

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

In the Matter of)
)
KYLE BUTLER) OAH No. 23-0066-POC
) Agency No. 2022-20

DECISION

I. Introduction

Kyle Butler served as a Cordova Police Department (CPD) officer from January 2020 until September 2022. After investigating a Notice of Personnel Action related to his departure from the CPD, the Executive Director of the Police Standards Council filed a five-count Accusation seeking revocation of Officer Butler’s Police Officer Certification. After a full hearing on the merits, this decision concludes that Officer Butler’s police officer certificate should be revoked pursuant to 13 AAC 85.110(a)(2) and (a)(3).

II. Facts

A. Background

The City of Cordova is a rural Alaska community located on Orca Inlet in Prince William Sound. Cordova’s year-round residents number around 2,300; the population swells in summertime during the commercial fishing season.

Public safety in Cordova is overseen by its four-member police department, supported by emergency dispatchers who, along with the police officers, also serve as corrections officers for the Cordova Jail. Just as the Cordova population grows in the summer, the “call volume and degree of severity ... increases dramatically in the summer.”¹

Working as an officer in a small, remote police force such as the CPD poses special challenges that generally do not exist in larger departments, and can exacerbate other more common challenges. The very limited staff size in small departments can mean that, for the majority of the shifts an officer works, that officer is the community’s only on-duty law enforcement officer. Mentally, this dynamic can be “a little straining” on officers.²

At all times relevant to this case, the Cordova Police Department consisted of a Chief of Police and three officers. Officers worked 10-hour shifts, plus an on-call period, and rotated between day and night shift assignments every few months.

¹ Butler testimony.
² Taylor testimony.

The Chief worked the day shift, so for five days each week – if the Department was fully staffed and no one was sick or on leave – there were both an officer and the Chief on duty during the day shift. Only one officer was on duty for the night shift. Apart from overlap periods around shift changes, an officer who was working nights would ordinarily be the only officer on duty in Cordova at that time.

In addition to time spent on duty, each CPD officer also had designated periods of time “on call.” Officers typically worked ten hours on duty, with a two hour on call period beforehand, for a total of 12 hours per day. Officers on call were generally permitted to remain at home and monitor their cell phone for calls from Dispatch. Officers on duty were expected to be at the police station or out patrolling.

Officers “regularly” got called in to work outside of regular hours to assist their colleagues.³ An officer working a shift could call a colleague to come to assist, but there were at least self-imposed pressures to avoid calling out a colleague who just finished a long shift or was at home sleeping.⁴

B. Officer Butler’s performance issues while at the Cordova Police Department

Kyle Butler was hired as a Public Safety Officer with CPD in December 2019. A former commercial fisherman, this was Mr. Butler’s first job in law enforcement. He attended the public safety academy in Sitka and was certified by the Alaska Police Standards Council (APSC) in March 2020.⁵ The sparse staffing at CPD left relatively little time for training and required Officer Butler to quickly assimilate into his new role – indeed, he worked a shift the day he flew home from the police academy. After what he felt was a “very rushed” period of field officer training, he felt he was essentially on his own, typically working night shifts with no other officer on duty. Officer Butler found the position very difficult both in terms of “times when you’d be on duty at night and on call the whole day” and in terms of the stress of being alone on shift as a new officer with minimal training. He felt added frustration from technology that didn’t always work, and feeling “very alone” while he was “still very much learning the ropes without anything backing [him] up.”⁶

Officer Butler generally had friendly relationships with the other two officers in the Department – Daniel Fiser and Cameron Hayden – as well as with the Cordova-based Alaska

³ Taylor testimony.

⁴ Butler testimony.

⁵ Ex. 3, Taylor testimony.

⁶ Butler testimony.

Wildlife Trooper with whom the CPD officers sometimes collaborated. His performance evaluations during his two years at CPD found him to be meeting or exceeding expectations in most – but not all – areas, describing “a good officer who has a good rapport with his fellow employees and citizens, [who] is fair in his application of law and strives to serve the community.”⁷ However, Officer Butler had significant difficulties with self-regulation, attendance, and consistent performance of his required duties. In addition to the stressors created by working in a small, understaffed department, with long hours and often little or no backup, these issues arose from his general unhappiness living in Cordova, and from some underlying physical health problems.

1. Self-Regulation

At various points throughout his two years at CPD, Officer Butler had incidents in which he noticeably and profoundly lost his composure while dealing with the public or while interacting with his colleagues.

a. Colleagues’ descriptions of self-regulation issues

Officer Butler generally had friendly day-to-day relationships with his CPD coworkers. At the evidentiary hearing in this matter, however, multiple witnesses testified about Officer Butler’s periodic episodes of emotional volatility and, sometimes, aggression. Cameron Hayden, then a fellow CPD officer, testified that he and Officer Butler worked well together, and that Officer Butler “was able to police accordingly and get the job done.” However, he also noted that Officer Butler struggled emotionally, and was “a guy who wore his heart on his sleeve.”⁸ Officer Hayden summarized that “you could always tell when there was something going on” with Officer Butler, “and a lot of times there was something going on.”⁹

Blake Reece, then the CPD Dispatch supervisor, testified that he considers Officer Butler a friend, and that they had great rapport as colleagues.¹⁰ Officer Reece testified credibly and in detail about Officer Butler’s difficulties with self-regulation, and the concerns these created within the Department. Officer Reece recalled that, particularly in the final six months of

⁷ Ex. 12. Officer Butler’s May 2021 evaluation found him meeting expectations in job knowledge, quality of work, problem solving, initiative, and dependability, and was exceeding expectations in cooperation and safety. However, the evaluation found that Officer Butler needed improvement in the areas of communication, “judgment/decisionmaking,” and “planning and organization.” Ex. 9. His January 2022 evaluation found him meeting expectations in most areas, and exceeding them in the area of safety, but also needing improvement in the areas of “communication” and “dependability.” Ex. 12.

⁸ Hayden testimony.

⁹ Hayden testimony.

¹⁰ Reece testimony.

employment, Officer Butler had episodes in which he became “irate” towards other members of the Department, as well as episodes in which he was “very agitated with Chief Taylor [--] very animated and cursing about it.”¹¹ Reece characterized these periodic “outbursts” and “lash[ing] out at other department members” as “unpredictable” and “affecting morale” among the other officers and dispatchers. “The frequency and unpredictability was a huge concern.” For Officer Reece, Officer Butler’s self-regulation issues rose to the point where he felt concerned about his own safety, Officer Butler’s safety, and the safety of others in the Department. While he never witnessed Officer Butler become physically aggressive, the unpredictable nature of his outbursts left Officer Reece very concerned.¹²

b. Bailey incident

The first notable incident was a January 2021 encounter with Cordova City Manager Helen Bailey and her husband Jeff. The evening before, the Baileys had a brief but “gruff” encounter with Officer Butler, who chastised them for having their dog off-leash. The next evening, as they prepared to bike with their dog in a more remote area of town, the Baileys were surprised to be confronted by Officer Butler again. They were more surprised by Officer Butler’s confrontational attitude, described by Mr. Bailey in a written complaint as “clearly agitated,” “venting anger,” “in a rage,” and “unhinged.” After Helen Bailey identified herself as the City Manager, the confrontation further deteriorated, with Officer Butler complaining about his job, angrily criticizing the City Manager’s attitude towards law enforcement, and threatening to “just take [the Baileys] in” for the leash law violation.¹³

Although Officer Butler disputes parts of Mr. Bailey’s account, he was aware at the time that his behavior had crossed a line.¹⁴ That night, he contacted Chief Taylor about the incident, self-disclosing that he had acted inappropriately, letting frustration get the better of him.¹⁵ Mr. Bailey submitted a written complaint about the incident a few days later.¹⁶ Officer Butler was

¹¹ Reece testimony.

¹² Officer Reece perceived Officer Butler’s behavior on a particular occasion as suggestive of a mental health crisis, and reported his concerns to Chief Taylor. The specifics of this incident are disputed, and not necessary to a determination of the outcome of this case.

¹³ Bailey test.; Ex. 7. Mr. Bailey found the situation “frightening,” feeling Officer Butler had “gone from zero to sixty in about three minutes,” that the discussion was clearly no longer about the leash laws, and that Officer Butler’s behavior “left [him] feeling unsettled and concerned about [his] family’s safety here.”

¹⁴ Officer Butler denies acting aggressively towards the Baileys, saying that he got flustered, and became more so as he felt himself losing control of the conversation once he had exited his patrol car. He concedes that his “voice was loud” and that he “said dumb things,” and that, more broadly, he “wasn’t able to process” how to handle the interaction with the Baileys. Butler testimony.

¹⁵ Taylor test.

¹⁶ Ex. 7.

apologetic and embarrassed about the incident, and aware that his behavior had fallen well short of Department policy and expectations.¹⁷ He was placed on a performance improvement plan, and wrote an apology to the Baileys.¹⁸

c. OCS incident

The next notable incident around self-regulation occurred in late June 2021, and involved a call to assist the Office of Children’s Services (OCS) in removing two children from a home. Officer Butler was the officer on duty when the original call came in, but the phone connection was poor and he had difficulty understanding what the OCS representative was asking. Frustrated, he asked Officer Fiser to help him figure that out. Officer Fiser determined that OCS needed CPD to remove the two children because it had no representative present in Cordova to do so. At least in part because of Officer Butler’s mood and demeanor, Officer Fiser then elected to handle the removal himself, contacting Trooper Hajicek to assist him because the children were both young girls, and she was the only female officer in Cordova. Upon learning that Officer Fiser had taken over the call, Officer Butler arrived at the father’s home visibly upset, and abruptly told both Hajicek and Fiser to go home.¹⁹ His clearly agitated demeanor led the children’s father to ask Butler, “are you mad at me?”, to which Officer Butler responded, “no sir, I’m mad at everything.”²⁰ While the situation was eventually resolved and both children successfully removed, Officer Butler’s angry demeanor made the already challenging situation more fraught and more difficult, with Officer Fiser having to take added steps to deescalate the tension and confusion it created.²¹

d. Anchor Bar incident

The following day, CPD was called to respond to a fight at the Anchor Bar.²² Officer Butler was “agitated” and seemed “frustrated” when contacted by Dispatch about having to go on a call.²³ He called Officer Fiser, asking Officer Fiser to respond with him because he was having a bad day.²⁴ Although Officer Butler was on duty and had received the call first, Officer

¹⁷ Taylor testimony.

¹⁸ Ex. 8, Taylor testimony, Butler testimony.

¹⁹ Officer Butler would later explain that he was concerned when he arrived because he had been criticized for overusing “call outs” to other officers on calls he could have handled solo, so did not want to appear to have called out Fiser and Hajicek for assistance.

²⁰ Fiser testimony.

²¹ Fiser testimony.

²² Reece testimony; Ex. 24, p. 8.

²³ Reece testimony.

²⁴ Fiser testimony.

Fiser was first to arrive at the scene. When he called Officer Butler to determine his status, Officer Butler began swearing loudly about a problem with his equipment. Officer Butler’s loud ranting came over the radio at the same time that a passerby – unrelated to the original call – approached Officer Fiser’s patrol car to talk to him.²⁵ Officer Fiser found it “extraordinarily difficult” to simultaneously manage the two conversations, particularly with Officer Butler swearing loudly – “generally, not something you want to have the public hear.”²⁶

Dispatcher Reece, who also heard Officer Butler’s diatribe over the radio, was concerned about Officer Butler cursing over recorded radio traffic, and about the impact of Officer Butler’s language – including both swearing and saying that he was going to quit – on departmental morale. He was also concerned “about whether [Officer Butler] would escalate the situation upon arrival, [as he] didn’t seem to be in a good mental head space to be handling a fight in progress at that time.”²⁷

After managing the pedestrian who had approached him, and with Officer Butler still not having arrived, Officer Fiser elected to just handle the initial call on his own. His decision to do so was motivated, at least in part, by Officer Butler being agitated, frustrated, and upset.²⁸

When he returned to the station, Officer Fiser and Dispatcher Reece discussed Officer Butler’s recent behavior. Officer Fiser then went to Officer Butler’s house to check on him, but Officer Butler refused to open the door and yelled angrily at him to go away.²⁹ Officer Fiser returned to the station, where he and Dispatcher Reece then raised the recent events with Officer Hayden because he “had good rapport with Butler and was senior to them, and they all looked up to him.” At Hayden’s suggestion, the officers collectively “decided to give Butler some space and try to support him the best [they] could, but [they] were very concerned.”³⁰

e. August 2021 ACOMS email incident

Later that summer, Officer Butler again displayed erratic, unprofessional behavior – this time, over interdepartmental email. Officer Hayden had emailed fellow officers asking them to update the Alaska Corrections Offender Management System (“ACOMS”) when taking actions

²⁵ Fiser testimony; Reece testimony.

²⁶ Fiser testimony.

²⁷ Reece testimony.

²⁸ By the time Officer Fiser contacted the initial complainant, the situation in the bar had already resolved. When Officer Fiser announced over the radio that the call was resolved, Officer Butler again voiced his frustration over the radio. Fiser testimony, Ex. 24, p. 8.

²⁹ Officer Butler later apologized to Officer Fiser for his behavior in this incident – including, specifically, for lashing out angrily when Officer Fiser had come to check on him. Fiser testimony.

³⁰ Reece testimony; Fiser testimony.

affecting someone’s custodial status.³¹ Officer Butler “replied all” to Officer Hayden’s email as follows:

This has nothing to do with me. Don’t lay this shit on my feet. I don’t even know how to use ACOMS. Since I’ve never used it. Yeah? I’m done with this department and this shit.³²

Both the tone and the language used by Officer Butler were significantly out of sync with Departmental norms, and created tension and uncertainty about whether Officer Butler intended to remain a member of the Department.³³

f. September 2021 refusal to respond to sexual assault call

Issues with Officer Butler’s poor morale reached a critical point on September 11, 2021, when Dispatch contacted him to take a sexual assault call, but Officer Butler “refused to respond,” and “said he was done.”³⁴ Officer Butler then texted the rest of the officers in the department – Chief Taylor, Officer Fiser, and Officer Hayden – letting them know about the call and that he was not taking it, even if it meant getting fired.³⁵

Chief Taylor responded, “ok,” to Butler’s text, and handled the call himself. Apparently interpreting Chief Taylor’s “ok” response to mean that he was being fired, Officer Butler brought all of his duty gear – including his badge, gun, and Department ID – to the station, and placed it unsecured on his desk.³⁶ Officer Butler’s conduct during this incident was very concerning to his CPD colleagues and to Trooper Hajicek, whom he had also informed of his decision to ignore the call and leave his gear at the station.³⁷

There remains some factual disagreement about why, exactly, Officer Butler refused to respond to the call. In a memo written within a week of this incident, Chief Taylor recounted

³¹ Information entered into ACOMS is used by a variety of people and entities –including courts, public defenders, prosecutors, and crime victims – to determine custodial status and to calculate custodial days for sentencing purposes. Failing to enter accurate information into ACOMS can have a variety of negative consequences for crime victims, criminal defendants, and those working in law enforcement. The impetus for Hayden’s email was an error in an ACOMS entry that led to a series of miscommunications or misunderstandings about an individual’s custodial status, which, in turn, led to a complaint to CPD.

³² Ex. 10 (R 143-144).

³³ Hayden testimony.

³⁴ Reece testimony, Taylor testimony, Ex. 11. At the time of this incident, Officer Butler was on duty, but had gone home at the start of his shift without telling Chief Taylor he was doing so.

³⁵ As recalled by Officer Fiser, the gist of the text was, “This person just got molested. I’m not going to the call. You guys talk and figure out who’s going to respond. I don’t care if Chief fires me.” Fiser testimony.

³⁶ The gear was in a secure area of the station, so not openly available to the public, but it was not properly turned in and accounted for. Taylor testimony.

³⁷ Hajicek testimony, Fiser testimony, Reece testimony. When Dispatcher Reece came to start his shift, the dispatcher who had taken the call told him what happened, and the two reviewed the audio recording of the dispatch call, including Officer Butler’s statements that he would not respond and “was done.” The dispatchers were “concerned,” “confused,” and “shocked” by Officer Butler’s actions. Reece testimony.

Officer Butler saying he had not wanted to take the call “because [he] felt like [he] did not care or could not care.”³⁸ Officer Butler contends that he meant he felt so drained and disconnected that he did not feel he could be effective in that moment or handle the call in a manner that the victim deserved.³⁹ Whatever his reasoning, Officer Butler’s actions – refusing to respond, and texting his fellow officers and Chief Taylor he was not responding to the call, and that he didn’t care if he was fired for it – are undisputed.⁴⁰

Two weeks after the incident, Chief Taylor placed Officer Butler on administrative leave, citing “the most recent events, along with a pattern of behavior over the past year,” and expressing “concern for [his] wellbeing.”⁴¹ He was required to undergo a return-to-work psychological evaluation; he did so successfully and was cleared to return to duty.

g. June 2022 noise complaint incident

After Officer Butler returned from administrative leave, there were no further notable incidents until the following summer. The first of these involved his handling of a hotel noise complaint made by an individual who was well known to the CPD and had previously voiced paranoid ideations about people conspiring to harm him. Officer Butler’s response to this call went poorly. By his own account, he “lost [his] temper,” “didn’t control the volume of [his] voice,” vented about his job frustrations, and escalated rather than deescalated the interaction. Indeed, another hotel patron eventually confronted Officer Butler and the complainant over the volume of their conversation, causing Officer Butler, by his own report, to become “supremely embarrassed.” As with the Bailey incident, Officer Butler self-reported this incident to Chief Taylor.⁴² Upon reviewing the audio of the encounter, Chief Taylor was concerned by Officer Butler’s delayed response time to the call, his audible frustration, and “venting about work to someone calling 911.”⁴³

³⁸ Ex. 11. Officer Fiser likewise described Officer Butler as saying he hadn’t responded because he was “in a really bad headspace and for whatever reason didn’t care” about the call or the underlying events, and that, recognizing the inappropriateness of responding in that mindset, he had instead texted the other officers. Fiser test.

³⁹ Butler testimony.

⁴⁰ Butler testimony, Hayden testimony, Taylor testimony.

⁴¹ Ex. 11 (R. 73-75), Ex. 21: City of Cordova PAF (R. 106). It was also documented in his 2022 performance evaluation as a “major miscommunication.” Ex. 12 (“Kyle had a major miscommunication in September 2021 which led me to believe he was resigning from his job. Officer Butler was cooperative with steps to resolve this error and has been more effective in his communication with me since that event.”)

⁴² Ex. 14, Taylor testimony.

⁴³ Ex. 14, p. 2.

h. Interactions with Chief Andrew Goss

Officer Butler’s difficulties with self-regulation arose again in late August and early September 2022. Chief Taylor had left CPD in mid-August, and was replaced by Chief Andrew Goss. Chief Goss and Officer Butler had a challenging relationship almost immediately, with Chief Goss frequently finding Officer Butler “defensive” and overreactive in their interactions. By the start of September, Chief Goss found that Officer Butler “almost always seemed extremely exhausted, agitated, [and] upset.”⁴⁴ As described further in Section II D, below, Chief Goss’s observations of Officer Butler during this time, and in particular with regard to a September 4 incident in which Officer Butler again lost his composure in front of colleagues and a member of the public, contributed to the Chief Goss’s recommendation that Officer Butler be terminated.

2. Attendance

Throughout his time at CPD, but particularly towards the end of his employment, Officer Butler had issues with attendance – including arriving late to work, leaving shifts early to work “on call” from home without authorization, and sometimes missing shifts entirely. These incidents were more impactful than they might have been in a larger department, because Officer Butler was missing shifts or parts of shifts where he was the only officer on duty.

Concerns about Officer Butler’s attendance were first memorialized in a September 26, 2020 letter of counseling. On that day, he had texted Chief Taylor that he “would be a little late” to work, but then never came to work at all. After sending the initial text, Officer Butler was out of contact until 1:30 p.m., when he texted asking to work the night shift instead.⁴⁵ In the letter of counseling, Chief Taylor expressed concern that “[t]his is not the first instance of this occurring, as you missed an entire shift last month[.]”⁴⁶

Officer Butler was also unable to be located during a June 2021 incident when a domestic violence complaint required multiple officers for response. Although he was on call, neither CPD dispatch nor Officer Fiser (the officer on duty) were able to reach him. Ultimately, Officer Hayden had to be called in to assist on his last day of a scheduled vacation.⁴⁷ As he had on other occasions, Officer Butler “gave a heartfelt apology” to Officers Hayden and Fiser a few days

⁴⁴ Goss testimony.

⁴⁵ This wasn’t possible, as Officer Butler was then scheduled to work the following day’s day shift; moving the skipped day shift to a night shift would have him on duty for 24 hours. Taylor testimony.

⁴⁶ Ex. 5. However, Chief Taylor also told Officer Butler that, “I believe you will make a fine officer and member of this department.” *Id.*

⁴⁷ Fiser testimony.

later. Specifically, he reported that he hadn't realized he was on call, so had ignored the multiple attempts to contact him.⁴⁸

By the end of 2021, Officer Butler's attendance and dependability were becoming significant concerns. In his January 2022 evaluation, Chief Taylor noted: "In the past month, Kyle's attendance has become lacking. He has shown up late for shifts and failed to complete shifts on several occasions. He has been counseled about his attendance and I expect to see an improvement in the next month."⁴⁹ Any improvement, however, was short lived. Among the attendance concerns, Officer Butler continued to work "on call" when he was supposed to be out patrolling.⁵⁰

Officer Butler's attendance issues affected not only his fellow officers but also the CPD dispatchers. Officer Butler would occasionally leave work at midnight – three hours before the end of his shift – and work the rest of the night "on call" without approval and without notifying Dispatch.⁵¹ Dispatch Supervisor Blake Reece grew concerned that this "was becoming a habit," and that it affected operations by leaving Dispatch unaware of the location of the only officer on shift. There were also incidents in which Officer Butler went "off radio" and became unreachable while on shift. Sometimes dispatchers were ultimately able to reach him on his cell phone, but on some occasions they simply could not reach him and had to rouse another officer to take a call. Other dispatchers complained to Officer Reece about this situation.

Likewise, other CPD officers also complained to him about Officer Butler not showing up for shifts.⁵² In addition to the significant September 2021 incident in which he decided not to respond to a sexual assault call, Officer Butler also failed to respond to a July 2022 trespassing call. In that incident, Dispatch contacted Officer Butler after a homeowner reported a strange man on her property. Officer Butler neither responded to the property nor contacted the homeowner. After the homeowner complained, Officer Butler blamed his non-response on a miscommunication about the nature of the homeowner's concern – specifically, he thought she was reporting a past event, not an immediate occurrence – but he admitted he should have contacted her to get clarification. Chief Taylor was dismayed by Officer Butler's failure to

⁴⁸ Fiser testimony.

⁴⁹ Ex. 12.

⁵⁰ Reece test., Taylor test. At the June 26 Anchor Bar complaint, Officer Butler – on duty – took longer to arrive at the scene than the on-call officer he had called for back-up. He was also found to have been working "on call" without permission on other occasions.

⁵¹ Reece test.

⁵² Reece test.

respond or even contact the homeowner, characterizing the complete failure to respond as something that “erodes public trust.”⁵³

Officer Butler’s attendance problems became much worse at the end of his time with CPD, and in particular after Chief Goss took over the Department in late August 2022.⁵⁴ In his first few weeks in the Department, Chief Goss spoke to Officer Butler several times about arriving late to work.⁵⁵ These issues came to a head when Officer Butler did not show up for his shift on September 4, 2022, and Officer Fiser, who Butler was supposed to relieve after a twelve-hour shift, had to call him multiple times before he answered the phone. When asked if he was coming to work, Officer Butler responded with apparent irritation, asking “do I need to?”

Officer Butler eventually arrived. The events that followed are somewhat in dispute.⁵⁶ It is undisputed that Butler left soon after arriving, informing those at the station that he planned to work the day “on call” if he was needed. It is also undisputed that, as described further in Section II D, below, this incident and the brief investigation that followed ended Officer Butler’s employment with CPD.

3. Productivity

Alongside the self-regulation and attendance issues described above, Officer Butler also struggled at CPD with timely completing his police reports. CPD officers entered their reports in the Alaska Records Management System (ARMS), a computerized record management system. Any criminal investigation or officer-initiated event needed to be documented in ARMS, and on an average week an officer would open 20-25 ARMS “tasks.”⁵⁷

In CPD, as elsewhere, completely timely and accurate reports is a significant part of an officer’s job responsibilities.⁵⁸ Writing reports while the events are fresh promotes higher quality, more accurate reports. CPD policy called for officers to finish all reports by the end of their four-day work week, absent extenuating circumstances.⁵⁹ Prompt completion is also

⁵³ Taylor test; Ex. 15.

⁵⁴ Reece test.

⁵⁵ Goss test.

⁵⁶ Officer Fiser testified that it was clear something was bothering Butler, he was not angry or agitated. He recalls Officer Butler telling him, “I’m not doing well. I’m not supposed to be here. This is my sixth day straight. I’ll be on call if you guys need me.” Fiser testimony. Chief Goss, who was not present at the time but learned about these events the following day, memorialized reports that Butler had been agitated and yelling about “hating” Cordova and no longer wanting to live there, and that his yelling and slamming of his car door was witnessed by a passerby outside the station. Ex. 19, Goss testimony.

⁵⁷ Hayden testimony.

⁵⁸ Goss testimony.

⁵⁹ Taylor testimony.

necessary because prosecutors rely on officers' reports in making charging decisions. Thus, with an arrest made during the night shift, reports needed to be completed in time to provide to the prosecutor the following morning.⁶⁰

Officer Butler had early difficulties timely completing his reports, and his May 2021 evaluation included a performance goal of ensuring his reports were completed by the end of his work week.⁶¹ While his January 2022 evaluation indicated that Officer Butler's "report writing has improved over the past year,"⁶² problems persisted. After the hotel noise complaint response issue in June 2022, Officer Butler was found to have been severely behind in documenting that event. On August 15, 2022 – more than 6 weeks after the incident, and after a citizen's complaint had been lodged – Chief Taylor found that Officer Butler had still not updated body cam footage nor completed a police report about this incident.⁶³

A few weeks later, when newly-appointed Chief Andrew Goss began investigating Officer Butler's performance, he learned that Officer Butler had 49 incomplete "tasks" in the internal computer system officers used to generate case reports.⁶⁴ Most of these were from 2020 or 2021; only 7 were from 2022.⁶⁵ Officer Butler now explains that his report writing delays snowballed over time, influenced by insufficient training on the various internal computer programs, IT problems, confusion about how to use the software, and reluctance about asking for help and being a burden to other overworked officers. Against this backdrop, his backlog of reports grew, which "messed with [his] head," contributing to his ongoing productivity problems.⁶⁶

C. August - September 2022 employment status

By early August 2022, Officer Butler had made the decision to resign from the Cordova Police Department, and had submitted his two-week's notice listing August 20, 2022 as his last day.⁶⁷ When he learned that Chief Taylor had resigned in order to take the Chief of Police

⁶⁰ Hayden testimony.

⁶¹ Ex. 9.

⁶² Ex. 12.

⁶³ Ex. 14.

⁶⁴ Ex. 18.

⁶⁵ The record is devoid of evidence showing what, exactly, was incomplete. Officer Butler has suggested that some of the incomplete tasks associated with his login were actually reports awaiting a Chief's sign-off. While it was possible that not all of the incomplete tasks were missing reports, it is more probable than not that most of them were missing reports. Officer Hayden, who had the same supervisor, did not have a backlog of reports awaiting the Chief's sign-off; in his view, the 49 unfinished tasks "seemed like a large number." Hayden test; Ex. 17, Ex. 18. Hayden also did not have any unfinished tasks from prior years, while Butler had 42. Hayden test.

⁶⁶ Butler testimony.

⁶⁷ Ex. 16: 7/29/22 Resignation letter (R. 017); Butler test.

position in Valdez, Officer Butler approached Officer Hayden about how losing two officers – half of the police force – at once would impact the remaining officers. He offered to stay on for another month to smooth the transition.

In the meantime, Chief Goss was hired to replace Chief Taylor. Chief Goss’s initial intent was to try to convince Officer Butler to stay in Cordova, but it was quickly apparent that Officer Butler did not want to do so. Nonetheless, an agreement was reached for Butler to stay on until September 30, 2022. Their relationship quickly soured, however, reaching a breaking point soon after the September 4, 2022 incident when Officer Butler did not show up to work, had to be called to come in, and left almost immediately.

In investigating that incident, Chief Goss became more broadly aware of Officer Butler’s attendance issues, and his associated volatile behavior. After speaking with other officers and the Dispatch supervisor, Chief Goss became concerned about Butler’s mental stability and fitness for duty.⁶⁸ It was at this time that Chief Goss also learned about Officer Butler’s backlog of overdue reports.

Thus, two weeks after Officer Butler had intended to leave CPD voluntarily, Chief Goss prepared a memo recommending his termination.⁶⁹ The memo specifically identified concerns around what Chief Goss perceived to be Officer Butler’s negative attitude, failing to show up to work on time, yelling at colleagues, and failing to submit reports.⁷⁰

Through his union, Officer Butler grieved his termination. Ultimately, an agreement was reached allowing Officer Butler to resign, effective to the date of his original August resignation letter.

D. F-4 and APSC Investigation

Law enforcement agencies are required to timely report changes of employment status for certificated personnel to the Police Standards Council, using the Council’s Personnel Action Form F-4. On September 30, 2022, Chief Goss submitted an F-4 reporting that Mr. Butler had resigned on September 6, 2022, and that he did so “in lieu of termination.” While Chief Goss indicated that Officer Butler was not eligible for rehire with Cordova PD, he answered “no” to the question “do you recommend de-certification.”⁷¹

⁶⁸ Ex. 19.

⁶⁹ Ex. 19.

⁷⁰ Ex. 19, p. 3.

⁷¹ Ex. 23, p. 1. Chief Goss also answered “no” to the question, “was the employee under investigation for any wrongdoing.” *Id.*

Chief Goss attached to the form a memo describing what he had heard and read about Officer Butler’s performance before he (Goss) became Chief, and what he himself had observed since becoming Chief. He explained that in addition to behavioral, attitude, and attendance concerns, Officer Butler was significantly behind on report writing – with 56 reports past due, some from as far back as 2020.⁷² He noted that, “[a]fter observing Officer Butler’s behavior and hearing from other officers, I am very concerned for Officer Butler’s mental wellbeing,” as well as for “the safety of other officers and citizens of Cordova.”⁷³

This submission triggered an investigation by Investigator Sarah Hieb. After collecting records and reviewing witnesses, Investigator Hieb recommended to the Council that a revocation proceeding be initiated.⁷⁴ The Council then made a probable cause determination authorizing the Executive Director to begin that process.⁷⁵

E. Procedural History

On January 6, 2023, the Executive Director filed an Accusation seeking revocation of Mr. Butler’s certificate. The five-count Accusation alleges three separate grounds for discretionary revocation, and two separate grounds for mandatory revocation, as follows:

Alleged grounds for discretionary revocation

- Respondent resigned “under threat of discharge ... for inefficiency, incompetence, or some other reason that adversely affects [his] ability and fitness [to] perform job duties.” (Count I)
- Respondent resigned “under threat of discharge ... for conduct that was detrimental to the reputation, integrity, or discipline” of the CPD.⁷⁶ (Count II)
- Respondent lacks good moral character. (Count III)

Alleged grounds for mandatory revocation

- Respondent resigned “under threat of discharge ... for conduct that would cause a reasonable person to have substantial doubt about [his] honesty, fairness, and respect for the rights of others and for the law[.]” (Count IV)

⁷² Ex. 23, p. 5. These reports ultimately had to be reassigned to other officers after Officer Butler left CPD. See Ex. 22.

⁷³ Ex. 23, p. 5.

⁷⁴ Hieb testimony; Ex. 24.

⁷⁵ Hieb testimony.

⁷⁶ The Executive Director’s Count II cites to 13 AAC 85.110(a)(2), which gives the Council discretion to revoke a certificate where an officer resigned under threat of discharge for “*inefficiency, incompetence, or some other reason ... that is detrimental to the reputation, integrity, or discipline*” of the department. Resignation under threat of discharge for “*conduct that is detrimental to the integrity*” of the department is grounds for mandatory revocation, which is separately requested under Count V of the Accusation. See 13 AAC 85.110(b)(3). The overlapping nature of these provisions is addressed further below.

- Respondent resigned “under threat of discharge ... for conduct that is detrimental to the integrity” of the CPD. (Count V)

Officer Butler timely submitted a Notice of Defense requesting a hearing on the allegations in the Accusation. The matter was then referred to the Office of Administrative Hearings, and a two-day hearing was held in April 2023. Officer Butler represented himself and testified on his own behalf. The Executive Director was represented by Assistant Attorney General Sarah Stanley, and presented testimony from Cordova Police Chief Andrew Goss and former Chief Nate Taylor, Cordova PD Sergeant Cameron Hayden and Officers Daniel Fiser and Blake Reece, Alaska Wildlife Trooper Cassandra Hajicek, Cordova resident Jeffrey Bailey, and APSC Investigator Sarah Hieb. The record closed on April 20, 2023. This decision follows.

III. Discussion

A. Legal Framework

The Alaska Police Standards Council is tasked with ensuring that police officers in Alaska “meet minimum standards for employment.”⁷⁷ In addition to setting the professional requirements for certification, the Council is empowered to revoke a certificate if the holder “does not meet the standards” set out in the Council’s regulations.⁷⁸ These standards include the requirement that an officer possess “good moral character,” defined in the Council’s regulations to mean “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.”⁷⁹ The Council’s regulations also set out circumstances under which revocation *may* be undertaken, as well as circumstances under which it is required.⁸⁰ The Executive Director bears the burden of proving each count of the Accusation by a preponderance of the evidence.

B. The Executive Director met his burden of showing that discretionary revocation is appropriate in this case.

The Executive Director argues that the Council has discretion to decertify Officer Butler on three separate bases. First, the Director urges that decertification is appropriate because Officer Butler resigned “under threat of discharge for inefficiency, incompetence, or some other reason that adversely affects [his] ability and fitness [to] perform job duties,” and/or “that was

⁷⁷ AS 18.65.150.

⁷⁸ AS 18.65.240(c), 13 AAC 85.110(a), 13 AAC 85.010(a)-(b).

⁷⁹ 13 AAC 85.900(7) (also noting, “for purposes of this standard, a determination of lack of ‘good moral character’ may be based upon a consideration of all aspects of a person’s character”).

⁸⁰ 13 AAC 85.110.

detrimental to the reputation, integrity, or discipline” of the CPD. The Executive Director also argues that the Commission has discretion to decertify Officer Butler on the grounds that he lacks good moral character.

As a threshold matter, all but one of the bases on which the Executive Director seeks revocation of Officer Butler’s certificate require a finding that Officer Butler “resigned under threat of discharge.” At the evidentiary hearing, Officer Butler suggested that his resignation had been structured expressly to avoid such a finding. Thus we must consider whether Officer Butler “resigned under threat of discharge.” On the one hand, it is undisputed that Officer Butler *initially* resigned of his own accord, submitting a letter with a last day of August 20, 2022. However, he rescinded that resignation, and elected to stay on at CPD. Within weeks, he was facing termination – indeed, Chief Goss delivered termination papers to him at his house. Through a union grievance, the termination was rescinded and he was permitted to resign. These facts support a finding that Officer Butler “resigned under threat of discharge.”

As to whether Officer Butler resigned under threat of discharge “for inefficiency, incompetence, or some other reason that adversely affects [his] ability and fitness [to] perform job duties,” (Count I), Chief Goss’s recommendation to terminate Officer Butler was based on multiple factors implicating this standard. Officer Butler’s scores of overdue reports, as well as documented delays in responding to calls while on duty, both implicate concerns with inefficiency. His documented failures to respond to certain calls or to work his full scheduled shifts further implicate “some other reason” adversely affecting his ability and fitness to perform his duties. Likewise, Officer Butler’s periodic inability to control his emotions clearly impacted his ability to perform his job duties. The evidence strongly supports the conclusion that the Council has the discretion to revoke Officer Butler’s certificate on this ground.

As to whether Officer Butler resigned from Cordova PD “under threat of discharge ... for inefficiency, incompetence, or some other reason that ... was detrimental to the reputation, integrity, or discipline” of the CPD (Count II), there is ample evidence that Officer Butler’s volatile behavior and periodic outbursts adversely affected internal morale as well as public perception of the CPD.

As to volatile behavior, police officers must maintain a high degree of self-regulation to avoid losing composure despite facing many situations in which it would be easy to do so. Yelling and swearing over the police radio, acting confrontationally towards fellow officers, and losing composure in front of members of the public all diminish public trust and confidence in

the CPD, as well as undermining agency morale. As to attendance issues, consistently coming to work and working one's full shift are basic duties and obligations of a law enforcement position. And in the context of a very small department, Officer Butler's failure to do so created significant strain on CPD as a whole. Likewise, extensively failing to complete reports or other required documentation undermines the reputation, integrity, and discipline of the CPD. Given the significant role that report-writing and accurate documentation play in law enforcement, a failure to timely and appropriately document law enforcement encounters undermines citizen trust and law enforcement efficacy.⁸¹ In short, the Executive Director established ample evidence that the Commission has discretion to revoke Officer Butler's certificate on this ground.

As to the assertion that Officer Butler lacks good moral character (Count III), the Council's regulations define good moral character as "the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States[.]"⁸² Prior Council decisions have allowed a "lack of good moral character" finding upon a showing that the officer is deficient in any constituent element.⁸³ That is, an officer whose conduct would cause a reasonable person to have substantial doubts about the officer's respect for the rights of others lacks good moral character, even if the officer's conduct raises no such concerns about their honesty or fairness.

Here, Officer Butler showed a lack of respect for the rights of others in not responding to certain calls and not being available and locatable while on duty or on call. Officer Butler showed a lack of respect for the rights of others and the law in not completing dozens of his required police reports, a task that is necessary for prosecutions to move forward, and for both defendants and victims to obtain complete and accurate records.⁸⁴ Simply failing to complete dozens of reports – some left incomplete for years – reflects a lack of respect for the rights of others and for the law. The evidence supports a finding that Officer Butler lacks good moral character as that term is defined in the Council's regulations. It is easy to confuse such a finding with a judgment that an officer is a bad person. Officer Butler is not a bad person, and this

⁸¹ Goss testimony ("We're letting citizens down when we take a report and nothing's getting documented." Because as a police officer, "citizens have confidence in you and [in] what you're going to," an officer failing to complete their reports is "failing to do the main part of [their] job.").

⁸² 13 AAC 85.900(7) (also providing that, for purposes of this standard, a determination of lack of "good moral character" may be based upon a consideration of all aspects of a person's character . . .)

⁸³ See, e.g. *In re E.X.*, OAH No. 13-0473-POC at 16 (APSC 2013).

⁸⁴ Hayden testimony.

finding is not an indictment of his deeper morality, but simply an acknowledgement of a pattern of conduct inconsistent with the expectations of law enforcement professions.

In short, the Executive Director met his burden of proving that the Council has the discretion to revoke Officer Butler's certificate. The evidence further supports the unhappy conclusion that revocation is clearly warranted here. It is plain that Officer Butler was deeply unhappy living and working in Cordova, and it is unclear why he remained there and with CPD for two years given the high levels of distress he was experiencing. It may well have been that, if he had left Cordova and CPD sooner, he could have found a way to be successful in a different law enforcement agency under very different circumstances. But that speculative possibility cannot erase the actual behaviors Officer Butler engaged in while a member of the CPD. Officer Butler appears to be a sincere and caring person. However, his repeated inability to demonstrate consistent self-regulation, his ongoing difficulties with and failure to adhere to the attendance requirements of this position, and his profound difficulties with productivity all support the conclusion that he is not well suited for a certificated law enforcement position. The Executive Director has amply demonstrated that those behaviors warrant revocation of Officer Butler's certificate.

C. It is not necessary to decide whether the facts of this case mandate revocation.

The Executive Director further asserts that decertification in this case is not only allowable but *required* on two grounds – resignation under threat of discharge for conduct implicating moral character, and for conduct detrimental to the integrity of the CPD. Accepting the Executive Director's argument as to these Counts requires a finding that the Council has no discretion on revocation under the facts of this case.

Both of these counts require analysis of the grounds for which termination was proposed. The bases for which Chief Goss proposed terminating Officer Butler were:

- Recent and historical attendance issues that had included missing an assigned shift entirely, coming in late “many times,” and not working complete shifts.⁸⁵
- Having nearly fifty incomplete reports, including some that were more than two years overdue;⁸⁶ and
- Reports of recent and historical volatile behavior and a negative attitude – specifically, “yelling at [a dispatcher] over the air,” “yelling at other

⁸⁵ Ex. 19, pp. 1-2.

⁸⁶ Ex. 19, p. 3; Goss testimony.

officers on scene while dealing with the public,” and repeatedly threatening to quit.⁸⁷

The first mandatory revocation count concerns good moral character, an issue addressed above. While the Council has *discretion* to revoke a certificate upon a finding that an officer lacks good moral character, it has no such discretion and is *required* to revoke the certificate of an officer who resigned under threat of discharge for conduct that raises substantial doubts about their moral character.⁸⁸ That is, the revocation is mandatory if the factual basis for the proposed termination was conduct raising substantial doubts about the officer’s moral character.

Here, while attendance issues and uncompleted work assignments in particular can potentially implicate moral character, it is questionable whether the evidence here supports stripping the Council of any discretion in whether or not to revoke this certificate.⁸⁹ It is not necessary to decide this question, moreover, because the cumulative evidence shows that discretionary revocation is overwhelmingly called for in this case.⁹⁰

It is likewise not necessary to decide whether the bases for which Officer Butler’s termination had been proposed constitute “conduct detrimental to the integrity” of the CPD such that the Council would lose any discretion as to whether or not revocation is appropriate. As has been observed in other decisions, the Council’s regulations on this issue partially overlap between the discretionary grounds and the mandatory grounds.⁹¹ On the one hand, 13 AAC 85.110(a)(2) vests the Council with discretion to revoke the certificate of an officer who has resigned under threat of discharge for “inefficiency, incompetence, or some other reason ... that is detrimental to the reputation, integrity, or discipline” of the agency where the officer worked.⁹² But 13 AAC 85.110(b)(3) then *mandates* that the Council revoke the certificate of an officer who has resigned under threat of discharge for “conduct ... that is detrimental to the integrity” of the department where the officer worked.⁹³

Presumably, “conduct detrimental to the integrity” of the Department means something significantly more grave than “inefficiency, incompetence, or some other reason ... detrimental

⁸⁷ Ex. 19, p. 2.

⁸⁸ Compare 13 AAC 85.110(a)(3) with 13 AAC 85.110(b)(3) (revocation mandatory if officer resigned under threat of discharge “for conduct that would cause a reasonable person to have substantial doubt about an individual’s honesty, fairness, and respect for the rights of others and for the laws of this state and the United States”).

⁸⁹ See, e.g., Executive Director’s Prehearing Brief, p. 8.

⁹⁰ Ex. 19.

⁹¹ See, e.g., *In re Braeuer*, OAH No. 19-0146-POC (APSC 2019) pp. 8-9.

⁹² 13 AAC 85.110(a)(2)

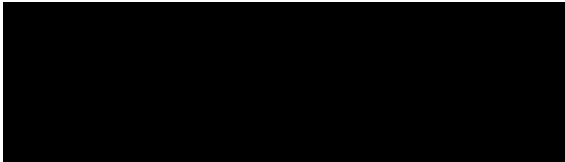
⁹³ 13 AAC 85.110(b)(3) (emphasis added).

to ... the integrity” of the Department, as the Council retains discretion on whether to revoke in the latter instance, but has no choice in the former instance. But the parties have not briefed the question of how and under what circumstances one of these parallel provisions supersedes the other. Here, where the outcome is the same – that is, where a basis for discretionary revocation has already been soundly established – it is not necessary to address whether the facts of this case further implicate a situation in which the Council has no discretion whether or not to revoke the certificate.

IV. Conclusion

The evidence presented established that Officer Butler resigned from CPD “under threat of discharge for reasons that adversely affected his ability and fitness to perform his job duties, and which were detrimental to the reputation, integrity, or discipline” of the CPD. The evidence further establishes that Officer Butler does not possess the moral character necessary to hold a police officer certificate. The Executive Director having met his burden of establishing that the Council can and should revoke Officer Butler’s certification, that certification is hereby REVOKED pursuant to 13 AAC 85.110(a).

DATED: May 26, 2023.



Cheryl Mandala
Administrative Law Judge

Adoption

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

DATED this 7 day of September, 2023.

By: _____

Sig

Rebecca Hamon

Name

APSC Council Chair

Title