23, 49.

³⁶ *Id.* at 23; Ryan testimony.

³⁷ Admin. Rec. at 187.

³⁸ *See, e.g.*, Admin. Rec. at 185, 188-89. The pre-interview admonition is typically referred to as the “Garrity” admonition. Mew testimony (citing *Garrity v. New Jersey*, 385 U.S. 493 (1967)).

At the start of the interview, Sgt. Davis explained to Mr. Much that both Milwaukee PD and APD had determined that Mr. Much's personal welfare check request "was improper."⁴⁰ Mr. Much responded by explaining that T's mother and grandfather had been unable to contact T. He also discussed that C had been to court in September but had been unable to persuade the Alaska Superior Court to award her custody of T. He justified the call by explaining "[s]o, when, uh, they went to court up here in September, the judge ordered up here that the child have – get a cell phone so that she has twenty-four-a-day access to the child."⁴¹

After Mr. Much described the Florida court order and Mr. L's move to Milwaukee, Sgt. Davis asked, "Okay. Have you seen these documents?"⁴² Mr. Much asked "which ones?" Sgt. Davis replied "Uh, well you – you've seen the . . . Alaska[?]" Mr. Much said, "I was at . . . court when – I was at court . . . in September when the judge . . ." At which point Sgt. Davis interrupted him and said "but you've seen a – you – she has access to a court document from Alaska from the September ordering the phone?"⁴³ And Mr. Much affirmed, "[y]eah."⁴⁴

Sgt. Davis next asked Mr. Much about his knowledge of the Florida court order, "Have you seen the original Florida . . . ?" Mr. Much replied, "[y]eah, I've seen those."⁴⁵

At the end of the interview, Mr. Much argued that he never did anything wrong—he simply gave information to dispatch, and dispatch chose to call Milwaukee.⁴⁶ Sgt. Davis agreed that Mr. Much had not misrepresented the facts. He explained to Mr. Much, however, that "when it comes to asking for police services, another officer has to provi – provide that."⁴⁷ Sgt. Davis's report sustained a finding that Mr. Much had violated APD's policy, but found that he was truthful and open in his contacts with dispatch. Sgt. Davis was critical of dispatch, finding

³⁹ Admin. Rec. at 185, 188-89; 191 Mew testimony. The admonition also warned that the interviewee retained the right to avoid self-incrimination, so a compelled answer would not be admissible in court. Failure to answer a question, however, would be grounds for discipline, including dismissal. Admin. Rec. at 185; Mew testimony.

⁴⁰ Admin. Rec. at 188. *See also id.* at 189.

⁴¹ *Id.* at 191.

⁴² *Id.* at 193.

⁴³ *Id.* The breaks and ellipses in the quoted text occur where Sgt. Davis and Mr. Much are talking over each other.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 215.

⁴⁷ *Id.*

that Ms. Chapman’s response to Mr. Much’s call was ambiguous and confusing, that she did not contact a patrol supervisor, and that she did allow the request to Milwaukee.⁴⁸

After Sgt. Davis submitted his report, a supervisor asked for additional investigation on the content of the Alaska court order that Mr. Much claimed was the basis for the welfare check.⁴⁹ The investigation was assigned to Sgt. Rodney Ryan, who reviewed the tapes and transcripts of Mr. Much’s call to APD dispatch, and obtained court records from Florida, Alaska, and Wisconsin, including the audio recording of the September custody hearing.⁵⁰ After discovering that the Alaska court had not entered an order regarding cell phone contact with T, Sgt. Ryan scheduled an interview with Mr. Much on February 18, 2011.

In the interview, Mr. Much at first asserted that the Alaska Superior Court “set in place” a “stipulation” that T was to have a cell phone and C was to have “twenty-four/seven” contact with her.⁵¹ Later, after Sgt. Ryan’s questioning, Mr. Much admitted that he had not heard the judge’s order in September, and had never personally reviewed the contents of an order from the Alaska Superior Court or the Florida court regarding T.⁵² He stated that he thought that when the judge was talking to T off the record he had heard the judge assure T that “don’t worry, you’re still gonna talk to your mother, you can have a cell phone.”⁵³ Mr. Much also explained that he thought there was a court order regarding the cell phone because that is what he had been told by C and her father.⁵⁴

In the interview with Sgt. Ryan, Mr. Much acknowledged that he heard the judge say that the Alaska court did not have jurisdiction and that custody would have to be determined in a Wisconsin court.⁵⁵ He defended his statements to dispatch and Sgt. Davis, saying that he *had* “been” at court and claimed that he had been told by C that the court had entered an order regarding T’s cell phone.⁵⁶ He also argued that he *had* “seen” the Florida court documents, although he admitted he had never read them and had no first-hand knowledge of their content.⁵⁷ Later in the interview, Mr. Much admitted that his statements that he had attended the court

⁴⁸ *Id.* at 51-52.

⁴⁹ *Id.* at 20.

⁵⁰ *Id.* at 25.

⁵¹ *Id.* at 78

⁵² *Id.* at 82, 90; Ryan testimony

⁵³ Admin. Rec. at 100.

⁵⁴ *Id.* at 107-08.

⁵⁵ *Id.* at 110.

⁵⁶ *Id.* 130, 153

⁵⁷ *Id.* at 115-17

hearing in Alaska, and that he had seen the Florida documents, would be taken to mean that he had first-hand knowledge of both the Alaska and the Florida court orders.⁵⁸ When asked why he did not take the time to do due diligence and research the facts in response to the questioning of dispatch, Mr. Much replied that he didn't "even think about it."⁵⁹

Sgt. Ryan filed his investigative report on the welfare check matter on March 15, 2011. In this report he sustained three instances of violations of policy by Mr. Much. First, as Sgt. Davis had done, Sgt. Ryan sustained a violation of the policy on general conduct, relating to Mr. Much having used his official position to conduct personal business.⁶⁰ Second and third, Sgt. Ryan sustained two violations of the duty to be honest, accurate, factual, and complete in official communications "when it is reasonable to expect that the information may be relied upon because of the employee's affiliation with the department."⁶¹ The first violation of the policy requiring honesty was based on Mr. Much's communications with dispatch. The second was for his communications in the interview with Sgt. Davis.

While working on his report on the welfare check matter, Sgt. Ryan was asked to investigate a second issue regarding Mr. Much's conduct. This issue involved an allegedly false police report that Mr. Much filed, and is explained below.

B. Facts relating to the January 2011 police report

On the evening of Saturday, January 15, 2011, J J was at the Captain Cook Hotel attending a company party for the employees of the Alaska No Name Center, where she worked.⁶² After the party ended, Ms. J was attacked by two women in the coat-check area of the hotel. One woman, A B, twice came at Ms. J and landed multiple punches on Ms. J's face and eyes.⁶³ The other woman, F E, held Ms. J during one of the assaults. Ms. B was Ms. J's coworker. Up to as many as four people, including Ms. B's husband were present and may have been involved to some extent in the assault.⁶⁴

⁵⁸ *Id.* at 118, 131, 150

⁵⁹ *Id.* at 180

⁶⁰ *Id.* at 36; Ryan testimony.

⁶¹ Admin. Rec. at 36-37; Ryan testimony.

⁶² J testimony.

⁶³ Admin. Rec. at 417-18; 420; J testimony.

⁶⁴ Admin. Rec. at 505-06.

After Ms. J got away from her assailants, she saw her supervisor, K C, who had been in a different room, and did not know about the assault. Mr. C advised her to be sure to call the police and report the assault.⁶⁵ She then left the hotel with her brother.⁶⁶

At around nine a.m. the next day, Ms. J called APD and reported that she had been assaulted the previous evening at the Captain Cook by A B.⁶⁷ She stated that she wanted Ms. B arrested, and she took extra time to check the spelling of Ms. B's name.⁶⁸ APD dispatch sent a computer message dispatching Mr. Much to J's home to investigate the report. The computer message, which appeared on a screen in Mr. Much's car, stated that the assault was "by A B at the Capt Cook hotel."⁶⁹

Mr. Much arrived at Ms. J's home at around 12:21 p.m. Ms. J testified that she told Mr. Much that she wanted to press charges for the assault.⁷⁰ Mr. Much asked her what happened and why she had not called the night before when the assault occurred.⁷¹

Ms. J testified that she told Mr. Much the names of two of her assailants, Ms. E and Ms. B, but that she did not know the names of the others involved.⁷² Ms. J testified that Mr. Much made clear there was little or nothing that he could do because she had not called the night before and he was not present during the assault.⁷³ He told her that her options were to make a citizen's arrest or get a restraining order.⁷⁴

After about 7-10 minutes with Ms. J, Mr. Much requested an incident number from dispatch. He wrote the incident number on the back of a business card, gave the card to Ms. J, and left.⁷⁵ He sent a message to dispatch saying that "she is going to get a restraining order" and

⁶⁵ J testimony.

⁶⁶ *Id.* (italics in Sgt. Ryan's Report).

⁶⁷ Niwa testimony; Admin. Rec. at 478

⁶⁸ Admin. Rec. at 418.

⁶⁹ Admin. Rec. at 397.

⁷⁰ J testimony. The evidence rules that apply to this hearing allow hearsay evidence to be considered only if it corroborates direct testimony. AS 44.62.460(c). Because Mr. Much did not testify, Ms. J's testimony, and earlier statements made by her or Mr. Much that corroborate her testimony, are the only admissible evidence to establish what was said in this conversation. Any out-of-court statement made by Mr. Much that does not corroborate Ms. J's testimony cannot be admitted for the purpose of establishing what was said by either Ms. J or Mr. Much during the interview on January 16, 2013. Out-of-court statements by Mr. Much that are against his interests (admissions) are admissible evidence, however. Alaska R. Evid. 801(d)(2).

⁷¹ J testimony.

⁷² *Id.* In other interviews that occurred out of court, Ms. J had stated that she was not sure that she had provided Mr. Much with names, because the interview was brief and not complete. Admin. Rec. at 425; Ryan testimony.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ J testimony.

that he was off to pick up a fellow officer for lunch.⁷⁶ He then cleared the call, which means that it was considered complete.

That evening, Ms. J went to court to file a petition for a protective order.⁷⁷ She filled out the form, and wrote out a two-page description of the incident. The form provided two boxes to check as grounds for a protective order, either “stalking” or “sexual assault,” and Ms. J checked “stalking.”⁷⁸ The magistrate denied the protective order, and explained that there had to “be two or more instances of repeated non-consensual contact” to issue a protective order based on stalking.⁷⁹ Ms. J testified that she interpreted this to mean “I have to get beat up two or more times before they do something.”⁸⁰

Ms. J continued to seek action on the matter, and on Tuesday, January 18, 2011, she called the Captain Cook Hotel, and asked for a copy of the video of the assault that had been captured by the hotel’s security cameras.⁸¹ The hotel security office told her that an APD officer was already enroute to the hotel to pick up a different video, and that the office would give the video of her assault to this officer.⁸² When Officer Aaron Roberts picked up the videos, and learned about the assault of Ms. J from the hotel security personnel, he began an investigation. His investigation included an interview with Ms. J, taking pictures of her injuries, and having a hotel official identify Ms. B from a photo lineup. Following his investigation, Officer Roberts filed a police report and obtained a warrant for the arrest of Ms. B.⁸³

During Officer Roberts’ investigation, APD learned that Mr. Much had not filed a police report following his investigation of the incident. On January 25, 2011, Sgt. Davis ordered Mr. Much to file a report on the incident “ASAP.”⁸⁴ Mr. Much then wrote and submitted the following:

On 01-16-2011 at 1215 hrs, I was sent to an assault call at No Name. comments (sic) of the call stated J had been assault (sic) at her company party and wanted to talk to the police about the incident. Upon arrival, I met J who stated she had been assaulted by a group of people at her

⁷⁶ Admin. Rec. at 399.

⁷⁷ Admin. Rec. at 503.

⁷⁸ *Id.*

⁷⁹ *Id.* at 502.

⁸⁰ J testimony. Ms. J later filed a second Petition for Protective Order, which was assigned a different case number. Admin. Rec. at 510. She withdrew that petition. *Id.*

⁸¹ Admin. Rec. at 419.

⁸² *Id.*

⁸³ Admin. Rec. at 456-60; 474.

⁸⁴ *Id.* at 440.

company the night before. J said she was not sure who had hit her by (sic) she had been pushed in a corner by a group of girls by the coat room. J stated she thinks it was either A B or F E who had assaulted her but again was not sure. J stated she was just happy to leave the party and go home. J stated her boss at work was taking care of the problem and she did not think an arrest was needed for the assault. J stated she just wanted the incident document. (sic) I completed a supplemental report to document the incident.

I DID NOT TAPE MY CONTACT

Action taken:

I completed a supplemental report and gave J an APD Business card with the incident number on it. I advised J about the restraining order process and she could apply for one if she thought it was needed. J said she did not think she was going to need a restraining order because her boss was going to fire the girls involved anyway.⁸⁵

After Mr. Much filed this report, APD began an investigation to determine whether it warranted a criminal action against Mr. Much. APD's legal theory was that filing a false police report might violate laws prohibiting tampering with public records.⁸⁶ The criminal investigation was assigned to Detective Niwa.

As part of the investigation, Detective Niwa determined that an audio file from Mr. Much's hand-held digital recorder had never been uploaded onto APD's server. By reviewing the dates of the files on either side of the missing audio file, Detective Niwa determined that the missing recording had been made between January 9, 2011, and January 21, 2011—the time interval when the interview with Ms. J occurred. He and another officer obtained a search warrant to seize the digital recorder from Mr. Much's home.⁸⁷ They never served the warrant, however, because Mr. Much voluntarily produced the recorder when they asked for it.⁸⁸

The file that was missing from APD's server had been erased from Mr. Much's hand recorder. Although forensics specialists can sometimes recover erased digital files, by chance, this file had been recorded over, and it was not recoverable.⁸⁹

In the investigation, Detective Niwa and his associate, Detective Anderson, reviewed dispatch recordings of calls from Ms. J and the Captain Cook Hotel, and the radio traffic with Mr. Much. They interviewed the director of security at the Captain Cook, Jeff Beelman, Officer

⁸⁵ *Id.* at 461-62.

⁸⁶ Niwa testimony.

⁸⁷ Anderson testimony; Niwa testimony.

⁸⁸ *Id.*

⁸⁹ Dunn testimony.

Roberts, Mr. C, Ms. J, Ms. J's godparents Y Z and O P M-Z (with whom Ms. J was living at the time of her interview with Mr. Much, and who witnessed, but did not hear, the interview), and other potential witnesses.⁹⁰ Detective Niwa determined that APD had probable cause to conclude that Mr. Much had committed a crime by submitting a false police report.⁹¹ He sent the file to the Office of Special Prosecutions and Appeals for evaluation. The Supervisor of Special Prosecutions, John Skidmore, determined that due to the delay between the incident and the drafting of the report, the evidence was insufficient to meet the burden for a criminal trial, and referred the matter back to APD.⁹²

APD then opened a new investigation, this time as an administrative personnel matter, rather than as a criminal matter.⁹³ The case was assigned to Sgt. Ryan, who also reviewed all of the materials. On March 15, 2011, Sgt. Ryan interviewed Mr. Much. At the start of the interview, Mr. Much signed APD's standard pre-interview (Garrity) admonition, and indicated that he understood that he was being ordered to be truthful.⁹⁴

In this interview, Mr. Much was able to recall where the interview occurred within the house, the layout of the house, the lighting conditions in the house, the extent of Ms. J's injuries, Ms. J's complexion and demeanor, and the first three questions that he asked.⁹⁵ He recalled that his fourth question was "do you know who hit you?", but his statements on how she answered that question were inconsistent.⁹⁶ First, he said "I don't recall if she gave me names or not."⁹⁷ Then he said "I think she did."⁹⁸ Then "I didn't remember her saying an actual name but, she said it was someone from her work um, had hit her and um – but she wasn't sure who hit her."⁹⁹ When Sgt. Ryan asked "You don't remember if she mentioned names or not?", Mr. Much first

⁹⁰ Admin. Rec. at 478-82.

⁹¹ Niwa testimony.

⁹² Admin. Rec. at 516; Ryan testimony.

⁹³ Ryan testimony.

⁹⁴ Admin. Rec. at 519; 604.

⁹⁵ *Id.* at 521-22. Although Mr. Much said that he remembered Ms. J's injuries, he described them as minimal. Later in the interview, when he was shown pictures of her injuries, he stated that he did not remember any but the small mark he had described earlier. *Id.* at 567-68. The pictures show, however, that Ms. J had substantial visible bruising. *Id.* at 465-70.

⁹⁶ *Id.* at 522.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

said that he did not recall what she said, and then concluded, “[s]he didn’t give me any names.”¹⁰⁰

The interview was quite lengthy, and returned several times to the question of whether Ms. J knew the name of the assailant who had struck her and whether she gave him the names of her assailants. Mr. Much retreated back to being unsure about whether she gave him any names, but he stated repeatedly that “she said she didn’t know which one hit her.”¹⁰¹

During the interview, Mr. Much asserted that after he told Ms. J what was involved in a private person arrest, she said she did not want to do that and that her boss was going to be take care of it.¹⁰² Although he explained the option of pursuing a restraining order, she said she did not think that would be necessary.¹⁰³ Mr. Much said he had not read the message on the computer-aided dispatch naming Ms. B as the assailant.¹⁰⁴

When asked about the police report, Mr. Much explained that when he was first asked to write a report, he did not remember ever being on the call at all.¹⁰⁵ Later, when he was ordered to write the report, he had no notes from the incident, although he had read Officer Roberts’ report.¹⁰⁶ He explained that when he put the two names in his report, B and E, he took them from Officer Roberts’ report because he did not remember the names. He justified this by saying “I thought that she had mentioned someone, she said from work and I assumed that those were names from her work, but I – I didn’t know.”¹⁰⁷ He admitted “I didn’t know it to be true.”¹⁰⁸ He admitted it was incorrect to put into his report that “J stated she thinks it was either A B or F E who had assaulted her” because at the time he wrote the report he did not remember her saying that, and he just took the names from Officer Roberts’ report.¹⁰⁹

He also admitted that Ms. J had never told him where the assault occurred, and that he had not asked that question.¹¹⁰ He admitted that Ms. J had wanted the incident documented, but asserted that having an incident number was sufficient documentation, and that a report was not

¹⁰⁰

Id.

¹⁰¹

Id. at 525. *See also id.* at 525; 540; 550; 552; 554; 588; 591; 592.

¹⁰²

Id. at 523;524; 603.

¹⁰³

Id. at 524.

¹⁰⁴

Id. at 525-26.

¹⁰⁵

Id. at 531.

¹⁰⁶

Id. at 533.

¹⁰⁷

Id. at 534.

¹⁰⁸

Id. at 556.

¹⁰⁹

Id. at 583.

¹¹⁰

Id. at 535.

necessary.¹¹¹ Mr. Much also admitted that he had not conducted a proper investigation.¹¹² He denied, however, that he wrote the report the way he did in order to cover up his improper investigation.¹¹³

Sgt. Ryan then drafted a report of his investigation. The report sustained four violations of APD policies. First, he found that Mr. Much had violated the policy relating to duty requirements because Mr. Much did not complete a thorough investigation and write a police report when he was dispatched to investigate the report of the assault against Ms. J.¹¹⁴ Second, he found that Mr. Much violated the policy relating to a police officer's responsibility to assist private citizens in making arrests because he did not thoroughly explain the process to Ms. J and make clear that he would assist her.¹¹⁵ Third, he found that the policy on preserving recordings was violated because Mr. Much deleted a recording on his handheld recorder. APD policy requires that all recordings, even accidental recordings, be submitted into the digital evidence system before deletion.¹¹⁶

Finally, Sgt. Ryan sustained a finding that Mr. Much had violated the duty of honesty when Mr. Much "failed to be accurate and factual on an official police report."¹¹⁷ Sgt. Ryan identified two different aspects of this violation. The first was based on Mr. Much's admission that the statement "she thinks it was either A B or F E who had assaulted her," was not "based on his memory of the incident."¹¹⁸ Second, Sgt. Ryan noted the inconsistencies between the facts stated by Ms. J in numerous interviews, and the representations made in Mr. Much's report. He noted that not only did Ms. J always and consistently identify Ms. B as the assailant who had punched her, she also showed a consistent interest in wishing to pursue charges against Ms. B. This was documented in her first call to APD dispatch, her going that night to the courthouse to seek a protective order, and her cooperation with Officer Roberts in the arrest process. In contrast, Mr. Much's version was internally inconsistent, because he claimed that she did not know who had hit her, yet he said that he offered her the options of a citizen's arrest or a protective order, both of which require knowing the name of the assailant. Sgt. Ryan concluded,

¹¹¹ *Id.* at 537.

¹¹² *Id.* at 562.

¹¹³ *Id.* at 564.

¹¹⁴ *Id.* at 421-22; Ryan testimony.

¹¹⁵ Admin. Rec. at 422-23; Ryan testimony.

¹¹⁶ Admin. Rec. at 426-27; Ryan testimony.

¹¹⁷ Admin. Rec. at 423-26; Ryan testimony.

¹¹⁸ Admin. Rec. at 423.

“[i]t is unreasonable to believe Ofc. Much’s account of his contact with J, that she did not know who assaulted her for sure, did not want to complete a PPA and appear in court, and did not think that anything legally needed to be done. J’s account has more credibility based upon the totality of the circumstances and investigation.”¹¹⁹

C. APD’s follow up to the two investigations

In April 2011, before the two internal investigations of Mr. Much had been finalized, APD Chief Mark Mew and other members of his staff met with Sgt. Derek Hseih, the president of the Anchorage Police Department Employee’s Association, regarding Mr. Much.¹²⁰ The meeting was at the request of the Employee’s Association.¹²¹ At the hearing, neither Chief Mew nor Mr. Hseih could remember the precise terms of the agreement, but Sgt. Hseih testified that he and Chief Mew agreed that if Mr. Much resigned, the APD would release information about Mr. Much only if Mr. Much provided a release.¹²² He also recalled agreement that no additional disciplinary action against Mr. Much would be taken by APD.¹²³

Sgt. Hseih then met with Mr. Much.¹²⁴ S M, C’s father, attended that meeting. Mr. M testified that he understood the agreement included a provision that no negative information would be included in Mr. Much’s personnel file that would preclude Mr. Much from working in law enforcement.¹²⁵ On April 19, 2011, Mr. Much sent a letter of resignation to Chief Mew, making his resignation effective May 18, 2013.

When a police officer resigns or otherwise ceases to be employed as a police officer, the officer’s employer must file a report with the Council within 30 days.¹²⁶ The report must state the reason for the change in employment, including whether it was a voluntary resignation to avoid an adverse action, and whether the employer has made any findings regarding the officer’s lack of good moral character.¹²⁷ To facilitate reporting, the Council provides police departments with a form, called an F-4 form for reporting the separation.

¹¹⁹ *Id.* at 420-21.

¹²⁰ Mew testimony; Hseih testimony.

¹²¹ Mew testimony.

¹²² Mew testimony; Hseih testimony.

¹²³ Hseih testimony.

¹²⁴ Hseih testimony.

¹²⁵ M testimony.

¹²⁶ 13 AAC 85.090(b); Alzaharna testimony.

¹²⁷ *Id.*

APD's original F-4 personnel action form for Mr. Much's resignation was not filled out or signed by Chief Mew.¹²⁸ The form is dated "5/11/11," but is stamped as received by the Council on January 3, 2012. The form was checked "yes" in answer to the questions, "Do you recommend de-certification?" and "Did the employee resign or retire in lieu of termination?"¹²⁹ It was checked "no" in answer to "Would you rehire?" and "yes" to "Was the employee under any investigation for wrongdoing?"¹³⁰

Approximately a year later, Mr. Much brought the original F-4 form to Sgt. Hseih, complaining that the form violated the agreement with Chief Mew.¹³¹ Chief Mew testified that the Employee's Association brought the F-4 form to him, and informed him that the F-4 violated the agreement that had been reached regarding Mr. Much's resignation.¹³² Chief Mew recalled that he and Sgt. Hseih had, in fact, discussed which boxes of the F-4 were to be checked, but he could not recall the specifics.¹³³ He accepted the Association's request that he redo the F-4, and on January 29, 2013, he filled out and signed a new F-4, which answer "no" to the questions, "Do you recommend de-certification?" and "Did the employee resign or retire in lieu of termination?"¹³⁴ The new form was still checked "no" in answer to "Would you rehire?" and "yes" to "Was the employee under any investigation for wrongdoing?"¹³⁵ Chief Mew testified that he felt it was accurate to say that Mr. Much did not resign in lieu of termination because APD had not made the decision to terminate him at the time of the agreement and resignation. The Executive Director received the modified F-4 on January 30, 2013, and issued the accusation initiating this hearing on February 20, 2013.¹³⁶

III. Discussion

A. The Accusation and the regulatory requirements for revocation of a police certificate

After receiving information from APD regarding Mr. Much, the Executive Director of the Police Standards Council investigated the matter by requesting APD's administrative files on

¹²⁸ Mew testimony; Much Exhibit 3.

¹²⁹ Much Exhibit 3.

¹³⁰ *Id.*

¹³¹ Hseih testimony.

¹³² Mew testimony.

¹³³ *Id.*

¹³⁴ *Id.*; Admin. Rec. at 16.

¹³⁵ *Id.*

¹³⁶ Admin. Rec. at 16.

Mr. Much.¹³⁷ On February 20, 2013, the Executive Director filed a one-count accusation against Mr. Much that sought to revoke his police certificate.¹³⁸ As the factual basis for revocation, the accusation alleged the two courses of conduct described above—Mr. Much’s actions regarding the September 2010 welfare check, and his actions regarding the January 2011 police report.¹³⁹

The regulation under which the Executive Director sought revocation, 13 AAC 85.110(a)(3), provides that the Council may, but is not required to, revoke a police officer’s certificate if the officer does not meet basic standards.¹⁴⁰ The basic standards are established by the Council in 13 AAC 85.010. The accusation alleges that Mr. Much failed to meet the standard requiring that a certified officer be “of good moral character.”¹⁴¹ The Council has defined “good moral character” as follows:

“good moral character” 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; for purposes of this standard, a determination of lack of “good moral character” may be based upon a consideration of all aspects of a person’s character;¹⁴²

The Executive Director has the burden of proof in this proceeding, and the Executive Director must prove the case by a “preponderance of the evidence.”¹⁴³ This means that for the Executive Director to prevail, the facts proved at the hearing must establish that it is more likely than not that Mr. Much is not of good moral character, as that term is defined by the Council. The Council has interpreted the term “good moral character” in a previous case, *In re Bowen*.¹⁴⁴ Further examination of *Bowen*’s interpretation follows.

B. Under the *Bowen* case, the Executive Director must prove substantial doubt about Mr. Much’s honesty, fairness, respect for the rights of others, and respect for the law

¹³⁷ Alzaharna testimony.

¹³⁸ Admin. Rec. at 6-9.

¹³⁹ *Id.*

¹⁴⁰ 13 AAC 85.110(a)(3) (“(a) The council will, in its discretion, revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate . . . (3) does not meet the standards in 13 AAC 85.010(a) or (b)”);

¹⁴¹ 13 AAC 85.010(a) (“(a) A participating police department may not hire a person as a police officer unless the person meets the following qualifications: . . . (3) is of good moral character”).

¹⁴² 13 AAC 85.900(7).

¹⁴³ AS 44.64.460(e)(1).

¹⁴⁴ OAH No. 10-0327-POC (Alaska Police Standards Council 2011).

Bowen involved a police officer who admitted that he engaged in inappropriate sexual conduct related to his official position.¹⁴⁵ The Executive Director charged Trooper Bowen with two counts in an accusation seeking revocation of Trooper Bowen’s police certificate. The first count alleged that Trooper Bowen was discharged from his position as a police officer in circumstances that warranted revocation of his certificate. The second count was identical to the count against Mr. Much here, alleging that Trooper Bowen was not of good moral character, and seeking revocation of Trooper Bowen’s certificate under 13 AAC 85.110(a)(3).

In determining whether to revoke Trooper Bowen’s certificate, the Council carefully scrutinized the definition of “good moral character.” With regard to how to apply the four elements of good moral character, the Council held that “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 substantial doubt with respect to all of them.”¹⁴⁶ Consistent with this interpretation, the Council found that the Executive Director had failed to prove that Trooper Bowen was not of good moral character. Although the Council found that the evidence supported a finding of substantial doubt about Trooper Bowen’s respect for rights of others, it also found that the Executive Director had not proved substantial doubt about Trooper Bowen’s honesty, fairness, or respect for law.¹⁴⁷

In presenting the case against Mr. Much, the Executive Director did not discuss *Bowen* or ask the Council to revisit *Bowen*’s holding that substantial doubt about all elements of good moral character must be proved to revoke under 13 AAC 85.110(a)(3). Yet, in the prehearing brief, the opening statement, and the closing argument, the Executive Director discussed only honesty and integrity. The Executive Director did not discuss whether the evidence proved substantial doubt about Mr. Much’s fairness, respect for the rights of others, or respect for law. It is not clear whether the Executive Director’s silence on the other elements indicates that the

¹⁴⁵ *Id.* at 1.

¹⁴⁶ *Id.* Although *Bowen* does not explain why this interpretation is the best interpretation of 13 AAC 85.900(7), it appears that the Council considered the use of the conjunctive “and” instead of the disjunctive “or” in the list of elements of good moral character to require proof of all elements in the list. The Alaska State Board of Public Accountancy also requires “good moral character” for licensure, and its regulations define “good moral character” in exactly the same terms as the Council uses, although the Accountancy Board definition adds examples of what constitutes a lack of good moral character. 12 AAC 04.990(12). In *In re Zaiser*, the Accountancy Board upheld a denial of licensure on the grounds of a lack of good moral character by finding that the applicant lacked all four elements in the definition. OAH No. 08-0099-CPA at 8 (Alaska State Board of Public Accountancy 2008). *Zaiser*, however, did not include an in-depth discussion of any element other than honesty. *Id.*

¹⁴⁷ *Bowen*, OAH No. 10-0327-POC at 15. The Council did, however, revoke Trooper Bowen’s certificate under Count I. *Id.* at 13-14.

Executive Director disagrees with *Bowen* or whether it means that the Executive Director was confident that the case against Mr. Much on honesty would necessarily establish all other elements.¹⁴⁸

Although the Council is not bound by its prior interpretations of regulation, a prior decision should generally be followed unless documented reason exists for adopting a new interpretation.¹⁴⁹ Here, given that the Executive Director did not request that the Council reconsider *Bowen*, this decision will apply the holding of *Bowen* to the facts of this case, and consider whether the Executive Director proved substantial doubt regarding Mr. Much's honesty, fairness, respect for the rights of others, and respect for the law.

C. Do Mr. Much's actions regarding the September 2010 welfare check incident establish that Mr. Much is not of good moral character?

1. Honesty

The term "honesty" is not defined in regulation, but a standard dictionary definition includes "adherence to the facts: freedom from subterfuge or duplicity: truthfulness, sincerity."¹⁵⁰ This definition comports with a common sense understanding of honesty, and will be applied in this decision with the caveat that in police work, subterfuge may at times be appropriate. For example, as Chief Mew explained, police officers are permitted to use a certain amount of deception in interrogating suspects or in undercover work, but not deception that "shocks the conscience."¹⁵¹ Therefore, a police officer might be able to defend against a charge of subterfuge or failure to adhere to the facts by showing that the subterfuge was appropriate official conduct under the circumstances.

With regard to the welfare check incident, Mr. Much's statements and actions did not adhere to the facts, and he did engage in subterfuge and duplicity. In his calls to APD dispatch to request the welfare check on T, for example, he asserted as fact that a court had ordered twenty-four hour cell-phone contact, when no such order exists. And although Mr. Much argued

¹⁴⁸ *C.f.*, e.g., *Zaiser*, OAH No. 08-0099-CPA at 8.

¹⁴⁹ *See, e.g.*, *May v. State*, 168 P.2d 873, 883 (Alaska 2007) ("Agencies are free to change course as their expertise and experience may suggest or require, but when they do so they must provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored."); *In re D.B.*, OAH No. 08-0697-PFD at 5 (Department of Revenue 2009) (holding that because division did not show that prior case was wrongly decided, "established agency precedent will therefore be applied in this case").

¹⁵⁰ *Webster's Third New Int'l Dict.* at 1086 (1986 Unabridged).

¹⁵¹ Mew testimony. Chief Mew also testified that dishonesty that occurs after the Garrity admonition should be seen as substantial dishonesty because the police officer has been ordered to be absolutely truthful in answering questions. *Id.*

in closing argument that he had a good-faith belief that there was an order, no admissible evidence in the record supports that argument. Neither Mr. Much nor Ms. M testified, and Ms. M's father, who did testify, did not say that he had told Mr. Much that the court had ordered cell-phone contact.¹⁵² Given that the judge had explicitly stated that an order regarding cell phone use is exactly "[t]he type . . . of thing I can't order," and that Mr. Much either knew this or could easily have learned it, his statements regarding the existence of a court order in his calls to dispatch demonstrate a failure to adhere to the facts.

Mr. Much's statements in his interview with Sgt. Davis create even more substantial doubt about his honesty. Here, after having been ordered to be truthful, Mr. Much engaged in subterfuge or duplicity about a material fact. As Mr. Much knew, having a police officer with first-hand knowledge about a court order is material to conducting a welfare check in a child custody situation. Police departments must avoid being used as pawns in welfare checks that might be unnecessary or even a sham intended to harass. Yet, Mr. Much deceived Sgt. Davis with answers that were intended to make Sgt. Davis believe that Mr. Much had first-hand knowledge of the relevant court orders. When Sgt. Davis asked "have you seen the documents?" and then clarified "the Alaska . . ." Mr. Much told him "I was at court . . . in September when the judge . . ."¹⁵³ This statement clearly was intended to make Sgt. Davis believe that Mr. Much had heard the order and had first-hand knowledge of the content of the order. Mr. Much then confirmed that there was a "court document from Alaska from the September—ordering the phone."¹⁵⁴ The statements, however, were not true—Mr. Much was not in the court at the relevant time, and it certainly was not true that he had first-hand knowledge of an order regarding cell phone use. He also confirmed that he had seen the Florida documents, which was intended to make Sgt. Davis believe that he had read those documents when in fact he had not.

At the end of the interview, it was clear that all three officers attending the session firmly believed that the court order existed, that Mr. Much had first-hand knowledge of the content of the order, and that Mr. Much had not misrepresented the facts to dispatch when he described the order and asserted that Mr. L was in violation of the order.¹⁵⁵ More blame was placed on

¹⁵² M testimony. Although in the transcripts Mr. Much asserts that C told him there was a court order, this evidence is hearsay, and can only be used to corroborate other direct evidence. AS 44.62.460(d).

¹⁵³ Admin. Rec. at 193.

¹⁵⁴ *Id.* (dash inserted).

¹⁵⁵ *Id.* at 213-17.

dispatch than on Mr. Much.¹⁵⁶ Thus, during an official investigation, Mr. Much did not adhere to the facts and he engaged in subterfuge and deception to avoid responsibility for his actions.

In sum, Mr. Much gave APD dispatch inaccurate information, and deceived a superior officer during a formal investigation, which caused the officer to believe that the information given to dispatch was accurate and that a police officer had knowledge of court orders. This action would cause a reasonable person to have substantial doubts about Mr. Much's honesty.

2. Fairness

Bowen defines "fairness" as used in 13 AAC 85.900(7) to mean "marked by impartiality and honesty: free from self-interest, prejudice or favoritism."¹⁵⁷ Here, as described above, Mr. Much used his position to promote his interests, and the interests of C and her parents. His actions put a burden on Mr. L (T's father), APD dispatch, and the Milwaukee Police Department. He knew that he had a special position as a police officer, and he used APD dispatch and Milwaukee PD as tools to forward his self-interest in a way that a member of the public could not. His actions would cause a reasonable person to have doubts about his fairness. Although the doubt about Mr. Much's fairness may not be substantial based on this incident alone, as explained below, the total doubt about his fairness after consideration of both incidents, is substantial.

3. Respect for the rights of others

The Council has not previously addressed the question of what is a "right" for purposes of 13 AAC 85.900(7). To keep the standard for revocation or denial of a certificate high, and avoid arbitrary allegations of a lack of good moral character, a "right" for purposes of 13 AAC 900(7) should be defined to mean a right established in law, including constitutional, statutory, or common law.¹⁵⁸

With regard to the September 2010 welfare check, Mr. Much showed disrespect for T's father and paternal grandparents by potentially subjecting them to an unwarranted welfare checks. He also did not respect APD dispatch employees, by trying to deflect blame onto dispatch employees—in his interview with Sgt. Davis, he placed responsibility for the welfare

¹⁵⁶ *Id.* at 51-52.

¹⁵⁷ OAH No. 10-0327-POC at 15-16 (quoting Webster's Ninth New Collegiate Dict. at 445 (1990)).

¹⁵⁸ Dictionaries offer several different definitions of the term "right," some of which are very broad, and would tend to make a revocation action easier to prove. For purposes of 13 AAC 85.900(7), this decision adopts a narrower definition, such as the following: "a capacity or privilege the enjoyment of which is secured to the person by the power of law." *Webster's Third New Int'l Dict.* at 1955 (1986 Unabridged).

check on APD dispatch, saying that all he did was call dispatch “to ask a question.”¹⁵⁹ The issue of the rights of others was not well developed at the hearing, but all people generally have rights related to free from unwarranted harassment or false accusations. In addition, the Uniform Child Custody Act vests certain rights in custodial parents.¹⁶⁰ Mr. Much’s action showed some lack of respect for these concerns. In sum, Mr. Much’s actions would cause a reasonable person to have doubts about his respect for the rights of others. As with fairness, the substantiality of this doubt will be further discussed after consideration of the second incident.

4. Respect for the law

Several aspects of Mr. Much’s actions in the 2010 welfare check matter indicate a lack of respect for the law. By using his connection with APD dispatch for his self-interest, and not being honest with dispatch and his superior officers in this matter, he has demonstrated a lack of respect for the oath he was required by law to take as a police officer, in which he promised to be honest and to be exemplary in obeying laws and the regulations of his department.¹⁶¹ By being deceptive regarding the content of court orders while engaging with other official law officials, he showed a lack of respect for the courts and the legal process. By engaging APD dispatch and Milwaukee PD in official law enforcement actions that were not warranted, he demonstrated a lack of respect for the law enforcement process, which is a critical component of respect for the law. Mr. Much’s actions would cause a reasonable person to have substantial doubts about his respect for the law.

D. Do Mr. Much’s actions regarding the January 2011 police report incident establish that Mr. Much is not of good moral character?

1. Honesty

In Mr. Much’s January 25, 2011, police report regarding the January 15, 2011, assault on Ms. J, Mr. Much stated that “J said she was not sure who had hit her.”¹⁶² In his official investigative interview with Sgt. Ryan in which he was ordered to be truthful, he repeated several times that Ms. J had stated that she did not know which of the women involved had actually hit her.

As Sgt. Ryan found, the evidence proves that Ms. J did not say to Mr. Much that she did not know which woman struck her. In her initial call to dispatch before meeting with Mr. Much,

¹⁵⁹ Admin. Rec. at 215.

¹⁶⁰ AS 25.30.

¹⁶¹ 13 AAC 85.040(b)(5).

¹⁶² Admin. Rec. at 461.

Ms. J provided the name of the woman who had struck her. Later that day, she went to court to seek a restraining order against the woman who had delivered the blow, and not against the other woman who had been involved.¹⁶³ Her testimony at the hearing was consistent with her statements in all of her interviews—she did not tell Mr. Much she did not know who hit her. Ms. J, who is now a nursing student, presented as a believable witness who had no reason to lie. Further, Mr. Much’s own actions belie his statement—he suggested that she seek a restraining order, and in order to obtain a restraining order, Ms. J would need to know the name of her assailant.¹⁶⁴

Moreover, on this record, no admissible evidence supports the truth of the assertion in Mr. Much’s police report or in his statements to Sgt. Ryan that Ms. J could not recall which woman struck her. Mr. Much did not offer sworn testimony regarding what Ms. J said. The police report and his statements to Sgt. Ryan are hearsay, and can only be used to corroborate direct evidence.¹⁶⁵ No direct evidence that supports the version of events in Mr. Much’s police report was submitted at the hearing. In contrast, Ms. J gave sworn testimony at the hearing that she never said that she did not know who struck her, and the evidence corroborating this testimony is compelling. In short, the evidence proves that Ms. J did not say that she did not know which woman had struck her, and the statement to the contrary in Mr. Much’s police report is false. This false statement alone would cause a reasonable person to have substantial doubts about Mr. Much’s honesty.

Other statements in Mr. Much’s January 25, 2011, police report, and in his interview with Sgt. Ryan, also raise doubts about Mr. Much’s honesty. Mr. Much wrote in the police report that Ms. J had told him she did not think an arrest was needed and that her boss would take care of the problem.¹⁶⁶ He stated that he gave her information regarding a restraining order, but she said she did not think she would need one.¹⁶⁷ He told Sgt. Ryan that Ms. J had told him she was not interested in pursuing a private person’s arrest procedure. Yet, Ms. J testified that she did not tell Mr. Much that she was unwilling to complete whatever forms were required, and she did not tell

¹⁶³ Admin. Rec. at 504-06. Ms. J’s application for a protective order shows that she remembered the incident in detail, and she knew very well that it was Ms. B who had punched her, first before any other women were involved, and then again when Ms. J was being held by the second assailant. Reading this account makes Mr. Much’s assertion that Ms. J told him that she did not know for sure who had actually struck her unbelievable.

¹⁶⁴ J testimony.

¹⁶⁵ AS 44.62.460(d).

¹⁶⁶ Admin. Rec. at 461.

¹⁶⁷ *Id.* at 462.

him that she did not want criminal charges filed.¹⁶⁸ She also did not tell him that her employer will take care of this, or that she did not want to go to court.¹⁶⁹ Her actions in calling the police, attempting to obtain a restraining order against her assailant, cooperating with Officer Robert’s investigation, and her testimony at the hearing all demonstrate that Ms. J was determined to obtain justice. On this record, it is more likely than not that Mr. Much’s statements regarding Ms. J’s lack of interest in pursuing the matter are not factual. These statements also would cause a reasonable person to have substantial doubts about Mr. Much’s honesty.

2. Fairness, respect for the rights of others, and respect for the law

The remaining three elements of good moral character—fairness, respect for the rights of others, and respect for the law—will be discussed together because Mr. Much actions raise doubt about all three in a related manner. Mr. Much’s initial action in doing a hurried and careless initial investigation on January 16, 2013, raises some doubt about his fairness to Ms. J, his respect for her right to obtain justice, and his respect for the laws on assault and for the oath he was required to take under law.¹⁷⁰

More compelling is the false police report filed on January 25, 2013, which raises substantial doubt about all three remaining elements of good moral character. In particular, the clearly false assertion by Mr. Much that Ms. J told him that she did not know the name of the woman who hit her establishes substantial doubt about all three. By asserting that Ms. J had said she did not know the name of her assailant on the morning after her assault, Mr. Much took action that would cast doubt on Ms. J’s credibility as a witness, and could undercut the prosecution’s ability to obtain a conviction. His willingness to put this false statement in a police report would raise substantial doubts about his fairness to Ms. J because he used his official position to cover up his errors at the expense of Ms. J’s credibility. His actions show no respect for the constitutional right of a victim “to be treated with dignity, respect, and fairness during all

¹⁶⁸ J testimony.

¹⁶⁹ J testimony.

¹⁷⁰ Mr. Much established through witness testimony and cross-examination that a police officer might, in some circumstances, reasonably respond to a misdemeanor assault dispatch by merely leaving a business card with a dispatch number, and never doing any further investigation or filing a police report. *See, e.g.*, cross examination of Ryan, Mew; testimony of Hsieh, Card. *But see also* testimony of Niwa (stating that police officer should always file police report on misdemeanor assault if crime has been committed). Even if Mr. Much’s actions could be appropriate in some circumstances, however, here, he admitted that his investigation was not proper. Admin. Rec. at 564. Mr. Much is correct that his initial investigation, standing alone, would not be grounds for revocation, but given his false police report, the grounds for revocation are clearly established by his actions.

phases of the criminal and juvenile justice proceedings.”¹⁷¹ His action places his interest in avoiding discipline above a victim’s ability to seek justice and taints an official law enforcement instrument.

Each of the other false statements in the police report also raises significant doubt about Mr. Much’s fairness, respect for the rights of others, and respect for the law. Mr. Much’s police report falsely indicates that Ms. J was not interested in pursuing the matter, and he falsely attributes statements to her that she expected her employer to take care of the problem. These statements would also undercut any subsequent action. This is unfair to Ms. J, shows a lack of respect for her rights, and a lack of respect for any subsequent legal proceedings. In sum, Mr. Much’s actions in the January 2011 J investigation and police report would cause a reasonable person to have substantial doubts about his honesty, fairness, respect for the rights of others, and respect for the law. When Mr. Much’s actions in the 2010 welfare check incident are also considered, the doubts become even more substantial.

E. Does the erroneous F-4 form and the delay in reporting by APD affect whether Mr. Much is of good moral character or whether his certificate should be revoked?

Before turning to whether the conclusions reached regarding Mr. Much’s moral character warrant revocation, this decision will discuss the two arguments that Mr. Much made at the hearing regarding why the Council should not revoke his certificate. First, he argued that the errors made by APD in processing his F-4 should exonerate him. Second, he argued that the testimony of witnesses that he was a person of honesty and integrity shows that he has good moral character.

Mr. Much proved at the hearing that APD did not properly process his F-4 form. First, it did not file the F-4 form within thirty days as required by 13 AAC 85.090(b). Second, the original F-4 form was not filled out consistently with the agreement that the Anchorage Police Department Employee’s Association had reached with Chief Mew. For both of these reasons, Mr. Much argued that the Council should not pursue its case against his certificate.

With regard to the thirty-day requirement, that requirement applies to the Anchorage Police Department. APD, however, is not a party to this proceeding, and the Council is not bound by APD’s processes or findings. The law requires that the Council administer the laws

¹⁷¹ Alaska Const. art I, § 24.

regarding police officer certification.¹⁷² It follows that the Council must take action regarding a police officer's certificate without regard to whether the officer's employer is timely in its filings. If APD is out of compliance with administrative requirements, the remedy would be to take administrative action to bring APD into compliance. No law requires or allows the Council to reinstate a police officer or abandon a revocation action just because an employer has not met an administrative time requirement established in regulation.

With regard to the original F-4 being contrary to the agreement between Chief Mew and Mr. Much, the Council was not a party to that agreement, and Mr. Much's remedy for a breach of that agreement would be against APD, not the Council. Moreover, Mr. Much was not prejudiced by the original F-4. His case was not treated as a "resigned in lieu of termination" case—if it had been, Mr. Much would have been subject to mandatory revocation, rather than the discretionary revocation sought here.¹⁷³ Executive Director Alzaharna testified that had she received only the amended F-4, she still would have processed the matter as a case for investigation, which would have revealed the same underlying facts and record that led to the accusation seeking revocation.¹⁷⁴

Finally, Mr. Much argued that Chief Mew's failure to adhere to the agreement, and allowing the erroneous F-4 form to be sent out, raises, in Mr. Much's view, issues with Chief Mew's integrity and honesty. Here, Mr. Much appears to be invoking the equitable doctrine of "unclean hands," under which a person who has committed wrong may not seek relief in an action based on equity. Here, however, neither Chief Mew nor APD is a party to this action, and this action is based on statute, not equitable doctrines. Accordingly, the error in filling out the original form is not relevant to this proceeding.¹⁷⁵

F. Does the character witnesses' testimony affect the determination of whether Mr. Much is of good moral character?

Several witnesses testified about their opinion of Mr. Much's character. Chief Mew, Sgt. Ryan, and Detective Niwa all testified that as to the incidents within their knowledge, they concluded that Mr. Much was not a truthful person.¹⁷⁶ Mr. Much's former colleague Archie Card, on the other hand, testified that in his experience, Mr. Much handled calls professionally

¹⁷² AS 18.65.220(6).

¹⁷³ Compare 13 AAC 85.110(a)(3) with 13 AAC 85.110(b)(3).

¹⁷⁴ Alzaharna testimony.

¹⁷⁵ Nothing in this decision should be taken to reflect negatively on Chief Mew or imply that the mistake in the original F-4 was anything other than a simple mistake.

¹⁷⁶ Mew, Ryan, and Niwa testimony.

and was honest.¹⁷⁷ C's father, S M, himself a former commissioned air force officer with classified clearance, testified that he considered Mr. Much a person of honesty and integrity.¹⁷⁸ Most significant was the testimony of Mr. Much's current employer, K Q, who employs Mr. Much to work as a supervisor for an armored transport service. Mr. Q testified that Mr. Much was an outstanding employee who did not cut corners and who had high standards for professionalism, leadership, integrity, work ethic, and morals.¹⁷⁹

Mr. Much argued in closing argument that he is a person of honesty and integrity. Although Mr. Much did not testify, his conduct at the hearing, his written and oral arguments, his conduct during the investigations, and the testimony of his character witnesses provide general support for the conclusion that he values truthfulness, honesty, and integrity, and that he believes that his internal compass is calibrated to guide him by those values. Therefore, it is not surprising that his employer and friends would trust him and see him as person integrity. Yet, even if Mr. Much values truth and integrity, if the compass that guides him on those values allows him to deceive a superior officer in an official interview, and to submit a false police report, then for purposes of evaluating his fitness for holding a police officer certificate, he must be considered to not have good moral character.

G. Should the Council exercise its discretion to revoke Mr. Much's certificate?

As shown above, this record establishes that Mr. Much does not meet the Council's regulatory requirement of having good moral character, as defined under 13 AAC 85.900(7). Yet, the regulation at issue in the accusation does not require the Council to revoke a certificate if the Executive Director proves that a police officer does not have good moral character—it merely provides that the Council may, in its discretion, elect to revoke the certificate of an officer who fails to meet basic standards. This raises the question of what circumstances warrant revocation.

Employment of a police officer who is dishonest has been recognized by the Alaska Supreme Court to be against public policy.¹⁸⁰ In reviewing the Council's regulations defining good moral character, however, the court noted that "minor acts of dishonesty" might not require

¹⁷⁷ Card testimony.

¹⁷⁸ M testimony.

¹⁷⁹ Q testimony.

¹⁸⁰ *State v. Public Safety Employees Ass'n*, 237 P.3d 151, 162 (Alaska 2011).

that the police officer be terminated as a matter of public policy.¹⁸¹ In contrast, the court strongly implied that acts of dishonesty that are “directly related to [law enforcement officers’] duties to the public,” that are “directed towards superiors in their chain of command,” or that “arise in the context of a formal investigation,” would require termination.¹⁸² Indeed, the court noted that if a police officer “had lied to a superior within the scope of a formal investigation directly related to his duties to the public,” public policy would likely require the termination of that officer’s career in law enforcement.¹⁸³

Here, Mr. Much was dishonest in answering questions from his superior officer in an official investigation involving his duty to ensure that a court order existed and was being violated before subjecting a custodial parent to a welfare check. He was also dishonest in a police report, and in the subsequent investigation of the truthfulness of that report, which indicates that, under the court’s interpretation of the Council’s regulations, Mr. Much should not be certificated as a matter of public policy.

Other considerations also would favor revocation of Mr. Much’s certificate as a matter of policy. In the hearing, the Executive Director provided testimony from Sharon Marshall, the Chief Prosecutor in the State’s District Attorney office in Anchorage. Ms. Marshall explained that in a criminal prosecution, if a prosecutor knows that a police officer has been dishonest in the course of his job, the prosecutor must provide that information to the defendant, even if it is not related to the current case.¹⁸⁴ Because the police officer’s testimony would be subject to impeachment, defendants who would otherwise be convicted might be acquitted, or prosecutors might decline to prosecute cases that rely upon the testimony of an untrustworthy police officer. In the case of a police officer like Mr. Much, if the Council has made the determination that a police officer is not honest, particularly in situations that relate to the officer’s official duties or

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* The discussion of the Council’s regulation in *Public Safety Employees Ass’n* implies that substantial dishonesty alone could be a sufficient reason for revoking a police certificate. That discussion raises some doubt about *Bowen’s* interpretation of 13 AAC 85.900(7) that all elements of good moral character must be proved to establish grounds for revocation.

¹⁸⁴ Marshall testimony (citing *Brady v. Maryland*, 295 U.S. 78, (1935); *Giglio v. United States*, 405 U.S. 150 (1972)). Ms. Marshall did not identify what degree of dishonesty triggered the obligation to report. She explained that if her office was unsure about its obligation to report possible police officer dishonesty, its practice was to forward the information to the court, and ask the court to determine whether the information had to be reported to the defendant.

to answering questions in an official investigation, Ms. Marshall's testimony strongly suggests that the officer could no longer effectively serve in a law enforcement capacity.¹⁸⁵

Although no Alaska cases and no witnesses discussed the other elements of good moral character, the public should be assured that police officers are fair, respect the rights of others, and have respect for the law. Where doubts about a police officer's fairness, respect for the rights of others, and respect for the law are as strong as those raised by Mr. Much's actions, the need to maintain public confidence in the integrity of law enforcement officers suggests that the police officer's certificate should be revoked.

In sum, public policy strongly favors revocation when the doubts about the police officer's honesty, fairness, respect for the rights of others, and respect for the law are so substantial as to undermine public confidence in law enforcement. It follows that here, Mr. Much's certificate should be revoked.

IV. Conclusion

Mr. Much's actions establish that Mr. Much is not of good moral character, as that term is defined by the Council. Because evidence demonstrates that Mr. Much could not effectively serve as a police officer, and because public policy requires that the public have confidence in law enforcement officers, Mr. Much's police certificate is revoked.

DATED this 7th day of October, 2013.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

¹⁸⁵ Because a prosecutor would be required to turn over a finding of dishonesty made by the employer, here, the Executive Director argued that the Council should revoke Mr. Much's certificate based on the findings by Sgt. Ryan that Mr. Much was dishonest. Yet, the Council is not bound by decisions made by the employing police department. A police department may have different policy considerations than the Council. Therefore, the Council should make independent findings, and not be bound by any decision made by an employer, either up or down, on issues like a police officer's honesty or employment.

Adoption

The undersigned adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of December, 2013.

By: Signed _____
Sheldon Schmitt
Chair, Alaska Police Standards Council

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