BEFORE THE ALASKA POLICE STANDARDS COUNCIL

In the Matter of	)	
	)	
JOSEPH M. HAZELAAR	)	OAH No. 13-0085-POC
	)	Agency File No. APSC 2011-16

ORDER ADOPTING THE EXECUTIVE DIRECTOR'S PROPOSAL FOR ACTION AND THE RECOMMENDED DECISION AS REVISED BY THIS ORDER, and REVOKING CPL. HAZELAAR'S POLICECERTIFICATE

After full review of the recommended decision AND Executive Director's Proposal for Action, and giving consideration to the presentation made by Mr. Hazelaar at the July 28, 2014, meeting, the Alaska Police Standards Council:

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

ORDER

In accordance with AS 44.64.060 (e)(3), the Council adopts the Executive Director's Proposal for Action and those portions of the recommended decision as

amended here and consistent with the Proposal for Action and REVOKES Cpl. Joseph Hazelaar's police certificate.

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

DATED this 27th day of August, 2014.

By: _____

Sheldon Schmitt
Chair, Alaska Police Standards Council

THE STATE
of ALASKA
GOVERNOR SEAN PARNELL

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May 5, 2014

Alaska Police Standards Council
c/o Kelly Alzaharna, executive Director
450 Whittier Street
Juneau, Alaska 99801

Re: *In re Joseph M. Hazelaar,* OAH No. 13-0085-POC
DECISION DUE BY END OF NEXT REGULAR MEETING THAT OCCURS AFTER MAY 25, 2014

Dear Council Members:

I am sending you the proposed decision that I prepared after a hearing in this case. As required by statute, the proposed decision was first distributed to the parties. The parties were offered the opportunity to comment on the proposed decision by filing a *Proposal for Action.* Both parties filed Proposals for Action, which are enclosed.

The decision is ready for final action by the Council. As the administrative law judge who heard the evidence, I can be available to the Council during consideration of the case, including during an executive session. If the Council would like my assistance, Mr. Skidmore is aware of my schedule and how to reach me.

Under AS 44.64.060(e), the Council can take one of the following actions on this decision:

1. adopt the proposed decision as the final agency decision;
2. return the case to me to take additional evidence or make additional findings or for other specific proceedings;
3. revise the proposed enforcement action, determination of best interests, order, award, remedy, sanction, penalty, or other disposition of the case;
4. reject, modify, or amend a factual finding (note that under this option the Council must first review the evidence relied on for that finding, including listening to the relevant testimony. I can assist the Council with that process);
5. reject, modify, or amend an interpretation or application of a statute or regulation.

I would like to draw the Council's attention to a potential issue raised by one of the Proposals for Action. In the Executive Director's Proposal, the Executive Director asks the Council to

consider a judicial order entered by a judge in 2007.[1] This request is problematic because, although the order is in the record, Cpl. Hazelaar objected to the admission of the order and it was admitted *only* for the purposes of impeachment. Cpl. Hazelaar was not put on notice that the Council would be asked to consider the content of the order when determining whether to revoke his certificate.

If the Council determines that it does not need to consider the 2007 court order in reaching its decision, then this potential issue is moot. If, however, the Council would like to consider the 2007 order, I would recommend that the Council remand the case to me to give Cpl. Hazelaar an opportunity to address the issue.

Turning to the issue of party participation in your meeting, under AS 44.64.060 the Council has the discretion, but not the obligation, to hear from the parties or their counsel in a public meeting. If you decide to allow the parties to address the Council, both parties must be afforded the same opportunity to address the Council.

Under AS 44.64.060(f), the Council must take action on the proposed decision during or before its next regularly scheduled meeting occurring at least 45 days after the proposed decision was distributed. The proposed decision was distributed April 10, 2014, which means the Council has until the next regularly scheduled meeting that occurs after May 25, 2014, to act on the decision. If the Council does not take action by the close of that meeting, the proposed decision will become the final decision by operation of law.

The decision document includes an adoption/non-adoption order that the Council can use to record its final decision. If the Council selects an option other than adoption of the proposed decision as written, I am available to assist it in using the non-adoption options or in drafting an appropriate decision.

The final decision must be distributed to the parties. Under our regulations, OAH takes care of that distribution. Please ask staff to send the Council's final decision to us for distribution.

If you have any questions about these procedures, please do not hesitate to contact me.

Very truly yours,

Stephen C. Slotnick
Administrative Law Judge

Enclosures as stated

cc: Megan Carmichael
Sue McLean
Kelly Alzaharna

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1 Director's Exhibit 4 (Order, *State v. Graham,* Case No. 4BE-06-1447 CR (July 16, 2007)).

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

In the Matter of	)	
	)	
JOSEPH M. HAZELAAR	)	OAH No. 13-0085-POC
	)	Agency File No. APSC 2011-16

DECISION

I. Introduction

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

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

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

II. Facts

1. Hazelaar serves as a Task Force Officer with DEA

Joseph Hazelaar joined the Alaska State Troopers in 2000. Over the years, he achieved some renown regarding his ability to handle dogs for the K-9 unit, and in his ability to pursue

drug interdiction.[1] His supervisors and colleagues considered him a very hard worker who was single-minded and dedicated to working his cases.[2]

In August 2007, Trooper Hazelaar was assigned to work as a Task Force Officer with the federal Drug Enforcement Administration (DEA).[3] This meant that his job duties involved working drug cases under the jurisdiction of DEA. As an administrative matter, however, he was still an employee of the Alaska State Troopers. The Troopers paid his salary and his chain of command remained with the Troopers. On a day-to-day basis, the drug cases that he worked were run by the DEA, and he took orders from his DEA supervisors.[4]

2. Hazelaar becomes the handler of confidential source S.P.

In 2008, a woman with the initials S.P. contacted the DEA. She explained that her ex-boyfriend had beaten her up and stolen money from her. She wanted to provide information regarding his drug connections. The DEA determined that S.P.'s information related to drug cases being worked by Inv. Hazelaar, and assigned him to be S.P.'s handler. Inv. Hazelaar had never served as a handler before, and he received only on-the-job training on handling informants.[5]

In handling S.P. over the next year, Inv. Hazelaar frequently texted or talked with her on the telephone. She did not like to meet in person with law-enforcement personnel. In Inv. Hazelaar's opinion, S.P. was a valuable but frustrating informant. He was working on what he called a "major organized-crime multi-jurisdictional drug case," and she provided useful information about some of the players. Inv. Hazelaar believed she had more information than she was giving. Yet, because she had never been charged with a crime, and was only a volunteer citizen informant, he had no leverage over her. At times, S.P. would be difficult to reach. She worked at a phone kiosk and had many different phones, and Inv. Hazelaar would have to leave messages on a string of phones because he never knew which one was in play.

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1 Spitzer testimony; Mallard testimony. Cpl. Eric Spitzer is Trooper Hazelaar's colleague. Col. Mallard was in Trooper Hazelaar's chain of command, but was not his direct supervisor. Col. Mallard was a captain at the time of most of the events in this case; he was a colonel at the time of the hearing, and is now no longer with the Troopers. Both Cpl. Spitzer and Col. Mallard were Trooper Hazelaar's friends.

2 Greenstreet testimony; Mallard testimony; Spitzer testimony. Captain Greenstreet was in Cpl. Hazelaar's chain of command but not his direct supervisor. He was a lieutenant at the time of most events in this case, and a captain at the time of his testimony.

3 Hazelaar testimony. At this time in his career, Trooper Hazelaar was an investigator. Later, he was promoted to corporal.

4 Hazelaar testimony; Greenstreet testimony; Mallard testimony; Spitzer testimony.

5 Hazelaar testimony.

3. Administrative Investigation I: the allegation of sexual misconduct[6]

On August 21, 2009, a woman with the initials L.W. was arrested on a drug offense. In an attempt to act as a cooperating witness, L.W. volunteered information about alleged police misconduct. L.W. explained that she was S.P.'s close friend, and that S.P. had confided in her that S.P. was having sexual relations with a law enforcement officer.[7] This allegation was relayed to supervisory personnel at both DEA and the Troopers. Both entities began to investigate the allegation. The investigations focused on Inv. Hazelaar as the most likely law enforcement agent to have been involved with S.P. The Troopers opened an administrative investigation of Inv. Hazelaar ("Administrative Investigation I"). The investigation was assigned to Sgt. Scott Johnson. On August 25, 2009, Alaska State Trooper Lt. Andrew Greenstreet orally instructed Inv. Hazelaar that Hazelaar was to have no further contact with S.P. while the investigation was pending. Lt. Greenstreet followed up this order with an email.[8]

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

4. The events of September 3rd

During this time, Inv. Hazelaar was not the only officer working on a major case involving S.P. Earlier in the summer—before the no-contact order was put in place—S.P. had been contacted by a notorious drug distributer named Wilber Daniel Meza, who asked S.P. to distribute a kilogram of cocaine.[9] Inv. Hazelaar's colleague, Cpl. Eric Spitzer, who was also a Task Force Officer assigned to DEA, was working the case involving Mr. Meza. Cpl. Spitzer and his colleagues on the Meza case immediately began to work on setting up a sting involving S.P. and Mr. Meza. S.P. preferred to communicate with Inv. Hazelaar, so even though he was not working on the Meza case, he would sometimes facilitate communication. S.P. met Meza at

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6 As will be explained later in greater detail, the allegation that Inv. Hazelaar had a sexual relationship with S.P. is not part of the accusation in this appeal, and should not be given any weight or credence in determining the outcome.

7 Record at 232; 2139.

8 Greenstreet testimony; Record at 548.

9 Record at 2132

two monitored meetings in Anchorage restaurants.[10] At one of these meetings, Mr. Meza was accompanied by another gentleman whom Cpl. Spitzer referred to as "Frank the Soldier."[11] After the meeting, Mr. Meza demanded to be taken to S.P.'s house, with the implied threat of "now I know where you live."[12] S.P. took Mr. Meza to her mother's house.[13] She went inside and returned with a glass of water, to demonstrate that she lived in the home.

At the time the no-contact order was issued—August 25th—Cpl. Spitzer and his fellow agents were still working out the details on how the cocaine was going to be transferred to S.P. They were expecting it to be a "dead drop" (meaning without contact between Meza and S.P.) in a warehouse at some time in the future.[14] Although the no-contact order issued by the Troopers applied only to Inv. Hazelaar, the DEA had ordered all officers involved in Anchorage drug cases to cease contact with S.P. while the investigation was pending. This meant that Cpl. Spitzer also had to stop contact with S.P., even though she now had a pivotal role in the Meza case.

At 3:58 p.m. on September 3, 2009, Cpl. Spitzer was at DEA's office when he received a phone call from S.P. The call came in on a number that he did not recognize, so he answered it. Cpl. Spitzer testified that S.P. first asked him where Joseph was and why he was not returning her calls.[15] Cpl. Spitzer told S.P. that Joseph was on vacation. She then informed him that she had run into Meza that day, Meza had been subsequently calling her, he was coming to her house with Frank the Soldier, and that he had "work" for her—meaning cocaine.[16]

This was a startling event for Cpl. Spitzer—so startling that he compared it to 9/11, and testified that he remembers exactly where he was when he received the call. A flurry of events occurred, including his trying to get permission to contact her, his receiving instructions that the drop should not take place that night if it was possible to avoid it, and his working to put a surveillance team in place in case the drop did occur. After he received permission to contact

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10 *Id.*

11 *Id.*

12 Record at 2134.

13 *Id.*

14 Record at 2135.

15 Spitzer testimony. In his interview with Investigator Angela Long on September 17, 2012, Cpl. Spitzer stated that she said "I called Joseph like a week ago – he says he can't talk to me anymore, over a week ago." Record at 2145. The memorandum that Cpl. Spitzer wrote on the night of the event states "[t]he CS stated that he/she had attempted to contact TFO Hazelaar for over a week. The CS said that TFO Hazelaar told her that he could not talk to her anymore, and since then has not answered the CS's calls." Hazelaar Ex. 4 at 1.

16 Spitzer testimony. In his interview with Inv. Long, Cpl. Spitzer agreed with Inv. Long that it was more likely that the house in question was S.P.'s mother's house. Record at 2146.

S.P., and had devised an exit strategy so that S.P. could give Meza a story for why the drop could not occur that night, Cpl. Spitzer called S.P. back. She said that she wanted to talk with Joseph.[17] Cpl. Spitzer's DEA supervisor then authorized Cpl. Spitzer to call Inv. Hazelaar and authorize Inv. Hazelaar to contact S.P.

At 6:14 p.m., Cpl. Spitzer called Inv. Hazelaar and left a message.[18] Inv. Hazelaar was coaching his son's football game. He returned Cpl. Spitzer's call at 6:17, and they spoke for 14 minutes. Inv. Hazelaar's phone tolls show that Inv. Hazelaar called Cpl. Spitzer again at 6:44 for one minute (likely a voice message or no call) and then again at 6:57 for four minutes.[19] No other voice calls were made by Inv. Hazelaar from his work cell phone during this interval.[20] According to Cpl. Spitzer, Inv. Hazelaar said that he had tried to contact S.P. by text messages and by phone.[21]

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

> Joseph n eric- obviously I feel very betrayed by the both u-wen I decided 2 work wit D.E.A. "voluntarily" by providing accurate information 2 help u both no matter whom it was from, joseph . . . u always assured me about safety as well as my family dats y I've come to trust work'n wit u within time I've always said I DO NOT feel comfortable work'n wit any 1 else-u assured about work'n wit eric-so I pursued wit da 'daniel' situat'n. I've tried 2 make contact wit u bcuz I am in fear 4 da safety of me n my family aftr I've shown dis man where my family resides n I've gotten no return call n I feel dat all eric is worried about is getn a recording – this isn't rite to me n "U BOTH" have made me feel dat people have always been rite wen dey say "D.E.A." only works 4 themselves n will screw people over after dey get da informat'n dey need![22]

Cpl. Spitzer replied to this message, asking S.P. to contact him again. He did not hear back from her. Later that evening, DEA shut the operation down.[23]

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17 Spitzer testimony.

18 Hazelaar Ex. 6 at page 30 of 54 (phone tolls for Spitzer phone; exhibit pages are unnumbered; page numbering is original numbering). The phone tolls show that the call at 6:14 was unanswered and that at 6:17 Cpl. Hazelaar checked his voicemail and then called Cpl. Spitzer back. *Id.* at 51 of 54.

19 *Id.*

20 *Id.* The phone tolls do not show a record of text messages sent or received. Although a record of text messages can be extracted from a phone, Inv. Hazelaar's phone was wiped clean as a routine process by the Troopers at a time when the Troopers did not realize that the record of his contacts on September 3rd would be important. A forensic study of the one phone recovered from S.P. did not show any text messages sent or received by S.P. to Inv. Hazelaar or Cpl. Spitzer on September 3rd.

21 Spitzer testimony; Record at 2154.

22 Hazelaar Exhibit 4 at 2 (transcription by Cpl. Spitzer; internal breaks and comments omitted).

23 Record at 2114.

Although Inv. Hazelaar has gaps in his memory, he remembered some of the events of September 3rd. He testified that he remembered receiving messages about S.P. at a football game at Bartlett High School. He remembered receiving text messages, the first of which was from S.P. herself, about the situation with Meza. He remembered that S.P. was concerned for her safety. He specifically remembered that S.P. was sending a message or messages from the basement of a house, locked in a bathroom, while Mr. Meza was also in the house. He could not say for certain whether he learned about S.P. being locked in a bathroom from S.P. herself, through a text message, phone call, or voicemail, or whether he learned it from someone else, such as Cpl. Spitzer.[24] Cpl. Spitzer testified at the hearing that he did not remember hearing from S.P. while she was locked in a bathroom in the basement of a house, and his memorandum and earlier testimony do not mention any such detail.[25]

Inv. Hazelaar testified that after he first heard from S.P. about the situation, he was very agitated and concerned for her safety. He recalled pacing in a gravel parking lot. He recalled that he called DEA from the parking lot, and spoke to at least two DEA agents, Todd Jones and Marc Schmidt, and possibly Cpl. Spitzer as well, on speakerphone. He has a vivid memory of telling these agents that someone needs to contact S.P. and if they did not do it he would. He recalled that they told him that whatever he did, he should not contact her.[26]

5. Texts from Inv. Hazelaar to S.P. from September 4th through September 8th

Although S.P. had many phones, only one phone was recovered from her and subjected to forensic analysis: 907-727-0441.[27] The forensic analysis of this phone does not show any relevant text traffic on September 3rd. From September 4-8, 2009, however, the following text traffic occurred between 907-727-0441 and Inv. Hazelaar's work-issued cell phone (907-980-5053):

Date	Type	Text
9/4, 8:48 a.m.	incoming	Give me a call
9/4, 9:35 a.m.	incoming	I am waiting 2 talk 2 u on other phone but only have 30 min left before

[24] Hazelaar testimony.
[25] Spitzer testimony.
[26] Hazelaar testimony.
[27] At closing argument, Hazelaar's counsel argued that the Executive Director had not *proved* that 907-727-0441 was S.P.'s phone. Although neither Agent Hawney (the DEA agent for whom the forensic analysis was performed) nor S.P. testified at the hearing, Inv. Long's testimony, the forensic analysis, the exhibits in the record, and the fact that Inv. Hazelaar texted this number on September 8th when Sgt. Johnson asked him to contact S.P. prove that 907-727-0441 was, in fact, S.P.'s phone.

		I will be around others. Please call
9/8, 8:22 a.m.	incoming	Give me a call on other line
9/8, 9:38 a.m.	incoming	Can u call me on other line?
9/8, 1:37 p.m.	incoming	Can u call me on other line?[28]

At the hearing, Inv. Hazelaar contested the dates of these texts, arguing that the date of an incoming text reflects when the phone was powered up, not when the text was sent. The forensic analysis indicates that the last text before the first September 4th Hazelaar text was dated August 22, 2009, so it is possible that the first September 4th Hazelaar text may have been sent before the August 25th no-contact order.[29] The second September 4th text came 47 minutes after the first, so it is unlikely that this text was sent before August 25th. The texts received on September 8th were sent after noon on September 7th because the telephone was powered up at noon on September 7th when a text from an unrelated number was received.[30]

6. Contact with S.P. on September 9th

On September 9, 2009, Sgt. Johnson was trying to finish up his investigation of the alleged sexual misconduct involving S.P. He needed to interview S.P. herself, but she did not respond to his attempts to contact her. He asked Inv. Hazelaar to see if he could arrange for the interview. At 5:29 p.m., Inv. Hazelaar sent the following text message to S.P.: "Can u please call me i just got back from vacation and got ur text." At 5:33, S.P. called Inv. Hazelaar back (from a different telephone).[31] Without S.P.'s knowledge, Hazelaar put her on speakerphone so that Sgt. Johnson and Senior Inspector Bruce Balzano of DEA could hear the conversation. The arrangements for the meeting were made. Shortly thereafter, all three met with S.P., and Sgt. Johnson and S.I. Balzano interviewed S.P. that evening while Inv. Hazelaar looked after S.P.'s child. In the interview, S.P. denied that she and Inv. Hazelaar had a sexual relationship.[32]

7. The September 10th interview of Hazelaar

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

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28 Record at 1459.
29 Record at 1459.
30 *Id.*
31 Hazelaar Ex. 6 at 52 of 54; Record at 254.
32 Record at 830-40.

> Okay. Okay. And I'm just gonna get started here. Um, obviously, you know what the complaint is that - that I'm looking into. Uh, since being ordered to do so by Lieutenant (Greenstreet), uh, when he served you with that - the notice of administrative investigation, uh, where he ordered you not to have any contact with the, uh, and you guys call them CS's. I'll try to call them CS's. I call them CI's, confidential informant. Um, have you had any contact with the CS by any means other than yesterday when, uh, Bruce and I had you text or call her to, uh, to talk to her.[33]

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

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

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

Although the Troopers had closed their investigation, the DEA continued its investigation of whether Inv. Hazelaar had a sexual relationship with S.P. In July 2010, S.P. recanted her earlier denial of the relationship, and told L.W.'s attorney, Rex Butler, that she did have sexual relations with Inv. Hazelaar. Mr. Butler informed the D.E.A. S.P. submitted to an interview and a polygraph with federal authorities. In the interview, she provided details of the alleged sexual relationship. The polygraph was evaluated as not deceptive to the relevant questions.[34]

On July 14, 2010, DEA authorities had S.P. place a recorded call to Inv. Hazelaar. The purpose of the call was to try to induce Inv. Hazelaar into admitting the illicit relationship. Inv. Hazelaar did not know that the call was being recorded and he did not know that S.P. had changed her story or already taken a polygraph. In the call, S.P. told Inv. Hazelaar that a federal official had left a message on her answering machine telling her that she must either go before a

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[33] Record at 495.

[34] Record at 1211-13. The evidence of S.P.'s polygraph is included here only because it explains why D.E.A. continued to investigate, not to support an inference that S.P. was telling the truth.

grand jury or take a polygraph. She said that "I mean obviously the allegation is about when I, you know, being intimate or whatever the case is."[35] During the course of the recording, which lasted about 38 minutes over two calls, she mentioned seven times that she had lied to federal officials, including statements that "obviously that I lied to them about that situation" and then later "obviously like I lied to DEA in the situation with us."[36] Inv. Hazelaar did not ask her what she had lied about or question her assertion that she had lied.

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

> MR. HAZELAAR: All they're trying to find out is whether or not you had a relationship or not. That's it.
>
> [S.P.]: I know, but that's the thing, though.
>
> MR. HAZELAAR: There's no law – there's no law –
>
> [S.P.]: Okay, but that's the thing is that you and I know the truth, and we know what happened, but that's the thing is that like if they give me a polygraph – that's my main concern because I already –
>
> MR. HAZELAAR: Why do you have to take a polygraph?
>
> [S.P.]: Because I don't want to get subpoenaed to a Grand Jury.
>
> MR. HAZELAAR: You're not going to get subpoenaed to a Grand Jury.[37]

Early in the call, Inv. Hazelaar told S.P. that she could tell them whatever she wanted to tell them.[38] He also said "I don't want to persuade you one way or another."[39] He suggested that the Grand Jury threat was likely a bluff, and told her "you don't even have to call him back" and that she could say "I don't want anything to do with you anymore. Stop calling."[40] He assured her that there was nothing to worry about.[41] Later in the conversation, when S.P. was continuing to express concern that there might be charges coming to her, Inv. Hazelaar said "Okay. So go – go tell everybody. Tell anybody you want to – tell the truth about everything. It doesn't bother me one bit. All right. There is nothing – you can go – go call the guy back and say hey I'll take a polygraph. Call the guy back and tell him say you want to change your story up and tell him

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35 Record at 105-06. *See also* Record at 86.
36 Record at 91, 95.
37 Record at 100-01.
38 Record at 86.
39 Record at 91.
40 Record at 86.
41 Record at 97.

something different."[42] After giving that advice, however, he then advised that if someone left him a voicemail asking him to take a polygraph, "[w]hat I would probably do is I probably wouldn't respond to it."[43]

When S.P. said "I have lied and I have covered up," Mr. Hazelaar responded "what would they know?" and "[e]verything else out there is backing you up. My statements back you up."[44] He also repeated, however, that "I haven't done – anything that neither one of us have done wrong. There is nothing out there okay."[45] And "[t]here's nothing wrong or inappropriate. There is nothing out there."[46]

Following this call, Inv. Hazelaar called Sgt. Johnson and told him that S.P. had called out of the blue. He asked Sgt. Johnson whether the investigation was still open. He told Sgt. Johnson that S.P. disclosed that she was being pressured to testify and that he told her to tell the truth.[47]

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

Shortly after the July 14, 2010, call from S.P., S.I. Balzano called Inv. Hazelaar and told him that the federal investigation was ongoing. S.I. Balzano asked Inv. Hazelaar to take a polygraph. Inv. Hazelaar was willing to do so at first, but after he learned that the DEA was investigating whether he had committed a federal crime by lying to a federal investigator, he approached Capt. Mallard. Capt. Mallard arranged for Inv. Hazelaar to take a state polygraph instead. He opened a second administrative investigation and assigned Sgt. Johnson to investigate. Inv. Hazelaar took the state polygraph and was asked whether he had sexual contact with S.P. and whether he was untruthful in this investigation.[48] The polygraphist who administered the polygraph determined that his answers were consistent with a person not attempting deception.[49] Federal authorities did not cooperate with Sgt. Johnson regarding the information that they were relying on in their investigation. Despite repeated attempts, he was

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42 Record at 106.
43 Record at 112.
44 Record at 110.
45 Record at 111.
46 Record at 112.
47 Johnson testimony.
48 Meyer testimony; Record at 593. Cpl. Aaron Meyer is a certified polygraphist with the Troopers.
49 Meyer testimony; Record at 594. The evidence that Inv. Hazelaar passed the polygraph is included only to explain why Administrative Investigation II was closed. It is not intended to support an inference regarding Inv. Hazelaar's truthfulness.

not able to re-interview S.P.[50] On October 6, 2010, Sgt. Johnson closed Administrative Investigation II with findings that the concerns raised regarding Inv. Hazelaar's truthfulness and conduct were unfounded. That month, Inv. Hazelaar was promoted to Corporal.

10. Administrative Investigation III: the Inv. Brown interview

On January 19, 2011, Lt. Greenstreet received a summary of the federal investigation.[51] That investigation concluded that Inv. Hazelaar was untruthful during the investigation and that he violated a direct order from his supervisor to not have contact with S.P.[52] Lt. Greenstreet requested that the Troopers open a third administrative investigation of Inv. Hazelaar. This investigation was assigned to Inv. Jeff Brown.

On February 15, 2011, Inv. Brown interviewed Cpl. Hazelaar. In the interview, Cpl. Hazelaar admitted that he had contact with S.P. after the date of the no-contact order, but first said that he had no idea whether the conversations were before or after the administrative investigations were closed.[53] When asked specifically about contact in the time period shortly after receiving the no-contact order, Cpl. Hazelaar first replied "I can only assume yes."[54] Later, as he started to recall more about the crisis involving Meza, he confirmed that "she was calling, uh, saying uh, hey uh, you know, I'm scared for my life uh, you know, where are you, so on and so forth."[55] He explained about the call to the DEA officials in which he advised "if you guys don't talk to her, I'm going to talk to her," to which they responded, "Joseph, whatever you do, don't uh, talk to her."[56] When Inv. Brown asked whether he continued to have the contact after that point, Cpl. Hazelaar responded affirmatively.[57]

Inv. Brown had earlier asked Cpl. Hazelaar about why he had the contact, and Cpl. Hazelaar had explained about his concern for S.P.'s safety and about his frustration with what he considered an unfair investigation of him. Then, when Inv. Brown asked why Cpl. Hazelaar continued to have contact after the DEA officials had reiterated the no-contact order, Cpl.

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50 Johnson testimony; Record at 568-69.

51 Record at 17; Greenstreet testimony.

52 *Id.*

53 Record at 121.

54 Record at 123.

55 Record at 126. Cpl. Hazelaar also said, "I'm getting over the telephone or through text messages is burning up my phone saying you told me that I could trust you for – through thick and thin and all this other stuff. So you know, not to go into a whole long tangent about that whatever but uh, I guess yes I did have conversations with her but I guess that's the moral of the story is never once was it in a malicious way ever." Record at 127-28.

56 Record at 126.

57 Record at 129.

Hazelaar said, "I'll take that on the chin I guess."[58] When asked about his "no" answer to Sgt. Johnson's question about contact with S.P. after the no-contact order, Cpl. Hazelaar said, "it looks completely bad as far as if I did make those statements versus what I'm saying right now and I have no excuse for that but uh, uh, it is not – that was never my intent at all."[59]

When asked about the September 8, 2009, text messages in which he asked S.P. to call him, Cpl. Hazelaar said "okay," asked whether Inv. Brown had any of S.P.'s texts to him, then said "I apologize, I apologize" then "fair enough, fair enough," and then admitted, "I violated uh, uh, the order."[60] Cpl. Hazelaar did not tell Inv. Brown that he had been authorized by Todd Jones through Cpl. Spitzer to contact S.P. on the night of September 3rd.

Later in the interview, Inv. Brown turned to the subject of the July 14, 2010, call with S.P. When Inv. Brown first asked Cpl. Hazelaar about the call, Cpl. Hazelaar still did not know that the call had been recorded. He said that as he remembered it, his concern during the call was that he thought the person who left a voice message on S.P.'s telephone might have been an attorney for one of the drug dealers, and that it was a trick to determine whether S.P. was a snitch.[61] Inv. Brown then told Cpl. Hazelaar that the call had been recorded, and played the recording. After hearing the recording, Cpl. Hazelaar expressed anger, frustration, and embarrassment. He characterized his responses during the recording as "piss poor" and "completely unprofessional."[62] He wondered whether he might have been multitasking during the conversation and noted that S.P. never came out and asked a direct question like "what do you want me to tell them about me and you having sex?"[63] He continued to adamantly deny that he had a sexual relationship with S.P.[64]

After the interview ended, Cpl. Hazelaar was told by Captain Mallard that he was not being investigated for sexual misconduct—he was being investigated for untruthfulness. He requested a follow-up interview with Inv. Brown, which Inv. Brown granted. Cpl. Hazelaar stated that he wanted to put on the record that "nowhere in there did I intentionally or knowingly, uh you know, deceive, uh anybody."[65] He said that it was embarrassing, and acknowledged that

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58 Record at 133.
59 Record at 134.
60 Record at 137.
61 Record at 142.
62 Record at 188.
63 Record at 178.
64 *Id.*
65 Record at 189.

Inv. Brown had made a good point about "how could [I] have – not have known?"[66] He confirmed that he had contact with S.P., but emphasized that he did not lie, did not try to thwart the investigation, and did not deliberately disobey an order. He was not able to offer an explanation for his conduct other than to say "it never came into my, uh, my brain."[67]

On March 16, 2011, Inv. Brown issued his report and findings. He sustained all of the allegations against Cpl. Hazelaar, finding violations of professional standards relating to truthfulness and conformance to the law, insubordination, failure to comply with directions, professional standards of behavior, unbecoming conduct, personal conduct, and violation of rules.[68] Based on this report, Capt. Mallard terminated Cpl. Hazelaar effective April 11, 2011.[69]

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

Cpl. Hazelaar contested his dismissal, and requested arbitration. As Human Resources officials were preparing for the arbitration, they became aware of the fact that Cpl. Hazelaar had been given permission to contact S.P. on the evening of September 3, 2009.[70] Col. Mallard testified that this evidence was significant to him, and he requested an additional administrative investigation in order to determine whether Inv. Brown's findings were valid. At Col. Mallard's request, Inv. Brown's supervisor, Angella Long, opened an additional administrative investigation. After interviewing Cpl. Hazelaar and reviewing the record, Inv. Long finished a draft of her report on March 4, 2013. It concluded that "[a]fter reviewing this case, I have found no reason to revise the Statement of Findings issued on March 16, 2011 [by Inv. Brown].[71]

After completing his own review, however, Col. Mallard concluded that Cpl. Hazelaar had not committed the violations that were described in Inv. Brown's report. On March 28, 2013, Col. Mallard drafted a memorandum superseding Inv. Brown's findings.[72] Col. Mallard found that the charge of insubordination/failure to comply with direction was mitigated because "he was following the direction provided by him by his DEA Group Supervisor." He found that Inv. Brown's conclusion that Cpl. Hazelaar was untruthful in his "no" answer to Sgt. Johnson's question about contact with S.P. was "inaccurate." Col. Mallard based this conclusion in part on

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66 *Id.*

67 Record at 189-90.

68 *Id.* With regard to the issue of sexual misconduct, that issue was not part of Administrative Investigation III, and Inv. Brown found that "[t]here is no evidence to directly prove or disprove whether Hazelaar and [S.P.] were involved in a sexual relationship." Record at 7.

69 Mallard testimony; Record at 2095.

70 Mallard testimony.

71 Record at 2114.

72 Mallard testimony; Record at 2094-96.

the fact that Cpl. Hazelaar had given only a one-word answer, "no."[73] He also found that the question asked about completed contact, not attempted contact, and therefore the fact that Cpl. Hazelaar had sent text messages to which no responses were received did not make the "no" answer untruthful. Finally, Col. Mallard found that Cpl. Hazelaar had not committed the violations of the rules or standards of professional behavior that had been found by Inv. Brown.[74] He stated that had he known in April 2011 what he knew in March 2013, he would not have terminated Cpl. Hazelaar.[75] Based on Col. Mallard's decision, the Division of Personnel reinstated Cpl. Hazelaar to his position as a Trooper.

12. The Alaska Police Standards Council process

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

- answer of "no" to Sgt. Johnson's question of whether had contact with S.P. after the August 25, 2009, no-contact order;
- responses to S.P.'s admissions and concerns made during the taped telephone call of July 14, 2010;
- characterization of his advice to S.P. during that July 14th call, as made to Sgt. Johnson later that day; and
- statements to investigators in interviews.[76]

The accusation alleged that under these facts, Cpl. Hazelaar "is not of good moral character and is dishonest." The accusation concluded that the Council should exercise its discretion under 13 AAC 85.110(a)(3) to revoke the certificate for a police officer who does not meet the minimum standard of good moral character under 13 AAC 85.010(a).[77]

A five-day in-person hearing was held before the Office of Administrative Hearings over July 16-17, November 26-27, and December 20, 2013, in Anchorage and Juneau. Closing

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73 Mallard testimony; Record at 2095-96.
74 Mallard testimony; Record at 2096.
75 *Id.*
76 Corrected Second Amended Accusation ¶¶ 5, 8, 9.
77 *Id.* ¶ 12 & Count I.

arguments were heard on February 26, 2014. Cpl. Hazelaar was represented by Stephen F. Sorensen and Megan Carmichael. The Executive Director was represented by Special Assistant Attorney General Susan McLean.

III. Discussion

A. Cpl. Hazelaar is not accused of sexual misconduct in this proceeding

Under the Administrative Procedures Act, an action to revoke a certificate begins with an accusation.[78] An accusation must inform the respondent of the wrongful acts that the respondent is alleged to have committed, and the legal basis for the revocation, so that the respondent can prepare a defense.[79] Here, the accusation filed in this case did not allege that Cpl. Hazelaar had a sexual relationship with S.P., and both parties were careful to not inquire about the topic any more than was necessary to explain the circumstances. Therefore, the decision on whether to revoke Cpl. Hazelaar's certificate cannot be based in any way on the fact that he was at one point accused of sexual misconduct.

In addition, because the record contains considerable evidence from the investigation into sexual misconduct, and because the topic is both prejudicial and central to this decision, the issue is worthy of a short digression to assure the reader of this decision that the facts on this issue are unconvincing. Simply put, the two complaining witnesses that alleged the existence of a sexual relationship are not reliable witnesses. They were involved in the drug culture in Anchorage at the time they made the accusation, and their personal motives in bringing the accusation make them unreliable. The issue should be set aside, and the issue of Cpl. Hazelaar's character approached with assurance that he did not commit sexual misconduct.

B. The Council's definition of "good moral character"

The accusation against Cpl. Hazelaar is based on one legal theory: that Cpl. Hazelaar has demonstrated a lack of good moral character and that the Council should therefore exercise its discretion to revoke Cpl. Hazelaar's certificate.[80] "Good moral character" is defined by the Council in regulation 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;

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78 *See* AS 44.62.360.

79 *Id.* (requiring that the accusation set out "the acts or omissions with which the respondent is charged, so that the respondent is able to prepare a defense"); *In re Whisler,* OAH No. 13-0473-POC at 9 (Alaska Police Standards Council 2013).

80 Corrected Second Amended Accusation ¶ 12, Count I.

> 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.[81]

In a 2013 decision, *In re Whisler*, the Council determined that the Executive Director is not required to prove substantial doubt about each of the four elements of good moral character.[82] The Council determined that it had the discretion to revoke the certificate of an officer who has committed an act that raises substantial doubt about the officer's honesty, fairness, respect for the rights of others, and respect for the law as a whole. Under *Whisler,* "[a] substantial deficit in any combination of these elements could establish an absence of good moral character, even if for some elements no deficit or doubt was proved."[83]

C. Does Cpl. Hazelaar's "no" answer to Sgt. Johnson raise doubt about his honesty?

An unambiguous standard for honesty applies when a police officer is being questioned by a superior officer in an official investigation.[84] In an official investigation, an officer must be completely honest, give complete answers, and disclose all relevant facts, even though the answer may mean the end of the officer's career. When an officer gives an incorrect answer in an official investigation, and the officer should have known that the answer was incorrect, the officer's incorrect answer will raise doubt about that officer's honesty.

When the incorrect answer shields the officer from further inquiry and possible exposure of wrongdoing, it supports an inference that the answer was intentionally deceitful. This increases the doubt about the officer's honesty.

The substantiality of the doubt is in proportion to the degree that the behavior is deceitful. An honest mistake or misunderstanding may be insubstantial. A deliberate falsehood or subterfuge by a police officer in an official investigation raises substantial doubt about the officer's honesty.[85] In between these two poles lies behavior and acts that are not innocent mistakes but neither are they deliberate deception. With regard to Inv. Hazelaar's "no" answer, there is evidence that it may have been deliberate deception. There is also evidence that it may have been an innocent mistake.

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81 13 AAC 85.900(7).
82 *Whisler,* OAH No. 13-0473 at 18.
83 *Id.*
84 *Much,* OAH No. 13-0288-POC at 21, 28; *Whisler,* OAH No. 13-0473-POC at 21.
85 *Much,* OAH No. 13-0288-POC at 21.

1. Substantial evidence that Inv. Hazelaar's "no" answer may have been deliberately deceptive

Cpl. Hazelaar argued at the hearing that his "no" answer to Sgt. Johnson was a correct answer. In his view, no completed back-and-forth "contact" actually occurred after August 25th. Therefore, he argues, "no" was correct. He also argues that the permission given to him to contact S.P. on September 3rd means that he had no motive to lie to Sgt. Johnson on September 10th. Those arguments are rejected for the following reasons:

- The no-contact order prohibited Cpl. Hazelaar from attempting to contact S.P., without regard to whether S.P. responded.[86]
- When Sgt. Johnson asked Cpl. Hazelaar on September 10, 2009, whether, other than the authorized contact that occurred the day before, he "had any contact with the CS . . . ", Sgt. Johnson intended the question—and the answer to the question—to encompass all contact, whether attempted, successful, authorized, or unauthorized, other than the one contact that occurred the day before.
- Cpl. Hazelaar was under an obligation to avoid deceit and give the best possible answer to Sgt. Johnson. His answer should have disclosed all contacts and all attempts at contact.
- Cpl. Hazelaar's own testimony was that he heard from S.P. during the afternoon of Sept. 3rd—the contact from her that occurred while she was in a bathroom in the basement while Mr. Meza was upstairs. This contact may have been a text message or it may have been a voice call.[87] If it was a voice call, it was back-and-forth contact. Voice or text, it was a memorable event that should have been disclosed in answer to Sgt. Johnson.
- Cpl. Hazelaar had sent S.P. at least one text message on September 4th and three on September 8th. September 8th was only two days before the interview with Sgt. Johnson. Cpl. Hazelaar should have remembered the texts and should have disclosed them.

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86 Hazelaar testimony. Cpl. Hazelaar testified that he understood that the no-contact order prohibited him from initiating a text or voice call, even if S.P. did not answer.

87 Inv. Hazelaar's phone logs show a 22 minute incoming call from 907-240-8729 at 3:25 p.m. Hazelaar Ex. 6 at 51 of 54. That phone number is a phone number that Investigator Angella Long testified was "associated with S.P.'s sister." Long testimony. Inv. Long associated the number with the sister through an on-line advertisement from 2008 that listed this number as a return number.

- Some evidence indicates that back-and-forth contact may have occurred. Cpl. Spitzer testified that Cpl. Hazelaar said he had sent a text to S.P. on September 3rd, after the call from Cpl. Spitzer, which ended at 6:31 p.m.[88] Both he and Cpl. Spitzer then received a text from S.P. at 6:56 p.m.—very near in time to the text apparently sent by Cpl. Hazelaar to S.P. after the call from Cpl. Spitzer.[89]
- Whether Cpl. Hazelaar had a motive to lie to Sgt. Johnson is not known or knowable, but a "yes" answer would have made things more difficult for him. He sent texts to S.P. on September 8th, and may have accepted a call from S.P., on September 3rd. These actions appear to be in violation of the no-contact order.[90]
- Cpl. Hazelaar benefitted from the "no" answer: the administrative investigation was dismissed.[91]

In sum, Cpl. Hazelaar's "no" answer raises doubt about his honesty. The evidence would support an inference that he was being deliberately deceitful. As explained below, however, the evidence does not compel a conclusion of deliberate deceit because it is also plausible that Cpl. Hazelaar made an innocent mistake when he answered "no."

2. Substantial evidence supports an alternative conclusion that Cpl. Hazelaar's "no" answer may have been an innocent mistake

Anyone who has ever participated in an interview—whether as an interrogator or an interviewee—knows that sometimes an interviewee will answer the question the interviewee thinks is being asked, rather than the question that, with careful consideration, the interviewee would have recognized was really being asked. In this circumstance, Cpl. Hazelaar may have

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[88] Spitzer testimony. Cpl. Spitzer testified that Inv. Hazelaar told him that Inv. Hazelaar had texted S.P. after being asked to do so by Cpl. Spitzer on September 3, 2009. Cpl. Hazelaar testified that he did not remember, and could not say one way or another.

[89] This analysis assumes that Cpl. Hazelaar sent a text shortly after hanging up with Cpl. Spitzer, which is consistent with Cpl. Spitzer's testimony. It is also possible however, that Cpl. Hazelaar was already aware of S.P.'s situation, because he had earlier received a call or text from her when she was in the bathroom. Either way, Cpl. Hazelaar had "contact" and should have remembered that he had contact.

[90] Inv. Long believed that Inv. Hazelaar may have had numerous contacts with S.P. after the no-contact order, not because of an illicit relationship, but because Inv. Hazelaar was highly motivated to keep working on his cases. Long testimony. Inv. Brown testified that Cpl. Hazelaar's behavior was consistent with a person who has something to hide. He did not know what it was that Inv. Hazelaar was trying to hide—not the allegation of sexual misconduct, which Inv. Brown agreed was unfounded—but something, whether it had to do with S.P. or something else. These are reasonable inferences from the evidence. The point of these inferences is not that they prove misconduct—the inferences involve speculation, and the investigators did not consider these inferences proven. The point, however, is that these are reasonable inferences that tend to refute Cpl. Hazelaar's inference that he had no motive to lie.

[91] Later, in a routine technology upgrade, his cellphone was "wiped," making it impossible to reconstruct his text messages.

misunderstood the question about contact to mean full-fledged conversations that occurred outside the realm of contacts that Sgt. Johnson already knew about or contacts that were authorized. Without giving it any thought, Cpl. Hazelaar may have just answered "no" to the question that he assumed was being asked. Support for this possibility includes:

- The focus of the interview, and Cpl. Hazelaar's focus when he was asked the question about contact, was on the allegation of sexual misconduct. Cpl. Hazelaar, without thinking it through, may have associated the question on contact with the relationship issue. Because the actual contacts were work-related and likely known to some officials, he may have answered "no" without meaning to deliberately mislead.
- Sgt. Johnson asked the question using the word "contact" as a noun, not a verb. He asked "have you had any contact with the CS?"[92] Used as a noun, the word contact is somewhat more likely to mean an "instance" or an "event" of communication.[93] In addition, asking someone if he has "had contact" implies that the attempted communication was successful and that the contact actually occurred.
- By referencing the authorized actual contact (by telephone and in-person) that had occurred the day before, Sgt. Johnson framed the question with reference to actual contact.
- On the previous day, when Cpl. Hazelaar first texted S.P. at Sgt. Johnson's request in Sgt. Johnson's presence, Cpl. Hazelaar told her "i just got back from vacation and got ur text."[94] So Cpl. Hazelaar may have assumed (without thinking it through) that Sgt. Johnson already knew that S.P. had been sending him texts.
- As Cpl. Spitzer testified, Cpl. Hazelaar is a person who often speaks quickly without thinking through what he is saying or what has been asked. Many examples of this characteristic are found in the transcripts of his interviews and in his testimony at the hearing.

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92 Record at 495.

93 *C.f., e.g.,* Webster's Third New Int'l Dictionary (1986) at 490 (defining "contact" as a noun to include "a condition or an instance of meeting, connecting, or communicating").

94 Record at 1459

None of these bullet points excuses Cpl. Hazelaar's "no" answer. Indeed, if Cpl. Hazelaar had consciously thought through any of these points in trying to decide what answer to give, he should have realized that he was required to disclose all contact and attempted contact in answer to this question, without regard to whether *he* thought the contact was relevant to the question. But the issue here is that each of these points makes it somewhat more plausible that Cpl. Hazelaar *did not think* before answering "no." Cpl. Hazelaar's conduct at the hearing confirmed that he is a person who is likely to speak quickly without giving careful thought to the question. Based on the evidence as a whole, the Executive Director has not proved by a preponderance of the evidence that Cpl. Hazelaar was deliberatively deceitful in the September 10, 2009, investigation. This finding will become extremely important later in this decision when considering whether to revoke Cpl. Hazelaar's certificate.

D. Does Cpl. Hazelaar's conduct during and after the July 14, 2010, recorded telephone call with S.P. raise doubt about his honesty or respect for the law?

The Executive Director asks the Council to draw several inferences from Cpl. Hazelaar's conduct in the July 14, 2010, recorded conversation with S.P. In the Director's view, this conversation shows

- A lack of honesty, because Cpl. Hazelaar was not concerned about S.P.'s admitted lying and his report to Sgt. Johnson was deceptive;
- A lack of respect for the rights of others because Cpl. Hazelaar wrongly advised S.P. that she could ignore a subpoena and not worry about the fact that she lied to a federal agent;
- A lack of respect for the law because he was potentially thwarting a federal investigation and he never reported that S.P. had admitted she lied to a federal investigator, which is a crime.[95]

Cpl. Hazelaar testified that this conversation fell into the typical pattern of conversations he had with S.P. when serving as her handler. She was always paranoid, worried about federal officials coming after her, and his typical response was to play along and minimize her concerns. In his view, he was likely only half paying attention during the conversation.

A close review of the transcript, and even listening to the recording to hear nuances in voice modulation, however, does not support Cpl. Hazelaar's view that he is only half listening

[95] Executive Director's Closing Brief at 24.

to the conversation. He appears engaged. He shows some concern for S.P., but his focus appears to be on himself. At no time does he show concern for law enforcement, even though the person with whom he is speaking is a known associate of major drug operatives, and the investigation, which he may be thwarting by discouraging her cooperation, appears to be a federal drug matter. In sum, his conduct makes him complicit in her dishonesty, which raises doubt about his honesty. His lack of concern for law enforcement raises some doubt about his respect for law.

In addition, when he called Sgt. Johnson later that day, he did not inform him that S.P. had admitted to lying to federal officials, and his description of the advice he gave to S.P. was not completely accurate. Although he did at one point tell her she could tell the truth, he also encouraged her to stick to her untruthful story and to not cooperate with federal officials.

Yet, although in other circumstances this conversation might raise substantial doubt about honesty and respect for the law, less weight will be given to the July 14th recording because, in general, a police officer's conversation with an informant is not a sound basis for assessing the officer's moral character. In talking to an informant, a police officer might well engage in deceptive or manipulative conduct.[96] To gather trust with the informant, the officer may make remarks that are deprecating of law enforcement—"I hate the DEA" or "I hate the IRS," for example. Being deceptive to an informant or suspect does not, however, demonstrate dishonesty, or a lack of respect for the law. In short, a police officer's conversation with a confidential informant will often be inexplicable simply because the relationship between the two may be based on a long and complex history of manipulation and deception. That history will no doubt make conversations between the two obscure, even conversations that occur after the former handler is no longer working the confidential informant.

Some weight, however, is given to this conversation for three reasons. First, by July 2010 Cpl. Hazelaar was no longer working on the drug cases involving S.P., and his need to manipulate S.P. and maintain her trust had ceased. Second, although Cpl. Hazelaar may not have been required to report this call to Sgt. Johnson, a more honest police officer with greater respect for the law would given a more accurate report. Third, even taking into account that for purposes of this action Cpl. Hazelaar did not have a sexual relationship with S.P, his acceptance

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[96] *C.f., e.g., In re Much,* OAH No. 13-0288-POC at 19-20 (Alaska Police Standards Council 2013) (explaining that police officers are permitted to use deception in interrogation or undercover work if deception does not "shock the conscience") *Much* has been appealed to superior court.

of her dishonesty implicitly makes him a party to the dishonesty. Therefore, a reasonable reader of this transcript will form doubt about Cpl. Hazelaar's honesty, and some doubt about his respect for law.[97]

E. Do Cpl. Hazelaar's statements during official invesigations raise doubt about his moral character?

The Executive Director asserts that Cpl. Hazelaar's statements to Inv. Brown, to Inv. Long, and at the hearing all demonstrate a lack of good moral character. With regard to his statements to Inv. Brown, the Executive Director notes that Cpl. Hazelaar's answers were rambling and unresponsive.[98] In addition, the Executive Director argued that Cpl. Hazelaar's assertion at the hearing that he never admitted to Inv. Brown that he contacted S.P. is evidence that he lacks honesty—either he was less than truthful in the interview with Inv. Brown, or he was not fully truthful at the hearing.

Contrary to the assertions of both the Executive Director and Cpl. Hazelaar, Cpl. Hazelaar's responses to Inv. Brown reflect well on Cpl. Hazelaar. In that interview, Cpl. Hazelaar admits that had contact with S.P. He takes it on the chin, even though it may (and temporarily, did) mean the demise of his career. That is what is expected of police officers—absolute honesty, without regard for the consequences.

In the interview, Cpl. Hazelaar feels certain that he never intended to violate the no-contact order or deceive Sgt. Johnson. He is unable to coherently express why he is so sure he did nothing wrong other than to simply admit "it never entered my brain." Although Cpl. Hazelaar waited until an investigator had evidence of contact to confess that he had contact, his overall performance in the Inv. Brown interview was consistent with the honesty and integrity expected of a police officer.[99]

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[97] The Executive Director's argument that Cpl. Hazelaar showed disrespect for S.P.'s rights by ignoring that she had committed a crime and wrongly advising her that she could ignore a subpoena is rejected. He did not tell her to ignore a real subpoena—just a hypothetical one. And his failure to advise a former informant that she may have violated a law is not a basis for determining his respect for her rights.

[98] The Executive Director also argued that Cpl. Hazelaar's story that on September 3, 2009, he told DEA officials "if you don't contact her, I will" is almost certainly a fabrication because no evidence corroborates that story and DEA officials on that day gave permission for Cpl. Hazelaar to contact S.P. That allegation is not included in the accusation, however, and the evidence regarding the truth of this story is inconclusive. The two federal officials whom Cpl. Hazelaar remembered being in on that call were not asked about it in their interview. Cpl. Spitzer does not recall the exchange, but Cpl. Hazelaar was not certain whether Cpl. Spitzer was a participant. Therefore, the "if you don't contact her I will" testimony does not increase the doubt about Cpl. Hazelaar's honesty.

[99] Record at 189. Toward the end of the interview, Cpl. Hazelaar lost his temper with Inv. Brown, and said "[c]ome on, man. You're telling [me] you don't uh, lie?" Record at 186. Although this outburst may seem to be an admission that the "no" answer was a lie, he then makes clear that it was not intended as an admission. Cpl.

The Executive Director is correct, however, that at the hearing Cpl. Hazelaar abandoned his former willingness to accept responsibility for his incorrect answer. At the hearing, Cpl. Hazelaar referred to his admission of contact with S.P. as a "mistake." He was then asked whether that meant he gave misleading testimony to Inv. Brown. His answer was as follows:

> That's where my fault comes in. And I think you got a little bit of testimony from people identifying me as being a simple person. And if you were to talk to any person out there, as far as disciplinary action to me: I just agree. So we can move on, let's just agree. In the very beginning of all this he talked about having these phone calls and messages back and forth. And I -- So in my mind because I'm coming from the DEA side of things and I'm, you know, you're looking at phone tolls, and there's like back and forth, back and forth. I probably should have said, "can you show me exactly what this looks like, so I can try to refer to it?" Whatever it was. And instead, I just agreed with him that I had contact with her during that period of time. And by agreeing that I just have this blanket contact, everything from there, as far as in my interview, I wasn't going to sit there and go for tit for tat. Because you hear me say there in my testimony, I said, "listen, you say you got this, I'm not going to dispute it, and let's move on to it. If there's contact, there's contact." And so that's where my testimony goes from as a result of talking that way. It wasn't to intentionally mislead him.

There are three major problems with this testimony. First it is an inaccurate characterization of his statements to Inv. Brown. In his interview with Inv. Brown, Cpl. Hazelaar was not just agreeing with Inv. Brown. He was giving Inv. Brown first-hand testimony of contacts that he remembered: "I remember sending a text message to uh, (Eric) at one point because she was calling uh, saying uh, hey uh, you know, I'm scared for my life."[100] And "the black and white of it is – there's phone calls that occurred before then."[101]

Second, as outlined in considerable detail earlier, Cpl. Hazelaar did have contact with S.P. His testimony at hearing is therefore an inaccurate characterization of the facts.

Third, his testimony that, when he made admissions to Inv. Brown he was just agreeing with an authority figure, is not consistent with his duty as a police officer. His interview with Inv. Brown was part of an official investigation. His obligation to tell the truth and not be deceptive or inaccurate was of the highest order. Regardless of how imposing an authority figure Inv. Brown may have been, or how much information Cpl. Hazelaar believed Inv. Brown may

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Hazelaar was frank that he could not justify the deception. He continued to feel certain that he had not compromised his integrity, but he was admitting that he had no justification for the "no" answer.

100 Record at 126.

101 Record at 190.

have had, Cpl. Hazelaar's obligation was to tell the truth, and nothing but the truth.[102] That he now testifies under oath that he was merely agreeing with representations made by Inv. Brown, and not necessarily giving truthful testimony when he answered Inv. Brown's questions, increases the doubt about Cpl. Hazelaar's honesty.

F. Is the doubt raised about Cpl. Hazelaar's honesty, fairness, respect for the rights of others, and respect for the law substantial?

Good moral character is defined as the absence of acts or conduct that would raise substantial doubt about an officer's honesty, fairness, respect for the rights of others, and respect for the law. The facts in this record raise substantial doubt about Cpl. Hazelaar's honesty.

First, this record contains several episodes of dishonesty. If Cpl. Hazelaar was only asking to explain away his "no" answer to Sgt. Johnson, that much perhaps could be done. Yet, he also seeks to explain away his acquiescence in S.P.'s July 14, 2010 admissions that she lied to federal investigators, and his incomplete report to Sgt. Johnson of his advice to S.P. Finally, he asks that we consider his admission to Inv. Brown on February 15, 2011, an innocent mistake because, in his view, he was just agreeing with Inv. Brown's representation. Here, Cpl. Hazelaar has had too many lapses to not form substantial doubt about his honesty

The second difficulty for Cpl. Hazelaar is that the doubt about his honesty reflects directly on his moral character. The evidence shows a tendency to be less than honest in circumstances when he is not likely to get caught. For example, in his September 10, 2009, interview with Sgt. Johnson, when no one had evidence of his contact with S.P., he answered the question about contact "no." When Inv. Brown had evidence of the contact, however, he changed his answer to "yes." When he learned that he had permission for at least some of the contact, his story changed a third time. Similarly, when he thought no one would have evidence of the July 14, 2010, call with S.P., his responses to her were designed to protect himself, rather than serve the common good. He elected to not disclose her admission of lying to Sgt. Johnson—which would have caused problems for him—and gave Sgt. Johnson the characterization of his advice that was also most likely to keep himself out of trouble. Finally, at the hearing, he sought to disown his own admissions to Inv. Brown that he had contact with S.P.

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[102] Although Cpl. Hazelaar's memory is that Inv. Brown indicated that he had considerable evidence, including phone tolls, of the contacts, in fact, Inv. Brown said very little regarding the evidence. Inv. Brown began the interview by explaining that federal authorities had released a near-final report concluding that they did not have sufficient evidence to prosecute Cpl. Hazelaar. He then said, "So that's the information we received. Part of the information within that alleges that um, there's potentially some contact or that you disobeyed some orders in some way, shape or form is what it comes down to." Record at 120.

This evidence does not necessarily prove deliberate deceit, but a police officer is expected to be scrupulously truthful, and to protect the public at all times without regard to whether anyone is aware of the action, and without regard to the consequences to the officer. The circumstances of Cpl. Hazelaar's lapses raise substantial doubt about his honesty.

Finally, Cpl. Hazelaar's willingness to describe his admissions to Inv. Brown as merely agreeing with an authority figure is troubling. His characterization of himself as a person who will just agree with authority, even in an official investigation when absolute truth is required, raises doubt about his honesty. A police officer should have mettle, courage, and backbone, even in stressful situations, and should be able to stand up to authority and speak only the truth.

Honesty is always a character issue, but being dishonest in order to shield one's self from suspicion reflects doubly on a person's character. Although this record does not establish substantial doubt about the other elements of moral character, here, the number of episodes of dishonest conduct, the circumstances of the dishonesty (it occurs when it is to his benefit and might avoid detection), coupled with the paramount importance of the element of honesty, mean that the Executive Director has proven that Cpl. Hazelaar lacks good moral character.

G. Should the Council revoke Cpl. Hazelaar's certificate?

In some cases, the Council's regulations require the Council to revoke a police officer's certificate if the facts alleging a violation are proved at hearing.[103] This case, however, is not a case of mandatory revocation. The Council has provided in its regulations that for violations of 13 AAC 85.110(a)(3), it has the discretion to allow a police officer to remain certificated, *even if the facts show that the officer lacks good moral character.*[104]

The Council's regulations give rise to a dilemma or seeming contradiction. The regulations *require* that a police officer be of good moral character in order to possess a certificate.[105] Yet, the regulations allow the Council to refrain from revoking a certificate for a police officer whom the Executive Director has proven does *not* have good moral character.

At closing argument, both parties were asked about what the standard should be for the Council to determine whether to exercise its discretion to revoke a certificate after finding that an officer lacked good moral character. Counsel for the Executive Director responded that the test

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103 For example, under 13 AAC 85.100(b) the Council must revoke a certificate if the Executive Director proves that an officer committed a crime of domestic violation or used a controlled substance while a police officer.

104 13 AAC 85.110(a)(3).

105 13 AAC 85.010(a)(3).

should include the quality and quantity of the evidence that led to the conclusion that the officer lacked good moral character. Ultimately, in the Director's view, the question came down to whether the officer could be trusted. If not, the Council should revoke.

Counsel for Cpl. Hazelaar advised that the test should include an examination of the officer's entire character for the time that the officer was certificated, and should include good acts as well as bad acts. Cpl. Hazelaar noted that the regulation defining "good moral character," 13 AAC 85.900(7), specifically allows the Council to consider "all aspects of a person's character." In addition, Cpl. Hazelaar requested that the Council be guided by the superior court decision in *Parcell v. Alaska Police Standards Council.*[106] In *Parcell,* the superior court reversed the Council's decision revoking the certificate of a police officer who, under the influence of alcohol, had made extremely distasteful and unwelcome advances towards female officers, and then was evasive and not forthcoming in the subsequent investigation. The superior court held that a lack of moral character should refer to engrained traits that cause consistent problems.[107]

In a previous case, *In re Much,* the Council extensively discussed the standard for exercising its discretion to revoke. With regard to the element of honesty, the Council analyzed an Alaska Supreme Court case to conclude that, although minor acts of dishonesty might not warrant revocation, "the court strongly implied that acts of dishonesty that are 'directly related to [law enforcement officers'] duties to the public,' that are 'directed towards superiors in their chain of command,' or that 'arise in the context of a formal investigation,' would require termination.[108] With regard to all four elements as a whole—for all of which the Council found substantial doubt in the *Much* case—the Council determined that "public policy strongly favors revocation when the doubts about the police officer's honesty, fairness, respect for the rights of others, and respect for the law are so substantial as to undermine public confidence in law enforcement."[109]

Applying the *Much* standard will help resolve the dilemma in the Council's regulations. Following *Much,* if the bad acts that cause the Council to have doubt about the police officer's lack of moral character involve the officer's work and undermine public confidence in law

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106 Case. No. 1JU-12-728CI (Sept. 30, 2013).

107 *Id.* at 7, 14. The Executive Director cautions that the *Parcell* decision is under appeal to the Alaska Supreme Court and therefore is not binding on the Council in this proceeding. The superior court's decision will be treated here as advisory, not precedential.

108 *In re Much,* OAH No. 13-0288-POC at 28 (citing *State v. Public Safety Employees Ass'n,* 237 P.3d 151, 162 (Alaska 2011)).

109 *Id.* at 29.

enforcement, then in general the Council will exercise its discretion and revoke. If, however, the Council finds that the bad acts are confined to a limited set of circumstances and to a particular time sequence, the Council may, in some cases, find that the officer's moral character is sufficiently robust at other times and in other circumstances so that the officer will not lack moral character in the future and can continue to serve. In this way, the requirement of good moral character remains a requirement for all police officers at all times. A temporary lapse of moral character in an unusual circumstance, however, may not necessarily require revocation if the Council has evidence that the lapse was limited to that unusual circumstance and was not deliberate deception.

1. Was Cpl. Hazelaar deliberately deceitful in an official investigation?

The first hurdle for Cpl. Hazelaar has already been discussed in great detail—was he deliberately deceitful in an official investigation? If yes, then the breach of the duty of good moral character is very serious. In *In re Much,* for example, the Council revoked the certificate of an Anchorage Police Officer, Stephen Much, in part because, "during an official investigation, Mr. Much did not adhere to the facts and he engaged in subterfuge and deception to avoid responsibility for his actions."[110] Thus, the Council has recognized that a police officer engaging in subterfuge to throw investigators off the scent can raise sufficient doubt about a police officer's honesty to warrant revocation, even if the Executive Director does not prove an outright lie.

This case, however, is different from *Much.* In *Much,* the subterfuge was shown to be deliberate because it was spread across several different responses from Mr. Much in an official investigation. Here, Cpl. Hazelaar's "no" answer was one answer to a preliminary question in an investigation focused on a different subject. It may or may not have been deliberate subterfuge. The other subterfuge engaged in by Cpl. Hazelaar—his characterization to Sgt. Johnson that he advised S.P. during the July 14, 2010 conversation to "tell the truth"—was not part of an official investigation, and, again, was an off-hand remark that may or may not have been designed to mislead a superior officer. As discussed above, substantial evidence would support an inference that Cpl. Hazelaar was deliberately deceitful on September 10, 2009, when he answered "no" to the question about his contact with S.P. Yet, as also explained above, given Cpl. Hazelaar's tendency to speak quickly without thinking, it is also possible that Cpl. Hazelaar did not intend to

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110 *Much,* OAH No. 13-0288-POC at 21.

deceive Sgt. Johnson. Therefore, this decision will not draw the inference that Cpl. Hazelaar's "no" answer was deliberately deceitful. Instead, additional evidence will be considered in deciding whether to revoke Cpl. Hazelaar's certificate.

2. Does the quality and quantity of the evidence that gave rise to substantial doubt about Cpl. Hazelaar's honesty support revocation?

In asking that the Council consider the quality and quantity of the evidence, the Executive Director was making the point that the evidence of lack of moral character here goes well beyond the "no" answer. A reader of the transcript of Cpl. Hazelaar's recorded conversation with S.P., and his implicit acceptance of her dishonesty in an official investigation, will form doubt about his moral character. In addition, his testimony at the hearing describing himself as a person who will just agree with authority, and who did agree with Inv. Brown to the extent that he gave what he now characterizes as incorrect answers, seems to describe a lack of good moral character.

Yet, there are other considerations that would make the Council hesitate to revoke a certificate based on these two incidents. First, as already explained, Cpl. Hazelaar's behavior in the recorded conversation might be due in part to the historical peculiarities of the relationship between a confidential informant and the informant's handler.

Second, with regard to his testimony at the hearing, in some ways, his testimony is less factual testimony and more akin to legal argument. Cpl. Hazelaar adopted a strategy at the hearing of denying that he had contact with S.P. This strategy led to inconsistent testimony and to him painting himself as a person who will give inaccurate answers in an official investigation. If his testimony is taken to mean that in all future investigations and hearings he will agree with authority rather than speak the truth, his certificate should be revoked. The Council can, however, decline to interpret this testimony in this fashion and recognize that Cpl. Hazelaar's testimony was influenced by his legal strategy. Because Cpl. Hazelaar is not likely to be faced with this dilemma in future police work, a reasonable person could find that his characterization of himself at the hearing should not be given weight in determining whether to revoke his certificate.[111] In sum, consideration of the quantity and quality of the evidence would tend to

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[111] Cpl. Hazelaar's characterization of himself as a simple person who would *prefer* to agree with authority, rather than evoke a conflict, was likely accurate. What was not accurate, however, was his testimony that in the interview with Inv. Brown he was merely agreeing with authority. Fortunately for Cpl. Hazelaar, he was not merely agreeing. He was admitting to contacts based on his own first-hand knowledge. Because Cpl. Hazelaar showed integrity during the Inv. Brown interview, the Council can reject both Cpl. Hazelaar's strategy and the

favor a decision to not revoke because although the evidence of dishonesty gives rise to doubt, except for the "no" answer, the evidence was from circumstances that would not normally be relied on to revoke a certificate.

3. Is the doubt about Cpl. Hazelaar's lack of moral character limited to a temporary lapse of moral character in an unusual circumstance?

All of the evidence of lack of moral character here relates to the S.P. matter. It that sense, the issue could be considered limited to one stressful and humiliating event in Cpl. Hazelaar's career. The evidence is not limited in time, however. Several different events over a period of years, culminating in his testimony in January 2014, all add to the doubt about his honesty. Thus, as with almost every aspect of this case, the question of whether the conduct was limited to these circumstances or likely to be repeated is inconclusive.

One fact, however, was clear: Cpl. Hazelaar's police work was generally of the highest quality. Cpl. Hazelaar was universally praised, by both witnesses for the Executive Director and his own witnesses, as a very competent police officer. Col. Mallard described him as a very strong, hard worker, who consistently went above and beyond what was required.[112] Lt. Anthony Henry of the Anchorage Police Department, who supervised Cpl. Hazelaar when Cpl. Hazelaar was stationed at the K-9 academy and when he was working on a gang investigation unit, testified that Cpl. Hazelaar's work performance was outstanding.[113] In this regard, Capt. Greenstreet's description of Cpl. Hazelaar's work ethic as stellar was a turning point in the hearing. Capt. Greenstreet was a neutral witness who was careful and thoughtful with his choice of words when he testified.

An officer's competence will generally not be considered when evaluating the evidence to determine whether substantial doubt exists regarding the officer's honesty, fairness, respect for others, or respect for the law. Simply put, whether an officer has a talent for investigation or

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characterization of himself that was a result of that strategy. In spite of Cpl. Hazelaar's testimony, the record does not prove that in future official investigations he will just agree with authority and fail to give truthful testimony.

[112] Mallard testimony.

[113] Henry testimony. *See also* Record at 327 (statement of Gordon Dorr (Cpl. Hazelaar's partner at DEA) that "Joseph Hazelaar is the driver at the airport shop. There's no – no question about it. The dog is phenomenal and, uh, Hazelaar has an appetite for work. It is, uh, well, exceptional."). In addition, several witnesses testified, and Cpl. Hazelaar introduced affidavits, to the effect that Cpl. Hazelaar was of good moral character. This evidence is given little weight, however, because the Council's regulation focuses on acts and omissions, not reputation. 13 AAC 85.900(7). Moreover, a person who elects to work in law enforcement will likely have character traits that reflect the values identified in the Council's regulations. Thus, in the previous cases of the Council that resulted in revocation, the officers had friends and colleagues who could truthfully testify that the officer had good moral character. Yet, the officers involved in those cases had all taken actions that showed that their judgment belied their values. *See Much,* OAH No. 13-0288-POC at 27; *Whisler,* OAH No. 13-0473-POC at 29.

other police work reveals nothing about the officer's moral character. In fact, as the Executive Director argued, "it is the good ones that you have to watch out for." An officer whose talent makes the officer arrogant, or whose drive to succeed and hunger for results causes the officer to believe that the rules do not apply to the officer, may be *more* likely to be dishonest or disrespect the rights of others or the law than a less talented officer. Yet, in determining whether to revoke a certificate, an officer's competence might be considered if it indicates that the issues giving rise to the doubt about the officer's moral character are not likely to be repeated.[114] This would only be true to the extent that the doubt about the officer's moral character did not arise from an instance of arrogance or disrespect for the rights of others or the law.

Here, accepting that Cpl. Hazelaar did not have an illicit relationship with S.P., his issues do not appear to be caused by arrogance or an attitude that he is above the law. He has a tremendous drive to investigate and solve crimes. His success has been stymied and sidetracked because of the instances of poor judgment and behavior on his part that gave rise to this revocation action. He now has the added stigma of having been found lacking in good moral character. Therefore, his drive to succeed may make it more likely that in the future he will be absolutely honest and willing to fully disclose all facts, both good and bad, in order to avoid results like those described in this decision. If so, his competence as a police officer may make it more likely that the lack of good moral character found here may be limited to one set of unusual circumstances.

An additional issue is whether Cpl. Hazelaar has been tarred by the brush of dishonesty to such an extent that a prosecutor who calls him as a witness in a future criminal trial must disclose to the defense that Cpl. Hazelaar has been found to be dishonest. That issue, called the "*Brady*" doctrine, after the U.S. Supreme Court case *Brady v. Maryland*, influenced the Council in deciding to revoke Mr. Much's certificate.[115] In the *Much* case, however, the Council made a specific finding that Mr. Much had been repeatedly dishonest in an official investigation and had filed a false police report.

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[114] In a previous decision, the Council explicitly considered job performance as a factor in determining whether to exercise its discretion to revoke. *In re Bowen,* OAH No. 10-0327-POC at 20 (Alaska Police Standards Council 2011) (citing "the absence of a highly rated job performance" as one factor in deciding to revoke certificate). Performance is only one of many factors that may be considered.

[115] *Much,* OAH No. 13-0288-POC at 29 ((citing *Brady v. Maryland,* 295 U.S. 78, (1935); *Giglio v. United States,* 405 U.S. 150 (1972)).

If the Council does not revoke Mr. Hazelaar's certificate, this case will be closer to the superior court's decision in *Parcell* than to the Council's decision in *Much.* In *Parcell,* the superior court rejected the Council's finding that it was compelled by the *Brady* doctrine to revoke Mr. Parcell's certificate, in part because the superior court found the evidence of dishonesty slight, and in part because the arbitrator had reinstated Mr. Parcell.[116] Here, this decision has not found that Cpl. Hazelaar was deliberately dishonest. This decision merely finds substantial *doubt* about his honesty in the circumstances of the S.P. investigation. His behavior during the administrative investigations into his sexual activity does not necessarily relate to how he would handle his own criminal investigations. Furthermore, as in *Parcell,* Cpl. Hazelaar's employer has reinstated Cpl. Hazelaar.[117] Whether Cpl. Hazelaar will be subject to impeachment based on this decision will be up to the court in future criminal cases. This decision, however, is not so definitive on the issue of honesty that it renders Cpl. Hazelaar incapable of serving as a prosecutor witness in the future. Therefore, the *Brady* doctrine does not necessarily compel revocation.

Exercising discretion to not revoke may be risky. Other police officers might wrongly infer that the Council has low standards for moral character. That risk, however, is speculative, and given the finding of a lack of moral character, and the grief that this case has caused Cpl. Hazelaar, no law enforcement officer should be tempted to follow in his footsteps. The real risk here is that the Council might be keeping an officer on the force who might be dishonest.

Yet, the risk is worth taking. In observing Cpl. Hazelaar at the hearing, he appeared to be a high-strung, emotional young man, and this case played upon his emotional nature. As Col. Mallard testified, Cpl. Hazelaar made many errors of judgment, first in getting too close to a confidential informant (not, we hope, in a sexual way, but close enough personally that the allegations of sexual contact had some verisimilitude), and last in electing to disown the statements he made to Inv. Brown. Although his errors give rise to doubt about Cpl. Hazelaar, on this record, they do not require an end to his career. Based on all of the evidence in this

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116 *Parcell* at 19-20.

117 This analysis does not indicate agreement with *Parcell.* Even if *Parcell* is reversed on appeal, however, the very fact that the superior court came out the other way on the *Brady* issue shows that application of the doctrine is a judgment call. This means that the doctrine does not make revocation a *fait accompli* once the Council makes a finding of a lack of good moral character, and that the Council is free to exercise its discretion to revoke or not based on the Council's determination of whether the episodes that create doubt about honesty make someone unfit for police work. This may or may not include a conclusion about how the *Brady* doctrine will affect the officer's ability to do police work in the future.

record, the Council would be justified in concluding that it is more likely than not that Cpl. Hazelaar's lack of good moral character was limited to the episodes arising from the S.P. matter, and decline to revoke Cpl. Hazelaar certificate.

IV. Conclusion

The Executive Director proved that Cpl. Hazelaar committed acts and omissions that give rise to substantial doubt about his honesty and established that he lacks good moral character. This record would justify going either way on the issue of revocation. The Council could determine that Cpl. Hazelaar's failure to give the correct answer to Sgt. Johnson, his implied complicity in S.P.'s admission of dishonesty, his incomplete report of the conversation to Sgt. Johnson, and his disowning of his statements to Inv. Brown, all indicate that he cannot be trusted to be truthful in the future. Balancing all of the evidence, however, the Council determines that the unusual circumstances of this case, the quality of the evidence that gives rise to the doubt, and Cpl. Hazelaar's record as a police officer, show that he is not likely to continue to demonstrate a lack of good moral character. Therefore, the Council declines to exercise its discretion to revoke Cpl. Hazelaar's certificate.

DATED: April 10th, 2014

By: _____
Stephen C. Slotnick
Administrative Law Judge

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

In the Matter of	)	
	)	
JOSEPH M. HAZELAAR,	)	No. APSC 2011-16
	)	**OAH No. 13-0085-POC**
Respondent.	)	
	)	

EXECUTIVE DIRECTOR'S PROPOSAL FOR ACTION

I. PROPOSED ACTION

The Administrative Law Judge has rendered a Decision finding that the facts raise substantial doubt about Joseph Hazelaar's honesty, and finding that the Executive Director has proven that he lacks good moral character.[1] The Executive Director hereby requests that the Council revise the proposed enforcement action by rejecting the interpretation of 13 AAC 110(a)(3), and revoke Joseph Hazelaar's certificate.

Alternatively, the Executive Director requests that the Council modify the Decision's interpretation of the facts as they apply to the regulation, giving greater weight to the fact that Hazelaar testified untruthfully at the administrative hearing, greater weight to the content of his statements during a recorded telephone conversation with a confidential informant, and greater weight to the fact that this is not an isolated incident. On that basis, the Council should revoke Joseph Hazelaar's certificate.

II. ANALYSIS

A. The Council Should Follow Its Prior Rulings and Revoke Hazelaar's Certificate Based Upon the Finding That He Lacks Good Moral Character

13 AAC 110 (a)(3) vests the Council with discretion to revoke the certificate of any police officer who does not meet the basic standards for police officers under 13 AAC 85.010. Those standards provide that an agency may a person as a police officer when the person:

> (1) is a citizen of the United States or a resident alien who has demonstrated an intent to become a citizen of the United States;
>
> (2) is 21 years of age or older;
>
> (3) is of good moral character;
>
> (4) has a high school diploma, or its equivalent, or has passed a General Educational Development (GED) test;

[1] Administrative Law Judge's Decision ("Decision") at 1 and 25.

(5) is, at the time of hire, certified by a licensed physician on a medical record form supplied by the council to be physically capable of performing the essential functions of the job of police officer;

(6) is mentally capable of performing the essential functions of the job of police officer and is free from any emotional disorder that may adversely affect the person's performance as a police officer.

Of these, "good moral character" is unique. It is the only standard dependent on intrinsic personal qualities, and therefore the only standard that cannot be remedied by outside factors. For example, the Council may find that a person was not 21 years old at the time of hire, but has since turned 21; a person may have been physically or emotionally incapable of performing the duties of a police officer, but has since received treatment and cured those limitation. There are no similar remedies for a lack of honesty.

The Council's decision in this matter will influence its decisions in future cases. "Although the Council is not bound by its prior interpretation of a regulation, a prior decision should generally be followed unless documented reasons are demonstrated for adopting a new interpretation". [2] In the past, the Council has revoked the certificates of officers who are found to be dishonest and lacking in good moral character, *In re Much,* OAH no. 13-0288, *In re Parcell,* 1 JU-12-728CI.[3] A decision not to revoke Hazelaar's certificate will hamper the Council's ability to act in future cases where there is substantial doubt about an officer's honesty and moral character. The Decision acknowledges that risk.[4]

Nonetheless, the Decision urges a new standard for action after a finding of substantial doubt about honesty and lack of good moral character, suggesting that the Council refrain from revoking a certificate where the evidence supports finding a "temporary lapse" in moral character. The Council should decline to adopt this new interpretation of 13 AAC 110(a)(3). Where the Executive Director has proven that an officer lacks good moral character, and particularly where that proof is based upon substantial doubt about the officer's honesty, the Council should revoke the officer's certificate. Therefore, the Executive Director requests that the Council revise the proposed enforcement action and revoke Joseph Hazelaar's certificate

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[2] *ITMO Whisler,* OAH No. 13-0423-POC, APSC No. 2012-22.

[3] The Administrative Law judge correctly notes that the Superior Court's decision in *Parcell* does not set precedent for this case. The Alaska Supreme Court will review the Council's decision *de novo.* Therefore, the relevant inquiry is the *Council's* decision in the matter of Parcell.

[4] Decision at 31.

B. The Administrative Law Judge's Decision Does Not Alter the Prosecution's Obligation to Disclose the Findings in this Case

Brady v. Maryland, 373 U.S. 83 (1962) and *Giglio v. United States* 405 U.S. 150 (1972), require prosecutors to disclose any evidence that may be relevant to impeaching a witness's credibility. The Decision distinguishes between "deliberate dishonesty" and "substantial doubt about honesty", suggesting that the finding of "substantial doubt about honesty" may prevent a court in the future from finding that Hazelaar is not credible. But a court's role in the future will be to determine whether the finding and the facts supporting it are admissible. If a court deems it admissible, then a jury will decide if Hazelaar is credible.

The Decision notes that lawyers may disagree about the prosecutor's duty to disclose. That question seems to be resolved by the Ninth Circuit's recent opinion in *Mike v. Ryan,* 711 F.3d 998 (9th Cir. 2013), in which the Court overturned an Arizona conviction, holding that state prosecutors violated the defendant's rights by failing to disclose previous incidents in which the arresting officer was untruthful. Among those incidents was a 1973 disciplinary action, entered in the officer's personnel file, in which the officer was suspended from work for five days after a supervisor concluded that the officer's "honesty, competency and overall reliability must be questioned".[5] *Id.* at 1020. The fact that the officer remained employed (and, presumably, certified) after this finding did not negate the prosecutors' duty to disclose it. Indeed, despite the fact that the officer had several later instances of misconduct, the court focused on the entry in his personnel file, stating, "That (the officer) was disciplined for lying on the job obviously bears on his credibility and qualifies as *Giglio* evidence", and chastised the prosecutors for failing to disclose it for more than a decade.[6]

Should the Council decline to revoke Hazelaar's certificate, neither the carefully drafted Decision nor the Council's decision will change the prosecution's obligation to disclose the finding that there is substantial doubt about Hazelaar's honesty and the facts supporting that finding, Rather than take the risk that Hazelaar's cases will be overturned decades later, prosecutors will disclose the finding and the facts supporting it.

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[5] *Mike v. Ryan* at 1020
[6] *Id.* at 1007

C. The Facts Surrounding This Investigation Do Not Support the Finding That Hazelaar's Lapse in Moral Character was "Temporary"

The Decision thoroughly sets out the facts, ultimately concluding that,

> ...the number of episodes of dishonest conduct, the circumstances of the dishonesty (it occurs when it is to his benefit and might avoid detection), coupled with the paramount importance of the element of honesty, mean that the Executive Director has proven that Cpl. Hazelaar lacks good moral character.[7]

The Decision states that the record would support going either way on the issue of revocation.[8] Nonetheless, it recommends that the Council depart from its prior decisions in cases involving an officer's dishonesty, consider the "unusual circumstances" of this case, find that Hazelaar is not likely to continue to be dishonest in the future, and decline to revoke his certificate on the ground that Hazelaar's conduct was the result of a temporary lapse in his moral character. This is not the case upon which to create such an exception.

The finding that there were a number of instances of dishonest conduct, occurring over a long period of time, should in itself refute the conclusion that Hazelaar's lack of moral character was "temporary". Additionally, the Council should give more weight to some facts in determining whether Hazelaar is likely to repeat his conduct in the future.

1. Hazelaar's Untruthful Testimony at the Administrative Hearing Weighs Against Finding A "Temporary Lapse" in Moral Character

Simply stated, the facts are as follows:

Hazelaar's direct supervisor ordered him to have no contact with S.P. The evidence proved that there were several contacts between Hazelaar and S.P during the pendency of the "no contact" order.[9] Sgt. Johnson asked Hazelaar whether he had contact with S.P, "by any means", to which Hazelaar responded, "No". When Hazelaar was later interviewed by Inv. Jeffrey Brown, he admitted that he had contact with S.P. in violation of the order, and he admitted that he could not justify his "No" answer to Sgt. Johnson.[10] In his testimony at the administrative hearing, Hazelaar denied contact with S.P, denied admitting to Inv. Brown that he had contacted S.P and denied admitting to Brown that his answer to Sgt. Johnson's question was untruthful.[11]

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[7] Decision at 25.
[8] Decision at 32
[9] Decision at 4 - 8
[10] Decision at 22-23- n. 99
[11] Decision at 22-24

Similarly, Hazelaar testified that he wasn't really paying attention during a recorded telephone conversation with S.P. The recording itself reflects that he was engaged in the conversation, although his focus was more on himself than on her.[12] It also reflects that the topic of the conversation was the internal investigation of Hazelaar, and included the possibility that S.P. might receive a subpoena to testify in court.

The Decision acknowledges that substantial evidence supports the conclusion that Hazelaar was deliberately deceptive when he untruthfully told Sgt. Johnson that he did not have contact with S.P, but states that substantial evidence also supports the conclusion that his "no" answer, while untruthful, was simply a mistake.[13] However, the Council lacks the one piece of evidence that would allow it to conclude that the answer was an innocent mistake – it lacks Hazelaar's unequivocal testimony to that effect.

In his testimony under oath, Hazelaar did *not* admit that he had initiated contact with S.P, and he did *not* say that his answer to Sgt. Johnson was just a mistake. Rather, he denied contact with her, testified that his text messages to her might have been sent previously to the "no contact" order[14], and denied making any admissions to Inv. Brown, characterizing his interchange with Brown as simply "agreeing" with the investigator.[15] The Decision cites detailed facts proving that when Hazelaar admitted the contact to Inv. Brown, he was not simply agreeing with the investigator. While, as the Decision notes, it is troubling that Hazelaar would simply "agree" when challenged, it is far more troubling that his testimony under oath was not the "truth and nothing but the truth".[16]

Rather than considering Hazelaar's untruthful testimony as weighing against Hazelaar's future honesty, the Decision characterizes it as "legal strategy", and then concludes that Hazelaar is unlikely to be dishonest in future cases where he is not the subject of the investigation.[17]

The Council should consider the fact that Hazelaar testified untruthfully as weighing *against* the conclusion that he is unlikely to repeat the conduct in the future. In the context of criminal sentencing, the U.S. Supreme Court has held that untruthful testimony can be considered as reflecting negatively upon prospects for future behavior:

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[12] Decision at 20-21
[13] Decision at 17-20, 28
[14] Decision at 6-7
[15] Decision at 23-24
[16] Decision at 23-24.
[17] Decision at 28

> A defendant's truthfulness or mendacity while testifying on his own behalf, almost without exception, has been deemed probative of his attitudes toward society and prospects for rehabilitation....The effort to appraise "character" is, to be sure, a parlous one, and not necessarily an enterprise for which judges are notably equipped by prior training... a fact like the defendant's readiness to lie under oath before the judge who will sentence him would seem to be among the more precise and concrete of the available indicia."

United States v. *Grayson*, 438 U.S. 41, 50, 57 L. Ed. 2d 582, 98 S. Ct. 2610 (1978); *See also, Fox v. State,* 569 P.2d 1335 (1977).

The reasoning in *Grayson* is pertinent to any matter in which a person testifies untruthfully. As the Decision notes, the evidence in this case supports the conclusion that Hazelaar is dishonest when he is not likely to get caught.[18] But the evidence also supports the conclusion that Hazelaar will not tell the truth at the pinnacle of the truth-seeking process – when he is testifying in court.

The Decision finds that Hazelaar's "no" answer to Sgt. Johnson was not a deliberate deception, since Hazelaar may have misinterpreted that question or may have simply answered without thinking. Those explanations, however, cannot justify his responses while testifying in court, where he had ample time to prepare for the questions that might be asked and consider what his answers might be. Portraying his testimony as "mischaracterization" of his earlier statements or "legal strategy" diminishes the seriousness of the fact that he was testifying under oath.

The Council should reject the conclusion that Hazelaar will be honest in future testimony, when he is not under the stress of being the subject of the investigation. As the members of the Council know from their own experience, in a criminal trial, the actions and veracity of the investigating officer are as much "on trial" as are the actions of the Defendant. Opposing counsel will attack an officer in an aggressive and personal manner. The stressful environment of cross-examination will not be tempered, as it was in Hazelaar's administrative investigation, by the inquisitor's deference to the officer's good work ethic and reputation for productivity. Untruthful answers in that setting will not be excused as "mischaracterizations" or "legal strategy".

There is nothing in the record to suggest that Hazelaar will respond any differently when he is exposed to the stress of cross-examination in his future cases. To the contrary, the record leads to the opposite conclusion.

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[18] Decision at 24, 25.

2. Hazelaar's Suggestion That S.P. Should Ignore a Subpoena Weighs Against Finding That His Lack of Moral Character is "Temporary"

The Decision concludes that Hazelaar's recorded telephone conversation with S.P. reflects that he was implicitly a party to her dishonesty, but discounts the weight to be given to the conversation, reasoning that the "typical" conversation between an informant and handler includes deception, and is therefore not an accurate measure of an officer's honesty. The Decision should have given greater weight to the fact that he advised S.P. to ignore a subpoena.

During the conversation, S.P. repeated seven times that she had lied to the officers during her first interview; Hazelaar's response was to "encourage her to stick to her untruthful story and to not cooperate with federal officials".[19]

The topic of a Grand Jury subpoena was not merely "hypothetical". During the conversation with S.P. she repeatedly expressed concern that she would receive a *real* subpoena to testify before a federal Grand Jury regarding the Hazelaar investigation. Aside from telling S.P. that he did not believe she would receive a subpoena, Hazelaar said:

> "I don't care if I gave you a subpoena to come to trial (referring to one of his cases) It's your choice on whether you come or not. There's nothing I can do that's going to force you to whether I have a subpoena or not". [20]

Although Hazelaar couched his advice in terms of hypothetically giving S.P. a subpoena in one of his cases, they were not otherwise discussing his cases. They were discussing the fact that federal officials wanted to interview her regarding an investigation of him. The only reasonable interpretation of his remark is that it was intended to advise S.P. that if she received a subpoena, she should ignore it.

The suggestion that the conversation was "typical" leads to the conclusion that Hazelaar would typically tell a potential witness that, if the witness received a subpoena regarding matters about which the witness had previously been interviewed, and about which the witness had previously lied, the witness should ignore the subpoena In that sense, Hazelaar's advice to S.P. reflects the same lack of appreciation for the seriousness of court proceedings as he displayed in his own testimony at the hearing.

When Hazelaar later called Sgt. Johnson to find out whether an investigation was ongoing, and reported that he had advised S.P. to "tell the truth", his statement to Sgt.

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[19] Decision at 21
[20] Admin. Rec., 92

Johnson was more than a simple failure to fully explain the content of the conversation. It was dishonest, and reflects a glaring lack of regard for what it means "to tell the truth".

3. The Record Regarding Hazelaar's Responses to This Investigation Supports Revocation of Hazelaar's Certificate

It is axiomatic that the best predictor of future behavior is past behavior. The record of this investigation alone supports the conclusion that Hazelaar tends to change his version of the truth depending upon what is most beneficial to him at the time, and depending on whether he perceives that others can disprove it, even when he is testifying under oath.[21] The fact that Hazelaar did not tell the truth when he testified at the hearing, coupled with evidence that he encouraged his former informant to continue lying to federal officers and to ignore a subpoena, supports the conclusion that Hazelaar will continue to be dishonest in the future. His certificate should be revoked.

D. In Determining Whether to Revoke His Certificate, The Council Should Consider A Prior Court Order Finding That Hazelaar Was Not Credible

During oral argument, the Administrative Law Judge questioned whether Hazelaar's prior work history should be considered in determining whether he is likely to display good moral character in the future. The Executive Director responded that, if prior history is considered, then that prior history should include a prior judicial finding that Hazelaar was not credible. That prior finding is not included in the Decision.

The Decision concludes that, despite the finding that there is substantial doubt about Hazelaar's honesty, his prior work history should tip the balance in favor of finding that he is not likely to repeat the dishonest conduct in the future. While it is true that many individuals spoke highly of Hazelaar's work ethic and productivity, his entire work history includes a Superior Court order suppressing evidence after finding that Hazelaar's testimony was not credible. That finding cannot be ignored, and it should tip the balance in the opposite direction.

1. Admission of the Prior Judicial Finding at the Administrative Hearing

At the Administrative Hearing, Hazelaar testified that he had never been the subject of a prior proceeding questioning his credibility.[22] After his direct testimony, the

[21] Decision at 24, 25
[22] Hazelaar Testimony, November 27, 2013.

administrative hearing was adjourned for approximately three weeks. When the hearing reconvened, the Executive Director sought to impeach Hazelaar's statement that his honesty had never been questioned, by confronting him with an order suppressing evidence in *State v. Graham,* 4-BE-06-1447.[23]

In *Graham,* the superior court suppressed evidence seized after Hazelaar obtained a telephonic search warrant. The court found that that Hazelaar's testimony before the magistrate, regarding his reasons for seeking a telephonic search warrant was "inaccurate, inconsistent, unreliable and insincere", "misleading and disingenuous",[24] and "in bad faith". [25]

When Hazelaar was confronted with the *Graham* order at the administrative hearing, he claimed that he was unaware of it until his attorney showed it to him, after his direct testimony was completed. He testified that, although he knew that the court had dismissed his case in *State v. Graham,* he did not know why, nor had he ever questioned why that case was dismissed. [26]

Therefore, the Administrative Law Judge declined to give the *Graham* order much weight as impeachment of Hazelaar's assertion that his honesty had never previously been questioned.

2. The Prior Judicial Finding is Relevant In Assessing Hazelaar's Future Conduct

Despite the fact that the *Graham* order was not deemed relevant to impeachment, it nonetheless cannot be ignored in weighing Hazelaar's past record to determine whether, in the future, he is likely to be honest. The order itself reflects that Hazelaar's conduct in the *Graham* case was remarkably similar to the conduct that gave rise to the Accusation in this case.

In *Graham,* Hazelaar applied for a telephonic search warrant, and told the Magistrate that evidence would be destroyed if a telephonic warrant was not immediately issued, because his informants had indicated that the defendants would be alerted and would destroy evidence if it was left unguarded.[27] At the suppression hearing, Hazelaar testified that his informants did not tell him that the defendants would be warned if the

[23] APSC Executive Director's Exhibit 5, "Order Suppressing Evidence" dated July 16, 2007.
[24] Exhibit 5, pg. 3
[25] Exhibit 5, pg. 3
[26] Hazelaar Testimony, December 20, 2013
[27] Exhibit 5, pg. 3

evidence was left unguarded[28], and that the real reason he did not seek a warrant in person was that he feared the warrant would be leaked by court personnel.[29] In its findings, the superior court concluded that Hazelaar's real reason for the telephonic warrant was that he was a long distance from the court, which, at the time, was not in itself sufficient reason for seeking a telephonic warrant.

Considering the *Graham* order as part of his work history, it becomes clear that Hazelaar's tendency to testify untruthfully was not merely an isolated and temporary reaction to a stressful internal investigation, but existed before that investigation began. Furthermore, Hazelaar's professed ignorance of the contents of an order dismissing one of his cases is so inconsistent with the portrayal of him as a conscientious and thorough police officer as to cause doubt about whether he was, in fact, unaware of the court's ruling in *Graham* prior to his direct testimony in this case.[30]

E. The Facts Do Not Support the Conclusion That Hazelaar's Certificate Should Not Be Revoked

Joseph Hazelaar's testimony in this matter was not truthful. His statement during an internal investigation was not truthful. His testimony in support of a telephonic search warrant in an earlier case was not truthful.

When a citizen loses his privacy as a result of an officer's untruthful testimony in support of a warrant, or his freedom as the result of a police officer's untruthful testimony at trial, it matters little whether the officer's false testimony was "deliberate" or "mistaken". Similarly, the untruthfulness of the testimony is not cured by characterizing it as "strategy" or "argument". A police officer's testimony must simply be the truth.

Rather than accept the conclusion that Joseph Hazelaar is likely to tell the truth in the future, the Council should instead choose the Decision's suggested alternative interpretation of the facts, and conclude that there is too great a risk that, if the Council does not revoke his certificate, it will be keeping a dishonest officer on the force.[31] His certificate should be revoked.

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[28] *Id.*

[29] Exhibit 5, pg. 5, n. 2 in which the Court stated , "Such reckless comments do not bolster his credibility"

[30] One reason it is difficult to accept Hazelaar's professed ignorance of the *Graham* ruling is that others were well aware of it. As a direct result of that ruling, the legislature amended AS 12.35.015(f) in 2007, to omit the requirement that a telephonic search warrant must be supported by testimony indicating that evidence would be destroyed.

[31] Decision at 31.

CONCLUSION

The Council should follow its prior decisions and revoke Hazelaar's certificate based upon the finding that there is substantial doubt about Hazelaar's honesty and the finding that he lacks good moral character.

Alternatively, the Council should consider the facts of the case, giving greater weight to the number of instances of Hazelaar's dishonest conduct, the fact that he testified untruthfully at the administrative hearing and the circumstances of his telephone conversation with a confidential informant. The Council should find that the facts pertaining to this Accusation do not support the conclusion that Hazelaar is likely to be honest in the future, and should revoke his certificate.

Should the Council consider Hazelaar's prior work history as relevant to determining whether he is likely to be dishonest in the future, then the Council should consider the fact that his history includes a court order suppressing evidence on the ground that his testimony was not credible. The Council should find that Hazelaar's conduct was not caused by a temporary lapse in moral character, and revoke Hazelaar's certificate.

Respectfully submitted this 27th day of April, 2014.

Susan S. McLean
Special Counsel for the Executive Director

Certificate of Service:
I hereby certify that a copy of this document will be served on Respondent's attorney by e-mail on May 2, 2014.

Susan S. McLean

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

In the Matter of

JOSEPH M. HAZELAAR,

Respondent.

OAH No. 13-0085-POC
Agency File No. APSC 2011-16

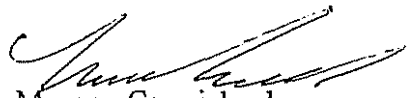
PROPOSAL FOR ACTION

Comes now Joseph Hazelaar, by and through Meagan Carmichael, Associate General Counsel for the Public Safety Employees Association (PSEA) and files this proposal for action, under AS 44.64.060.

Mr. Hazelaar requests that the final decisionmaker adopt the proposed decision as the final agency decision. The reasons for this request include: any questions of fact are supported by the substantial evidence test; any questions of law involving agency expertise are supported by the reasonable basis test; any questions of law involving no expertise are supported by the substitution of judgment test; and any review of administrative regulations are supported by the reasonable and not arbitrary test, as discussed in *Patrick v. Mun. of Anchorage, Anchorage Transp. Comm'n*, 305 P.3d 292 (Alaska 2013).

Therefore, it is respectfully requested that the final decisionmaker adopt the proposed decision as the final agency decision, under AS 44.64.060.

Submitted on behalf of Joseph Hazelaar



Meagan Carmichael
Associate General Counsel, PSEA
Alaska Bar # 1011071

Certificate of Service

On the 2nd day of May, 2014, a copy of this Proposal for Action was sent via email to:

'Sue McLean at suesmclean@gmail.com

Meagan Carmichael

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

JOSEPH HAZELAAR, Appellant, v. ALASKA POLICE STANDARDS COUNCIL, Appellee.	)	Case No.1JU-14-883 CI

DECISION ON APPEAL

I. INTRODUCTION

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

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

II. BACKGROUND

Administrative Law Judge ("ALJ") Slotnick found the facts to be as follows:[1]

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[1] Excerpt of Record ("R.") at 299-330. These facts are taken verbatim from ALJ Slotnick's "Decision" dated April 10, 2014 and found at these pages in the Record. All citations to the Record in this Order are based on Hazelaar's submission and pagination.

1. Hazelaar served as a Task Force Officer with DEA

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

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

2. Hazelaar becomes the handler of confidential source S.P.

In 2008, a woman with the initials S.P. contacted the DEA. She explained that her ex-boyfriend had beaten her up and stolen money from her. She wanted to provide information regarding his drug connections. The DEA determined that S.P.'s information related to drug cases being worked by Inv. Hazelaar, and assigned him to be S.P.'s handler. Inv. Hazelaar had never served as a handler before, and he received only on-the-job training on handling informants.

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

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

3. Administrative Investigation I: the allegation of sexual misconduct

On August 21, 2009, a woman with the initials L.W. was arrested on a drug offense. In an attempt to act as a cooperating witness, L.W. volunteered information about alleged police misconduct. L.W. explained that she was S.P.'s close friend, and that S.P. had confided in her that S.P. was having sexual relations with a law enforcement officer. This allegation was relayed to supervisory personnel at both DEA and the Troopers. Both entities began to investigate the allegation. The investigations focused on Inv. Hazelaar as the most likely law enforcement agent to have been involved with S.P. The Troopers opened an administrative investigation of Inv. Hazelaar ("Administrative Investigation I"). The investigation was assigned to Sgt. Scott Johnson. On August 25, 2009, Alaska State Trooper Lt. Andrew Greenstreet orally instructed Inv. Hazelaar that Hazelaar was to have no further contact with S.P. while the investigation was pending. Lt. Greenstreet followed up this order with an email.

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

4. The events of September 3rd

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

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

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

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

At 6:14 p.m., Cpl. Spitzer called Inv. Hazelaar and left a message. Inv. Hazelaar was coaching his son's football game. He returned Cpl. Spitzer's call at 6:17, and they spoke for 14 minutes. Inv. Hazelaar's phone tolls show that Inv. Hazelaar called Cpl. Spitzer again at 6:44 for one minute (likely a voice message or no call) and then again at 6:57 for four minutes. No other voice calls were made by Inv. Hazelaar from his work cell phone during this interval. According to Cpl. Spitzer, Inv. Hazelaar said that he had tried to contact S.P. by text messages and by phone.

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

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

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

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

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

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

5. Texts from Inv. Hazelaar to S.P. from September 4th through September 8th

Although S.P. had many phones, only one phone was recovered from her and subjected to forensic analysis: 907-727-0441. The forensic analysis of this phone does not show any relevant text traffic on September 3rd. From September 4-8, 2009, however, the following text traffic occurred between 907-727-0441 and Inv. Hazelaar's work-issued cell phone (907-980-5053):

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

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

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

6. Contact with S.P. on September 9th

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

7. The September 10th interview of Hazelaar

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

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

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

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

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

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

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

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

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

> MR. HAZELAAR: All they're trying to find out is whether or not you had a relationship or not. That's it.
> [S.P.]: I know, but that's the thing, though.
> MR. HAZELAAR: There's no law—there's no law—
> [S.P.]: Okay, but that's the thing is that you and I know the truth, and we know what happened, but that's the thing is that like if they give me a polygraph—that's my main concern because I already –
> MR. HAZELAAR: Why do you have to take a polygraph?
> [S.P]: Because I don't want to get subpoenaed to a Grand Jury.
> MR. HAZELAAR: You're not going to get subpoenaed to a Grand Jury.

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

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

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

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

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

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

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

10. Administrative Investigation III: the Inv. Brown interview

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

On February 15, 2011, Inv. Brown interviewed Cpl. Hazelaar. In the interview, Cpl. Hazelaar admitted that he had contact with S.P. after the date of the no-contact order, but first said that he had no idea whether the conversations were before or after the administrative investigations were closed. When asked specifically about contact in the time period shortly after receiving the no-contact order, Cpl. Hazelaar first replied "I can only assume yes." Later, as he started to recall more about the crisis involving Meza, he confirmed that "she was calling, uh, saying uh, hey uh, you know, I'm scared for my life uh, you know, where are you, so on and so forth." He explained about the call to the DEA officials in which he advised "if you

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

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

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

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

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

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

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

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

Cpl. Hazelaar contested his dismissal, and requested arbitration. As Human Resources officials were preparing for arbitration, they became aware of the fact that Cpl. Hazelaar had been given permission to contact S.P. on the evening of September 3, 2009. Col. Mallard testified that this evidence was significant to him, and he requested an additional administrative investigation in order to determine whether Inv. Brown's findings were valid. At Col. Mallard's request, Inv. Brown's supervisor, Angella Long, opened an additional administrative investigation. After interviewing Cpl. Hazelaar and reviewing the record, Inv. Long finished a draft of her report on March 4, 2013. It concluded that "[a]fter reviewing the case, I have found no reason to revise the Statement of Findings issued on March 16, 2011 [by Inv. Brown].

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

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

12. The Alaska Police Standards Council process

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

- answer of "no" to Sgt. Johnson's question of whether had [sic] contact with S.P. after the August 25, 2009, no-contact order;
- responses to S.P.'s admissions and concerns made during the taped telephone call of July 14, 2012;
- characterization of his advice to S.P. during that July 14th call, as made to Sgt. Johnson later that day; and
- statements to investigators in interviews.

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

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

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

> The Executive Director of the Alaska Police Standards Council filed an accusation alleging that Alaska State Trooper Corporal Joseph Hazelaar had committed acts that showed he was not of good moral character. The Executive Director asked that the Council exercise its discretion to revoke Cpl. Hazelaar's police certificate.
>
> The Executive Director proved that Cpl. Hazelaar committed acts that give rise to substantial doubt about his honesty. These include giving an incorrect answer during an official investigation, an implicit approval of false testimony, a misleading characterization of advice given to a confidential informant, and a disowning of his own statements and characterization of himself as a person who is not truthful. *Taken as a whole, the facts raise substantial doubt about Cpl. Hazelaar's honesty and prove that he lacks good moral character* [emphasis added].
>
> *The evidence does not establish, however, that the Council should exercise its discretion to revoke Cpl. Hazelaar's certificate* [emphasis added]. His incorrect answer may have been an inadvertent error rather than a deliberate attempt to deceive. The evidence that raised doubt about his honesty included a recorded call with a confidential informant, which normally would not be relied on as the basis for revocation. In addition, Cpl. Hazelaar's lack of good moral character may be limited to a unique set circumstances [sic] related to highly unusual, stressful, and

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

personal events. His other police work has been excellent. Accordingly, the Council will allow him to retain his certificate.[3]

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

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

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

1) adopts the factual findings in the recommended decision;

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[3] R. at 299.
[4] R. at 297-98.
[5] The Troopers had once terminated Hazelaar during the course of this investigation, and subsequently reinstated him.
[6] R. 297-98.

2) adopts the conclusion that Mr. Hazelaar is lacking good moral character for the reasons expressed in the Executive Director's Proposal for Action and in the recommended decision as revised by this order;

3) revises the recommended decision by

   a. adopting the Executive Director's Proposal for Action;

   b. rejecting the *Much* analysis that a temporary lack of moral character is acceptable. This council has never held that view and was in error to ever suggesting [sic] otherwise. This council believes that one either has a good moral character or one does not have good moral character.

   c. The council also rejects the inference that Mr. Hazelaar's dishonest conduct was temporary, limited to one set of circumstances, or otherwise excusable.

   d. The council concludes from the facts that Mr. Hazelaar cannot be trusted to be truthful in the future.

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

III. STANDARD OF REVIEW

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

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

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"[8] "In determining whether evidence is substantial, ... we must take into account whatever in the record fairly detracts from its weight."[9]

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

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

IV. DISCUSSION

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

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

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[8] *Id.*, citing *Lewis–Walunga v. Municipality of Anchorage*, 249 P.3d 1063, 1069 (Alaska 2011).
[9] *Id.*, citing *Lopez v. Adm'r, Pub. Emps. Ret. Sys.*, 20 P.3d 568, 570 (Alaska 2001).
[10] *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982).
[11] *Usibelli Coal Mine, Inc. v. State, Dep't of Natural Res.*, 921 P.2d 1134, 1147 (Alaska 1996), citing *Rose*, 647 P.2d at 161 (Alaska 1982).
[12] *Williams v. Abood*, 53 P.3d 134, 139 (Alaska 2002) [internal citations omitted].

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

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

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

As part of its powers, the Council may, in its discretion, revoke an officer's certificate if the officer is not "of good moral character."[15] In its regulations the Council has defined good moral character as:

> the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the

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[13] 348 P.3d 882.
[14] *Parcell,* 348 P.3d at 886-87.
[15] *See* 13 AAC 85.110(a)(3).

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

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

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

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

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[16] 13 AAC 85.900(7).
[17] *Parcell*, 348 P.3d at 888.
[18] *Id.*
[19] *Id.*

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

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

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[20] *Suydam v. State, Commerical Fisheries Entry Comm'n*, 957 P.2d 318. 323 (Alaska 1998).
[21] *Parcell*, 348 P.3d at 888.
[22] Keith Mallard, Tony Henry, Aaron Meyer, and Eric Spitzer all testified on Hazelaar's behalf, while three further witnesses, Rikk Rambo, James Lewis, and Matthew Heieren, submitted affidavits containing similar statements as to Hazelaar's good moral character.

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

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

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[23] R. at 299.
[24] R. at 815.
[25] R. at 777.

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

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

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

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

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[26] R. at 1106.
[27] R. at 1107.
[28] R. at 1113.
[29] R. at 1382.
[30] *Parcell*, 348 P.3d at 888.
[31] 257 P.3d 151 (Alaska 2011).

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

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

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

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[32] *State v. Pub. Safety Employees Ass'n*, 257 P.3d 151, 161 (Alaska 2011).
[33] *State v. Pub. Safety Employees Ass'n*, 323 P.3d 670 (Alaska 2014).
[34] *State v. Pub. Safety Employees Ass'n*, 257 P.3d 151 (Alaska 2011).
[35] *PSEA 2014*, 323 P.3d at 681.
[36] *PSEA 2011*, 257 P.3d at 165.

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

"[T]he fact that there is no legal requirement to terminate a police officer's employment for minor acts of dishonesty does not limit the Council's discretion to revoke that officer's certification."[38]

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

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

The Court finds that the decision to revoke Hazelaar's certificate was supported by a reasonable interpretation of 13 AAC 85.110(a)(3). To the extent that competing conclusions and inferences can be drawn from the evidence contained in the record, the Council's conclusions and inferences are entitled to deference. Under the substantial evidence standard, the Court does not reweigh conflicting evidence. The Council's finding that Hazelaar engaged in instances of misconduct is supported by substantial evidence. Having found that Hazelaar had been dishonest, the Council had a rational basis for concluding that a reasonable person

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[37] *Parcell*, 348 P.3d at 888 [internal citations omitted].
[38] *Parcell*, 348 P.3d at 889.

would have substantial doubt about his honesty and thus that he lacked good moral character under the regulations.

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

V. CONCLUSION

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

Entered at Juneau, Alaska this 6th day of April, 2016.

Louis James Menendez
Superior Court Judge

SEAL OF THE TRIAL COURTS OF THE STATE OF ALASKA FIRST JUDICIAL DISTRICT

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