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City of Austin

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Human Resources Dept



MEMORANDUM

TO: Joya Hayes, Director of Civil Service

FROM: Rhoda Mae Kerr, Fire Chief

DATE: October 31, 2016

SUBJECT: 30-Day Agreed Suspension of Fire Captain Gregory Zenkner

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, the Rules and Regulations for Firefighters', Police Officers', and Emergency Medical Services Personnel's Civil Service Commission, I have agreed to temporarily suspend Fire Captain Gregory Zenkner from his duty as a Firefighter of the City of Austin, Texas for a period of thirty (30) days. The agreed temporary suspension is effective beginning at 0900 hours October 31, 2016, and ending at 0900 hours on November 30, 2016.

I took this action because Captain Zenkner violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Captain Zenkner in violation of Rule 10:

Between September 9 and October 16, 2016, Captain Zenkner posted inappropriate comments on his social media account. Although Captain Zenkner did not identify himself as an AFD employee in those postings, that connection was easily made by the readers of the postings by clicking on the link to his profile, where he identified himself as a Captain with the Austin Fire Department.

By these actions, Captain Zenkner violated Rule 10.03(L) of Civil Service Rules by violating the following Policies and Procedures of the Austin Fire Department:

AFD Policy and Procedures:

- E201: Code of Conduct

V (D): "Whether on or off duty, members shall not conduct themselves in a manner that will bring credit to themselves and the Fire Department."

- C109: Use of Social Media

IV (B) (2): Member are not restricted from using social media as private citizens or for personal matters, so long as their use does not impair working relationships of the Department for which loyalty and confidentiality are important, impede the performance of duties, impair discipline and harmony among coworkers, negatively affect the public perception of the Department, or violate any provisions of AFD Policy E201 Code of Conduct.


IV (B) (3): Members are prohibited from the use of speech, images, comments, and/or cartoons containing obscene or sexually explicit language, images, or acts and statements or other forms of speech that ridicule, malign, disparage, threaten, harass, or otherwise express bias against any person, as further defined in AFD Policy E202 Harassment.

IV (B) (5): Members may not post, transmit, or disseminate any photographs, videos or other recordings obtained or accessible as a result of employment with the Department without the express authorization of the Fire Chief or her designee.

I recognize and respect my employees' First Amendment right to free speech. However, their role as public servants dictates that they are held to a higher standard for what they say and do, both on and off duty. When the government acts as the employer, there is much broader discretion to impose limits on speech, especially when the individual identifies himself/herself as affiliated with that employer. As stewards of the public trust, it is incumbent upon all of us to ensure we balance our personal viewpoints and opinions with the privilege we are granted in serving our community.


By signing this Agreed Suspension, Captain Zenkner understands and agrees that I am forgoing my right to indefinitely suspend him or recommend his involuntary demotion for the conduct described above and that by agreeing to this suspension, Captain Zenkner waives all right to appeal this disciplinary action to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, to District Court, nor may he utilize the Grievance Procedure (Article 20) of the Collective Bargaining Agreement to contest this suspension.


Rhoda Mae Kerr, Fire Chief


Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed suspension and I understand that by entering into this agreement, the Fire Chief forgoes her right to indefinitely suspend me or recommend my involuntary demotion for the conduct described above and that by agreeing to this suspension, I have no right to appeal this disciplinary action to the Civil Service Commission, to the District Court, to an Independent Third-Party Hearing Examiner, and I may not utilize the Grievance Procedure (Article 20) of the Collective Bargaining Agreement to contest this suspension.



Gregory Zenkner, Fire Captain

10-31-2016
Date