

BEFORE THE ALASKA POLICE STANDARDS COUNCIL

IN THE MATTER OF)	
)	OAH No. 14-0647-POC
RAY Z. LEGGETT)	APSC No. 2013-12
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FINAL DECISION

I. Introduction

All police officers – including “chief administrative officers” who have obtained certification from the Alaska Police Standards Council – must possess good moral character pursuant to AS 18.65.240 and 13 AAC 85.010(a)(3). This is one of the most basic bedrock principles of law enforcement certification. Police Chief Ray Z. Leggett, like all police officers, must be of good moral and trustworthy character – *i.e.*, a person who is honest, fair, respects the law, and respects the rights of everyone involved in the criminal justice system.¹

For the reasons expressed herein, the Council finds that Chief Leggett’s conduct demonstrated a lack of this basic standard. The evidence showed that Chief Leggett engaged in a series of actions that suggest he was attempting to use his official position to benefit a family member. Even though Chief Leggett, subjectively, may not have been attempting to improperly influence the course of the criminal investigation, Chief Leggett exercised extremely bad judgment in his communications with a fellow officer regarding a criminal investigation where his son was the primary suspect. When Chief Leggett’s conduct is considered in its totality it raises a substantial doubt as to his ability to be fair and respectful to the law. The Council concludes that revocation of his police certificate is necessary and appropriate under these circumstances. Failure to revoke Chief Leggett’s certificate would erode the trust that the State of Alaska citizens have with police officers.

II. Facts²

Procedure

Administrative Law Judge Mark T. Handley of the Office of Administrative Hearings (OAH) was assigned to hear this appeal. John Novak, Assistant Attorney General, represented the Executive Director of Alaska Police Standards Council (Director). Mr. Leggett was represented by his attorney, Stephen F. Sorensen.

¹ *In re Whistler*, OAH No. 13-0473-POC, at p. 18 (APSC 2013); *In re Hazelaar*, OAH No. 13-0085-POC at pp. 15-16 (APSC 2014).

² As Administrative Law Judge Mark Handley found in his Proposed Decision, “there is not a great deal of dispute about what happened in this case[.]” See Proposed Decision, at p. 19.

Prior to the hearing, Mr. Leggett filed a motion to dismiss arguing that the Director lacked the authority to initiate the revocation of his certificate due to his alleged failure to meet the requirements of AS 18.65.240(a)(2) – that is, as the “chief administrative officer” of a local police department, Chief Leggett was explicitly exempt from those requirements under AS 18.65.280(a). The Council concluded otherwise and denied the motion to dismiss. As a police officer who has obtained certification from the Council, Chief Leggett’s certificate, even though he is a “chief administrative officer,” could be revoked for failing to meet the requirements of AS 18.65.240(a)(2).

An evidentiary hearing was held to determine whether Chief Leggett failed to meet the requirements of AS 18.65.240(a)(2). Both parties called witnesses, filed exhibits and post hearing briefings. ALJ Hanley issued a proposed decision finding that Chief Leggett did not lack good moral character since “Chief Leggett’s actions were an isolated instance of bad judgment.”³ After careful consideration, and a review of the underlying testimony, the Council declined to adopt the proposed decision. This Final Decision followed.⁴

Testimony of Chief Leggett

Chief Leggett is currently employed both as chief of police of Skagway and as pastor for his church. Chief Leggett has been the chief of police of Skagway since 2004. Chief Leggett went into law enforcement after he graduated from high school and has been in law enforcement for thirty years. In that time he has had about four thousand hours of training.

Chief Leggett’s prior experience and education include training at the FBI academy and the Law Enforcement Management Institute in Texas. When he was working in the Dallas, Texas area, Chief Leggett helped start two police training academes: one for law enforcement officers and one for correctional officers. Chief Leggett has taught in most of the law enforcement academies in the Dallas area. Chief Leggett obtained his basic, intermediate, advanced, and masters police offers certifications in Texas. Chief Leggett was a police officer in Texas for twenty-four years. In Texas, his law enforcement positions included Patrol Corporal, Patrol Sergeant, CID Sergeant, Lieutenant, Special Operations, Commander, and Lieutenant of Internal Affairs. Chief Leggett was also an Assistant Pastor in Texas. His work for churches has

³ See OAH Proposed Decision, dated October 31, 2016 at p.2.

⁴ At its March 29, 2017 meeting, the Council voted to reject the Administrative Law Judge’s decision and found that Chief Leggett’s conduct raised a substantial doubt as to his good moral character, with its Final Decision to follow setting forth the Council’s analysis. This Final Decision followed.

been as a volunteer. Chief Leggett received commendations in Texas including letters of appreciation from police academies for teaching, for creating classes, and for writing curriculums. He helped write a curriculum in Texas for cultural awareness. Chief Leggett was on the Board of Directors for nine years for the Alaska Association of Chiefs of Police and received a letter of appreciation for his services for that organization.

Chief Leggett is married and has five children. One of his children is Mitchell.

Neither the City of Skagway nor its Police Department has adopted a policy regarding the Computer Voice Stress Analysis (CVSA), the voice-based lie detection system that Chief Leggett employed in this case. The City government of Skagway has a Manager, Mayor, and an Assembly. The City Manager, the Mayor, and some Assembly Members are aware of this complaint before the APSC, and circumstances surrounding the complaint, but no employment actions against Chief Leggett have been initiated.

Chief Leggett explained that his son, Mitchell, is unique. Mitchell has Asperger's, Attention Deficit Disorder, and is Bipolar. He is now twenty-five years-old. Chief Leggett and his wife home-schooled Mitchell to avoid medicating him when he was a child. They learned to break things up into small chunks to help him learn because Mitchell has difficulty focusing. Chief Leggett explained that his son, Mitchell, will lie if he believes telling a lie will be better for him than the truth. When he was a child, if you boxed him in and confronted him about telling a lie, he would have seizures. Chief Leggett explained that when Mitchell got too stressed, he would have pseudo seizures. After evaluation, Mitchell met by phone with a psychologist. Then Chief Leggett got Mitchell a counselor.

When he became an adult, Mitchell was supposed to go to a half-way house in Haines and participate in a vocational rehabilitation program to transition to independence, but in Chief Leggett's view, those working with Mitchell dropped the ball, and things went downhill for him.

In 2011, Lynn Canal Counseling Group helped Mitchell find a place to live in Haines. The housing did not work out, Mitchell moved in with someone else and stopped calling his parents back when they tried to contact him. Mitchell got in with a bad crowd and started using alcohol. Before he left home, Chief Leggett had explained to Mitchell that drinking alcohol with the medication he was supposed to be taking could kill him. Chief Leggett found out a week or so after an incident in Haines, that Mitchell had almost died from drinking. Chief Leggett was in contact with some members of the Haines Police to find out what was going on with Mitchell.

One of the police officers in Haines helped to keep an eye on Mitchell, but things were not going well.

In 2012, Chief Leggett brought Mitchell back from Haines to get him back on track after having some 'heart to heart' talks with him. Chief Leggett agreed with Mitchell that he could come back and live with his parents with condition that he act like an adult, not have emotional fits, be honest with them, and pitch in around the house. Chief Leggett stressed that because Mitchell lies compulsively, one of the primary conditions of living with them was that he be honest. Chief Leggett believed that the best way for Mitchell to learn to be more honest was to make him practice being honest with them. Chief Leggett explained that part of his approach to getting Mitchell to be honest was to confront him whenever he appeared to be not telling the truth and if he did not come clean, Chief Leggett would explain to Mitchell that he would use the CVSA to test him. Chief Leggett explained that Mitchell would generally confess to the truth when he was threatened with a CVSA test.

Chief Leggett has received extensive training on the use of the CVSA. He believes that it is very accurate and is a very useful law enforcement tool. He has been a big booster for greater use of the CVSA in the Alaska law enforcement community. In addition to having the Skagway Police Department purchase the CVSA equipment and taking several courses in the systems proper use, Chief Leggett tries to use and practice with the system often in order to improve and maintain his skill level. This includes doing practice tests. Sometimes these practice tests are done for educational and demonstration purposes with local groups. Chief Leggett testified that he routinely deletes these practice tests after they are complete.

After Mitchell had been back living with his parents in Skagway for a while, Chief Leggett found out that Paul Nelson, Mitchell's former employer in Haines at Big Foot Auto, still owed Mitchell a pay check. Mitchell was reluctant to call about the paycheck, so Chief Leggett offered to walk him through the conversation if Mitchell would place the call on the speaker phone. During the call, Chief Leggett learned that Mitchell had been in the process of buying a car from his employer, Mr. Nelson, which seemed odd to Chief Leggett because Mitchell did not have a drivers' license. Mitchell's former employer told Mitchell that he had not yet paid for the car, and Mitchell asked him to just keep the car and mail him his paycheck. When Mitchell's former employer suggested that Mitchell just come back to Haines and pick up his pay check,

Chief Leggett became concerned that pursuing this any further was not going to work out well for Mitchell, and so he advised Mitchell to treat this as a learning experience and just let it go.

A couple of weeks later, Chief Leggett heard from the grocery store where Mitchell was working in Skagway that they had heard from Mr. Nelson in Haines that Mitchell was going to be arrested for credit fraud. Earlier, Chief Leggett had told Mitchell's employers at the grocery store that if they had problems with Mitchell they could let him know, and that they should fire him if he was not doing a good job.

Chief Leggett then called Haines PD to see whether Mr. Nelson was just trying to make trouble for Mitchell, but was told that there was an investigation into the matter and that he should call Sergeant Ford when Sergeant Ford got back to town, because he was handling the case. Chief Leggett had never talked to Sergeant Ford before. Chief Leggett believed that it was appropriate for him to call Sergeant Ford to talk about the Mitchell because he was calling as a parent, and a parent may appropriately talk to the police about issues involving his child. Chief Leggett explained during cross examination that he never viewed his contacts with Sergeant Ford as acting as an official in an official investigation. Chief Leggett viewed his role in interacting with Sergeant Ford as that of a parent. Chief Leggett recalled that he did not identify himself as the police chief but merely as "Ray" and Mitchell's father when he called Sergeant Ford, but Chief Leggett admitted that he assumed Sergeant Ford knew he was Skagway's police chief because of the contact list the local police offices kept. When he called Sergeant Ford, Chief Leggett asked what Sergeant Ford could tell him about the case involving Mitchell. Sergeant Ford responded that Mitchell was an adult. Chief Leggett pointed out that Sergeant Ford had dealt with Mitchell before and that was probably aware that Mitchell had special needs. Chief Leggett explained about Mitchell's conditions.

Chief Leggett asked Sergeant Ford again if there was anything he could tell him about what was going on. Sergeant Ford answered that Mitchell was accused of using other people's credit cards. Chief Leggett then explained to Sergeant Ford that one of the conditions that Mitchell be allowed to stay at the family home was that he had to tell the truth. Chief Leggett told Sergeant Ford that he was going to run Mitchell on a CVSA. Sergeant Ford asked what a CVSA was and Chief Leggett explained about the test. Chief Leggett apparently went into his CVSA booster mode, explaining how useful he thought the CVSA was and telling Sergeant Ford just to call the Skagway PD if they ever thought they wanted to try it. Chief Leggett told

Sergeant Ford that if it turned out that Mitchell did what he was accused of, Chief Leggett's view was that Mitchell would have to go to Haines and make this right, and that Mitchell's obligation to make things right if he was guilty of wrongdoing was separate from any actions that the Haines Police Department might decide to take. Sergeant Ford responded that this approach sounded good.

Chief Leggett recalled that he and Sergeant Ford started to talk about credit card fraud cases in general, and Chief Leggett recalled saying that these kind of cases were tough because there are people out there that feel that credit card theft is not as bad as stealing something from someone's house, even though in his view it is the same thing. Chief Leggett then said again that he was going to run a CVSA test on Mitchell and asked Sergeant Ford if he wanted him to send the results to him. Chief Leggett had used this approach before with Mitchell, and Mitchell would usually spill as soon as the machine came out. Chief Leggett recalls that Sergeant Ford responded: "Yeah, that would be great." Chief Leggett recalls that he said to Sergeant Ford: "OK, I will let you know." Chief Leggett believes that he made it clear to Sergeant Ford that he was going to test Mitchell on the CVSA for his own edification. Chief Leggett did not get the impression that Sergeant Ford was uncomfortable with his call based on his voice or their conversation.⁵ Chief Leggett's impression was that Sergeant Ford was genuinely interested in the CVSA and wanted to learn more about it.

That evening after dinner, Chief Leggett ran Mitchell on the CVSA equipment at his church, which is next to his house. Chief Leggett was off duty at the time and viewed the test he performed as a practice test because he did not follow all the required procedures to do a CVSA test. Chief Leggett further explained that he viewed the test he gave Mitchell as a practice test because he did not make a video or audio tape and just asked the one question. Chief Leggett explained that he would not have asked just one question if he was giving Mitchell a real CVSA test. Chief Leggett explained that he thought this practice test with just the one question would be enough to get a truthful answer from Mitchell because of Mitchell's faith in the test.

Chief Leggett explained when he confronted Mitchell about suspected lies in the past he would tell Mitchell that he believed that the CVSA test would tell whether Mitchell was telling the truth and then when he would put the CVSA equipment down in front of Mitchell, he would

⁵ As explained in more detail, *supra*, Sergeant Ford's impression of the conversation was much different. Sergeant Ford believed that Chief Leggett was attempting to influence the course of the investigation.

spill out the truth, without even needing to go through with the test. This time Mitchell was surprisingly agreeable to taking the test when Chief Leggett told he planned to use it, saying: “fine, let’s do it.” The only thing about the accusation that Sergeant Ford had communicated to Chief Leggett was that Mitchell was suspected of having used someone else’s credit card. Thus, Chief Leggett only asked the question: “Did you use someone else’s credit card without their permission?” and the CVSA equipment indicated that Mitchell answered truthfully in the negative.

Chief Leggett is still not sure that the CVSA results were incorrect. One reason for his doubt is that Mitchell’s plea agreement, which was a plea to one misdemeanor when he was charged with five felonies, indicated that the evidence against Mitchell may not have been very strong. Another reason Chief Leggett has doubts that the CVSA result was wrong is because he now understands that what Mitchell was accused of doing was double billing customers to cover taking cash out of the register. Chief Leggett believes that even if Mitchell was guilty of this crime, the CVSA might have indicated that Mitchell truthfully denied having used someone else’s credit card without permission, because Mitchell may not have thought that was what he had done, since he was overbilling, and may have thought he was being asked if he had used a stolen credit card.

Chief Leggett explained another reason he viewed his use of the CVSA on his son as merely a practice test was that someone who was truly investigating the accusation against Mitchell using a CVSA evaluation would do the evaluation more comprehensively, even based on the limited information he had about the accusation. This would require asking ask several types of questions, such as questions about whether Mitchell had used a printed version of credit card receipts improperly, or used credit card numbers, to try to narrow down what Mitchell had done or not done. Chief Leggett explained that he only asked the one question because the test was primarily for his benefit to see if Mitchell was complying with the truthfulness rule for living in the family home, and Chief Leggett thought Mitchell would probably tell the truth if he used the CVSA because of Mitchell’s fear of the test’s accuracy. Chief Leggett testified that in his mind, the purpose of the test was just to show Mitchell that he was dead serious about him telling the truth.

After he completed the test, Chief Leggett told Mitchell to go home. Chief Leggett recalls that he then called Sergeant Ford because Sergeant Ford had said in their first

conversation that he would be interested in receiving the test results. Chief Leggett explained to Sergeant Ford some more about how the CVSA tests were conducted, because Sergeant Ford seemed interested. Chief Leggett told Sergeant Ford that it would be easy to generate a copy of the test results and said he could send them to Sergeant Ford if he wanted them. Sergeant Ford said he wanted them, so Chief Leggett printed the results out and faxed it to him. He did not send it as a report. There was no cover letter, for example, which he would have sent with the results if the results of the test were part of an official investigation.

Chief Leggett testified that, in his opinion, his use of the CVSA equipment was proper. Chief Leggett explained that in the Skagway Police department all their equipment is take home. Chief Leggett encourages his officers to use the police long guns for hunting. Chief Leggett has used CVSA for other non-police use, such as practice testing with school kids after hours in the church. Chief Leggett recalled that he has tested himself and his daughter. Chief Leggett explained when he is done with one of his practice tests on the CVSA, he erases the tests. Chief Leggett testified that after he used the CVSA on Mitchell and printed out the results he deleted the test results because, in his view, he had just run a practice test on Mitchell.

Chief Leggett testified that he did not get the sense that Sergeant Ford that seemed uncomfortable with any of their interactions and Sergeant Ford seemed genuinely interested in receiving the CVSA results. When Chief Leggett sent CVSA results to Sergeant Ford, he thought Sergeant Ford was just going to look at CVSA results to see what the CVSA information looked like for the future if he ever wanted to use the CVSA. Chief Leggett testified that Sergeant Ford never stated that he was bothered or intimidated by his call. On cross-examination, Chief Leggett explained that he was surprised to learn that Sergeant Ford had been uncomfortable with their interactions because when he spoke to Sergeant Ford he believed that because he was dealing with a police sergeant, and therefore he was dealing with an experienced police officer. If the situation had been turned around, in his department, if one of his officers had felt uncomfortable with what another police chief was asking him about an investigation, he would expect that officer to talk to him, and Chief Leggett would then have called that police chief to address the problem.

Chief Leggett explained that he also told Sergeant Ford that Mitchell would not call him, and that if Sergeant Ford needed to talk to Mitchell to call Chief Leggett because Mitchell would probably not call him back as Mitchell was in the habit of not returning calls when he did not

want to talk to the person who called. Chief Leggett explained that he would make sure Mitchell called him if Sergeant Ford called Chief Leggett and told him that he wanted to talk to Mitchell. Chief Leggett testified he never got another call from Sergeant Ford. Although Sergeant Ford had testified that he had tried to call Chief Leggett on his landline, Chief Leggett testified that he does not have a landline in his home. Chief Leggett believed that Sergeant Ford had his cell phone number, but did not receive any calls from Sergeant Ford on his cell phone.

Chief Leggett explained that Mitchell had a cell phone. Chief Leggett would occasionally check Mitchell's phone to see who was calling and to make sure Mitchell was acting responsibly, not abusing on-line shopping, and to teach him how to respond to people who called him. Chief Leggett clarified that he did not tell Sergeant Ford that using someone else's credit card would have been out of character for Mitchell, because Chief Leggett had no doubt that theft was within Mitchell's character, but he did say he thought it was beyond Mitchell's intellectual capacity, because credit card fraud is a complex crime to pull off.

The first time Chief Leggett was aware that there was an issue with his contacts with Sergeant Ford was when the Executive Director spoke with him and asked about what had happened during a break in a convention they both attended in December of 2012. At that time, the Executive Director did not show him any paperwork on the complaint and did not tell him that Sergeant Ford had included the results of his using the CVSA on Mitchell in his official investigative report into the alleged credit card theft.

Chief Leggett disputes the Executive Director's summary of this conversation in her report. Chief Leggett remembers that he explained at that time that his use of the CVSA was for his own edification, not to produce a report for Sergeant Ford. Chief Leggett remembers that the Executive Director then asked him if he sent Sergeant Ford something and Chief Leggett said "yes" and that Sergeant Ford had asked to see the results and Chief Leggett had assumed that Sergeant Ford wanted to see what CVSA results were like.

Chief Leggett also disputes the Executive Director's summary of what he said about having more documentation of the CVSA results he sent Sergeant Ford. Chief Leggett remembers that the Executive Director then asked him if he had more back-up of the results, and rather than telling her that he did, he said that he did not know, did not think so, and would go check. At the time, he thought he had probably deleted the results, because he likes to keep those electronic files clean and organized, so that he can easily find the CVSA reports that are

related to one of his police cases. Chief Leggett recalls that the way this conversation ended was with the Executive Director telling him that if she needed anything else she would let him know.

Chief Leggett later called the Executive Director when he got a subpoena for this documentation to explain that he did not have any documentation and explained why and later responded by letter. The next time he spoke with the Executive Director was several months later when he got the accusation.

Chief Leggett spoke with Juneau District Attorney Scott after he found out they were bringing charges against Mitchell because Chief Leggett wanted to make District Attorney Scott aware of what was going on with the accusation and as well as find out if there was anything he needed to do to prevent problems that might result with Skagway police cases. Chief Leggett understood from that conversation that the accusation would not be a problem for the prosecution of Skagway criminal cases.

Chief Leggett explained that he applied for police officer certification because his primary responsibilities include responding to calls. On cross examination, Chief Leggett explained some of the realities of being a police chief in a small, isolated town with only four police officers. Chief Leggett explained that he believes it is important to evaluate situations carefully and make assignments based on his understanding of the individuals involved, including what has to be done, and the availability of resources, even if there may be an apparent conflict. Even if a police officer responded to a call in which a family member was involved Chief Leggett might have to keep the officer doing needed work until he could get more help. Chief Leggett disagreed that his making direct contact with the officer in charge of the investigation was indicative of his trying to interfere with that investigation because, in his mind, a Chief of Police trying to interfere with an investigation would try to work through the Chief of the Police Department that was conducting the investigation. Chief Leggett believes that contacting the officer in charge as Mitchell's parent was appropriate.

On cross examination, Chief Leggett explained that relations with the Skagway Police Department and ADA Williams were somewhat strained before she filed the complaint against him because of disagreements with how she was handling their criminal cases. Chief Leggett also explained that relations between the Haines Police Department and the Skagway Police Department were also strained for a period due to the Haines Chief's decision to promote a police officer who had been dismissed from the Skagway Police Department, after the Haines

Chief asked Chief Leggett about the circumstance surrounding the officer's dismissal. After this incident, Chief Leggett decided to limit interactions with the Haines Police Department to official business. Chief Leggett testified that the relationship between the two departments has improved over time.

Testimony of Sergeant Simon Ford

Officer Simon Ford testified that he works with the Palmer Police Department.⁶ He became a police officer in 2010. In the fall of 2012, he was promoted while working in the Haines police department. There were five police officers in Haines at that time including the chief. There were about 3000 people in Haines when he worked there. Sergeant Ford believes that Skagway has about 200 people in the winter and thousands in the summer. His understanding was that they have about 5 police officers. Skagway is the closest community to Haines. While in Haines he worked with the state trooper. He occasionally contacted Skagway. His experience was that it was important to coordinate with other southeast communities for drug enforcement. He once transported a prisoner for Skagway.

Sergeant Ford had not had contact with Chief Leggett before incidents relating to this case. Sergeant Ford explained that he would normally work through his chief to contact another chief. Sergeant Ford explained that he would work through the chain of command to speak with someone in another police department. Sergeant Ford explained he believed it would be more appropriate for him to go through the chain of command to contact another agency chief.

When Chief Leggett first called, Sergeant Ford had been in contact Big Foot Auto to investigate a complaint of credit card theft by an employee and was working with another police officer. Mr. Nelson at Big Foot had already done his own investigation and spent an hour with the officers going through the paperwork, which showed Sergeant Ford that Mitchell Leggett was the suspect.

At the time, Mitchell was 21. In Sergeant Ford's experience, Mitchell seemed to process things slower than normal. He thought Mitchell might be autistic or have Asperger's. Sergeant Ford had previous contacts with Mitchell's issues with drinking to excess and having people taking advantage of him. Mitchell was always very cooperative respectful and grateful for assistance and advice. Mitchell Leggett was friendly and easy to deal with and spoke to Sergeant Ford about caring for his dog.

⁶ At this time of this incident, Sergeant Ford works as a police officer for the Haines Police Department.

Sergeant Ford's understanding of the crime he was investigating was that a customer would give his credit card to Mitchell, as the attendant. Mitchell would document the card number and run the number again, then take that extra amount out of the register. If someone paid cash, the person would get a two percent discount. There was also about a four percent discrepancy in these reimbursements that they thought Mitchell had been pocketing. Specific victims were identified as being overcharged. One of the victims described Mitchell as the person who handled her credit card. At the conclusion of the initial meeting with Mr. Nelson, Sergeant Ford felt that he needed to do further investigation, which he did.

Sergeant Ford testified that he treated the investigation as any other despite Mitchell being a police chief's child, because he was an adult. If Mitchell had been 17, Sergeant Ford would have contacted Chief Leggett, because it was required and standard operating procedure in a case involving a juvenile suspect. Sergeant Ford worked on this case for a month before he sent it to the ADA. Sergeant Ford testified that he tried to contact Mitchell and even called Ray Leggett's home to contact Mitchell but was unable to make contact. He had heard Mitchell might have returned to Skagway, but he did not contact the Skagway Police Department to pick up Mitchell.

Sergeant Ford testified that he received a call from Chief Leggett who identified himself as Ray Leggett—not Chief Leggett. Sergeant Ford testified that the call made him uncomfortable. Chief Leggett said Paul Nelson had called Mitchell's Skagway employer and told him that Mitchell was not to be trusted. Chief Leggett told Sergeant Ford that Mitchell was now living and working in Skagway. Sergeant Ford testified that during the first part of conversation Chief Leggett was trying to find out if there was an investigation.

Sergeant Ford testified that during the second part of the call Chief Leggett was explaining Mitchell's mental health problems and Chief Leggett said he wanted to figure out the truth, and that Mitchell should be prosecuted if he was guilty.

Sergeant Ford testified that he asked Chief Leggett to have Mitchell call him, but Mitchell did not contact him. Sergeant Ford testified that Chief Leggett told him he thought Mr. Nelson did not have a good moral character and that he was a liar and fraudulent person. Chief Leggett indicated that he felt Mr. Nelson was trying to pin this crime on Mitchell. Chief Leggett also indicated that if a charge is not correct, it is closed unfounded. Sergeant Ford testified that

he felt that Chief Leggett was trying to convey that Sergeant Ford had identified the wrong suspect and the investigation was headed in the wrong direction.

Sergeant Ford testified that Chief Leggett explained about the CVSA and said he would try to test Mitchell and would share results. Sergeant Ford feels he should have said no, but Sergeant Ford said he would include the results in the record he sent to the DA. Sergeant Ford testified that Chief Leggett conveyed that he thought this CVSA test was reliable and should be admitted in court. After the conversation, Sergeant Ford testified that like he felt like he had been to the principal's office.

Sergeant Ford explained that after the first call, Chief Leggett called back that evening. Chief Leggett told Sergeant Ford that he had administered the test and explained how it was conducted. Chief Leggett said his results showed that Mitchell was telling the truth. Chief Leggett said he would FAX the test results, and he did. The results were signed by Chief Leggett and indicated that, in his opinion, the test results were accurate. Sergeant Ford testified that he did not give the results any weight. Sergeant Ford felt confident that his investigation into Mitchell's actions had met the probable cause standard.

On cross-examination, Sergeant Ford admitted that he did not feel that Chief Leggett was being threatening or intimidating in his contacts with him. Sergeant Ford admitted that Chief Leggett had indicated that he would provide the CVSA results either way they turned out. Sergeant Ford admitted and that Chief Leggett had told him Mitchell should be held accountable if he was guilty. However, Sergeant Ford felt that it was improper for Chief Leggett to have provided the test results, but Sergeant Ford testified, that he was not sure whether the rest of his conversations with Chief Leggett crossed the line.

Sergeant Ford explained he called ADA Williams the next day, because he had slept on the problem of having received the CVSA results and felt uncomfortable. ADA Williams told him Chief Leggett's conduct was totally inappropriate, and told him to document contacts with Chief Leggett and include them in the investigative report.

Sergeant Ford explained that ADA Williams had been working the case against Mitchell. Sergeant Ford recalls that charges were filed, but does not remember testifying to the Grand Jury. Sergeant Ford explained that he understood that Mitchell's case had been plead down to a misdemeanor charge, and he felt this was an appropriate disposition of the case.

Testimony of Assistant District Attorney Paige, nee Williams

ADA Paige, nee Williams did not recall the conversation with Sergeant Ford the day after Chief Leggett sent him the CVSA test results. ADA Paige recalls that her concerns about Chief Leggett's involvement in the investigation on Mitchell did not begin until she received the investigative report. When she received the investigative report, her first impression was that she wanted one comprehensive report with all charges combined. When she got the complete report a couple weeks later, it struck her that Chief Leggett had tested his son. ADA Paige testified that she would never get involved in a case involving a family member and she spoke with other attorneys and they agreed it was not appropriate. ADA Paige filed the complaint with the Alaska Police Standards Council.

ADA Paige admitted that they did not have the best case against Mitchell because there was no admission by Mitchell and the victim was not the best witness. ADA Paige did have some concern that the defense attorney would try to make use of the CVSA results which might help with a jury, but she did not give the results any weight in determining guilt because of the bias of the tester.

ADA Paige explained that she filed the felony charges against Mitchell and the Grand Jury returned an indictment. On the day of trial, the parties settled by with a plea to a misdemeanor, with a suspended imposition of sentence, which was successfully completed.

ADA Paige believes Chief Leggett's involvement in the investigation was inappropriate because of the CVSA test and because he drew conclusions about witnesses and theft charges in general in his conversations with Sergeant Ford. ADA Paige also recalled that Chief Leggett was a tireless booster of the CVSA and its wider use in Alaska law enforcement in her conversations with him. ADA Paige admitted that she believed that if Chief Leggett had just called the Haines Police Department to find out what was going on with his son that would have been appropriate.

Testimony of Executive Director Kelly Alzaharna

Executive Director Kelly Alzaharna conducted the investigation on ADA Paige's complaint against Chief Leggett. Director Alzaharna testified that she first contacted Chief Leggett in-person at a convention in Anchorage. Director Alzaharna recalled that during that conversation, she asked Chief Leggett what had happened. Chief Leggett admitted he had contacted Officer Ford. Director Alzaharna recalled that Chief Leggett had explained that he had told Officer Ford that he would conduct a CVSA exam on his son and would send the results to

Officer Ford. This caused Director Alzaharna concern because her CVSA training had included instruction that you should not conduct these exams on family members. Chief Leggett told her the results of the CVSA test were no deception was indicated.

Director Alzaharna explained that this means that the test results indicated that Mitchell was being truthful. Director Alzaharna testified that it is important to retain the back up for the CVSA test results. Chief Leggett did not indicate that the CVSA test he gave Mitchell was a practice exam, in their first conversation. He indicated that he included the back-up documentation in support of CVSA test results. Chief Leggett never provided these back-up documents despite receiving a subpoena. This back up includes questions asked and charts. The idea of maintaining documentation is to allow others to review and see if they agree with the interpretation. Director Alzaharna testified that although Leggett said he would provide back-up but he never did. Director Alzaharna recalled that Chief Leggett had said that he and ADA Paige did not get along.

Director Alzaharna interviewed Sergeant Ford. He told her that he was the investigating officer in Mitchell's case. Sergeant Ford tried to contact Mitchell but could not. Director Alzaharna's recollection was that Sergeant Ford told Chief Leggett that he did not want to talk about Mitchell's case with him. Sergeant Ford told her he felt it was inappropriate for Chief Leggett to talk to him, but Sergeant Ford admitted that he did not express his concerns with Chief Leggett.

Director Alzaharna then spoke with Chief of Haines Police, Gary Lowe, and asked him what he knew. Director Alzaharna testified that Chief Lowe felt that he would not request assistance from the Skagway Police Department and he felt Chief Leggett's intervention was not appropriate.

When Director Alzaharna called Chief Leggett to let him know that she would send a subpoena for the CVSA test documentation he told her that he did not have the records. That concerned her because it would not be appropriate to destroy documents. At that time, Chief Leggett said he had been encouraged to do as many exams as possible to stay in practice, and that included family and friends. This was inconsistent with Director Alzaharna's understanding of the CVSA training she had received. Director Alzaharna's understanding was that you should not conduct official exams on family members. She asked that Chief Leggett provide a summary of the back-up in response to the subpoena. Chief Leggett provided a letter of response. This

letter included a response that he had not kept back-up because he had conducted the test solely for his own edification. Director Alzaharna believed this response was not consistent with what he had told her and Sergeant Ford about the test he had conducted.

Director Alzaharna then contacted Stacy Parsons and the CEO Dr. Humbole, to see if the course would have instructed him that it would be appropriate to perform an official CVSA test on family and friends. Dr. Humbole told her that trainees were highly discouraged from doing so. Dr. Humbole sent her an email and said slide 38 of the CVSA training instructs trainees not to conduct testing on friends and relatives and that they should refer such cases to another agency. This answer was consistent with Director Alzaharna's training. Documentation maintenance is also emphasized. All instructors use the same power point presentation before the training test. One true or false question on final exam would be correctly answered indicating that trainees should avoid testing family or friends.

Director Alzaharna spoke with Chief Leggett again on April 14, 2014. Chief Leggett asked her for any documentation up to that time and the status of the case. She responded that in these processes there usually is not any sharing of documentation. Director Alzaharna's recollection is that Chief Leggett then he indicated that he had sent the back-up of his test of Mitchell to another CVSA examiner. When she asked which examiner, he said he would have to check the book. Director Alzaharna took this reference to a book to refer the book that the testers are supposed to maintain. Director Alzaharna recalled that Chief Leggett said he would provide the name of the instructor he had sent the documentation to, but he never did.

Director Alzaharna recalled that Chief Leggett also admitted that it is accurate to say that the training discourages giving friends and family a CVSA examination in an investigation, but he explained that he did not consider his test of Mitchell to be a CVSA examination, rather it was just a test, meaning an informal practice interview. Director Alzaharna felt this was inconsistent with his earlier description of the exam and his action in asking that it be included in the police report.

Director Alzaharna then confirmed the dates of Leggett's training. She also verified that the City of Skagway, not Mr. Leggett, had paid for the CVSA software and equipment.

Director Alzaharna spoke with one of Mr. Leggett's instructors. He confirmed that testing family members was discouraged, this was also confirmed by another of Mr. Leggett's instructors, and by instructor Mike McQuillan. Mr. McQuillan reported that Chief Leggett had

asked him to send her a memo saying that he encourages students to practice as much as possible. Mr. McQuillan told her he had responded that testing family members was discouraged except for a practice test that involved numbers.

In her opinion, Chief Leggett went against his training on CVSA testing when he tested Mitchell. Director Alzaharna believes that Chief Leggett was not truthful with her during her investigation. In her opinion, his conduct during this investigation would lead a reasonable person to believe that he did not have respect for fairness and the law.

On cross examination, Director Alzaharna testified that she does not think she recorded her conversations with Chief Leggett. She explained that she usually does not record these investigations and admitted that she does not investigate these cases that often because they have an employer's investigation team to rely on. Director Alzaharna explained that she did not take action on complaint letter for a couple of months because they had a backlog.

Testimony of CVSA Instructors

The Executive Director called several witnesses to testify that CVSA training protocol discourages the use of the CVSA on friends and relatives, including Dr. Humble, the CEO and founder of the National Institute of Truth Verification (NITV). This testimony focused on two aspects of the training. One focus was the caution against using the CVSA on friends and family members to find out whether they were telling the truth about issues that could damage relationships. The other focus of the testimony was that the training strongly discouraged conducting an official CVSA examination on a friend or family member or in other circumstances where the evaluator's bias could color the results, or perceived bias could taint the results so that those results would be subject to criticism. This testimony was consistent with all the CVSA trainer witness. All of them testified that the courses warn trainees not to put their personal relationships in jeopardy by doing practice CVSA tests on to find out personal information from those you a personally close to because it could harm those relationships, and not to do official CVSA tests when your feelings for the test subject could influence the way you read the test results or call your impartiality into question.

III. Discussion

Trust for – and within – law enforcement is paramount to ensure that justice is achieved. The citizens of the State of Alaska must be assured that a police officer's actions are done for the right reasons – that is, not done to obtain preferential treatment for a particular person. All

police officers owe a duty to everyone involved in the justice system that similarly situated individuals will be treated similarly. It is vitally important that the law be upheld in a manner that treats all persons fairly, equally, and without bias in a criminal investigation. This includes the appearance that a particular course of action was done to obtain preferential treatment. The Council has previously described why this high moral character is so vital to the people of the state:

The citizens of the State of Alaska, through the Alaska Police Standards Council, grant and entrust police officers with great responsibility and power. The citizens of the State of Alaska grant the responsibility and power to police officers to investigate and hold accountable those that prey upon the most vulnerable of our community – children, mentally and physically challenged, and the elderly. The citizens of the State of Alaska grant the responsibility and power to police officers to protect our community members from those that engage in murder, sexual assault, sexual exploitation of children, armed robbery, and domestic violence. Police officers are able to meet their responsibilities and perform their duties only if citizens trust them to be of the highest moral and trustworthy character. Without trust, rape victims will not provide officers the needed information that is highly private and personal in nature. Without that trust, children that have been sexually exploited will not be willing to report their abusers and provide the needed detailed information regarding the criminal actions of their fathers, step-fathers, uncles, or grandfathers. Without that trust, citizen witnesses will not be willing to come forward and report their observations of drive by shootings, home invasion robberies, and murder. Without that trust, victims of domestic violence will not call 911 to get the help they so desperately need. Police officers additionally must be able to effectively testify in court, without being subject to impeachment, in order for offenders to be held accountable.⁷

As a result of this important and vital role that police officers play in our communities, all police officers must possess good moral character. “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; 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.⁸

⁷ See *In re Parcell*, APSC 2007-09 at p. 5 (affirmed in *APSC v. Parcell*, 438 P.3d 882 (Alaska 2015)) (emphasis added).

⁸ 13 AAC 85.900(7).

In re Whisler, the Council determined that it had the discretion to revoke the certificate of an officer who has committed an act that raised substantial doubt about the officer's honesty, fairness, respect for the rights of others, and respect for the law collectively, 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."⁹ Put another way, failure of the existence of one or more of the elements of "good moral character" is not fatal to a finding that the officer lacks good moral character, provided that the doubt raised about at least one element is substantial.

For the reasons explained herein, Chief Leggett violated that trust.

A CVSA examination is designed to determine if a person is being deceptive when answering particular questions. The basic principle of a CVSA examination is that a person's voice pattern is different when he or she answers a question deceptively in comparison to answering truthfully. Chief Leggett has received extensive training on how to conduct CVSA examinations, and believes that they are accurate, should be relied upon, and are a very effective law enforcement tool. Chief Leggett believes that the CVSA should be used more frequently by the Alaska law enforcement tool.

But the CVSA has an obvious limitation – the examiner's bias can affect the reliability of the results. As Dr. Humble testified, CVSA examiners should avoid testing relatives of close friends for this reason. Bias exists when an examiner administers an examination to a family member or close friend. All CVSA trainees are taught this most basic protocol. Chief Leggett's administration of the CVSA on Mitchell – given the context of the surrounding events – shows a profound lack of judgment. Chief Leggett's CVSA examination of Mitchell was not in accord with his training. The examination's findings – by any measure – were not credible or valid.

Further, Chief Leggett knew that Mitchell was under criminal investigation by another law enforcement agency, and that Mitchell was the primary suspect.¹⁰ Chief Leggett's actions – by contacting Sergeant Ford, conducting a CVSA on his son, and then providing the results to the investigator – demonstrate that there are severe questions about Chief Leggett's impartiality and willingness to use his position and influence to the benefit of a family member. Given

⁹ *In re Whisler*, OAH No. 13-0473 at 18 (Alaska Police Standards Council 2013).

¹⁰ That is not to say that a police officer cannot be a concerned parent, and in that parental role, want to help their child. However, Chief Leggett's conduct went beyond that of just being a concerned parent. He severely blurred the lines between being a parent and being an advocate for his son by misusing the CVSA examination.

Chief Leggett's strong, vocal belief in the CVSA, it should come as no surprise that Sergeant Ford believed that Chief Leggett was attempting to influence the investigation given the CVSA examination's results.

Chief Leggett's extensive law enforcement experience also belies a finding of a simple miscommunication. Chief Leggett is a highly trained police officer, with years of experience in leadership roles, including advanced and masters police certifications, commander, and a lieutenant of internal affairs; he is also leader in the Alaska law enforcement community. As a leader, Chief Leggett knows, or should have known, that his actions would have influence, especially when he (as a police chief) was speaking to a police sergeant. This conduct contributes to public distrust of police officers, and the belief that police officers will 'protect their own'. It equally undercuts their responsibility to uphold the law and treat all persons fairly, equally, and without bias.

The ALJ found Chief Leggett to have a soft spoken and friendly, but very assured, intelligent, persuasive, and authoritative speaking style. While this style has probably served Chief Leggett well, especially when dealing with members of his church, in his conversations with Sergeant Ford, it blurred Sergeant Ford's understanding of Chief Leggett intent – that Chief Leggett was a police chief with a conflict of interest who was attempting to improperly influence an ongoing criminal investigation.

IV. Conclusion

The Council concludes that revocation of Chief Ray Leggett's police certification is appropriate and necessary due to his conduct that shows a substantial doubt that he possesses a good moral character. Revocation is appropriate under 13 AAC 85.110(a)(3).

DATED: May 3rd, 2017.

By: _____



Bryce A. Johnson,
Chair, Alaska Police Standards Council

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.