

Board of Police & Fire Commissioners  
Human Resources Department  
625 52<sup>nd</sup> St. , Room 205  
Kenosha, WI 53140  
Phone (262) 653-4130  
Fax (262) 653-4127  
E-mail: jbaltes@kenosha.org



COMMISSION MEMBERS:  
Charles Bradley - President  
James Greco - Vice President  
Richard H. Schend - Secretary  
Edward Kubicki - Commissioneer  
Christine Schwartz - Commissioner

Kenosha Police and Fire Commission  
**MEETING AGENDA**  
Tuesday, June 17, 2014  
8:00 a.m.  
Municipal Office Building, Room 202  
625 52<sup>nd</sup> Street, Kenosha, Wisconsin

1. Call to order.
2. Roll call.
3. Receive and file minutes of the meeting held May 20, 2014. (action)
4. Citizens comments.
5. Receive and file Police and Fire Department reports for the month of May 2014. (enclosed)
6. Receive and file Summons and Complaint for Review in the Jeremy Ryan et al v. City of Kenosha Board of Police & Fire Commissioners matter. (enclosed)
7. Receive and file Attorney Eugene Brookhouse's Notice of Retainer. (enclosed)
8. Receive and file Police Chief Morrissey's notification of Police Officer Jacob Berghuis's 2 day unpaid suspension. (enclosed)
9. Receive and file Police Chief Morrissey's disciplinary charges against Officer Casey Apker. (enclosed)
10. Receive and file Fire Chief Thomsen's disciplinary charges against Firefighter Matthew Spidell. (enclosed)
11. Police Chief John Morrissey will present Life Saving Awards to three (3) citizens and five (5) police officers.
12. Motion to go into closed session. (action)

The Board of Police & Fire Commissioners will go into closed session under authority of Section 19.85 (1)(c) to discuss:

- Three (3) candidates for the position of Probationary Police Officer, and
- One (1) candidate for promotion from Police Officer to Detective.

And under authority of Section 19.85 (1)(b) to discuss:

- Disciplinary charges filed against Police Officer Casey Apker, and
- Disciplinary charges filed against Firefighter Matthew Spidell.

The Board will reconvene into open session. (action)

13. Set hearing dates.
14. The next meeting is scheduled for 8:00 a.m. on Tuesday, July 15, 2014.
15. Adjournment.

If you are a person with a disability, please contact the Human Resources Department at the Municipal Office Building (262-653-4130), at least seventy-two (72) hours in advance of the Commission meeting to give them time to make any necessary accommodations for you.



POLICE AND FIRE COMMISSION  
MINUTES OF MEETING HELD MAY 20, 2014

1. President Bradley called the meeting to order at 8:00 a.m.
2. On roll call, all commission members were present.
3. At 8:01 a.m., the commission went into closed session under authority of Section 19.85 (1)(g) to deliberate with respect to the Summons & Complaint for Review in the Jeremy Ryan et al v. City of Kenosha Board of Police & Fire Commissioners matter, on a motion made by Vice President Greco, seconded by Secretary Schend and carried unanimously. On roll call, all commissioners were present.

The commission reconvened into open session at 9:38 a.m. on a motion made by Secretary Schend, seconded by Vice President Greco and carried unanimously.

Secretary Schend made a motion that the Brookhouse Law Firm be retained to represent the Commission and file an answer to the Summons & Complaint for Review as required in Case #14CV0680, Jeremy Ryan et al v. City of Kenosha Board of Police & Fire Commissioners. Vice President Greco seconded the motion and it was carried unanimously.

Secretary Schend made a motion to authorize and direct Brookhouse Law Firm to answer the complaint consistent with the direction given by the Commission.

4. Secretary Schend made a motion to receive and file the minutes of the regular meeting held April 17, 2014. Commissioner Kubicki seconded the motion and it was carried unanimously.
5. Secretary Schend made a motion to receive and file the minutes of the special meeting held April 17, 2014. Commissioner Kubicki seconded the motion and it was carried unanimously.
6. Commissioner Kubicki made a motion to receive and file the minutes of the special meeting held April 22, 2014. Secretary Schend seconded the motion and it was carried unanimously.
7. Secretary Schend made a motion to receive and file the minutes of the special meeting held May 5, 2014. Vice President Greco seconded the motion and it was carried unanimously.
8. Citizens' comments – none.
9. Commissioner Kubicki made a motion to receive and file the Police and Fire Department reports for the month of April 2014. Secretary Schend seconded the motion and it was carried unanimously.

10. The next meeting is scheduled for 8:00 a.m. on Tuesday, June 17, 2014.
11. The meeting adjourned at 9:48 a.m. on a motion made by Secretary Schend, seconded by Vice President Greco and carried unanimously.

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Charles Bradley - President

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James Greco - Vice President

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Richard H. Schend - Secretary

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Edward Kubicki - Commissioner

CFS01 - Run By: MORRISSEY, JOHN

## C A P S

Calls For Service  
Daily Summary  
05/01/2014 to 05/31/2014

Incident Number	Ofcr Add Assg Unt	Complainant	Type Call	Location	Time Recd	Time Disp	Time Arvd	Time Comp	Time Spnt	Disposition
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Total Calls for the Period: 10,008

## REPORT GRAND TOTALS

## CALL RECEIVED SUMMARY

ALARM	156
BOX ALARM	
CELL PHONE	2,370
E-911 CALL	601
OFFICER INITIATED	2,100
PHONE	3,426
RADIO	13
TRAFFIC STOP	1,127
WALK-IN	207
OTHER	
ATUO CALL	8

TOTAL WORK TIME 976,100

## CALL DISPOSITION SUMMARY

REPORT	1,809
NO REPORT	8,000
VOID	192
CSR-CITIZEN SELF REPORT	
GOA	
WARRANT	7
TRANSPORTED	
NO TRANSPORT	
DENIAL OF INJURY (DOI)	
ASSIST CITIZEN/NO TRANSP	
NO PATIENT	
AGAINST MEDICAL ADVICE (A	
UNIT REASSIGNED	
SAVE/REASSIGNED	

OFF01 - Run By: JWM309

## C A P S

OFFENSE ACTIVITY  
BY DISPOSITION  
05/01/2014 THRU 05/31/2014

OFFENSE	OFFENSES REPORTED	UNFOUNDED	ACTUAL OFFENSES	----- OFFENSES CLEARED -----			TOTAL CLEARED	PERCENT CLEARED
				/---BY ARREST---/ ADULT	JUVENILE	/---BY EXCEPTION---/ ADULT		
	1		1	1			1	100.0
CHAP51/SUICIDE ATT	9		9			8	8	88.8
NATURAL DEATH	2		2			2	2	100.0
DEATH INV	7		7			1	1	14.2
ROBBERY/FIREARM H/S/A	1		1					0.0
ROBBERY/OTHER WEAPON H/S/	2		2					0.0
ROBBERY/OTHER WEAPON OTH	1		1	1			1	100.0
ROBBERY/FORCE H/S/A	4		4		1	1	2	50.0
ROBBERY/FORCE COMM BUSN	2		2	1			1	50.0
ROBBERY/FORCE BANK	1		1					0.0
ROBBERY/ATTEMPT H/S/A	1		1					0.0
AGG ASLT/FIREARM	1		1	1			1	100.0
AGG ASLT/SHARP INSTRUMENT	4		4	2			2	50.0
AGG ASLT/BLUNT INSTRUMENT	2		2	2			2	100.0
AGG ASLT/OTHER WEAPON	1		1	1			1	100.0
AGG ASLT/HANDS, FEET, ETC	4		4	2			2	50.0
BURG/FORCE, RESIDENCE	9		9	1		1	2	22.2
BURG/FORCE, NON-RESIDENCE	8		8	1		1	2	25.0
BURG/UNLAWFUL ENTRY, RESID	13		13		1		1	7.6
BURG/UNLAWFUL ENTRY, NON-R	3		3			1	1	33.3
BURG/ATTEMPT, RESIDENCE	3		3	1			1	33.3
BURG/ATTEMPT, NON-RES	2		2		1		1	50.0
THF PSNATCH 200+	1		1					0.0
THF SHOPLFT 200+	6		6	5			5	83.3
THF SHOPLFT \$50-199	13		13	9	1		10	76.9
THF SHOPLFT \$1-49	25		25	15	3	1	19	76.0
THF FRM VEH 200+	5		5					0.0
THF FRM VEH \$50-199	2		2					0.0
THF FRM VEH \$1-49	4		4			1	1	25.0
THF FRM VEH, ATTEMPT	2		2			2	2	100.0
THF VEH ACC \$1-49	2		2			1	1	50.0
THF BIKE 200+	2		2					0.0
THF BIKE \$50-199	7		7					0.0
THF BLDG 200+	15	1	14		1	1	2	14.2
THF BLDG \$50-199	2		2					0.0
THF BLDG \$1-49	1		1					0.0
THF DRIVE OFF \$50-199	1		1					0.0
THF OTHER 200+	24		24	1	1	4	6	25.0
THF OTHER \$50-199	12	2	10	4		2	6	60.0
THF OTHER \$1-49	8		8					0.0

OFF01 - Run By: JWM309

## C A P S

## OFFENSE ACTIVITY

## BY DISPOSITION

05/01/2014 THRU 05/31/2014

OFFENSE	OFFENSES REPORTED	UNFOUNDED	ACTUAL OFFENSES	/----- OFFENSES CLEARED -----/					TOTAL CLEARED	PERCENT CLEARED
				/---BY ARREST---/		/---BY EXCEPTION---/				
				ADULT	JUVENILE	ADULT	JUVENILE	OTHER		
MV THEFT,AUTO	8		8	1				1	2	25.0
MV THEFT,OTH JURIS,REC LO	2		2	1	1				2	100.0
BATTERY/SIMPLE ASLT	23		23	11	4			1	16	69.5
BATTERY/DV	44		44	31	1				32	72.7
THREATS/INTIMIDATION	9	1	8	2				1	3	37.5
BATTERY,OTHER	1		1	1					1	100.0
ARSON, OTHER	1		1							0.0
FORGERY/CHECK,MONEY ORDER	1		1							0.0
FRAUD/WORTHLESS CK	1		1							0.0
FRAUD/CONFIDENCE	2		2					1	1	50.0
FRAUD/ATTEMPT	1		1							0.0
FRAUD/DEFRAUD INNKEEPER	2		2		1				1	50.0
FRAUD/OTHER	3		3							0.0
FRAUD/IDENTITY THEFT	27		27					2	2	7.4
FRAUD,THEFT BY	1		1							0.0
EMBEZZLEMENT	2		2	2					2	100.0
VANDALISM/RESIDENCE	19		19	1				3	4	21.0
VANDALISM/AUTO	39		39	2				4	6	15.3
VANDALISM/BUSINESS	8		8		1			1	2	25.0
VANDALISM/SCHOOL	3		3		2				2	66.6
VANDALISM/PUBLIC PROPERTY	2		2					1	1	50.0
VANDALISM/PRIVATE PROPERT	9		9	2	1				3	33.3
WPN/DISCHRG IN CITY LIMIT	3		3	1					1	33.3
WPN/SHOOT INTO VEHICLE	1		1	1					1	100.0
WPN/SHOOT INTO DWELLING	1		1							0.0
WPN/POSSESS ILLEGAL	1		1					1	1	100.0
WPN/AIMING & POINTING	1		1					1	1	100.0
WPN/POSS/SELL GUN-MINOR	1		1							0.0
WPN/CCW	7		7	4	3				7	100.0
WPN/OTHER VIO	2		2		1				1	50.0
SEX ASLT,1ST (OFFENSE)	2		2		1				1	50.0
SEX/INCEST	1	1								0.0
SEX/INDECENT EXPOSURE	1		1					1	1	100.0
SEX OFFENSES, OTHER	14	1	13					9	9	69.2
SEX/SODOMY	1		1		1				1	100.0
SEX/FONDLE-16 & OVER	2		2					1	1	50.0
SEX-13/15 YRS	1		1					1	1	100.0
SEX/COMPUTER-CHILD PORNOG	2		2		1				1	50.0
DRUG/POSSESS HARD DRUGS	6		6	4					4	66.6
DRUG/POSSESS MARIJUANA	34		34	27	6				33	97.0

OFF01 - Run By: JWM309

## C A P S

OFFENSE ACTIVITY  
BY DISPOSITION

05/01/2014 THRU 05/31/2014

OFFENSE	OFFENSES REPORTED	UNFOUNDED	ACTUAL OFFENSES	----- OFFENSES CLEARED -----			TOTAL CLEARED	PERCENT CLEARED
				/---BY ARREST---/ ADULT	JUVENILE	/---BY EXCEPTION---/ ADULT		
DRUG/POSSESS SYN	1		1	1			1	100.0
DRUG/PWID HARD DRUGS	1		1	1			1	100.0
DRUG/PWID MARIJUANA	2		2	1			1	50.0
CHILD ENTICE/DRUGS	1		1			1	1	100.0
DRUG/PARAPHERNALIA SELL/P	1		1	1			1	100.0
FAMILY TROUBLE	159	1	158	1		155	156	98.7
CHILD NEGLECT	5		5					0.0
CHILD ABUSE	15	1	14	2		3	5	35.7
RESTRAINING ORDER	7	1	6	2		2	4	66.6
CHILD CUSTODY, INTERFERE	6	1	5					0.0
DWI, ALCOHOL	33		33	33			33	100.0
DWD, DRUGS	1		1	1			1	100.0
LIQ, LICENSE VIOLATION	1		1	1			1	100.0
LIQ, SELL TO MINOR	5		5	5			5	100.0
LIQ, POSSESSION BY UNDERAG	3		3	1	2		3	100.0
LIQ, DRINK IN MV	7		7	7			7	100.0
LIQ, MINOR LOITER IN TAVER	1		1	1			1	100.0
LIQ, INTOX IN PARK	6		6	6			6	100.0
LIQ, VIOLATION OTHER	10		10	10			10	100.0
TAVERN REPORT	22		22			22	22	100.0
DC/PERSON	37	1	36	14	11	6	31	86.1
DC/ANNOYING PHONE CALLS	4		4			1	1	25.0
DC/LOUD MUSIC	10		10	10			10	100.0
DC/NEIGHBOR TROUBLE	2		2			2	2	100.0
DC/FIGHT IN PUBLIC	9		9	4	2		6	66.6
DC/TROUBLE W/KIDS	2		2			2	2	100.0
DC/OTHER	10		10	8	2		10	100.0
DC/DOM ABUSE	17		17	14		1	15	88.2
DC/STALKING	3		3					0.0
VAG, BEGGING	1		1	1			1	100.0
MISC OFFENSE	1		1		1		1	100.0
LITTERING	2		2	1			1	50.0
OBSTRUCT FLOW OF TRAFFIC	1		1	1			1	100.0
TRESPASSING (ADULT ONLY)	2		2	2			2	100.0
CIVIL MATTER	3		3			1	1	33.3
IN PARK AFTER HOURS	1		1		1		1	100.0
CITY CODE VIOLATION	1		1	1			1	100.0
SMOKING VIOLATION	3		3			3	3	100.0
TAVERN WRITTEN WARNING	1		1			1	1	100.0
TOBACCO VIOLATION (ADULT)	2		2	2			2	100.0

OFF01 - Run By: JWM309

## C A P S

OFFENSE ACTIVITY  
BY DISPOSITION

05/01/2014 THRU 05/31/2014

OFFENSE	OFFENSES REPORTED	UNFOUNDED	ACTUAL OFFENSES	OFFENSES CLEARED			TOTAL CLEARED	PERCENT CLEARED
				---BY ARREST---/ ADULT JUVENILE	---BY EXCEPTION---/ ADULT JUVENILE	OTHER		
SUSP VEHICLE	2		2			2	2	100.0
SUSP PERSON	6		6			2	2	33.3
SUSP PROPERTY	1		1			1	1	100.0
JUV/TRESPASS	4		4		2		2	50.0
JUV/CURFEW VIOLATION	2		2		2		2	100.0
RUNAWAY	33		33			32	32	96.9
CHILD,MISSING	2	1	1			1	1	100.0
ADULT,MISSING	7		7			3	3	42.8
CHILD,FOUND	1		1			1	1	100.0
TRF/ABANDN VEHICLE	6		6			6	6	100.0
TRF/TOW IN	20		20	1		19	20	100.0
TRF/SPEEDING	9		9	9			9	100.0
TRF/PD ACCIDENT	12		12	4		7	11	91.6
TRF/PI ACCIDENT	3		3			2	2	66.6
TRF/REGISTRATION VIO	1		1	1			1	100.0
TRF/LICENSE VIOLATION	55		55	53	1	1	55	100.0
TRF/CHASE/FLEEING	1		1					0.0
TRF/KEYS/IGNITION	2		2	2			2	100.0
TRF/MV VIO,OTHER	1		1			1	1	100.0
ANI/DOG BITE	12		12			2	2	16.6
ANI/BARKING DOG	1		1	1			1	100.0
ANIMAL AT LARGE	7		7	7			7	100.0
ANIMAL CRUELTY	4		4	1		2	3	75.0
CONTEMPT,BAIL JUMPING	9		9	8			8	88.8
P & P VIOLATIONS	6		6	5	1		6	100.0
JUV/TRUANT	44		44		44		44	100.0
JUV/UNCONTROLLABLE	5		5			4	4	80.0
RESIST/OBSTRUCT OFFICER	14		14	12	2		14	100.0
COUNTERFEIT MONEY	3		3					0.0
SUSP PACKAGE	2		2					0.0
FIRE,STRUCTURE/BRUSH	3		3					0.0
FIRE,FALSE ALARM	1		1			1	1	100.0
FIRE,OTHER	1		1			1	1	100.0
CHECK WELFARE	19		19			16	16	84.2
INJ PERSON/MED RUN	23		23			22	22	95.6
OVERDOSE,ACCIDENTAL	2		2			1	1	50.0
CHAPTER 51	29		29			29	29	100.0
MENTAL PROBLEMS	28		28			27	27	96.4
SRV/DMG OR PROB W/SQUAD	2		2			2	2	100.0
ATL VEHICLE	2		2			1	1	50.0

OFF01 - Run By: JWM309

## C A P S

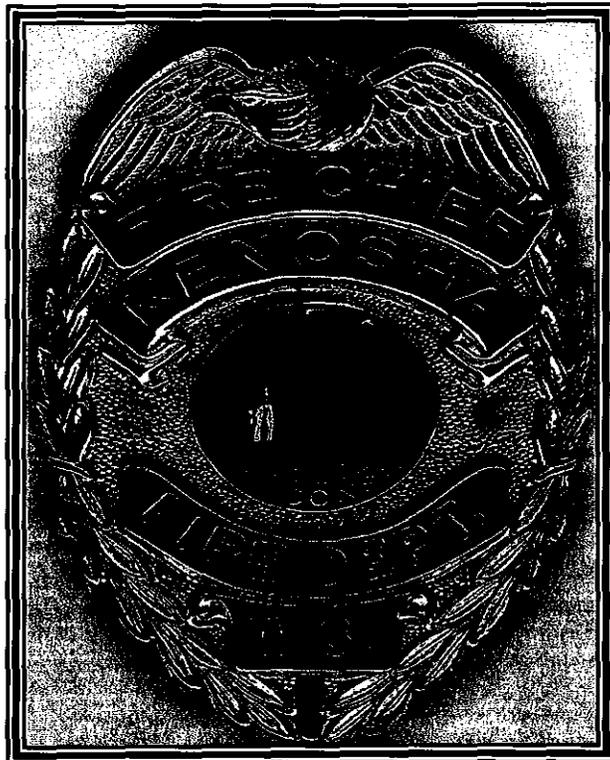
OFFENSE ACTIVITY  
BY DISPOSITION

05/01/2014 THRU 05/31/2014

OFFENSE	OFFENSES REPORTED	UNFOUNDED	ACTUAL OFFENSES	/----- OFFENSES CLEARED -----/					TOTAL CLEARED	PERCENT CLEARED
				/---BY ARREST---/		/---BY EXCEPTION-----/				
				ADULT	JUVENILE	ADULT	JUVENILE	OTHER		
ASSIST OTH AGENCY	8		8					8	8	100.0
SRV/INFO ONLY	4		4					4	4	100.0
SRV/ADD PATROL	1		1					1	1	100.0
TAMPERING WITH MAIL	1		1							0.0
WAW/WARRANT	3		3	3					3	100.0
WAW/JUV CAPIAS	1		1		1				1	100.0
WAW/WARR OTH AGENCY	1		1	1					1	100.0
PROPERTY/FOUND	30		30					24	24	80.0
PROPERTY/LOST	9		9					7	7	77.7
REPOSSESSION	32		32					32	32	100.0
LIC,TAX CAB-RENEW & TRANS	1		1	1					1	100.0
LIC,AMUSEMENT ENTERPRISE-	4		4	4					4	100.0
HIT & RUN PD	36		36	11				16	27	75.0
HIT & RUN PI	4		4	2				2	4	100.0
AGENCY: 00TOTALS	1421	12	1409	397	105			536	1038	

# **KENOSHA FIRE DEPARTMENT**

## **MONTHLY REPORT**



**MAY  
2014**



RESPONSE BY UNITS

	MONTHLY		YEAR TO DATE		YTD COMBINED FIRE/EMS TOTALS
	EMS	FIRE	EMS	FIRE	
Engine #2	127	14	563	109	672
Engine #3	143	41	669	211	880
Engine #4	98	38	393	164	557
Engine #5	104	34	541	161	702
Engine #6	92	13	400	55	455
Engine #44	0	0	1	1	2
Engine #55	0	0	0	0	0
Truck #3	8	50	58	279	337
Truck #4	5	35	31	243	274
Truck #7	35	15	146	99	245
P-19	0	0	0	4	4
MERV #1	0	0	0	0	0
MERV #2	0	0	0	0	0
Battalion 1	8	66	44	344	388
Med Unit #2	1	0	44	2	46
Med Unit #3	316	8	1477	63	1540
Med Unit #4	225	8	962	52	1014
Med Unit #5	274	8	1291	48	1339
Med Unit #7	90	4	418	21	439
Rescue #33	3	0	17	1	18
Rescue #44	4	0	9	0	9
Rescue #77	0	0	0	0	0



**KENOSHA FIRE DEPARTMENT CALLS FOR SERVICE**

05/01/14 THRU 05/31/14

	<b>MONTH</b>	<b>YEAR TO DATE</b>
EMS Calls for Service*	896	4126
Fire Calls for Service	131	705
<b>Total Calls for Service</b>	<b>1027</b>	<b>4831</b>

\*Includes 15 Med 7 change of quarters occurrences.

**APPROXIMATE LOSS/ SAVE SUMMARY**

Approximate Fire Loss for May	<u>\$47,952</u>	Approximate Fire Save for May	<u>\$207,302</u>
Approximate Fire Loss to Date	<u>\$991,211</u>	Approximate Fire Save to Date	<u>\$11,913,055</u>

Respectfully Submitted,

  
John R. Thomsen  
Fire Chief  
Kenosha Fire Department

COPY

STATE OF WISCONSIN

CIRCUIT COURT

KENOSHA COUNTY

JEREMY RYAN,  
TIMOTHY THOMPSON,  
RICARDO LEBRON,  
KRISTIN MARIE KAMINSKI,  
RAYMOND TESSMAN, and  
HENDERSON DARBY, III,  
c/o Blumenfield & Shereff, LLP  
1001 West Glen Oaks Lane, Suite 110  
Mequon, Wisconsin 53092

FILED

MAY 07 2014

Rebecca Matoska-Mentink  
Clerk of Circuit Court

Petitioners,

v.

Case No. **14CV0680**  
Case Code: 30955 – Petition for Writ of Certiorari

CITY OF KENOSHA BOARD OF  
POLICE AND FIRE COMMISSIONERS,  
625 52nd Street, Room 205  
Kenosha, WI 53140  
Attn: Ms. Jo Baltes, Clerk

Respondent,

DAVID M. DASTIANELLI  
Circuit Judge Branch 1

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court,

912 56th Street, Kenosha, Wisconsin 53140-3736, and to plaintiffs' attorney, whose address is Blumenfield & Shereff, LLP, 1001 West Glen Oaks Lane, Suite 110, Mequon, Wisconsin 53092.

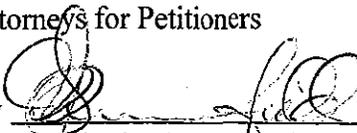
You may have an attorney represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Mequon, Wisconsin, 6<sup>th</sup> day of May, 2014.

**BLUMENFIELD & SHEREFF, LLP**  
Attorneys for Petitioners

By

  
\_\_\_\_\_  
Charles S. Blumenfield  
State Bar No. 01016104

Mailing Address:

1001 West Glen Oaks Lane  
Suite 110  
Mequon, WI 53092  
Phone: (262) 241-3400

**JEREMY RYAN,  
TIMOTHY THOMPkins,  
RICARDO LEBRON,  
KRISTIN MARIE KAMINSKI,  
RAYMOND TESSMAN, and  
HENDERSON DARBY, III,  
c/o Blumenfield & Shereff, LLP  
1001 West Glen Oaks Lane, Suite 110  
Mequon, Wisconsin 53092**

**Plaintiffs,**

v.

**CITY OF KENOSHA BOARD OF  
POLICE AND FIRE COMMISSIONERS,  
625 52nd Street, Room 205  
Kenosha, WI 53140  
Attn: Ms. Jo Baltus, Clerk**

**Defendant.**

Case No. **14CV0680**  
Case Code: 30955 – Petition for Writ of Certiorari

FILED

MAY 07 2014

Rebecca Matoska-Mentink  
Clerk of Circuit Court

**COMPLAINT FOR REVIEW BY CERTIORARI**

Plaintiffs, Jeremy Ryan, Timothy Thompkins, Ricardo Lebron, Kristin Marie Kaminski, Raymond Tessman and Henderson Darby III (hereinafter “Plaintiffs”), by their attorneys, Blumenfield & Shereff, LLP by Attorney Charles S. Blumenfield, as and for a Complaint for Review by Certiorari against the Defendant, City of Kenosha Board of Police and Fire Commissioners (hereinafter “the Board”), hereby allege as follows:

1. Plaintiff, Jeremy Ryan (hereinafter “Ryan”), is an adult citizen of the State of Wisconsin, and is employed as a Firefighter by the City of Kenosha Fire Department.
2. Plaintiff, Timothy Thompkins (hereinafter “Thompkins”), is an adult resident of the City of Kenosha, and formerly served as the City of Kenosha Equal Employment Opportunity (EEO) Coordinator.

3. Plaintiff, Ricardo Lebron (hereinafter “Lebron”), is an adult resident of the City of Kenosha, and is employed as a Firefighter by the City of Kenosha Fire Department.

4. Plaintiff, Kristin Marie Kaminski (hereinafter “Kaminski”), is an adult citizen of the State of Wisconsin, and is employed as a Firefighter by the City of Kenosha Fire Department.

5. Plaintiff, Raymond Tessman (hereinafter “Tessman”), is an adult citizen of the State of Wisconsin, and is employed as a Firefighter by the City of Kenosha Fire Department.

6. Plaintiff, Henderson Darby, III (hereinafter “Darby”), is an adult resident of the City of Kenosha, and, until December 2013, served as a Firefighter for the City of Kenosha.

7. Defendant, City of Kenosha Board of Police and Fire Commissioners (hereinafter “the Board”), is a Board established pursuant to Wis. Stat. § 62.13, and has jurisdiction over disciplinary matters involving, *inter alia*, members of the City of Kenosha Fire Department, including Fire Chief John R. Thomsen (hereinafter “Thomsen”); the jurisdiction of the Board extends to charges brought by aggrieved persons, as the Board determined Plaintiffs to be, pursuant to Wis. Stat. § 62.13(5)(b).

8. On April 17, 2014, the Board considered the arguments of counsel regarding various motions to dismiss the Second Amended Complaint, which motions had been brought by Thomsen and the intervenor, City of Kenosha (hereinafter “the City”).

9. On April 22, 2014, the Board issued a Decision and Order (hereinafter “Decision”) denying all of the aforementioned motions to dismiss of Thomsen and the City. The Board then, *sua sponte*, dismissed the Second Amended Complaint, and with it all charges against Thomsen, thereby terminating the proceeding without holding the hearing required by Wis. Stat. § 62.13(5)(d), which reads as follows:

**§ 62.13 (5)(d)** Following the filing of charges in any case, a copy thereof shall be served upon the person charged. The board shall set date for hearing not less than 10 days nor more than 30 days

following service of charges. The hearing on the charges shall be public, and both the accused and the complainant may be represented by an attorney and may compel the attendance of witnesses by subpoenas which shall be issued by the president of the board on request and be served as are subpoenas under ch. 885.

A true and correct copy of the Decision is attached hereto and incorporated herein for reference as Exhibit A.

10. By dismissing the charges contained in the Second Amended Complaint without a hearing, the Board exceeded its jurisdiction in that it failed to comply with the mandate of Wis. Stat. § 62.13(5) despite acknowledging a proper basis existed for holding such a hearing. In so doing, the Board's action was arbitrary and unreasonable, and represented its will and not its judgment.

11. The Board proceeded on an incorrect theory of law by pre-judging the allegations set forth in the Second Amended Complaint, contending in its Decision and Order that even if it were to assume all of the allegations in the Second Amended Complaint were true, the Board would not impose any additional punishment on Thomsen.

12. The Board failed to recognize that, as a jurisdictional pleading, the Second Amended Complain did not contain all of the facts and circumstances relevant to a full and fair determination of the charges against Thomsen.

13. The Board's Order dismissing the matter was entered without advising the Plaintiffs of the possibility of such an unprecedented action, and thus denied the Plaintiffs an opportunity to address either the propriety of the action or the issue of potential punishment. The Decision thus effectively abrogated the due process rights of the Plaintiffs to a hearing on, and a final determination of, the charges presented.

14. If the Board's dismissal of the Second Amended Complaint is found to be proper, it may well encourage efforts by local officials and Fire and/or Police Chiefs to seek to avoid Board

review of misconduct, directly contrary to the holding of *Durkin v. Board of Police & Fire Commissioners for the City of Madison*, 48 Wis. 2d 112, 120, 180 N.W.2d 1, 5 (1970), 75 L.R.R.M. (BNA) 2766, 64 Lab. Cas. P 52,404:

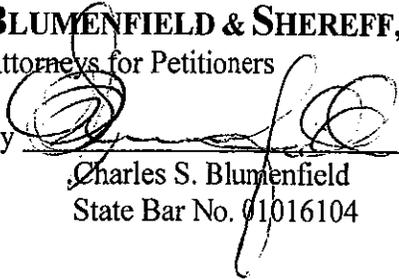
[T]he lawful right of [aggrieved persons] to file charges as provided in sec. 62.13(5)(b), Stats., would be rendered meaningless. The Board is required to process charges filed with it by [aggrieved persons] in accordance with the statutes of the State of Wisconsin and such rules and regulations as it may adopt which are not inconsistent therewith.

**WHEREFORE**, Plaintiffs pray the Court review the proceedings of the Board, as set forth in the Decision, the record, and this Complaint, and provide relief as follows:

- A. An Order directing immediate certification of the record to the Circuit Court by the Defendant City of Kenosha Board of Police and Fire Commissioners.
- B. An Order and Judgment reversing the Decision and Order of the Defendant City of Kenosha Board of Police and Fire Commissioners dismissing the Second Amended Complaint, and directing the Board to conduct a hearing pursuant to Wis. Stat. § 62.13(5).
- C. For such other and further relief as the Court may deem just and equitable.

Dated at Mequon, Wisconsin this 6th day of May, 2014.

**BLUMENFIELD & SHEREFF, LLP**  
Attorneys for Petitioners

By 

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**BEFORE THE BOARD OF POLICE & FIRE COMMISSIONERS  
FOR THE CITY OF KENOSHA, STATE OF WISCONSIN**

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In The Matter Of The Disciplinary  
Charges Filed Against:

Kenosha Fire Department  
Fire Chief John R. Thomsen

**DECISION AND ORDER ON  
MOTIONS TO DISMISS OF  
CHIEF AND CITY**

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**INTRODUCTION**

The Motions to Dismiss/for Summary Judgment of John Thomsen, the Fire Chief ("Chief") for the City of Kenosha ("City"), State of Wisconsin, and the Motions to Dismiss of the City (collectively, "Motions"), having each and all come before the Board of Police & Fire Commissioners for the City of Kenosha ("Board") for oral argument at a special meeting on April 17, 2014; the Board consisting of Commissioners Charles Bradley, James Greco, Richard Schend, and Edward Kubicki, Commissioner Helen Schumacher having recused herself from further proceedings on the Complaints against the Chief; and

The parties, on the record at proceedings in this matter on February 18, 2014, having waived the requirement of Wis. Stat. § 62.13(5)(d) that a hearing be held within thirty (30) days following service of charges on the Chief; and

The Chief having filed his Briefs in Support of said Motions; the City having filed its Briefs in Support of said Motions; the complainants ("Complainants") having objected to and opposed said Motions and filed their Briefs in Opposition to said Motions; the Chief having appeared in person and by his attorneys, Madrigrano, Aiello



& Santarelli, LLC, by Attorney Nicholas Infusino; the City having appeared by its attorneys, Buelow Vetter, by Attorneys Joel S. Aziere and David G. Vliet, with argument by Attorney Joel S. Aziere; Complainant, Jeremy Ryan, having appeared in person and Complainants having appeared by their attorneys, Blumenfield & Shereff, LLP, by Attorney Charles S. Blumenfield; and

The Board having read and considered the affidavits and arguments of the parties as set forth in the briefs and made at such meeting and otherwise being fully advised in the premises,

IT IS BY THE BOARD HEREBY DECIDED AND ORDERED:

**ARGUMENTS**

Among others, the following arguments are made in support of and in opposition to the Motions:

1. Purpose of Wis. Stat. § 62.13(5).

The Chief and City argue that Wis. Stat. § 62.13 is designed primarily to provide due process protections for accused subordinates after investigation and discipline has been imposed, rather than to create a right of an aggrieved person to have quasi-judicial hearings for any complaint he or she files.

In response, the Complainants argue that the purpose of Wis. Stat. § 62.13 is to remove politics from the operation of fire and police departments by giving the disciplinary process to an independent entity, i.e., the Board.

2. Jurisdiction.

The Chief and City argue that this Board does not have the jurisdiction to hold a hearing on the charges because the Chief did not request a hearing under Wis. Stat. 62.13(5)(c) to review the discipline imposed.

Similarly, the Chief and City further argue that many of the charges of the Second Amended Complaint have already been fully investigated, addressed, and resolved by the Mayor, who they claim has the legal authority and power to discipline the Chief absent any involvement, finding, or determination by the Board and, since the Chief has not requested a hearing on such discipline, the Chief and City claim that the Board does not have the jurisdiction to hold a hearing on the charges of the Second Amended Complaint.

Additionally, the Chief and City argue that, under Wis. Stat. 62.13(5)(em), the uninvestigated charges of the Second Amended Complaint require a reasonable effort to determine if there is "just cause" for the charges before the filing of such charges, which did not occur with respect to such uninvestigated charges in this case. On those grounds, the Chief and City contend that the Board has no jurisdiction to hold a hearing on such uninvestigated charges.

In response, the Complainants argue that only the Board has the authority to impose discipline upon a fire chief under Wis. Stat. § 62.13, contending that the Mayor has no such right to suspend or otherwise impose discipline upon a police or fire chief under Wis. Stat. § 62.13 and that the Mayor does not have the same statutory authority under Wis. Stat. § 62.13 to impose discipline upon the Chief as the Chief has to impose

discipline upon a subordinate. The Complainants argue that the Mayor can only conduct an investigation of the conduct of the Chief to determine if a basis exists, in the Mayor's opinion, to file charges to seek discipline and that, if the Mayor chooses not to file charges, those aggrieved can still seek review of the Chief's conduct before the Board under Wis. Stat. § 62.13.

Likewise, the Complainants contend that a non-lawyer investigator, not appointed by the Board, operating without the authority of the Board, and conducting a limited investigation, should not replace the Board in the Board's discipline decisions.

3. Standing.

The Chief and City argue that the Complainants lack standing to bring the charges of their Second Amended Complaint because none of the Complainants is an "aggrieved person" within the meaning of Wis. Stat. § 62.13 because the Complainants are not personally affected or injured by the alleged conduct of the Chief.

In response, the Complainants argue that the Complainants, as employees of the City of Kenosha Fire Department, as witnesses to or targets of several of the alleged episodes of misconduct by the Chief, with detailed knowledge of the others, and as members of the City of Kenosha Fire Department obligated to take orders from the Chief, are each an "aggrieved person" within the meaning of Wis. Stat. § 62.13.

Furthermore, the Complainants argue that the law does not require an individual to suffer any direct harm or grievance in order to be an "aggrieved person" within the meaning of Wis. Stat. § 62.13. Rather, the Complainants contend that generalized harm

to the community is sufficient for an individual to be an "aggrieved person" within the meaning of Wis. Stat. § 62.13.

The Chief and City also argue that the Complainants lack standing to bring the charges of their Second Amended Complaint because the Complainants did not identify exactly what allegations each of them is specifically making or otherwise bring separate complaints.

In response, the Complainants argue that the Bylaws of the Commission provide for allegations to be made "upon information and belief". The Complainants further argue that requiring otherwise would mean that many charges brought by chiefs would fail as they seldom have direct knowledge of the alleged misconduct serving as the basis for the charges.

Additionally, the Chief and City argue that the Complainants are acting at the behest of Local 414 in order to protect the interests of a larger representative body (i.e., Local 414), such that the Second Amended Complaint is actually being pursued by Local 414, which is an entity and not an "aggrieved person".

In response, the Complainants argue that the Complainants do not forfeit their rights as a citizen to complain about the improper conduct of the Chief by assuming a leadership or other role in Local 414.

4. Constitutional Due Process and Right to Fundamental Fairness.

The Chief and City contend that certain of the complaints contained in the Second Amended Complaint been investigated and either disciplined imposed and served or determined to be unsubstantiated, such that the doctrines of employment-

related double jeopardy, *res judicata*, and issue preclusion should apply to preclude or bar further consideration or review of the same.

In response, the Complainants argue that the Mayor did not actually impose any punishment in this case but that the Chief rather agreed to a suspension without any acknowledgement of wrongdoing by the Chief. To that end, the Complainants contend that there is no possibility of double punishment for the same act because there has been no punishment imposed whatsoever. Likewise, the Complainants argue that the City/Mayor cannot enter into an agreement with the Chief which would foreclose an "aggrieved person" from filing charges with the Board. The Complainants argue that, to allow that, would be to permit a chief and a Mayor to conspire to prevent the Board from taking appropriate action against a chief who has engaged in misconduct.

Further, the Complainants argue that, since only the Board has the statutory authority to impose discipline upon the Chief, there is no possibility of double punishment for the same act because there has been no punishment imposed by any authority. Accordingly, the Complainants argue that the criteria for employment-related double jeopardy are not present in this case.

Likewise, the Complainants argue that the principles of *res judicata* and issue preclusion do not apply in this case because there has been no hearing to explore the factual predicate for the allegations, such that there has not been any final judgment or court ruling issued by any court which is binding on the parties to a lawsuit.

5. Public Policy.

The Chief and City argue that not dismissing the Second Amended Complaint would be against public policy because not doing so would be to hold that (i) double jeopardy and fundamental fairness do not apply to police officers or firefighters; (ii) Mayors do not have the right to discipline and negotiate resolutions with accused subordinates; (iii) the accuser can dictate the punishment and investigation (i.e., if the accuser, not satisfied with what Mayor has done, can file a complaint with the Board); and (iv) an investigation would never be closed.

The Complainants argue that public policy demands review of the Chief's alleged misconduct because public policy requires a fire chief to act properly and with good behavior and to be disciplined if he fails to do so.

The Chief and City further argue that, since January 1, 2011, the Board has never held a hearing on "aggrieved person" complaints made directly to the Board and primarily relied on the investigation that had been undertaken by the Chief, such that to do differently here would be to treat the Chief unfairly.

The Complainants argue that the fact that complainants in other cases have not been successful in obtaining a hearing before this Board has no relevance to this matter, contending that, even though complainants in other cases have not been successful in obtaining a hearing before this Board, that is not a basis for the Chief to avoid review of his alleged misconduct in this case.

## DECISION

1. Purpose of Wis. Stat. § 62.13(5).

The Wisconsin Supreme Court has stated as follows:

"Wis. Stat. § 62.13, regulating boards of police and fire commissioners throughout Wisconsin, is a broad generic statute that is meant to be flexible, in order to meet the needs of different cities. Wis. Stat. § 62.13(5) provides a quasi-judicial proceeding with all the elements of 'fair play' fundamental to due process in an administrative law setting. Wis. Stat. § 62.13(5) broadly outlines the features of the disciplinary process before the board, from complaint filing through findings, determinations, and orders. In addition, the statute as a whole demonstrates a legislative intent to provide due process protections to police officers and firefighters subject to disciplinary proceedings. Efficiency and fairness are the purposes for the disciplinary hearing process. One of the primary purposes for the legislative act providing for the creation of the board was to remove the administration of fire and police departments from city politics and to place it in the hands of impartial and nonpolitical citizen boards." *Conway v. Board of Police and Fire Com'rs of City of Madison*, 2003 WI 53, ¶¶ 39-41, 262 Wis. 2d 1, 662 N.W.2d 335.

Further, Wis. Stat. § 62.13(12) provides as follows: "Legislative Intent. Section 62.13...shall be construed as an enactment of statewide concern for the purpose of providing a uniform regulation of police, fire, and combined protective services departments."

Additionally, Wis. Stat. § 62.04 provides, in part, as follows:

"...For the purpose of giving to cities the largest measure of self-government compatible with the constitution and general law, it is hereby declared that ss. 62.01 to 62.26 shall be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof."

In view of the foregoing, it is clear to the Board that one of the primary purposes of Wis. Stat. § 62.13 is to provide for an independent body, removed from city politics, to handle disciplinary matters arising within police and fire departments for the general welfare, peace, and order of the City and its inhabitants and, in the process, to provide procedural due process to the accused. Accordingly, the Board concludes that the statute

is designed to provide much more than simply an avenue of due process for a disciplined chief or subordinate to request a hearing on discipline imposed. When in apparent conflict, the provisions of Wis. Stat. § 62.13 need to be construed to promote its underlying purpose. Provisions of a statute must be read to give full and reasonable meaning to all of its terms if possible. *Belding v. Demoulin*, 2014 WI 8, ¶ 17, 352 Wis. 2d 359, 843 N.W.2d 373.

## 2. Jurisdiction.

The Board does not agree that the Mayor has the unilateral authority to discipline (suspend) the Chief avoiding any involvement, finding, or determination by the Board. Both the Wisconsin Supreme Court and Wisconsin legislature have firmly recognized and established that one of the primary purposes of Wis. Stat. § 62.13 is to provide for an independent body, removed from city politics, to handle disciplinary matters arising within police and fire departments for the general welfare, peace, and order of the City and its inhabitants. If the Mayor were to possess the unilateral authority to discipline a Chief by suspension, preventing any involvement, finding, or determination by the Board, city politics would continue to play a part in the administration of fire and police departments (in violation of the declared public policy of the State of Wisconsin) and Wis. Stat. § 62.13 would be stripped bare and rendered meaningless and a nullity. "Statutory interpretations that render provisions meaningless should be avoided." *Belding*, 2014 WI 8 at ¶ 17.

Furthermore, it is important for the Board to give effect to every word of a statute. "When we engage in statutory interpretation, we focus on the words that the

legislature chose for the statute...Moreover, we examine statutory language with the purpose of giving 'reasonable effect to every word, in order to avoid surplusage.'" *State v. Hanson*, 2012 WI 4, ¶ 16, 338 Wis. 2d 243, 808 N.W.2d 390.

Wis. Stat. § 62.13(5)(j) provides as follows:

"The provisions of pars. (a) to (i) shall apply to disciplinary actions against the chiefs where applicable. In addition thereto, the board may suspend a chief pending disposition of charges filed by the board or by the mayor of the city." (emphasis added.)

The legislature chose to use the phrase "...the board may suspend a chief pending disposition of charges filed...by the mayor of the city" in Wis. Stat. § 62.13(5)(j). This, interestingly, is the legislature's only use of the word "mayor" in Wis. Stat. § 62.13(5) and it is not a coincidence that such sole use of the word "mayor" appears in a provision that clearly contemplates a situation where the Mayor files charges against the Chief with the Board. Again, to otherwise conclude that the Mayor has the unilateral authority to discipline the Chief by suspension without any involvement, finding, or determination by the Board would render such statutory provision meaningless and contravene the legislative intent of such provision as expressed by its terms. Such a reading of the statute would then allow the Mayor to simply impose discipline upon the Chief without ever filing charges with the Board, leaving all other aggrieved persons with no further recourse. "Statutory interpretations that render provisions meaningless should be avoided." *Belding*, 2014 WI 8, ¶ 17.

Wis. Stat. § 62.13(3) clearly provides that the Board has the power to hire, fire, and otherwise discipline chiefs, as follows:

"Chiefs. The board shall appoint the chief of police and the chief of the fire department...who shall hold their offices during good behavior, subject to suspension or removal by the board for cause."

Wis. Stat. § 62.09(8) designates the mayor as the city's chief executive officer charged with insuring that all city employees discharge their duties. Wis. Stat. § 62.09(8)(a). It further provides that "where there is no board of police and fire commissioners", the mayor "shall appoint all police officers." Wis. Stat. § 62.09(8)(d).

Nowhere in the statutes or any case cited by a party hereto does it provide that a mayor, where there is a police and fire commission, has the power to discipline a chief by imposing a suspension. (The only case cited is a case in which the mayor has filed charges with the police and fire commission: In the Matter of the Charges Filed Against Fire Chief Jesse Alba by Mayor Jeff Scrima before the City of Waukesha Board of Police and Fire Commissioners (October 14, 2013).)

Although there appears no existing statute stating that a mayor does not have the power to discipline a chief, the Board concludes, based on (a) the clear enabling language of Wis. Stat. § 62.13(3), (b) the fact that authority to discipline generally follows from the authority to hire and fire, (c) the fact that the only statutory language concerning a part played by a mayor with respect to discipline of a chief describes that role by the mayor to be one in which he is permitted to file charges with the Board; and (d) the fact that there exists no statute enabling the mayor, like the chief (with respect to a subordinate), to impose a suspension, that the Mayor does not have the power to discipline a chief. Certainly, the Mayor and a chief can negotiate and agree upon a chief's suspension, demotion, or termination without bringing the matter before the

Board for approval, but such an agreement does not limit or prevent the Board from fulfilling its obligations under Wis. Stat. § 62.13(5) if the matter is properly brought before the Board.

The foregoing holding is not changed by Wis. Stat. § 62.13(5)(j) providing that the provisions of Wis. Stat. 62.13(5)(a) to (i) "shall apply to disciplinary actions against the chiefs where applicable" combined with Wis. Stat. § 62.13(5)(c) providing that no hearing on the suspension of a subordinate by a chief unless the subordinate requests a hearing before the board. Although Wis. Stat. § 62.13(5)(c) provides that a chief may suspend a subordinate for just cause, it does not expressly provide that the mayor has the power to suspend a chief. Given the absence of express authority running to a mayor and the existence of the express enabling statute running to the Board, we conclude that a mayor does not have the right to suspend a chief (absent the agreement of the chief to accept the suspension) pursuant to the "where applicable" provision in Wis. Stat. § 62.13(5)(j).

However, assuming arguendo, that the mayor does have the power to suspend the Chief and pursuant to Wis. Stat. § 62.13(5)(j) and Wis. Stat. § 62.13(5) (c) "no hearing on such suspension shall be held unless requested by the suspended subordinate" (here the Chief), we nonetheless conclude that Wis. Stat. § 62.13(5)(c) does not prevent the Board from considering charges brought by a member of the Board, by the Board as a body, or by any aggrieved person on the same complaints for which the Chief (or subordinate) was suspended by the Mayor (or Chief) albeit that the Board would, in

order to promote due process, take into account all of the requirements of just cause enunciated.

Wis. Stat. § 62.13(5)(d) provides that following the filing and service of charges "the board shall set" a date for hearing. The only stated exception to the requirement of the board to set the hearing is the provision of Wis. Stat. § 62.13(5)(c) that no hearing on the suspension of a subordinate by a chief, after the chief files a report of such suspension with the commission immediately upon issuing the suspension, shall be held unless requested by the subordinate. Wis. Stat. § 62.13(5)(c) goes on to provide that if the subordinate requests a hearing, then the chief is required to file the charges with the board. By the clear meaning of its language, Wis. Stat. § 62.13(5)(c) applies to circumstances wherein the chief has taken action against a subordinate, not to a mayor taking negotiated/agreed action against a chief.

Even if the Board accepts as true, for the sake of argument, that the Mayor, in cases of disciplinary actions against the Chief, assumes the role and possesses all of the same statutory authority that the Chief otherwise has in disciplining a subordinate, that does not remove jurisdiction of this matter from the Board or otherwise deny the Board jurisdiction over this matter. In the case where the Chief disciplines a subordinate without filing charges with the Board, an aggrieved person still has the right under Wis. Stat. § 62.13(5)(b) to file charges with the Board. Likewise, in the case where the Mayor disciplines a Chief without filing charges with the Board, an aggrieved person still has the right under Wis. Stat. § 62.13(5)(b) to file charges with the Board. The Board does not see any reason or basis to bind aggrieved persons to the discipline imposed by the

Chief on a subordinate or by a Mayor on the Chief because doing so would violate one of the primary purposes of Wis. Stat. § 62.13 "to remove the administration of fire and police departments from city politics and to place it in the hands of impartial and nonpolitical citizen boards." *Conway*, 2003 WI 53, ¶41. As such, the Board agrees that the Chief and Mayor cannot enter into an agreement which would foreclose an "aggrieved person" from filing charges with the Board. See *Durkin v. Madison Bd. of Police & Fire Comm'rs*, 48 Wis. 2d 112, 180 N.W.2d 1 (1971). The right of an aggrieved person to file charges is not conditioned on the subordinate's (Chief's) request for a hearing on the suspension imposed by the Chief (Mayor).

Under such circumstances, it would then be the initial task of the Board at such hearing to determine what action should be taken on the charges filed by the complainant. Among others, the Board could:

1. Receive, file, dismiss, and take no further action on the charges filed. As argued by the Chief, the "Board has authority to dismiss a Complaint without a hearing after the Complaint has been processed if, in its judgment it should determine such was a proper disposition of the charges filed". *Durkin v. Madison Bd. of Police & Fire Comm'rs*, 48 Wis. 2d 112, 123, 180 N.W.2d 1 (1971); or

2. Proceed to hearing on the charges; determine if the charges are sustained; if so, apply the just cause requirements of Wis. Stat. § 62.13(5)(em); and then, if such requirements have been met, impose discipline taking into account the discipline already imposed by the Chief (Mayor).

The Board concludes that such a procedure (#2 above) would not be violative of the subordinate's (Chief's) rights to constitutional due process or right to fundamental fairness.

It is the disciplinary process outlined in Wis. Stat. § 62.13(5) that promotes and protects the fair play to which the employee is entitled.

“Wis. Stat. § 62.13(5) provides a quasijudicial proceeding with all the elements of ‘fair play’ fundamental to due process in an administrative law setting. Wis. Stat. § 62.13(5) broadly outlines the features of the disciplinary process before the board, from complaint filing through findings, determinations, and orders. In addition, the statute as a whole demonstrates a legislative intent to provide due process protection to police officers and firefighters subject to disciplinary proceedings. Efficiency and fairness are the purposes for the disciplinary hearing process. *Conway v. Board of Police and Fire Com'rs of City of Madison*, 2003 WI 53, ¶¶ 39-41, 262 Wis. 2d 1, 662 N.W.2d 335

The employee has the right, pursuant to Wis. Stat. § 62.13(5)(i) to appeal to the Circuit Court any discipline imposed by the Board. On appeal, the Circuit Court is to determine, upon the evidence, whether there was just cause, per Wis. Stat. § 62.13(5)(em), to sustain the charges against the accused. Wis. Stat. § 62.13(5)(i).

Additionally, the Board disagrees that Wis. Stat. 62.13(5)(em) requires the Board to make reasonable effort or investigation to determine if there is “just cause” for the charges before the filing of such charges.

Wis. Stat. § 62.13(5)(em) provides as follows:

“No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.

7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department."

By its express terms, Wis. Stat. § 62.13(5)(em) simply sets forth the standards that the Board must apply when determining whether or not there is "just cause" to impose discipline on the Chief or otherwise sustain the charges. Given its placement within Wis. Stat. § 62.13 (5) and its plain language, it is clear that the Wis. Stat. § 62.13(5)(em) determinations are to be made by the Board following the hearing required by Wis. Stat. § 62.13(5)(d), following the Board's determination that the charges have been sustained pursuant to Wis. Stat. § 62.13(5)(e), and prior to the Board imposing any discipline.

This proceeding, however, is not yet at that stage. There has been no evidentiary hearing. In order for the Board to be able to determine if there is "just cause" to impose discipline on the Chief or otherwise sustain the charges under the standards itemized in Wis. Stat. § 62.13(5)(em), there would need to be an evidentiary hearing on the charges. At this point in the proceeding, the Board is not considering whether or not to impose discipline upon the Chief or sustain the charges. Rather, the only issues presently before the Board are certain motions to dismiss. The Board does not agree that those standards are pertinent or applicable to the Motions presently before the Board.

In sum, regardless of whether or not the Mayor has the unilateral authority to discipline the Chief absent any involvement, finding, or determination by the Board, the Board concludes that the Board, in either such case, has jurisdiction to hear Complainants' Second Amended Complaint.

3. Standing.

Wis. Stat. § 62.13(5)(b) provides, in part, as follows:

“Charges may be filed against a subordinate by the chief, by a member of the board, by the board as a body, or by any aggrieved person.”

The question, here, is whether or not the Complainants are “aggrieved persons” within the meaning of Wis. Stat. § 62.13(5)(b). Wis. Stat. § 62.13 does not provide a definition of an “aggrieved person” and no case or other law has been cited by the Chief, City, or Complainants specifically defining “aggrieved person” for purposes of Wis. Stat. § 62.13, so the Board must look elsewhere for guidance on this issue.

“Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning.” *Wis. Prof'l Police Ass'n v. Wis. Employment Relations Comm'n*, 2013 WI App 145, ¶ 17, 352 Wis. 2d 218, 841 N.W.2d 839. See also Wis. Stat. § 990.01(1).

The Board agrees that the common, ordinary, and accepted meaning of the word “aggrieved”, as defined in several widely-used and accepted dictionaries, is “injured” or “harmed”. Nothing in the dictionary definitions, however, suggests that such injury or harm must be suffered specifically, directly, or personally. It is certainly possible for an individual to be injured or harmed generally, indirectly, and impersonally.

This is further supported by Wis. Stat. § 62.04, which provides, in part, as follows:

“...For the purpose of giving to cities the largest measure of self-government compatible with the constitution and general law, it is hereby declared that ss. 62.01 to 62.26 shall be

liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof."

In order to "promote the general welfare, peace, good order and prosperity" of the City and its inhabitants and serve the legislature intent of Wis. Stat. § 62.13, it is necessary for aggrieved inhabitants of the City, whether harmed specifically or generally, directly or indirectly, personally or impersonally, to have standing to have their complaints heard by the Board.

The Complainants are employees and members of the City's Fire Department who are obligated to take orders from the Chief, allege to be witnesses to or targets of several of the alleged episodes of misconduct by the Chief, with detailed knowledge of the others, and are a part of the community that the City's Fire Department serves.

Furthermore, the Bylaws of the Board, to which the parties are bound, provide for allegations to be made "upon information and belief". If personal, specific, or direct knowledge was required in order to bring such charges, such Bylaws or applicable statutes would have specifically required as much.

Finally, the Complainants of the Second Amended Complaint are natural persons; Local 414 is not a party to the Second Amended Complaint which is now the operative document in this matter. Complainants, by assuming a leadership or other role in Local 414 or having some other relationship to Local 414, do not forfeit their statutory rights as "aggrieved persons" to complain about alleged improper conduct of the Chief.

Therefore, in view of the foregoing, the Board concludes that the Complainants are "aggrieved persons" within the meaning of Wis. Stat. § 62.13(5)(b) and, therefore, have standing to bring the charges of their Second Amended Complaint.

4. Constitutional Due Process and Right to Fundamental Fairness.

In order for employment-related double jeopardy to exist, a number of elements need to be present.

For one, the imposition of discipline on both occasions must be for the same offense(s). This element, however, is not present in this matter because the Board cannot determine from the Mayor's letter of discipline for what specific conduct of the Chief the suspension was imposed. The Board cannot discern whether such suspension was on the basis of the incident at the Blood Drive alone, or whether there were other or additional grounds for which such suspension was imposed.

Additionally, the parties would have had to agree that the discipline was to serve as a final sanction for the specified offense. Again, this element is not present in this matter because the Chief would have known that, if an aggrieved person filed charges, the Board would need to act on those charges. Accordingly, the act by the Mayor and agreement of the Chief in this matter cannot reasonably to have been deemed a final disposition of the offense(s) by the parties.

Employment-related double jeopardy would result if the body authorized to impose discipline - here the Board - sought to increase the punishment previously imposed on an employee for the same act. The Chief could have prevented the Mayor from imposing any discipline by simply refusing to agree to it. The result would have

been that the Mayor could have then either filed charges with the Board or forgone any further action against the Chief. The Chief should not, on a double jeopardy claim, be permitted to foreclose the right of an aggrieved person to bring charges simply by agreeing to discipline proposed by a Mayor unable to impose such discipline without the Chief's agreement.

Similarly, the principles of *res judicata* and issue preclusion do not apply in this matter because there has been no evidentiary hearing of the allegations of the Complainants' Second Amended Complaint and there has not been any final judgment entered or court ruling issued by any court which is binding on the parties to a lawsuit.

The Mayor in this case was not acting as a court or quasi judicial entity. He did not conduct an adversarial hearing at which testimony was taken, findings of fact made, and conclusions of law reached. As the parties themselves conceded in oral argument, the Mayor and Chief negotiated a discipline accepted by the Chief. For the Board to act upon a complaint brought by an aggrieved person and to take action pursuant to Wis. Stat. § 62.13(5) which provides due process protections to the accused, cannot be *res judicata*, issue preclusion, collateral estoppels or "employment related" double jeopardy for the non-judicial agreed, action taken by the Mayor, not the entity - the Board - designated by statute to discipline both subordinate and chiefs.

Accordingly, in view of the foregoing, the Board concludes that the doctrines of employment-related double jeopardy, *res judicata*, and issue preclusion do not preclude or bar the Board's review or consideration of the Complainants' Second Amended Complaint in this matter.

Wis. Stat. § 62.13 (5)(h) provides as follows:

"No person shall be deprived of compensation while suspended pending disposition of charges."

The Chief and City contend that the failure of the Board to dismiss the Second Amended Complaint and the Board's setting of a hearing on the Second Amended Complaint would violate Wis. Stat. § 62.13 (5)(h) since, pursuant to the Mayor's letter of January 24, 2014, the Chief was suspended without pay for one and possibly two weeks for one or more unspecified violations of the very same charges as would be considered, among others, pursuant to the Second Amended Complaint.

Clearly the context of Wis. Stat. § 62.13(5) and its clear meaning is a mandate to the Board that, during the time that it is considering the charges, conducting the hearing, determining just cause, and imposing discipline, if any, the Board shall not take action which deprives the person charge of his compensation pending that determination. It is a simple due process standard that the accused should not be deprived of compensation until such time, if any, that the accused has the opportunity to contest the charges and submit his own proofs and testimony and the Board concludes that the charges have been sustained and that just cause exists for imposing discipline.

In this case, however, Wis. Stat. § 62.13(5)(h) is being relied upon by the Chief and City to circumvent the obligation of the Board pursuant to Wis. Stat. § 62.13(5)(d) to consider charges against a member of the police or fire department, in this case the Chief.

It is not this Board that has suspended the Chief without pay while considering the disposition of charges against him (if the Second Amended Complaint is not dismissed.) Rather, it is the Mayor's action, with the agreement of the Chief, that has resulted in the suspension without pay. As elsewhere discussed in this decision, this apparently negotiated action of the Mayor accepted by the Chief, is not the type of contested, imposed discipline intended by Wis. Stat. § 62.13(5)(h), to prevent the Board from fulfilling its obligations under Wis. Stat. § 62.13(5)(d).

Put another way, Wis. Stat. § 62.13(5)(h) should, in context, be read to provide that the Board shall take no action which would deprive the employee of compensation pending resolution of charges before the Board for consideration.

To hold otherwise would result in the absurd conclusion that if, for instance, the Mayor imposed a suspension without pay (which the Chief accepted without seeking a hearing before the Board) for a serious charge which might reasonably be the basis for the Chief's removal, that nonetheless the Board would be prevented from acting because of the imposition by the Mayor of the suspension without pay.

5. Public Policy.

As stated above, it is the declared legislative intent and public policy of the State of Wisconsin that Wis. Stat. § 62.13 "be liberally construed in favor of the rights, powers and privileges of cities to promote the general welfare, peace, good order and prosperity of such cities and the inhabitants thereof". In order for the general welfare, peace, good order, and prosperity of the City of Kenosha and its inhabitants to be served, it is necessary that Complainants' Second Amended Complaint be heard and

not be dismissed. The public policy of the State of Wisconsin demands review of the Chief's alleged misconduct because such public policy unquestionably requires the Chief to act properly and with good behavior and to be disciplined if he fails to do so.

The fact that complainants in other cases have not been successful in obtaining a hearing before this Board has no relevance to this matter. The Chief cannot be permitted to avoid review of his alleged misconduct in this case just because complainants in other cases have not been successful in obtaining a hearing before the Board. Further, the Board takes judicial notice that in none of the matters cited by the Chief at pages 13 and 14 of his April 4, 2014, Brief did any of the letters or other filings delivered to the Board fulfill the requirements of Sections 6.4.1 and 6.4.2 of the Board Bylaws. Further, the Board, in some of those matters sought investigation in order to determine if there was a basis for a member of the Board or the Board, each pursuant to Wis. Stats. 62.13 (5) (b), to file charges. In the exercise of their discretion, the Board members concluded that none of the matters, even after investigation, merited the Board or one of its members bringing charges.

6. Durkin Analysis.

The Board having determined that the motions to dismiss shall be denied, the Board now considers whether, nonetheless, to dismiss the Second Amended Complaint, if, in the judgment of the Board, it determines that dismissal of the Second Amended Complaint is a proper disposition of the charges filed by the Complainants. *Durkin v. Board of Police & Fire Comm.* 48 Wis. 2d 112, 180 N.W.2d 1 (1970).

Assuming that all of the charges set forth in the Second Amended Complaint are true and would be sustained at a hearing on that complaint pursuant to Wis. Stats. §62.13(5)(d), we nonetheless conclude that the discipline agreed to by the Mayor and Chief and set forth in the Mayor's letter of January 24, 2014, is a proper disposition of the charges set forth in the Second Amended Complaint. Therefore, the Second Amended Complaint should be dismissed.

**ORDER**

NOW, THEREFORE the Board concludes and orders as follows:

1. The Motions of the City and Chief to Dismiss the Second Amended Complaint are denied.

2. That the filing of the Second Amended Complaint by the Complainants, aggrieved persons, requires the Board to consider the Second Amended Complaint despite the fact that the Mayor imposed discipline and the Chief did not seek a hearing on the discipline imposed by the Mayor.

3. The Board determines and concludes that dismissal of the Second Amended Complaint is a proper disposition of the charges filed by the Complainants and for that reason, the Second Amended Complaint is dismissed.

Approved and filed with the Secretary this 22<sup>nd</sup> day of April, 2014:

Board of Police and Fire Commissioners for the City of Kenosha, State of

Wisconsin

By: \_\_\_\_\_  
Commissioner Charles Bradley

By: \_\_\_\_\_  
Commissioner James Greco

By: \_\_\_\_\_  
Commissioner Richard Schend

By: \_\_\_\_\_  
Commissioner Edward Kubicki

Distribution:

Attorney Joel S. Aziere, Attorney for City of Kenosha  
Attorney Charles S. Blumenfield, Attorney for Jeremy Ryan  
Attorney Nicholas J. Infusino, Attorney for Chief John Thomsen

# BROOKHOUSE & HEMSING LAW OFFICES

ATTORNEYS AND COUNSELORS

5455 SHERIDAN ROAD, SUITE 202  
KENOSHA, WISCONSIN 53140

EUGENE J. BROOKHOUSE, S.C.  
COURT COMMISSIONER  
JUSTIN R. HEMSING

E Mail: [ebrookhouse@brookhouselaw.com](mailto:ebrookhouse@brookhouselaw.com)  
website: [www.brookhouselaw.com](http://www.brookhouselaw.com)  
TELEPHONE NUMBER: (262) 658-3571  
FAX: (262) 658-8485

May 21, 2014

Mr. Charles S. Blumenfield  
Blumenfield & Shereff, LLP  
1001 West Glen Oaks Lane, Suite 110  
Mequon WI 53092

*Also transmitted via email to:  
[blumenfield@cbcslaw.com](mailto:blumenfield@cbcslaw.com)*

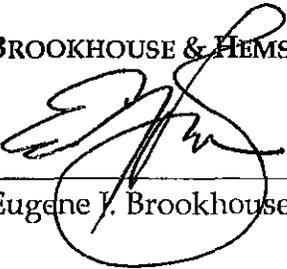
**Re: *Jeremy Ryan, et al vs. City of Kenosha Board of Police and  
Fire Commissioners, Kenosha County Case No. 14-CV-680***

Dear Mr. Blumenfield:

Please find enclosed the Notice of Retainer and Appearance, as well as the Answer and Affirmative Defenses in the above entitled matter, the originals of which have been filed with the Clerk of Courts.

Very truly yours,

**BROOKHOUSE & HEMSING LAW OFFICES**

By   
Eugene J. Brookhouse

EJB/dd  
Enclosure

JEREMY RYAN, ET. AL.,

Case No.: 14-CV-680

Plaintiffs,

vs.

Hon. Bruce E. Schroeder

CITY OF KENOSHA BOARD OF POLICE  
AND FIRE COMMISSIONERS,

Case Code: 30955

Defendant.

---

**NOTICE OF RETAINER AND APPEARANCE**

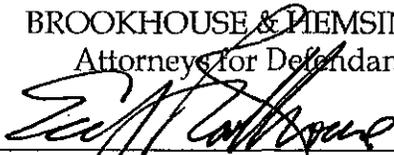
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TO: Charles S. Blumenfield, Esq.  
Blumenfield & Shereff, LLP  
1001 West Glen Oaks Lane, Suite 110  
Mequon, Wisconsin 53092  
*Attorneys for Plaintiffs*

PLEASE TAKE NOTICE that the undersigned have been retained by and hereby appear for CITY OF KENOSHA BOARD OF POLICE AND FIRE COMMISSIONERS, the above-named Defendant in the above-captioned action, and hereby demand that copies of all papers, pleadings, notices, and orders subsequent to Plaintiffs' Summons and Complaint in the above-captioned action be served upon the undersigned at the undersigned's offices located at 5455 Sheridan Road, Suite 202, Kenosha, Wisconsin 53140.

Dated in Kenosha, Wisconsin, this 21<sup>st</sup> day of May, 2014.

BROOKHOUSE & NIEMSIK LAW OFFICES  
Attorneys for Defendant

By: 

Eugene J. Brookhouse  
State Bar No.: 01013193

5455 Sheridan Road, Suite 202  
Kenosha, Wisconsin 53140  
(262) 658-3571

JEREMY RYAN, ET. AL.,

Plaintiffs,

vs.

CITY OF KENOSHA BOARD OF POLICE  
AND FIRE COMMISSIONERS,

Defendant.

Case No.: 14-CV-680

Hon. Bruce E. Schroeder

Case Code: 30955

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**ANSWER AND AFFIRMATIVE DEFENSES**

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ANSWER

NOW COMES the above-named Defendant, CITY OF KENOSHA BOARD OF POLICE AND FIRE COMMISSIONERS ("Board"), by its attorneys, BROOKHOUSE & HEMSING LAW OFFICES, by Eugene J. Brookhouse, and does hereby answer and affirmatively defend against Plaintiffs' Complaint herein, as follows:

**PARTIES**

1. Answering paragraphs 1 through 6, inclusive, of Plaintiffs' Complaint, Board lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and, therefore, deny the same, putting Plaintiffs to their proof.
2. Answering paragraph 7 of Plaintiffs' Complaint, Board admits the allegations contained therein.
3. Answering paragraph 8 of Plaintiffs' Complaint, Board admits the allegations contained therein.

4. Answering paragraph 9 of Plaintiffs' Complaint, Board denies that Wis. Stat. § 62.13(5)(d) required the Board to hold a hearing on the Second Amended Complaint and admits all of the remaining allegations contained therein.

5. Answering paragraph 10 of Plaintiffs' Complaint, Board denies the allegations contained therein.

6. Answering paragraph 11 of Plaintiffs' Complaint, Board denies the allegations contained therein and affirmatively alleges that the Board, per and in accordance with *Durkin v. Madison Bd. of Police & Fire Comm'rs*, 48 Wis. 2d 112, 180 N.W.2d 1 (1971), determined, in its judgment, that dismissal of the Second Amended Complaint was a proper disposition of the charges filed by Plaintiffs in the Second Amended Complaint.

7. Answering paragraphs 12 through 14, inclusive, of Plaintiffs' Complaint, Board denies the allegations contained therein.

#### AFFIRMATIVE DEFENSES

Further answering Plaintiffs' Complaint and by way of affirmative defenses, Board alleges the following:

8. Plaintiffs have failed to state a claim upon which relief can be granted.

9. Plaintiffs have failed to join a party under Wis. Stat. § 803.03.

10. Wis. Stat. § 62.13(5)(d) does not require the Board to hold a hearing in all cases. The Board affirmatively alleges all of the following: (a) Wis. Stat. § 62.13(5)(d) does not require the Board to hold a hearing in all cases because Wis. Stat. § 62.13(5)(d) is merely a scheduling statute requiring that, if the Board is going to hold a hearing, it must be held "not less than 10 days nor more than 30 days following service of

charges”; (b) if Wis. Stat. § 62.13(5)(d) is determined to require the Board to hold a hearing in all cases, Wis. Stat. § 62.13(5), as a statute as a whole, would be rendered internally inconsistent because Wis. Stat. § 62.13(5)(c) specifically and expressly mandates that “No hearing on such suspension shall be held unless requested by the suspended subordinate”; and (c) as such, within the general framework of Wis. Stat. § 62.13(5), it was not and necessarily could not have been the intention of the legislature of the State of Wisconsin to require the Board to hold a hearing in all cases.

11. Per and in accordance with *Durkin v. Madison Bd. of Police & Fire Comm’rs*, 48 Wis. 2d 112, 180 N.W.2d 1 (1971), the Board has the power, discretion, and judgment to dismiss the Second Amended Complaint without a hearing. The Board affirmatively alleges that the Board’s decision and order dismissing the Second Amended Complaint is supported by the Wisconsin Supreme Court’s observation in *Durkin v. Madison Bd. of Police & Fire Comm’rs*, 48 Wis. 2d 112, 180 N.W.2d 1 (1971), to wit: “Nevertheless, we would observe that the Board does have the authority to dismiss the complaint after it has been processed if, in its judgment it should determine such was a proper disposition of the charges filed by the [aggrieved person]. Also, should the Board decide further proceedings are necessary, on the basis of the record now before us, various factors should be taken into consideration by the Board in its ultimate decision.” *Id.* at 123.

12. The Board properly exercised its power, discretion, and judgment to dismiss the Second Amended Complaint. The Board affirmatively alleges that the Board duly processed the Second Amended Complaint by receiving and filing the same at a public/open meeting/hearing on March 18, 2014; and that, after processing the same and fully considering all of the pleadings and affidavits filed by each of the

parties, proceedings, factual representations of the parties at oral argument, and arguments of the parties, the Board determined, in its judgment, that dismissal of the Second Amended Complaint was a proper disposition of the charges filed by Plaintiffs in the Second Amended Complaint.

13. Per and in accordance with *Durkin v. Madison Bd. of Police & Fire Comm'rs*, 48 Wis. 2d 112, 180 N.W.2d 1 (1971), the Board, in its judgment, decided that further proceedings on the Second Amended Complaint were not necessary.

14. The Board did not proceed on an incorrect theory of law when the Board dismissed the Second Amended Complaint.

15. The Board did not exceed its jurisdiction when the Board dismissed the Second Amended Complaint.

16. The Board has fully complied with Wis. Stat. § 62.13(5) and all other applicable law in regards to the Second Amended Complaint.

WHEREFORE, Board demands judgment against Plaintiffs as follows:

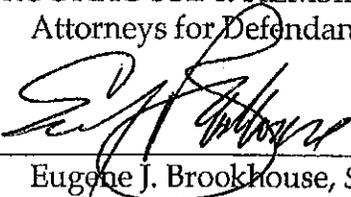
A. For dismissal of Plaintiffs' Complaint on its merits and for Board's costs and disbursements herein sustained; and

B. For such other and further relief as the Court may find just and equitable.

Dated in Kenosha, Wisconsin, this 21st day of May, 2014.

BROOKHOUSE & HEMSING LAW OFFICES  
Attorneys for Defendant/Board

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

  
Eugene J. Brookhouse, State Bar No.: 01013193

5455 Sheridan Road, Suite 202  
Kenosha, Wisconsin 53140  
(262) 658-3571

Kenosha Police Department  
Public Safety Building  
1000 – 55<sup>th</sup> Street  
Kenosha, WI 53140-3794  
(262) 605-5200



JOHN W. MORRISSEY  
Chief of Police

DANIEL G. MISKINIS  
Deputy Police Chief

## Memorandum

**To:** Members of the Police and Fire Commission  
**From:** Police Chief John W. Morrissey  
**Date:** June 17, 2014  
**Re:** Disciplinary Action

---

This letter is to inform you that I determined that on March 12, 2014, Officer Jacob Berghuis violated Kenosha Police Department policies and procedures 26.1 II 2 General Rules and Regulations, "be courteous . . . to the general public".

On May 29, 2014, I held a settlement conference with Officer Berghuis. Officer Berghuis accepted an unpaid suspension of 2 days.

If you have any questions do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "John W. Morrissey".

John W. Morrissey  
Chief of Police

Cc: File



*The mission of the Kenosha Police Department is to serve all people with respect, fairness and compassion. We are committed to preserving peace, order and safety; enforcing laws and ordinances; and safeguarding constitutional rights.*

In the Matter of the Disciplinary  
Charges Filed Against

OFFICER CASEY APKER

**AFFIDAVIT OF SERVICE**

This is to certify that I, Lieutenant Brad Hetlet, personally delivered the original of the disciplinary charges against Officer Casey Apker to Mr. Charles Bradley, the President of the Kenosha Police & Fire Commission, by delivering the charges to him in person. I personally served Mr. Charles Bradley, the President of the Kenosha Police & Fire Commission on June 3<sup>rd</sup>, 2014 at 7:25 a.m. or p.m.

This is to further certify that I, Lieutenant Brad Hetlet, personally delivered to Officer Casey Apker a copy of the disciplinary charges which were filed earlier with the President of the Kenosha Police & Fire Commission on June 3<sup>rd</sup>, 2014. I personally served Officer Apker with a copy of the disciplinary charges on June 3<sup>rd</sup>, 2014 at 7:45 a.m. or p.m. in the Chief's Conference Room of the Public Safety Building.



Lieutenant Brad Hetlet  
Kenosha Police Department

Subscribed and sworn to before me  
this 3<sup>rd</sup> day of June, 2014.

Kelly M. Andreoli  
Notary Public, State of Wisconsin  
My commission expires on 10-16-16

June 3, 2014

**VIA PERSONAL DELIVERY**

Mr. Charles Bradley  
President  
Board of Kenosha Police & Fire Commissioners  
8306-23 Avenue  
Kenosha, WI 53143

**Re: Filing of Disciplinary Charges against Officer Casey Apker**

Dear Mr. Bradley:

Pursuant to the provisions of Section 62.13(5)(b), Wis. Stats., the Bylaws of the Board of Police and Fire Commissioners, and the Rules and Regulations of the Kenosha Police Department, I am hereby filing the following charges against Officer Casey Apker. These charges are being filed as the result of three internal investigations conducted by Lieutenant Brad Hetlet and Sergeant Tim Schaal of the Kenosha Police Department concerning serious acts of misconduct by Officer Apker.

**BACKGROUND INFORMATION**

On December 9, 2013, the Kenosha Police Department received a citizen complaint against Officer Casey Apker. The complaint alleged that Officer Apker made threatening and intimidating comments to a citizen while on duty and in uniform. The citizen was concerned that Officer Apker would use his authority as a police officer to continue to harass or intimidate him and his fiancée. At that same time, Sergeant Schaal was conducting an internal investigation into a complaint of harassment filed against Officer Apker by a female police officer and a separate internal investigation into a potential rule violation. Due to the seriousness of all of these allegations, I assigned Lt. Brad Hetlet to conduct an internal investigation.

**FACTUAL FINDINGS OF INVESTIGATION**

**A. INTERNAL INVESTIGATION OF CITIZEN COMPLAINT**

On November 30, 2013, Jeremie Berry and his fiancée, Susan Romero, drove to LaFogata Restaurant on Sheridan Road for dinner. The restaurant was quite crowded, so Mr. Berry had to drive around the parking lot a couple of times looking for a parking space. Mr. Berry saw a car backing out of a parking spot, and waited to pull into it. Before he could do so, another car driven by Officer Apker pulled into the vacant space. Officer Apker was off duty and he and his wife were meeting friends for dinner. Mr. Berry found another parking spot and then approached Officer Apker on his way into the restaurant. Mr. Berry admits to telling the other

driver that's some real "asshole" move. Officer Apker told Mr. Berry to "take his fucking ass back to Illinois." Mr. Berry then asked Officer Apker if he was a "tough guy." The exchange ended there. Officer Apker and his wife went into the restaurant. Mr. Berry and his fiancée went into the restaurant but decided not to stay. On his way back to his car, Mr. Berry admits that he wrote "Karma is a bitch" in the dirt on the back of Officer Apker's vehicle. Mr. Berry had never seen Casey Apker before and did not know that he was a police officer.

One week later, on December 7, 2013, Mr. Berry was working security at an event at the VFW on the corner of 67<sup>th</sup> Street and 39<sup>th</sup> Avenue. At about midnight, Mr. Berry went out to his car to warm it up and noticed a Kenosha Police squad car turn into the VFW parking lot. The squad car drove through the lot very slowly, and Mr. Berry noticed the officer looking directly at him as he drove by. The squad then pulled onto 39<sup>th</sup> Avenue, turned into a neighboring parking lot, and parked facing north with its headlights on. While outside, Mr. Berry smoked a cigarette and talked to patrons as they were leaving. Mr. Berry got into his car, picked up his fiancée in front of the VFW, and turned northbound onto 39<sup>th</sup> Avenue. The squad car then pulled out of the parking lot and followed Mr. Berry's vehicle for several blocks.

Mr. Berry turned onto 60<sup>th</sup> Street and pulled into the Speedway gas station at 60<sup>th</sup> Street and 37<sup>th</sup> Avenue. The squad car continued eastbound on 60<sup>th</sup> Street. Mr. Berry and his fiancée went into the gas station to purchase cigarettes. As Mr. Berry started to exit the gas station, Officer Apker was standing inside, near the doorway. Officer Apker asked Mr. Berry if he remembered him and Mr. Berry responded "no" and asked how he was doing. Officer Apker told Mr. Berry "you can stop the nice guy shit. You really don't remember me?" This statement drew the attention of other customers. Officer Apker then pointed to Mr. Berry's fiancée and said "she was with you." When Mr. Berry again confirmed that he did not recognize him, Officer Apker stated "Karma is a bitch. Remember that from here on out." Officer Apker then told Mr. Berry that he was lucky he was not being ticketed for disorderly conduct, and then Officer Apker left the gas station. It was at that time that Mr. Berry realized this was the gentleman who took his parking spot at LaFogata the week before.

After arriving home, Mr. Berry began to worry. He could not figure out how Officer Apker had recognized him or found him at the VFW post. Mr. Berry became concerned that he might be followed or pulled over by Officer Apker while driving in Kenosha, or that Officer Apker might have his fellow officers watching out for him so they could pull him over. Thus, Mr. Berry contacted the Police Department to file a citizen complaint. Mr. Berry was interviewed by Lt. Hetlet on December 9, 2014 and provided a written statement. Sgt. Schaal interviewed Susan Romero that same evening and took a written statement.

On December 17, 2013, Officer Apker stopped in Lt. Hetlet's office to ask if a complaint had been filed against him. Lt. Hetlet confirmed that a complaint had been filed. Officer Apker stated that another car had been waiting for the parking space at LaFogata, but Officer Apker explained he had gotten to the parking spot first, so he took it.

On January 10, 2014, Officer Apker again asked Lt. Hetlet about the status of the citizen complaint. Officer Apker stated that he had no idea who the gentleman was, but that the guy knew he was a cop. During that discussion, Officer Apker described the citizen as wearing a leather biker vest with the letters "VFW" on the back.

### **First Interview of Officer Apker**

Officer Apker was interviewed twice during this investigation. The first interview was on April 3, 2014. Officer Apker stated that he saw a car pulling out at LaFogata so he pulled into the vacant space. Officer Apker denied seeing any other car waiting for the parking spot. Officer Apker admitted that he and the citizen exchanged words, and that he told him "to go back to Illinois." Officer Apker denied using profanity with this citizen. Officer Apker could not describe the vehicle Mr. Berry drove, other than to say it was a white car with Illinois plates. Officer Apker could not describe the citizen driving the white car, other than to say that he wore a leather biker jacket.

Officer Apker stated that he recognized the citizen from the previous night at a bar called Bob's Grandview. Officer Apker stated that the citizen was wearing the same leather biker jacket as the next night at LaFogata. Officer Apker stated he did not exchange words with the citizen at Bob's Grandview, but that the citizen kept staring at him.

Officer Apker stated he thought it was the very next night that he was at the VFW parking lot. Officer Apker indicated there was a dance at the VFW post on December 7<sup>th</sup> so officers were asked to provide extra patrols in the area. Officer Apker was driving through the VFW parking lot when he was flagged down by a group of kids who had locked their keys in the car. Officer Apker did not have a lock-out kit with him, so he contacted Officer Jurgens at 23:56 hours to assist. Officer Adam Jurgens arrived at 23:58 hours, and cleared the call at 00:03 hours.

In his first interview, Officer Apker stated that after he made the call for assistance to Officer Jurgens, he noticed the same white vehicle that he had seen the night before in the LaFogata parking lot, but it was now parked on the street in front of the VFW. Officer Apker decided to run the vehicle's Illinois license plates on his squad computer. The first time he ran the plate was at 23:55 hours, using the wrong plate number, so he ran the plate number a second time at 00:18 hours with the correct information. This query provided him with the name and registered owner of the vehicle, and Officer Apker ran this driver's license number at 00:19 hours and then again at 00:21 hours. From that query, Officer Apker learned the owner's name and date of birth, so he ran that information at 00:22 hours in an attempt to find more information on the driver.

During his first interview, Officer Apker stated that the man he saw in the VFW parking lot was the same man from the night before in the LaFogata parking lot, and the same man from the night before that at Bob's Grandview. Officer Apker decided to follow the man as he drove out of the VFW parking lot. Officer Apker followed the white car to a Speedway gas station at 37<sup>th</sup>

Avenue and 60<sup>th</sup> Street. Officer Apker admits talking with this citizen, but denies any use of profanity. Officer Apker admits stating to the citizen "Karma is a bitch," but denies stating "Remember that from here on out." Officer Apker alleged that the citizen was just making this stuff up to get him in trouble. Officer Apker also stated that this would never have happened if the man had not written on his car. During the first interview, Officer Apker confirmed that he wanted the citizen to know that he had written on a police officer's car and he wanted him "to realize that he wrote on a cop's car and don't-don't-mess with that car."

Officer Apker denied ever threatening Mr. Berry and stated he did not act in an authoritative manner. Officer Apker conceded that speaking to Mr. Berry while armed and in uniform could appear authoritative and intimidating, but that was not his intent. Officer Apker also denied threatening to have Mr. Berry arrested for disorderly conduct.

### **Other Pertinent Information Collected During the Investigation**

Lt. Hetlet interviewed Officer Jurgens on April 7, 2014. Officer Jurgens confirmed that, on December 7<sup>th</sup>, Officer Apker informed him that he had a "battle" over a parking spot at LaFogota and that the same car was parked on the street in front of the VFW. Officer Apker stated he was going to wait for the driver to come out and then see who gets in the car. Officer Jurgens told Officer Apker to be careful and not to do anything stupid.

The internal investigation also confirmed the times that Officer Apker did computer searches of the Illinois license plate and the driver's license number for the owner of the white vehicle in the VFW parking lot on December 7, 2013. A search of computer records confirmed that one of these searches was conducted *before* Officer Apker contacted Officer Jurgens for assistance with the lock-out kit (wrong plate number at 23:55 hours).

### **Second Interview of Officer Apker**

Officer Apker was interviewed again on April 9, 2014. Lt. Hetlet asked Officer Apker about inconsistencies as to when he noticed Mr. Berry's vehicle and whether it was before or after the lock-out call. Officer Apker stated that, upon further reflection, he was flagged down by the kids, drove around the VFW, saw Mr. Berry, noticed his vehicle, ran the license plate, and then assisted Officer Jurgens with the lock-out call. Officer Apker claimed to be concerned about "ill will" from this citizen, but could not explain why he did not do a Records check or Master Name check on Mr. Berry to determine if he had prior police contact with him.

Officer Apker could not explain why he could only provide a vague description of the vehicle driven by Mr. Berry and a vague description of Mr. Berry and what he was wearing. The vehicle was unique in that it was a white 1994 Mercury Tracer station wagon with personalized Illinois license plates.

Officer Apker stated he did not recall telling Officer Jurgens that he had a "battle" over a parking spot and was going to wait and see who got in the vehicle.

Officer Apker could not explain why he logged off his computer three times during his shift on December 7, 2013, including 5 minutes before he entered the Speedway gas station. Officer Apker was insistent that he did not intentionally log off his computer that evening. The IT log issues a code when an officer logs off the computer system. During the interview, Officer Apker could not explain why this code was generated if he did not log off his squad computer.

## **B. INTERNAL INVESTIGATION OF HARASSMENT COMPLAINT**

On November 6, 2013, Field Training Officer (FTO) Kurt Zurcher approached Sergeant Tim Schaal about allegations of harassment against Officer Apker. FTO Zurcher explained that his trainee, Officer Jennifer Wasielewski, had complained about comments and actions taken by Officer Apker which made her feel uncomfortable and concerned for her employment. Sergeant Schaal interviewed Officer Wasielewski that same day. Officer Wasielewski previously worked for the Wisconsin State Patrol, and during that time, she became friends with Officer Apker. Officer Wasielewski indicated that she and Officer Apker were never in a dating relationship, but that they did attend a wedding together as friends. Eventually, the two grew apart after Officer Apker started dating the woman who would later become his wife. Officer Apker's wife is a corrections officer at the Kenosha County Jail. Officer Wasielewski stated that she is currently dating Tim Cepress, a second shift officer for the Kenosha Police Department.

While Officer Wasielewski was in field training on 3rd shift, other officers pointed out to FTO Zurcher that Officer Apker appeared to be responding to an excessive number of calls for service to which Officer Wasielewski was also assigned. Officer Wasielewski reported that when Officer Apker responded to her calls, he would talk to other officers on the scene, but would not talk to her [Officer Wasielewski]. Two other third shift officers, Officer Adam Jurgens and Officer Cory Brennan, provided statements during the investigation and they confirmed that Officer Apker "jumped" calls and responded to a disproportionate number of calls where Officer Wasielewski was also assigned.

On November 1, 2013, FTO Zurcher and Officer Wasielewski were assigned to a domestic violence call. FTO Zurcher contacted dispatch to ask for an additional squad to respond to the call. An officer was dispatched, but Officer Apker told the other officer to disregard because he would respond to the call. Officer Wasielewski placed a suspect under arrest for battery and placed her in the back of Officer Apker's squad car. Officer Apker approached Officer Wasielewski beside his squad car and engaged in a conversation about personal matters. Officer Apker made an inappropriate inquiry about the officer that Officer Wasielewski was dating. Officer Apker asked:

"Did Tim [Officer Tim Cepress] tell you that people are asking him how it feels to have my sloppy seconds?"

Officer Wasielewski reminded Officer Apker that the two of them had never dated.

During this same conversation, Officer Apker informed Officer Wasielewski that another officer was at the Kenosha County Jail and asked his wife if it was weird or awkward for her [Danielle Apker] to see her husband's ex-girlfriend at work. Officer Wasielewski reminded Officer Apker that they had never dated. Then, Officer Apker stated:

Well I told my wife that nothing happened between us so if that were ever asked of you it would be a lot easier for you if you said the same.

Confused, Officer Wasielewski asked why it would be easier for her if she made the statement above. Officer Apker told Officer Wasielewski she would "have a lot less explaining to do." Officer Wasielewski then asked Officer Apker whether he would have trouble working with her or whether it would affect the way Officer Apker backs her up. Officer Wasielewski had to ask the question twice before Officer Apker responded that his "personal feelings" about someone would not affect the way he backs up an officer.

During the interview, Officer Wasielewski also reported an incident that occurred on November 2, 2013. Third shift officers were holding an after work party to celebrate an officer completing the FTO program and another officer's birthday. Officer Wasielewski attended with her boyfriend, Officer Tim Cepress. A short time after they arrived, Officer Apker showed up at the party. Officer Wasielewski was uncomfortable being at the party if Officer Apker was there, so she left. Officer Wasielewski asked other third shift officers if Officer Apker ever attended the after work parties and was told he does not attend these social events.

Officer Wasielewski reported that the entire conversation with Officer Apker on November 1, 2013 was not initiated by her, nor was it welcome. Officer Wasielewski considered the conversation inappropriate, made her feel uncomfortable and made her concerned for her job. Officer Wasielewski was very reluctant to report these incidents, and initially asked that supervisors only monitor the situation because she was concerned about how Officer Apker would react. However, she did submit a written statement and did cooperate during the investigation.

### **C. INTERNAL INVESTIGATION OF PLEASANT PRAIRIE CALL**

On November 10, 2013, at approximately 00:57 hours, Officer Ball called dispatch to advise them that Pleasant Prairie Police had something going on at Springbrook Road. Dispatch advised officers that Pleasant Prairie Police were requesting assistance with traffic for a roll-over accident. Officer Fitzgerald then called out on the Pleasant Prairie call.

Lt. Hetlet was assigned to work 3<sup>rd</sup> shift patrol that evening. He checked the AVL (Automated Vehicle Locator) to determine what squads were in the area and noticed that Officer Fitzgerald

was in the area of the call and that Officer Ball appeared to be en route to the call from Sheridan Road. Lt. Hetlet also noted that Officer Apker was near Woodman's Market on Highway 50 and was traveling eastbound. Lt. Hetlet continued to watch the AVL to determine which officers were responding to assist Pleasant Prairie Police. At approximately 01:00 hours, Officer Apker's squad disappeared from the AVL screen. Lt. Hetlet changed the settings on the AVL terminal to include "non logins" and determined that Officer Apker's squad was still eastbound on Highway 50 and then was east of Highway 31 on 39<sup>th</sup> Avenue. Lt. Hetlet checked the 3rd shift schedule and determined that Officer Apker was assigned to area 70, which is west of Highway 31. Lt. Hetlet watched the AVL monitor as Officer Apker made his way to 24th Avenue and then to the area of the Pleasant Prairie call.

During the time Lt. Hetlet watched the AVL screen, he also listened to radio traffic on KPD Channel 1. While monitoring the radio, Lt. Hetlet determined that four officers were responding to assist Pleasant Prairie on their call. Officer Apker did not notify dispatch that he was traveling eastbound out of his assigned patrol area, nor did he advise dispatch that he would be assisting on the Pleasant Prairie call. Officer Apker did not request permission to leave his assigned patrol area. After 15-20 minutes, Lt. Hetlet heard Officer Ball notify dispatch that a suspect was in custody and heard Officer Apker notify dispatch of the location where the suspect was taken into custody.

Lt. Hetlet contacted the dispatch center and learned that, at 01:14 hours, Officer Apker contacted dispatch on KPD Channel 2 and advised them that he was en route to the Pleasant Prairie call. At 01:15 hours, Officer Apker notified dispatch on Channel 2 that he was on scene. Based on the AVL screen, Lt. Hetlet determined that Officer Apker had been at the scene for 10 minutes before he notified dispatch of his location.

On March 14, 2014, Officer Apker was interviewed as part of this internal investigation. Initially, Officer Apker had trouble identifying the boundaries of his assigned patrol area, and claimed the eastern border was 39<sup>th</sup> Avenue. Eventually, Officer Apker admitted that the eastern border of his patrol area is Highway 31. Officer Apker stated that he did not notify dispatch when he left his assigned patrol area to assist because, if he did not get involved in the call, he was not going to notify dispatch that he was at the call. Officer Apker was asked why he would use Channel 2 to contact dispatch when it was a slow night, and Channel 1 was not closed to radio traffic. Officer Apker stated he did not know how to answer that question; he "just clicked over to Channel 2 and just called out."

During the interview, Officer Apker admitted it was a stupid mistake on his part to switch over to Channel 2 to contact dispatch.

During the interview, Officer Apker denied logging off of his computer and stated that the "computer went down." When asked whether he intentionally logged off his computer, Officer Apker stated "I don't believe so." Officer Apker acknowledged that it could appear that he was trying to avoid anyone knowing his location when he logged off his computer and called

dispatch on Channel 2 to report his location. Officer Apker admitted that what he did was a violation of Department policy by going out of his patrol area and not staying logged on to his computer.

During the investigation, Lt. Hetlet determined that, within the first couple minutes after Officer Ball called dispatch to advise that Pleasant Prairie needed assistance, there were a minimum of eighteen (18) radio transmissions by four (4) different officers regarding this call.

### **CHARGES**

The internal investigation found substantial and credible evidence to prove the following violations of Kenosha Police Department policy.

#### **A. INTERNAL INVESTIGATION OF CITIZEN COMPLAINT**

##### **(1) Violation 1**

On November 30, 2013, Officer Apker was involved in an off-duty confrontation over a parking space with Mr. Berry at the LaFogata Restaurant. After the confrontation and unbeknownst to Officer Apker at the time, Mr. Berry wrote "Karma is a Bitch" on the back of Officer Apker's personal vehicle. While on duty and in full uniform during the early morning hours of December 8, 2013, Officer Apker recognized Mr. Berry and his vehicle at an event at the VFW. When Mr. Berry left the VFW, Officer Apker followed him to the Speedway gas station and initiated contact with him. Officer Apker confronted and intimidated Mr. Berry about writing in the dirt on the back window of his car on November 30, 2013.

Rules violated:

- **Rule 1.2 --** I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions.

##### **(2) Violations 2, 3, 4, 5 and 6**

On December 8, 2013, while on-duty Officer Apker confronted Mr. Berry at the Speedway gas station and used his authority and position as a police officer to intimidate him in reference to an incident which occurred while off-duty at LaFogata Restaurant on November 30, 2013.

Rules violated:

- **Rule 26.1 (II) 21** -- Devote full time and attention to department business.
- **Rule 26.1 (II) 2** -- Be courteous and respectful to other members of the department and to the general public.
- **Rule 26.1 (II) 4** -- Be competent, efficient, and exercise common sense in the performance of their duties.
- **Rule 26.1 (II) 12** -- Be neat and clean, exercising good manners at all times.
- **Rule 26.1 (II) 19** -- Not engage in conduct which would be demeaning to the department or unbecoming of an officer thereof.

**(3) Violation 7**

During his interview, Officer Apker made the following untruthful statements to a superior officer:

- On December 17, 2013, Officer Apker informed Lt. Hetlet that another car was waiting for the same parking spot at LaFogata, but he thought that he had gotten there first so he took the spot. Yet, during his April 3, 2014, interview, Officer Apker denied that another vehicle was waiting for the parking spot at LaFogata. This untruthfulness is confirmed by a statement that Officer Apker made to Officer Jurgens while on the lock-out call at the VFW on December 7, 2013, when Officer Apker stated that he had a "battle" over a parking spot recently and the car that was involved was parked at the VFW.
- During the interview with Officer Apker on April 3, 2014, he stated that the guy who was staring at him at Bob's Grandview was wearing a leather vest but could not see the back of it so he did not know if anything was written on it. On January 10, 2014, Officer Apker told Lt. Hetlet that "VFW" was written on the vest. When this discrepancy was brought to Officer Apker's attention during the interview, he then remembered that VFW was written on the back of the vest.
- During the April 3, 2014 interview, Officer Apker indicated that after clearing the lock-out call, he parked in the Shell gas station lot across from the VFW and that's when he noticed Mr. Berry and then noticed Mr. Berry's car. The Department of Justice records indicate that Officer Apker ran the license plate of the vehicle prior to the lock-out call. Officer

Jurgens reported that during the lock-out call, Officer Apker mentioned to him that he had a battle for a parking spot recently and that the vehicle was parked outside the VFW.

- Officer Apker reported that when he first recognized this individual, Mr. Berry was just standing by the entrance to the VFW looking around. On December 17, 2013, Officer Apker stated to Lt. Hetlet that while he drove through the lot of the VFW, he recognized Mr. Berry getting into his car.
- During the interview on April 3, 2014, Officer Apker stated he did not learn anything by running the personalized license plate on the white Mercury Tracer station wagon at 23:55 hours on December 7, 2013. However, from running the license plate, Officer Apker learned the driver's license number of the registered owner (the father of the complainant). During his interview, Officer Apker reported that he ran the license number but did not learn anything or do anything with the information that came back from the Department of Transportation. This is contrary to the Department of Justice Recall Query print-out which indicates that Officer Apker ran the correct plate number at 00:18:52 hours and used the information from that query to run the registered owner's driver's license number at 00:19:58 hours and then again at 00:21:04 hours. By running the driver's license number, Officer Apker learned the name, address, and date of birth of the registered owner. He then ran the name and date of birth at 00:22:31 hours in an attempt to obtain further information on this citizen.
- During the interview on April 9, 2014, Officer Apker stated that he did not shut off his squad computer while working third shift (which started on December 7, 2013). When presented with a print-out from IT that shows that he did log-off of his squad computer at 00:30:23 hours, again at 02:05:53 hours and again at 02:29:23 hours, Officer Apker denied doing so and stated "*I have no idea why my computer went off.*"

Rule violated:

- **Rule 26.1 (II) 16** -- Answer all job related questions from a higher authority promptly, completely, and truthfully, except as provided in the Police Officers Bill of Rights.

**(4) Violation 8**

While on duty, Officer Apker queried the license plate of a vehicle on two different occasions and queried the driver's license number of the car owner on

three different occasions between the hours of 23:55 hours on December 7, 2013 and 00:22 hours on December 8, 2013. All five (5) queries were made by Officer Apker in reference to an off-duty incident that occurred on November 30, 2013, that involved a white 1994 Mercury Tracer station wagon with Illinois plates and the registered owner of that vehicle. The queries were not related to any official police business.

Rule violated:

- **Rule 81.4 (IV) 8** -- No member shall access or allow others to access any file or database unless that person has a need and a right to such information.
- **TIME System Security Policy adopted by the Wisconsin Department of Justice** -- Users should use the terminal only for the purposes for which they are authorized. The TIME System and CIB/NCIC is only to be used by authorized law enforcement/criminal justice personnel for law enforcement/criminal justice purposes.

**B. INTERNAL INVESTIGATION OF HARASSMENT COMPLAINT**

**(1) Violation 1**

Officer Apker initiated a conversation with Officer Wasielewski while on duty about a prior personal relationship and that conversation was unwelcome and inappropriate. By carrying on such a conversation, Officer Apker was not courteous and respectful of Officer Wasielewski's feelings and lacked common sense and good manners while on duty.

Rules violated:

- **Rule 26.1 General Rules and Regulations**

II) ALL SWORN AND CIVILIAN MEMBERS OF THE DEPARTMENT, WHILE ON DUTY, AT ALL TIMES, SHALL:

2) Be courteous and respectful to other members of the department and to the general public.

\* \* \* \* \*

4) Be competent, efficient, and exercise common sense in the performance of their duties.

\* \* \* \* \*

12) Be neat and clean, exercising good manners at all times.

**(2) Violation 2**

Officer Apker initiated a conversation with Officer Wasielewski while on duty about a prior personal relationship and that conversation was unwelcome and inappropriate. During this conversation, Officer Apker asked Officer Wasielewski to keep quiet about their personal relationship and explained that it would be easier for her if she did. This conversation weighed on her mind and made her feel uncomfortable, reasonably interfered with her job performance and created an intimidating and hostile work environment.

Rule violated:

• **Rule 26.4 Harassment and Discrimination in the Workplace**

I) **POLICY**

It is the policy of the Kenosha Police Department that all employees have the right to work in an environment free of all forms of harassment. The Kenosha Police Department will not tolerate, condone, or allow harassment by employees, whether sworn, civilian, volunteer or other non-employees who conduct business with this agency. The Kenosha Police Department considers harassment and discrimination forms of serious employee misconduct. Therefore, the Kenosha Police Department shall take direct and immediate action to prevent such behavior, and to remedy all reported instances of harassment and discrimination. A violation of this agency policy can lead to discipline up to and including termination, with repeated violations, even if "minor," resulting in greater levels of discipline as appropriate.

\* \* \* \* \*

IV) **PROCEDURES**

B) Harassment – Harassment is any verbal, written, visual or physical act that creates a hostile, intimidating or offensive work environment or interferes with an individual's job performance.

**(3) Violation 3**

Officer Apker initiated a conversation with Officer Wasielewski while on duty about a prior personal relationship and that conversation was unwelcome and

inappropriate. During this conversation, Officer Apker asked Officer Wasielewski to keep quiet about their personal relationship and explained that it would be easier for her at work if she did. These comments were provocative and weighed on Officer Wasielewski's mind, making her feel uncomfortable, reasonably interfered with her job performance and decreased her morale and self-esteem.

Rule violated:

- **City of Kenosha Work Rules**

- J) PROHIBITED CONDUCT

- \* \* \* \* \*

- 5) Threatening, intimidating, interfering with, or physically or verbally abusing the general public, supervisors or fellow employees.

- \* \* \* \* \*

- 39) Any incident of hazing that includes actions that result in injuries, creates a significant risk of injury and may have an adverse impact on productivity, safety and morale. These actions include provocative comments, language or other activities that put another employee's self-esteem, health and safety in jeopardy.

**C. INTERNAL INVESTIGATION OF PLEASANT PRAIRIE CALL**

**(1) Policy Violations 1, 2 and 3**

Officer Apker left and traveled 4.3 miles outside of his assigned patrol area to respond to a call outside of the Police Department's jurisdiction without authorization from a supervisor or being dispatched to the call. Officer Apker logged off of his squad computer and communicated with dispatch on Channel 2 to avoid being detected out of his patrol area. Officer Apker was on scene for approximately 10 minutes before notifying dispatch of his location and that he was assisting on the call.

Rules Violated:

- **Policy 26.1(II)4.** Be competent, efficient, and exercise common sense in the performance of their duties.
- **Policy 26.1(II)13.** Not leave place of assignment or duty without being direct by person in higher authority in chain of command or dispatcher.
- **Policy 41.1 Patrol, Section III(C).** Officers assigned to patrol duties will be assigned their beat area prior to each day's tour of duty by the roll call

Lieutenant/Sergeant. Officers assigned to a beat will not leave their beat unless:

1. Directed to do so by the dispatcher or supervisor
2. For emergency police business
3. Going to and from lunch break with the acknowledgement of the dispatcher
4. Going to and from the tour of duty
5. Going to and from the police building on police related matters
6. For follow-up investigation with acknowledgement of dispatcher.

**(2) Policy Violation 4**

On November 11, 2013, at 00:57:43 hours, Officer Ball received permission to assist Pleasant Prairie on a roll-over accident at Springbrook Road. At 01:00:21 hours, Officer Apker logged off of his squad computer and drove to the area of the Pleasant Prairie call. During the interview with Officer Apker, he stated that the computer went down and implied that the computer logged him off because he let it sit too long. When asked if he intentionally logged off, he stated "I don't believe so. I don't see why I would log-off." When asked whether he intentionally logged off the computer and communicated on Channel 2 with dispatch to avoid being detected out of his area, Officer Apker "no" because he believed his area border was 39<sup>th</sup> Avenue. Earlier in the interview, he acknowledged that the east border of his area is Highway 31.

Officer Apker stated during his interview that he responded to the Pleasant Prairie call because he did not hear any other squads responding there to assist. The investigation confirmed that there were a minimum of eighteen (18) radio transmissions by four (4) different officers regarding this call.

Rule Violated:

- **Violation of Rule 26.1 (II)(16)** -- Answer all job related questions from higher authority promptly, completely, and truthfully, except as provided in the Police Officer's Bill of Rights.

**OFFICER APKER'S PRIOR DISCIPLINE**

<b>Date</b>	<b>Discipline Imposed</b>	<b>Reason for Discipline</b>
08/27/09	Training and coaching	Work performance (police pursuit)
03/06/10	Verbal reprimand	Work performance (officer safety)

03/08/10	Written reprimand	Care and use of equipment (squad accident)
10/29/11	Two (2) day suspension without pay	Care and use of equipment (squad accident)
7/25/12	Seventy-two (72) day suspension without pay and last chance agreement	Multiple policy violations (ethics, unbecoming conduct, unprofessional conduct, untruthfulness)

**REQUEST FOR DISCIPLINARY ACTION**

Based upon the serious nature of these acts of misconduct by Officer Apker as described above, there is "just cause" to conclude that Officer Apker engaged in the misconduct that serves as the basis for these disciplinary charges. A police officer must perform his job duties in a satisfactory, competent, and professional manner. A police officer cannot be permitted to use his power and authority to threaten or intimidate the citizens that they are sworn to protect from harm. Officer Apker used his authority as a police officer to run the license plate and driver's license number of a citizen with whom he had a personal disagreement, and then confronted that individual. Further, Officer Apker has engaged in unwelcome and inappropriate conduct toward a female police officer which creates a hostile work environment. This misconduct is compounded by the fact that the female officer is newly hired and concerned for her job because she is serving in her probationary period. Officer Apker has also deliberately logged off his computer on several occasions, and left his assigned patrol area without notifying dispatch of his location. Officer Apker was deceptive and untruthful in his investigatory interviews on multiple occasions, conduct which cannot be tolerated in a Police Department.

In July, 2012, Officer Apker was issued a 72 work day suspension without pay and placed on a Last Chance Agreement for unprofessional and inappropriate behavior with women who he interacts with as part of his job duties. This significant disciplinary action and prior warning has failed to correct his behavior, thus satisfying the "just cause standard" for termination of Officer Apker's employment. Therefore, for the good of the Police Department, I am requesting that Officer Apker be terminated from his employment and respectfully request the Commission to affirm this decision. This requested action is based upon the seriousness of these charges, the number of rule violations at issue, his prior disciplinary record, as well as Officer Apker's overall record of service to the Kenosha Police Department.

I am sending a courtesy copy of these charges to the KPPA President, Peter Deates, and the KPPA attorney, Tim Hawks. It is my understanding that Commission Bylaws require that the Police Department must legally serve a copy of these charges on Officer Casey Apker. Thus, attached is an Affidavit of Service which will be completed once the Charges have been served on Officer Apker. If you would prefer the Commission to officially serve Officer Apker with a

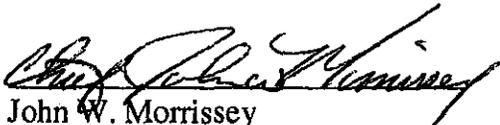
Mr. Charles Bradley  
June 4, 2014  
Page 16

copy of the charges filed with the Commission, please contact me and I will make arrangements to do so.

Upon your receipt of these charges, I would request that a hearing be scheduled as required by Section 62.13(5), Wis. Stats., not less than ten (10) days nor more than thirty (30) days after the service of these charges on Officer Apker.

I will be represented in this matter by Attorney Nancy Pirkey of Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, WI 53186. Attorney Pirkey may be reached by phone at (262) 364-0257 or by e-mail at [npirkey@buelowvetter.com](mailto:npirkey@buelowvetter.com). Please include Attorney Pirkey on all future correspondence regarding the scheduling of the hearing or any other aspect of this matter.

Respectfully submitted,



John W. Morrissey  
Chief of Police

cc: Mr. Steve Stanczak, Personnel Director  
Attorney Nancy Pirkey  
Officer Casey Apker  
Attorney Tim Hawks, KPPA Attorney  
Detective Peter Deates, KPPA President

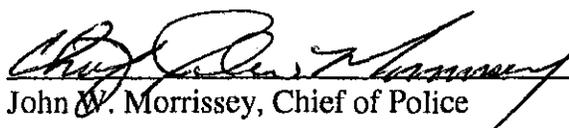
In the Matter of the Disciplinary  
Charges Filed Against

OFFICER CASEY APKER

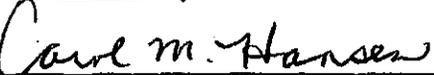
**AFFIDAVIT OF CHIEF JOHN W. MORRISSEY**

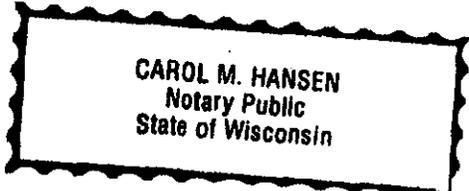
Chief John W. Morrissey states as follows:

1. I am the Police Chief for the City of Kenosha Police Department. It is in this capacity that I make this affidavit.
2. I submit this affidavit to comply with Section 6.4.1 of the By-Laws of the Kenosha Police & Fire Commission which requires that I file a verified (notarized) complaint with the Police & Fire Commission.
3. The attached disciplinary charges are the result of an internal investigation conducted by Lieutenant Brad Hetlet and Sergeant Tim Schaal of the Kenosha Police Department. These charges are true and correct and are supported by substantial facts and evidence developed during the course of this internal investigation.

  
 John W. Morrissey, Chief of Police

Subscribed and sworn to before me  
this 2 day of June, 2014.

  
 Notary Public, State of Wisconsin  
 My commission expires on 6/22/2014



Kenosha Police Department  
Public Safety Building  
1000 – 55<sup>th</sup> Street  
Kenosha, WI 53140-3794  
(262) 605-5200



JOHN W. MORRISSEY  
Chief of Police

DANIEL G. MISKINIS  
Deputy Police Chief

June 3, 2014

Officer Casey Apker  
Kenosha Police Department  
1000-55<sup>th</sup> Street  
Kenosha, WI 53140

**Re Administrative Leave**

Officer Casey Apker:

This letter is to notify you that you are hereby placed on administrative leave with pay effective immediately, pending the final determination of the disciplinary charges filed with the Police & Fire Commission.

While on administrative leave, you are ordered to adhere to the following rules:

- Remain available for call on one hour's notice during your normal scheduled hours of work by leaving word with the lieutenant of Internal Affairs where you can be reached. Until further notice, your normal work schedule will be 7:00 a.m. to 3:00 p.m. on your current 4-2 work schedule. If you intend to leave the Kenosha metropolitan area for more than 72 hours, you must contact Lt. Brad Hetlet and provide information as to your whereabouts and as to a means of communicating with you.
- You will respond to any subpoena, legal summons or other court appearance, which is scheduled, during your administrative leave. If you need access to files, reports, evidence or other documents in order to testify in court, please contact Captain Eric Larsen or Lt. Brad Hetlet and they will make arrangements for you to access these records.
- You will not represent yourself as a Kenosha police officer or take any action as a police officer, unless fulfilling the requirements of a subpoena or other legal summons. Your powers as a police officer in the State of Wisconsin are suspended, pending further notice. All privileges afforded to you as a police officer by the State of Wisconsin, due to your employment with the City of Kenosha are suspended as well.



*The mission of the Kenosha Police Department is to serve all people with respect, fairness and compassion. We are committed to preserving peace, order and safety; enforcing laws and ordinances; and safeguarding constitutional rights.*

- You are required to immediately turn in all badges, identification and access cards and your department issued firearm.
- You are ordered not to discuss this matter with any person, unless it is a family member, union representative or your attorney.
- If you have vacation or holiday time that you wish to use you must submit a leave card, any leave not used that is not authorized to be carried over will be lost. Your request for time off must be submitted to Lt. Brad Hetlet.
- You are not to contact any member of the Kenosha Police Department and discuss official police business or the reasons for your administrative leave, unless you have prior approval of Lieutenant Brad Hetlet or me.
- You are not to visit, appear, or otherwise be in the non-public areas of the Kenosha Police Department unless you have the prior approval of Deputy Chief Daniel Miskinis, Inspector Lewis Lindquist, Lieutenant Brad Hetlet or me.
- If you have any secondary employment that is connected with Kenosha Unified School District, in which you have the ability to exercise police powers, that authorization is suspended until further notice.

Respectfully,



John W. Morrissey  
Chief of Police  
Kenosha Police Department

cc: Deputy Chief Daniel Miskinis  
Inspector Lewis Lindquist  
Attorney Nancy Pirkey  
Steve Stanczak, Human Resources Director  
Peter Deates, KPPA President  
Personnel File

Served to Officer Casey Apker at 0745 hours on JUNE 3<sup>rd</sup>, 2014.



Lt. Brad Hetlet

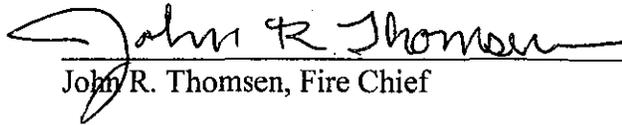
In the Matter of the Disciplinary  
Charges Filed Against

Firefighter Matthew Spidell

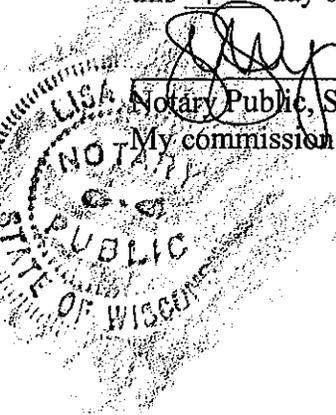
**AFFIDAVIT OF CHIEF JOHN R. THOMSEN**

Chief John R. Thomsen states as follows:

1. I am the Fire Chief for the City of Kenosha Fire Department. It is in this capacity that I make this affidavit.
2. I submit this affidavit to comply with Section 6.4.1 of the By-Laws of the Kenosha Police & Fire Commission which requires that I file a verified (notarized) complaint with the Police & Fire Commission.
3. The attached disciplinary charges are the result of an internal investigation conducted by Deputy Chief John Poltrock and myself of the Kenosha Fire Department. These charges are true and correct and are supported by substantial facts and evidence developed during the course of this internal investigation.

  
 John R. Thomsen, Fire Chief

Subscribed and sworn to before me  
this 11 day of June, 2014.

 *Lisa*  
 Notary Public, State of Wisconsin  
 My commission: 2-4-18

In the Matter of the Disciplinary  
Charges Filed Against

Firefighter Matthew Spidell

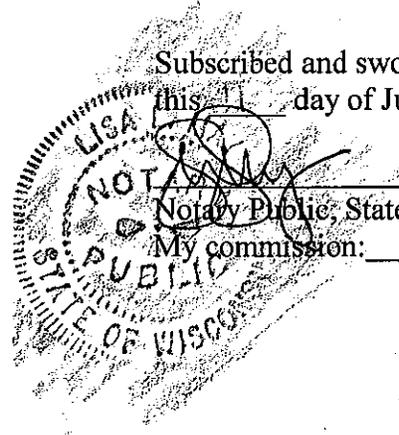
**AFFIDAVIT OF SERVICE**

This is to certify that I, John Thomsen, personally delivered to Matthew Spidell a copy of the disciplinary charges filed with the President of the Kenosha Police & Fire Commission on June 11, 2014. I personally served Firefighter Matthew Spidell with a copy of the disciplinary charges on June 11, 2014 at 7:38 a.m. or p.m.

John R Thomsen  
Fire Chief  
Kenosha Fire Department

Subscribed and sworn to before me  
this 11 day of June, 2014.

Notary Public, State of Wisconsin  
My commission: 2-4-18



In the Matter of the Disciplinary  
Charges Filed Against

Firefighter Matthew Spidell

**AFFIDAVIT OF SERVICE**

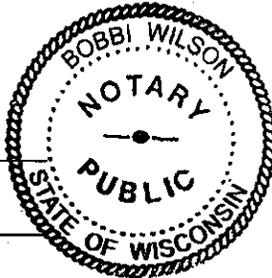
This is to certify that I, Matthew N. Haerter, personally delivered the original of the disciplinary charges against Firefighter Matthew Spidell to Mr. Charles Bradley, the President of the Kenosha Police & Fire Commission. I personally served Mr. Bradley with a copy of these disciplinary charges at his home on June 11, 2014 at 941 a.m. or p.m.

B/C [Signature]  
BATTALION CHIEF #496  
Kenosha Fire Department

Subscribed and sworn to before me  
this 11 day of June, 2014.

[Signature]

Notary Public, State of Wisconsin  
My commission: 6-22-2018



**KENOSHA FIRE DEPARTMENT**

625 - 52nd Street

Kenosha, WI 53140-3480

Phone (262) 653-4100

Fax (262) 653-4107



**JOHN R. THOMSEN**

**FIRE CHIEF**

**COPY**

June 11, 2014

**FF Matthew Spidell  
Station 3**

**RE: Administrative Leave pending Termination Hearing**

FF Matthew Spidell:

I am hereby providing you notice of disqualification and filing of the following disciplinary charges. These charges are being filed as a result of an internal investigation conducted by the Kenosha Fire Department concerning violations of the collective bargaining agreement and General Rules of the Fire Department.

You have intentionally engaged in conduct that is in violation of the Fire Department General Rule which states "*In matters of general conduct, not within the scope of the Department rules, personnel shall be governed by the ordinary rules of good behavior observed by law abiding citizens.*"; violation of the 2013-2015 Collective Bargaining Agreement (CBA) between the City of Kenosha and L-414 of the International Association of Firefighters residency requirement; 25 counts of violating policy 01-D-01 (failing to report the loss of driver license); operating Fire Department equipment without a valid driver license; violation of Policy 01-C-03 (failure to maintain personal contact information); violation of Policy 01-P-03 (failure of Policy Awareness and Adherence); violation of Wisconsin State Statute SPS 330.09(2) (license requirement); Wisconsin State Statute 343.44 (1)(a) (driving under suspension); and failing to maintain the minimum requirements set forth by the job description for the position of firefighter.

An investigative interview was held on May 15, 2014. you acknowledged you did not possess a valid driver's license for a 3 month period beginning sometime in July, and ending on October 16, 2013. You failed to report your lost of driving privileges due to suspension on August 15<sup>th</sup>, 2013 through October 16, 2014.

During the investigative meeting, you stated you simply did not read any mail delivered to your home address and only skimmed department emails from June 2013 to May 2014. As a result, any notices sent from law enforcement or the Department of Transportation were simply discarded.

At no time during this period of driver's license suspension did you inform anyone in your chain-of-command that you did not possess a valid driver's license. As a result, you operated City and

personal vehicles without a valid license on duty, or to other station assignments when temporarily transferred.

### Loss of Residency

On or about December 30, 2013, it was brought to the attention of the Human Resource Department Director Stanczak, by your former wife that you were not residing at the address of record. Deputy Chief Poltrock and House Captain Loewen interviewed you regarding your driver's license status. You produced a current driver's license with an address of 5008 Emstan Hills Road Racine, Wisconsin. On or about December 30, 2014, you had three (3) different addresses of record: 5008 Emstan Hills, Road Racine, Wisconsin; 75 E Fieldstone Circle Franklin, Wisconsin; and 4012 W Anthony Drive Franklin, Wisconsin.

On February 5, 2014 the Fire Chief received an email from Karen Terry (HR Department) regarding your failure to produce a valid driver's license. I called House Captain (HC) Loewen to ascertain the reason for your failure to produce a license. HC Loewen stated "he's off sick, if you want proof, then you can drive to Milwaukee and obtain it from him there, because that is where he lives."

After discussion with HR Director Stanczak, Attorney Vliet and generalist Mrs. Buckley-Hunter, the private investigation firm Proulx Professional Research, Inc was contracted to do surveillance on you beginning March 23, 2014. After numerous weeks of surveillance, you could not be located at 5008 Emstan Hills Road Racine, Wisconsin but were found entering and leaving the property located at 3602 N. 92<sup>nd</sup> Street Milwaukee, Wisconsin. You acknowledged having a key to the property on 92<sup>nd</sup> street Milwaukee, personal belongings and sole access to the garage. Additionally, you acknowledged living at this address with your son, girl friend and dog on a regular basis.

On May 13, 2014 Natalie Spidell (former wife) provided an email which included a text message conversation between herself and you. In this text message dated October 9, 2013 you provided 3602 N. 92<sup>nd</sup> Street Milwaukee Wisconsin 53222 as your place of residence. Ms. Spidell also stated this is the address where she would occasionally deliver your son (Remy) for scheduled placement.

During the May 15, 2014 investigative interview, you stated his primary residence was 5008 Emstan Hills Rd. Racine Wisconsin, yet you admit only residing at the location on days without your juvenile son. This residence is owned and inhabited by a co-worker FF James Adams and his spouse. As illustrated by your work and child placement calendars, from January 1, 2014 to May 15, 2014 (150 days total) it appears you have spent less than 29 days on duty, at least 70 days residing at 92<sup>nd</sup> Street in Milwaukee, and less than 49 days in Racine. You were given the opportunity to provide proof of residency on a number of occasions during the interview. On the day of the interview, you stated you had a key to the Adams' residence, free access to the house and rented room yet refused to travel to the home because you did not want to invade your own personal privacy nor the privacy of the property owner. When asked why you have never been seen at the property in Racine, you stated you park your vehicle in the garage. It is noted the Racine property has a two car garage and each of the primary resident/property owners have

a personal vehicle that have yet to be seen in the drive way by the investigator or Chief Thomsen.

On June 10, 2014 you declared your residence to be in Milwaukee, Wisconsin as indicated by your "Facebook" profile.

### FACTUAL FINDINGS OF THE INVESTIGATION

1. In accordance with posted city policy, the requirements of the classification of KFD Firefighter, and KFD Policy and Procedure (01-D-01), you were required to immediately inform your superiors of your loss of driving privileges due to license suspension on August 15<sup>th</sup>, 2013. You failed to do so on any of the assigned duty days you worked during the 61 day duration of his license suspension.
2. You failed to respond to request via email from HR Department to produce a copy of your valid driver's license on August 9<sup>th</sup>, 2013.
3. On August 9<sup>th</sup>, you were assigned to Truck 3/Rescue 33 and put in a position to drive a reserve BLS unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
4. On August 15<sup>th</sup>, you were assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
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6. On September 2nd, you were assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
7. You failed to respond to request via email from HR Department to produce a copy of your valid driver's license (required after his July 6<sup>th</sup> renewal date) on September 3rd, 2013.
8. On September 8th, you were assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.

9. On September 18th, you were assigned to Med 5 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
10. On September 23rd, you were assigned to Med 7 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
11. On September 29<sup>th</sup>, you were assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
12. You failed to respond to request via email from HR Department to produce a copy of your valid driver's license (required after his July 6<sup>th</sup> renewal date) on October 2nd, 2013.
13. On October 2<sup>nd</sup>, Spidell you were assigned to Truck 3/Rescue 33 and put in a position to drive a reserve BLS unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to placing the city in a position of indefensible liability in the event of an accident.
14. On October 5<sup>th</sup>, you were assigned to Work Out of Classification as assigned Apparatus Operator on Med 7 and drove a Paramedic unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to as well as any other assignments that unit had during its 24-hour shift placing the city in a position of significant exposure to liability in the event of an accident.
15. On October 8<sup>th</sup>, you were assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned.
16. On October 14th, you were assigned to Truck 3/Rescue 33 and put in a position to drive a reserve BLS unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
17. You failed to respond to request via email from HR Department to produce a copy of your valid driver's license (required after his July 6<sup>th</sup> renewal date) on November 6th, 2013.
18. You failed to respond to request via email from HR Department to produce a copy of your valid driver's license (required after his July 6<sup>th</sup> renewal date) on December 6th, 2013.

19. You failed to respond to request via email from HR Department to produce a copy of your valid driver's license (required after his July 6<sup>th</sup> renewal date) on January 10th, 2014.
20. During the time period of license suspension, you responded to no less than 48 EMS calls for service without a valid license.
21. On or about October 1, 2013, you intentionally moved beyond the boundaries of the collective bargaining agreement residency requirement. You then and currently reside at 3602 N. 92 Street Milwaukee, WI.
22. On or about December 30, 2013, you informed the Deputy Fire Chief John Poltrock and House Captain Matthew Loewen that you were in possession of a valid driver license and stated the information on the driver license was correct, but in fact was false. You produced a driver's license with the address of another Kenosha FF James D. Adams (5008 Emstan Hills Road, Racine, WI). You then provided false statement regarding your residency to DC Poltrock and House Captain Loewen.
23. During the May 15, 2014 investigative meeting, you provided false statement regarding your residence to me.
24. For each day of the 61-day suspension period, you were in violation of Operating a motor vehicle after suspension as covered under State Statute 343.44 (1)(a) and adopted by City Ordinance. Such violations would result in the award of a \$124.00 bond and deduction of 3 points against his driver's license for each occurrence.

#### **Violation of the General Rules of the Fire Department**

Fire Department General Rule which states "*In matters of general conduct, not within the scope of the Department rules, personnel shall be governed by the ordinary rules of good behavior observed by law abiding citizens.*"

On or about December 30, 2013 you provided false statements regarding your residence to DC Poltrock and House Captain Loewen.

On May 15, 2014 you repeatedly provided false statements to me and intentionally deceived the Command Staff of the Fire Department by providing false information on your residence.

You intentionally violated Wisconsin State Statutes SPS 330.09(2) *Fire Department Safety and Health Standards* and 343.44 (1A) by operating a vehicle with a suspended license.

#### **Violation of the Policy and Procedures of the Fire Department**

You failed to adhere to the following Fire Department Policies:

1. Policy 01-C-03 (*Failure to maintain personal contact information*),
2. Policy 01-P-03 (*Policy awareness and Adherence*),
3. Policy 01-D-01 (*Driving Privilege Loss Reporting Requirements*).

### **Violation of the Collective Bargaining Agreement**

You intentionally violated the residency requirement of the 2013-2015 Collective Bargaining Agreement (CBA) between the City of Kenosha and L-414 of the International Association of Firefighters when you moved beyond the recognized residency boundaries.

Based upon the seriousness, egregious nature and repeated violations, there is just cause to conclude you engaged in the misconduct that serves as the basis for this disciplinary charge.

You willfully and deliberately lied to me, Deputy Chief Poltrock, and House Captain Loewen, and failed to maintain the qualifications necessary for a firefighter and as an out-of-class apparatus operator, violated three (3) department policies, and violated the residency requirements of the collective bargaining agreement.

The sheer number of occurrences, the three month time period where you held no driver's license, and the fact that you never responded to any email inquiry from HR Department clearly illustrates that you intentionally deceived and displayed conduct unbecoming a law abiding citizen.

The number of known occurrences where you failed to obey State Statute adopted by City Ordinance, valid requests from the Department of Human Resources, and Fire Department Policy exceeds twenty (20). By any measure, you showed a gross lack of judgment and professionalism by putting yourself, co-workers, patients, and the city at tremendous risk by driving, or being in an expected position to drive a municipal emergency vehicle without a valid driver's license, all while intentionally failing to inform your employer so other arrangements could be made to protect the city and the department from tremendous exposure to liability.

You did knowingly attempt to provide false information on your driver's license in order to deceive your employer as to your residence.

Therefore, I am placing you on administrative leave pending a special meeting of the Police and Fire Commission at which time I will recommend your termination from employment.

You are advised to return any and all City issued equipment (SCBA mask, flashlight, helmet, 2 sets of turnout jackets and bunker pants boots, safety jacket, and badges) must be returned to your station officer by the end of today, June 11, 2014. You are directed to remove all your personal belongings from your locker. Failure to return all City of Kenosha property will result in a deduction from your final paycheck for the cost of such items. Any personal items left at the station after that time will be delivered to your address.

This is a difficult decision but a necessary one in the interests of the Kenosha Fire Department. If you are qualified and would like to pursue an alternative position within the City of Kenosha in which you may meet the minimum qualifications, you can view a list of the existing opportunities at [www.kenosha.org](http://www.kenosha.org) by clicking on the Human Resources page and the Employment/Promotional Opportunities link.

Respectfully,

John R. Thomsen  
Chief of the Department  
Kenosha Fire Department

Filename: spidell discharge on residency disqualifications (Autosaved)  
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Subject:  
Author: jthomsen  
Keywords:  
Comments:  
Creation Date: 5/27/2014 9:39:00 AM  
Change Number: 3  
Last Saved On: 6/10/2014 12:31:00 PM  
Last Saved By: jthomsen  
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As of Last Complete Printing  
Number of Pages: 7  
Number of Words: 2,418 (approx.)  
Number of Characters: 13,784 (approx.)

**KENOSHA FIRE DEPARTMENT**

625 - 52nd Street  
Kenosha, WI 53140-3480  
Phone (262) 653-4100  
Fax (262) 653-4107



F.C.  
**JOHN R. THOMSEN**  
FIRE CHIEF

**COPY**

June 11, 2014

**VIA PERSONAL DELIVERY at HOME ADDRESS**

Charles Bradley  
President  
Kenosha Police and Fire Commission  
625-52 Street  
Kenosha, Wisconsin 53140

RE: Filing of Disciplinary Charges against Firefighter  
Matthew Spidell

Dear President Bradley:

Pursuant to Wisconsin Statute Section 62.13 (5)(b), I am hereby providing notice of disqualification and filing the following charges against Firefighter (FF) Matthew Spidell and respectfully request a hearing within the next 30 days. The charges are being filed as a result of an internal investigation conducted by the Kenosha Fire Department concerning violations of the collective bargaining agreement and General Rules of the Fire Department by FF Spidell.

FF Spidell intentionally engaged in conduct that is in violation of the Fire Department General Rule which states "*In matters of general conduct, not within the scope of the Department rules, personnel shall be governed by the ordinary rules of good behavior observed by law abiding citizens.*"; violation of the 2013-2015 Collective Bargaining Agreement (CBA) between the City of Kenosha and L-414 of the International Association of Firefighters residency requirement; 25 counts of violating policy 01-D-01 (failing to report the loss of driver license); operating Fire Department equipment without a valid driver license; violation of Policy 01-C-03 (failure to maintain personal contact information); violation of Policy 01-P-03 (failure of Policy Awareness and Adherence); violation of Wisconsin State Statute SPS 330.09(2) (license requirement); Wisconsin State Statute 343.44 (1)(a) (driving under suspension); and failing to maintain the minimum requirements set forth by the job description for the position of firefighter.

## BACKGROUND INFORMATION

Matthew Spidell is assigned as a firefighter on a 24/48 hour work schedule, on the "B" shift at Fire Station 3, and began his employment with the Kenosha Fire Department on April 2, 2007. Spidell is represented by L-414 of the International Association of Firefighters and is covered by the 2013-2015 CBA with the City of Kenosha.

The Fire Department is a paramilitary organization that requires command and control of subordinate personnel for the purpose of maintaining compliance with the Rules and Regulations of the Department and the collective bargaining agreement.

## INVESTIGATION

### Loss of Driving Privilege

An investigative interview was held on May 15, 2014. FF Spidell acknowledged he did not possess a valid driver's license for a 3 month period beginning sometime in July, and ending on October 16, 2013. FF Spidell lost his driving privileges due to his license suspension on August 15<sup>th</sup>, 2013 through October 16, 2014. Spidell was issued a valid license on October 16, 2014 three (3) months and 1 day after license expired or suspended.

During the investigative meeting, FF Spidell stated he simply did not read any mail delivered to his home address and only skimmed department emails from June 2013 to May 2014. As a result, any notices sent from law enforcement or the Department of Transportation were simply discarded by Spidell.

At no time during his period of driver's license suspension did Spidell inform anyone in his chain-of-command that he did not possess a valid driver's license. As a result, FF Spidell was operating City and personal vehicles without a valid license on duty, to other station assignments when temporarily transferred.

### Loss of Residency

On or about December 30, 2013, it was brought to the attention of the Human Resource Department Director Stanczak, by FF Spidell's former wife that he was not residing at the address of record. Deputy Chief Poltrock and House Captain Loewen interviewed Spidell regarding his driver's license status. Spidell produced a current driver's license with an address of 5008 Emstan Hills Road Racine, Wisconsin. On or about December 30, 2014, FF Spidell had three (3) different addresses of record: 5008 Emstan Hills, Road Racine, Wisconsin; 75 E Fieldstone Circle Franklin, Wisconsin; and 4012 W Anthony Drive Franklin, Wisconsin.

On February 5, 2014 the Fire Chief received an email from Karen Terry (HR Department) regarding Spidell's failure to produce a valid driver's license. The Fire Chief called House Captain (HC) Loewen to ascertain the reason for Spidell's failure to produce a license. HC Loewen stated to the Fire Chief "he's [Spidell] off sick, if you want proof, then you can drive to Milwaukee and obtain it from him there, because that is where he lives."

After discussion with HR Director Stanczak, Attorney Vliet and generalist Mrs. Buckley-Hunter, the private investigation firm Proulx Professional Research, Inc was contracted to do surveillance on FF Spidell beginning March 23, 2014. After numerous weeks of surveillance, Spidell could not be located at 5008 Emstan Hills Road Racine, Wisconsin but was found entering and leaving the property located at 3602 N. 92<sup>nd</sup> Street Milwaukee, Wisconsin. Spidell acknowledged having a key to the property on 92<sup>nd</sup> street Milwaukee, personal belongings and sole access to the garage. Additionally, Spidell acknowledged living at this address with his son, girl friend and dog on a regular basis.

On May 13, 2014 Natalie Spidell (former wife) provided an email which included a text message conversation between herself and FF Spidell. In this text message dated October 9, 2013 FF Spidell provided 3602 N. 92<sup>nd</sup> Street Milwaukee Wisconsin 53222 as his place of residence. Ms. Spidell also stated this is the address where she would occasionally deliver their son (Remy) for scheduled placement.

During the May 15, 2014 investigative interview, FF Spidell stated his primary residence was 5008 Emstan Hills Rd. Racine Wisconsin, yet FF Spidell admits only residing at the location on days without his juvenile son. This residence is owned and inhabited by a co-worker FF James Adams and his spouse. As illustrated by Spidell's work and child placement calendars, from January 1, 2014 to May 15, 2014 (150 days total) it appears he has spent less than 29 days on duty, at least 70 days residing at 92<sup>nd</sup> Street in Milwaukee, and less than 49 days in Racine. FF Spidell was given the opportunity to provide proof of residency on a number of occasions during the interview. On the day of the interview, Spidell stated he had a key to the Adams' residence, free access to the house and his rented room yet refused to travel to the home because he did not want to invade his own personal privacy nor the privacy of the property owner. When asked why he has never been seen at the property in Racine, Spidell stated he parks his vehicle in the garage. It is noted the Racine property has a two car garage and each of the primary resident/property owners have a personal vehicle that have yet to be seen in the drive way by the investigator or Chief Thomsen.

On June 10, 2014 FF Spidell declares his residence to be in Milwaukee, Wisconsin as indicated by his "Facebook" profile.

### **FACTUAL FINDINGS OF THE INVESTIGATION**

1. In accordance with posted city policy, the requirements of the classification of KFD Firefighter, and KFD Policy and Procedure (01-D-01), FF Spidell was required to immediately inform his superiors of his loss of driving privileges due to his license suspension on August 15<sup>th</sup>, 2013. He failed to do so on any of the assigned duty days he worked during the 61 day duration of his license suspension.
2. Spidell failed to respond to request via email from HR Department to produce a copy of his valid driver's license on August 9<sup>th</sup>, 2013.

3. On August 9<sup>th</sup>, Spidell was assigned to Truck 3/Rescue 33 and put in a position to drive a reserve BLS unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
4. On August 15<sup>th</sup>, Spidell was assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
5. On August 18<sup>th</sup>, Spidell was assigned to Truck 3/Rescue 33 and put in a position to drive a reserve BLS unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
6. On September 2nd, Spidell was assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
7. Spidell failed to respond to request via email from HR Department to produce a copy of his valid driver's license (required after his July 6<sup>th</sup> renewal date) on September 3rd, 2013.
8. On September 8th, Spidell was assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
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14. On October 5<sup>th</sup>, Spidell was assigned to Work Out of Classification as assigned Apparatus Operator on Med 7 and drove a Paramedic unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to as well as any other assignments that unit had during its 24-hour shift placing the city in a position of significant exposure to liability in the event of an accident.
15. On October 8<sup>th</sup>, Spidell was assigned to Med 3 and put in a position to drive a Paramedic unit with a crew of 3 and at least one patient to the hospital on each ALS call it was assigned.
16. On October 14<sup>th</sup>, Spidell was assigned to Truck 3/Rescue 33 and put in a position to drive a reserve BLS unit with a crew of 3 and at least one patient to the hospital on each call it was assigned to placing the city in a position of significant exposure to liability in the event of an accident.
17. Spidell failed to respond to request via email from HR Department to produce a copy of his valid driver's license (required after his July 6<sup>th</sup> renewal date) on November 6<sup>th</sup>, 2013.
18. Spidell failed to respond to request via email from HR Department to produce a copy of his valid driver's license (required after his July 6<sup>th</sup> renewal date) on December 6<sup>th</sup>, 2013.
19. Spidell failed to respond to request via email from HR Department to produce a copy of his valid driver's license (required after his July 6<sup>th</sup> renewal date) on January 10<sup>th</sup>, 2014.
20. During the time period of license suspension, Spidell responded to no less than 48 EMS calls for service without a valid license.
21. On or about October 1, 2013, FF Spidell intentionally moved beyond the boundaries of the collective bargaining agreement residency requirement. Spidell's then and current residence is 3602 N. 92 Street Milwaukee, WI.
22. On or about December 30, 2013, FF Spidell informed the Deputy Fire Chief John Poltrock and House Captain Matthew Loewen that he was in possession of a valid driver license and stated the information on the driver license was correct, but in fact was false. FF Spidell produced a driver's license with the address of another Kenosha FF James D. Adams (5008 Emstan Hills Road, Racine, WI). FF Spidell provided false statement regarding his residency to DC Poltrock and House Captain Loewen.

23. During the May 15, 2014 investigative meeting, FF Spidell provided false statement regarding his residence to the fire chief.

24. For each day of the 61-day suspension period, Spidell was in violation of Operating a motor vehicle after suspension as covered under State Statute 343.44 (1)(a) and adopted by City Ordinance. Such violations would result in the award of a \$124.00 bond and deduction of 3 points against his driver's license for each occurrence.

### **Violation of the General Rules of the Fire Department**

Fire Department General Rule which states "*In matters of general conduct, not within the scope of the Department rules, personnel shall be governed by the ordinary rules of good behavior observed by law abiding citizens.*"

On or about December 30, 2013 FF Spidell provided false statements regarding his residence to DC Poltrock and House Captain Loewen.

On May 15, 2014 FF Spidell repeatedly provided false statements to the Fire Chief and intentionally deceived the Command Staff of the Fire Department by providing false information on his residence.

FF Spidell intentionally violated Wisconsin State Statutes SPS 330.09(2) *Fire Department Safety and Health Standards* and 343.44 (1A) by operating a vehicle with a suspended license.

### **Violation of the Policy and Procedures of the Fire Department**

FF Spidell failed to adhere to the following Fire Department Policies:

1. Policy 01-C-03 (*Failure to maintain personal contact information*),
2. Policy 01-P-03 (*Policy awareness and Adherence*),
3. Policy 01-D-01 (*Driving Privilege Loss Reporting Requirements*).

### **Violation of the Collective Bargaining Agreement**

FF Spidell intentionally violated the residency requirement of the 2013-2015 Collective Bargaining Agreement (CBA) between the City of Kenosha and L-414 of the International Association of Firefighters when he moved beyond the recognized residency boundaries.

### **PRIOR DISCIPLINARY ACTION**

FF Spidell received the following discipline since being appointed in 2007:

4/22/2008      Formal Counseling

Damage to Med Unit

8/18/2012	Written Record/Verbal reprimand	Failed to report for Duty
9/20/2012	Written reprimand	Damaged Fire Engine
2/7/2013	Suspension (3 days/2 held in abeyance)	Failed to report for Duty
3/27/2013	Suspension (the 2 previously held in abeyance plus 1 additional day)	Failed to report for training, and submitted false overtime slip

### REQUEST FOR DISCIPLINARY ACTION

Based upon the seriousness, egregious nature and repeated violations, there is just cause to conclude FF Spidell engaged in the misconduct that serves as the basis for this disciplinary charge.

FF Spidell willfully and deliberately lied to Fire Chief John Thomsen, Deputy Chief Poltrock, and House Captain Loewen, and failed to maintain the qualifications necessary for a firefighter and as an out-of-class apparatus operator, violated three (3) department policies, and violated the residency requirements of the collective bargaining agreement.

The sheer number of occurrences, the three month time period where he held no driver's license, and the fact that he never responded to any email inquiry from HR Department clearly illustrates that Spidell was intentionally deceptive to the extreme and displayed conduct unbecoming a law abiding citizen.

The number of known occurrences where Spidell failed to obey State Statute adopted by City Ordinance, valid requests from the Department of Human Resources, and Fire Department Policy exceeds twenty (20). By any measure, Spidell showed a gross lack of judgment and professionalism by putting himself, his co-workers, his patients, and the city at tremendous risk by driving, or being in an expected position to drive a municipal emergency vehicle without a valid driver's license, all while intentionally failing to inform his employer so other arrangements could be made to protect the city and the department from tremendous exposure to liability.

FF Spidell did knowingly attempt to provide false information on his driver's license in order to deceive his employer as to his residence.

Therefore to restore the legitimate command and control of personnel, to maintain the terms of the collective bargaining agreement, and for the good of the Department, I am requesting FF Spidell be dismissed from the Department effective immediately.

I will serve these charges on FF Spidell and will provide the Commission with an Affidavit of Service once completed. Additionally, I am sending a courtesy copy of the charges to IAFF L-414 President Jeremy Ryan.

The City will be represented in this matter by Attorney Daniel Vliet of Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, WI 53185. Mr. Vliet may be reached by telephone at (262) 364-0259. Please include Attorney Vliet on all future correspondence regarding the scheduling of the hearing or any other aspects of this matter.

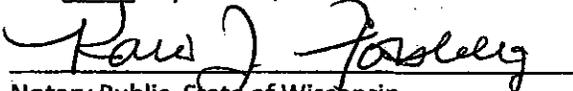
Your Servant,



John R. Thomsen  
Chief of the Department  
Kenosha Fire Department

cc: Steve Stanczak, Director of Human Resources  
Attorney Vliet  
FF Matthew Spidell  
FF Jeremy Ryan, L-414 Union President

Subscribed and sworn to before me  
this 10<sup>th</sup> day of June, 2014.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission: 3/15/15