

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

In the Matter of: )

STEVEN W. MUCH )  
\_\_\_\_\_ )

OAH No. 13-0288-POC  
Agency File No. APSC 2013-05

NOTICE TRANSMITTING FINAL DECISION

Attached is the Alaska Police Standards Council decision in this matter, which was adopted on December 3<sup>rd</sup>, 2013. Under AS 44.62.520, the board's decision becomes effective 30 days after the attached decision is mailed or otherwise delivered to you.

A party may request reconsideration of the decision by filing a petition under AS 44.62.540 within 15 days after delivery or mailing of the decision. Send the petition requesting reconsideration to the following address:

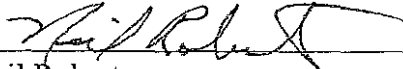
Office of Administrative Hearings  
P.O. Box 110231  
Juneau, AK 99811-0231

At the same time, send a copy of the petition to the opposing party's legal counsel, or to the opposing party if not represented by counsel.

Judicial review of the council's decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

DATED this 17<sup>th</sup> day of December, 2013.

By: \_\_\_\_\_

  
Neil Roberts  
Office of Administrative Hearings  
P.O. Box 110231  
Juneau, AK 99811-0231  
(907) 465-1886  
(907) 465-2280 fax

RECEIVED

JAN 17 2014

Police Standards Council

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

In the Matter of )

STEVEN W. MUCH )

OAH No. 13-0288-POC

Agency File No. APSC 2013-05

**DECISION**

**I. Introduction**

The Executive Director of the Alaska Police Standards Council alleged that former Anchorage Police Department Officer Steven Much was not of good moral character, and requested that the Council revoke Mr. Much's police certificate. A hearing was held on the allegations on August 7-8, 2013, in Anchorage. Assistant Attorney General John Novak represented the Executive Director, and Mr. Much represented himself.

At the hearing, the Executive Director proved that Mr. Much had been deceptive during official interviews conducted by a superior officer, and had submitted an official police report that contained false statements. Mr. Much's actions would cause a reasonable person to have substantial doubt about his honesty, fairness, respect for the rights of others, and respect for the law. The weight of the evidence regarding the doubt about Mr. Much's good moral character warrants revocation of Mr. Much's police certificate.

**II. Facts**

Officer Steven Much joined the Anchorage Police Department (APD) in 2004. Before coming to Alaska, he had worked for the Los Angeles Police Department for 10 years, most of which was spent on specialty squads.<sup>1</sup> Mr. Much worked as a patrol officer for APD for approximately seven years. On May 18, while APD was investigating two incidents involving Mr. Much that occurred in the fall and winter of 2010-11, Mr. Much resigned.

The first investigation involved a telephone call that Mr. Much made to APD dispatch on September 27, 2010. In this call, he inquired whether APD dispatch could ask the police department in Milwaukee, Wisconsin, to do a welfare check on Mr. Much's girlfriend's nine-year-old daughter, who lived with her father in the Milwaukee area. The second investigation involved Mr. Much's response to a dispatch he received on January 16, 2011. In this dispatch, he was directed to investigate a report of an assault that had occurred the previous evening. His

<sup>1</sup> Admin. Rec. at 29.

**RECEIVED**

**JAN 17 2014**

**Police Standards Council**

inadequate inquiry into the matter, and subsequent inaccurate police report, were the subject of APD's second investigation.

When Mr. Much resigned from APD, the investigative stage for these two incidents was completed, but APD had not yet determined any final administrative action or discipline relating to the incidents. Based on Mr. Much's actions in these two incidents, the Executive Director of the Police Standards Council filed an accusation against Mr. Much that asked the Council to revoke Mr. Much's police certificate. The two incidents are described in detail below.

**A. Facts relating to the September 2010 welfare check call and the subsequent investigations**

During the time relevant to this hearing, Mr. Much lived with his girlfriend, Bianca Lukasik, in Eagle River. Ms. Lukasik has a daughter from a previous relationship, Skyler, who was nine-years-old in September 2010. Under a child custody order issued by a Florida court in 2006, Skyler's father, Robert Koster, has primary custody of Skyler.<sup>2</sup> Mr. Koster moved to Milwaukee, Wisconsin in 2008. As of the fall of 2010, the Florida custody order remained the controlling order for Skyler's custody.

During the summer of 2010, Skyler came to Anchorage for a visit. At the end of the summer, around the time that Skyler was due to return to Wisconsin, Ms. Lukasik filed a petition for a change of custody in Alaska superior court, and enrolled Skyler in school in Eagle River.<sup>3</sup>

On the morning of September 8, 2010, a hearing was held before Judge McKay in Alaska superior court in Anchorage on Ms. Lukasik's custody petition. Ms. Lukasik, Mr. Much, Skyler, and Skyler's grandfather, Randy Lukasik, were present at the start of the hearing. Mr. Koster was represented by an attorney, and he participated by telephone. At the start of the proceedings, at the Judge's request, Mr. Much took Skyler out of the courtroom, and he and Skyler stayed in the hallway during the hearing on the custody dispute.<sup>4</sup>

Shortly after the hearing began, Judge McKay explained to Ms. Lukasik that Alaska did not have jurisdiction over Skyler's custody.<sup>5</sup> The judge then asked Ms. Lukasik whether she wished to put anything further on the record.<sup>6</sup> Ms. Lukasik stated that Mr. Koster denied a lot of telephonic communication with Skyler, and asked the judge to establish that Skyler would be

<sup>2</sup> *Id.* at 347-61.

<sup>3</sup> *Id.* at 249.

<sup>4</sup> Lukasik testimony. After the custody hearing ended, Judge McKay had a talk with Skyler off the record, so that Skyler did not "think anybody's lost or anybody's won." Admin. Rec. at 225.

<sup>5</sup> Admin. Rec. at 229.

<sup>6</sup> *Id.* at 223.

allowed to use a cell phone that had been given to Skyler to stay in touch with her. Judge McKay explained that “That’s the type . . . of thing that I can’t order.”<sup>7</sup> Judge McKay, however, then “strongly encouraged” Mr. Koster “to make sure that [Skyler] has access to the phone.”<sup>8</sup> When Judge McKay asked, “Do you understand that Mister Koster?,” Mr. Koster replied, “yes, sir.”<sup>9</sup> The judge required that Skyler be back in Wisconsin by Sunday night (September 12) so that she could attend school on Monday morning.<sup>10</sup>

Judge McKay then signed an order dismissing the case for lack of jurisdiction. The order also memorialized that Skyler was to be returned to her father in Wisconsin by the evening of September 12, 2010.<sup>11</sup>

After Skyler left Alaska, Skyler’s grandparents became concerned because they were unable to communicate with Skyler.<sup>12</sup> About two weeks after she left, Mr. Lukasik called the police in Milwaukee to request that the Milwaukee police department perform a welfare check on Skyler.<sup>13</sup>

A welfare check is a very common police procedure, often done at the request of citizens who have concerns about family, friends, or co-workers whom they have been unable to contact.<sup>14</sup> When a welfare check is requested about a child who may be involved in a custody dispute, however, police departments are cautious because the “welfare check” request might be unwarranted, intended more to harass the parent than to protect the child.<sup>15</sup> For this reason, when child custody is involved, APD will usually send an officer to the home of the requesting party before doing the welfare check, so that the officer can view the court documents regarding custody and contact with the child.<sup>16</sup>

The Milwaukee police department apparently also has concerns about welfare checks for children whose parents live apart, and when Mr. Lukasik called to request a welfare check, the Milwaukee police informed him that it would only process an out-of-state request if the request

---

7 *Id.*  
8 *Id.* at 223-24.  
9 *Id.* at 224.  
10 *Id.*  
11 *Id.* at 221.  
12 Lukasik testimony.  
13 *Id.*  
14 Ryan testimony.  
15 *Id.*  
16 *Id.*

came from a law-enforcement agency.<sup>17</sup> Mr. Lukasik then called APD. He testified, however, that APD told him that it is APD policy to not get involved in out-of-state custody issues.<sup>18</sup> He asked if he could see the policy, but according to his testimony, he was told that it was not available.<sup>19</sup> Mr. Lukasik then called Mr. Much and asked him to look into the issue.<sup>20</sup>

On September 27, 2010, Mr. Much called APD dispatch. The call was answered by dispatch supervisor Sandy Chapman.<sup>21</sup> Mr. Much explained that he had a couple of questions regarding his fiancée's daughter, who lived in Milwaukee.<sup>22</sup> He said that the child had been sent home with a cell phone, but "now the jackass took the phone away from her, turned it off."<sup>23</sup> He told her that his fiancée and her parents had called Milwaukee police to request a welfare check, and Milwaukee PD had said it would respond only at the request of a local police department.<sup>24</sup>

Ms. Chapman at first did not think the situation warranted a welfare check, and described that "it's custody – not letting me talk '[to] em – usually we refer 'em back to their attorney . . . [to] have their attorney call [or] contact his attorney that he's not complying with the order."<sup>25</sup> She explained to Mr. Much the concern that the request might be "just to harass" and that if the issue is really a custody dispute "we shouldn't waste police time on that."<sup>26</sup>

Ms. Chapman then asked Mr. Much, "when and how often is she supposed to talk to her and when did she last talk to her?" Mr. Much answered this question with reference to "the order," saying "the order is that she is supposed to have contact with her when . . . she's supposed to be able to get a hold of that child 24/7."<sup>27</sup>

Ms. Chapman sought assurance that the father's action was a violation of a court order: "Okay, but is any of this court ordered?"<sup>28</sup> Mr. Much confirmed that the court had ordered the

---

<sup>17</sup> Lukasik testimony.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Admin. Rec. at 60; Chapman testimony.

<sup>22</sup> Admin. Rec. at 61. Mr. Much later admitted that Bianca was not actually his fiancée, but she was his girlfriend and they did live together. *Id.* at 128.

<sup>23</sup> Admin. Rec. at 61.

<sup>24</sup> *Id.* at 61-62.

<sup>25</sup> *Id.* at 62 (dashes inserted).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 63.

cell phone requirement, saying “yeah, yeah” in answer to her question. She continued asking “That she’s supposed to have access[?]” and he affirmed “Twenty-four, twenty-four seven.”<sup>29</sup>

Ms. Chapman then assented to make the call to the Milwaukee police, again emphasizing that this request was borderline: “they’ll probably do it once for us” and that “we’ll just do it . . . one time.” She repeated the concern about “harass[ment]” and “playing games with custody.”<sup>30</sup> Later that day, after further exchanges of phone calls to provide addresses, and further assurances from Mr. Much to a different dispatcher that “the judge up here ordered that my fiancée is to be able to have twenty-four hours a day, uh, contact with her daughter,” APD dispatch sent an electronic message to Milwaukee police.<sup>31</sup> The electronic message included the statement that “PER COURT ORDER JUV SHOULD HAVE CELL 907 8548509 ON WHENEVER NOT IN SCHOOL SO BIOL MOM BIANCA LUKASIK CAN CNTC CELL HAS BEEN TAKEN AWAY”<sup>32</sup>

The next day, Sergeant Lisa Ibarra, Milwaukee Police Department, called APD. She spoke to dispatcher Karen Pfanmiller, asking for additional information that was not included in the original message. Sgt. Ibarra considered the request improper.<sup>33</sup> She did not dispatch an officer to do the welfare check, but did call the father and ask that he contact Ms. Lukasik to resolve the issue.<sup>34</sup>

After doing the research requested by Sgt. Ibarra, Ms. Pfanmiller, informed her supervisor that Mr. Much had asked dispatch to request a welfare check with no officer responding or being assigned to the case.<sup>35</sup> APD Internal Affairs assigned Sgt. Gil Davis to investigate the incident.<sup>36</sup> Sgt. Davis scheduled a formal interview with Mr. Much. Before doing the interview, Sgt. Davis informed Mr. Much of the investigation, and asked Mr. Much to listen to the tapes of the calls with dispatch. Sgt. Davis then conducted the interview with Mr. Much on October 7, 2013. Two other officers also attended the interview, a shop steward, and a shop steward trainee.<sup>37</sup>

29

*Id.*

30

*Id.* at 64.

31

*Id.* at 68

32

*Id.* at 58.

33

*Id.* at 49.

34

*Id.* at 23, 49.

35

*Id.* at 23, 49.

36

*Id.* at 23; Ryan testimony.

37

Admin. Rec. at 187.

Early in the interview, Sgt. Davis delivered a standard pre-interview admonition to Mr. Much.<sup>38</sup> This admonition instructs the officer that the interview is part an official investigation, and the officer is *ordered* to answer all questions “truthfully, completely, and without evasion.”<sup>39</sup>

At the start of the interview, Sgt. Davis explained to Mr. Much that both Milwaukee PD and APD had determined that Mr. Much’s personal welfare check request “was improper.”<sup>40</sup> Mr. Much responded by explaining that Skyler’s mother and grandfather had been unable to contact Skyler. He also discussed that Bianca had been to court in September but had been unable to persuade the Alaska Superior Court to award her custody of Skyler. He justified the call by explaining “[s]o, when, uh, they went to court up here in September, the judge ordered up here that the child have – get a cell phone so that she has twenty-four-a-day access to the child.”<sup>41</sup>

After Mr. Much described the Florida court order and Mr. Koster’s move to Milwaukee, Sgt. Davis asked, “Okay. Have you seen these documents?”<sup>42</sup> Mr. Much asked “which ones?” Sgt. Davis replied “Uh, well you – you’ve seen the . . . Alaska[?]” Mr. Much said, “I was at . . . court when – I was at court . . . in September when the judge . . .” At which point Sgt. Davis interrupted him and said “but you’ve seen a – you – she has access to a court document from Alaska from the September ordering the phone?”<sup>43</sup> And Mr. Much affirmed, “[y]eah.”<sup>44</sup>

Sgt. Davis next asked Mr. Much about his knowledge of the Florida court order, “Have you seen the original Florida . . . ?” Mr. Much replied, “[y]eah, I’ve seen those.”<sup>45</sup>

At the end of the interview, Mr. Much argued that he never did anything wrong—he simply gave information to dispatch, and dispatch chose to call Milwaukee.<sup>46</sup> Sgt. Davis agreed that Mr. Much had not misrepresented the facts. He explained to Mr. Much, however, that

<sup>38</sup> See, e.g., Admin. Rec. at 185, 188-89. The pre-interview admonition is typically referred to as the “Garrity” admonition. Mew testimony (citing *Garrity v. New Jersey*, 385 U.S. 493 (1967)).

<sup>39</sup> Admin. Rec. at 185, 188-89; 191 Mew testimony. The admonition also warned that the interviewee retained the right to avoid self-incrimination, so a compelled answer would not be admissible in court. Failure to answer a question, however, would be grounds for discipline, including dismissal. Admin. Rec. at 185; Mew testimony.

<sup>40</sup> Admin. Rec. at 188. See also *id.* at 189.

<sup>41</sup> *Id.* at 191.

<sup>42</sup> *Id.* at 193.

<sup>43</sup> *Id.* The breaks and ellipses in the quoted text occur where Sgt. Davis and Mr. Much are talking over each other.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 215.

“when it comes to asking for police services, another officer has to provi – provide that.”<sup>47</sup> Sgt. Davis’s report sustained a finding that Mr. Much had violated APD’s policy, but found that he was truthful and open in his contacts with dispatch. Sgt. Davis was critical of dispatch, finding that Ms. Chapman’s response to Mr. Much’s call was ambiguous and confusing, that she did not contact a patrol supervisor, and that she did allow the request to Milwaukee.<sup>48</sup>

After Sgt. Davis submitted his report, a supervisor asked for additional investigation on the content of the Alaska court order that Mr. Much claimed was the basis for the welfare check.<sup>49</sup> The investigation was assigned to Sgt. Rodney Ryan, who reviewed the tapes and transcripts of Mr. Much’s call to APD dispatch, and obtained court records from Florida, Alaska, and Wisconsin, including the audio recording of the September custody hearing.<sup>50</sup> After discovering that the Alaska court had not entered an order regarding cell phone contact with Skyler, Sgt. Ryan scheduled an interview with Mr. Much on February 18, 2011.

In the interview, Mr. Much at first asserted that the Alaska Superior Court “set in place” a “stipulation” that Skyler was to have a cell phone and Bianca was to have “twenty-four/seven” contact with her.<sup>51</sup> Later, after Sgt. Ryan’s questioning, Mr. Much admitted that he had not heard the judge’s order in September, and had never personally reviewed the contents of an order from the Alaska Superior Court or the Florida court regarding Skyler.<sup>52</sup> He stated that he thought that when the judge was talking to Skyler off the record he had heard the judge assure Skyler that “don’t worry, you’re still gonna talk to your mother, you can have a cell phone.”<sup>53</sup> Mr. Much also explained that he thought there was a court order regarding the cell phone because that is what he had been told by Bianca and her father.<sup>54</sup>

In the interview with Sgt. Ryan, Mr. Much acknowledged that he heard the judge say that the Alaska court did not have jurisdiction and that custody would have to be determined in a Wisconsin court.<sup>55</sup> He defended his statements to dispatch and Sgt. Davis, saying that he *had* “been” at court and claimed that he had been told by Bianca that the court had entered an order

47

*Id.*

48

*Id.* at 51-52.

49

*Id.* at 20.

50

*Id.* at 25.

51

*Id.* at 78

52

*Id.* at 82, 90; Ryan testimony

53

Admin. Rec. at 100.

54

*Id.* at 107-08.

55

*Id.* at 110.

RECEIVED

JAN 17 2014



regarding Skyler's cell phone.<sup>56</sup> He also argued that he *had* "seen" the Florida court documents, although he admitted he had never read them and had no first-hand knowledge of their content.<sup>57</sup> Later in the interview, Mr. Much admitted that his statements that he had attended the court hearing in Alaska, and that he had seen the Florida documents, would be taken to mean that he had first-hand knowledge of both the Alaska and the Florida court orders.<sup>58</sup> When asked why he did not take the time to do due diligence and research the facts in response to the questioning of dispatch, Mr. Much replied that he didn't "even think about it."<sup>59</sup>

Sgt. Ryan filed his investigative report on the welfare check matter on March 15, 2011. In this report he sustained three instances of violations of policy by Mr. Much. First, as Sgt. Davis had done, Sgt. Ryan sustained a violation of the policy on general conduct, relating to Mr. Much having used his official position to conduct personal business.<sup>60</sup> Second and third, Sgt. Ryan sustained two violations of the duty to be honest, accurate, factual, and complete in official communications "when it is reasonable to expect that the information may be relied upon because of the employee's affiliation with the department."<sup>61</sup> The first violation of the policy requiring honesty was based on Mr. Much's communications with dispatch. The second was for his communications in the interview with Sgt. Davis.

While working on his report on the welfare check matter, Sgt. Ryan was asked to investigate a second issue regarding Mr. Much's conduct. This issue involved an allegedly false police report that Mr. Much filed, and is explained below.

#### **B. Facts relating to the January 2011 police report**

On the evening of Saturday, January 15, 2011, Krissa Heartwell was at the Captain Cook Hotel attending a company party for the employees of the Alaska Eye Surgery Center, where she worked.<sup>62</sup> After the party ended, Ms. Heartwell was attacked by two women in the coat-check area of the hotel. One woman, Stefanie Aslakson, twice came at Ms. Heartwell and landed multiple punches on Ms. Heartwell's face and eyes.<sup>63</sup> The other woman, Emma Shine, held Ms. Heartwell during one of the assaults. Ms. Aslakson was Ms. Heartwell's coworker. Up to as

<sup>56</sup> *Id.* 130, 153

<sup>57</sup> *Id.* at 115-17

<sup>58</sup> *Id.* at 118, 131, 150

<sup>59</sup> *Id.* at 180

<sup>60</sup> *Id.* at 36; Ryan testimony.

<sup>61</sup> Admin. Rec. at 36-37; Ryan testimony.

<sup>62</sup> Heartwell testimony.

<sup>63</sup> Admin. Rec. at 417-18; 420; Heartwell testimony.

many as four people, including Ms. Aslakson's husband were present and may have been involved to some extent in the assault.<sup>64</sup>

After Ms. Heartwell got away from her assailants, she saw her supervisor, Kevin Barry, who had been in a different room, and did not know about the assault. Mr. Barry advised her to be sure to call the police and report the assault.<sup>65</sup> She then left the hotel with her brother.<sup>66</sup>

At around nine a.m. the next day, Ms. Heartwell called APD and reported that she had been assaulted the previous evening at the Captain Cook by Stephanie Aslakon.<sup>67</sup> She stated that she wanted Ms. Aslakson arrested, and she took extra time to check the spelling of Ms. Aslakson's name.<sup>68</sup> APD dispatch sent a computer message dispatching Mr. Much to Heartwell's home to investigate the report. The computer message, which appeared on a screen in Mr. Much's car, stated that the assault was "*by Stephanie Aslakson at the Capt Cook hotel.*"<sup>69</sup>

Mr. Much arrived at Ms. Heartwell's home at around 12:21 p.m. Ms. Heartwell testified that she told Mr. Much that she wanted to press charges for the assault.<sup>70</sup> Mr. Much asked her what happened and why she had not called the night before when the assault occurred.<sup>71</sup>

Ms. Heartwell testified that she told Mr. Much the names of two of her assailants, Ms. Shine and Ms. Aslakson, but that she did not know the names of the others involved.<sup>72</sup> Ms. Heartwell testified that Mr. Much made clear there was little or nothing that he could do because she had not called the night before and he was not present during the assault.<sup>73</sup> He told her that her options were to make a citizen's arrest or get a restraining order.<sup>74</sup>

<sup>64</sup> Admin. Rec. at 505-06.

<sup>65</sup> Heartwell testimony.

<sup>66</sup> *Id.* (italics in Sgt. Ryan's Report).

<sup>67</sup> Niwa testimony; Admin. Rec. at 478

<sup>68</sup> Admin. Rec. at 418.

<sup>69</sup> Admin. Rec. at 397.

<sup>70</sup> Heartwell testimony. The evidence rules that apply to this hearing allow hearsay evidence to be considered only if it corroborates direct testimony. AS 44.62.460(c). Because Mr. Much did not testify, Ms. Heartwell's testimony, and earlier statements made by her or Mr. Much that corroborate her testimony, are the only admissible evidence to establish what was said in this conversation. Any out-of-court statement made by Mr. Much that does not corroborate Ms. Heartwell's testimony cannot be admitted for the purpose of establishing what was said by either Ms. Heartwell or Mr. Much during the interview on January 16, 2013. Out-of-court statements by Mr. Much that are against his interests (admissions) are admissible evidence, however. Alaska R. Evid. 801(d)(2).

<sup>71</sup> Heartwell testimony.

<sup>72</sup> *Id.* In other interviews that occurred out of court, Ms. Heartwell had stated that she was not sure that she had provided Mr. Much with names, because the interview was brief and not complete. Admin. Rec. at 425; Ryan testimony.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

After about 7-10 minutes with Ms. Heartwell, Mr. Much requested an incident number from dispatch. He wrote the incident number on the back of a business card, gave the card to Ms. Heartwell, and left.<sup>75</sup> He sent a message to dispatch saying that “she is going to get a restraining order” and that he was off to pick up a fellow officer for lunch.<sup>76</sup> He then cleared the call, which means that it was considered complete.

That evening, Ms. Heartwell went to court to file a petition for a protective order.<sup>77</sup> She filled out the form, and wrote out a two-page description of the incident. The form provided two boxes to check as grounds for a protective order, either “stalking” or “sexual assault,” and Ms. Heartwell checked “stalking.”<sup>78</sup> The magistrate denied the protective order, and explained that there had to “be two or more instances of repeated non-consensual contact” to issue a protective order based on stalking.<sup>79</sup> Ms. Heartwell testified that she interpreted this to mean “I have to get beat up two or more times before they do something.”<sup>80</sup>

Ms. Heartwell continued to seek action on the matter, and on Tuesday, January 18, 2011, she called the Captain Cook Hotel, and asked for a copy of the video of the assault that had been captured by the hotel’s security cameras.<sup>81</sup> The hotel security office told her that an APD officer was already enroute to the hotel to pick up a different video, and that the office would give the video of her assault to this officer.<sup>82</sup> When Officer Aaron Roberts picked up the videos, and learned about the assault of Ms. Heartwell from the hotel security personnel, he began an investigation. His investigation included an interview with Ms. Heartwell, taking pictures of her injuries, and having a hotel official identify Ms. Aslakson from a photo lineup. Following his investigation, Officer Roberts filed a police report and obtained a warrant for the arrest of Ms. Aslakson.<sup>83</sup>

During Officer Roberts’ investigation, APD learned that Mr. Much had not filed a police report following his investigation of the incident. On January 25, 2011, Sgt. Davis ordered Mr.

---

<sup>75</sup> Heartwell testimony.

<sup>76</sup> Admin. Rec. at 399.

<sup>77</sup> Admin. Rec. at 503.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 502.

<sup>80</sup> Heartwell testimony. Ms. Heartwell later filed a second Petition for Protective Order, which was assigned a different case number. Admin. Rec. at 510. She withdrew that petition. *Id.*

<sup>81</sup> Admin. Rec. at 419.

<sup>82</sup> *Id.*

<sup>83</sup> Admin. Rec. at 456-60; 474.

RECEIVED

JAN 17 2014

Decision

Police Standards Council

Much to file a report on the incident "ASAP."<sup>84</sup> Mr. Much then wrote and submitted the following:

On 01-16-2011 at 1215 hrs, I was sent to an assault call at [REDACTED] [REDACTED] comments (sic) of the call stated HEARTWELL had been assault (sic) at her company party and wanted to talk to the police about the incident. Upon arrival, I met HEARTWELL who stated she had been assaulted by a group of people at her company the night before. HEARTWELL said she was not sure who had hit her by (sic) she had been pushed in a corner by a group of girls by the coat room. HEARTWELL stated she thinks it was either STEPHANIE ASLAKSON or EMMA SHINE who had assaulted her but again was not sure. HEARTWELL stated she was just happy to leave the party and go home. HEARTWELL stated her boss at work was taking care of the problem and she did not think an arrest was needed for the assault. HEARTWELL stated she just wanted the incident document. (sic) I completed a supplemental report to document the incident.

I DID NOT TAPE MY CONTACT

Action taken:

I completed a supplemental report and gave HEARTWELL an APD Business card with the incident number on it. I advised HEARTWELL about the restraining order process and she could apply for one if she thought it was needed. HEARTWELL said she did not think she was going to need a restraining order because her boss was going to fire the girls involved anyway.<sup>85</sup>

After Mr. Much filed this report, APD began an investigation to determine whether it warranted a criminal action against Mr. Much. APD's legal theory was that filing a false police report might violate laws prohibiting tampering with public records.<sup>86</sup> The criminal investigation was assigned to Detective Niwa.

As part of the investigation, Detective Niwa determined that an audio file from Mr. Much's hand-held digital recorder had never been uploaded onto APD's server. By reviewing the dates of the files on either side of the missing audio file, Detective Niwa determined that the missing recording had been made between January 9, 2011, and January 21, 2011—the time interval when the interview with Ms. Heartwell occurred. He and another officer obtained a

---

<sup>84</sup> *Id.* at 440.

<sup>85</sup> *Id.* at 461-62.

<sup>86</sup> Niwa testimony.

RECEIVED

JAN 17 2014

search warrant to seize the digital recorder from Mr. Much's home.<sup>87</sup> They never served the warrant, however, because Mr. Much voluntarily produced the recorder when they asked for it.<sup>88</sup>

The file that was missing from APD's server had been erased from Mr. Much's hand recorder. Although forensics specialists can sometimes recover erased digital files, by chance, this file had been recorded over, and it was not recoverable.<sup>89</sup>

In the investigation, Detective Niwa and his associate, Detective Anderson, reviewed dispatch recordings of calls from Ms. Heartwell and the Captain Cook Hotel, and the radio traffic with Mr. Much. They interviewed the director of security at the Captain Cook, Jeff Beelman, Officer Roberts, Mr. Barry, Ms. Heartwell, Ms. Heartwell's godparents James Butler and JoAnn Roberts-Butler (with whom Ms. Heartwell was living at the time of her interview with Mr. Much, and who witnessed, but did not hear, the interview), and other potential witnesses.<sup>90</sup> Detective Niwa determined that APD had probable cause to conclude that Mr. Much had committed a crime by submitting a false police report.<sup>91</sup> He sent the file to the Office of Special Prosecutions and Appeals for evaluation. The Supervisor of Special Prosecutions, John Skidmore, determined that due to the delay between the incident and the drafting of the report, the evidence was insufficient to meet the burden for a criminal trial, and referred the matter back to APD.<sup>92</sup>

APD then opened a new investigation, this time as an administrative personnel matter, rather than as a criminal matter.<sup>93</sup> The case was assigned to Sgt. Ryan, who also reviewed all of the materials. On March 15, 2011, Sgt. Ryan interviewed Mr. Much. At the start of the interview, Mr. Much signed APD's standard pre-interview (Garrity) admonition, and indicated that he understood that he was being ordered to be truthful.<sup>94</sup>

In this interview, Mr. Much was able to recall where the interview occurred within the house, the layout of the house, the lighting conditions in the house, the extent of Ms. Heartwell's injuries, Ms. Heartwell's complexion and demeanor, and the first three questions that he asked.<sup>95</sup>

---

<sup>87</sup> Anderson testimony; Niwa testimony.

<sup>88</sup> *Id.*

<sup>89</sup> Dunn testimony.

<sup>90</sup> Admin. Rec. at 478-82.

<sup>91</sup> Niwa testimony.

<sup>92</sup> Admin. Rec. at 516; Ryan testimony.

<sup>93</sup> Ryan testimony.

<sup>94</sup> Admin. Rec. at 519; 604.

<sup>95</sup> *Id.* at 521-22. Although Mr. Much said that he remembered Ms. Heartwell's injuries, he described them as minimal. Later in the interview, when he was shown pictures of her injuries, he stated that he did not remember any

He recalled that his fourth question was “do you know who hit you?”, but his statements on how she answered that question were inconsistent.<sup>96</sup> First, he said “I don’t recall if she gave me names or not.”<sup>97</sup> Then he said “I think she did.”<sup>98</sup> Then “I didn’t remember her saying an actual name but, she said it was someone from her work um, had hit her and um – but she wasn’t sure who hit her.”<sup>99</sup> When Sgt. Ryan asked “You don’t remember if she mentioned names or not?”, Mr. Much first said that he did not recall what she said, and then concluded, “[s]he didn’t give me any names.”<sup>100</sup>

The interview was quite lengthy, and returned several times to the question of whether Ms. Heartwell knew the name of the assailant who had struck her and whether she gave him the names of her assailants. Mr. Much retreated back to being unsure about whether she gave him any names, but he stated repeatedly that “she said she didn’t know which one hit her.”<sup>101</sup>

During the interview, Mr. Much asserted that after he told Ms. Heartwell what was involved in a private person arrest, she said she did not want to do that and that her boss was going to be take care of it.<sup>102</sup> Although he explained the option of pursuing a restraining order, she said she did not think that would be necessary.<sup>103</sup> Mr. Much said he had not read the message on the computer-aided dispatch naming Ms. Aslakson as the assailant.<sup>104</sup>

When asked about the police report, Mr. Much explained that when he was first asked to write a report, he did not remember ever being on the call at all.<sup>105</sup> Later, when he was ordered to write the report, he had no notes from the incident, although he had read Officer Roberts’ report.<sup>106</sup> He explained that when he put the two names in his report, Aslakson and Shine, he took them from Officer Roberts’ report because he did not remember the names. He justified this by saying “I thought that she had mentioned someone, she said from work and I assumed

---

but the small mark he had described earlier. *Id.* at 567-68. The pictures show, however, that Ms. Heartwell had substantial visible bruising. *Id.* at 465-70.

<sup>96</sup> *Id.* at 522.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 525. *See also id.* at 525; 540; 550; 552; 554; 588; 591; 592.

<sup>102</sup> *Id.* at 523; 524; 603.

<sup>103</sup> *Id.* at 524.

<sup>104</sup> *Id.* at 525-26.

<sup>105</sup> *Id.* at 531.

<sup>106</sup> *Id.* at 533.

RECEIVED

JAN 17 2014

that those were names from her work, but I – I didn't know.”<sup>107</sup> He admitted “I didn't know it to be true.”<sup>108</sup> He admitted it was incorrect to put into his report that “HEARTWELL stated she thinks it was either STEPHANIE ASLAKSON or EMMA SHINE who had assaulted her” because at the time he wrote the report he did not remember her saying that, and he just took the names from Officer Roberts' report.<sup>109</sup>

He also admitted that Ms. Heartwell had never told him where the assault occurred, and that he had not asked that question.<sup>110</sup> He admitted that Ms. Heartwell had wanted the incident documented, but asserted that having an incident number was sufficient documentation, and that a report was not necessary.<sup>111</sup> Mr. Much also admitted that he had not conducted a proper investigation.<sup>112</sup> He denied, however, that he wrote the report the way he did in order to cover up his improper investigation.<sup>113</sup>

Sgt. Ryan then drafted a report of his investigation. The report sustained four violations of APD policies. First, he found that Mr. Much had violated the policy relating to duty requirements because Mr. Much did not complete a thorough investigation and write a police report when he was dispatched to investigate the report of the assault against Ms. Heartwell.<sup>114</sup> Second, he found that Mr. Much violated the policy relating to a police officer's responsibility to assist private citizens in making arrests because he did not thoroughly explain the process to Ms. Heartwell and make clear that he would assist her.<sup>115</sup> Third, he found that the policy on preserving recordings was violated because Mr. Much deleted a recording on his handheld recorder. APD policy requires that all recordings, even accidental recordings, be submitted into the digital evidence system before deletion.<sup>116</sup>

Finally, Sgt. Ryan sustained a finding that Mr. Much had violated the duty of honesty when Mr. Much “failed to be accurate and factual on an official police report.”<sup>117</sup> Sgt. Ryan identified two different aspects of this violation. The first was based on Mr. Much's admission

<sup>107</sup> *Id.* at 534.

<sup>108</sup> *Id.* at 556.

<sup>109</sup> *Id.* at 583.

<sup>110</sup> *Id.* at 535.

<sup>111</sup> *Id.* at 537.

<sup>112</sup> *Id.* at 562.

<sup>113</sup> *Id.* at 564.

<sup>114</sup> *Id.* at 421-22; Ryan testimony.

<sup>115</sup> Admin. Rec. at 422-23; Ryan testimony.

<sup>116</sup> Admin. Rec. at 426-27; Ryan testimony.

<sup>117</sup> Admin. Rec. at 423-26; Ryan testimony.

RECEIVED

JAN 17 2014

that the statement “she thinks it was either Stephanie Aslakson or Emma Shine who had assaulted her,” was not “based on his memory of the incident.”<sup>118</sup> Second, Sgt. Ryan noted the inconsistencies between the facts stated by Ms. Heartwell in numerous interviews, and the representations made in Mr. Much’s report. He noted that not only did Ms. Heartwell always and consistently identify Ms. Aslakson as the assailant who had punched her, she also showed a consistent interest in wishing to pursue charges against Ms. Aslakson. This was documented in her first call to APD dispatch, her going that night to the courthouse to seek a protective order, and her cooperation with Officer Roberts in the arrest process. In contrast, Mr. Much’s version was internally inconsistent, because he claimed that she did not know who had hit her, yet he said that he offered her the options of a citizen’s arrest or a protective order, both of which require knowing the name of the assailant. Sgt. Ryan concluded, “[i]t is unreasonable to believe Ofc. Much’s account of his contact with Heartwell, that she did not know who assaulted her for sure, did not want to complete a PPA and appear in court, and did not think that anything legally needed to be done. Heartwell’s account has more credibility based upon the totality of the circumstances and investigation.”<sup>119</sup>

**C. APD’s follow-up to the two investigations**

In April 2011, before the two internal investigations of Mr. Much had been finalized, APD Chief Mark Mew and other members of his staff met with Sgt. Derek Hseih, the president of the Anchorage Police Department Employee’s Association, regarding Mr. Much.<sup>120</sup> The meeting was at the request of the Employee’s Association.<sup>121</sup> At the hearing, neither Chief Mew nor Mr. Hseih could remember the precise terms of the agreement, but Sgt. Hseih testified that he and Chief Mew agreed that if Mr. Much resigned, the APD would release information about Mr. Much only if Mr. Much provided a release.<sup>122</sup> He also recalled agreement that no additional disciplinary action against Mr. Much would be taken by APD.<sup>123</sup>

Sgt. Hseih then met with Mr. Much.<sup>124</sup> Randy Lukasik, Bianca’s father, attended that meeting. Mr. Lukasik testified that he understood the agreement included a provision that no negative information would be included in Mr. Much’s personnel file that would preclude Mr.

<sup>118</sup> Admin. Rec. at 423.  
<sup>119</sup> *Id.* at 420-21.  
<sup>120</sup> Mew testimony; Hseih testimony.  
<sup>121</sup> Mew testimony.  
<sup>122</sup> Mew testimony; Hseih testimony.  
<sup>123</sup> Hseih testimony.  
<sup>124</sup> Hseih testimony.

**RECEIVED**

**JAN 17 2014**



Much from working in law enforcement.<sup>125</sup> On April 19, 2011, Mr. Much sent a letter of resignation to Chief Mew, making his resignation effective May 18, 2013.

When a police officer resigns or otherwise ceases to be employed as a police officer, the officer's employer must file a report with the Council within 30 days.<sup>126</sup> The report must state the reason for the change in employment, including whether it was a voluntary resignation to avoid an adverse action, and whether the employer has made any findings regarding the officer's lack of good moral character.<sup>127</sup> To facilitate reporting, the Council provides police departments with a form, called an F-4 form for reporting the separation.

APD's original F-4 personnel action form for Mr. Much's resignation was not filled out or signed by Chief Mew.<sup>128</sup> The form is dated "5/11/11," but is stamped as received by the Council on January 3, 2012. The form was checked "yes" in answer to the questions, "Do you recommend de-certification?" and "Did the employee resign or retire in lieu of termination?"<sup>129</sup> It was checked "no" in answer to "Would you rehire?" and "yes" to "Was the employee under any investigation for wrongdoing?"<sup>130</sup>

Approximately a year later, Mr. Much brought the original F-4 form to Sgt. Hseih, complaining that the form violated the agreement with Chief Mew.<sup>131</sup> Chief Mew testified that the Employee's Association brought the F-4 form to him, and informed him that the F-4 violated the agreement that had been reached regarding Mr. Much's resignation.<sup>132</sup> Chief Mew recalled that he and Sgt. Hseih had, in fact, discussed which boxes of the F-4 were to be checked, but he could not recall the specifics.<sup>133</sup> He accepted the Association's request that he redo the F-4, and on January 29, 2013, he filled out and signed a new F-4, which answer "no" to the questions, "Do you recommend de-certification?" and "Did the employee resign or retire in lieu of termination?"<sup>134</sup> The new form was still checked "no" in answer to "Would you rehire?" and "yes" to "Was the employee under any investigation for wrongdoing?"<sup>135</sup> Chief Mew testified

125

Lukasik testimony.

126

13 AAC 85.090(b); Alzaharna testimony.

127

*Id.*

128

Mew testimony; Much Exhibit 3.

129

Much Exhibit 3.

130

*Id.*

131

Hseih testimony.

132

Mew testimony.

133

*Id.*

134

*Id.*; Admin. Rec. at 16.

135

*Id.*

RECEIVED

JAN 17 2014

that he felt it was accurate to say that Mr. Much did not resign in lieu of termination because APD had not made the decision to terminate him at the time of the agreement and resignation. The Executive Director received the modified F-4 on January 30, 2013, and issued the accusation initiating this hearing on February 20, 2013.<sup>136</sup>

### III. Discussion

#### A. The Accusation and the regulatory requirements for revocation of a police certificate

After receiving information from APD regarding Mr. Much, the Executive Director of the Police Standards Council investigated the matter by requesting APD's administrative files on Mr. Much.<sup>137</sup> On February 20, 2013, the Executive Director filed a one-count accusation against Mr. Much that sought to revoke his police certificate.<sup>138</sup> As the factual basis for revocation, the accusation alleged the two courses of conduct described above—Mr. Much's actions regarding the September 2010 welfare check, and his actions regarding the January 2011 police report.<sup>139</sup>

The regulation under which the Executive Director sought revocation, 13 AAC 85.110(a)(3), provides that the Council may, but is not required to, revoke a police officer's certificate if the officer does not meet basic standards.<sup>140</sup> The basic standards are established by the Council in 13 AAC 85.010. The accusation alleges that Mr. Much failed to meet the standard requiring that a certified officer be "of good moral character."<sup>141</sup> The Council has defined "good moral character" as follows:

"good moral character" means the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States; 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;<sup>142</sup>

<sup>136</sup> Admin. Rec. at 16.

<sup>137</sup> Alzaharna testimony.

<sup>138</sup> Admin. Rec. at 6-9.

<sup>139</sup> *Id.*

<sup>140</sup> 13 AAC 85.110(a)(3) ("(a) The council will, in its discretion, revoke a basic, intermediate, or advanced certificate upon a finding that the holder of the certificate . . . (3) does not meet the standards in 13 AAC 85.010(a) or (b)");

<sup>141</sup> 13 AAC 85.010(a) ("(a) A participating police department may not hire a person as a police officer unless the person meets the following qualifications: . . . (3) is of good moral character").

<sup>142</sup> 13 AAC 85.900(7).

The Executive Director has the burden of proof in this proceeding, and the Executive Director must prove the case by a “preponderance of the evidence.”<sup>143</sup> This means that for the Executive Director to prevail, the facts proved at the hearing must establish that it is more likely than not that Mr. Much is not of good moral character, as that term is defined by the Council. The Council has interpreted the term “good moral character” in a previous case, *In re Bowen*.<sup>144</sup> Further examination of *Bowen’s* interpretation follows.

**B. Under the *Bowen* case, the Executive Director must prove substantial doubt about Mr. Much’s honesty, fairness, respect for the rights of others, and respect for the law**

*Bowen* involved a police officer who admitted that he engaged in inappropriate sexual conduct related to his official position.<sup>145</sup> The Executive Director charged Trooper Bowen with two counts in an accusation seeking revocation of Trooper Bowen’s police certificate. The first count alleged that Trooper Bowen was discharged from his position as a police officer in circumstances that warranted revocation of his certificate. The second count was identical to the count against Mr. Much here, alleging that Trooper Bowen was not of good moral character, and seeking revocation of Trooper Bowen’s certificate under 13 AAC 85.110(a)(3).

In determining whether to revoke Trooper Bowen’s certificate, the Council carefully scrutinized the definition of “good moral character.” With regard to how to apply the four elements of good moral character, the Council held that “the definition does not provide for a finding that a person lacks good moral character based on only one of the listed considerations: it calls for conduct that creates substantial doubt with respect to all of them.”<sup>146</sup> Consistent with this interpretation, the Council found that the Executive Director had failed to prove that Trooper Bowen was not of good moral character. Although the Council found that the evidence supported a finding of substantial doubt about Trooper Bowen’s respect for rights of others, it

<sup>143</sup> AS 44.64.460(e)(1).

<sup>144</sup> OAH No. 10-0327-POC (Alaska Police Standards Council 2011).

<sup>145</sup> *Id.* at 1.

<sup>146</sup> *Id.* Although *Bowen* does not explain why this interpretation is the best interpretation of 13 AAC 85.900(7), it appears that the Council considered the use of the conjunctive “and” instead of the disjunctive “or” in the list of elements of good moral character to require proof of all elements in the list. The Alaska State Board of Public Accountancy also requires “good moral character” for licensure, and its regulations define “good moral character” in exactly the same terms as the Council uses, although the Accountancy Board definition adds examples of what constitutes a lack of good moral character. 12 AAC 04.990(12). In *In re Zaiser*, the Accountancy Board upheld a denial of licensure on the grounds of a lack of good moral character by finding that the applicant lacked all four elements in the definition. OAH No. 08-0099-CPA at 8 (Alaska State Board of Public Accountancy 2008). *Zaiser*, however, did not include an in-depth discussion of any element other than honesty. *Id.*

also found that the Executive Director had not proved substantial doubt about Trooper Bowen's honesty, fairness, or respect for law.<sup>147</sup>

In presenting the case against Mr. Much, the Executive Director did not discuss *Bowen* or ask the Council to revisit *Bowen's* holding that substantial doubt about all elements of good moral character must be proved to revoke under 13 AAC 85.110(a)(3). Yet, in the prehearing brief, the opening statement, and the closing argument, the Executive Director discussed only honesty and integrity. The Executive Director did not discuss whether the evidence proved substantial doubt about Mr. Much's fairness, respect for the rights of others, or respect for law. It is not clear whether the Executive Director's silence on the other elements indicates that the Executive Director disagrees with *Bowen* or whether it means that the Executive Director was confident that the case against Mr. Much on honesty would necessarily establish all other elements.<sup>148</sup>

Although the Council is not bound by its prior interpretations of regulation, a prior decision should generally be followed unless documented reason exists for adopting a new interpretation.<sup>149</sup> Here, given that the Executive Director did not request that the Council reconsider *Bowen*, this decision will apply the holding of *Bowen* to the facts of this case, and consider whether the Executive Director proved substantial doubt regarding Mr. Much's honesty, fairness, respect for the rights of others, and respect for the law.

**C. Do Mr. Much's actions regarding the September 2010 welfare check incident establish that Mr. Much is not of good moral character?**

**1. Honesty**

The term "honesty" is not defined in regulation, but a standard dictionary definition includes "adherence to the facts; freedom from subterfuge or duplicity; truthfulness, sincerity."<sup>150</sup> This definition comports with a common sense understanding of honesty, and will be applied in this decision with the caveat that in police work, subterfuge may at times be appropriate. For example, as Chief Mew explained, police officers are permitted to use a certain

<sup>147</sup> *Bowen*, OAH No. 10-0327-POC at 15. The Council did, however, revoke Trooper Bowen's certificate under Count I. *Id.* at 13-14.

<sup>148</sup> *C.f.*, e.g., *Zaiser*, OAH No. 08-0099-CPA at 8.

<sup>149</sup> *See, e.g., May v. State*, 168 P.2d 873, 883 (Alaska 2007) ("Agencies are free to change course as their expertise and experience may suggest or require, but when they do so they must provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored."); *In re D.B.*, OAH No. 08-0697-PFD at 5 (Department of Revenue 2009) (holding that because division did not show that prior case was wrongly decided, "established agency precedent will therefore be applied in this case").

<sup>150</sup> *Webster's Third New Int'l Dict.* at 1086 (1986 Unabridged).

amount of deception in interrogating suspects or in undercover work, but not deception that “shocks the conscience.”<sup>151</sup> Therefore, a police officer might be able to defend against a charge of subterfuge or failure to adhere to the facts by showing that the subterfuge was appropriate official conduct under the circumstances.

With regard to the welfare check incident, Mr. Much’s statements and actions did not adhere to the facts, and he did engage in subterfuge and duplicity. In his calls to APD dispatch to request the welfare check on Skyler, for example, he asserted as fact that a court had ordered twenty-four hour cell-phone contact, when no such order exists. And although Mr. Much argued in closing argument that he had a good-faith belief that there was an order, no admissible evidence in the record supports that argument. Neither Mr. Much nor Ms. Lukasik testified, and Ms. Lukasik’s father, who did testify, did not say that he had told Mr. Much that the court had ordered cell-phone contact.<sup>152</sup> Given that the judge had explicitly stated that an order regarding cell phone use is exactly “[t]he type . . . of thing I can’t order,” and that Mr. Much either knew this or could easily have learned it, his statements regarding the existence of a court order in his calls to dispatch demonstrate a failure to adhere to the facts.

Mr. Much’s statements in his interview with Sgt. Davis create even more substantial doubt about his honesty. Here, after having been ordered to be truthful, Mr. Much engaged in subterfuge or duplicity about a material fact. As Mr. Much knew, having a police officer with first-hand knowledge about a court order is material to conducting a welfare check in a child custody situation. Police departments must avoid being used as pawns in welfare checks that might be unnecessary or even a sham intended to harass. Yet, Mr. Much deceived Sgt. Davis with answers that were intended to make Sgt. Davis believe that Mr. Much had first-hand knowledge of the relevant court orders. When Sgt. Davis asked “have you seen the documents?” and then clarified “the Alaska . . .” Mr. Much told him “I was at court . . . in September when the judge . . . .”<sup>153</sup> This statement clearly was intended to make Sgt. Davis believe that Mr. Much had heard the order and had first-hand knowledge of the content of the order. Mr. Much then confirmed that there was a “court document from Alaska from the September—ordering the

<sup>151</sup> Mew testimony. Chief Mew also testified that dishonesty that occurs after the Garrity admonition should be seen as substantial dishonesty because the police officer has been ordered to be absolutely truthful in answering questions. *Id.*

<sup>152</sup> Lukasik testimony. Although in the transcripts Mr. Much asserts that Bianca told him there was a court order, this evidence is hearsay, and can only be used to corroborate other direct evidence. AS 44.62.460(d).

<sup>153</sup> Admin. Rec. at 193.

phone.”<sup>154</sup> The statements, however, were not true—Mr. Much was not in the court at the relevant time, and it certainly was not true that he had first-hand knowledge of an order regarding cell phone use. He also confirmed that he had seen the Florida documents, which was intended to make Sgt. Davis believe that he had read those documents when in fact he had not.

At the end of the interview, it was clear that all three officers attending the session firmly believed that the court order existed, that Mr. Much had first-hand knowledge of the content of the order, and that Mr. Much had not misrepresented the facts to dispatch when he described the order and asserted that Mr. Koster was in violation of the order.<sup>155</sup> More blame was placed on dispatch than on Mr. Much.<sup>156</sup> Thus, 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.

In sum, Mr. Much gave APD dispatch inaccurate information, and deceived a superior officer during a formal investigation, which caused the officer to believe that the information given to dispatch was accurate and that a police officer had knowledge of court orders. This action would cause a reasonable person to have substantial doubts about Mr. Much’s honesty.

## 2. Fairness

*Bowen* defines “fairness” as used in 13 AAC 85.900(7) to mean “marked by impartiality and honesty: free from self-interest, prejudice or favoritism.”<sup>157</sup> Here, as described above, Mr. Much used his position to promote his interests, and the interests of Bianca and her parents. His actions put a burden on Mr. Koster (Skyler’s father), APD dispatch, and the Milwaukee Police Department. He knew that he had a special position as a police officer, and he used APD dispatch and Milwaukee PD as tools to forward his self-interest in a way that a member of the public could not. His actions would cause a reasonable person to have doubts about his fairness. Although the doubt about Mr. Much’s fairness may not be substantial based on this incident alone, as explained below, the total doubt about his fairness after consideration of both incidents, is substantial.

## 3. Respect for the rights of others

The Council has not previously addressed the question of what is a “right” for purposes of 13 AAC 85.900(7). To keep the standard for revocation or denial of a certificate high, and

<sup>154</sup> *Id.* (dash inserted).

<sup>155</sup> *Id.* at 213-17.

<sup>156</sup> *Id.* at 51-52.

<sup>157</sup> OAH No. 10-0327-POC at 15-16 (quoting Webster’s Ninth New Collegiate Dict. at 445 (1990)).

avoid arbitrary allegations of a lack of good moral character, a “right” for purposes of 13 AAC 900(7) should be defined to mean a right established in law, including constitutional, statutory, or common law.<sup>158</sup>

With regard to the September 2010 welfare check, Mr. Much showed disrespect for Skyler’s father and paternal grandparents by potentially subjecting them to an unwarranted welfare checks. He also did not respect APD dispatch employees, by trying to deflect blame onto dispatch employees—in his interview with Sgt. Davis, he placed responsibility for the welfare check on APD dispatch, saying that all he did was call dispatch “to ask a question.”<sup>159</sup> The issue of the rights of others was not well developed at the hearing, but all people generally have rights related to free from unwarranted harassment or false accusations. In addition, the Uniform Child Custody Act vests certain rights in custodial parents.<sup>160</sup> Mr. Much’s action showed some lack of respect for these concerns. In sum, Mr. Much’s actions would cause a reasonable person to have doubts about his respect for the rights of others. As with fairness, the substantiality of this doubt will be further discussed after consideration of the second incident.

#### 4. Respect for the law

Several aspects of Mr. Much’s actions in the 2010 welfare check matter indicate a lack of respect for the law. By using his connection with APD dispatch for his self-interest, and not being honest with dispatch and his superior officers in this matter, he has demonstrated a lack of respect for the oath he was required by law to take as a police officer, in which he promised to be honest and to be exemplary in obeying laws and the regulations of his department.<sup>161</sup> By being deceptive regarding the content of court orders while engaging with other official law officials, he showed a lack of respect for the courts and the legal process. By engaging APD dispatch and Milwaukee PD in official law enforcement actions that were not warranted, he demonstrated a lack of respect for the law enforcement process, which is a critical component of respect for the law. Mr. Much’s actions would cause a reasonable person to have substantial doubts about his respect for the law.

<sup>158</sup> Dictionaries offer several different definitions of the term “right,” some of which are very broad, and would tend to make a revocation action easier to prove. For purposes of 13 AAC 85.900(7), this decision adopts a narrower definition, such as the following: “a capacity or privilege the enjoyment of which is secured to the person by the power of law.” *Webster’s Third New Int’l Dict.* at 1955 (1986 Unabridged).

<sup>159</sup> Admin. Rec. at 215.

<sup>160</sup> AS 25.30.

<sup>161</sup> 13 AAC 85.040(b)(5).

RECEIVED

JAN 17 2014

**D. Do Mr. Much's actions regarding the January 2011 police report incident establish that Mr. Much is not of good moral character?**

**1. Honesty**

In Mr. Much's January 25, 2011, police report regarding the January 15, 2011, assault on Ms. Heartwell, Mr. Much stated that "HEARTWELL said she was not sure who had hit her."<sup>162</sup> In his official investigative interview with Sgt. Ryan in which he was ordered to be truthful, he repeated several times that Ms. Heartwell had stated that she did not know which of the women involved had actually hit her.

As Sgt. Ryan found, the evidence proves that Ms. Heartwell did not say to Mr. Much that she did not know which woman struck her. In her initial call to dispatch before meeting with Mr. Much, Ms. Heartwell provided the name of the woman who had struck her. Later that day, she went to court to seek a restraining order against the woman who had delivered the blow, and not against the other woman who had been involved.<sup>163</sup> Her testimony at the hearing was consistent with her statements in all of her interviews—she did not tell Mr. Much she did not know who hit her. Ms. Heartwell, who is now a nursing student, presented as a believable witness who had no reason to lie. Further, Mr. Much's own actions belie his statement—he suggested that she seek a restraining order, and in order to obtain a restraining order, Ms. Heartwell would need to know the name of her assailant.<sup>164</sup>

Moreover, on this record, no admissible evidence supports the truth of the assertion in Mr. Much's police report or in his statements to Sgt. Ryan that Ms. Heartwell could not recall which woman struck her. Mr. Much did not offer sworn testimony regarding what Ms. Heartwell said. The police report and his statements to Sgt. Ryan are hearsay, and can only be used to corroborate direct evidence.<sup>165</sup> No direct evidence that supports the version of events in Mr. Much's police report was submitted at the hearing. In contrast, Ms. Heartwell gave sworn testimony at the hearing that she never said that she did not know who struck her, and the evidence corroborating this testimony is compelling. In short, the evidence proves that Ms.

<sup>162</sup> Admin. Rec. at 461.

<sup>163</sup> Admin. Rec. at 504-06. Ms. Heartwell's application for a protective order shows that she remembered the incident in detail, and she knew very well that it was Ms. Aslakson who had punched her, first before any other women were involved, and then again when Ms. Heartwell was being held by the second assailant. Reading this account makes Mr. Much's assertion that Ms. Heartwell told him that she did not know for sure who had actually struck her unbelievable.

<sup>164</sup> Heartwell testimony.

<sup>165</sup> AS 44.62.460(d).

**RECEIVED**

**JAN 17 2014**



Heartwell did not say that she did not know which woman had struck her, and the statement to the contrary in Mr. Much's police report is false. This false statement alone would cause a reasonable person to have substantial doubts about Mr. Much's honesty.

Other statements in Mr. Much's January 25, 2011, police report, and in his interview with Sgt. Ryan, also raise doubts about Mr. Much's honesty. Mr. Much wrote in the police report that Ms. Heartwell had told him she did not think an arrest was needed and that her boss would take care of the problem.<sup>166</sup> He stated that he gave her information regarding a restraining order, but she said she did not think she would need one.<sup>167</sup> He told Sgt. Ryan that Ms. Heartwell had told him she was not interested in pursuing a private person's arrest procedure. Yet, Ms. Heartwell testified that she did not tell Mr. Much that she was unwilling to complete whatever forms were required, and she did not tell him that she did not want criminal charges filed.<sup>168</sup> She also did not tell him that her employer will take care of this, or that she did not want to go to court.<sup>169</sup> Her actions in calling the police, attempting to obtain a restraining order against her assailant, cooperating with Officer Robert's investigation, and her testimony at the hearing all demonstrate that Ms. Heartwell was determined to obtain justice. On this record, it is more likely than not that Mr. Much's statements regarding Ms. Heartwell's lack of interest in pursuing the matter are not factual. These statements also would cause a reasonable person to have substantial doubts about Mr. Much's honesty.

## 2. Fairness, respect for the rights of others, and respect for the law

The remaining three elements of good moral character—fairness, respect for the rights of others, and respect for the law—will be discussed together because Mr. Much's actions raise doubt about all three in a related manner. Mr. Much's initial action in doing a hurried and careless initial investigation on January 16, 2013, raises some doubt about his fairness to Ms. Heartwell, his respect for her right to obtain justice, and his respect for the laws on assault and for the oath he was required to take under law.<sup>170</sup>

<sup>166</sup> Admin. Rec. at 461.

<sup>167</sup> *Id.* at 462.

<sup>168</sup> Heartwell testimony.

<sup>169</sup> Heartwell testimony.

<sup>170</sup> Mr. Much established through witness testimony and cross-examination that a police officer might, in some circumstances, reasonably respond to a misdemeanor assault dispatch by merely leaving a business card with a dispatch number, and never doing any further investigation or filing a police report. *See, e.g.*, cross examination of Ryan, Mew; testimony of Hsieh, Card. *But see also* testimony of Niwa (stating that police officer should always file police report on misdemeanor assault if crime has been committed). Even if Mr. Much's actions could be appropriate in some circumstances, however, here, he admitted that his investigation was not proper. Admin. Rec. at

More compelling is the false police report filed on January 25, 2013, which raises substantial doubt about all three remaining elements of good moral character. In particular, the clearly false assertion by Mr. Much that Ms. Heartwell told him that she did not know the name of the woman who hit her establishes substantial doubt about all three. By asserting that Ms. Heartwell had said she did not know the name of her assailant on the morning after her assault, Mr. Much took action that would cast doubt on Ms. Heartwell's credibility as a witness, and could undercut the prosecution's ability to obtain a conviction. His willingness to put this false statement in a police report would raise substantial doubts about his fairness to Ms. Heartwell because he used his official position to cover up his errors at the expense of Ms. Heartwell's credibility. His actions show no respect for the constitutional right of a victim "to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice proceedings."<sup>171</sup> His action places his interest in avoiding discipline above a victim's ability to seek justice and taints an official law enforcement instrument.

Each of the other false statements in the police report also raises significant doubt about Mr. Much's fairness, respect for the rights of others, and respect for the law. Mr. Much's police report falsely indicates that Ms. Heartwell was not interested in pursuing the matter, and he falsely attributes statements to her that she expected her employer to take care of the problem. These statements would also undercut any subsequent action. This is unfair to Ms. Heartwell, shows a lack of respect for her rights, and a lack of respect for any subsequent legal proceedings. In sum, Mr. Much's actions in the January 2011 Heartwell investigation and police report would cause a reasonable person to have substantial doubts about his honesty, fairness, respect for the rights of others, and respect for the law. When Mr. Much's actions in the 2010 welfare check incident are also considered, the doubts become even more substantial.

**E. Does the erroneous F-4 form and the delay in reporting by APD affect whether Mr. Much is of good moral character or whether his certificate should be revoked?**

Before turning to whether the conclusions reached regarding Mr. Much's moral character warrant revocation, this decision will discuss the two arguments that Mr. Much made at the hearing regarding why the Council should not revoke his certificate. First, he argued that the errors made by APD in processing his F-4 should exonerate him. Second, he argued that the

---

564. Mr. Much is correct that his initial investigation, standing alone, would not be grounds for revocation, but given his false police report, the grounds for revocation are clearly established by his actions.

<sup>171</sup> Alaska Const. art I, § 24.

testimony of witnesses that he was a person of honesty and integrity shows that he has good moral character.

Mr. Much proved at the hearing that APD did not properly process his F-4 form. First, it did not file the F-4 form within thirty days as required by 13 AAC 85.090(b). Second, the original F-4 form was not filled out consistently with the agreement that the Anchorage Police Department Employee's Association had reached with Chief Mew. For both of these reasons, Mr. Much argued that the Council should not pursue its case against his certificate.

With regard to the thirty-day requirement, that requirement applies to the Anchorage Police Department. APD, however, is not a party to this proceeding, and the Council is not bound by APD's processes or findings. The law requires that the Council administer the laws regarding police officer certification.<sup>172</sup> It follows that the Council must take action regarding a police officer's certificate without regard to whether the officer's employer is timely in its filings. If APD is out of compliance with administrative requirements, the remedy would be to take administrative action to bring APD into compliance. No law requires or allows the Council to reinstate a police officer or abandon a revocation action just because an employer has not met an administrative time requirement established in regulation.

With regard to the original F-4 being contrary to the agreement between Chief Mew and Mr. Much, the Council was not a party to that agreement, and Mr. Much's remedy for a breach of that agreement would be against APD, not the Council. Moreover, Mr. Much was not prejudiced by the original F-4. His case was not treated as a "resigned in lieu of termination" case—if it had been, Mr. Much would have been subject to mandatory revocation, rather than the discretionary revocation sought here.<sup>173</sup> Executive Director Alzaharna testified that had she received only the amended F-4, she still would have processed the matter as a case for investigation, which would have revealed the same underlying facts and record that led to the accusation seeking revocation.<sup>174</sup>

Finally, Mr. Much argued that Chief Mew's failure to adhere to the agreement, and allowing the erroneous F-4 form to be sent out, raises, in Mr. Much's view, issues with Chief Mew's integrity and honesty. Here, Mr. Much appears to be invoking the equitable doctrine of "unclean hands," under which a person who has committed wrong may not seek relief in an

<sup>172</sup> AS 18.65.220(6).

<sup>173</sup> Compare 13 AAC 85.110(a)(3) with 13 AAC 85.110(b)(3).

<sup>174</sup> Alzaharna testimony.

action based on equity. Here, however, neither Chief Mew nor APD is a party to this action, and this action is based on statute, not equitable doctrines. Accordingly, the error in filling out the original form is not relevant to this proceeding.<sup>175</sup>

**F. Does the character witnesses' testimony affect the determination of whether Mr. Much is of good moral character?**

Several witnesses testified about their opinion of Mr. Much's character. Chief Mew, Sgt. Ryan, and Detective Niwa all testified that as to the incidents within their knowledge, they concluded that Mr. Much was not a truthful person.<sup>176</sup> Mr. Much's former colleague Archie Card, on the other hand, testified that in his experience, Mr. Much handled calls professionally and was honest.<sup>177</sup> Bianca's father, Randy Lukasik, himself a former commissioned air force officer with classified clearance, testified that he considered Mr. Much a person of honesty and integrity.<sup>178</sup> Most significant was the testimony of Mr. Much's current employer, Kyle Patterson, who employs Mr. Much to work as a supervisor for an armored transport service. Mr. Patterson testified that Mr. Much was an outstanding employee who did not cut corners and who had high standards for professionalism, leadership, integrity, work ethic, and morals.<sup>179</sup>

Mr. Much argued in closing argument that he is a person of honesty and integrity. Although Mr. Much did not testify, his conduct at the hearing, his written and oral arguments, his conduct during the investigations, and the testimony of his character witnesses provide general support for the conclusion that he values truthfulness, honesty, and integrity, and that he believes that his internal compass is calibrated to guide him by those values. Therefore, it is not surprising that his employer and friends would trust him and see him as person integrity. Yet, even if Mr. Much values truth and integrity, if the compass that guides him on those values allows him to deceive a superior officer in an official interview, and to submit a false police report, then for purposes of evaluating his fitness for holding a police officer certificate, he must be considered to not have good moral character.

**G. Should the Council exercise its discretion to revoke Mr. Much's certificate?**

As shown above, this record establishes that Mr. Much does not meet the Council's regulatory requirement of having good moral character, as defined under 13 AAC 85.900(7).

<sup>175</sup> Nothing in this decision should be taken to reflect negatively on Chief Mew or imply that the mistake in the original F-4 was anything other than a simple mistake.

<sup>176</sup> Mew, Ryan, and Niwa testimony.

<sup>177</sup> Card testimony.

<sup>178</sup> Lukasik testimony.

<sup>179</sup> Patterson testimony.

Yet, the regulation at issue in the accusation does not require the Council to revoke a certificate if the Executive Director proves that a police officer does not have good moral character—it merely provides that the Council may, in its discretion, elect to revoke the certificate of an officer who fails to meet basic standards. This raises the question of what circumstances warrant revocation.

Employment of a police officer who is dishonest has been recognized by the Alaska Supreme Court to be against public policy.<sup>180</sup> In reviewing the Council’s regulations defining good moral character, however, the court noted that “minor acts of dishonesty” might not require that the police officer be terminated as a matter of public policy.<sup>181</sup> In contrast, 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.<sup>182</sup> Indeed, the court noted that if a police officer “had lied to a superior within the scope of a formal investigation directly related to his duties to the public,” public policy would likely require the termination of that officer’s career in law enforcement.<sup>183</sup>

Here, Mr. Much was dishonest in answering questions from his superior officer in an official investigation involving his duty to ensure that a court order existed and was being violated before subjecting a custodial parent to a welfare check. He was also dishonest in a police report, and in the subsequent investigation of the truthfulness of that report, which indicates that, under the court’s interpretation of the Council’s regulations, Mr. Much should not be certificated as a matter of public policy.

Other considerations also would favor revocation of Mr. Much’s certificate as a matter of policy. In the hearing, the Executive Director provided testimony from Sharon Marshall, the Chief Prosecutor in the State’s District Attorney office in Anchorage. Ms. Marshall explained that in a criminal prosecution, if a prosecutor knows that a police officer has been dishonest in the course of his job, the prosecutor must provide that information to the defendant, even if it is

<sup>180</sup> *State v. Public Safety Employees Ass’n*, 237 P.3d 151, 162 (Alaska 2011).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* The discussion of the Council’s regulation in *Public Safety Employees Ass’n* implies that substantial dishonesty alone could be a sufficient reason for revoking a police certificate. That discussion raises some doubt about *Bowen’s* interpretation of 13 AAC 85.900(7) that all elements of good moral character must be proved to establish grounds for revocation.

not related to the current case.<sup>184</sup> Because the police officer's testimony would be subject to impeachment, defendants who would otherwise be convicted might be acquitted, or prosecutors might decline to prosecute cases that rely upon the testimony of an untrustworthy police officer. In the case of a police officer like Mr. Much, if the Council has made the determination that a police officer is not honest, particularly in situations that relate to the officer's official duties or to answering questions in an official investigation, Ms. Marshall's testimony strongly suggests that the officer could no longer effectively serve in a law enforcement capacity.<sup>185</sup>

Although no Alaska cases and no witnesses discussed the other elements of good moral character, the public should be assured that police officers are fair, respect the rights of others, and have respect for the law. Where doubts about a police officer's fairness, respect for the rights of others, and respect for the law are as strong as those raised by Mr. Much's actions, the need to maintain public confidence in the integrity of law enforcement officers suggests that the police officer's certificate should be revoked.

In sum, 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. It follows that here, Mr. Much's certificate should be revoked.

//  
//  
//  
//  
//  
//

---


<sup>184</sup> Marshall testimony (citing *Brady v. Maryland*, 295 U.S. 78, (1935); *Giglio v. United States*, 405 U.S. 150 (1972)). Ms. Marshall did not identify what degree of dishonesty triggered the obligation to report. She explained that if her office was unsure about its obligation to report possible police officer dishonesty, its practice was to forward the information to the court, and ask the court to determine whether the information had to be reported to the defendant.

<sup>185</sup> Because a prosecutor would be required to turn over a finding of dishonesty made by the employer, here, the Executive Director argued that the Council should revoke Mr. Much's certificate based on the findings by Sgt. Ryan that Mr. Much was dishonest. Yet, the Council is not bound by decisions made by the employing police department. A police department may have different policy considerations than the Council. Therefore, the Council should make independent findings, and not be bound by any decision made by an employer, either up or down, on issues like a police officer's honesty or employment.

**IV. Conclusion**

Mr. Much's actions establish that Mr. Much is not of good moral character, as that term is defined by the Council. Because evidence demonstrates that Mr. Much could not effectively serve as a police officer, and because public policy requires that the public have confidence in law enforcement officers, Mr. Much's police certificate is revoked.

DATED this 7<sup>th</sup> day of October, 2013.


By:   
Stephen C. Slotnick  
Administrative Law Judge

Adoption

The undersigned adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

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 3<sup>rd</sup> day of December, 2013.

By:   
Sheldon Schmitt  
Chair, Alaska Police Standards Council

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:

Steven Much

John Novak, AAG

Kelly Alzaharna, APSC

Signature

Date

Neil Robert 12/17/13

RECEIVED

NOV 21 2013

Police Standards Council

RECEIVED

JAN 17 2014

Police Standards Council



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

Steven W. Much,

Appellant,

vs.

Alaska Police Standards Commission,

Appellee.

Case No. 3AN-14-4466 CI

Opinion

Summary.

In this administrative appeal, Steven W. Much argues the Alaska Police Standards Commission (APSC) should not have revoked his police officer certification. Mr. Much contends first that APSC's accusation did not give sufficient notice of the conduct at issue and thus deprived him of due process. Mr. Much next asserts the Commission should not have relied on the F-4 form completed by APD upon his separation from that department to revoke his certification. The gravamen of that argument is that APD agreed not to take an action adverse to Mr. Much at the time he voluntarily resigned. On the merits of the conduct which formed the basis of the revocation, Mr. Much argued the facts did not support the Commission's finding that he lacked good moral character. Finally, Mr. Much asserts that the conduct found by the ALJ did not warrant revocation of his certification.

In its brief, APSC first argues that Mr. Much waived any argument regarding notice and continues that in any event, he received sufficient notice to pass muster on due process grounds. As

to use of the F-4, APSC argues it was not relied upon at all and to the extent the form should not have been submitted with inaccurate information, it has no bearing on the instant case. As to Mr. Much's actions, APSC points to substantial evidence in the record to support a finding of poor moral character. Since that is a determination within APSC's agency expertise, it asks this court to defer to its decision. APSC likewise urges the court to accept revocation as an appropriate response to Mr. Much's actions, arguing it has ample discretion to do so on the record here.

#### Facts and Proceedings.

The parties' views of the underlying facts leading to this appeal are not too disparate. There are two incidents that form the bases for APSC's accusation: Mr. Much's attempt, on behalf of his girlfriend Bianca Lukasik, to have the Milwaukee, Wisconsin, police department perform a welfare check on the father of Ms. Lukasik's daughter Skyler, over whom the parents were engaged in a custody dispute; and (2) Mr. Much's handling of an APD case involving allegations by Krissa Heartwell that she was assaulted by her co-worker Stefanie Aslakson during an office party. The gist of APSC's allegations as to the first incident is that Mr. Much inappropriately used his position as an Anchorage police officer for the benefit of his girlfriend in an effort to induce Milwaukee police to conduct a welfare check, then was not forthcoming about his actions when investigated by APD. The essence of APSC's concerns about the second incident is that Mr. Much led APD to believe he had taken actions in the course of an investigation of Ms. Heartwell's complaints, but had not actually done so, and in addition Mr. Much mislead his superiors about what he actually did.

APD investigated both incidents, in the course of which investigators reviewed transcripts of court hearings and dispatch recordings, interviewed pertinent witnesses, performed a forensic

examination of Mr. Much's audio recorder, and reviewed documentary evidence relating to the two incidents. APD itself did not take any disciplinary or other action against Mr. Much. Rather, Mr. Much and APD agreed that he could resign his position with APD, and APD would not use either incident to take any action adverse to Mr. Much. However, APSC's executive director lodged the accusation here based on a review of APD's investigation. After a two-day hearing, at which the ALJ took testimony and reviewed the investigative files from APD, the ALJ determined that APSC had proved by a preponderance of the evidence that Mr. Much lacked the necessary moral character to hold a police certification, and revoked that certification. APSC adopted the result reached by the ALJ. Mr. Much timely appealed. This court has jurisdiction of this administrative appeal.

In the decision at issue, the ALJ thoroughly sets forth the facts found as to each of the described incidents. Decision at 1 – 17. The information garnered by APD during the course of its own thorough investigations is related, including court and dispatch transcripts, interview, documents, and the forensic examination of Mr. Much's audio recorder. Of course the records and interviews developed by APD during those investigations are part of the record here, and formed the essential basis of the accusation that Mr. Much lacked good moral character so should not hold a police officer certification. APD's investigation and the hearing record were reviewed by this court, too. Based upon the evidence, the ALJ found that Mr. Much lacked the moral character required for police officer certification and recommended revocation of that certification, a recommendation that as noted was adopted by APSC.

#### Standard of Review.

The standard of review employed in an appeal of an administrative agency's decision often

foreshadows the result. *Alaska Police Standards Council v. Parcell*, 348 P.3d 882 , 883 (Alaska 2015). Here, this court may not reweigh the evidence and questions of fact are reviewed only to determine whether substantial evidence supports the ALJ's findings. "Where questions of law do not involve agency expertise, the appropriate standard of review is 'substitution of judgment.'" *Id.*, quoting *Alaska Exch. Carriers Ass'n v. Regulatory Comm'n of Alaska*, 202 P.3d 458, 460 (Alaska 2009). Application of an agency's own regulations to the case before it may be reversed only if such application was "arbitrary, unreasonable, or an abuse of discretion." *Griffiths v. Andy's Body Frame, Inc.*, 165 P.3d 619, 623 (Alaska 2007). If "a case requires resolution of policy questions which lie within the agency's area of expertise and are inseparable from the facts underlying the agency's decision," this court is only called upon to determine whether there was a rational basis for the decision below. *Western States Fire Protection Co. v. Municipality of Anchorage*, 146 P.3d 986, 989 (Alaska 2006).

#### Discussion.

##### Notice was sufficient to meet due process requirements.

Mr. Much did not raise any argument about a lack of notice in proceedings below. APSC makes a compelling argument that Mr. Much waived any claim that he received insufficient notice from the accusation and proceedings below to inform himself of the issues to be addressed. *Pasco v. Dep't of Motor Vehicles*, 45 P.3d 325, 328-29 (Alaska 2002). Thus, the court need not address any contention that Mr. Much was not sufficiently apprised of the conduct alleged to make him unsuitable for police certification.

Even if the court was called upon to address the issue on the merits, Mr. Much's argument

would fail. Good moral character is specifically defined in regulations adopted by APSC as:

the absence of acts or conduct that would cause a reasonable person to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of this state and the United States; 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.

13 AAC § 85.900(7). Adoption by APSC of a definition for "moral character," which the legislature specifically designated as a required trait for qualification as a police officer, AS 18.65.240(a)(2), falls squarely within agency's expertise and authority. *Parcell, supra*. Mr. Much had sufficient notice from the accusation that his "moral character," as defined in the foregoing regulation, was questioned, and honesty is specifically included as a component of moral character. APSC cites to specific provisions of the Administrative Procedure Act (APA), AS 44.62.360, which govern the requirements of an accusation. Here, as urged by APSC, the accusation met the requirements of the APA. The accusation was sufficient under the APA and does not give rise to a due process violation.

Mr. Much's due process argument attempts to implicate the rationale expressed by the ALJ for finding substandard moral character based on *In re Bowen*, OAH No. 10-0327-POC (APSC 2011). That is, the ALJ here decided that APSC had to show substantial doubt about each of the four character traits listed in 13 AAC 85.110(a)(3) to establish Mr. Much was not of good "moral character." Mr. Much's argument is that he was ill-prepared to contest allegations related to each of the four "moral character" factors identified by the ALJ here, as outlined in *Bowen*. Apparently Mr. Much contends that because the accusation did not break down the individual considerations addressed by the ALJ, he was deprived of due process. The argument that the accusation alleging poor moral character was deficient for failing to identify each trait listed in the definition cannot be

adopted by this court. It strikes this court that by application of the Bowen approach, the ALJ here actually provided a greater level of protection to Mr. Much than ought to have been considered. That is to say, APSC's argument that failing to achieve any one of the identified characteristics would support a finding that an individual officer lacked moral character is persuasive, *cf. Territory of Alaska v. Five Gallons of Alcohol*, 10 Alaska 1, 10 (D. Alaska Terr. 1940), and it was not necessary to demonstrate Much lacked each of the four factors listed in the regulation, *i.e.*, (honesty, fairness, respect for others, and respect for the law, in order to have grounds for decertification.

Mr. Much is correct that it was a misapplication of law to employ the test from *Bowen*. However, with respect to the finding that his moral character was substandard, any error was harmless. This is because the ALJ's use of the test from *Bowen* actually resulted in a proceeding more favorable to Mr Much's position, and more protective of his rights, than application of a proper rule. APSC alleged as grounds for discretionary revocation of Mr. Much's certificate that he "lacks good moral character and is dishonest." Accusation at 4. It was enough, and substantial evidence supports, a determination that Mr. Much was, at least, dishonest and in addition showed a lack of respect for others. *See* APSC brief at 21-2.

Under these circumstances, remanding the case for application of the correct rule of law would serve no useful purpose because the record adequately supports the key finding that Mr. Much at minimum lacked honesty in the performance of his duties, which of itself is sufficient to find he lacked the requisite moral character to serve the Anchorage community as a police officer. Specifically, there was substantial evidence that Mr. Much was dishonest in his dealings with APD as well as Ms. Heartwell and Skyler's father.

Since the agency's determination that such conduct amounted to moral character below that required of a police officer, *Parcell*, the remaining issue is whether the misconduct by Mr. Much supported revocation of his police officer certification. That decision must be upheld if it is not "arbitrary, unreasonable, or an abuse of discretion." *Pacifica Marine, Inc. v. Solomon Gold, Inc.*, 356 P.3d 780, 793 (Alaska 2015); *Griffiths, supra*. Here the statute specifically grants discretion to revoke police certification if the individual officer's moral character is substandard. True, APSC is not required to do so but this court cannot reverse such a decision simply because it might have reached a different conclusion. *Parcell, supra*. At bottom, it was not unreasonable for APSC to determine Mr. Much's moral character was below that necessary to truly and faithfully serve the community in which he would be policing the lawfulness of others.

Conclusion.

The findings and action by APSC revoking the police certification of Steven Much under AS 18.65.220 is AFFIRMED.

Dated this 19<sup>th</sup> day of January, 2016.

By: Charles W. Ray, Jr.  
Superior Court Judge Charles W. Ray, Jr.

I certify that on 2/4/16  
copies of this form were sent to:

CLEAR:

Stidmore, Coe

AM