

CONFIDENTIAL

Attorney-Client Communication
and
Attorney Work Product

Investigative Report - Summary
for
Jefferson County
Re: Stringer Complaint

October 22, 2017

Russ Perisho, Attorney
P.O. Box 1719
Poulsbo, WA 98370
rperisho@gmail.com

Investigative Report -
Summary

October 22, 2017

To: Suzanne Kelly Michael, Michael & Alexander PLLC, Attorney for Jefferson County
From: Russ Perisho, Attorney
Re: Investigation – Stringer Complaint

I. Overview of Issues and Investigation.

On May 24, 2017, Mike Stringer, who was a captain in the Jefferson County Sheriff's Office ("Sheriff's Office"), submitted allegations styled as a whistleblower complaint ("Complaint"). The general allegations were:

- (1) Stringer (and another captain) were improperly "demoted" in January 2015 by David Stanko, Jefferson County Sheriff;
- (2) Stringer stated concerns about the Sheriff's Department's spending of funds obtained through two federal Homeland Security grants;
- (3) In 2015, Stringer was subjected on four occasions to "offensive, vulgar, insulting remarks" by Stanko.¹
- (4) In 2017, Stringer was improperly pressured by Stanko to retire.²

It was determined that an outside investigator would gather facts about Stringer's concerns. This investigation commenced on June 7, 2017 at the request of Suzanne Kelly Michael, Michael & Alexander PLLC, Attorney for Jefferson County ("County"). Facts were gathered, and documents obtained from individuals and the County. Seventeen people were interviewed, including Springer and Stanko. Steps were taken

¹ The Complaint also asserted that Stanko made "inappropriate" comments to other Sheriff's Office staff. In his interview, Stringer said he did not witness any of these comments. This summary addresses only the issues involving Stringer.

² On August 25, 2017, Stringer wrote an email that "amended" his complaint to clarify that he challenged actions of both Stanko and the County.

during the investigation to preserve the confidentiality of attorney-client communications and attorney work product materials.

II. Summary of Findings and Conclusions.

A. There is no basis for a conclusion that Stanko's 2015 consolidation and assignment change violated any law or policy.

On January 14, 2015, a newly-elected sheriff, David Stanko, wrote an email to all Sheriff's Office staff announcing that he was appointing an undersheriff and "consolidating" command staff to "provide clear lines of communication internally and externally." Specifically, Stanko wrote that the "classifications of Captain and Sergeant will be consolidated into one classification where each of those officers will perform the function of shift supervisor." The two existing captains could retain their title, but "will perform the daily shift duties of Sergeant." Stringer said in his interview that he and the other captain were told by Stanko about the change in a meeting; this appears to have occurred shortly before the email was sent. The change had nothing to do with Stringer's job performance.

Stringer complained about this action in the Complaint, but did not provide a specific basis for his belief that the consolidation and assignment change were wrong either in the Complaint or in his interview. In an August 25, 2017 email, Stringer wrote: "It is my belief that my attempted demotion to the rank of Sergeant from the rank of Captain was completely without cause and unlawful, considering the position was one protected by the Civil Service Commission."

The change was coordinated with the County Administrator, HR and a labor consultant. Stringer was covered by a collective bargaining agreement containing a "just cause" term, but no grievance was ever filed. The captains' collective bargaining agreement allowed the County to require captains to perform the duties "typically assigned to a Sergeant." In fact, the union effectively ratified the action by agreeing later in 2015 to a compensation approach that treated captains the same as sergeants.³

There was no suggestion by Stringer that any County or Sheriff's Office policy was violated. Stringer believed that Stanko "explored" the change with the County Civil Service Commission; however, no action was taken by the commission. Although the

³ Stringer's total compensation was not significantly impacted by the change; by 2016, Stringer was earning more than he earned before January 2015.

State civil service commission statute (Ch. 41.14 RCW) provided that the County Civil Service Commission could investigate the "removal, suspension, demotion or discharge" of a civil service appointee if a request had been made within ten days of the action, Stringer never filed such a demand. As a result, no investigation was ever undertaken by the County Civil Service Commission to determine if a "demotion" occurred and, if so, whether it was "made in good faith for cause."⁴

Based on the facts gathered in the investigation, there is no basis for a conclusion that any applicable law or policy was violated by the 2015 consolidation and assignment change.

B. There is no basis for a conclusion that there were improprieties in Sheriff Office spending of Homeland Security grant funds.

The Sheriff's Office applied in 2015 and 2016 to the Department of Homeland Security for financial assistance under its Homeland Security Grant Program. Funds were received and used to purchase two all-terrain vehicles with transport trailers.

Stringer stated concerns about the Sheriff's Office grant applications in the Complaint, but did not provide a specific basis for a belief that the grant applications and fund use violated any law or policy. Stringer said in the Complaint that Stanko told management staff not to become involved in Border Patrol operations out of concern about political impacts from Border Patrol immigration compliance steps.

The Sheriff's Office policy on Immigration Violations (Policy 412) is clear about the limitations on deputies asked to assist the U.S. Immigration and Customs Enforcement (ICE) agency in responding to suspected immigration status violations. Nothing about the grant applications and use of funds was inconsistent with Sheriff's Office policy.

Documents associated with the grant applications show that assisting ICE address immigration status violations is not the thrust of the grant program. The applications were made with the coordination and support of the U.S. Border Patrol Port Angeles Station towards a goal of "enhanced law enforcement presence in exploited border zones and designated marine ports of entry." U.S. Department of Homeland Security ~~Bureau of Customs and Border Protection Operations Order Report. The participating~~ agencies "will not enforce Federal immigration or Custom laws, but will enforce State

⁴ RCW 41.14.120 permits appeal of civil service findings to superior court.

law and local municipal codes against violators in target areas to help reduce criminal activity associated with alien; drug and weapon smuggling." (emphasis added)

A review of the Sheriff's Office grant applications shows that a host of legal requirements impact the use of the funds. However, no information was obtained in the investigation to provide reason to believe that any of these rules were violated. Based on the facts gathered in the investigation, there is no basis for a conclusion that any applicable law or policy was violated by Sheriff's Office actions related to the financial assistance received under the Homeland Security Grant Program pursuant to 2015 and 2016 grant applications.

C. There is no basis for concluding that Stanko's 2015 comments and joking were unlawful discrimination or otherwise prohibited by County policy.

Stringer said in the Complaint that in 2015, he was subjected on three days to "offensive, vulgar, insulting remarks" by Stanko. The 2015 "remarks" involved casual and joking conversations among deputies with obscene and sexual terms directed at Stringer by Stanko. Stringer said in his interview that Stanko "flipped him off" with his middle finger during command staff discussions at least a dozen times.

Stringer provided detail about the contexts for the various remarks, explaining that he made and kept contemporaneous notes in his "officer" notebook. The notebook was obtained. Its entries were consistent with Stringer's descriptions in his interview and in the Complaint.

Stringer identified witnesses to each incident. Some deputy officers alleged to have been witnesses corroborated Stringer's account, while others had no recall of such incidents. One alleged witness who did not work for the Sheriff's Office denied observing an incident in 2015 in which Stanko was said to have "flipped off" Stringer. In his interview, Stanko said that he and Stringer engaged in mutual, good-natured "bantering" during command staff and other small group, closed-door discussions. Stanko denied making the "remarks" specifically described by Stringer in the Complaint. Stanko said in his interview that a part of this "fraternal law enforcement bantering" involved him occasionally giving Stringer the middle finger gesture.

The County and the Sheriff's Office have policies prohibiting discrimination, including sex harassment. The Sheriff's Office policy states that conduct such as "crude and offensive statements and remarks," "off color jokes," "indecent gestures," can "under

certain circumstances" be prohibited "discriminatory harassment." Under the County and Sheriff's Office policies, discriminatory harassment has occurred when offensive conduct or statements (1) are directed at someone because of their protected status (e.g., sex), and (2) have the effect of interfering with an individual's work performance or otherwise created a hostile work environment.

Here, there was no suggestion that the comments and gestures were directed at Stringer because of his sex (male) or due to any other protected status category. Similarly, there was no persuasive information that the statements and gestures ever interfered with Stringer's work performance or created a hostile work environment. Stringer never objected to what Stanko and others described as mutual bantering; he never conveyed to Stanko that he was offended or demeaned by what happened. In his interview, Stringer said that he found the remarks "completely insulting," but said that "we do have pretty heavy joking." Stringer was aware of effective ways to bring complaints for violations of the discrimination policy but did not try to stop the offending conduct. The collective bargaining agreement contained provisions that would have supported a factually-supported grievance, but none was ever lodged. The remarks on three days in 2015 were isolated and infrequent events, and were long-passed by the time the Complaint was submitted in May 2017.⁵ Stringer complained of no similar comments over the course of the last two years he worked.

Based on the facts gathered in the investigation, there is no basis for a conclusion that any applicable law or policy was violated by Stanko's 2015 remarks and gestures.

D. There is no basis for concluding that Stringer was improperly pressured to retire.

In the Complaint, Stringer said that in the "past year or so," Stanko has "verbally asked me about retirement, asking me for an exact date." In his interview, Stringer said this felt like "pressure" to retire. Stringer gave notice on May 2, 2017 in an email about "retirement" that he intended to resign his employment on June 30, 2017. The resignation was effective on that date.

In his interview, Stringer said that he began formulating a plan to retire over the last year and a half of his employment. He talked openly with deputies and staff that he

⁵ Although the alleged remarks did not violate non-discrimination policies, such conduct – if it occurred – seems out of place in today's professional law enforcement working environment.

wanted to retire as soon as he could and hoped to retire on his 53rd birthday – June 30, 2017. However, Stringer did not want to provide official notice of a retirement date until he made what he viewed as his final decision.

This caused a problem for the Sheriff's Office. Command staff responsible for hiring a new deputy as a replacement were well aware of Stringer's plan to retire. In late 2016, Stringer scheduled his 2017 vacation time for the last three weeks of June 2017, sending a signal to others that he did not intend to work past June 30, 2017. In February 2017, Stringer asked to skip strategic planning sessions, writing in an email that "by the time any "planning" is actually occurring, I will be retired." Yet, the Sheriff's Office could not initiate the hiring process until the County received formal notice from Stringer of a retirement date.

Stanko and other command staff asked Stringer when he intended to retire. When interviewed, they said there was never any intent to pressure Stringer to decide to retire; rather, the objective was to receive written notice of Stringer's final plan so that replacement hiring could commence.⁶ This was consistent with all the facts. When Stringer described in his interview the specifics of two conversations with Stanko in March 2017 about retirement, Stringer said that Stanko's stated reason for initiating the conversations was because he needed to have a retirement date to fill the position.

No adverse action was ever taken against Stringer by the County based on his age. There were no persuasive facts that the reason Stringer retired was because of questions about his planned retirement date.

Based on the facts gathered in the investigation, there is no basis for a conclusion that any applicable law or policy was violated by Stanko and other command staff asking Stringer to provide the date he intended to retire.

⁶ One of the command staff said in his interview that it can take as long as a year to get a new deputy into a patrol car. In the meantime, being short-handed places a burden on all the remaining deputies.

