

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

VALENT MAXWELL,)
)
Appellant,)
)
v.)
)
ALASKA POLICE STANDARDS)
COUNCIL,)
)
Appellee.)

Case No. 1KE-17-69 CI
OAH No. 16-0134-POC
Agency No. APSC 2015-12

DECISION

Officer Valent Maxwell appeals the December 14, 2016 Final Decision of the Alaska Police Standards Council (APSC), which revoked his police certificate. Oral argument was not requested. The APSC’s Final Decision is, for the following reasons, reversed.

I. STATEMENT OF POINTS ON APPEAL

Officer Maxwell’s February 15, 2017 Statement of Points on Appeal sets forth the following claims:

1. The APSC erred in concluding that his case, when taken as a whole, lead to a substantial doubt about his honesty and respect for the law, which justifies the revocation of his police certificate.
2. The APSC erred in finding that his conduct showed a severe lack of respect for the law, which raises substantial doubts regarding his good moral character.
3. The APSC erred in finding that his police certificate should be revoked because he lacked respect for the law when he testified that he would fill out the 2013 and 2014 permanent fund dividend applications the same way if he had an opportunity to fill them out again.
4. The APSC erred in finding that his police certificate should be revoked because he lacked respect for the law when he testified that he believed it to

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1 be true when he stated in his 2013 and 2014 permanent fund applications that
2 he had been an Alaska resident for all of the prior year, and when he testified
3 that he believed that statement to be true now.

- 4 5. The APSC erred in finding that his police certificate should be revoked after
5 the APSC acknowledged that Superior Court Judge Louis Menendez’s
6 remarked during Mr. Maxwell’s criminal trial that the facts of that criminal
7 case could provide some justification for his continued confusion about
8 whether he was eligible to receive the 2013 and 2014 permanent funds.
- 9 6. The APSC erred by failing to adopt the July 25, 2016 Decision of
10 Administrative Law Judge Stephen C. Slotnick as the agency’s final decision.

11 **II. JURISDICTION**

12 The court has jurisdiction to review the APSC’s Final Decision per Alaska
13 Appellate Rule 602(a)(2), AS 22.10.020(d), AS 44.62.330(a)(18), and AS 44.62.560.

14 **III. STANDARD OF REVIEW**

15 Alaska Supreme Court has recognized that:

16 In reviewing administrative decisions . . . [there] are at least four principal
17 standards of review. “These are the ‘substantial evidence test’ for questions of
18 fact; the ‘reasonable basis test’ for questions of law involving agency expertise;
19 the ‘substitution of judgment test’ for questions of law where no expertise is
20 involved; and the ‘reasonable and not arbitrary test’ for review of administrative
21 regulations.” We review an agency’s interpretation of its own regulation under
22 the reasonable basis standard, deferring to the agency unless the interpretation is
23 ‘plainly erroneous and inconsistent with the regulation.’ We review questions of
24 law and issues of constitutional interpretation de novo under the substitution of
25 judgment standard.¹

26 ¹ *Simpson v. Commercial Fisheries Entry Commission*, 101 P.3d 605, 609 (Alaska 2004)
27 (quoting *Jager v. State*, 537 P.2d 1100, 1107 n. 23 (Alaska 1975), *See also, Williams v.*
28 *Ketchikan Gateway Borough*, 295 P.3d 374, 375 (Alaska 2013); *May v. Commercial Fisheries*
29 *Entry Commission*, 175 P.3d 1211, 1215 (Alaska 2007), *Lauth v. State*, 12 P.3d 181, 184
30 (Alaska 2000) (quoting *Board of Trade, Inc. v. State, Dep’t of Labor, Wage & Hour Admin.*,
31 968 P.2d 86, 89 (Alaska 1998)).

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1 “Substantial evidence is evidence that a ‘reasonable mind might accept as
2 adequate to support a conclusion.’”² An appellate court does not “reweigh the evidence nor
3 choose between competing factual inferences,”³ and the court must uphold an administrative
4 agency’s decision if it is support by substantial evidence “[e]ven though there are competing
5 facts that might support a different conclusion.”⁴

6 The substantial evidence test is highly deferential, but [the court must] still review
7 the entire record to ensure that the evidence *detracting* from the agency’s decision
8 is not *dramatically* disproportionate to the evidence supporting it such that [the
9 court] cannot ‘conscientiously’ find the evidence supporting the decision to be
10 substantial.⁵

11 ² *May*, 175 P.3d at 1216 (quoting *Cleaver v. Commercial Fisheries Entry Commission*, 48 P.3d
12 464, 467 (Alaska 2002) (internal citation and quotations omitted)).

13 ³ *State of Alaska, Division of Corporations, Business and Professional Licensing v. Platt*, 169
14 P.3d 595, 601 (Alaska 2007) (quoting *Doyon Universal Services v. Allen*, 999 P.2d 764, 767
15 (Alaska 2000)).

16 ⁴ *Platt*, 169 P.3d at 601.

17 ⁵ *Odom v. State of Alaska, Division of Corporations, Business and Professional Licensing*,
18 2018 WL 794366 (Alaska February 9, 2018) (quoting *Shea v. State, Department of*
19 *Administration, Division of Retirement & Benefits*, 267 P.3d 624, 634 n. 40 (Alaska 2011))
20 (emphasis in original) (quoting *Universal Camera Corp. v. National Labor Relations Board*,
21 340 U.S. 474, 488 (1951)). *See also*, *Powercorp Alaska, LLC v. State, Alaska Industrial*
22 *Development and Export Authority*, 171 P.3d 159, 163 (Alaska 2007) (quoting *Leigh v. Seekins*
23 *Ford*, 136 P.3d 214, 216 (Alaska 2006) (citation omitted)).

24 The Court in *Shea* stated:

25 To be sure, the requirement for canvassing “the whole record” in order to
ascertain substantiality does not furnish a calculus by which a reviewing court can
assess the evidence . . . Nor does it mean that even as to matters not requiring
expertise a court may displace the Board’s choice between two fairly conflicting
views, even though the court would justifiably have made a different choice had
the matter been before it de novo. [But under the substantial evidence test,] a
reviewing court is not barred from setting aside a Board decision when it cannot
conscientiously find that the evidence supporting that decision is substantial,
when viewed in the light that the record in its entirety furnishes, including the
body of evidence opposed to the Board’s view.

267 P.3d at 634 n. 40 (quoting *Universal Camera Corp.* 340 U.S. at 488).

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1 This standard “reflects the prudence of deferring to a state professional board’s special
2 competence in recognizing violations of professional standards [b]ut [the court] will not uphold
3 the imposition of reputationally and economically damaging professional sanctions based on
4 evidence that would not permit a reasonable mind to reach the conclusion in question.”⁶

5 **IV. SUMMARY OF DECISION**

6 This court’s decision is somewhat lengthy and is fact intensive for two reasons.

7 First, the court is required to review and consider the entire record in deciding this
8 appeal.
9

10 Second, the focus of the accusations against Officer Maxwell evolved over the
11 course of the case and attempts were made to add additional claims.

12 The formal accusation claimed that Officer Maxwell lacks “good moral character”
13 and requests that his police certificate be revoked as a reasonable person would have substantial
14 doubts about his honesty and respect for the laws of the State of Alaska because he certified in
15 his 2013, 2014, and 2015 Alaska Permanent Fund Dividend (PFD) applications that he had been
16 an Alaska resident for the entirety of each qualifying year when he was not, which resulted in
17 related felony criminal charges.

18 The Executive Director attempted during the course of the proceeding before the
19 Administrative Law Judge to, in effect, add additional claims regarding Officer Maxwell’s
20 honesty based on his interview with Trooper John Ryan and the opinions of Trooper Ryan and
21 Investigator Shawn Stendevad concerning his honesty.
22

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25 ⁶ *Odom* (quoting *State, Dep’t of Commerce, Community & Economic Dev., Div of Corps, Bus. & Prof’l Licensing v. Wood*, 278 P.3d 266, 273 (Alaska 2012)).

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1 The APSC in its Final Decision found that Officer Maxwell’s certification should
2 be revoked not because of his actions and knowledge concerning the PFD applications at the
3 time he submitted the applications, but because he testified during the administrative hearing that
4 he had done nothing wrong with respect to the applications and would do the same thing again
5 knowing what he knows now. The APSC determined that the same would cause a reasonable
6 person to have substantial doubts about his honesty and respect for the laws of Alaska because he
7 would knowingly engage in “trickery” by doing so as he would be certifying that he was an
8 Alaska resident for the entirety of each qualifying year at issue when he knows he was not, and
9 he would be applying for PFDs that he would know he was not eligible to receive.⁷

11 The court finds that the APSC’s determination that Officer Maxwell’s hearing
12 testimony would cause a reasonable person to have substantial doubts about his honesty is not
13 supported by substantial evidence in the record because it is clear that his testimony was based
14 on a misunderstanding of and confusion concerning the material facts and pertinent Alaska law.

15 The court finds that the APSC’s determination that Officer Maxwell’s hearing
16 testimony would cause a reasonable person to have substantial doubts about his respect for the
17 laws of Alaska is not supported by substantial evidence because, as noted, it is clear that his
18 testimony was based on a misunderstanding of and confusion concerning the material facts and
19 pertinent law, and it is clear that his lack of understanding and confusion did not constitute a lack
20 of respect for the pertinent Alaska law.

22
23 ⁷ And the Executive Director raised additional claims as the case proceeded, including claims
24 that: Officer Maxwell had been dishonest when interviewed by Trooper Ryan; and, that a lack of
25 moral character can be found on dishonesty grounds if it is shown that another law enforcement
officer and/or a prosecutor is/are of the opinion that the police officer at issue is dishonest, a fact
that it was claimed would have to be discovered to the defense in any case in which that police
officer is involved.

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1 Given the foregoing, the court is not required to address whether the APSC
2 abused its discretion in deciding to revoke Officer Maxwell’s police certification based on its
3 “good moral character” findings as there are now no grounds for revocation.

4 V. FACTS

5 a. Administrative Record, Hearing Exhibits and Testimony, Post Hearing Exhibits

6 APSC records reflect that: Officer Maxwell was hired as a police officer by the
7 Klawock Police Department (KPD) on October 30, 2008;⁸ he had previously worked as a
8 correctional officer in Utah and a police officer in Idaho;⁹ he was promoted to Sergeant on May
9 26, 2011;¹⁰ he resigned from KPD on April 1, 2012;¹¹ KPD rehired him on June 6, 2012;¹² he
10 resigned again from KPD on October 19, 2013;¹³ and, was rehired by KPD on March 4, 2014.¹⁴

11
12 The Town of Fairview, Montana records¹⁵ reflect that: Officer Maxwell was hired
13 by the Fairview Police Department (FPD) as a police officer on May 1, 2012; he was sworn in on
14 May 4, 2012 and was authorized that date to carry a firearm; he reported a work-related ankle
15 injury on May 7, 2012; he signed a contract with the Town of Fairview on May 9, 2012 which
16 provided that the Town would loan him \$1,189.94, with a check in that amount being written to a
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19 ⁸ Record at p. 19. The court notes that certain of these documents, and other documents in the
20 record, contain Officer Maxwell’s Social Security number. There are no disputes as to the
21 authenticity of the documents. So the court has attempted to redact his Social Security number
22 from each such document. The court cannot represent that it found every place where his Social
23 Security number appears, so his counsel may want to review the court’s file in this regard and
24 bring to the court’s attention the location any such numbers that have not been redacted.

25 ⁹ Record at p. 19.

¹⁰ Record at p. 20.

¹¹ Record at p. 21.

¹² Record at p. 22.

¹³ Record at p. 23.

¹⁴ Record at p. 24.

¹⁵ Record at pp. 200-08. These records were submitted as Exhibit 9 during the hearing before
Administrative Law Judge (ALJ) Neil Slotnick.

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1 hotel and repayment payments to be withheld from his paychecks beginning in July 2012,
2 because there was no housing available when he arrived on May 1, 2012; the Town Council
3 agreed on May 14, 2012 to pay the hotel without cost to him; and, he resigned on May 20, 2012.

4 Officer Maxwell's informed the Town of Fairview Police Chief of his decision to
5 resign in a May 20, 2012 email. He advised therein, in pertinent part, that: he had decided the
6 night before to return to KPD due to his financial situation and the state of his vehicle; the City
7 of Klawock provides free housing and will pay his way back there; he is disappointed by this
8 outcome, Fairview is a wonderful city with problems for which he wished he could be part of the
9 solution but the financial strain does not allow him to remain; and, he "would truly like to work
10 for you"; he hopes "this is a bridge I have not burned," and, the PFD comes out in October "and
11 if a position were available I believe I would be able to return."¹⁶

12
13 City of Ronan, Montana records¹⁷ reflect that: Officer Maxwell applied for the
14 position of Police Chief; he stated in his application that his "reason for leaving" KPD was that
15 he was "Looking for a department to retire from closer to home"¹⁸; he was appointed as the
16 City's Police Chief on October 25, 2013; the appointment was to a "FULL TIME"¹⁹ position; the
17 Notice of Appointment, signed by Officer Maxwell, provides for a 12 month probationary period
18 and that the position is "FULL TIME" and "PERMANENT"²⁰; the Montana Public Safety
19 Officer Standards & Training Council was notified of his appointment, his first day on the job
20 was October 28, 2013; he lived in a rented duplex unit; he obtained a Montana driver's license;

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23 ¹⁶ Record at p. 208.

24 ¹⁷ Record at pp. 148-199. These records were submitted as Exhibit 8 during the hearing before
ALJ Slotnick.

25 ¹⁸ Record at p. 197.

¹⁹ Record at p. 170.

²⁰ Record at p. 172.

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1 and, he was terminated from the position on January 7, 2014 because his job performance was
2 unsatisfactory.

3 Log Cabin Sporting Goods records reflect that it is located in Craig, Alaska and
4 that Officer Maxwell arranged to have a firearm shipped from there to himself in Ronan,
5 Montana on October 19, 2013 and another firearm on October 31, 2013.²¹

6 Alaska Unemployment Insurance records²² reflect that Officer Maxwell applied
7 for unemployment compensation in January 2014 after being terminated from a Chief of Police
8 position in Ronan, Montana because he did not meet the job performance expectations of his
9 employer. He stated in his submissions that: he had been employed in Montana; his mailing and
10 residence address was in Ronan and he was not traveling or planning to relocate;²³ and, that he
11 had not been traveling during the weeks that ended on February 1, 2014 and February 8, 2014.
12 He was determined to be eligible for unemployment compensation.

13
14 APSC records reflect that Officer Maxwell submitted a Personal History
15 Statement²⁴ in April 21, 2014 in which, in part, he stated:

- 16 a. He lives in Klawock, Alaska.
17 b. He has an Alaska driver's license that will expire March 17, 2019, and he has
18 or had a Montana driver's license.
19 c. He was employed by the Kodiak Area Native Association, overseeing the
20 Village Public Safety Officer (VPSO) program from July 1999 until October
21 2008.

22 ²¹ Record at pp. 208-12. This record was submitted as Exhibit 10 during the hearing before ALJ
23 Slotnick.

24 ²² Record at pp. 75-114. These records were submitted as Exhibit 3 during the hearing before
25 ALJ Slotnick.

²³ The document on which this information is provided is not dated. It appears to be an initial
application.

²⁴ Record at pp. 44-52, 117-125. The Personal History was submitted as Exhibit 5 during the
hearing before ALJ Slotnick.

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- 1 d. He was employed by KPD as a police officer/sergeant beginning in October
2 2008, he was then employed by FPD as a patrol officer from May 20, 2012 to
3 May 30, 2012 and left that employment due to lack of housing, he was
4 employed again by KPD beginning June 20, 2012, and he was then employed
5 by the Ronan Police Department (RPD) as the Chief of Police from November
6 2013 until February 2012²⁵ when he was released during his probationary
7 period because he did not possess the skills or command training necessary for
8 the position.
- 9 e. He has never been convicted of a crime or the subject of a criminal
10 investigation.

11 He signed the Statement under penalty of perjury on April 10, 2014.

12 Alaska Permanent Fund Division records²⁶ reflect that:

- 13 a. Officer Maxwell applied for the Permanent Fund Dividend (PFD) every year
14 from 2001 through 2015. He received the PFD each year except 2015.
- 15 b. He applied for the 2013 PFD on January 1, 2013. He stated in his application
16 that: he received the prior PFD; he was in Alaska the day he applied; he had
17 not been absent from Alaska more than 90 or 180 days in 2012; he is a U.S.
18 citizen; and, he is in the armed forces.²⁷ He received the \$900 2013 PFD.
- 19 c. He applied for the 2014 PFD on March 3, 2014. He stated in his application
20 that: he received the prior PFD; he was in Alaska the day he applied; he had
21 not been absent from Alaska more than 90 or 180 days in 2013; and, he is a
22 U.S. citizen. His Certificate of eSignature included certifications that:
- 23 1. "I am now and intend to remain an Alaska resident indefinitely."²⁸
 - 24 2. "I have not claimed residency in another state, territory, or country."
 - 25 3. "I was an Alaska resident for all of 2013."
 - 26 4. He understands that if any of what he says is not true it would be a
27 criminal offense, he will lose all future PFDs, and he will have to repay all
28 dividends he had been paid.
 - 29 5. "I certify that the information I am supplying on and with this form is true
30 and correct."

31 He received the \$1,884 2014 PFD.

32 ²⁵ Officer Maxwell, in context, evidently meant February 2014.

33 ²⁶ Record at pp. 43, 126-42. The PFD records (pp. 126-42) were submitted as Exhibit 6 during
34 the hearing before ALJ Slotnick.

35 ²⁷ This was an error that was later rectified.

²⁸ Record at p. 43.

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- 1
- 2 d. He applied for the 2015 PFD on February 16, 2015. He stated in his
- 3 application that: he received the prior PFD; he was in Alaska the day he
- 4 applied; he had not been absent from Alaska more than 90 or 180 days in
- 5 2014; and, he is a U.S. citizen.
- 6 e. None of these documents define “resident” or “residency” or inform the
- 7 applicant where such definitions may be found.

8 Investigator Shawn Stendevad of the Department of Revenue Criminal

9 Investigation Unit prepared an Incident Report²⁹ in which she, in pertinent part, states that:

- 10 a. She received a report on April 10, 2015 from Trooper John Ryan that Officer
- 11 Maxwell had moved from Alaska in October 2013 to work as a police chief in
- 12 Ronan, Montana, he was terminated from that position in January 2014, and
- 13 he moved back to Alaska shortly thereafter and resumed his employment as a
- 14 KPD police officer.
- 15 b. She looked at the PFD Division’s records and saw that Officer Maxwell had
- 16 applied for the 2014 and 2015 PFDs without disclosing any absences on his
- 17 application and signed with an electronic signature thereby certifying that he
- 18 had been a resident of Alaska in 2013 and 2014, and that the information in
- 19 his applications was true and correct. And that he received the 2013 PFD
- 20 (\$900) and the 2014 PFD (\$1,884). The Division records show that he
- 21 applied on January 1, 2013, March 3, 2014, and February 16, 2015.
- 22 c. The City of Ronan confirmed that Officer Maxwell had been employed there
- 23 as the Police Chief from October 25, 2013 through January 7, 2014, and
- 24 advised that he had been discharged because he did not have the skills
- 25 required for the position.
- 26 d. Alaska Marine Highway System (AMHS) records³⁰ reflect that Officer
- 27 Maxwell departed Ketchikan for Prince Rupert, B.C. on October 22, 2013,
- 28 arriving there that day and that he arrived in Ketchikan from Prince Rupert on
- 29 March 1, 2014.
- 30 e. Information from the Police Chief of Fairview, Montana that their records
- show that Officer Maxwell worked there as a police officer from May 4, 2012

²⁹ Record at pp. 32-38.

³⁰ The AMHS records for Officer Maxwell were submitted as Exhibit 7 (Record pp. 143- 47) during the hearing before ALJ Slotnick.

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1 through May 7, 2012 and then he stopped appearing for work and eventually
2 called and resigned, and that he had advised he was in Idaho.³¹

3 f. AMHS records show that Officer Maxwell departed Ketchikan for
4 Bellingham, Washington on April 18, 2012, arriving April 20, 2012 and
5 returned to Ketchikan from Prince Rupert on May 22, 2012.

6 g. Trooper Ryan, with Trooper Sgt. Miller present, interviewed³² Mr. Maxwell
7 on May 27, 2015. Mr. Maxwell stated that:

- 8 1. The first time he moved to Montana he went to look at a position, it was
9 not a permanent position, he did not like it there, he could not afford the
10 housing there so he stayed in a hotel, and it ended up being more like a
11 vacation, and he was not gone for more than 30 days. He went with a
12 friend, Mike Rousch, who was moving to Montana permanently. He took
13 his dive gear and some odds and ends but his furniture and exercise
14 equipment remained in storage in Klawock.

15 ³¹ This information is from Trooper Ryan's Supplemental report that was included with
16 Investigator Stendevad's report.

17 ³² This information is from Trooper Ryan's Supplemental report that was included with
18 Investigator Stendevad's report. An audio recording of the interview was submitted following
19 the hearing before ALJ Slotnick as part of Exhibit 14. Trooper Ryan advised Officer Maxwell at
20 the outset of the recording that they were contacting him on behalf of Investigator Stendevad
21 with regards to his recent PFD applications. Officer Maxwell's recorded statements included the
22 following. He had gone to Ronan but did not intend to make Montana his home, he viewed it as
23 a step to becoming a police chief somewhere else, with Alaska always a possibility, and KPD
24 Police Chief Stonecipher had mentioned that he may be retiring in a couple of years. He left his
25 belongings in storage in Klawock. He had gone to Montana earlier to look at the Fairview police
position, with the understanding that if he stayed he could replace the Chief there when he
retired. He had a dive trip planned with his brother-in-law. He sold an extra bed and kept the rest
of his furniture in storage in Klawock. He shipped his firearms down. He had reservations about
going there because of what he had heard had happened there but he decided to go see if it would
work out. It did not. The situation was a mess and he did not feel that he was capable of being
the Chief there. The plan had been for the town to provide him with a trailer but the oil
companies bought them all so he had to stay in a hotel for about \$100 per night. So he left and
returned to Klawock. He has applied for the PFD each of the 10-12 years he has been in Alaska
but is not familiar with how it works. He asked if he had screwed up an application. He said he
crashed through the applications at the last minute. He is sure he put down the dates he had been
gone in the applications (in response to a comment about his representing that he had been a
resident for the entire year at issue). He does not read the application cover sheet when he
applies. He is aware of fishermen who leave and receive the PFD. He is not trying to cover
anything up and would like to talk with Investigator Stendevad. (All emphasis in this Decision is
added unless otherwise noted).

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1 2. The second time he was gone for about four months, it was full-time
2 employment, he moved but did not intend to make Montana his home, he
3 left his belongings in storage in Klawock. He was trying to get
4 experience, the position was a stepping stone, returning to Alaska was
always an option. He took a TV and shipped his firearms down but all of
his furniture and his exercise gear remained in his apartment in Klawock.

5 3. He has been getting PFDs since he moved to Alaska, but does not know
6 how they work. He has lived in Alaska for 10-12 years. He knows of
7 fisherman who leave for the winter and then come back and they get
8 PFDs. He maybe didn't understand the questions on the PFD applications,
which he crashes through at the last minute. He is bad with dates. He was
not trying to cover anything up. He did not intentionally try to portray that
he had not left Alaska.

9 h. Trooper Ryan, with Sgt. Miller present, interviewed Victoria Douglas-Strait
10 on May 28, 2015.³³ She advised that: she used to clean Officer Maxwell's
11 house before he moved the second time; he snuck her daughter out with him
12 then so she has not had anything to do with him since; the first move was
supposed to be permanent, he sold his recliners, beds, a table and some other
13 furniture, and he took his TV and a bed with him; he had her pack up his other
14 belongings and send them to him; he did not leave anything behind; he, had
no plans of returning but she guesses something happened in Montana and
came back.

15 i. She interviewed KPD Police Chief Terry Stonecipher on June 15, 2015, who:
16 affirmed that Officer Maxwell is a police officer with KPD; he has personal
17 knowledge of the two times Mr. Maxwell quit to accept employment in
18 Montana; Officer Maxwell had never moved his belongings from his city
owned apartment in Klawock, at least the second time he left, per what
Officer Maxwell had told him he asked to rejoin the KPD police force.

19 j. She interviewed Klawock City Administrator Lesley Isaac, who advised that
20 he thought Officer Maxwell had left his belongings in the apartment for a
while because they had to move it into the apartment he has now when a new
21 police officer was hired.

22 The State of Alaska filed a Criminal Information in Case No. 1JU-15-735 CR on
23 July 13, 2015 charging Officer Maxwell with three counts of Unsworn Falsification and two

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³³ Trooper Ryan's Supplemental report was included with Investigator Stendevad's report.

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1 counts of Theft in the 2nd Degree.³⁴ The State alleges therein that he made false statements in his
2 applications for the 2013, 2014, and 2015 PFDs and committed related thefts by receiving PFDs
3 in 2013 and 2014.

4 Sarah Heib, APSC Administrative Investigator, filed an Accusation³⁵ against
5 Officer Maxwell on or about January 26, 2016. She stated therein that she “is seeking to revoke”
6 Mr. Maxwell’s “police certificate under the legal authority of AS 18.65.240(a) and (c) . . . [and]
7 13 AAC 85.110.”³⁶ She specifically asserted that he did “not meet the minimum standards for a
8 certified police officer established under 13 AAC 85.010(a)(3). . . [because he] lacks good moral
9 character, which is grounds for discretionary revocation under 13 AAC 85.110(a)(3).”³⁷ She
10 based her request on allegations concerning Officer Maxwell’s employment and residences in
11 2012, 2013, and 2014, his 2013, 2014, and 2015 PFD applications, and his being charged on July
12 10, 2015 with three counts of Unsworn Falsification with respect to the PFD applications.

14 Officer Maxwell, through counsel, filed a Notice of Defense and request for a
15 hearing on or about February 9, 2016.³⁸

16 Alaska Court System records³⁹ for 1JU-17-735 CR reflect that: Officer Maxwell
17 consented to a court trial; during an April 27, 2016 proceeding Juneau Superior Court Judge
18 Louis Menendez advised that he found Officer Maxwell not guilty because the State had not
19 proven the intent *mens rea* elements of the five charged offenses; and, Judge Menendez then
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22 ³⁴ Record at pp. 27-31.

23 ³⁵ Record at pp. 2-4.

24 ³⁶ Record at p. 2.

25 ³⁷ Record at p. 4.

³⁸ Record at p. 5.

³⁹ Record at p. 243. The log notes for an April 27, 2016 court proceeding were submitted as Exhibit 13 and an audio recording of Judge Menendez’s verdict and findings in Exhibit 14 following the hearing before ALJ Slotnick. (Tr. at pp. 606-14).

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1 discussed the evidence presented during the trial, including evidence concerning Officer
2 Maxwell's employment by the Fairview and Ronan police departments, his obtaining a Montana
3 driver's license and license plates, the periods of time he was out-of-state during the years at
4 issue, his application for and receipt of Alaska unemployment compensation, his leaving most of
5 his belongings in Klawock, and his relationship with KPD.

6
7 A hearing before ALJ Slotnick was scheduled to begin on June 1, 2016. The
8 APSC Executive Director filed a Pre-Hearing Brief⁴⁰ that date. The Executive Director argued
9 therein that the evidence presented during the hearing will show by a preponderance of the
10 evidence that Officer Maxwell does not meet the basic police standards, specifically the "good
11 moral character" standard set forth at 13 AAC 85.010(a)(3) and as defined at 13 AAC 85.900(7),
12 and so the ALJ should recommend to the APSC that it exercise its discretion to revoke his police
13 certification, because he:

14 made dishonest/false statements under oath in three separate applications for
15 Alaska Permanent Fund Dividends, i.e., respondent dishonestly/falsely stated that
16 he was a resident of Alaska for all of 2012 (2013 PFD application); respondent
17 dishonestly/falsely stated that he was a resident for all of 2013 (2014 PFD
18 application); and respondent dishonestly/falsely stated that he was a resident of
19 Alaska for all of 2014 (2015 PFD application).⁴¹

20 The hearing before ALJ Slotnick began on June 1, 2016, the presentation of
21 evidence and closing arguments concluded on June 3, 2016.⁴² The parties and ALJ Slotnick
22 agreed at the outset that the issue was not whether Mr. Maxwell in fact was eligible for the 2013,
23

24 ⁴⁰ Record at pp. 222-26.

25 ⁴¹ Record at p. 225.

⁴² A brief hearing was held on July 6, 2016, while the matter was under advisement, concerning
ALJ Slotnick's desire to listen to the recording of Trooper Ryan's May 27, 2015 interview of Mr.
Maxwell (Exhibit 16), and the parties agreed that he could do so.

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1 2014, and 2015 PFDs, or whether he filed an application for a PFD for which he was not
2 eligible.⁴³

3 Investigator Stendevad was the Executive Director's first witness. Her
4 testimony⁴⁴ included:

- 5 a. Her education, employment, training, experience, and job duties. She
6 previously worked as a paralegal for a law firm. She has been employed by
7 the Permanent Fund Division, since 2004, beginning as an eligibility
8 technician, then becoming an investigator, eventually becoming a lead
9 investigator and then the supervising investigator.
- 10 b. A description of the on-line PFD application process, which begins with a
11 notice that entering untrue information is a class C felony offense and a check
12 off box for the applicant to acknowledge that he or she has read and
13 understands AS 11.56.205, the unsworn falsification 1st degree statute. And is
14 followed by questions which include whether a person had been out-of-state
15 more than 90 days and more than 180 days during the prior calendar year.
16 And includes a requirement that the applicant provide the names of two
17 Alaskan residents who can verify that the applicant was an Alaskan resident
18 during the prior calendar year. And concludes with a certification that: the
19 applicant is and will indefinitely remain an Alaska resident; the applicant was
20 an Alaska resident for all of the prior (qualifying) year, and has not claimed
21 residency in any other state; and, the applicant understands that if anything
22 stated is not true that is a criminal offense, if anything is deliberately
23 misrepresented or state with reckless disregard for the facts the person could
24 be civilly liable and fined up to \$3,000 and being ineligible for the next 5
25 PFDs; and, the applicant certifies that the information provided is true and
correct.
- c. The PFD application form does not include a question about whether the
applicant was an Alaska resident during the qualifying year. The form also
does not define when a person loses their Alaska resident status or when a
person is deemed to be a resident of another state.
- d. There are circumstances in which a person could work out-of-state and not
lose his or her Alaska residency. There are circumstances in which a person

⁴³ Tr. at pp. 48-51.

⁴⁴ The court notes that its description of the testimony generally recounts the testimony as it unfolds in the transcript, but the court on occasion has described testimony provided at a later point in the transcript, for example on cross, if it fits with the subject being described at that point in the Decision. This is particularly true of Officer Maxwell's testimony.

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1 may travel outside the state for more than 90 and more than 180 days and
2 retain their Alaska residency.

- 3 e. There are supplemental questions on the PFD application form that an
4 applicant must answer if he or she answered “yes” to being out-of-state for 90
5 or 180 days during the qualifying years, which include questions about dates
6 of travel, whether the person maintained their home in Alaska, and whether
7 the person accepted full-time employment in another state or country. Moving
8 one’s belongings out-of-state and accepting permanent employment in another
9 state are disqualifying actions.
- 10 f. A person applying for a PFD is not certifying that they are eligible for the
11 PFD but the person is certifying that she or he was a resident of Alaska
12 throughout the qualifying year.
- 13 g. The Department does advise people that if they are unsure about their
14 eligibility they should go ahead and apply and disclose the issues the person is
15 concerned about. If Officer Maxwell had called the Department he likely
16 would have been advised that he was not eligible but that he should state on
17 the application that he had been gone more than 90 days, explain the
18 circumstances, and submit it.
- 19 h. Officer Maxwell has not repaid the 2013 or 2014 PFDs. There has been no
20 formal declaration that he in fact was ineligible for those PFDs.
- 21 i. The PFD application deadline is March 31 each year.
- 22 j. A person’s Alaska residency is severed the moment the person crosses the
23 Alaska border with the intent to move from Alaska.
- 24 k. A person cannot be a resident of more than one state.
- 25 l. The PFD website has information available concerning eligibility, including
the example of a person who moves from Alaska to Washington for a new
job, purchases a home in Washington, and then after two weeks decides to
return to live in Alaska - the person is not eligible for the PFD for that
qualifying year, even though the person was not gone for more than 180 days.
- m. Officer Maxwell certified in each of these three PFD applications that he had
been an Alaska resident for the entire period of each qualifying year.
- n. Officer Maxwell received the 2013 and 2014 PFDs and his 2015 PFD
application is on hold pending the outcome of her investigation.
- o. The initial report by Trooper Ryan concerning Officer Maxwell, and her
subsequent investigative steps, which included: checking his PFD records;

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1 those records show that he certified on each of the three applications at issue
2 that he was an Alaska resident for the entirety of each of the three qualifying
3 years; she determined that the 2014 and 2015 applications were filed from a
4 computer in Alaska; obtaining information about his employment in Ronan,
5 Montana, some through Trooper Ryan; she obtained information from the
6 Alaska Department of Labor which showed when he earned wages in Alaska
7 and his unemployment compensation history; obtaining information from
8 Homeland Security about his Canada/U.S. border crossings; obtaining
9 information from the APSC; obtaining information about his employment in
10 Fairview, Montana; obtaining AMHS records for him for 2012-14; requesting
11 that Trooper Ryan and Sgt. Miller interview him; checking in Montana
12 regarding his Montana driver's license and vehicle registration; interviewing
13 KPD Police Chief Stonecipher; and, interviewing Klawock City Administrator
14 Leslie Isaacs. She has never met or spoken with Officer Maxwell.

- 9 p. Her opinion is that Officer Maxwell was not honest or truthful in completing
10 the PFD applications at issue. And it is her opinion that his "ability to
11 perform the functions of a peace officer are impaired . . . by his . . . actions as
12 regards to his PFD applications."⁴⁵
- 12 q. Her evidence does not include an admission from Officer Maxwell that that he
13 made a statement in a PFD application that he did not believe to be true or that
14 he intended to mislead the Department of Revenue.
- 14 r. Officer Maxwell testified during his criminal trial that he traveled to Idaho,
15 Utah, and Washington after his employment in Ronan was terminated and
16 before he returned to Klawock but he stated in his unemployment
17 compensation application that he remained in Montana during that time
18 period.

17 The Executive Director's second witness was Trooper Ryan. His testimony
18 included:

19 _____
20

21 ⁴⁵ Tr. at p. 162. ALJ Slotnick, later in her testimony, did not allow her to opine that Officer
22 Maxwell's conduct would adversely affect his ability to function as a law enforcement officer
23 because the State would have to disclose information about this matter to the defense and to the
24 court which would result in prosecutors being less likely to prosecute his cases and courts less
25 likely to issue search warrants based on his testimony, and judges and juries would be more
likely to discredit his testimony. And ALJ Slotnick would not allow her to opine that Officer
Maxwell's conduct would be detrimental to the reputation, dignity, or discipline of law
enforcement in Alaska. ALJ Slotnick noted that the same were not stated as grounds in the
Accusation and that he did not agree with the Executive Director's theory that such bad opinion
evidence establishes that an officer's police certificate must be revoked. Tr. at pp. 163-170.

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- 1 a. His education, employment, training, and experience.
- 2 b. He has known Officer Maxwell since 2010. He knew Officer Maxwell had
- 3 left Alaska. Spring is his slow-time and he often uses that time to investigate
- 4 residency cases. He looks at who had left Prince of Wales Island (POW) and
- 5 returned and whether they applied for a PFD. He did so for Officer Maxwell,
- 6 who had returned to Klawock over a year earlier and was driving a vehicle
- 7 with Montana license plates, well past the deadline for obtaining Alaska
- 8 license plates. He did not find that Officer Maxwell had applied for hunting
- 9 or fishing licenses. He passed the matter on to Investigator Stendevad.
- 10 c. He later cited Officer Maxwell for the license violation. In the process of
- 11 investigating that matter he learned from Montana that Officer Maxwell had
- 12 obtained a permanent registration there, which required that he be a resident
- 13 of Montana.
- 14 d. Investigator Stendevad asked him to contact the City of Ronan on her behalf
- 15 concerning Officer Maxwell and he contacted the City Clerk there on May 6,
- 16 2015, who advised that the City had hired Officer Maxwell to be its Police
- 17 Chief, beginning on October 25 2013, a full-time position, and that he had
- 18 been terminated from the position on January 7, 2014. He conveyed that
- 19 information to Investigator Stendevad. He also made contact with the Chief of
- 20 Police in Fairview and was informed that Officer Maxwell had started work
- 21 there as a full-time police officer on May 4, 2012 and his last day of work was
- 22 May 7, 2012, and thereafter he did not report or return phone calls and he
- 23 eventually resigned, and he reported that he had been in Idaho during his
- 24 absence from work. He wrote up reports concerning the foregoing and
- 25 Investigator Stendevad asked him to interview Mr. Maxwell.
- e. He took Sgt. Miller with him to interview Officer Maxwell. They found him
- at the Klawock airport and conducted the interview there. He recorded the
- interview. The narrative in his report of the interview is accurate.

Officer Maxwell told him: the employment in Montana was full-time; he obtained a Montana driver's license and registered his vehicle there; he was going to use the Montana position as a stepping stone to another position, possibly in Alaska; he sold a bed and left his furniture and exercise equipment in Klawock; he applied for the PFD each year he was in Alaska, 10-12 years; he is not familiar with how the PFD works; he had been offered a patrol position in Montana with the understanding that he would replace the current Chief when he retired; and, he just crashes through the PFD applications at the last minute.

Officer Maxwell also told him: he did not intend to make Montana his home; he left his belongings in storage in Klawock; he wasn't gone more than 30 days the first time he went to Montana and he was going there then to look at

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1 a position; he said it was not a permanent position, he would start in patrol and
2 move up to Chief; it ended up being more of a vacation; he stayed at a hotel in
3 Fairview at about \$100 per night; and when he left Fairview he came right up
4 to Klawock.

4 f. There are a bunch of warnings on the last page of the PFD application about
5 legalities and not answering truthfully. When he does an application he reads
6 those types of things because he is a law enforcement officer.

6 g. Integrity, honesty, and forthrightness are important things to him as a law
7 enforcement officer because law enforcement officers have to build the
8 public's trust and that of fellow officers. This is something instilled in law
9 enforcement officers from the time they arrive at the academy.

9 h. He also interviewed Ms. Douglas-Strait after interviewing Mr. Maxwell
10 because he found out that she was the person who had packed up Mr.
11 Maxwell's belongings. She said that: she used to clean Mr. Maxwell's
12 residence before he moved to Montana the second time; her daughter left with
13 him; she had not had any dealings with him since; he took his TV and bed
14 with him and sold the rest of his belongings; and, she shipped his clothing and
15 "cop stuff" to him in Montana.

13 i. It is his opinion that Officer Maxwell was dishonest, was not truthful, in his
14 2013, 2014, and 2015 PFD applications. One of the red flags for him in this
15 regard was that he had Mr. Maxwell's PFD applications and Officer Maxwell
16 had said he disclosed his absences but he did not do so on the applications,
17 and he had stated in his applications that he had not received benefits from
18 other states. His opinion is also based on the information provided by Ms.
19 Douglas-Strait. Also, he said that he had just gone down to Fairview to check
20 it out but he had a permanent full-time job there. And he minimized his
21 familiarity with the Alaska PFD. But the biggest thing was that he put down
22 on his PFD applications that he was a resident of Alaska the whole entire time
23 and did not disclose his absences.

19 j. It is his opinion that Officer Maxwell cannot perform the duties of a police
20 officer in Alaska.⁴⁶

22 ⁴⁶ Officer Maxwell objected to all, or virtually all of the opinion testimony elicited by the
23 Executive Director's attorney. The Executive Director argued that the disclosure requirements of
24 *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150, 154 (1972)
25 would require that Trooper Ryan's opinion of Officer Maxwell be disclosed to the defense and as
a result could not perform the duties of a police officer. ALJ Slotnick sustained the objections
because: the Executive Director was attempting to present a case that went beyond the
allegations in the accusation - for example, that Officer Maxwell was not truthful when
interviewed by Trooper Ryan and Sgt. Miller; because Trooper Ryan is a fact witness who

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- 1 k. He complained over the last 4 ½ years to several people, including the
2 Klawock City Administrator Leslie Isaacs, and Dewey Skan, about KPD
3 hiring Officer Maxwell. He does not know if there were any related
4 investigations. He had also mentioned Officer Maxwell to the APSC, but
5 does not know if that resulted in an investigation. He complained because
6 Officer Maxwell did not enforce the mandatory domestic violence (DV) arrest
7 laws, he did not deal appropriately with intoxicated persons, he fell asleep on
8 duty, and there were concerns about animal cruelty and public safety.
- 9 l. There are different definitions of residency for purposes of elections, PFD,
10 fish and game licenses and struggles with the different definitions and
11 requirements. “I think that’s a struggle that all law enforcement people have
12 been having for multiple, multiple years now . . .”⁴⁷
- 13 m. He had inquired in Montana if Officer Maxwell had obtained hunting or
14 fishing licenses and been informed he had not.

15 Sarah Heib was the Executive Director’s third, and final, witness. Her testimony
16 included:

- 17 a. She is an administrative investigator for the APSC.
- 18 b. Her education, training, and experience, which include being a police officer
19 in Juneau from 2004 until February 2013.
- 20 c. Her job duties.
- 21 d. She prepared and filed the Accusation against Officer Maxwell. The
22 Accusation is based on APSC certification files, Investigator Stendevad’s
23 report, and court records.⁴⁸

24 Officer Maxwell’s first witness was himself. His testimony included:

25 should not be testifying about the law; and, such fellow officer opinion testimony is not a basis
for finding lack of “good moral character” under the applicable law. *See*, Tr. at pp. 274-79, 286-
91.

⁴⁷ Tr. at p. 353.

⁴⁸ ALJ Slotnick, after the discussion concerning proffered opinion testimony from Trooper
Ryan, declined to allow the Executive Director to present opinion testimony from Ms. Hieb as to
whether Officer Maxwell was truthful and honest in his PFD applications and as to whether his
making false statements in the applications would adversely affect his fitness to perform the
duties of a police officer. Tr. at pp. 304-07.

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- 1 a. He has lived in Alaska since 1999. He is a police officer with KPD. He started
2 with KPD in October 2008. Prior to that he worked for the Kodiak Area
3 Native Association as a VPSO for approximately 12 years. He became a
4 sergeant and for the last two years he as the Village Public Safety
Coordinator. He also worked as school resources officer on the north slope.
He has been a police officer for a total of some 26 years.
- 5 b. While in Kodiak he formed a village marine safety unit that won a National
6 Red Cross Community Safety Award. For KPD he is the armorer, was the K-
7 9 officer, was a school resource officer, was the acting Chief of Police, and he
8 takes care of vehicle maintenance scheduling. As well as basic police duties.
- 9 c. He has been injured many times in the line of duty. He has been involved in
10 four incidences involving the use of deadly force.
- 11 d. He traveled to Fairview, Montana in 2012. He had been offered a job with the
12 Fairview Police Department. He was told during the related negotiations that
13 the current Chief of Police would be retiring and he would then be in a very
14 good position to replace her when she left. He viewed it as “an opportunity to
15 get some supervisory time under my belt. My long term goal was to
16 eventually . . . be able to use that in order to perhaps become Klawock’s Chief
17 of Police when . . . Chief Stonecipher retires.”⁴⁹
- 18 e. He understood that he was offered a full-time permanent position with the
19 Fairview Police Department conditioned on his completing a 90 day probation
20 period and that either party could terminate his employment during that 90
21 day period. He did not know how long he would be in Fairview but when he
22 arrived intended to stay for a while. He did not know how it would work out,
23 if they would like him and he would like it there.
- 24 f. He filled out his personnel history statement with the APSC concerning his
25 dates of employment in Fairview from memory and that was the best he could
do.
- g. He went to Montana with a friend, who is married and has children and who
were leaving Klawock permanently and a U-Haul was rented and they and his
friend Mike put as much of Mike’s belongings in it as they could. He only
took what he would need for work, his firearms, clothing and personal
necessities and left the rest of his belongings in the apartment in Klawock. He
had the City’s permission to do so. He did sell his desk and some other items
before he left to raise money for his moving expenses. These were items it
would be cheaper to replace than to move.

⁴⁹ Tr. at p. 318.

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- 1 h. He was told that Fairview would provide a mobile home before he left for
2 Montana but on the way he was told that the mobile home would not be
3 available. The area was experiencing an oil boom and the oil companies were
4 buying all of the mobile homes. When he arrived he stayed in a hotel at about
5 \$100 a night. He expressed concern to the Chief who went to the Mayor who
6 then offered him a personal loan to cover the nearly \$1,000 he had paid the
7 hotel, and the City Council later agreed to just pay the bill as he had been
8 promised City housing and it was not available. He was then told to go stay
9 with family in Washington or wherever and they would let him know when
10 housing was available. So his plan at that point was to return to Fairview once
11 the housing was straightened out.
- 12 i. He retained his Alaska driver's license while in Fairview and did not obtain a
13 Montana driver's license.
- 14 j. It was not working out in Fairview so his intentions changed and he resigned
15 during his probationary period. He could not afford to live there in a hotel.
16 He was at his sister's home in Washington waiting for a call that his housing
17 was available that did not come and he was in contact with KPD Chief
18 Stonecipher throughout and the Chief offered for him to return to KPD. The
19 Fairview Police Department was overworked and understaffed. He did not
20 think it was a stable employment situation. He was ready to come back home
21 and that is what he did. Once he was back in Klawock he had no plans to
22 leave.
- 23 k. He thinks he was gone about 30 days. He was not out of the state of Alaska
24 more than 90 days in 2012.
- 25 l. He did not think that he had severed his Alaska residency in 2012. He never
considered that he may have done so. He always considered himself an
Alaska resident. He did not think about it one way or the other at that point in
time. He has never consciously claimed residency in another state since
moving to Alaska.
- m. He wanted to forward his career and so applied for and was hired to be the
police chief in Ronan, Montana. He wanted to return to KPD as the Chief of
Police and to retire from that position. He did not know if it was an at-will
position. He had a one-year probationary period. He understood that it would
be a permanent position once he completed the probationary period. He
thinks he worked for the Ronan Police Department from October 26, 2013
until January 7, 2014 when he was fired. The department was in turmoil when
he arrived. It was a hostile work environment because the employees had
figured that the chief would be promoted from within. And he simply did not
have the skill set to succeed in the position. He would have like have kept the
job as it would enhance his long-term plans but he realized early on that this
was not going to be a long-term position.

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- 1 n. He obtained a Montana driver's license while in Ronan. It was a condition of
2 his employment. He also understood that he had to change his vehicle
3 registration for his SUV to Montana, and so he did so. When he registered his
4 SUV at the Montana DMV there was no talk about residency, the thought that
5 qualification for the permanent registration was based on the age of the
6 vehicle. He did not claim residency in Montana. He did not think along those
7 lines. He did not think that obtaining the Montana driver's license would
8 sever his Alaska residency. He did not file a Montana tax return because he
9 did not believe he was a Montana resident.
- 10 o. He did not ship all of his belongings to Ronan. He did ship his sidearm and
11 patrol rifle. And he took clothing and personal items and his work equipment.
12 He left the remainder in the City owned apartment in Klawock.
- 13 p. He kept in touch with Chief Stonecipher throughout his time in Ronan. Chief
14 Stonecipher offered him his old position with KPD. It took him a few days to
15 take care of the things he needed to in order to move and then he left
16 Montana, visited his father in Salt Lake City, Utah and also stopped to see his
17 ex-wife and step-son, he stopped and picked up a friend and visited relatives
18 in Washington and then drove to Prince Rupert, B.C. where he caught the
19 ferry and came back to Klawock, where he resumed his KPD employment.
- 20 q. Once back at KPD he had no intention of going anywhere else.
- 21 r. He was not gone from Alaska more than 90 days in 2012, 2013, or 2014. He
22 did not believe he had severed his residency ties to Alaska. He always
23 considered himself to be an Alaska resident. But, again, residency was not
24 something he was thinking about at the time. He answered every question in
25 the applications correctly. He did not hide the fact that he had left the state
and returned. The applications, to his recollection, do not define residency.
He did not intend to mislead any public servant. He did not claim residency in
any other state. He would not have applied if he knew he was not eligible.
- 26 s. The City of Ronan prompted him to register his vehicle in Montana. He
27 understood that the permanent registration was available for vehicles of a
28 certain age and he does not recall that any length of residency was attached.
29 He did not change the license plates because he had initially intended to send
30 the van to his sister in Washington so that his nieces would have
31 transportation at college, and he was going to buy a used car in Klawock but
32 those plans changed. He has a current Alaska driver's license and the vehicle
33 is now registered in Alaska.
- 34 t. The interview with the Troopers came from out of the blue. He is not good
35 with dates. He thought he was forthcoming and truthful. He asked if he had
36 messed up an application and when told he had he owned up and said he
37 would do what was necessary to make that right.

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- 1 u. Ms. Douglas-Straight cleaned his apartment once or twice a month. She
2 packed some things up. She was not there the whole time he was moving
3 items, and he does not recall having any conversations with her about his
4 move. She did not ship anything to him. The only things shipped to him were
5 his firearms.
- 6 v. He had no specific knowledge of criminal fraud cases being brought against
7 PFD applicants until he was charged. He is not aware of any specific
8 prosecutions for fraud related to obtaining fish and game licenses.
- 9 w. As a police officer he wants to make sure that everything he does is truthful
10 and above approach.
- 11 x. He has always filled out PFD applications truthfully and correctly. He
12 understood that the application is the instrument by which the state determines
13 if a person is qualified as a resident to receive a PFD. His concern in filling
14 out the applications was to make sure it was done completely, accurately, and
15 honestly. He believed he has been an Alaska resident since he applied for the
16 PFD the first time.

17 “Q Okay. So knowing everything you know today, and let’s assume you
18 know everything you know today, when you filled out your application in
19 2012 okay? Would you do the same thing?

20 A Well, given what I know, giving the understanding and the -- the opinions
21 that -- that were rendered by Menendez, I would say absolutely yes. I would -
22 - I would do the same thing.

23 Q So, would you do - - with everything you know today, you would do
24 exactly the same thing?

25 A Yes.

Q Despite the fact that you moved twice to Montana, right?

A Yes, I would do it exactly the same despite everything. I would not - -
knowing what I know today, would not change a thing.

Q And you think that that - - and so, along those lines, you haven’t paid back
the prior dividends, right, for --

A I don’t believe - - at this point in time, I don’t believe I owe the state any
money. I don’t believe I cheated the state out of any money. I have not been
contacted one way or the other regarding that. So, no, I have not. I -- I -- I --
I am unconvinced that, in fact -- I -- I mean, my understanding, and even to
my knowledge today was that I was found -- that in fact I did not sever my

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1 Alaska residency and that I did not -- I -- I -- I did not make false statements
2 or untruthful answers to my PFD questionnaire.

3 So, I have not seen anything at this point in time that would lead me to believe
4 that I -- any of the PFDs that I received, I received improperly. Now, if -- if
5 that changes, I would be happy to do, you know, what can be done to rectify
6 that.

7 Q So, as you sit here now, if you had to sign -- fill out that application -- the
8 application for the '12 dividend, '13 and '14 dividend, you would do exactly
9 the same thing?

10 A Yes. I didn't do anything wrong. I was completely honest and forthcoming
11 on those applications. I did not intentionally set out to -- mislead or deceive
12 anybody and I believe that that was all held to be true in my criminal case.
13 So, again, yes, given what I know today, I would not change a thing as far as
14 those applications are concerned.

15 Q So, in your mind, the fact that the judge found you not guilty of committing
16 a certain specific crime, that means you didn't do anything wrong in
17 connection with PFD application process? That's your -- is that your
18 understanding?

19 A No, sir. No, that's not exactly correct.

20 Q Okay. Correct me. How's it no --

21 A It's is -- give me -- it is the -- it -- it was his -- during his verdict, he stated
22 that in his opinion my Alaska residency was not severed. And in his opinion,
23 there was no intent to defraud or mislead the State of Alaska. And in his
24 opinion, the PFD applications were true and correct.

25 So, given the fact that a -- a --- I believe he was a district court judge, Judge
26 Menendez giving those opinions after, I guess, two days of arguing the issue -
27 - or debating the issue of residency, based upon my knowledge of his opinion,
28 no, I don't believe that I broke my residency. I don't believe that I -- you
29 know, I -- I did not intend to mislead or defraud anybody. So, with the basis
30 of your question, yes, absolutely, I would do the same thing all over again --

31 Q Okay.

32 A -- given what I know now.

33 Q So, you've been a police officer for 16 years and that's your understanding
34 of a not guilty verdict in a criminal prosecution; that the judge makes findings

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1 that everything that the person did was just fine? Is that your understanding of
2 what it means to be acquitted in a criminal case?

3 A Again, that's not what I said. You asked me, given what I know? And I
4 told you that part of what my understanding what Judge Menendez didn't --
5 information was is that he didn't find that I had terminated my Alaska
6 residency. So, given that -- and that's all I'm saying, is given the information
7 that he provided me during the course of his verdict, I would tell you that I
8 would not do anything different.

9 Q Okay. And so, once again, I'm just talking about non guilty verdicts,
10 generally. Isn't it -- well, let's just talk about this case. Isn't it true that what
11 Judge Menendez said is he's not convinced beyond a reasonable doubt that
12 you committed a crime? That was his findings, right?

13 A That was part of his findings.

14 Q Okay. And you're aware that you actually asked Judge Menendez to make
15 additional findings; were you aware of that?

16 A I am.

17 Q And he declined to do that?

18 A That's correct.

19 Q Okay. So, your takeaway is that you've been vindicated, that -- and you'd
20 do the same thing to --

21 A I understand that you don't like my answer and I'm sorry that you don't like
22 my answer. I -- I truly am. But you asked me, given what I know now, given
23 my understanding of what I know now -- my understanding of what I know
24 now, would I do anything different? And sir, I'm here to tell you that given
25 my understanding of what I know now, I would not do anything different. I
don't know how more clearly I can state.

Q Okay. Got it.

A Based upon my understanding and my information, I believe that what I did
there no intent to defraud or mislead anyone within the state of Alaska.

Q Okay.

A And I would do it -- I would do it the same again.

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1 Q Okay. Got it. And, we'll move on. . . ."⁵⁰

- 2 y. He shipped two firearms to Montana when he went to Ronan because he was
3 driving through Canada. He took firearms with him when he went to Fairview
4 because he took the ferry to Bellingham and so did not go through Canada.
- 5 z. He signed a one-year lease in Ronan. It was his intent to stay at least a year.
- 6 aa. He heard the testimony yesterday about the example on the PFD website of a
7 person who leaves Alaska for Washington, purchases a home there, and after
8 two weeks decides to return to Alaska being a non-Alaska resident, even if
9 gone for less than days. He has never seen that. He understands it is an
10 example of a non-resident.

11 "Q Okay. And you're still -- if you were to know that today, if you knew that
12 when you filled out these applications, your testimony is that you would do the
13 -- exactly the same thing? Really?

14 A My -- when I read that, I -- I would think that it was the purchase of a
15 home that indicates a plan to permanently relocate outside the state of Alaska.
16 I did not have any such contract to purchase any permanency. So, again, I --
17 my understanding is, yes, I -- I would do the same thing."⁵¹

- 18 bb. He signed the year-long lease out of necessity, he needed a place to live. He
19 did not do so to "break my Alaska residency."⁵² He does not believe he
20 terminated his Alaska residency.
- 21 cc. He did not register the van in Alaska once he returned because he had planned
22 to have it be down south so that his sister's daughters could use it at college
23 and he would have a vehicle when he went south for vacation. He had a
24 patrol car and rarely drove the van. He just did not get it done. He was issued
25 a citation, owned up to it, paid it, and registered the vehicle in Alaska. This
was about a year after he returned to Alaska.
- dd. When he told the Troopers he had crashed through the applications he did not
mean it was at the last minute before the application deadline, it meant it was
the last minute on his personal list of things to get done. The Troopers did a
very good job of interviewing him, keeping him off balance, and he was
grasping for an explanation of what could have happened, how an application
could have been filled out incorrectly. He used the same term, "crashed
through" when responding to a question from his lawyer during the hearing.

⁵⁰ Tr. at pp. 451-56.

⁵¹ Tr. at p. 466.

⁵² Tr. at pp. 466-67.

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1 The applications were filled out correctly and honestly, whether he crashed
2 through them or not.

3 ee. He signed the F3 under oath on April 10, 2014. He has no explanation for
4 why he did not list his sister with his other family members. He did not list
any of his siblings. He has two half-sisters.⁵³

5 ff. He made the statement in the Ronan application that he was looking for a
6 department to retire from closer to home. And he made the statement in the
7 email to the Fairview Chief of Police about hoping he had not burned a bridge
and he truly would like to work there, and he had had high hopes. Those were
the truth when stated.

8 gg. He would not agree with the proposition that once a person is physically
9 present in another state with the intent to remain there that the person is no
10 longer an Alaska resident.

11 hh. He did not fill out the 2014 PFD application until March 3, 2014, after he had
12 returned to Alaska. It was not something he had thought about until he had
returned. His roommate brought up the subject.

13 ii. He thinks Montana has a personal income tax. He understood that you only
14 had to pay it if you considered yourself to be a Montana resident. He did not
15 so consider himself so he did not file a return there, even though he earned
income in Montana. He discussed this with H & R Block. He thinks most
residency requirements require that a person be in the state for year before the
person qualifies for state benefits.

16 jj. He traveled with somebody both times he went to Montana - with Mike Roush
17 to Fairview and with Ron Hartman to Ronan.

18 kk. He did not look at the FAQs when filling out the PFD applications because
19 there weren't any questions the he could not answer or had questions about.
He was comfortable with the answers he provided.

20 ll. If he had believed his residency had been severed in 2012, 2013, 2014, or
21 2015 he would not have applied for those PFDs. He did not apply for the

22
23 ⁵³ The Executive Director's counsel the asked whether this: "Would be another example of you
24 not giving due care to documents and information you sign under oath?" Officer Maxwell's
25 counsel objected on relevance grounds. The Executive Director's counsel argued that the whole
Accusation was about Officer Maxwell's truthfulness. ALJ Slotnick sustained the objection,
stating: "NO, no, no, no, no, no, we don't -- you have to allege certain bad acts and I -- you can
amend the accusation if you want to." Tr. at p. 483.

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1 2016 PFD after discussing the matter with his attorney. He wanted to get this
2 matter straightened out.⁵⁴

3 mm. He understood from the discussion of the regulations that one was not
4 considered to have permanent full-time employment until the probationary
5 period is over.

6 Officer Maxwell's second, and final, witness was Terry Stonecipher. His
7 testimony included:

8 a. His is KPD's Chief of Police. He has had that position for going on four
9 years. Officer Maxwell works for him. They have worked together a KPD
10 since 2009. Officer Maxwell is currently a KPD patrol officer.

11 b. Officer Maxwell went to Montana two times. The first time he left partial
12 belongings in apartment in Klawock. The second time he moved out he left
13 almost of all of his belongings in the apartment, the apartment was cluttered
14 and full. He does not know what was in all of the boxes. The City had no
15 problem allowing Officer Maxwell to leave things there because the apartment
16 would be empty until a new officer was hired. Other officers had done
17 likewise. He does not know if anything was shipped from the apartment after
18 he last checked on Officer Maxwell's belongings.

19 c. He and Officer Maxwell kept in close contact both times Officer Maxwell was
20 away. He rehired Officer Maxwell because Klawock has a "pretty horrendous
21 reputation for -- I mean, officers come and go . . . Officer Maxwell was a -- a
22 good officer."⁵⁵

23 ⁵⁴ Tr. at pp. 493-95.

24 ⁵⁵ Tr. at pp. 504-05. At this point there was an extended discussion between counsel and ALJ
25 Slotnick about whether this line of questioning opened the door to the Executive Director asking
26 questions on cross about Trooper Ryan's allegations concerning Officer Maxwell's job
27 performance. Tr. at pp. 506-520. ALJ Slotnick advised that whether he was a good cop or bad
28 cop is not relevant and that he was more interested in the residency issues. He then observed that
29 the APSC had just ruled in the *Hazelaar* case that when an officer is found to be dishonest the
30 officer's certificate will be revoked, regardless of good work performance mitigating factors. So
31 if the evidence shows that Officer Maxwell was dishonest he most likely will recommend
32 revocation. And that he had tried to make it clear to everyone that he would not give a lot of
33 weight to character evidence and "[t]hat my concern was strictly what is -- the bad acts alleged in
34 the accusation." Tr. at p. 517.

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- 1 d. He has known Trooper Ryan since 2009. Trooper Ryan has a strained
2 relationship with KPD, he has “made it very clear that he is unhappy with all
3 the officers at the Klawock Police Department.”⁵⁶
- 4 e. The first time Officer Maxwell left Klawock he understood from Officer
5 Maxwell that Officer Maxwell’s goal was to be a patrol officer and then
6 become the Chief of Police for an indefinite period of time. And he
7 understood the second time he left that Officer Maxwell intended to be the
8 Chief of Police in Ronan for an indefinite period of time. They had
9 conversations both times about Officer Maxwell coming back to KPD if the
10 new position did not work out.

11 The Executive Director’s counsel argued in his closing that: it had been shown by
12 a preponderance of the evidence that Officer Maxwell was not a person of good moral character
13 because a reasonable person would have substantial doubts about his honesty, fairness, respect
14 for the rights of others, or for the law.

15 The Executive Director’s counsel specifically argued that: the evidence in the
16 record showed that Officer Maxwell was not a resident of Alaska in 2012, 2013, or 2014; Officer
17 Maxwell committed the crimes of unsworn falsification and theft by applying for and receiving
18 the PFDs those years; Officer Maxwell does not have respect for the law as evidenced by his
19 PFD applications and related testimony; Officer Maxwell lacks honesty in three different
20 contexts - the PFD⁵⁷ applications, his interview with Trooper⁵⁸ Ryan, and his hearing⁵⁹

21 ⁵⁶ Tr. at p. 521.

22 ⁵⁷ The Executive Director’s counsel argued that Officer Maxwell’s statements in the PFD
23 applications that he was an Alaska resident were false based on the evidence concerning his two
24 moves to Montana. And he argued that the APSC does not want to “play games” or “get into
25 lawyerly stuff”, the representations about his Alaska residency are clearly false, they “are
statements a police officer should not make” and the APSC are “cops and cops think certain
ways.” Tr. at p. 556. ALJ Slotnick, stated, with respect to this argument that:

Yes, but Mr. Novak [Executive Director’s counsel], I mean, the problem with that
argument is that the term residency is confusing, that people don’t actually know
all the details of what makes someone a resident, doesn’t make someone a
resident, what it takes to be eligible for the PFD and what it does not. And that is

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1 testimony; a lack of honesty finding does not require a finding of intent to deceive or an
2 intentional lie, a reckless false statement will suffice as would willful blind ignorance of the law,
3 particularly on the part of a police officer with Officer Maxwell's experience⁶⁰ as the importance
4 of honesty and integrity is instilled in police recruits from the time they arrive in Sitka for the
5 training academy, and police officers have a duty to become knowledgeable enough to ensure
6

7
8
9 not an unreasonable argument. And if a cop fills out a PFD form and believes
10 that they were a resident in the qualifying year and signs it . . . that should not be a
11 disqualifying event in that cop's history unless cop had reason to doubt.

11 Tr. at pp. 556-57.

12 ⁵⁸ The Executive Director's counsel argued that Officer Maxwell was dishonest with Trooper
13 Ryan with respect to: his intentions with respect to his two moves to Montana; his familiarity
14 with the PFD program; that he was sure he provided the dates of his absences from Alaska in the
15 applications; and, his crashing through the applications at the last minute; his storing his
16 belongings in Klawock.

17 ⁵⁹ The Executive Director's counsel argued that Officer Maxwell was dishonest in his hearing
18 testimony: that he had lived in Alaska since 1999; his intentions with regards to the moves to
19 Fairview and Ronan; that he planned to return to Klawock and retire there as Police Chief; and,
20 that he did not think about residency issues - when applying for the PFDs or obtaining a Montana
21 driver's license and vehicle registration, or twice moving to Montana.

22 ⁶⁰ ALJ Slotnick stated that he agreed that Officer Maxwell was not eligible for the PFDs during
23 the years in question. And that:

24 I'll also let you know that your [Executive Director's counsel] theory of the case
25 is one that I accept. That if this was subterfuge on his part, then I would be very
inclined to find that he doesn't meet the standards for a certificate. And I also
tend to agree with you that his -- circumstances here, someone applying for a
PFD, that is questionable, raises an inference of subterfuge.

What I'm struggling with is this concept that if he had an honest belief or that if
he -- if it was just an innocent mistake. And I don't want to declare war on police
officers who apply for PFDs to which they're not entitled. And so, I'm -- and I
am struggling here with that. And so, the more you can help me out with that -- of
that difficulty and the more Mr. Heiser [Mr. Maxwell's counsel] on his side can
help me out of the difficulty if -- to go the other way, I would appreciate it.

Tr. at p. 553.

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1 that there sworn statements are correct;⁶¹ his dishonesty or disrespect for the law are evidenced
2 by his hearing testimony concerning whether he would do things differently if he were applying
3 for the PFDs at issue then knowing what he knows now.⁶²

4 The Executive Director's counsel concluded by arguing that, in view of prior
5 APSC decisions, he should have been allowed to present opinion testimony from Investigator
6 Stendevad, and perhaps others, that Officer Maxwell had been dishonest or untruthful, including
7 during the investigation.
8

9
10
11 ⁶¹ The Executive Director's counsel argued, in part, that Officer Maxwell was dishonest in his
12 testimony about his experience with residency in the context of cases involving PFDs and fish
13 and game licensing. He questioned how Officer Maxwell could be a police officer for 17 years
14 and not know about such things. And he argued that because Officer Maxwell was a police
15 officer, he had a duty to call the PFD office or look at the FAQs before certifying on the
16 applications that he was an Alaska resident. He did not does those things and did not want to do
17 them, he instead acted like the Sgt. Schultz character in Hogan's Heroes ("I see nothiiiiing").

18 ⁶² The Executive Director's counsel, in this regard, stated:

19
20 And very troubling as well and this goes to both his credibility as well as his
21 disrespect -- lack of respect for the law. And he testified that if he knew then
22 what he knows now that he once again would certify that he had been an Alaska
23 resident for the entire prior years. So, if he knew then what he knows now he
24 would still certify that. And either that testimony is less than credible or he has a
25 complete disrespect for the law. And I would submit -- you know, I -- first, I
think I tend to believe him, I guess. I don't know. That's crazy to me. But it's
one or the other.

It's either he's lying in his testimony or he has complete disrespect for the law.
Because if you go through the situation where you are investigated, prosecuted, sit
through all the testimony, have the definition explained to you that it's -- that
you're not -- if you moved to a location with the intent to remain indefinitely and
you would still do it again tomorrow, I would submit it's a complete and utter
disregard for the law.

That he is saying that he would not respect the law in the future, and I think that's
important for the court to note and rely upon in your proposed finding.

Tr. at pp. 573-74.

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1 Officer Maxwell’s counsel, in closing, argued that: the Accusation is based on the
2 felony charges; the APSC’s pre-hearing brief focuses on the claim that Officer Maxwell
3 dishonestly stated in the PFD applications that he was an Alaska resident; but during the hearing
4 APSC’s counsel made all kinds of other accusations and allegations; the case should focus on
5 what was alleged in the Accusation; Officer Maxwell has good moral character based on his
6 work history; Officer Maxwell went to Montana for brief periods of time and returned to
7 Klawock; Officer Maxwell honestly believed he qualified for the PFDs in 2012, 2013, and 2014;
8 he did not intend to mislead a public servant; residency is a complex issue; the PFD application
9 does not define residency; the example from the PFD website cited by the APSC involved
10 moving to another state and purchasing a home, so it is not helpful in this case; he credibly
11 testified that he thought full-time permanent employment means one is no longer on probation;
12 he sincerely believed that since he had not been out-of-state for 90 or 180 days during any of the
13 years at issue he qualified for those PFDs; the issue is not whether he in fact was a resident of
14 Montana or Alaska but rather “[t]he issue is his belief, it’s is -- whether he committed deceit,
15 fraud, subterfuge, trickery, duplicity”;⁶³ any red flags at to his residency would have only been
16 evident to a lawyer, Judge Menendez indicated that Mr. Maxwell could reasonably and
17
18

19
20 ⁶³ Tr. at p. 589. ALJ Slotnick noted at this point that:

21 Well, the definition is what a reasonable person would conclude. And I do think
22 that the *Much* case supports Mr. Novak’s theory of the case. But I also do agree
23 with you that we don’t want a trap for the unwary. That that’s not the point here,
24 is that you know, a policeman who makes an honest, good faith mistake on a PFD
25 application shouldn’t necessarily lose his certification. We’re going to have to
really [take a] closer look at the circumstances. But I do tend to think that Mr.
Novak’s theory of the case, at least as to the issue of not -- of ignoring the red
flags and going ahead and accepting a PFD when a reasonable person would have
inquired is -- that’s a reasonable theory, unless you can persuade me otherwise.

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1 justifiably believe he was an Alaska resident and had not established residency in another state,
2 and Investigator Stendevad testified that accepting out-of-state employment does not necessarily
3 sever a person's residency; and he testified credibly with respect to the matters raised in the
4 APSC's closing arguments.

5 ALJ Slotnick took the matter under advisement.

6 Following the hearing additional evidence was submitted into the record.⁶⁴ The
7 Executive Director filed: a printout from the Montana DMV website related to vehicle
8 registration (Exhibit 12); a copy of the log notes from the April 26, 2016 hearing during which
9 Judge Menendez returned the verdicts in Officer Maxwell's criminal case (Exhibit 13); a copy of
10 the audio recording of that hearing (Exhibit 14); and a copy of the audio recording of Trooper
11 Ryan's interview of Officer Maxwell (Exhibit 16). And Officer Maxwell submitted a copy of
12 Montana statutes concerning motor vehicle registrations.
13

14 The substance of Trooper Ryan's interview of Officer Maxwell is addressed
15 above.

16 All of the participants appeared by telephone for the return of verdict hearing.
17 Officer Maxwell listened to the verdict by telephone from an airport.⁶⁵ The following occurred
18 during the hearing:

- 19
- 20 a. Judge Menendez stated at the outset that, after reviewing the record, he
found Officer Maxwell not guilty on all five charges.
 - 21 b. He specifically focused on the *mens rea* elements. He stated: "Most
22 specifically I was troubled by the lack of showing of an intent to defraud
23

24 Tr. at p. 590.

25 ⁶⁴ Record at pp. 228-255.

⁶⁵ Airport announcements can be heard several times on the recording as Judge Menendez is
stating his findings.

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1 or deprive, the lack of that showing at its reflected in the charging
2 documents.”

3 c. He discussed Officer Maxwell’s two moves to Montana and police jobs in
4 Montana, which he found had been proven. He discussed Officer
5 Maxwell’s long-term professional goal of becoming the Chief of Police in
6 Klawock and his twice returning from Montana to again work for the
7 Klawock Police Department. He noted that he left both Montana jobs
8 during the probationary period. He noted that he did not move anybody
9 with him to Montana. He was out of state year for less than the 90 days
10 referenced in the PFD applications. He noted that Officer Maxwell had
11 indicated that he had moved the second time to be closer to his family but
12 that is not what happened, he returned to Klawock and KPD. He noted
13 that he may have received benefits in Montana in the form of a driver’s
14 license and vehicle registration but that is not the issue, the issue his
15 intent. He noted that if Officer Maxwell acted with the required *mens rea*
16 he did in a public and “foolish way” by driving around Klawock with
17 Montana license plates. He also discussed the Alaska unemployment
18 benefits that Officer Maxwell had received.

19 d He noted that it may be that what Officer Maxwell did could be pursued
20 on the civil level. He does not know. “There may be a wish to proceed”
21 on that basis. “But that’s up to their [the State’s] decision to be made.”

22 The Montana DMV webpage and the Montana statutes reflect that:

- 23
- 24
- 25 a. New residents must register their vehicles “within 60 days of establishing
residency.”⁶⁶
- b. Non-residents who are gainfully employed in Montana must present their out-
of-state registration to the county treasurer’s office and taxes or fees in lieu of
taxes, and registration fees are due. “Non-residents may choose to register by
the calendar quarter. The vehicle must display the license plates from both its
home state and from Montana.”⁶⁷
- c. Passenger vehicles may be registered for 12 months, 24 months, or
permanently if the vehicle is 11 years old or older. The total cost is \$103.50.
The annual registration fee for such a vehicle would be \$28.

⁶⁶ Record at p. 231.

⁶⁷ Record at p. 231.

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1 **b. ALJ Slotnick’s Decision**

2 ALJ Slotnick issued his Decision on July 25, 2016. He found that the Executive
3 Director had not shown that Officer Maxwell was dishonest or that there was substantial doubt
4 about his good moral character and so denied the requested revocation of his certificate.

5 ALJ Slotnick framed the issue as follows: the Executive Director alleges that
6 Officer applied for and received benefits (PFDs) for which he was not eligible, and in so doing
7 certified that he was an Alaska resident when he was not an Alaska resident, and asserts that this
8 conduct demonstrated a lack of good moral character under 13 AAC 85.010(a)(3), so his police
9 officer’s certification should be revoked.
10

11 13 AAC 85.010(a)(3) provides that:

- 12 (a) A participating police department may not hire a person as a police officer
13 unless the person meets the following minimum qualifications at the time of
14 hire . . . (3) is of good moral character.⁶⁸

15 13 AAC 85.900(7) provides that:

- 16 (7) “good moral character” means the absence of acts or conduct that would cause
17 a reasonable person to have substantial doubts about an individual’s honesty,
18 fairness, and respect for the rights of others and for the laws of this state and the
19 United States; for purposes of this standard, a determination of lack of “good
20 moral character” may be based upon a consideration of all aspects of a person’s
21 character.

22 13.AAC 85.110(a)(3) provides that:

- 23 (a) The council may revoke a basic, intermediate, or advanced certificate upon a
24 finding that the holder of the certificate . . . (3) does not meet the standards of
25 13 AAC 85.010(a).

ALJ Slotnick construed 13 AAA 85.900(7) as requiring that the Executive
Director prove by a preponderance of the evidence that Officer Maxwell engaged in acts or

⁶⁸ All emphasis is added unless otherwise noted.

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1 conduct that would cause a reasonable person to have substantial doubt about his honesty or
2 fairness or respect for the rights of others or respect for the laws of Alaska or the United States.⁶⁹

3 ALJ Slotnick determined that Officer Maxwell in fact was not eligible for the
4 2013 or 2014 PFDs because for each qualifying year, 2012 and 2013, he had maintained a
5 primary home in Montana⁷⁰ and had accepted full-time permanent employment in Montana⁷¹
6 based on 15 AAC 23.43.143(d)(1),(4), and because in 2013 he obtained a “benefit of residency”
7 from Montana under 15 AAC 23.43.143(d)(17) in the form of the permanent registration of his
8 motor vehicle in Montana under a provision available to residents with cars 11 years old or
9 older.⁷²

10
11 AS 43.23.005(a)(3) provides that one of the PFD eligibility requirements is that
12 the applicant “was a state resident during the entire qualifying year.” AS 43.23.095(6) provides
13 that: “‘qualifying year’ means the year immediately preceding January 1 of the current dividend
14 year.”

15 Alaska Statute 43.23.095(8) provides that:

16 “state resident” means an individual who is physically present in the state with the
17 intent to remain indefinitely in the state under the requirements of AS 01.10.055

18
19 ⁶⁹ ALJ Slotnick cited *Much v. Alaska Police Standards Council*, Case No. 3AN-14-4466 CI
20 (Alaska Super.Ct. 2016) and *In re E.X.*, OAH No. 13-0473-POC (Police Standards Council
21 2013) in support of the proposition that the Executive Director need only prove at least one of
22 the four circumstances referenced in 13 AAC 85.900(7) rather than all four.

23 ⁷⁰ ALJ Slotnick noted that Officer Maxwell apparently owned few belongings so the fact he left
24 some behind in Klawock in an apartment he did not rent or own is “fully consistent with the
25 conclusion that his primary home was in Montana.” Decision at p. 5.

⁷¹ ALJ Slotnick noted that Officer. Maxwell, while in Montana, had no job in Alaska and no
residence in Alaska.

⁷² ALJ Slotnick noted that Officer Maxwell was correct that the program is available for such
older vehicles and that, even though Officer Maxwell may not have realized the program was
only available to residents, the fact he obtained a “permanent” registration, rather than one which
had to be periodically renewed, implies the intent to remain in Montana permanently.

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1 or if the individual is not physically present in the state, intends to return to the
2 state and remain indefinitely in the state under the requirements of AS 01.10.055.

3 Alaska Statute 01.10.055 provides that:

- 4 (a) A person establishes residency in the state by being physically present in the
5 state with the intent to remain in the state indefinitely and to make a home in
6 the state.
- 7 (b) A person demonstrates the intent required by (a) of this section
- 8 (1) by maintaining a principal place of abode in the state for at least 30 days
9 or for a longer period if a longer period is required by law or regulation;
10 and
- 11 (2) by providing other proof of intent as may be required by law or regulation,
12 which may include proof that the person is not claiming residency outside
13 the state or obtaining benefits under a claim of residency outside the state.
- 14 (c) A person who establishes residency in the state remains a resident during an
15 absence from the state unless during the absence the person establishes or
16 claims residency in another state, territory, or country, or performs other acts
17 or is absent under circumstances that are inconsistent with the intent required
18 under (a) of this section to remain a resident of this state.

19 15 AAC 23.143, in pertinent part, provides that:

- 20 (a) An individual's intent to establish residency, remain indefinitely in Alaska or
21 return to Alaska and remain indefinitely is demonstrated through the
22 establishment and maintenance of customary ties indicative of Alaska
23 residency and the absence of those ties elsewhere. . . In evaluating whether an
24 individual claiming Alaska residency has demonstrated an intent to remain
25 indefinitely in Alaska, the department will consider whether or not the
individual has:
- (1) taken steps to establish Alaska residency and sever residency in the other
state or country;
- (2) ties to another state or country that indicate continued residency in the
other state or country; and
- (3) taken other action during the qualifying year, through the date of the
application, that is inconsistent with an intent to remain in Alaska
indefinitely.

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1 (d) An individual is not eligible for a dividend if, at any time from January 1 of
2 the qualifying year through the date of the application, the individual has

3 (1) maintained the individual's principal home in another state or country,
4 regardless of whether the individual spent a majority of time at that home,
5 except while absent for a reason listed . . .⁷³

6 (4) accepted full-time, permanent employment in another state or country
7 except while on an absence listed . . .⁷⁴

8 (17) obtained any other benefit or benefits as a result of establishing or
9 maintaining any claim of residency in another state or country or by
10 disclaiming Alaska residency, except that the department will not deny a
11 dividend to an individual solely because the individual received Medicaid
12 benefits from another state if the individual's application for Medicaid was
13 consistent with the intent to maintain residency in Alaska.

14 ALJ Slotnick next addressed the issue of whether a person in Officer Maxwell's
15 position, who applied for PFDs in 2013 and 2014 when not eligible and certified he was an
16 Alaska resident throughout the qualifying years, could nonetheless have had the good-faith belief
17 that he was eligible for the PFD when he applied for the 2013 and 2014 PFDs.

18 ALJ Slotnick posited that such applicants would fall into one of three categories:
19 a person who honestly believed he or she was eligible and had no related doubts; a dishonest
20 person who knew she or he was not eligible but applied nonetheless; and, a person who has
21 doubts about their eligibility but did not make a related inquiry or otherwise exercise caution to
22 avoid receiving an illegal benefit.

23 ALJ Slotnick noted that there is a continuum of doubt, and that "a person who
24 ignored a substantial risk that he or she was ineligible, and engaged in subterfuge or self-

25 ⁷³ The reasons are listed at AS 43.23.008(a)(1)-(3), (9)-(11), (13), and (16), and none apply
herein.

⁷⁴ The list of allowed absences are set forth at AS 43.23.008(a)(1)-(3), (9)-(11), (13), and (16),
and, again, none apply herein.

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1 deception, would be considered dishonest.”⁷⁵ And that if “a reasonable person would have
2 known or suspected that he or she was ineligible, then we could presume that Officer Maxwell
3 either knew or suspected he was ineligible. Officer Maxwell could then rebut this presumption
4 with actual evidence of innocent intent. . .”⁷⁶

5 ALJ Slotnick then found that a reasonable Alaskan in Officer Maxwell’s
6 circumstances “might have been confused about eligibility.”⁷⁷ He noted that: many Alaskans
7 leave the state for extended periods, with some remaining eligible; most understand that a 90-day
8 absence is a critical because at that point applicants have to explain absences on the form; all
9 Alaska residents cannot be expected to understand the nuances of “residency,” for example, a
10 person who has not read the PFD regulations might not be aware that taking a permanent full-
11 time out-of-state job is a disqualifying event; and, a reasonable person could believe that taking
12 an out-of-state job on probationary status with a high risk of failure, who retained the possibility
13 of returning to their prior job in Alaska would be eligible when the out-of-state job did not work
14 out and the person returned to Alaska and their prior employment.

15 ALJ Slotnick noted that: the Alaska Department of Revenue encourages people
16 who do not know if they are eligible to apply and the Department will make that determination,
17 even though this requires the applicant to certify that they were a resident during the entire
18 qualifying year, and the Department does not consider this to be dishonest. And he found that
19 this “is precisely what Officer Maxwell did here,”⁷⁸ as, other than the residency certification, an
20 issue that was not readily apparent, he answered every question in the applications truthfully,
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24 ⁷⁵ Record at p. 292.
25 ⁷⁶ Decision at p. 6.
⁷⁷ Decision at p. 7.
⁷⁸ Decision at p. 7.

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1 including the question about whether he had been out of the state for more than 90 days, and
2 there were no questions about whether he had taken a job in another state, and a reasonable
3 person would have concluded that a question about an out-of-state job would be included if it
4 was a disqualifier, particularly since the questions about being out-of-state that are asked focus
5 on the length of the absence.⁷⁹

6
7 ALJ Slotnick concluded this part of his analysis with:

8 In summary, the facts of this case inevitably raise doubt about Officer Maxwell's
9 honesty. A person who moves to Montana should have suspected he was not
10 eligible for a PFD. This is especially true for a job as police chief, which is an
11 important municipal job, closely connected with actually living in the
12 municipality. These circumstances alone, however, are inconclusive evidence of
13 honesty or dishonesty. Given that his tenure at his Montana jobs was short, that
14 he remained in contact with his former employer, and that the PFD application did
15 not trigger any obvious indication of ineligibility, an honest person in his situation
16 could apply in good faith. Therefore, even though there were significant red
17 flags, in these circumstances, we cannot presume that his act of applying was
18 dishonest. Instead we must look to evidence of his actual state of mind to
19 determine whether his acts of applying for PFDs for which he was not eligible
20 were dishonest. To address that issue, we turn to Officer Maxwell's testimony at
21 the hearing.⁸⁰

22 With regards to Officer Maxwell's hearing testimony, SLJ Slotnick noted that if it
23 is credible it establishes a plausible non-dishonest explanation for his conduct at issue. And that
24 the Executive Director recognized as much and so attempted to undermine his credibility by
25 showing that he was not truthful during Trooper Ryan's interview, the witness testimony that he

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23 ⁷⁹ ALJ Slotnick also noted that the Executive Director believes that the residency certification is
24 the clearest proof of Officer Maxwell's dishonesty, but it "is actually one of the murkiest issues
25 of all." Decision at p. 8. And he noted that the Department's recommended approach, per
Investigator Stendevad's testimony, for a person in Officer Maxwell's position, to answer
untruthfully that he had been out of Alaska for more than 90 days, which would open an inquiry
into his employment and principal home, is untenable.

⁸⁰ Decision at p. 9. (footnotes omitted).

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1 is not truthful, and his testimony that he believes today that he was eligible for the 2013 and
2 2014 PFDs. SLJ Slotnick then addressed each of the Executive Director’s points.

3 SLJ Slotnick gave no weight to the opinion testimony because: the witnesses’
4 testimony was based on the witnesses’ view that Officer Maxwell’s PFD applications were
5 wrongful, and that is ultimately a decision for the Council; opinions can, and often are, based on
6 mistaken views; and, the definition of “good moral character” in 13 AAC 85.900(7) requires that
7 the Council focus on the person’s conduct and acts and not on the opinion of others.

8
9 SLJ Slotnick did not find persuasive the Executive Director’s claims that Officer
10 Maxwell was untruthful⁸¹ during Trooper Ryan’s interview because: the interview was a surprise
11 to Officer Maxwell, it was informal, he was not under oath or with counsel; minor misstatements
12 or misremembering things “in this sudden and stressful informal interview would not be a reason
13 to doubt he credibility”;⁸² and the examples cited by the Executive Director “are explainable . . .
14 more like exaggerations or the result of poor word choice.”⁸³ The “ended up being more like a
15 vacation” statement conveyed the point that the Fairview time was brief, and was not intended to
16 be a statement of fact as to the purpose of the trip. With regards to his claimed lack of
17 familiarity with PFDs, he has applied a number of times but is not an expert on the PFD
18 regulations. And he explained that by “crashing through at the last minute” he was referring to
19 his personal to-do lists. He did incorrectly state repeatedly that he had disclosed his absences on
20 the applications but a bad memory is not dishonesty, and here a lie would not have benefitted
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24 ⁸¹ SLJ Slotnick stated that the Executive Director had identified three untruths: that the Fairview
25 situation “ended up being more of a vacation”; that he was not familiar with how the PFD works;
and that he crashed through those PFD applications at the last minute.

⁸² Decision at p. 11.

⁸³ Decision at p. 11.

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1 him as the Trooper had copies of his applications. ALJ Slotnick noted that Officer Maxwell's
2 interview statements were consistent with his hearing testimony.

3 SLJ Slotnick recognized that it was possible that Officer Maxwell's interview
4 answers might have been "carefully planned defenses for his act of application" which would
5 belie his statements that he did not think about residency and which "also might show that he
6 was a sharp operator who engages in subterfuge and deception, and therefore, as the Council
7 explained in *Much*, is subject to not being trusted as a police officer." But found that the
8 recording of the Trooper interview "makes clear" that Officer Maxwell "is not a sharp operator"
9 and presented as "an uncertain and stressed individual who was trying to give truthful answers"⁸⁴
10

11 SLJ Slotnick found it troubling that Officer Maxwell would testify that he still
12 believes he was an Alaska resident for all of 2012 and 2013 He agreed with the Executive
13 Director that Officer Maxwell's "testimony raises doubt about Officer Maxwell's respect for the
14 law."⁸⁵ But Officer Maxwell's testimony reflects that he was relying on Judge Menendez's
15 findings, and the same could explain his continued confusion over his eligibility, though Judge
16 Menendez did not specifically find that he was a resident for all of 2012 or 2013. SLJ Slotnick
17 noted that Officer Maxwell had only heard Judge Menendez's comments once, in the courtroom,
18 and it is understandable that he did not fully comprehend what the Judge was saying and instead
19 viewed the comments as exonerating him.⁸⁶
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23 ⁸⁴ Decision at p. 12.

24 ⁸⁵ Decision at p. 14.

25 ⁸⁶ SLJ Slotnick not that the APSC in *In re Lynch*, OAH No. 14-1644-POC at 13 (Alaska Police Standards Council 2015) had "declined to give weight to a respondent's hearing testimony that he continued to believe that an incorrect interpretation of the law was valid, finding the testimony 'to be a poorly chosen litigation strategy, not dishonesty'." Decision at p. 15 n. 53.

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1 SLJ Slotnick found more troubling Officer Maxwell’s testimony that he would
2 submit the same PFD applications for 2013 and 2014 if he knew at the time of the applications
3 what he knows now, particularly since he should have realized that “several experts with training
4 in residency matters have concluded that he was no longer an Alaska resident when he moved to
5 Montana.”⁸⁷ But Officer Maxwell was responding to a hypothetical question and he did not say
6 that he would not disclose additional information or would engage in trickery, so “[w]hat he had
7 in mind is not clear.”⁸⁸ The answer does raise doubts about his respect for the law but it is not, in
8 and of itself, a sufficient basis for revoking his police officer certificate.⁸⁹

9
10 SLJ Slotnick then considered whether the totality of the circumstances warrants
11 the conclusion that Officer. Maxwell lacks good moral character. He began by observing that he
12 had limited the Executive Director’s opinion evidence. He did so because he rejected the
13 Executive Director’s theory that such evidence proves lack of good moral character. He stated
14 five reasons.

15 First, he is not persuaded that the Executive Director’s view is that if any law
16 enforcement officer was of the opinion that a police officer is dishonest, that opinion would
17 necessarily have to be disclosed to the defense in every case that the officer is involved in per the
18 United States Supreme Court’s decisions in *Brady v Maryland* and *Giglio v. United States* is
19 correct. But in any event, this theory would allow the revocation of the officer’s certificate on
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22 _____
⁸⁷ Decision at p. 13.

23 ⁸⁸ Decision at p. 15.

24 ⁸⁹ SLJ Slotnick recognized that the Alaska Supreme Court has held that the Executive Director
25 is not required to prove a pattern of conduct of lack of respect for the law or dishonesty - that one
such instance may suffice. *See, Alaska Police Standards Council v. Parcell*, 348 P.3d 882, 888
(Alaska 2015). But concluded that the statement at issue “is too thin a reed upon which to base a
conclusion that Officer Maxwell does not have respect for the law.” Decision at p. 15 n. 54.

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1 the basis of any such opinion, regardless of whether it is well-founded. And such an approach
2 would be fundamentally unfair and violate the officer's due process rights.

3 Second, the Executive Director's theory would usurp the decision-making
4 authority of the APSC as any evidence of such an opinion would be dispositive.

5 Third, allowing the Executive Director to pursue this theory would violate Officer
6 Maxwell's due process rights because: under this theory it could be determined that the acts
7 alleged in the Accusation were not wrongful yet the opinion testimony would still require
8 revocation; and, this theory was not pled in the Accusation so he had no prior notice of the same.

9 Fourth, allowing this type of opinion determination would create the opportunity
10 for selective and arbitrary enforcement of the "good moral character" requirement. Police
11 certificates would be revoked based on opinions rather than on the alleged bad acts.

12 Fifth, evidence regarding how prosecutors apply *Brady* and *Giglio* is not
13 necessary because the APSC is familiar with those cases and if the APSC determines that it has
14 doubt about a police officer's honesty then those cases provide strong ground for revocation.⁹⁰
15 He noted that, in any event, admitting such evidence under this theory would mean that a police
16 officer's certificate must be revoked any time another officer has such an opinion and that this
17 would violate the respondent officer's due process rights, at least if the opinion was unfounded.
18 And he stated that, in the context of this case, it would violate Officer Maxwell's due process
19 rights for two reasons: first, the Accusation is based on two specific bad acts - filing applications
20 for the 2013 and 2014 PFDs though he was not eligible for either - and under this theory his
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25 ⁹⁰ ALJ Slotnick cited *In re E.X.*, OAH No. 13-0473-POC at 17 (Alaska Police Standards Council
2013) and *In re Much*, OAH No. 13-0288-POC at 29 n. 184 (Alaska Police Standards Council
2013) (*aff'd Much v. Alaska Police Standards Council*, 3AN-14-4466 (Alaska Super. Ct. 2016)).

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1 license would be revoked if it is was not shown that his acts were not wrongful, and, second, the
2 Accusation does not present such claims.

3 ALJ Slotnick then framed the issues as follows: whether the facts of the case
4 create substantial doubt about Officer Maxwell’s honesty and/or respect for the law and, if so,
5 whether the doubt warrants revocation of his police certificate. He found that the facts of the
6 case did not create such substantial doubt, even when his conduct and his testimony are
7 considered together, because: the APSC made such a finding in the similar case of *In re Lynch*⁹¹;
8 Officer Maxwell’s conduct was even remote from his official police duties than that in *In re*
9 *Lynch*⁹²; the evidence does not show that he intentionally applied for a PFDs for which he was
10 not eligible or that he acted deceptively; most Alaskans would not know that the circumstances
11 of his brief time in Fairview would disqualify a person’s Alaska residency and eligibility for the
12 PFD for that qualifying year; and, that means that the decision really focuses on the Ronan
13 situation, and his related testimony, which per *In re Lynch* are treated together as one alleged bad
14 act, all of which has been previously discussed and does not support a finding of lack of good
15 moral character. And with regards to Officer Maxwell’s “continued adherence to a false position
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21 ⁹¹ ALJ Slotnick recounted that in *In re Lynch* the officer had made a false statement in a multi-
22 page affidavit prepared by somebody else as a result of an honest mistake, signing the affidavit
23 was not part of his official duties, the accusation was limited to one alleged instance of dishonest
24 conduct, and the officer’s hearing testimony that he still believed the statement to be true was
25 made as part of “a poorly chosen litigation strategy, not dishonesty.” *In re Lynch* , OAH No. 14-
1644-POC at 13.

⁹² ALJ Slotnick noted that Trooper Ryan had testified about specific instances of Officer
Maxwell’s conduct as a police officer for impeachment purposes but those allegations had not
been proven and were not introduced as evidence of the allegations in the Accusation, so he was
not discussing those matters further. *See*, Decision at p. 19 n. 63.

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1 in his hearing testimony, and his avowal that he would do the same again,”⁹³ “considerable
2 weight”⁹⁴ has been given to the same but:

3 the issues with this testimony (the reliance on the superior court’s comments and
4 the fact the testimony was a response to a hypothetical question), even with
5 maximum weight given to the testimony, considering Officer Maxwell’s conduct
as a whole does not provide a sufficient basis for revocation.

6 Therefore, based solely on the issues alleged in the Accusation, and the lack of
7 proof that Officer Maxwell was aware of the risk that he was ineligible for a PFD
8 at the time of his 2013 and 2014 applications, the Executive Director has not
proved that Officer Maxwell lacked sufficient moral character to retain his police
certificate.⁹⁵

9 ALJ Slotnick concluded that: “The Executive Director has not proved that Officer
10 Valent Maxwell lacks good moral character. The Executive Director’s requested revocation of
11 Officer Maxwell’s certificate is denied.”⁹⁶

12 **c. Parties’ Proposals for Action**

13 Officer Maxwell proposed that the APSC adopt ALJ Slotnick’s proposed
14 decision.

15 The Executive Director proposed that the APSC decline to adopt ALJ Slotnick’s
16 proposed decision because:

- 17 1. ALJ Slotnick applied a “lawyer speak”⁹⁷ definition of “dishonesty” which is
18 contrary to APSC precedent.
- 19 2. ALJ Slotnick refused “to recognize and apply the proposition that an officer,
20 including Mr. Maxwell, cannot perform the duties of a law enforcement
21 officer when another law enforcement officer (fellow officer, supervisor of

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23 ⁹³ Decision at pp. 19-20.

24 ⁹⁴ Decision at p. 19.

25 ⁹⁵ Decision at p. 20.

⁹⁶ Decision at p. 20.

⁹⁷ Record at p. 261.

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1 [sic] chief) holds the opinion that the officer has been dishonest/untruthful. A
2 proposition the Council repeatedly has recognized in the past.”⁹⁸

- 3 3. ALJ Slotnick declined to find that Mr. Maxwell had been dishonest even
4 though the evidence in the record established that he made false statements in
5 the three PFD applications, multiple false statements during Trooper Ryan’s
6 interview, and he testified he would do it again.
- 7 4. ALJ Slotnick erred in finding that Mr. Maxwell was not on notice prior to the
8 hearing that opinion evidence of his truthfulness/honesty would be presented.
- 9 5. ALJ Slotnick erred in finding that the evidence in the record supported the
10 proposition that the Department of Revenue encourages people make false
11 statements in their PFD applications and that the Department does not
12 consider a person falsely certifying that he or she had been an Alaska resident
13 the entirety of the preceding year to be dishonest.

14 The Executive includes its proposed decision for the APSC’s consideration.

15 **d. APSC’s Final Decision**

16 The APSC did not adopt the Executive Director’s proposed decision or ALJ
17 Slotnick’s Decision as its Final Decision.

18 The APSC found that “the evidence supports a finding that Officer Maxwell has a
19 significant lack of respect for the law” and so “the Council finds that his police certification
20 should be revoked.”⁹⁹

21 The APSC employed the following analysis:

- 22 1. Officer Maxwell has been accused of lacking “good moral character.”
- 23 2. “Good moral character” is defined in 13 AAC 85.900(7).
- 24 3. Under 13 AAC 85.900(7) the Executive Director is required to prove by a
25 preponderance of the evidence “acts or conduct” by Officer Maxwell “that
would cause a reasonable person to have substantial doubts about” his

⁹⁸ Record at pp. 261-62.

⁹⁹ Record at p. 287

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1 “honesty”, “fairness”, “respect for the rights of others” or “respect . . . for the
2 laws of this state” or of “the United States.”¹⁰⁰

3 4. The Executive Director contends that a reasonable person would have
4 substantial doubts about Officer Maxwell’s honesty because he applied for the
5 2013 and 2014 PFDs, thereby certifying that he had been an Alaska resident
6 for the entire preceding year though he had moved to Montana during each of
7 those prior years and accepted full-time employment and, obtained a benefit in
8 Montana. The APSC agrees that Officer Maxwell was not eligible for either
9 of the PFDs for the reasons stated by the Executive Director. But all residents
10 cannot be expected to understand the “residency” nuances, the Department of
11 Revenue encourages people who do not know whether they are eligible to
12 apply, Officer Maxwell truthfully answered the questions asked in the
13 application, and a reasonable person could presume that the length of absence
14 is the only disqualifier. The Executive Director believes that the residency
15 certification most clearly shows Officer Maxwell’s dishonesty but his
16 certifying that he was a resident throughout those qualifying years “is actually
17 one of the murkiest issues of all”¹⁰¹ as a person who is a resident is not
18 necessarily eligible for a PFD. Officer Maxwell’s residency answers on the
19 applications were incorrect “but given the complexity of the issue of
20 residency, not necessarily dishonest (unless he actually knew or suspected he
21 had lost his residency).”¹⁰²

22 5. The Department of Revenue’s solution - that Officer Maxwell should have
23 answered “yes” to the length of out-of-state time questions as that would flag
24 that he was ineligible when he explained the reasons, though the answer

25 ¹⁰⁰ 13 AAC 85.900(7) uses the conjunctive “and” three times: “‘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.” 13 AAC 85.900(7) further provides that: “for purposes of this
standard, a determination on a lack of ‘good moral character’ may be based upon a consideration
of all aspects of a person’s character.” The APSC in *In Re Bowen*, OAH No. 10-0327-POC
(Alaska Police Standards Council 2011) decided that the Executive was required to prove that a
reasonable person would have substantial doubts about the officer’s honesty, fairness, respect for
the rights of others and for the laws of this state and the United States. The APSC then decided
in *In re E.X.*, OAH No. 13-0473-POC (Alaska Police Standards Council 2013) that the
“consideration of all aspects of a person’s character” language in 13 AAC 85.900(7) meant that a
finding that an officer did not have good moral character could be based on a reasonable person
having substantial doubts about any one or more of the listed factors rather than all of the listed
factors. That is the approach that ALJ Slotnick and the APSC have taken in this case. *See also*,
In re Lynch, OAH No. 14-1644 (Alaska Police Standards Council 2014).

¹⁰¹ Record at p. 294.

¹⁰² Record at p. 294.

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1 would not be the truth - is not viable and, in any event, he was not instructed
2 to take that approach.

- 3 6. “In summary, the facts of this case inevitably raise doubt about Officer
4 Maxwell’s honesty . . . These circumstances alone, however, are inconclusive
5 evidence of honesty or dishonesty . . . an honest person in his situation could
6 apply in good faith.”¹⁰³ So the APSC cannot presume his applying was
7 dishonest and will instead “look at evidence of Officer Maxwell’s actual state
8 of mind to determine whether his acts of applying for PFDs for which he was
9 not eligible were dishonest. To address that issue, we turn to Officer
10 Maxwell’s testimony at the hearing.”¹⁰⁴
- 11 7. The APSC first considered whether Officer Maxwell’s testimony that he
12 believed he was an Alaska resident was credible. He did provide a plausible
13 explanation for his conduct. The opinion testimony of Trooper Ryan and
14 Investigator Stendevad was not sufficient to show that Officer Maxwell was
15 not credible. Officer Maxwell’s statements¹⁰⁵ when interviewed by Trooper
16 Ryan were not sufficient as none of his statements involved significant
17 untruthfulness as he at most made minor misstatements or misremembered
18 things during “this sudden and stressful interview.”¹⁰⁶ The examples relied on
19 by the Executive Director can be explained as exaggerations or poor choices
20 of words or the product of a poor memory. It is possible that he engaged in
21 “subterfuge and deception” but “[t]he recording of the interview makes clear,
22 however, that Officer Maxwell is not a sharp operator. . . He presents as an
23 uncertain and stressed individual who was trying to give truthful answers.”¹⁰⁷
- 24 8. The APSC then considered Officer Maxwell’s hearing testimony that he
25 believed then that he was eligible to apply for the 2013 and 2014 PFDs, and
whether that testimony provides “a reason to disregard his testimony that he
believed he was eligible at the time of application.”¹⁰⁸ He testified that: those
applications were filled out honestly and correctly and that he still believes he
was an Alaska resident for the entirety of both qualifying years; he believed
then and believes now that he never claimed residency in another state; and,
he would “absolutely” fill out the applications the same way knowing then
what he knows now. He should have been at least hesitant to certify his
Alaska residency, if not aware that he was not an Alaska resident, given all

22 ¹⁰³ Record at p. 295.

23 ¹⁰⁴ Record at p. 295.

24 ¹⁰⁵ The Executive Director focused on Officer Maxwell’s statements that: the Fairview situation
“ended up being more of a vacation”; “I’m not familiar with how the PFD works”; and, “I
crash[ed] through those PFD applications at the last minute.”

25 ¹⁰⁶ Record at p. 297.

¹⁰⁷ Record at p. 298.

¹⁰⁸ Record at p. 298.

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1 that he had been through and the opinions of residency experts that he was no
2 longer an Alaska resident when he moved to Montana.

3 Even more troubling is that Officer Maxwell would apparently fill
4 out his application exactly as he did before, without informing the
5 PFD division of absence or his move. He now knows that because
6 his absences were for less than 90 days, the application itself does
7 not call for disclosure of pertinent facts about his moves or his
8 employment. He knows that the absence of these questions is what
9 allowed him to fill out the application truthfully (other than the
10 residency issue) and never trigger further inquiry from the PFD
11 division. Further, he heard Investigator Stendevad say that the
12 PFD Division would counsel him to answer that he was absent for
more than 90 days, so that the pertinent questions would be posed
to him. Yet, he would fill out the application the same way,
without providing additional disclosures to the PFD Division that
would make his ineligibility clear. Officer Maxwell should know
that he has an obligation to provide more information, rather than
do the same thing again, and just accept a benefit to which he was
not entitled.¹⁰⁹

- 13 9. The APSC then stated its agreement with the Executive Director’s argument
14 that this testimony, if true, shows Officer Maxwell’s lack of respect for the
15 law because it would show that he was willing to mislead the PFD division in
16 order to receive the PFD checks “for money for which either knows he does
17 not qualify or at a minimum is aware that he may not qualify.”¹¹⁰ This
18 testimony “raises substantial doubt about Officer Maxwell’s respect for the
19 law.”¹¹¹ Officer Maxwell testified that he was relying on Judge Menendez’s
20 comments in acquitting him. “These comments could provide some
21 justification for Officer Maxwell’s continued confusion about whether he was
22 eligible for the 2013 and 2014 PFDs.”¹¹² But those comments “do not dispel
the doubt raised by Officer Maxwell’s testimony” as the Judge did not say that
Officer Maxwell “actually remained a resident or that he was eligible for the
2013 and 2014 PFDs.”¹¹³ The Judge instead found that the State had not
proven beyond a reasonable doubt that Officer Maxwell intended to mislead a
public servant or deprive the State of its property, specifically noting that the
State could still proceed with a related civil action. “A person with police
training should understand that the criminal charge did not turn on his

23 ¹⁰⁹ Record at p. 299.

24 ¹¹⁰ Record at p. 300.

25 ¹¹¹ Record at p. 300.

¹¹² Record at p. 300.

¹¹³ Record at p. 300.

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1 residency or eligibility for the PFD.”¹¹⁴ “The verdict in this criminal case was
2 not a finding that he was eligible for the 2013 or 2014 PFDs. Officer
3 Maxwell’s lack of respect for the law remains.”¹¹⁵ “What is troubling is
4 Officer Maxwell’s continued belief in an inaccurate interpretation of the law
5 in his testimony that he would do the same thing again . . . suggests trickery
6 because he knows **now** that the application does not disclose his absences.”¹¹⁶

5 10. The APSC found that:

6 The facts of this case, when taken as a whole, lead to a substantial
7 doubt about Officer Maxwell’s honesty and respect for the law,
8 which justify revocation of his police certificate. Although honesty
9 and respect for the law are two different elements of good moral
10 character, the Council’s previous cases explain that the elements
11 are to be considered collectively, not individually. . . the evidence
12 presented regarding Officer Maxwell’s conduct demonstrate a
13 fundamental lack of understanding of the law, and more
14 importantly, a lack of respect for the law.¹¹⁷

11 11. The APSC concluded that: “The Executive Director’s requested revocation of
12 Officer Maxwell’s certificate is granted. Officer Maxwell’s conduct shows a
13 severe lack of **respect for the law**, which raises substantial doubts regarding
14 his good moral character.”¹¹⁸

14 VI. DISCUSSION

15 The parties agree on the applicable standard(s) of review. But identifying the
16 issues to be reviewed is not straightforward for two reasons. First, it is not entirely clear from
17 the APSC’s Final Decision whether it found that Officer Maxwell lacked “good moral character”
18 for purposes of 13 AAC 85.900(7) because a reasonable person would have substantial doubts
19 about his respect for the laws of the State of Alaska or because a reasonable person would have
20 substantial doubts about his respect for the laws of Alaska and his honesty. The court will
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23 ¹¹⁴ Record at p. 301.

24 ¹¹⁵ Record at p. 301.

25 ¹¹⁶ Record at p. 301. The APSC noted that “one instance of dishonest or disrespectful conduct
may meet that threshold” per *Alaska Police Standards Council v. Parnell*, 348 P.3d 882, 888
(Alaska 2015). *Id.*

¹¹⁷ Record at p. 301.

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1 proceed on the basis of the APSC making both lacks “good moral character” findings. Second,
2 Officer Maxwell lists several points on appeal. But his briefing reflects that he disputes that the
3 APSC’s lack of “good moral character” determination(s) is/are supported by substantial evidence
4 and, in any event, he claims that the APSC abused its discretion under 13 AAC 85.110(a)(3) by
5 revoking his police certificate based on the lack of “good moral character” finding(s).

6 So the following two, and potentially three, issues are presented:

- 7 1. Whether there is substantial evidence in the record to support the APSC’s
8 finding that a reasonable person would have substantial doubts about Officer
9 Maxwell’s honesty.
- 10 2. Whether there is substantial evidence in the record to support the APSC’s
11 finding that a reasonable person would have substantial doubts about Officer
12 Maxwell’s respect for the laws of the State of Alaska.
- 13 3. If there is substantial evidence in the record to support the APSC’s finding
14 that a reasonable person would have substantial doubts about Officer
15 Maxwell’s honesty and/or his respect for the laws of the State of Alaska,
16 whether the APSC abused its discretion in deciding based thereon to revoke
17 his police certificate.¹¹⁹

18 ¹¹⁸ Record at p. 302.

19 ¹¹⁹ Officer Maxwell does not claim that the APSC misapplied 13 AAC 85.900(7) by construing
20 it in the disjunctive in accordance with *In re E.X.* rather than in the conjunctive per *In re Bowen*
21 so the court is not addressing that potential issue and will affirm the APSC’s decision if there is
22 substantial evidence in the record to support its findings regarding Officer Maxwell’s “honesty”
23 and/or “respect for the law.” The court also notes that Mr. Maxwell argued before ALJ Slotnick
24 that the Executive Director was attempting, towards the end of the administrative hearing, to add
25 new unpled allegations based on Officer Maxwell’s hearing testimony concerning what he would
do with respect to the PFD applications at issue knowing then what he knows now. ALJ Slotnick
nonetheless addressed the same in his proposed decision and the APSC ultimately focused its
Final Decision on the same. But Officer Maxwell did not raise this issue in his briefing before
this court until his Reply. The court will not consider an argument which was not raised until the
Reply, deeming the same to have been waived. *See, Conam v. Bell Lavalin, Inc.*, 842 P.2d 148,
158 (Alaska 1992); *Brown v. Ely*, 14 P.3d 257, 262 n. 28 (Alaska 2000); Alaska Rule of
Appellate Procedure 212(c)(3); and, Alaska Rule of Appellate Procedure 605(a)(3). It is also the
court’s view that the APSC could base its decision on this evidence as it was presented during
the hearing, related directly to the issues raised in the formal accusation, and Officer Maxwell
had an adequate opportunity to address the matter at the time.

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1 **a. Honesty**

2 The APSC’s finding that Officer Maxwell lacks “good moral character” because a
3 reasonable person would have substantial doubts about his honesty is not based on a finding that
4 Officer Maxwell was dishonest when he applied for the 2013, 2014, or 2015 PFDs.¹²⁰ Rather the
5 finding is based on what he would do hypothetically if he could go back in time and apply for
6 those PFDs knowing what he knows now, that he was not an Alaska resident during the entirety
7 of the qualifying years of 2012, 2013, and 2014, and so he would know that he was
8 misrepresenting his residence and that he was not eligible to receive any of those PFDs. The
9 APSC found that having heard Judge Menendez’s verdict and related findings and the hearing
10 testimony he must have understood that he did not meet the Alaska residency requirement for
11 any of said years and so he was not eligible for any of these FDSs yet testified that he would do
12 the same thing with respect to those PFD applications, relying largely on Judge Menendez’s
13 verdict and findings.
14

15 The APSC’s lack of honesty findings are not supported by substantial evidence in
16 the record for at least seven reasons.

17 First, with the exception of the residency certification, it is undisputed that the
18 PFD applications at issue were filled out accurately.
19
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22 ¹²⁰ The APSC’s analysis is a bit difficult to follow at times. It appears that the APSC at one
23 point intended to look to Officer Maxwell’s hearing testimony in an effort to determine if he had
24 been dishonest in 2013, 2014, and 2015 when he applied for those PFDS. *See*, Record at pp. 295,
25 297. But that is not what the APSC actually did. The APSC instead considered what he knew as
of the time he testified during the 2016 administrative hearing, in particular what he had heard
during his 2016 trial and the 2016 administrative hearing, not what he knew when applied for the
PFDs at issue.

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1 Second, the APSC did not find that Officer Maxwell was dishonest at the time he
2 certified in the PFD applications that he was an Alaska resident for the entirety of the qualifying
3 year. The APSC instead noted that this “is actually one of the murkiest issues of all.”

4 Third, the penultimate question was not asked of Officer Maxwell. He was not
5 specifically and clearly told on direct or cross-examination to assume that he in fact was not an
6 Alaska resident for the entirety of the qualifying years and so was not eligible for the PFDs at
7 issue and then asked whether he would nonetheless have applied for the same.

8 Fourth, the APSC finds fault with Officer Maxwell’s honesty because when he
9 testified during the administrative hearing he did not at least express hesitancy about
10 hypothetically filling out the applications the same way then knowing what he knows now
11 because he had heard experts testify that he was not an Alaska resident for the entirety of the
12 qualifying years and he should have understood from Investigator Stendevad’s testimony that the
13 PFD division, given his circumstances, would counsel him to write on the PFD applications that
14 he had been gone from Alaska more than 90 days, which would trigger his having to answer
15 additional questions about his absences and further inquiry from the PFD division. But this
16 approach would require that he be untruthful about how long he was gone and that he still sign
17 and submit the applications, thereby certifying that he was an Alaska resident for the entirety of
18 the qualifying years. An approach that the APSC itself had previously noted in the Final
19 Decision was “not viable.”

20 Fifth, the APSC’s lack of honesty finding is in essence that Officer Maxwell is
21 dishonest because he must have understood when he testified during the administrative hearing
22 that he in fact did not qualify for the PFDs at issue because he was not an Alaska resident for the
23 entirety of any of the qualifying years but he nonetheless testified that he would still basically
24
25

DECISION

1 submit the same applications if he could go somehow then back in time and do so. So the theory
2 is that after being acquitted of five PFD-related felonies he knowingly and truthfully testified
3 during an administrative hearing in a proceeding in which his livelihood and professional career
4 are in the balance that if he somehow could he would basically commit the PFD-related felony
5 crimes that contributed to the formal accusation being filed. The record clearly reflects that this
6 is not what Officer Maxwell intended to relate in this testimony. Though not asked the
7 penultimate question, he was asked on redirect, after all of the testimony relied on by the APSC,
8 whether he would have applied for the PFDs at issue if he believed his Alaska residency had
9 been severed and he testified that he would not have applied for the PFDs.
10

11 Sixth, the record clearly reflects that when Officer Maxwell testified he in fact did
12 not understand Alaska's residency law, or that under said law he in fact was not an Alaska
13 resident during the entirety of any of the qualifying years.¹²¹ The record firmly supports ALJ
14 Slotnick's and the APSC's findings that Officer Maxwell is, in general, not "a sharp operator."
15 And the record clearly shows that when he testified he in fact still thought that his Alaska
16 residency had not been severed, and in that regard: he was materially relying on Judge
17 Menendez's verdict and related findings; he misunderstood what he could hear of Judge
18 Menendez's findings; and, based on the same his focus was on whether when he had actually
19 applied for the PFDs he had intended to mislead or defraud. The APSC itself seemingly
20 acknowledges that Officer Maxwell misunderstood the law as the APSC concluded, in part, that:
21

22
23 ¹²¹ The court notes that the Executive Director's argument in closing at the conclusion of the
24 administrative hearing that Officer Maxwell must have either lied during his hearing testimony,
25 when he testified that he believed he had accurately and honestly filled out the PFD applications,
including the residency certifications, or he had complete disregard for the law, a position the
APSC apparently agrees with, does not allow for an obvious alternative, that he simply did not
even then understand and/or remained substantially confused about Alaska's residency law.

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1 “the evidence presented regarding Officer Maxwell’s conduct demonstrates a fundamental lack
2 of understanding of the law.”¹²²

3 Seventh, given the foregoing and the entirety of the record the court finds that the
4 evidence detracting from the APSC’s decision in this regard is dramatically disproportionate to
5 the evidence supporting the decision and so cannot conscientiously find that the evidence
6 supporting the decision is substantial.

7
8 **b. Lack of Respect for Alaska Law**

9 The APSC’s finding that a reasonable person would have substantial doubts about
10 Officer Maxwell’s respect for Alaska law is not supported by substantial evidence for four
11 reasons.

12 First, this finding is interrelated to and intertwined with the APSC’s lack of
13 honesty findings discussed above. Here the APSC found that such substantial doubts exist about
14 Officer Maxwell’s respect for Alaska law because he testified that he would fill out the PFD
15 applications at issue in the same way if, knowing what he knows now, he could somehow go
16 back in time and do so and that this demonstrates his lack of respect for the law because he
17 would have known that he was not an Alaska resident for the entirety of the qualifying years and
18 so could not certify otherwise and was not eligible for these PFDs.

19 Second, the court’s reasons stated above for finding that the APSC’s honesty
20 finding is not supported by substantial evidence in the record also apply to the lack of respect for
21 the law of Alaska finding. In a nutshell, the record clearly shows that Officer Maxwell did not
22 understand and/or was substantially confused about the Alaska residency law when he testified.
23
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¹²² Record at p. 301.

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1 Third, the APSC may be equating a lack of understanding of the law with lack of
2 respect for the law and, if so, it only mentioned this theory briefly in the Final Decision and it
3 has not even attempted to explain how such is the case, particularly given its acknowledgement
4 that the law in this area is not well understood.¹²³

5 Fourth, given the foregoing and the entirety of the record the court finds that the
6 evidence detracting from the APSC's decision in this regard is dramatically disproportionate to
7 the evidence supporting the decision and so cannot conscientiously find that that evidence
8 supporting the decision is substantial.
9

10 **c. Police Certification Revocation**

11 The court above has found that the APSC's lack of "good moral character"
12 findings are not supported by substantial evidence in the record, so there is no basis in this case
13 for the APSC to revoke Officer Maxwell's police certificate and the court need not address
14 whether the APSC would have abused its discretion if either of its lack of "good moral
15 character" findings were supported by substantial evidence.

16 **VII. CONCLUSION**

17 The APSC's decision that Officer Maxwell does not have "good moral character"
18 under 13 AAC 85.900(7) is not supported by substantial evidence and so the APSC's decision to
19 revoke his police certificate is reversed.
20

21 **IT IS SO ORDERED.**

22 Dated at Ketchikan, Alaska this 9th day of April 2018.

23 *Signed* _____
24 Trevor Stephens
Superior Court Judge

25 _____
¹²³ The court notes that the Appellee did not argue this theory in its Appellee's brief.

1 [This document has been modified to conform to the technical standards for publication. Names may have been
2 changed to protect privacy.]
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